

# **TITLE 16: OCCUPATIONAL AND PROFESSIONAL LICENSING**

## **CHAPTER 1: OCCUPATIONAL AND PROFESSIONAL LICENSING GENERAL PROVISIONS**

### **PART 1: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

#### **16.1.1.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, on behalf of the department, its divisions, and all administratively attached boards and commissions.

[16.1.1.1 NMAC - Rp, 16 NMAC 1.1.I.100, 01/23/11]

#### **16.1.1.2 SCOPE:**

This part applies to disciplinary proceedings by an issuing agency pursuant to the Parental Responsibility Act against a license, certificate, registration or permit required to engage in a profession or occupation.

[16.1.1.2 NMAC - Rp, 16 NMAC 1.1.I.101, 01/23/11]

#### **16.1.1.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978.

[16.1.1.3 NMAC - Rp, 16 NMAC 1.1.I.102, 01/23/11]

#### **16.1.1.4 DURATION:**

Permanent.

[16.1.1.4 NMAC - Rp, 16 NMAC 1.1.I.103, 01/23/11]

#### **16.1.1.5 EFFECTIVE DATE:**

January 23, 2011, unless a later date is cited at the end of a section.

[16.1.1.5 NMAC - Rp, 16 NMAC 1.1.I.104, 01/23/11]

#### **16.1.1.6 OBJECTIVE:**

This part is intended to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license, certificate, registration or permit required to engage in a profession or license by an issuing agency under this part.

[16.1.1.6 NMAC - Rp, 16 NMAC 1.1.I.105, 01/23/11]

#### **16.1.1.7 DEFINITIONS:**

A. All terms defined in the Parental Responsibility Act shall have the same meanings in this part unless defined below.

B. As used in this part:

(1) "agency" means as the context requires, the issuing agency that is implementing the Parental Responsibility Act;

(2) "HSD" means the New Mexico human services department;

(3) "license" means a license, certificate, registration or permit issued by an agency that a person is required to have to engage in a profession or occupation in New Mexico;

(4) "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;

(5) "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[16.1.1.7 NMAC - Rp, 16 NMAC 1.1.I.106, 01/23/11]

#### **16.1.1.8 DISCIPLINARY PROCEEDINGS:**

A. Disciplinary action: If an applicant or licensee is not in compliance with a judgment and order for support, the agency:

(1) shall deny an application for a license;

(2) shall deny the renewal of a license; and

(3) has grounds for suspension or revocation of a license.

B. Certified list: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the agency shall match the certified list against the current list of agency applicants and licensees. Upon the later receipt of an application

for licensure or renewal, the agency shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the agency shall report to HSD the names of agency applicants and licensees who are on the certified list and the action the agency has taken in connection with such applicants and licensees.

C. Initial action: Upon determination that an applicant or licensee appears on the certified list, the agency shall:

(1) commence a formal proceeding under Subsection D of 16.1.1.8 NMAC to take the appropriate action under Subsection A of 16.1.1.8 NMAC; or

(2) for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the agency with a subsequent statement of compliance by the earlier of the application for license renewal or a specified date not to exceed six months; if the licensee fails to provide the statement, the agency shall commence a formal proceeding under Subsection D of 16.1.1.8 NMAC.

D. Notice of contemplated action: Prior to taking any action specified in Subsection A of 16.1.1.8 NMAC, the agency shall serve upon the applicant or licensee a written notice stating that:

(1) the agency has grounds to take such action, and that the agency shall take such action unless the licensee or applicant:

(a) mails a letter (certified mail, return receipt requested) within 20 days after service of the notice requesting a hearing; or

(b) provides the agency, within 30 days of the date of the notice, with a statement of compliance, and

(2) if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

E. Evidence and proof: In any hearing under this part, relevant evidence is limited to the following:

(1) a statement of non-compliance is conclusive evidence that requires the agency to take the appropriate action under Subsection A of 16.1.1.8 NMAC, unless;

(2) the applicant or licensee can provide the agency with a subsequent statement of compliance which shall preclude the agency from taking any action based solely on the prior statement of non-compliance.

F. Order: When an action is taken under this part solely because the applicant or licensee is not in compliance with a judgement and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The agency may also include any other conditions necessary to comply with agency requirements for reapplication or reinstatement of lapsed licenses.

G. Procedures: Proceedings under this part shall be governed by the Uniform Licensing Act, Section 61-1-1 NMSA 1978, *et seq.*, or any other adjudicatory procedures adopted by the agency.

[16.1.1.8 NMAC - Rp, 16 NMAC 1.1.II.200-206, 01/23/11]

## **PART 2: SUNRISE PROGRAM**

### **16.1.2.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[2/1/94; Recompiled 12/31/01]

### **16.1.2.2 SCOPE:**

Any unregulated profession or occupation that is not under the authority of an existing agency and that seeks to create a new board or commission for the public health, safety or welfare must comply with the provisions of the Act and must submit an application for regulation in accordance with these rules and regulations.

[2/1/94; Recompiled 12/31/01]

### **16.1.2.3 STATUTORY AUTHORITY:**

These rules and regulations are adopted pursuant to Section 12-9A-6, NMSA 1978, 1993 supplement.

[2/1/94; Recompiled 12/31/01]

### **16.1.2.4 DURATION:**

Permanent.

[2/1/94; Recompiled 12/31/01]

### **16.1.2.5 EFFECTIVE DATE:**

February 1, 1994 [unless a later date is cited at the end of a section].

[2/1/94; Recompiled 12/31/01]

**16.1.2.6 OBJECTIVE:**

**PURPOSE OF SUNRISE REVIEW:**

**A.** The sunrise review establishes a system for investigation of the necessity of State regulation of an occupation or profession prior to the legislature enacting any law for such regulation.

**B.** The sunrise review enables the Committee and legislature to evaluate the need for regulation of an occupation or profession and to determine the level of regulation needed to safeguard the public health, safety or welfare.

[2/1/94; Recompiled 12/31/01]

**16.1.2.7 DEFINITIONS:**

Each of the following terms shall have the meaning indicated when used in these rules and regulations:

**A.** "Act" is the Sunrise Act (Sections 12-9A-1 through 12-9A-6, NMSA 1978, 1993 Supplement).

**B.** "Applicant Group" is any business or professional group or organization, any individual, or any other interested party who submits a completed application for sunrise review to the Manager.

**C.** "Committee" is the Legislative Finance Committee of the State of New Mexico.

**D.** "Department" is the Regulation and Licensing Department of the State of New Mexico.

**E.** "Manager" is the Sunrise Program Manager of the Regulation and Licensing Department of the State of New Mexico.

**F.** "Sunrise Review" is the process by which a determination is made regarding the necessity for State regulation of an occupation or profession.

[2/1/94; Recompiled 12/31/01]

**16.1.2.8 FUNDING OF SUNRISE PROGRAM:**

**A.** To implement the provisions of the Act, the Department was granted authority to assess costs of the sunrise program among boards covered by the Uniform Licensing Act (Sections 61-1-1 through 61-1-31, NMSA 1978).

**B.** The Department shall submit an annual budget request for the costs of the sunrise program. Funding shall be approved by the legislature as part of the General Appropriations Act. The Department shall assess annually each board covered by the Uniform Licensing Act a proportionate share, based upon its budget, for the costs of the sunrise program.

**C.** The Department shall return proportionately to the contributing boards any of their contributed funds that are unexpended by the sunrise program at the end of the fiscal year.

**D.** The Department shall deposit to the funds of the sunrise program all application fees paid by Applicant Groups. Such application fees shall be used to pay part of the costs of the sunrise program, thereby reducing proportionately the contribution of each of the boards for the costs of the sunrise program.

[2/1/94; Recompiled 12/31/01]

#### **16.1.2.9 APPLICATION FOR REGULATION - GENERAL INFORMATION:**

**A.** An Applicant Group seeking state licensure or regulation of a profession or occupation not under the authority of an existing agency shall submit an application for regulation to the sunrise program.

**B.** The burden of proving the need for regulation of an occupation or profession is on the Applicant Group. The Applicant Group can demonstrate a need for regulation by meeting the criteria for licensure and regulation set forth in the Act. The more thoroughly the need for regulation is substantiated by the Applicant Group, the more easily and quickly the application can be reviewed.

**C.** A complete application consists of submittal to the Manager of the completed Applicant Group Questionnaire and the required fee. The Questionnaire must be complete in all details and all items must be addressed.

**D.** The Applicant Group shall submit sufficient information to enable the Manager, Department and Committee to fairly, adequately and completely evaluate its application.

**E.** The Applicant Group shall cooperate with the Manager, Department and Committee as necessary to interpret and clarify the application and supporting materials. The Applicant Group shall provide, to the extent possible, all information requested by the Manager, Department or Committee.

**F.** Ordinarily, an Applicant Group's approved request for regulation will be considered by the legislature only during one of its "long" sessions; i.e., during odd-numbered years. Therefore, it is recommended that the Applicant Group have its completed application in the Manager's office by January 1st, but in no case later than April 1st, of the even-numbered year preceding the legislature's "long" session. The

earlier an Applicant Group submits its application, the better its chances of receiving a complete sunrise review prior to the start of a particular legislative session. Although the Manager, Department and Committee shall make every effort to promptly complete their sunrise review of each application, it is possible, upon occasion, that a complete review of a particular application cannot be completed prior to the start of a particular legislative session. In such case, if the application for licensure or regulation is approved at a later date by the Committee, the Committee shall consider action on the proposed licensure or regulation at the next legislative opportunity.

**G.** Ordinarily, an application from an Applicant Group will be reviewed in the order in which it is received; i.e., the first application received shall be the first one reviewed. If it is necessary for the Manager, Department or Committee to establish priorities, the priority of one applicant group over another will be based on information in the applications, particularly that relating to the potential harm to the public that may be caused by the continued practice of the unregulated group. In such case, the Manager, Department or Committee shall decide on the order in which each application shall be reviewed.

[2/1/94; Recompiled 12/31/01]

#### **16.1.2.10 PROCEDURE FOR SUNRISE REVIEW:**

**A.** The Applicant Group first shall submit a letter of intent to the Manager, declaring its interest in becoming regulated by the State of New Mexico and its desire to begin the sunrise review process. The letter of intent shall be delivered to: Sunrise Program Manager, Regulation and Licensing Department, State of New Mexico, Post Office Box 25101, 725 St. Michaels Drive, Santa Fe, New Mexico 87504

**B.** Upon receipt of the letter of intent, the Manager shall contact the Applicant Group to arrange for a meeting to discuss the application requirements set forth in these rules and regulations and in the Applicant Group Questionnaire; if, for any reason, the Applicant Group's representative(s) cannot attend such a meeting, the Manager shall send to the Applicant Group a copy of these rules and regulations and an Applicant Group Questionnaire.

**C.** Upon request by the Applicant Group, the Manager will review a draft of the application and recommend changes as necessary. The Applicant Group, however, is the final authority on the contents of the application.

**D.** The Applicant Group shall submit its completed application to the Manager at the address set forth in paragraph "A" above.

**E.** An application fee of one thousand dollars (\$1,000.00) must accompany the completed Questionnaire. The check or money order in payment of such fee shall be made payable to "Regulation and Licensing Department".

**F.** Within ten (10) working days of the Manager's receipt of the application from an Applicant Group:

**(1)** If the application is complete, the Manager shall send a letter of acceptance to the Applicant Group stating its proposal has been accepted for sunrise review; or

**(2)** If the application is not complete, the Manager shall send a letter to the Applicant Group stating specifically what additional information is necessary.

**G.** When the Applicant Group's application has been accepted for sunrise review, the Manager shall notify in writing the Department, Committee, boards covered by the Uniform Licensing Act, and Governor's Office, and shall begin the sunrise review process. If necessary, the Manager shall contact the Applicant Group to clarify documentation or to request additional information.

**H.** During the process of sunrise review, the Manager shall solicit comments from the public relative to the necessity or desirability of regulation of the Applicant Group. The Manager may contact directly boards covered by the Uniform Licensing Act, professional associations, interested parties and groups and/or schedule public hearings to be held in one or more cities in the State.

**I.** The Manager shall submit to the Department a written review and evaluation of the Applicant Group's proposal and a recommendation regarding regulation.

**J.** The Manager, with the Department's approval, shall submit to the Committee and to the Governor's Office a written review and evaluation of the Applicant Group's proposal and a recommendation regarding regulation.

**K.** The Committee shall review the Applicant Group's proposal and the Department's written comments and recommendation. The Committee may conduct a hearing on the pro the proposal or may request additional information from the Applicant Group. It shall be the responsibility of the Applicant Group to furnish promptly any additional information requested by the Committee.

**L.** If the Committee finds that all criteria for licensure or regulation of an occupation or profession have been met pursuant to Section 12-9A-3, NMSA 1978, 1993 Supplement, it may recommend creation of a new board or commission to regulate or license the occupation or profession. Such recommendation shall be made to the legislature in accordance with the requirements of Section 12-9A-5, NMSA 1978, 1993 Supplement.

**M.** If the Committee does not find that all criteria for licensure or regulation of an occupation or profession have been met, it may recommend denial of the application for regulation.

**N.** If the Committee finds that the criteria for licensure or regulation of an occupation or profession would be met if amendment were made to the application for regulation, it may recommend such amendment to the Applicant Group and it may allow such amendment to be made to the application before making its final recommendation.

**O.** Whether the Committee recommends approval or denial of the application of an Applicant Group, it may make additional recommendations regarding solutions to problems identified during the sunrise review.

[2/1/94; Recompiled 12/31/01]

#### **16.1.2.11 REAPPLICATION FOR SUNRISE REVIEW:**

**A.** If the Committee does not recommend creation of a new board or commission to license or regulate a profession or occupation, the Applicant Group may reapply for a sunrise review after the expiration of one (1) year from the date of the Committee's decision.

**B.** Notwithstanding the time limitation of paragraph "A" above, in the event of extreme or compelling circumstances or clear evidence of harm or endangerment to the health, safety or welfare of the public, the Applicant Group may reapply for sunrise review at any time.

**C.** When reapplying for sunrise review, the Applicant Group shall follow the procedure for sunrise review as set out in Section 201.00 of these rules and regulations.

[2/1/94; Recompiled 12/31/01]

#### **16.1.2.12 APPLICATION FEE:**

The application fee shall be one thousand dollars (\$1,000.00) for any Applicant Group seeking State regulation of a profession or occupation through creation of a new board or commission.

[2/1/94; Recompiled 12/31/01]

#### **16.1.2.13 MISCELLANEOUS FEES:**

**A.** The fee for photocopies of documents shall be twenty-five cents (\$0.25) per page.

**B.** The fee for certified copies of documents shall be fifty cents (\$0.50) per page.

**C.** The fee for any check which fails to clear the bank or is returned unpaid for any reason shall be twenty dollars (\$20.00).

[2/1/94; Recompiled 12/31/01]

**16.1.2.14 SEVERABILITY:**

If any part of the application of these rules and regulations is held invalid, the remainder of its application to other situations, groups or persons shall not be affected.

[2/1/94; Recompiled 12/31/01]

## **CHAPTER 2: ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

**16.2.1.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.1.1 NMAC - Rp, 16.2.1.1 NMAC 02/11/2022]

**16.2.1.2 SCOPE:**

All licensed doctors of oriental medicine, applicants, temporary licensees, applicants for temporary licensure, doctors of oriental medicine certified for expanded practice and applicants for certification, educational courses, externs, auricular detoxification specialists, educational programs and applicants for approval of educational programs.

[16.2.1.2 NMAC - Rp, 16.2.1.2 NMAC 02/11/2022]

**16.2.1.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1, 2, 3, 7, 8, 8.1, 14.1 and 9, NMSA 1978.

[16.2.1.3 NMAC - Rp, 16.2.1.3 NMAC 02/11/2022]

**16.2.1.4 DURATION:**

Permanent.

[16.2.1.4 NMAC - Rp, 16.2.1.4 NMAC 02/11/2022]

**16.2.1.5 EFFECTIVE DATE:**

February 11, 2022 unless a later date is cited at the end of a section or paragraph.

[16.2.1.5 NMAC - Rp, 16.2.1.5 NMAC 02/11/2022]

#### **16.2.1.6 OBJECTIVE:**

This part provides definitions for terms used in the rules in addition to those definitions in the Act, lists the board's duties, clarifies what are not public records, provides for inspection of the board's public records, and provides for telephone conferences.

[16.2.1.6 NMAC - Rp, 16.2.1.6 NMAC 02/11/2022]

#### **16.2.1.7 DEFINITIONS:**

The following definitions apply to the rules and the act.

##### **A. Definitions beginning with "A":**

- (1) **"A4M"** is the American academy of anti-aging medicine.
- (2) **"ACAM"** is the American college of alternative medicine.
- (3) **"ACAHM"** is the accreditation commission for acupuncture and [oriental] herbal medicine, formerly known as and synonymous with the accreditation commission for acupuncture and oriental medicine, (ACAOM), and any previous or former names used by the institution including the national accreditation commission for schools and colleges of acupuncture and oriental medicine, (ACSCAOM).
- (4) **"Act"** is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.
- (5) **"AMA"** is the American medical association.
- (6) **"Animal acupuncture"** is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act 61-14-1 to 61-14-20 NMSA 1978 and the rules of the New Mexico board of veterinary medicine 16.25.9.15 NMAC.
- (7) **"Applicant"** is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.
- (8) **"Applicant for temporary licensure"** is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.
- (9) **"Auricular acupuncture detoxification"** is an acupuncture related technique used only in the treatment and prevention of alcoholism, substance abuse and chemical dependency. Auricular acupuncture detoxification may be described or

referred to as "auricular detoxification", "acupuncture detoxification", "auricular acupuncture detoxification", or "acudetox".

(10) **"Auricular detoxification specialist supervisor"** is a doctor of oriental medicine registered with the board under the provisions of 16.2.16.18 NMAC.

(11) **"Auricular detoxification specialist training program"** is a training program approved by the board under the provisions of 16.2.16.26 NMAC to train certified auricular detoxification specialists and auricular detoxification supervisors.

(12) **"Auricular detoxification specialist training program trainer"** is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

(13) **"Authorized substances"** are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to Paragraph (1) of Subsection C of Section 61-14A-8 NMSA 1978 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific category of expanded practice as defined in 16.2.19 NMAC.

#### **B. Definitions beginning with "B":**

(1) **"Bioidentical hormones"** means compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.

(2) **"Biomedical diagnosis"** is a diagnosis of a person's medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, ninth revision, clinical modification (ICD-9-CM).

(3) **"Biomedicine"** is the application of the principles of the natural sciences to clinical medicine.

#### **C. Definitions beginning with "C":**

(1) **"Certified auricular detoxification specialist"** is a person certified by the board under the provisions of 16.2.16.10 NMAC to perform auricular detoxification techniques, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. A person certified pursuant to Paragraph (1) of Subsection B of 61-14A-4 NMSA 1978 shall use the title of "certified auricular detoxification specialist" or "C.A.D.S."

(2) **"Chief officer"** is the board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

(3) **"Clinical experience"** is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than 500 patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least 25 different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.

(4) **"Clinical skills examination"** is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.

(5) **"Complainant"** is the complaining party.

(6) **"Complaint committee"** is a board committee composed of the complaint committee chairperson and the complaint manager.

(7) **"Complaint committee chairperson"** is a member of the board appointed by the board's chairperson.

(8) **"Complaint manager"** is the board's administrator or any member of the board appointed by the board's chairperson.

#### **D. Definitions beginning with "D":**

(1) **"Department"** is the state of New Mexico regulation and licensing department.

(2) **"Detoxification"** is a concept in integrative medicine based on the principle that illnesses can be caused by the accumulation of toxic substances (toxins) in the body. Therapeutic support of elimination of these toxins is detoxification.

(3) **"Doctor of oriental medicine"** is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

#### **E. Definitions beginning with "E":**

(1) **"Educational course"** is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded

practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

(2) **"Educational program"** is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four academic years and meets the requirements of Section 61-14A-14 NMSA 1978 of the act and 16.2.7 NMAC.

(3) **"Expanded practice"** is authorized by of Section 61-14-8.1 NMSA 1978 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in 16.2.19 NMAC. Expanded practice is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Paragraph (2) of Subsection G of Section 61-14A-3 NMSA 1978 of the act.

(4) **"Extern"** is a current applicant undergoing supervised clinical training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC.

(5) **"Externship"** is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC.

(6) **"Externship supervisor"** is a doctor of oriental medicine who has at least five clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board's application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC.

#### **F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G": Good cause** is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

#### **H. Definitions beginning with "H": [RESERVED]**

#### **I. Definitions beginning with "I":**

(1) **"Inactive licensee"** means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC.

(2) **"ICE"** is the institute for credentialing excellence.

(3) **"IFM"** is the institute for functional medicine.

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L":**

(1) **"Licensee"** is a doctor of oriental medicine licensed pursuant to the act.

(2) **"License"** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

(3) **"Licensing candidate"** is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

(4) **"Licensing fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

(5) **"Licensure by endorsement"** is a licensing procedure for the experienced practitioner who completed his initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC. Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

(6) **"Limited temporary license"** is a license issued under the provisions of 16.2.5.12 NMAC for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized healthcare practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

(7) **"Live cell products"** are living cells from glandular tissues and other tissues.

**M. Definitions beginning with "M": "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**N. Definitions beginning with "N":**

(1) **"Natural substances"** are substances that exist in or are produced by nature and have not been substantially transformed in character or use.

(2) **"NCA"** is a notice of contemplated action.

(3) **"NCCAOM"** is the national certification commission for acupuncture and oriental medicine.

#### **O. Definitions beginning with "O":**

(1) **"Office"** is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

(2) **"Oxidative medicine"** is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body's oxidation and reduction function and health.

**P. Definitions beginning with "P": "Protomorphogens"** are extracts of glandular tissues.

#### **Q. Definitions beginning with "Q": [RESERVED]**

#### **R. Definitions beginning with "R":**

(1) **"Respondent"** is the subject of the complaint.

(2) **"Rules"** are the rules, promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC.

#### **S. Definitions beginning with "S":**

(1) **"Substantial equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 NMSA 1978 *et. seq.*

(2) **"Supervised clinical observation"** is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(3) **"Supervised clinical practice"** is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(4) **"Supervision"** is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be

provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC. No more than four students shall be under supervision for supervised clinical practice and no more than four students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

**T. Definitions beginning with "T":**

(1) **"Temporary licensee"** is a doctor of oriental medicine who holds a temporary license pursuant to the act, 61-14-12 NMSA 1978 and 16.2.5 NMAC.

(2) **"Therapeutic serum"** is a product obtained from blood by removing the clot or clot components and the blood cells.

(3) **"Treatment program"** is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of 16.2.16.28 NMAC.

**U. Definitions beginning with "U":** **"USP 797"** is the United States pharmacopeia Chapter 797 pharmaceutical compounding.

**V. Definitions beginning with "V":** **"Veteran"** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.2.1.7 NMAC - Rp, 16.2.1.7 NMAC 02/11/2022; A, 4/25/2023]

**16.2.1.8 BOARD DUTIES:**

In addition to its duties described in the act, the board shall:

**A.** Keep a file of all approved educational programs.

**B.** Issue certificates of approval of educational programs.

**C.** Delegate its ministerial duties if it so chooses.

**D.** Notify the governor when any board member has missed three consecutive meetings.

**E.** Elect a chairperson and a vice-chairperson at the first board meeting after January first each year.

**F.** The board shall perform such other duties and shall exercise such other powers as may be conferred upon it by statute, or as may be reasonably implied from such statutory powers and duties and as may be reasonably necessary in the performance of its responsibilities under the act.

[16.2.1.8 NMAC - Rp, 16.2.1.8 NMAC 02/11/2022]

#### **16.2.1.9 PUBLIC RECORDS:**

All records kept by the board shall be available for public inspection pursuant to the New Mexico Inspection of Public Records Act, Section 14-2-1, NMSA 1978, et seq., except as provided herein.

**A.** During the course of the processing and investigation of a complaint, and before the vote of the board as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, Section 61-1-1, NMSA 1978, et seq., and in order to preserve the integrity of the investigation of the complaint, records and documents that reveal confidential sources, methods, information or licensees accused, but not charged yet with a violation of the act, shall be confidential and shall not be subject to public inspection. Such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the board by any investigating agent or agency.

**B.** Upon the completion of the processing and investigation of the complaint, and upon the decision of the board to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege conferred by Subsection A of 16.2.1.9 NMAC shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection.

**C.** All tests and test questions by which applicants are tested shall not be available to public inspection, as there is a countervailing public policy requiring that such records remain confidential in order to ensure the integrity of a licensing exam intended to protect the public health, safety and welfare from incompetent practitioners.

**D.** The board or its administrator may charge a fee not to exceed one dollar per page for documents 11 inches by 17 inches or smaller in size for copying public records.

[16.2.1.9 NMAC - Rp, 16.2.1.9 NMAC 02/11/2022]

#### **16.2.1.10 TELEPHONE CONFERENCES:**

Pursuant to the provisions of the Open Meetings Act, Section 10-15-1.C, NMSA 1978, as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each board member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting. Participation of a board member by such means shall constitute presence in person at the meeting.

[16.2.1.10 NMAC - Rp, 16.2.1.10 NMAC 02/11/2022]

#### **16.2.1.11 DISASTER OR EMERGENCY PROVISION:**

Doctors of oriental medicine, educational programs and auricular detoxification specialists currently licensed and in good standing or otherwise meeting the requirements for New Mexico licensure in a state which a federal disaster has been declared may apply for licensure in New Mexico under 16.2.1.11 NMAC during the four months following the declared disaster. The application for emergency provisional licensure shall be made to the board and shall include:

**A.** an application under this provision shall be made to the board that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number accompanied by proof of identity, which may include a copy of drivers license, passport or other photo identification issued by a governmental entity; and the applicants signature on the affidavit made part of the application form;

**B.** an affidavit attesting to the consequences suffered by the applicant as a result of the federal disaster;

**C.** evidence of completion of requirements specified in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC; if the applicant is unable to obtain documentation from the federal declared disaster area or as a result of the declared federal disaster the board may accept other documentation in lieu of the forms required under 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC; the board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving licensure;

**D.** exceptions may be made for good cause;

**E.** an affidavit certifying that all the documents submitted with the application are true and accurate or are faithful copies of the original;

**F.** nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC; and

**G.** the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine.

[16.2.1.11 NMAC - Rp, 16.2.1.11 NMAC 02/11/2022]

## **PART 2: SCOPE OF PRACTICE**

### **16.2.2.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.2.1 NMAC - Rp, 16.2.2.1 NMAC, 02-15-05]

### **16.2.2.2 SCOPE:**

All licensed doctors of oriental medicine, all licensed doctors of oriental medicine certified for expanded practice as defined in 16.2.19 NMAC, temporary licensees engaging in only those activities authorized on the temporary license, externs engaging in only those activities authorized by the externship and students enrolled in an educational program in acupuncture and oriental medicine approved by the board working under the direct supervision of a teacher at the approved educational program as part of the educational program in which they are enrolled.

[16.2.2.2 NMAC - Rp, 16.2.2.2 NMAC, 02-15-05; A, 11-28-09]

### **16.2.2.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-3, 4, 6, 8 and 8.1 NMSA 1978.

[16.2.2.3 NMAC - Rp, 16.2.2.3 NMAC, 02-15-05]

### **16.2.2.4 DURATION:**

Permanent.

[16.2.2.4 NMAC - Rp, 16.2.2.4 NMAC, 02-15-05]

### **16.2.2.5 EFFECTIVE DATE:**

02-15-05, unless a later date is cited at the end of a section.

[16.2.2.5 NMAC - Rp, 16.2.2.5 NMAC, 02-15-05]

**16.2.2.6 OBJECTIVE:**

This part clarifies the scope of practice of doctors of oriental medicine, temporary licensees, externs and students and doctors of oriental medicine certified for expanded practice.

[16.2.2.6 NMAC - Rp, 16.2.2.6 NMAC, 02-15-05; A, 11-28-09]

**16.2.2.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[16.2.2.7 NMAC - Rp, 16.2.2.7 NMAC, 02-15-05]

**16.2.2.8 SCOPE OF PRACTICE:**

Pursuant to Section 61-14A-3 NMSA 1978, the practice of oriental medicine in New Mexico is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy, form and function to restore and maintain health. Oriental medicine includes all traditional and modern diagnostic, prescriptive and therapeutic methods utilized by practitioners of acupuncture and oriental medicine. The scope of practice of doctors of oriental medicine shall include but is not limited to:

- A. evaluation, management and treatment services;
- B. diagnostic examination, testing and procedures;
- C. the ordering of diagnostic imaging procedures and laboratory or other diagnostic tests;
- D. the surgical procedures of acupuncture and other related procedures;
- E. the stimulation of points, areas of the body or substances in the body using qi, needles, heat, cold, color, light, infrared and ultraviolet, lasers, sound, vibration, pressure, magnetism, electricity, electromagnetic energy, bleeding, suction, or other devices or means;
- F. physical medicine modalities, procedures and devices;
- G. therapeutic exercises, qi exercises, breathing techniques, meditation, and the use of biofeedback devices and other devices that utilize heat, cold, color, light, infrared

and ultraviolet, lasers, sound, vibration, pressure, magnetism, electricity, electromagnetic energy and other means therapeutically;

H. dietary and nutritional counseling and the prescription or administration of food, beverages and dietary supplements therapeutically;

I. counseling and education regarding physical, emotional and spiritual balance in lifestyle;

J. prescribing, administering, combining, providing, compounding and dispensing any non-injectable herbal medicine, homeopathic medicines, vitamins, minerals, enzymes, glandular products, natural substances, protomorphogens, live cell products, amino acids, dietary and nutritional supplements; cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act and nonprescription drugs as they are defined in the Pharmacy Act;

K. the prescription or administration of devices, restricted devices and prescription devices as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978) by a doctor of oriental medicine who meets the requirements of 16.2.2.9 NMAC.

[16.2.2.8 NMAC - Rp, 16.2.2.8 NMAC, 02-15-05; A, 11-28-09]

#### **16.2.2.9 DEVICES, RESTRICTED DEVICES AND PRESCRIPTION DEVICES:**

The board determines that devices, restricted devices and prescription devices as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978) are necessary in the practice of oriental medicine. Doctors of oriental medicine who have the training recommended by the manufacturer of the device shall be authorized to prescribe, administer or dispense the device.

[16.2.2.9 NMAC - Rp, 16.2.2.9 NMAC, 02-15-05; A, 11-28-09]

#### **16.2.2.10 SCOPE OF PRACTICE FOR EXPANDED PRACTICE:**

A. In addition to the scope of practice for a licensed New Mexico doctor of oriental medicine, the scope of practice for those certified in expanded practice shall include certification in any or all of the following modules: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy. practitioners previously certified as Rx1 extended prescriptive authority, will be certified for basic injection therapy and practitioners previously certified as Rx2 expanded prescriptive authority, will be certified for injection therapy, intravenous therapy and bioidentical hormone therapy.

B. The expanded practice shall include:

(1) the prescribing, administering, compounding and dispensing of herbal medicines, homeopathic medicines, vitamins, minerals, amino acids, proteins, enzymes, carbohydrates, lipids, glandular products, natural substances, natural medicines, protomorphogens, live cell products, gerovital, dietary and nutritional supplements, cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act (26-1-1 NMSA 1978) and nonprescription drugs as they are defined in the Pharmacy Act (61-11-1 NMSA 1978); and

(2) the prescribing, administering, compounding and dispensing of the following dangerous drugs or controlled substances as they are defined in the New Mexico Drug, Device and Cosmetic Act, the Controlled Substances Act (30-31-1 NMSA 1978) or the Pharmacy Act:

- (a) sterile water;
- (b) sterile saline;
- (c) sarapin or its generic;
- (d) caffeine;
- (e) procaine;
- (f) oxygen;
- (g) epinephrine;
- (h) vapocoolants;
- (i) bioidentical hormones; and
- (j) biological products, including therapeutic serum.

C. When compounding drugs for their patients, doctors of oriental medicine certified for expanded practice and prescriptive authority shall comply with the compounding requirements for licensed health care professionals in the United States pharmacopeia and national formulary.

[16.2.2.10 NMAC - N, 02-15-05; A, 11-28-09]

**16.2.2.11 [RESERVED]**

[16.2.2.11 NMAC - Rp 16.2.2.10 NMAC, 02-15-05; Repealed, 11-28-09]

**16.2.2.12 PRESCRIPTION PADS:**

A doctor of oriental medicine, when prescribing, shall use prescription pads imprinted with his name, address, telephone number and license number. If a doctor of oriental medicine is using a prescription pad printed with the names of more than one doctor of oriental medicine, each doctor of oriental medicine shall have a separate signature line indicating the name and license number. Each specific prescription shall indicate the name of the doctor of oriental medicine for that prescription.

[16.2.2.12 NMAC - Rp 16.2.2.11 NMAC, 02-15-05; A, 11-28-09]

**16.2.2.13 [RESERVED]**

[16.2.2.13 NMAC - N, 02-15-05; Repealed, 11-28-09 A/E, 06-15-10; A/E, 06-15-10; Repr, 11-28-10]

**16.2.2.14 [RESERVED]**

[16.2.2.14 NMAC - N, 02-15-05; Repealed, 11-28-09]

**PART 3: APPLICATION FOR LICENSURE**

**16.2.3.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.3.1 NMAC - Rp, 16.2.3.1 NMAC, 2/11/2022]

**16.2.3.2 SCOPE:**

All applicants for licensure as doctors of oriental medicine.

[16.2.3.2 NMAC - Rp, 16.2.3.2 NMAC, 2/11/2022]

**16.2.3.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-4, 6, 8, 9 and 10, NMSA 1978.

[16.2.3.3 NMAC - Rp, 16.2.3.3 NMAC, 2/11/2022]

**16.2.3.4 DURATION:**

Permanent.

[16.2.3.4 NMAC - Rp, 16.2.3.4 NMAC, 2/11/2022]

**16.2.3.5 EFFECTIVE DATE:**

February 11, 2022, unless a later date is cited at the end of a section.

[16.2.3.5 NMAC - Rp, 16.2.3.5 NMAC, 2/11/2022]

**16.2.3.6 OBJECTIVE:**

This part lists the requirements that an applicant must fulfill in order to apply for licensure as a doctor of oriental medicine.

[16.2.3.6 NMAC - Rp, 16.2.3.6 NMAC, 2/11/2022]

**16.2.3.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.3.7 NMAC - Rp, 16.2.3.7 NMAC, 2/11/2022]

**16.2.3.8 GENERAL REQUIREMENTS:**

**A.** Any applicant who has been subject to any action or proceeding comprehended by Subsection A of 16.2.3.8 NMAC may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

**B.** Any applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.

[16.2.3.8 NMAC - Rp, 16.2.3.8 NMAC, 2/11/2022]

**16.2.3.9 EDUCATIONAL PROGRAM REQUIREMENTS:**

Every applicant shall provide satisfactory proof that he completed a board approved educational program as defined in 61-14A-14 NMSA 1978 of the act and 16.2.7 NMAC. If the educational program is no longer in existence, or if the applicant's records are not available 2 for good cause, the applicant shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept or reject as adequate and sufficient such evidence presented in lieu of the records otherwise required.

[16.2.3.9 NMAC - Rp, 16.2.3.9 NMAC, 2/11/2022]

### **16.2.3.10 CRIMINAL CONVICTIONS:**

**A.** Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license, including temporary licenses and auricular detoxification specialist certificates, issued by the board:

- (1)** homicide;
- (2)** aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;
- (3)** robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;
- (4)** rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;
- (5)** driving under the influence of intoxicating liquor or drugs within the five years prior to the date of application;
- (6)** trafficking controlled substances, specifically excluding cannabis or cannabis-derived products, within the five years prior to the date of application;
- (7)** crimes involving child abuse or neglect;
- (8)** fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;
- (9)** making a false statement under oath or in any official document;
- (10)** an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

[16.2.3.10 NMAC - Rp, 16.2.3.10 NMAC, 2/11/2022]

### **16.2.3.11 INITIAL LICENSURE APPLICATION:**

Upon approval of an application for licensure that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure, except that licenses initially issued after May 1 will not expire until July 31 of the next renewal period as defined in 16.2.8.9 NMAC; the application requirements for a license shall be receipt of the following by the board:

**A.** the fee for application for licensure specified in 16.2.10 NMAC;

**B.** an application for licensure that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

**C.** two passport-type photographs of the applicant taken not more than six months prior to the submission of the application;

**D.** an affidavit as provided on the "initial licensure application" as to whether the applicant:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

**(2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

**(3)** is in arrears on a court-ordered child support payment; or

**(4)** has violated any provision of the act or the rules;

**E.** an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

**F.** an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978;

G. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

(2) the license must be renewed annually by July 31; and

(3) the applicant must notify the board within ten days if the applicant's address changes;

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the required program; this copy shall include on it an affidavit certifying that it is a true copy of the original;

I. an official copy of the applicant's transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; or this copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant's application for licensure; and

J. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.3.11 NMAC - Rp, 16.2.3.11 NMAC, 2/11/2022]

#### **16.2.3.12 EXAMINATION REQUIREMENTS:**

The examination requirements specified in 16.2.4 NMAC shall be received at the board office within 12 months of the receipt of the initial application at the board office, with the exception of the national certification commission for acupuncture and oriental medicine

(NCCAOM) score requirements which need to be submitted to the board office within 24 months of the initial application.

[16.2.3.12 NMAC - Rp, 16.2.3.12 NMAC, 2/11/2022]

#### **16.2.3.13 DOCUMENTS IN A FOREIGN LANGUAGE:**

All documents submitted in a foreign language must be accompanied by an accurate translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an applicant's application shall be at the expense of the applicant.

[16.2.3.13 NMAC - Rp, 16.2.3.13 NMAC, 2/11/2022]

#### **16.2.3.14 SUFFICIENCY OF DOCUMENT:**

The board shall determine the sufficiency of the documentation that supports the application for licensure. The board may, at its discretion, request further proof of qualifications or require a personal interview with any applicant to establish his or her qualifications. If requested by the board, all further proof of qualifications shall be received at the board office at least 45 days before the clinical skills examination date. Any required personal interview will be scheduled as determined by the board.

[16.2.3.14 NMAC - Rp, 16.2.3.14 NMAC, 2/11/2022]

#### **16.2.3.15 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE:**

Documentation required for licensure shall be received at the board office no later than 12 months after the initial application is received at the board office, with the exception of the national certification commission for acupuncture and oriental medicine (NCCAOM) score requirements which need to be submitted to the board office within 24 months of the initial application.

[16.2.3.15 NMAC - Rp, 16.2.3.15 NMAC, 2/11/2022]

#### **16.2.3.16 NOTIFICATION OF LICENSURE:**

The applicant shall be notified of approval or denial of his completed application requirements including examination requirements by mail postmarked no more than 21 days from the board's receipt of all required documentation. The board shall issue a

license to all applicants who have met the requirements of 16.2.3 NMAC and 16.2.4 NMAC.

[16.2.3.16 NMAC - Rp, 16.2.3.16 NMAC, 2/11/2022]

**16.2.3.17 EXPIRATION AND ABANDONMENT OF APPLICATION:**

If all application requirements have not been met within 24 months of the initial application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the application is abandoned and the applicant wants to reapply for licensure, the applicant shall be required to submit the completed current application form, pay the current application fee and satisfy the requirements for licensure then in effect at the time of the new application.

[16.2.3.17 NMAC - Rp, 16.2.3.17 NMAC, 2/11/2022]

**PART 4: EXAMINATIONS**

**16.2.4.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[7-1-96; 16.2.4.1 NMAC -Rn, 16 NMAC 2.4.1, 5-20-00]

**16.2.4.2 SCOPE:**

All applicants for licensure as doctors of oriental medicine.

[7-1-96; 16.2.4.2 NMAC - Rn, 16 NMAC 2.4.2, 5-20-00]

**16.2.4.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9, 10(F) and 11, NMSA 1978.

[7-1-96; 16.2.4.3 NMAC - Rn, 16 NMAC 2.4.3, 5-20-00]

**16.2.4.4 DURATION:**

Permanent.

[7-1-96; 16.2.4.4 NMAC - Rn, 16 NMAC 2.4.4, 5-20-00]

**16.2.4.5 EFFECTIVE DATE:**

July 1, 1996, unless a later date is cited at the end of a section.

[7-1-96, 4-1-97; 16.2.4.5 NMAC - Rn & A, 16 NMAC 2.4.5, 5-20-00]

**16.2.4.6 OBJECTIVE:**

This part clarifies the contents, language, number and type of the examinations for licensure, the requirements for issuance of a license, the frequency of examination administration and re-examination requirements in the event of a failing score.

[7-1-96; 16.2.4.6 NMAC - Rn, 16 NMAC 2.4.6, 5-20-00; A, 7-26-01]

**16.2.4.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[7-1-96; 16.2.4.7 NMAC - Rn, 16 NMAC 2.4.7, 5-20-00; A, 02-15-05]

**16.2.4.8 APPROVED EXAMINATIONS:**

The board approved examinations shall consist of a written examination portion and a practical examination portion.

**A.** The written examinations approved by the board shall be:

- (1) the national certification commission for acupuncture and oriental medicine foundations of oriental medicine module;
- (2) the national certification commission for acupuncture and oriental medicine acupuncture module;
- (3) the national certification commission for acupuncture and oriental medicine Chinese herbology module;
- (4) the national certification commission for acupuncture and oriental medicine biomedicine module;
- (5) the national certification commission for acupuncture and oriental medicine approved clean needle technique course; and
- (6) the board approved and board administered jurisprudence examination covering the act and the rules.

**B.** The practical examinations approved by the board shall be:

- (1) the national certification commission for acupuncture and oriental medicine point location module; and

(2) the clinical skills examination; the clinical skills examination includes examination in acupuncture, herbal medicine and biomedicine competencies.

C. The board may adopt such other examinations as may be necessary for psychometric evaluation of its approved examinations.

[11-3-81...7-1-96; 4-1-97, 8-31-98, 5-15-99, 7-3-99; 16.2.4.8 NMAC - Rn & A, 16 NMAC 2.4.8, 5-20-00; A, 7-26-01; A, 02-15-05; A, 11-28-09]

#### **16.2.4.9 EXAMINATION LANGUAGE:**

All examinations required by the board shall be given in English.

[11-3-81...7-1-96; 16.2.4.9 NMAC - Rn, 16 NMAC 2.4.9, 5-20-00; A, 7-26-01]

#### **16.2.4.10 EXAMINATION REQUIREMENTS FOR LICENSURE:**

The following shall be the examination requirements for licensure. All fees for nationally recognized examinations shall be paid by the applicant and are not included in fees charged by the board.

A. Achievement of a passing score as determined by the national certification commission for acupuncture and oriental medicine (NCCAOM) on each of the following:

- (1) the NCCAOM foundations of oriental medicine module;
- (2) the NCCAOM acupuncture module;
- (3) the NCCAOM Chinese herbology module;
- (4) the NCCAOM biomedicine module; and
- (5) the NCCAOM point location module.

B. Achievement of a passing score of at least 75 percent on the clinical skills examination. To determine a passing score when the applicant is examined by more than one examiner, if the applicant is examined by two examiners, the applicant must receive a score of at least 75 percent after both scores are averaged and if the applicant is examined by three examiners, the applicant must receive a score of at least 75 percent from a majority of the examiners.

C. Successful completion of the national certification commission for acupuncture and oriental medicine approved clean needle technique course.

**D.** Achievement of a passing score of not less than 90 percent on the board approved and board administered jurisprudence examination covering the act and the rules.

**E.** Applicants who completed the national certification commission for acupuncture and oriental medicine (NCCAOM) examinations in acupuncture and Chinese herbology prior to June 2004 are not required to pass the NCCAOM foundations of oriental medicine module.

[11-3-81...7-1-96; 4-1-97, 8-31-98, 5-15-99; 16.2.4.10 NMAC - Rn, 16 NMAC 2.4.10, 5-20-00; A, 7-26-01; A, 02-15-05; A, 11-28-09]

#### **16.2.4.11 CLINICAL SKILLS EXAMINATION FREQUENCY AND DEADLINES:**

The board shall hold a clinical skills examination at least once each year provided that applications for licensure are pending. The initial application specified in 16.2.3.11 NMAC shall be received at the board office at least 60 calendar days before the next scheduled clinical skills examination date. The board shall send a written response to the applicant informing the applicant of the application's completeness or needed documentation postmarked at least 45 calendar days before the next scheduled clinical skills examination date. All documentation required to complete the initial application for licensure shall be received at the board office at least 35 calendar days before the next scheduled clinical skills examination date. If the application requirements are received at the board office after a deadline, the application will be held and not processed until the deadline schedule for the next subsequent clinical skills examination. The applicant shall be notified of approval or denial of his or her completed initial application for licensure specified in 16.2.3.11, by mail postmarked at least 25 calendar days prior to the next scheduled clinical skills examination date.

[11-3-81...7-1-96; 16.2.4.11 NMAC - Rn, 16 NMAC 2.4.11, 5-20-00; A, 7-26-01; A, 03-02-03; A, 11-28-09]

#### **16.2.4.12 CLINICAL SKILLS EXAMINATION CONFIRMATION:**

The board approved confirmation card, provided to the applicant, shall be mailed to the applicant upon receipt of the clinical skills examination fee specified in 16.2.10 NMAC. Confirmation of clinical exam passage will be valid for 24 months. After 24 months has passed, the applicant will have to retake the clinical exam and reapply as a new applicant.

[16.4.2.12 NMAC - N, 7-26-01; A, 03-02-03; A, 11-28-09]

#### **16.2.4.13 PAYMENT OF CLINICAL SKILLS EXAMINATION FEE:**

The non refundable clinical skills examination fee specified in 16.2.10 NMAC shall be paid by check or money order in U.S. funds and received in the board's office at least forty five (45) calendar days prior to the next scheduled clinical skills examination.

[11-3-81...7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.12 NMAC - Rn & A, 16 NMAC 2.4.12, 5-20-00; 16.2.4.13 NMAC - Rn, 16.2.4.12 NMAC, 7-26-01; A, 7-26-01; A, 03-02-03; A, 11-28-09; A, 02-08-13; A, 6-16-15

#### **16.2.4.14 CLINICAL SKILLS EXAMINATION COMMITMENT:**

Upon receipt of the clinical skills examination fee for the next scheduled clinical skills examination, the applicant shall sit for the exam or forfeit the fee. The non-refundable clinical skills examination fee may be applied to a subsequent exam only as provided in Section 15 of 16.2.4 NMAC.

[11-3-81...7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.13 NMAC - Rn, 16 NMAC 2.4.13, 5-20-00; 16.2.4.14 NMAC - Rn, 16.2.4.13 NMAC, 7-26-01; A, 7-26-01; A, 03-02-03; A, 11-28-09]

#### **16.2.4.15 FORFEITURE OF CLINICAL SKILLS EXAMINATION FEE:**

Once the clinical skills examination fee is received in the board office, the applicant shall take the next scheduled clinical skills examination or forfeit the clinical skills examination fee. Under special circumstances the applicant may be allowed to take the next subsequent scheduled clinical skills examination without paying an additional examination fee.

[3-23-93...7-1-96; 4-1-97; N, 8-31-98, 5-15-99, 2-17-00; 16.2.4.14 NMAC - Rn & A, 16 NMAC 2.4.14, 5-20-00; 16.2.4.15 NMAC - Rn, 16.2.4.14 NMAC, 7-26-01; A, 7-26-01; A, 3-02-03; A, 6-16-15; A, 9-15-15]

#### **16.2.4.16 FAILING SCORE:**

In the event that an applicant fails to achieve a passing score on the clinical skills examination, he may apply as provided in 16.2.4.17 NMAC, and must pay the required fees.

[11-3-81...7-1-96; 4-1-97; Rn, 16 NMAC 2.4.12, 8-31-98, 5-15-99; 2-17-00; 16.2.4.15 NMAC - Rn, 16 NMAC 2.4.15, 5-20-00; 16.2.4.16 NMAC - Rn, 16.2.4.15 NMAC, 7-26-01; A, 7-26-01; A, 11-28-09]

#### **16.2.4.17 RE-EXAMINATION:**

Applicants who have failed the clinical skills examination may apply to take the next subsequent clinical skills examination. The applicant shall notify the board of his commitment to take the next subsequent clinical skills examination with a written and

signed letter received at the board office at least 60 days before the next clinical skills examination date. The applicant shall then be notified by the board of his acceptance to take the next clinical skills examination by mail postmarked at least 45 days prior to the next scheduled clinical skills examination date. The applicant shall pay the clinical skills examination fee in accordance with the provisions of 16.2.4.13 NMAC. If the applicant does not pass the next scheduled clinical skills examination, the applicant shall file a new application on the current form provided by the board, pay all the required fees, and satisfy all current requirements in effect at the time the application is made. If the applicant passes the exam, but does not complete license application within 24 months, the applicant will have to reapply as an initial applicant.

[7-1-96; 4-1-97; Rn, 16 NMAC 2.4.13, 8-31-98, 5-15-99, 2-17-00; 16.2.4.16 NMAC - Rn, 16 NMAC 2.4.16, 5-20-00; A, 10-22-00; 16.2.4.17 NMAC - Rn, 16.2.4.16 NMAC, 7-26-01; A, 7-26-01; A, 11-28-09]

#### **16.2.4.18 EXAMINERS:**

The board shall select a group of doctors of oriental medicine to act as examiners for the clinical skills examination. These examiners shall have had five years of clinical experience at the time they are selected. The board or its designated agent shall train these examiners to judge applicants taking the board approved clinical skills examination in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.

[Rn, 16 NMAC 2.4.16, 8-31-98; A, 8-31-98; 16.2.4.19 NMAC - Rn, & A, 16 NMAC 2.4.19, 5-20-00; 16.2.4.18 NMAC - Rn, 16.2.4.19 NMAC, 7-26-01; A, 7-26-01; A, 11-28-09]

#### **16.2.4.19 REVIEW OF CLINICAL SKILLS EXAMINATION SCORE:**

Applicants may request review of their clinical skills examination results by the board or its examination committee for significant procedural or computational error if such review request is received in writing at the board office within 30 calendar days of notification to the applicant of the clinical skills examination results.

[Rn, 16 NMAC 2.4.17, 8-31-98, 5-15-99; 16.2.4.20 NMAC - Rn & A, 16 NMAC 2.4.20, 5-20-00; 16.2.4.19 NMAC - Rn, 16.2.4.20 NMAC, 7-26-01; A, 7-26-01; A, 02-15-05; A, 11-28-09]

### **PART 5: TEMPORARY LICENSING**

#### **16.2.5.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.5.1 NMAC - Rp 16.2.5.1 NMAC, 2/11/2022]

#### **16.2.5.2 SCOPE:**

All licensees, applicants, temporary licensees, applicants for temporary licensure, externs, educational programs and applicants for approval of educational programs.

[16.2.5.2 NMAC - Rp 16.2.5.2 NMAC, 2/11/2022]

#### **16.2.5.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 12, NMSA 1978.

[16.2.5.3 NMAC - Rp 16.2.5.3 NMAC, 2/11/2022]

#### **16.2.5.4 DURATION:**

Permanent.

[16.2.5.4 NMAC - Rp 16.2.5.4 NMAC, 2/11/2022]

#### **16.2.5.5 EFFECTIVE DATE:**

February 11, 2022, unless a later date is cited at the end of a section.

[16.2.5.5 NMAC - Rp 16.2.5.5 NMAC, 2/11/2022]

#### **16.2.5.6 OBJECTIVE:**

This part establishes requirements for temporary licensure and limited temporary licensure, prior disciplinary action relating to other licenses, prior litigation and prior felonies, the educational requirements for temporary licensure, the renewal period for temporary licensure and the requirements for renewal of temporary licenses.

[16.2.5.6 NMAC - Rp 16.2.5.6 NMAC, 2/11/2022]

#### **16.2.5.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.5.7 NMAC - Rp 16.2.5.7 NMAC, 2/11/2022]

#### **16.2.5.8 GENERAL REQUIREMENTS:**

**A.** Any applicant for temporary licensure or applicant for a limited temporary license who has been subject to any action or proceeding comprehended by Subsection E of 16.2.5.10 NMAC and Subsection D of 16.2.5.12 NMAC, may be subject to disciplinary

action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

**B.** Any applicant for temporary licensure or an applicant for a limited temporary license who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.

[16.2.5.8 NMAC - Rp 16.2.5.8 NMAC, 2/11/2022]

#### **16.2.5.9 TEMPORARY LICENSE EDUCATIONAL REQUIREMENTS:**

**A.** An applicant for temporary licensure shall provide satisfactory proof that he or she has completed an approved educational program. An applicant for temporary licensure who is legally recognized in any state or foreign country to practice another health care profession and who possesses knowledge and skills that are included in the scope of practice of doctors of oriental medicine shall provide satisfactory proof that he or she has completed the education required for legal recognition in that state or foreign country.

**B.** The board, by a vote of the majority of the members of the board acting at a duly convened meeting of the board, may determine not to require the applicant for temporary licensure to complete the requirements of Subsection A of 16.2.5.9 NMAC, if the board determines that there is good cause and the health and safety of the citizens of New Mexico will not be jeopardized.

[16.2.5.9 NMAC - Rp 16.2.5.9 NMAC, 2/11/2022]

#### **16.2.5.10 TEMPORARY LICENSE APPLICATION:**

Upon approval of an application for a temporary license that fulfills the requirements listed below, the board shall issue a temporary license that will be valid for the dates specified on the license but shall not exceed six months. The temporary license shall include the name of the temporary licensee, the effective dates of the license, the name of the sponsoring New Mexico doctor of oriental medicine or New Mexico educational program, and a statement that the license shall be for the exclusive purpose of one or more of the following: teaching acupuncture and oriental medicine; consulting, in association with the sponsoring doctor of oriental medicine, regarding the sponsoring doctor's patients; performing specialized diagnostic or treatment techniques in association with the sponsoring doctor of oriental medicine regarding the sponsoring doctor's patients; assisting in the conducting of research in acupuncture and oriental medicine; or assisting in the implementation of new techniques and technology related

to acupuncture and oriental medicine. The application requirements for a limited temporary license shall be receipt of the following by the board.

**A.** The fee for application for temporary license specified in 16.2.10 NMAC.

**B.** An application for temporary license that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program.

**C.** One passport-type photograph of the applicant taken not more than six months prior to the submission of the application.

**D.** An affidavit as provided on the "temporary license application" from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program attesting to the qualifications of the applicant and the activities the applicant will perform.

**E.** An affidavit as provided on the "temporary license application" as to whether the applicant:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

**(2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

**(3)** is in arrears on a court-ordered child support payment.

**F.** An official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act.

**G.** An affidavit as provided on the "temporary license application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection E of 16.2.5.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978.

H. An affidavit as provided on the "temporary license application" stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; and

(2) the applicant must notify the board within ten days if the applicant's address changes or the circumstances of the applicant's relationship to the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program change; and

(3) the applicant may only engage in those activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program for the limited time specified on the temporary license.

I. A copy of the applicant's license, certification or registration or other document proving that the applicant is legally recognized in another state or country to practice acupuncture and oriental medicine or another health care profession and who possesses knowledge and skill that are included in the scope of practice of doctors of oriental medicine. The copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants in the United States who practice in a state in which there is no legal recognition, a copy of the certification document in acupuncture, Chinese herbal medicine or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the national certification commission for acupuncture and oriental medicine (NCCAOM) shall be sufficient. The copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal requirement for practice, the above provisions in this paragraph shall not apply.

**J.** A copy of the applicant's diploma for graduation from the educational program that is required to be licensed, certified, registered or legally recognized to practice in the state or country where the applicant practices. This copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original.

**K.** An official copy of the applicant's transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject. This copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant's application for licensure.

**L.** An affidavit stating that the applicant has been officially informed by the board in writing that either of the following two requirements has been fulfilled:

**(1)** the educational program in acupuncture and oriental medicine from which the applicant graduated has been approved by the board as an educational program; or

**(2)** the board, by a vote of the majority of the members of the board acting at a duly convened meeting of the board, has determined not to require the applicant for temporary licensure to have graduated from an approved educational program as provided for in Subsection B of 16.2.5.9 NMAC.

**M.** An accurate translation in English of all documents submitted in a foreign language. Each translated document shall bear the affidavit of the translator certifying that they are competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.5.10 NMAC - Rp 16.2.5.10 NMAC, 2/11/2022]

#### **16.2.5.11 TEMPORARY LICENSE RENEWAL:**

A temporary license issued by the board may be renewed a maximum of two times only, for a period of six months for each renewal. Renewals shall run sequentially so that a renewal shall begin immediately when the previous temporary license period expires. Upon approval of an application for renewal of a temporary license that fulfills the requirements listed below, the board shall issue a temporary license. The application requirements for renewal of a temporary license shall be receipt of the following by the board:

**A.** The fee for renewal of a temporary license specified in 16.2.10 NMAC.

**B.** An application for renewal of a temporary license that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program.

**C.** An affidavit from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program attesting to the qualifications of the applicant and the activities the applicant will perform.

[16.2.5.11 NMAC - Rp 16.2.5.11 NMAC, 2/11/2022]

#### **16.2.5.12 LIMITED TEMPORARY LICENSE APPLICATION:**

Upon approval of an application for a limited temporary license that fulfills the requirements listed below, the board shall issue a limited temporary license that will be valid for the dates specified on the license but shall not exceed 18 consecutive months from the date of issuance and is not renewable. A limited temporary license shall be for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program. The limited temporary license shall include the name of the limited temporary license holder, the effective dates of the license, the name of the sponsoring New Mexico doctor of oriental medicine or New Mexico educational program, and a statement that the license shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. The requirements for a limited temporary license shall be:

**A.** the fee for application for a limited temporary license specified in 16.2.10 NMAC;

**B.** an application for limited temporary license that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program;

**C.** an affidavit as provided on the "temporary license application" from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program attesting to the qualifications of the applicant and the activities the applicant will perform; and

**D.** an affidavit as provided on the "temporary license application" as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

(3) is in arrears on a court-ordered child support payment; and

**E.** an affidavit as provided on the "temporary license application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.5.12 NMAC, may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978; and

**F.** an affidavit as provided on the "temporary license application" stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; and

(2) the applicant must notify the board within ten days if the applicant's address changes or the circumstances of the applicant's relationship to the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program change; and

(3) the applicant may only engage in those activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program for the limited time specified on the temporary license; and

**G.** the applicant shall provide one or more of the following:

(1) a current curriculum vitae demonstrating experience in the field in which they will be teaching;

(2) a current license to practice in the field in which they will be teaching;

(3) proof of education in the field in which they will be teaching.

**H.** an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the letter from the translator certifying that they are competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear a letter from the sponsor certifying that the translation is a true and faithful translation of the original; the translation of any document relevant to an application shall be at the expense of the applicant.

**I.** for teachers returning to New Mexico after having fulfilled the above requirements, an affidavit by the sponsoring organization testifying that all information is current and correct will be sufficient without re-submitting documentation.

**J.** if the applicant is certified by the NCCAOM or another state's acupuncture board that reviews continuing education courses, documentation providing NCCAOM, or other state instructor status will suffice.

[16.2.5.12 NMAC - Rp 16.2.5.12 NMAC, 2/11/2022; A, 4/25/2023]

## **PART 6: RECIPROCAL LICENSING**

### **16.2.6.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.6.1 NMAC - Rp, 16.2.6.1 NMAC 12/27/2022]

### **16.2.6.2 SCOPE:**

All licensees and applicants.

[16.2.6.2 NMAC - Rp, 16.2.6.2 NMAC 12/27/2022]

**16.2.6.3 STATUTARY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8; 61-14A-9; and 61-14A-13 NMSA 1978.

[16.2.6.3 NMAC - Rp, 16.2.6.3 NMAC 12/27/2022]

**16.2.6.4 DURATION:**

Permanent.

[16.2.6.4 NMAC - Rp, 16.2.6.4 NMAC 12/27/2022]

**16.2.6.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[16.2.6.5 NMAC - Rp, 16.2.6.5 NMAC 12/27/2022]

**16.2.6.6 OBJECTIVE:**

The purpose of this part is to provide for the issuance of expedited licenses pursuant to Section 61-1-31.1 NMSA 1978 and Section 61-1-34 NMSA 1978.

[16.2.6.6 NMAC - Rp, 16.2.6.6 NMAC 12/27/2022]

**16.2.6.7 DEFINITIONS:**

**A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions under 16.2.6.8 NMAC; and

(2) any foreign country included under 16.2.6.8 NMAC.

**B. "Expedited license" means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.**

**C. "Good standing" means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.**

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in an eligible jurisdiction, as defined by Subsection A of this rule;

(2) does not have a disqualifying criminal conviction, as defined in Paragraph (10) of 16.2.3 NMAC of the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**G. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.2.6.7 NMAC - Rp, 16.2.6.7 NMAC 12/27/2022]

#### **16.2.6.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

**A.** Applicants for expedited licensure as doctors of oriental medicine licensed in the following states and territories of the United States shall not be eligible or expedited licensure under Section 61-14A-13 NMSA 1978 of the Acupuncture and Oriental Medicine Practice Act (pursuant to the list of disapproved jurisdiction list, below, only four states are unequivocally approved for purposes of expedited licensure, which include Arkansas, Florida, Nevada, and Texas):

(1) California, on the grounds that it does not recognize the national certification commission for acupuncture and oriental medicine (NCCAOM) examinations or certifications, as it utilizes its own examination, the California acupuncture licensing exam;

(2) Michigan, on the grounds that licensure was not required until 2019 and there were no education or examination requirements for then registered acupuncturists to become licensed through 2024;

(3) Ohio, on the grounds that Ohio no longer licenses oriental medicine professionals and does not allow the use of Chinese herbal medicine by licensed acupuncturists;

(4) Wyoming, on the grounds that licensure was not required prior to 2018, and there were no education or examination requirements consistent with New Mexico's examination requirements, for then registered acupuncturists to become licensed.

Further, education requirements cannot be determined to be consistent with New Mexico;

(5) Guam, on the grounds that licensure of acupuncturists is determined based on the licensure an applicant holds in the U.S., and there is no way to determine whether such licensure is consistent with New Mexico other than on a case-by-case basis; and

(6) American Samoa, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin, on the grounds that education and licensure examination requirements in these jurisdictions cannot be determined to be consistent with those requirements in New Mexico;

(7) Northern Mariana Islands, on the grounds that education and licensure examination requirements in this jurisdiction cannot be determined to be consistent with those requirements in New Mexico. Further, licensure as an acupuncturist is allowed if an applicant is licensed in one of the U.S. states or territories, and there is no way to determine whether such licensure is consistent with New Mexico other than on a case-by-case basis; and

(8) Unless the applicant holds a current or active oriental medicine certification from the NCCAOM, Alaska, Arizona, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Kansas, Massachusetts, Mississippi, Missouri, New Jersey, and North Dakota, on the grounds that New Mexico required the rigorous NCCAOM oriental medicine certification.

**B.** An applicant may not apply for expedited licensure on the basis of practice in any jurisdiction that does not license, register, certify, or regulate the practice of acupuncture or oriental medicine, including each of the following:

- (1) Alabama;
- (2) Oklahoma;
- (3) South Dakota;
- (4) Puerto Rico; and
- (5) U.S. Virgin Islands.

[16.2.6.8 NMAC - Rp, 16.2.6.8 NMAC 12/27/2022]

**16.2.6.9 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing from an eligible jurisdiction as defined in these rules;
- (3) pass a written jurisprudence examination on the state laws and rules as required by Paragraph (4) of Subsection A of Section 61-14A-13 NMSA 1978;
- (4) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all the materials required by Subsection A of 16.2.6.11 NMAC, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-14A-17 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.2.6.9 NMAC - N, 12/27/2022]

**16.2.6.10 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board, a complete application containing all the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing from another jurisdiction, including a branch of the United States Armed Forces; and

(3) Submission of the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated), proof of honorable discharge, such as a copy of DD form 214, DD form 215, DD form 256, DD form 257, NGB form 22, military ID card, driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted and board staff is in receipt of all of the materials, including documentation from third parties, required by Subsection A of 16.2.6.11 NMAC.

**C.** Upon receipt of a complete application, board staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant is not a qualified applicant as defined by this rule and has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-14A-7 NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fees or renewal fees for the first three years of licensure with the board.

[16.2.6.10 NMAC - N, 12/27/2022]

#### **16.2.6.11 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules. However, if the licensee has not passed the NCCAOM in another jurisdiction, the licensee shall be required to take and pass the NCCAOM prior to renewing the license. Additionally, if the licensee has not passed any additional examinations as required by 16.2.4.10 NMAC, including the New Mexico clinical skills examination, the licensee shall be required to take and pass such examinations prior to renewing the license.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license granted under this rule.

[16.2.6.11 NMAC - N, 12/27/2022]

### **PART 7: EDUCATIONAL PROGRAMS**

#### **16.2.7.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.7.1 NMAC - Rp, 16.2.7.1 NMAC, 4/25/2023]

#### **16.2.7.2 SCOPE:**

All licensed doctors of oriental medicine, temporarily licensed doctors of oriental medicine, approved educational programs and all applicants for licensure as a doctor of oriental medicine, temporary licensure and for approval of an educational program.

[16.2.7.2 NMAC - Rp, 16.2.7.2 NMAC, 4/25/2023]

#### **16.2.7.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 14 NMSA 1978.

[16.2.7.3 NMAC - Rp, 16.2.7.3 NMAC, 4/25/2023]

#### **16.2.7.4 DURATION:**

Permanent.

[16.2.7.4 NMAC - Rp, 16.2.7.4 NMAC, 4/25/2023]

**16.2.7.5 EFFECTIVE DATE:**

April 25, 2023, unless a later date is cited at the end of a section.

[16.2.7.5 NMAC - Rp, 16.2.7.5 NMAC, 4/25/2023]

**16.2.7.6 OBJECTIVE:**

This part establishes the requirements for approval of educational programs, the requirements for making an application for approval of an educational program, the renewal of the approval of the educational program and the requirement of notification of changes.

[16.2.7.6 NMAC - Rp, 16.2.7.6 NMAC, 4/25/2023]

**16.2.7.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.7.7 NMAC - Rp, 16.2.7.7 NMAC, 4/25/2023]

**16.2.7.8 EDUCATIONAL PROGRAM REQUIREMENTS:**

All educational programs shall be approved by the board. Using the requirements of 16.2.7.8 NMAC and 16.2.7.9 NMAC (Sections 8 and 9 of Part 7 of the rules), the board will evaluate whether or not an educational program shall be approved. If a visit is necessary to evaluate the educational program, the cost of the visit, including any administrative costs, shall be paid in advance by the educational program.

**A.** The foundation educational program requirement shall be the four academic year masters of oriental medicine program that meets the national certification commission for acupuncture and oriental medicine (NCCAOM) accreditation/equivalent education policy as defined here. Graduation/education must be obtained from a formal education program that has met the standards of the accreditation commission for acupuncture and herbal medicine (ACAHM) or an equivalent educational body. A program may be established as having satisfied this requirement by demonstration of one of the following:

- (1) accreditation or candidacy for accreditation by ACAHM; or
- (2) approval by a foreign government's ministry of education, ministry of health, or equivalent foreign government agency; each candidate must submit their documents for approval by a foreign credential equivalency service approved by the NCCAOM for that purpose; programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAHM in effect at the time of application; or

(3) approval by a foreign private accreditation agency that has an accreditation process and standards substantially equivalent to that of ACAHM, and that is recognized for that purpose by the appropriate government entity in that foreign country; each candidate must submit their documents for approval by a foreign credential equivalency service approved by the NCCAOM for that purpose; programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAHM in effect at the time of application.

**B.** The educational program shall provide a program that shall be at least four academic years and shall include in-class education that comprises a minimum of 2,400 clock hours of classes including a minimum of 1,100 hours of didactic education in acupuncture and oriental medicine and a minimum of 900 hours of supervised clinical practice, instruction and observation in acupuncture and oriental medicine. The curriculum shall provide the knowledge and skills required to maintain appropriate standards of acupuncture and oriental medical care.

**C.** The educational program shall include a didactic curriculum that educates and graduates physicians who are competent to practice acupuncture and oriental medicine and who are able to diagnose, prescribe, and treat accurately and that specifically includes, in addition to the requirements of the act, oriental principles of life therapy, including the prescription of herbal medicine, diet and nutrition, manual therapy/physical medicine and counseling, not to exceed 900 hours of the required 2,400 hours specified in Subsection B of 16.2.7.8 NMAC and that includes a minimum of 450 hours of education in herbal medicine.

**D.** The educational program shall include a clinical curriculum that includes clinical instruction and direct patient contact. This clinical part of the educational program shall include at least 900 hours of supervised clinical practice, instruction and observation in the following areas:

(1) the observation of and assistance in the application of principles and techniques of oriental medicine including diagnosis, acupuncture, moxibustion, manual therapy/physical medicine, diet and nutrition, counseling and the prescription of herbal medicine; and

(2) a minimum of 400 hours of actual treatment in which the student is required to perform complete treatment as the primary student practitioner.

**E.** The educational program shall include a curriculum that educates and graduates physicians who are competent to demonstrate a clinically relevant, complementary and integrative knowledge of biomedicine and biomedical diagnosis sufficient to treat and refer patients when appropriate.

**F.** The educational program may honor credit from other educational programs.

**G.** The names and educational qualifications of all teaching supervisors, resident teachers, and visiting teachers of acupuncture and oriental medicine shall be submitted to the board and shall meet the following:

(1) all teachers of acupuncture and oriental medicine in New Mexico shall have a license or temporary license to practice acupuncture and oriental medicine in New Mexico issued by the board; any educational program in violation of this provision shall be subject to suspension or revocation of the educational program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC;

(2) all teachers of acupuncture and oriental medicine at educational programs outside New Mexico shall be licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine in the state or country in which he or she practices and teaches; any educational program in violation of this provision shall be subject to suspension or revocation of the educational program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC;

(3) exceptions may be made at the board's discretion and for good cause.

**H.** Educational programs may employ or contract with tutors to teach components of the educational program. Educational programs may honor credit from tutors. A tutor is defined in the act as "a doctor of oriental medicine with at least ten years of clinical experience who is a teacher of acupuncture and oriental medicine."

**I.** The educational program may be subject to inspection by the board.

[16.2.7.8 NMAC - Rp, 16.2.7.8 NMAC, 4/25/2023]

#### **16.2.7.9 EDUCATIONAL PROGRAM CERTIFICATE OR DIPLOMA AND TRANSCRIPT REQUIREMENTS:**

Educational programs shall provide the following:

**A.** A transcript of grades, as part of the student's record, that includes the following:

- (1) name of the student;
- (2) address of the student;
- (3) date of birth;
- (4) course titles;
- (5) grade received in each course; and
- (6) number of clock hours per course.

**B.** A certificate or diploma stating that the student has satisfactorily completed the educational program only after personal attendance in all required classes, and satisfactory completion of the educational program requirements.

[16.2.7.9 NMAC - Rp, 16.2.7.9 NMAC, 4/25/2023]

**16.2.7.10 APPLICATION FOR ANNUAL APPROVAL OF AN EDUCATIONAL PROGRAM:**

All educational programs in New Mexico are required to be annually approved by the board. Any educational program outside New Mexico, that so chooses, may apply to receive annual approval status. These educational programs shall be granted approval after submitting to the board:

**A.** the initial application fee for annual approval of an educational program specified in 16.2.10 NMAC and paid by certified check or money order in U.S. funds; and

**B.** an application that is complete and in English on a form prescribed by the board that contains the matriculation date for the educational program and the information necessary to verify that the standards of professional education required by 16.2.7.8 and 16.2.7.9 NMAC are being met including an official copy of the curriculum. The board shall act upon the application within 60 days of the receipt of the application and shall inform the educational program of the status of the application in writing by mail postmarked within seven days of acting on it.

[16.2.7.10 NMAC - Rp, 16.2.7.10 NMAC, 4/25/2023]

**16.2.7.11 APPLICATION FOR SINGLE INSTANCE APPROVAL OF AN EDUCATIONAL PROGRAM:**

An educational program that does not have annual approval status from the board shall receive a single instance approval of the educational program for use by a single applicant after the educational program that graduated the applicant has submitted to the board:

**A.** the application fee for a single instance approval of an educational program, specified in 16.2.10 NMAC, paid by certified check or money order in U.S. funds; and

**B.** an application that is complete and in English on a form prescribed by the board that contains the matriculation date for the educational program and the information necessary to verify that the standards of professional education required by 16.2.7.8 and 16.2.7.9 NMAC are being met including an official copy of the curriculum. The application and the application fee shall be received at the board's office at least 90 days prior to the next scheduled clinical skills examination. The board shall send a written response to the applicant for approval of an educational program informing the applicant of the application's completeness or needed documentation postmarked at

least 85 days before the next scheduled clinical skills examination date. All documentation requested to complete the application shall be received at the board's office at least 70 days before the next scheduled clinical skills examination date. The applicant shall be notified of approval or denial of the application in writing by mail postmarked at least 60 days prior to the next scheduled clinical skills examination date. Note that the above deadlines exist to synchronize with the deadlines for applicants regarding the clinical skills exam as defined in 16.2.4.11 NMAC.

[16.2.7.11 NMAC - Rp, 16.2.7.11 NMAC, 4/25/2023]

#### **16.2.7.12 ANNUAL RENEWAL, LATE RENEWAL AND EXPIRED APPROVAL:**

To maintain annual approval status, an educational program shall submit by May 1st an annual renewal application that is complete and in English on a form prescribed by the board and the required fee for renewal of approval of an educational program, specified in 16.2.10 NMAC, paid by certified check or money order in U.S. funds. The approval period is defined as August 1st to July 31st of the subsequent year. The approval expires at 12:00 midnight on July 31st. Renewal applications received after September 30th of any year must be submitted with the late fee specified in 16.2.10 NMAC (Part 10 of the rules) and paid by certified check or money order in U.S. funds. If the annual renewal application and fee are not received within 60 days after expiration, following the approval period, the annual approval is expired and the educational program shall submit the initial application and initial application fee to become approved.

[16.2.7.12 NMAC - Rp, 16.2.7.12 NMAC, 4/25/2023]

#### **16.2.7.13 NOTIFICATION OF CHANGES:**

If ownership of the educational program changes or the educational program is substantially changed the educational program shall notify the board within 10 days of such change. The educational program may then be subject to inspection. The educational program shall be on a probationary approval status until final approval is given under the changed circumstances.

[16.2.7.13 NMAC - Rp, 16.2.7.13 NMAC, 4/25/2023]

### **PART 8: LICENSE RENEWAL**

#### **16.2.8.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.8.1 NMAC - Rp, 16.2.8.1 NMAC, 2/11/2022]

#### **16.2.8.2 SCOPE:**

All licensed doctors of oriental medicine and all licensed doctors of oriental medicine certified for expanded practice.

[16.2.8.2 NMAC - Rp, 16.2.8.2 NMAC, 2/11/2022]

**16.2.8.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 8.1, 9 and 15, NMSA 1978.

[16.2.8.3 NMAC - Rp, 16.2.8.3 NMAC, 2/11/2022]

**16.2.8.4 DURATION**

Permanent.

[16.2.8.4 NMAC - Rp, 16.2.28.4 NMAC, 2/11/2022]

**16.2.8.5 EFFECTIVE DATE:**

February 11, 2022, unless a later date is cited at the end of a section.

[16.2.8.5 NMAC - Rp, 16.2.8.5 NMAC, 2/11/2022]

**16.2.8.6 OBJECTIVE:**

This part defines the requirements for renewal of licenses.

[16.2.8.6 NMAC - Rp, 16.2.8.6 NMAC, 2/11/2022]

**16.2.8.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.8.7 NMAC - Rp, 16.2.8.7 NMAC, 2/11/2022]

**16.2.8.8 LICENSE RENEWAL GENERAL REQUIREMENTS:**

**A.** Except as otherwise provided in the act, these rules or state law, including but not limited to the board's right to deny an application for renewal pursuant to Section 61-14A-17 NMSA 1978, and the Parental Responsibility Act, Section 40-5A-1 NMSA 1978, et seq., each licensed doctor of oriental medicine shall be granted renewal of his license for one year upon receipt and approval by the board or its designee of completion of the following requirements.

**B.** Any applicant for license renewal who is licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act, shall provide an affidavit regarding the disciplinary record of the applicant since last renewing his or her license with the board.

**C.** Any applicant for license renewal who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC, may be subject to disciplinary action, including denial, suspension, or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1, NMSA 1978, et seq.

**D.** Any applicant for license renewal who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.

[16.2.8.8 NMAC - Rp, 16.2.8.8 NMAC, 2/11/2022]

#### **16.2.8.9 LICENSING PERIOD:**

The licensing period shall run from August 1 to the following July 31. A newly licensed doctor of oriental medicine shall be issued a license that shall be required to be renewed on July 31, except that licenses initially issued after May 1 shall not expire until July 31 of the next renewal period.

[16.2.8.9 NMAC - Rp, 16.2.8.9 NMAC, 2/11/2022]

#### **16.2.8.10 ANNUAL LICENSE RENEWAL APPLICATION:**

The board will renew a doctor of oriental medicine's license upon receipt of a renewal application with the following supporting documentation, at the board office:

**A.** the license renewal fee specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process;

**B.** a license renewal application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

**C.** an affidavit as provided on the "annual license renewal form" as to whether the applicant since receiving or last renewing (whichever is more recent) his license with the board:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

**(2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

**(3)** is in arrears on a court-ordered child support payment; or

**(4)** has violated any provision of the act or the rules; and

**D.** an affidavit as provided on the "annual license renewal form" regarding the applicant's license history since last renewing his license with the board stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

**E.** an affidavit as provided on the "annual license renewal form" stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

**(2)** an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978;

**F.** an affidavit as provided on the "annual license renewal form" stating that the applicant understands that:

**(1)** each licensed doctor of oriental medicine is responsible for the timely submission of the annual renewal application and fees;

(2) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

(3) the license must be renewed annually by July 31; and

(4) the applicant must notify the board within ten days if the applicant's address changes;

**G.** if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits;

**H.** an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

**I.** satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC; doctors of oriental medicine certified for the expanded practice shall submit satisfactory proof, as determined by the board, of completion of any expanded practice continuing education requirements established by the board in 16.2.9.9 NMAC

[16.2.8.10 NMAC - Rp, 16.2.8.10 NMAC, 2/11/2022]

#### **16.2.8.11 LATE LICENSE RENEWAL:**

**A.** For a licensee whose late application to renew his or her license is received at the board office during the 60 day grace period provided by Section 61-14A-15 NMSA 1978, the license shall be renewed if the applicant for late license renewal completes the requirements of 16.2.8.10 NMAC and pays the fee for late license renewal specified in 16.2.10 NMAC.

**B.** If proof of NCCAOM recertification or equivalent continuing education as defined in 16.2.9.8 NMAC is received at the board office during the 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

**C.** For doctors of oriental medicine certified for expanded practice, if proof of expanded practice continuing education as defined in 16.2.9.9 NMAC is received at the board office during the 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

[16.2.8.11 NMAC - Rp, 16.2.8.11 NMAC, 2/11/2022]

#### **16.2.8.12 EXPIRED LICENSE:**

At the end of the 60 day grace period provided by Section 61-14A-15 NMSA 1978, a licensee that has not renewed his license, nor completed all continuing education requirements specified in 16.2.9.8 NMAC, the license is expired and the doctor of oriental medicine shall not practice oriental medicine until his expired license is renewed. For an expired license, if a properly completed application for license renewal is received at the board office within one year of the last regular renewal date, the license shall be renewed, provided all the requirements of late license renewal are completed in addition to the requirements of 16.2.8.11 NMAC and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC. The licensee shall notify the board of his correct and current mailing address and of any address changes within ten days of the change. Any doctor of oriental medicine who fails to renew his expired license by the next July 31 annual license renewal date after the notification shall be required to apply as a new applicant.

[16.2.8.12 NMAC - Rp, 16.2.8.12 NMAC, 2/11/2022]

#### **16.2.8.13 [RESERVED]**

### **PART 9: CONTINUING EDUCATION**

#### **16.2.9.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.9.1 NMAC - Rp 16 NMAC 2.9.1, 12/1/2001]

#### **16.2.9.2 SCOPE:**

All licensed doctors of oriental medicine and all licensed doctors of oriental medicine certified for expanded practice as defined in 16.2.19 NMAC.

[16.2.9.2 NMAC - Rp 16 NMAC 2.9.2, 12/1/2001; A, 11/28/2009]

#### **16.2.9.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 8.1, 9, and 15, NMSA 1978.

[16.2.9.3 NMAC - Rp 16 NMAC 2.9.3, 12/1/2001; A, 11/28/2009]

**16.2.9.4 DURATION:**

Permanent.

[16.2.9.4 NMAC - Rp 16 NMAC 2.9.4, 12/1/2001]

**16.2.9.5 EFFECTIVE DATE:**

December 1, 2001, unless a later date is cited at the end of a section.

[16.2.9.5 NMAC - Rp 16 NMAC 2.9.5, 12/1/2001]

**16.2.9.6 OBJECTIVE:**

This part defines continuing education requirements for doctors of oriental medicine and all licensed doctors of oriental medicine certified for expanded practice as defined in 16.2.19 NMAC.

[16.2.9.6 NMAC - Rp 16 NMAC 2.9.6, 12/1/2001; A, 3/7/2003; A, 11/28/2009]

**16.2.9.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.9.7 NMAC - Rp 16 NMAC 2.9.7, 12/1/2001; A, 2/15/2005; A, 2/8/2013]

**16.2.9.8 CONTINUING EDUCATION:**

**A.** A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

**(1)** continuing NCCAOM recertification in oriental medicine, or in both acupuncture and Chinese herbology, or in acupuncture only if licensed prior to 1997, or;

**(2)** completion of 15 hours annually, of NCCAOM approved continuing education courses or of courses approved by other acupuncture or oriental medicine licensing authorities.

(3) a course taken for initial certification in expanded practice may not also be used for continuing education required for annual license renewal.

**B.** proof of current Basic Life Support, BLS, and CPR with proof of having completed an American heart association or American red cross approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of each annual license renewal.

**C.** A doctor of oriental medicine who is a board approved examiner, examiner supervisor, or examiner trainer, for the clinical skills examination, shall be granted continuing education credit for time spent functioning as an examiner or training to be an examiner. This also applies to an observing board member who has completed the training. The continuing education credit is limited to six hours per year.

**D.** The board shall annually audit a random ten percent of continuing education documentation to determine the validity of the documentation.

**E.** A doctor of oriental medicine who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to Section 61-14A-17, NMSA 1978, and the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978.

**F.** A doctor of oriental medicine shall maintain an understanding of the current act and rules.

[16.2.9.8 NMAC - Rp 16 NMAC 2.9.8, 12/1/2001; A, 10/1/2003; A, 2/15/2005; A, 9/25/2006; A, 11/28/2009; A/E, 6/15/2010; A/E, 6/15/2010; Re-pr, 11/28/2010; A, 2/8/2013; A, 3/2/2014; A, 6/16/2015; A, 1/4/2020]

### **16.2.9.9 CONTINUING EDUCATION FOR LICENSEES CERTIFIED FOR EXPANDED PRACTICE:**

In addition to the continuing education requirements listed in 16.2.9.8 NMAC, doctors of oriental medicine previously certified in expanded practice are subject to the following requirements beginning August 1, 2013:

**A.** a doctor of oriental medicine certified for expanded practice in one or more areas as defined in 16.2.19 NMAC shall complete continuing education hours as follows:

- (1) three hours every three years for recertification in basic injection therapy;
  - (2) seven hours every three years for recertification in injection therapy;
  - (3) seven hours every three years for recertification in intravenous therapies;
- and

**(4)** seven hours every three years for recertification in bioidentical hormone therapy;

**(5)** except that a doctor of oriental medicine recertifying in injection therapy or intravenous therapy need not complete an additional three hours in basic injection therapy;

**(6)** doctors of oriental medicine previously certified as Rx1 shall need seven hours, every three years, for recertification in prolotherapy as specified in Section 16 of 16.2.19 NMAC.

**B.** license holders who are newly certified for expanded practice shall complete continuing education hours on a prorated basis during the first year(s) of certification, and then shall comply with recertification requirements every three years thereafter;

**C.** courses approved for recertification taken within 120 days prior to a renewal cycle may be carried over and applied to the next renewal cycle, but may not be used for both renewal cycles.

**D.** the continuing education shall be about substances in the board approved appropriate expanded practice formulary or formularies defined in 16.2.20 NMAC or updated information in improving current techniques or other techniques that are part of the expanded practice certification as defined in 16.2.19 NMAC;

**E.** continuing education courses, including teachers, shall be approved by the board:

**(1)** course providers requesting approval for Rx continuing education certification shall be required to submit the following materials to the board for approval no less than 45 days prior to the date of the course offering and the materials shall include:

**(a)** an application fee as defined in Subsection C of 16.2.10.9 NMAC;

**(b)** course description, including objectives, subject matter, number of hours, date time and location; and

**(c)** curriculum vitae of the instructor(s) including previous experience of at least five years in subjects they are engaged to teach;

**(2)** courses approved by national providers of continuing medical education (CME) are recognized by the board as approved providers for expanded practice continuing education units (CEU) including but not limited to A4M, ACAM, AMA, IFM;

**(3)** individual practitioners requesting approval for a specific course that has not already been approved as defined in Paragraph (2) of Subsection D of 16.2.9.9

NMAC, for their own personal continuing education shall submit a copy of the course brochure including a course description, subject matter, contact hours, and curriculum vitae of the instructor 45 days prior to the course offering;

(4) the continuing education committee shall meet each month on or before the 15<sup>th</sup> to review course materials if applications have been submitted; electronic review is acceptable;

(5) a doctor of oriental medicine certified for expanded practice in basic injection, injection or intravenous therapies must remain current in basic life support, BLS, and CPR with proof of having completed an American heart association approved course; hands-on supervised practice of clinical skills is required; the didactic portion may be completed on-line; a current copy of this card shall be submitted to the board at the time of each triennial expanded practice certification renewal; and

F. (1) teaching an approved continuing education course shall be equivalent to taking the approved course; the first time that the course is offered; (2) continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements for expanded practice continuing education; (3) the board may determine specific mandatory courses that must be completed; specific mandatory courses shall be noticed at least six months prior to the date of the course; exceptions to being required to complete a specific mandatory course may be made for good cause.

[16.2.9.9 NMAC - N, 10/1/2003; A, 2/15/2005; A, 11/28/2009; A, 2/8/2013; A3/2/2014; A, 6/16/2015; A, 9/15/2015; A, 1/4/2020]

## **PART 10: FEES**

### **16.2.10.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[7-1-96; 16.2.10.1 NMAC - Rn, 16 NMAC 2.10.1, 10-22-00]

### **16.2.10.2 SCOPE:**

All licensees, applicants, applicants for expanded practice certification, educational courses, temporary licensees, applicants for temporary licensure, limited temporary license holders, limited temporary license applicants, extern applicants, externship supervisor applicants, certified auricular detoxification specialists, certified auricular detoxification specialist applicants, auricular detoxification specialist training programs, auricular detoxification specialist training program applicants, educational programs and applicants for approval of educational programs.

[7-1-96; 16.2.10.2 NMAC - Rn, 16 NMAC 2.10.2, 10-22-00; A, 1-1-01; A, 8-13-01; A, 02-15-05; A, 11-28-09]

**16.2.10.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 8.1, 9, 14.1 and 16, NMSA 1978.

[7-1-96; 16.2.10.3 NMAC - Rn, 16 NMAC 2.10.3, 10-22-00; A, 8-13-01]

**16.2.10.4 DURATION:**

Permanent.

[7-1-96; 16.2.10.4 NMAC - Rn, 16 NMAC 2.10.4, 10-22-00]

**16.2.10.5 EFFECTIVE DATE:**

July 1, 1996 unless a later date is cited at the end of a section.

[7-1-96, A, 8-31-98; 16.2.10.5 NMAC - Rn & A, 16 NMAC 2.10.5, 10-22-00]

**16.2.10.6 OBJECTIVE:**

This part clarifies the requirements for the deposit and use of revenues derived from fees, establishes that the board shall not make refunds and lists all fees charged by the board.

[7-1-96; 16.2.10.6 NMAC - Rn, 16 NMAC 2.10.6, 10-22-00]

**16.2.10.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[7-1-96; 16.2.10.7 NMAC - Rn, 16 NMAC 2.10.7, 10-22-00; A, 02-15-05; A, 11-28-09]

**16.2.10.8 DEPOSIT AND USE OF FEES:**

All fees and other funds collected under the act shall be deposited with the state treasurer for credit to the board of acupuncture and oriental medicine fund. The board shall appropriate money from the fund to pay for the costs of administration of the act. Any surplus funds remaining at the end of each fiscal year shall not revert to the general fund.

[8-18-87...7-1-96; A, 5-15-99; A, 2-17-00; 16.2.10.8 NMAC - Rn, 16 NMAC 2.10.8, 10-22-00; A, 8-13-01; A, 02-15-05]

### **16.2.10.9 FEES CHARGED:**

**A.** All fees shall be paid by check, certified check or money order in US funds unless otherwise specified by rule.

**B.** No fees paid to the board shall be refunded.

**C.** The board shall charge the following fees:

- (1) application for licensure: \$525.00;
- (2) application for expedited licensure: \$750.00;
- (3) application for licensure by endorsement: \$800.00;
- (4) application for temporary licensure: \$330.00;
- (5) application for limited temporary license: \$100.00;
- (6) clinical skills examination, not including the cost of any nationally recognized examinations: \$500.00;
- (7) annual license renewal: \$225.00;
- (8) late license renewal: an additional \$200.00;
- (9) expired license renewal: an additional \$350.00 plus the renewal and late fees;
- (10) temporary license renewal: \$100.00;
- (11) application for a new annual approval or renewal of approval of an educational program, including the same program offered at multiple campuses: \$450.00;
- (12) late renewal of approval of an educational program: an additional \$200.00;
- (13) application for single instance approval of an educational program: \$225.00;
- (14) application for initial expanded practice certification: \$100.00 per module;
- (15) application for triennial expanded practice license renewal: an additional \$200;

(16) late expanded practice license renewal: an additional \$125.00 plus the renewal fee;

(17) expired expanded practice license renewal: an additional \$100.00 plus the renewal and late fees;

(18) application for externship supervisor registration: \$225.00;

(19) application for extern certification: \$225.00;

(20) continuing education provider course approval application: \$50.00;

(21) auricular detoxification specialist certification application: \$50.00;

(22) auricular detoxification specialist certification renewal: \$30.00;

(23) auricular detoxification specialist certification late renewal: \$20.00;

(24) auricular detoxification specialist supervisor registration application: \$50.00;

(25) auricular detoxification specialist training program approval application: \$100.00;

(26) auricular detoxification specialist training program approval renewal: \$50.00;

(27) treatment program approval application: \$100.00;

(28) administrative fee for application for approval of an expanded practice educational course: \$600.00;

(29) administrative fee for faculty change in an expanded practice course: \$50.00;

(30) administrative fee for curriculum change in an expanded practice course: \$150.00;

(31) renewal of expanded prescriptive authority course: \$200.00;

(32) administrative fee for inactive license application: \$125.00;

(33) administrative fee for inactive license renewal: \$100.00;

(34) administrative fee for inactive license reinstatement application: \$125.00;

(35) administrative fee for each duplicate license: \$30.00;

(36) administrative fee for a single transcript or diploma from the former international institute of Chinese medicine, per copy: \$50.00;

(37) administrative fees to cover the cost of photocopying, electronic data, lists and labels produced at the board office.

[11/3/1981...7/1/1996; A, 5/15/1999; A, 2-17-00; 16.2.10.9 NMAC - Rn, 16 NMAC 2.10.10, 10/22/2000; A, 1/1/2001; A, 8/13/2001; A, 3/2/2003; A, 2/15/2005; A, 9/25/2006; A, 11/28/2009; A, 11/28/2010; A, 2/8/2013; A, 3/2/2014; A, 12/27/2022]

## **PART 11: LICENSEE BUSINESS OFFICES AND ADMINISTRATIVE REQUIREMENTS**

### **16.2.11.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.11.1 NMAC - Rp 16 NMAC 2.11.1, 12-1-01]

### **16.2.11.2 SCOPE:**

All licensees, applicants, temporary licensees, applicants for temporary licensure, limited temporary license holders, externs, certified auricular detoxification specialists, auricular detoxification specialist training programs, educational programs and applicants for approval of educational programs.

[16.2.11.2 NMAC - Rp 16 NMAC 2.11.2, 12-1-01; A, 02-15-05]

### **16.2.11.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8 and 9, NMSA 1978.

[16.2.11.3 NMAC - Rp 16 NMAC 2.11.3, 12-1-01]

### **16.2.11.4 DURATION:**

Permanent.

[16.2.11.4 NMAC - Rp 16 NMAC 2.11.4, 12-1-01]

### **16.2.11.5 EFFECTIVE DATE:**

December 1, 2001, unless a later date is cited at the end of a section.

[16.2.11.5 NMAC - Rp 16 NMAC 2.11.5, 12-1-01]

**16.2.11.6 OBJECTIVE:**

This part establishes the requirements for registration of all licensee offices, the requirement that an office in a residence be set apart and have toilet facilities available, the inspection of offices, the keeping of records, the use of a trade name, the display of the license and the requirement for notifying the board of changes to, relocation or closing of the office.

[16.2.11.6 NMAC - Rp 16 NMAC 2.11.6, 12-1-01]

**16.2.11.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.11.7 NMAC - Rp 16 NMAC 2.11.7, 12-1-01; A, 02-15-05; A, 11-28-09]

**16.2.11.8 OFFICE:**

All offices shall be registered with the board. All offices must have a written needlestick policy in place including recommendations for postexposure prophylaxis. When the practice of acupuncture and oriental medicine is conducted in a building used for residential purposes, a room or rooms shall be set apart as an office for the practice and shall be used solely for this purpose. It shall be equipped with a washroom and toilet facilities readily available in the same premises. An office may be inspected at any time during normal business hours by the board or its agents.

[16.2.11.8 NMAC - Rp 16 NMAC 2.11.8, 12-1-01; A, 6-16-15]

**16.2.11.9 RECORDS:**

A doctor of oriental medicine, temporary licensee, extern or educational program shall keep accurate records of each patient including the diagnosis and nature of treatment given and any other relevant data deemed necessary by the provider. Records shall be retained for a minimum of 10 years or in accordance with federal regulation and shall be open to inspection at any time during normal business hours by the board.

[16.2.11.9 NMAC - Rp 16 NMAC 2.11.9, 12-1-01; A, 11-28-09]

**16.2.11.10 USE OF BUSINESS NAME OR TRADE NAME:**

The board shall be notified of the use of a trade or business name or "DBA" by a doctor of oriental medicine. The board shall be notified, in writing, of any change of business or trade name within 10 days of the change.

[16.2.11.10 NMAC - Rp 16 NMAC 2.11.10, 12-1-01; A, 02-15-05; A, 11-28-09]

**16.2.11.11 DISPLAY OF LICENSE:**

The current license shall be conspicuously displayed in all offices of the doctor of oriental medicine or temporary licensee that are registered with the board. For the fee specified in part 10, the board shall provide a copy of the license for each additional office location registered with the board.

[16.2.11.11 NMAC - Rp 16 NMAC 2.11.11, 12-1-01]

**16.2.11.12 CHANGES, RELOCATION, CLOSING:**

Within 10 days of any changes, a doctor of oriental medicine or temporary licensee shall inform the board, in writing, of any changes to his or her practice, including relocation, abandonment and closing for over 90 days. Notice to the board shall include at a minimum the name of the licensee, office location, mailing address, telephone number, business name and the names of all licensees practicing at that location.

[16.2.11.12 NMAC - Rp 16 NMAC 2.11.12, 12-1-01; A, 02-15-05; A, 11-28-09]

**PART 12: GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE**

**16.2.12.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.12.1 NMAC - Rp, 16.2.12.1 NMAC, 2/11/2022]

**16.2.12.2 SCOPE:**

All licensees, applicants, temporary licensees, applicants for temporary licensure, limited temporary license holders, limited temporary license applicants, externs, certified auricular detoxification specialists, certified auricular detoxification specialist applicants, auricular detoxification specialist training programs, auricular detoxification specialist training program applicants, educational programs and applicants for approval of educational programs.

[16.2.12.2 NMAC - Rp, 16.2.12.2 NMAC, 2/11/2022]

**16.2.12.3 STATUTORY AUTHORITY:**

This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 17 NMSA 1978.

[16.2.12.3 NMAC - Rp, 16.2.12.3 NMAC, 2/11/2022]

**16.2.12.4 DURATION:**

Permanent.

[16.2.12.4 NMAC - Rp, 16.2.12.4 NMAC, 2/11/2022]

**16.2.12.5 EFFECTIVE DATE:**

February 11, 2022, unless a later date is cited at the end of a section or paragraph.

[16.2.12.5 NMAC - Rp, 16.2.12.5 NMAC, 2/11/2022]

**16.2.12.6 OBJECTIVE:**

This part clarifies the grounds for which the board may deny, suspend or revoke a license to practice acupuncture and oriental medicine or otherwise discipline a licensee, applicant, temporary licensee, applicant for temporary licensure, extern, extern supervisor or educational program in addition to those reasons listed in the act in Section 61-14A-17 NMSA 1978.

[16.2.12.6 NMAC - Rp, 16.2.12.6 NMAC, 2/11/2022]

**16.2.12.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.12.7 NMAC - Rp, 16.2.12.7 NMAC, 2/11/2022]

**16.2.12.8 AUTHORITY AND PROCEDURE:**

The board may refuse to issue, or may suspend, or revoke any license, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in the Act and clarified in 16.2.12 NMAC.

[16.2.12.8 NMAC - Rp, 16.2.12.8 NMAC, 2/11/2022]

**16.2.12.9 FAILURE TO USE PRE-STERILIZED SINGLE USE NEEDLES:**

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who fails to use pre-sterilized single use needles.

[16.2.12.9 NMAC - Rp, 16.2.12.9 NMAC, 2/11/2022]

**16.2.12.10 FAILURE TO FOLLOW PROPER INSTRUMENT STERILIZATION PROCEDURE:**

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who fails to use sterile instruments or fails to follow proper instrument sterilization procedures including the use of biological monitors and the keeping of accurate records of sterilization cycles and equipment service maintenance as described in the manufacturer's instruction manual, the current edition of "clean needle technique manual for acupuncturists" published by the national acupuncture foundation, and the instrument sterilization protocols used by New Mexico hospitals and the American hospital association.

[16.2.12.10 NMAC - Rp, 16.2.12.10 NMAC, 2/11/2022]

**16.2.12.11 FAILURE TO FOLLOW CLEAN NEEDLE TECHNIQUE:**

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who fails to follow clean needle technique as defined in the current edition of "clean needle technique manual for acupuncturists" published by the national acupuncture foundation.

[16.2.12.11 NMAC - Rp, 16.2.12.11 NMAC, 2/11/2022]

**16.2.12.12 FALSE REPORTING:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine temporary licensee, applicant, applicant for temporary licensure, extern, educational program or applicants for approval of an educational program shall be guilty of unprofessional conduct who willfully makes or files false reports or records in his or her practice of acupuncture and oriental medicine, or who files false statements for collection of fees for services that were not rendered.

[16.2.12.12 NMAC - Rp, 16.2.12.12 NMAC, 2/11/2022]

**16.2.12.13 OUT OF STATE DISCIPLINARY ACTION:**

Pursuant to the Act, Paragraphs (3) and (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, an applicant, a temporary licensee, an applicant for temporary licensure or an extern shall be guilty of incompetence or unprofessional conduct for any act or omission which has resulted in disciplinary action against him or her by the licensing or disciplinary authority, or court in another state, territory, or country which would constitute incompetence if it had been committed in New Mexico.

[16.2.12.13 NMAC - Rp, 16.2.12.13 NMAC, 2/11/2022]

**16.2.12.14 PROCURING LICENSE BY FRAUD:**

Pursuant to the Act Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, an applicant, a temporary licensee, an applicant for temporary licensure or an extern shall be guilty of fraud or deceit in procuring or attempting to procure or renew a license or a temporary license to practice in the profession of acupuncture and oriental medicine if he makes false statements, or provides false or misleading information on his or her application.

[16.2.12.14 NMAC - Rp, 16.2.12.14 NMAC, 2/11/2022]

**16.2.12.15 MISREPRESENTATION:**

Pursuant to the Act, Paragraphs (5) and (14) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct and attempting to attract patronage in an unethical manner who guarantees a cure will result from the performance of professional services.

[16.2.12.15 NMAC - Rp, 16.2.12.15 NMAC, 2/11/2022]

**16.2.12.16 FALSE ADVERTISING:**

Pursuant to the Act, Paragraph (13) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, instructor in an educational course or program or applicant for approval of an educational program shall be guilty of advertising by means of knowingly false statements who makes or publishes or causes to be made or published any advertisement, offer, statement or other form of representation, oral or written, that directly or by implication is false, misleading or deceptive.

[16.2.12.16 NMAC - Rp, 16.2.12.16 NMAC, 2/11/2022]

**16.2.12.17 FALSE ADVERTISING BY APPLICANTS:**

Pursuant to the Act, Paragraphs (7) and (13) of Subsection A of Sections 61-14A-17 NMSA 1978, an applicant or an applicant for temporary licensure shall be guilty of violating the provisions of the act, specifically Section 61-14A-4 NMSA 1978, and shall be guilty of advertising by means of knowingly false statements who advertises his or her practice of acupuncture and oriental medicine if he does such advertising prior to being licensed by the board.

[16.2.12.17 NMAC - Rp, 16.2.12.17 NMAC, 2/11/2022]

#### **16.2.12.18 EDUCATIONAL FRAUD:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who practices fraud, deceit, gross negligence, or misconduct in the clinical practice or in relation to the operation of an educational program in acupuncture and oriental medicine.

[16.2.12.18 NMAC - Rp, 16.2.12.18 NMAC, 2/11/2022]

#### **16.2.12.19 FAILURE TO KEEP RECORDS:**

Pursuant to Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who fails to keep written records reflecting the course of treatment of the patient for a period of at least seven years from the date of each service.

[16.2.12.19 NMAC - Rp, 16.2.12.19 NMAC, 2/11/2022; A, 12/27/2022]

#### **16.2.12.20 FAILURE TO PROVIDE RECORDS TO PATIENT:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who fails to make available to a patient or client, upon request, copies of patient records in their possession, or under their control that have been prepared for and paid for by the patient or client. The patient records must be provided to the patient or client within 30 days of the written request, except as authorized or required by the Federal (Health Insurance Portability and Accountability Act (HIPAA)).

[16.2.12.20 NMAC - Rp, 16.2.12.20 NMAC, 2/11/2022; A, 12/27/2022]

#### **16.2.12.21 BREACH OF CONFIDENTIALITY:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who reveals personally identifiable facts, data or information obtained in a professional capacity, without the prior consent of the patient or client, except as authorized or required by law.

[16.2.12.21 NMAC - Rp, 16.2.12.21 NMAC, 2/11/2022]

#### **16.2.12.22 DELEGATION OF RESPONSIBILITIES TO UNQUALIFIED PERSONS:**

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who:

**A.** delegates professional responsibilities to a person when the doctor of oriental medicine, temporary licensee or extern delegating such responsibilities knows or has reason to know that the person is not qualified by education, by experience or by licensure or certification to perform the responsibilities; or

**B.** fails to exercise appropriate supervision over temporary licensees or students who are authorized to practice only under the supervision of the doctor of oriental medicine or temporary licensee.

[16.2.12.22 NMAC - Rp, 16.2.12.22 NMAC, 2/11/2022]

#### **16.2.12.23 ABANDONMENT OF PATIENTS:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who abandons or neglects a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandons professional employment in a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients.

[16.2.12.23 NMAC - Rp, 16.2.12.23 NMAC, 2/11/2022]

#### **16.2.12.24 SOLICITATION:**

Pursuant to the Act, Paragraph (14) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of attempting to attract patronage in an unethical manner who solicits patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate oral or written response from the recipient.

[16.2.12.24 NMAC - Rp, 16.2.12.24 NMAC, 2/11/2022]

#### **16.2.12.25 FEE SPLITTING:**

Pursuant to the Act, Paragraph (14) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of attempting to attract patronage in an unethical manner who engages in fee splitting. "Fee splitting" means

paying or offering to pay a business or professional person or receiving or offering to receive from a business or professional person a commission, rebate, or compensation for bringing or referring a patient or dividing or offering to divide fees received for service for bringing or referring a patient. A division of fees between or among practitioners in the same practice or fee arrangements to cover patients during temporary absences is not fee splitting and is not prohibited by this provision.

[16.2.12.25 NMAC - Rp, 16.2.12.25 NMAC, 2/11/2022]

#### **16.2.12.26 FINANCIAL EXPLOITATION:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who exercises undue influence on the patient or client in such manner as to exploit the patient or client for the financial gain of the doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program or of a third party.

[16.2.12.26 NMAC - Rp, 16.2.12.26 NMAC, 2/11/2022]

#### **16.2.12.27 SEXUAL ABUSE, EXPLOITATION AND MISCONDUCT:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, an applicant, a temporary licensee, an applicant for temporary licensure or an extern shall be guilty of unprofessional conduct who commits an act of sexual abuse, exploitation or misconduct, by exercising influence within a doctor/patient or teacher/student relationship for purposes of engaging a patient or student in sexual activity or who engages in sexual contact or the suggestion of sexual contact with a patient or student during the doctor/patient or teacher/student relationship within an educational program, unless a sexual relationship with the patient or student preceded the professional relationship as doctor/patient or teacher/student. If the licensee, temporary licensee or extern and the patient mutually desire a personal/sexual relationship, the licensee, temporary licensee or extern shall immediately terminate the professional relationship with a written and signed termination of care agreement, make an appropriate referral to another health care practitioner, and wait before engaging in such a relationship for a time when it is reasonably certain based on the factors enumerated below that the professional relationship has no influence on the personal/sexual relationship. The licensee, temporary licensee or extern who engages in such a personal/sexual relationship, following the cessation or termination of treatment, bears the burden of providing proof that there has been no exploitation, in light of all relevant factors, including:

- A.** the amount of time that has passed since care was terminated;
- B.** the nature and duration of the care;

- C. the circumstances of termination;
- D. the patient's personal history;
- E. the patient's mental status;
- F. the likelihood of adverse impact on the patient and others; and

**G.** any statements or actions made by the licensee, temporary licensee or extern during the course of care suggesting or inviting the possibility of a post termination relationship with the patient. Each of the following acts constitutes sexual abuse, exploitation or misconduct:

- (1)** physical or verbal sexual contact or intercourse during the course of the professional relationship, whether in or out of the practitioner's place of business;
- (2)** failure to maintain appropriate professional boundaries even if the patient is perceived as seductive;
- (3)** failure to provide the patient with an opportunity to undress and dress in private;
- (4)** failure to provide the patient with the opportunity to wear underwear or a smock during treatment;
- (5)** failure to obtain informed verbal consent before undraping or treating the patient's breasts, buttocks or genitals;
- (6)** use of inappropriate parts of the practitioner's body to brace the patient;
- (7)** palpation beyond that which is necessary to accomplish a competent examination or treatment;
- (8)** sexual repartee, innuendo, jokes or flirtation;
- (9)** sexual comments about the patient's person or clothing;
- (10)** inquiry into the patient's sexual history or behavior beyond that which is necessary for a competent examination, diagnosis or treatment; the practitioner shall not be unnecessarily intrusive; the practitioner shall not verbalize any unprofessional comments concerning the patient's sexual history or behavior; and
- (11)** attempting to diagnose or treat a sexual issue beyond the practitioner's scope of training or practice.

[16.2.12.27 NMAC - Rp, 16.2.12.27 NMAC, 2/11/2022]

#### **16.2.12.28 CONVICTION OF CRIME:**

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, applicant, temporary licensee, applicant for temporary licensure or extern shall be guilty of incompetence if convicted of any misdemeanor or felony relating to the practice of acupuncture and oriental medicine, identified as a disqualifying criminal conviction in 16.2.3.10 NMAC. For the purpose of this section, conviction includes any finding of guilt by a court or jury, any plea or judgment of conditional discharge, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred.

[16.2.12.28 NMAC - Rp, 16.2.12.28 NMAC, 2/11/2022]

#### **16.2.12.29 PERMITTING INSERTION OR REMOVAL OF ACUPUNCTURE NEEDLES:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, applicant, temporary licensee, applicant for temporary licensure or extern shall be guilty of unprofessional conduct who permits, directs or supervises the insertion or removal of acupuncture needles by an unlicensed agent or employee. This provision shall not apply to a patient carrying out the instructions of his or her doctor of oriental medicine, temporary licensee or extern when it is part of the patient's treatment providing that the instructions are simple and clear and there is no danger to the patient. This provision shall not apply to a student enrolled in an educational program practicing under the direct supervision of a teacher as part of the educational program in which he or she is enrolled.

[16.2.12.29 NMAC - Rp, 16.2.12.29 NMAC, 2/11/2022]

#### **16.2.12.30 PERMITTING THE PRESCRIPTION OF SUBSTANCES AND PROCEDURES:**

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, applicant, temporary licensee, applicant for temporary licensure or extern shall be guilty of unprofessional conduct who permits, directs or supervises the prescription of substances or procedures within the scope of practice of a doctor of oriental medicine by an unlicensed agent or employee. This provision shall not apply to a patient carrying out the instructions of his or her doctor of oriental medicine, temporary licensee, or extern when it is part of the patient's treatment providing that the instructions are simple and clear and there is no danger to the patient. This provision shall not apply to a student enrolled in an educational program practicing under the direct supervision of a teacher as part of the educational program in which he is enrolled.

[16.2.12.30 NMAC - Rp, 16.2.12.30 NMAC, 2/11/2022]

### **16.2.12.31 FAILURE TO OBTAIN INFORMED CONSENT:**

Pursuant to Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who fails to obtain, from the patient, a written informed consent for diagnosis and treatment that gives the patient at least a description of the types of diagnostic and treatment services used and any associated potential risks and sensations. The written informed consent shall also contain an explanation that the following will be discussed orally with the patient:

**A.** an estimate of the number of times the patient may need to return for treatment;

**B.** the frequency of treatment; and

**C.** the possible outcome of the diagnostic procedure or treatment service. The written informed consent shall also contain a statement that the patient shall have the choice to accept or reject the proposed diagnostic procedure or treatment, or any part of it, before or during the diagnosis or treatment.

[16.2.12.31 NMAC - Rp, 16.2.12.31 NMAC, 2/11/2022]

### **16.2.12.32 INCOMPETENCE AND UNPROFESSIONAL CONDUCT:**

The specifications of incompetence and unprofessional conduct defined in the act and 16.2.12 NMAC shall not be exclusive of the types of acts and omissions which may be found by the board to constitute incompetence or unprofessional conduct.

[16.2.12.32 NMAC - Rp, 16.2.12.32 NMAC, 2/11/2022]

### **16.2.12.33 ACUPUNCTURE ON ANIMALS:**

A person who is not licensed under the Veterinary Practice Act, including a licensed doctor of oriental medicine, is prohibited from practicing veterinary medicine, including acupuncture on an animal, as defined by the Veterinary Practice Act, except under direct supervision of a licensed veterinarian pursuant to 16.25.9.15 NMAC, or superseding rule. A licensed doctor of oriental medicine is guilty of unprofessional conduct who:

**A.** practices acupuncture on an animal or renders related services on an animal in violation of the Veterinary Practice Act; or

**B.** advertises or solicits clients for the practice of acupuncture on an animal except as permitted by rule promulgated by the board of veterinary medicine; or

**C.** accepts a fee directly from a client for services rendered on an animal.

[16.2.12.33 NMAC - Rp, 16.2.12.33 NMAC, 2/11/2022]

#### **16.2.12.34 DISCIPLINARY ACTION AND FINES:**

A licensee, temporary licensee, applicant, applicant for temporary licensure, extern, extern supervisor or educational program is subject to disciplinary proceedings, including fines, in accordance with the uniform Licensing Act, Sections 61-1-1 NMSA 1978 through 61-1-35, as amended, for violations of the act or for violations of 16.2.12 NMAC. Fines may be assessed for each violation. Fines may be assessed in addition to other disciplinary action taken by the board for repeated or serious violations or for providing false or misleading information to the board.

**A.** Violations of specific rules applicable to educational programs may result in denial, suspension or revocation of the educational program approval or in assessment of fines as described below:

(1) failure to provide the board complete, accurate transcripts pursuant to Paragraphs (1) & (2) of Subsection C of 16.2.3.13 NMAC - \$1000.00;

(2) failure to furnish the board, its investigators, or agents with information requested by the board or failure to allow visits or inspections of the institute or facility pursuant to 16.2.7.8 NMAC or Subsection M of Section 16.2.7.9 NMAC - \$1000.00;

(3) failure to provide the board with the names and educational qualifications of all teaching supervisors, resident teachers and visiting teachers as required by Subsection G of Section 16.2.7.9 NMAC - \$500.00;

(4) failure to provide at least 900 hours of supervised clinical practice and observation with at least 400 of those hours as actual treatment hours with the student as the primary student practitioner pursuant to Subsection C of Section 16.2.7.9 NMAC - \$ 500.00;

(5) failure to notify board of ownership or program changes pursuant to 16.2.7.13 NMAC - \$200.00;

(6) failure to maintain and enforce appropriate guidelines and procedures for termination and transfer of clinic patients pursuant to 16.2.12.23 NMAC - \$ 500.00; and

(7) failure to comply with any other provisions required of an educational program, a fine not to exceed \$1,000.00 for each violation.

**B.** A licensee, temporary licensee, applicant, applicant for temporary licensure, extern or an extern Supervisor is subject to disciplinary proceedings in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-35 NMSA 1978, as amended, for violations of the act, Section 61-14A-17 NMSA 1978, or the Rules. The board has authority to take action that may result in denial of a license, failure to renew a license,

suspension of a license, revocation of a license, restriction or limitation on the scope of practice, requirement to complete remedial education, monitoring of the practice by a supervisor approved by the board, censure or reprimand, compliance with conditions of probation or suspension for a specific period of time, corrective action as specified by the board, or payment of a fine not to exceed \$1,000.00 for each violation.

**C.** Violations of specific rules applicable to extern supervisors and externs as defined in 16.2.14 NMAC may result in suspension or revocation of the externship supervisor registration or the extern certification or in assessment of a fine not to exceed \$1000.00 for each violation.

[16.2.12.34 NMAC - Rp, 16.2.12.34 NMAC, 2/11/2022]

#### **16.2.12.35 EXPANDED PRESCRIPTIVE AUTHORITY INCOMPETENCE:**

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine certified for the expanded prescriptive authority shall be guilty of incompetence if he, when diagnosing and treating a patient, does not possess and apply the knowledge and use the skill and care ordinarily used by similarly certified doctors of oriental medicine.

[16.2.12.35 NMAC - Rp, 16.2.12.35 NMAC, 2/11/2022]

#### **16.2.12.36 INCOMPETENCE:**

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine or a doctor of oriental medicine certified in expanded practice who injudiciously prescribes, administers, or dispenses a drug as defined in the New Mexico Drug, Device and Cosmetic Act shall be guilty of incompetence.

[16.2.12.36 NMAC - Rp, 16.2.12.36 NMAC, 2/11/2022]

### **PART 13: COMPLAINT AND DISCIPLINARY PROCEDURES**

#### **16.2.13.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[7-1-96; 16.2.13.1 NMAC - Rn, 16 NMAC 2.13.1, 11-6-00]

#### **16.2.13.2 SCOPE:**

All licensees, applicants, temporary licensees, applicants for temporary licensure, externs, educational programs and applicants for approval of educational programs.

[7-1-96; 16.2.13.2 NMAC - Rn & A, 16 NMAC 2.13.2, 11-6-00; A, 12-1-01]

**16.2.13.3 STATUTORY AUTHORITY:**

This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 17, NMSA 1978.

[7-1-96; 16.2.13.3 NMAC - Rn, 16 NMAC 2.13.3, 11-6-00]

**16.2.13.4 DURATION:**

Permanent.

[7-1-96; 16.2.13.4 NMAC - Rn, 16 NMAC 2.13.4, 11-6-00]

**16.2.13.5 EFFECTIVE DATE:**

July 1, 1996, unless a later date is cited at the end of a section.

[7-1-96, A, 8-31-98; 16.2.13.5 NMAC - Rn & A, 16 NMAC 2.13.5, 11-6-00]

**16.2.13.6 OBJECTIVE:**

This Part defines the creation of the complaint committee, the complaint committee chairperson and the complaint manager, and describes the procedures for the filing of a complaint, the receipt of a complaint at the board's office, the review of the complaint by the complaint committee, the review of the complaint, if necessary, by the board and disciplinary proceedings.

[7-1-96; 16.2.13.6 NMAC - Rn, 16 NMAC 2.13.6, 11-6-00]

**16.2.13.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[7-1-96; 16.2.13.7 NMAC - Rn, 16 NMAC 2.13.7, 11-6-00; A, 12-1-01; A, 02-15-05]

**16.2.13.8 INITIATING A COMPLAINT:**

A. A complaint may be initiated by any person by a telephone call, a written complaint, or an in person complaint presented to any board member or the board's administrator. The board's administrator or complainant shall prepare a complaint form. This form shall be available at the office of the board's administrator.

B. The provisions of Subsection A above notwithstanding, no formal disciplinary proceeding against any person may be instituted without a written, signed complaint.

C. The board's administrator shall maintain a written log of all complaints received that records the following: the date of the complaint; the name, address and telephone number of the complaining party (complainant); the name of the subject of the complaint (respondent); the method by which the complaint was made (e.g., telephone, letter, etc.); and other pertinent data as the board may direct.

[7-1-96, A, 8-31-98; 16.2.13.8 NMAC - Rn & A, 16 NMAC 2.13.8, 11-6-00; A, 12-1-01]

#### **16.2.13.9 PROCEDURES FOR PROCESSING A COMPLAINT:**

A. The board's administrator, or any member of the board who may be appointed by the board's chairperson, will act as the complaint manager for the procedures outlined below.

B. Upon receipt of a written signed complaint, or upon the board's action initiated by a majority vote of the board which is reduced to a written statement based on reasonable ground to believe that the Act or Rules may have been or are being violated, the complaint manager shall:

(1) Log in the date of receipt of the initial complaint.

(2) Determine whether the respondent is a applicant, temporary licensee, applicant for temporary licensure, extern, extern applicant, educational program, or applicant for approval of an educational program.

(3) Assign a complaint number and create an individual file. Complaint numbering shall begin with the last two digits of the year in which the complaint is filed, and shall then continue sequentially (e.g., 95-001).

(4) Forward the complaint to the complaint committee chairperson.

(5) Within seven (7) working days of receipt of the written complaint, send written acknowledgment of receipt of the complaint to the complainant.

[7-1-96; 16.2.13.9 NMAC - Rn & A, 16 NMAC 2.13.9, 11-6-00; A, 12-1-01]

#### **16.2.13.10 REVIEW BY THE COMPLAINT COMMITTEE:**

A. The complaint committee chairperson and complaint manager will comprise the complaint committee, and will review all written, signed complaints filed against a respondent. The complaint committee shall provide the respondent with a copy of the complaint within thirty (30) days of receipt of the complaint, unless the complaint committee reasonably determines that disclosure of the complaint at that time will substantially and materially impair the integrity or efficacy of the investigation. Nondisclosure at the initial stage of the complaint process shall be the exception, rather than the rule.

B. The respondent shall file a written response to the complaint that shall be received in the board's office within thirty days of the postmarked date on which complaint notice was mailed to the respondent, and shall be advised that he or she is required to provide all documents and exhibits in support of his or her position, unless it has been determined that disclosure of the complaint will substantially and materially impair the integrity or efficacy of the investigation, pursuant to Subsection A of 16.2.13.10.A NMAC (Subsection 10.A. of Part 13 of the Rules), in which case the investigation shall proceed without notice to the respondent at the initial stage.

C. If the complaint committee has determined that it is in the best interest of the investigation to withhold disclosure of the complaint during the initial stage of the investigation, pursuant to Subsection A of 16.2.13.10.A NMAC (Subsection 10.A. of Part 13 of the Rules), a copy of the complaint shall be provided to the respondent no later than at the time of the issuance of an NCA, if any.

D. If the complaint committee determines that further information is needed, it may issue investigative subpoenas, or employ an investigator, expert, or other person whose services are determined to be necessary in order to assist in the processing and investigation of the complaint.

E. Upon completion of the investigation, the complaint committee will present a summary of the case to the board, and will make recommendations for action. The summary shall not identify any of the parties by name.

[7-1-96, A, 8-31-98, A, 7-3-99; A, 2-17-00; 16.2.13.10 NMAC - Rn & A, 16 NMAC 2.13.10, 11-6-00; A, 12-1-01]

#### **16.2.13.11 REVIEW BY THE BOARD:**

A. The complaint committee shall present its report and recommendation(s) to the board. The matter shall be referred to only by the assigned case number, and the identities of the parties shall not be disclosed to the board until and unless an NCA is issued. The complaint committee's report shall address issues regarding the statute of limitations and the board's subject matter jurisdiction.

B. After the complaint committee's report has been considered by the board, if the board determines there is not sufficient evidence or cause to issue an NCA, the case will be closed. A letter from the board will be sent, postmarked within thirty (30) days of the date of the board's decision, to both the complainant and respondent. The letter will state the board's action and the reasons for its decision.

C. After the complaint committee's report has been considered by the board, the board may vote to issue an NCA if it determines there is sufficient evidence that, if not rebutted or explained, will justify the board taking disciplinary action.

D. If the board votes to issue an NCA, a complete copy of the complaint committee's file, including exhibits, shall be forwarded to the attorney general's office for assignment of a prosecuting attorney and the Attorney General's decision as to whether there is a sufficient basis to prosecute.

E. At any time the board may enter into a settlement agreement with the respondent as a means of resolving a complaint. Any proposed settlement agreement must be approved by the board and by the respondent upon a knowing and intentional waiver by the respondent of his or her right to a hearing as provided by the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

[7-1-96, A, 8-31-98, A, 5-15-99; 16.2.13.11 NMAC - Rn & A, 16 NMAC 2.13.11, 11-6-00; A, 12-1-01]

#### **16.2.13.12 DISCIPLINARY PROCEEDINGS:**

A. The chairperson of the board, or his or her designee, shall serve as chief officer for the disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The chief officer shall be fully authorized to rule on non-dispositive matters on behalf of the full board, including, but not limited to matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, issuance of subpoenas, uncontested motions to change venue, motions to excuse a member filed pursuant to Section 61-1-7(C)NMSA 1978, and discovery and briefing schedules.

B. No party shall engage in ex-parte communications with the chief officer or any member of the board in any pending matter under investigation or in which an NCA has been issued.

C. All disciplinary proceedings shall be conducted in accordance with the Uniform Licensing Act.

[7-1-96; A, 8-31-98; A, 5-15-99; 16.2.13.12 NMAC - Rn, 16 NMAC 2.13.12, 11-6-00; A, 12-1-01]

### **PART 14: EXTERNSHIPS**

#### **16.2.14.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

#### **16.2.14.2 SCOPE:**

All licensed Doctors of Oriental Medicine, Applicants, Externship Supervisor applicants, Externship Supervisors, Extern applicants, and Externs.

[16.2.14.2 NMAC - Rp, 16.2.14.2 NMAC, 2/11/2022]

**16.2.14.3 STATUTORY AUTHORITY:**

This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 61-14A-9 and 61-14A-14.1 NMSA 1978.

[16.2.14.3 NMAC - Rp, 16.2.14.3 NMAC, 2/11/2022]

**16.2.14.4 DURATION:**

Permanent.

[16.2.14.4 NMAC - Rp, 16.2.14.4 NMAC, 2/11/2022]

**16.2.14.5 EFFECTIVE DATE:**

February 11, 2022 unless a later date is cited at the end of a section.

[16.2.14.5 NMAC - Rp, 16.2.14.5 NMAC, 2/11/2022]

**16.2.14.6 OBJECTIVE:**

The purpose of an externship is to provide recent graduates the opportunity to practice under supervision while preparing for licensure. This part establishes the requirements regarding the education and certification for an extern, scope of practice of an extern, the requirements for an externship supervisor, issuance of an externship supervisor registration, fees, change of externship supervisor, the expiration on an extern certification, the revocation of an externship supervisor registration or extern certification, and the grounds for denial, suspension or revocation of the externship supervisor's license or extern's potential license.

[16.2.14.6 NMAC - Rp, 16.2.14.6 NMAC, 2/11/2022]

**16.2.14.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.14.7 NMAC - Rp, 16.2.14.7 NMAC, 2/11/2022]

**16.2.14.8 GENERAL REQUIREMENTS FOR EXTERNS:**

**A.** An extern applicant who has been subject to any action or proceeding described in Subsection C of 16.2.14.10 NMAC or who has violated the Act or the rules, may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the

Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978.

**B.** An applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978; and

**C.** An extern applicant must be an applicant for licensure.

[16.2.14.8 NMAC - Rp, 16.2.14.8 NMAC, 2/11/2022]

#### **16.2.14.9 EDUCATIONAL AND EXAMINATION REQUIREMENTS FOR EXTERNS:**

**A.** An extern applicant shall provide satisfactory proof that he or she has completed a board approved educational program.

**B.** An extern applicant shall provide satisfactory proof from the national certification commission for acupuncture and oriental medicine that he or she has successfully passed the following:

**(1)** the national certification commission for acupuncture and oriental medicine foundations of oriental medicine module; and

**(2)** the national certification commission for acupuncture and oriental medicine approved clean needle technique course; and

**(3)** the national certification commission for acupuncture and oriental medicine point location module.

**C.** An extern applicant must have graduated from a board approved educational program within twelve (12) months of filing the application for extern certification.

[16.2.14.9 NMAC - Rp, 16.2.14.9 NMAC, 2/11/2022]

#### **16.2.14.10 EXTERN CERTIFICATION APPLICATION:**

Upon approval of an application for extern certification that fulfills the requirements listed below, the board shall issue an extern certification. In the interim between regular board meetings, whenever a qualified applicant for extern certification has filed his or her application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary extern certification that will suffice until the next regular meeting of the board. In no event shall the applicant begin the practice of acupuncture and oriental medicine until the extern certification or interim temporary extern certification is issued by the board.

The application requirements for extern certification shall be receipt of the following by the board:

**A.** the fee for application for extern certification specified in 16.2.10 NMAC;

**B.** an application for extern certification that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

**C.** an affidavit as provided on the "extern certification application" as to whether the applicant:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

**(2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

**(3)** is in arrears on a court-ordered child support payment; or

**(4)** has violated any provision of the act or the rules; and

**D.** an affidavit as provided on the "extern certification application" stating that the applicant is an applicant for licensure; and

**E.** an affidavit as provided on the "extern certification application" stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

**(2)** an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978; and

**(3)** the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; and

**(4)** the scope of practice of an extern shall be limited to the practice of acupuncture and oriental medicine as defined in the act and 16.2.2 NMAC, except that the extern shall not prescribe or administer any herbal, nutritional, homeopathic or any other medicines or substances; when diagnosing and treating a patient, the extern shall practice only within the limits of his or her education and training; the extern shall possess and apply the knowledge, and use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to their limited clinical experience; and

**(5)** the extern certification shall expire automatically 12 months after the date of issuance unless the certificate expires sooner for any of the following reasons:

**(a)** upon licensure;

**(b)** if the extern fails the board's clinical skills examination more than once; or

**(c)** if the extern is no longer under the supervision of the externship supervisor; and

**(6)** if the externship relationship terminates before the expiration of the extern certification, the extern may reapply to be supervised by another externship supervisor by filing the appropriate forms required by the board; the extern certification time limit of 12 months shall remain the same and shall not be extended; and

**(7)** in no event shall an extern practice under extern certification(s) for more than a total of 12 months or after failing the board's clinical skills examination more than once; the extern certification is not renewable; exceptions for good cause shall not apply to the extern certification; and

**(8)** the applicant must notify the board within ten days if the applicant's address changes; and

**(9)** the board may refuse to issue, or may suspend, or revoke any license, extern certification or externship supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC.

**F.** an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying

that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.14.10 NMAC - Rp, 16.2.14.10 NMAC, 2/11/2022]

#### **16.2.14.11 REQUIREMENTS AND RESPONSIBILITIES OF EXTERNSHIP SUPERVISORS:**

**A.** The externship supervisor shall:

(1) provide a clinical environment where the extern is able to further his or her knowledge and apply acupuncture and oriental medicine theory and techniques; and

(2) directly supervise the extern on the premises of the treating facility at all times and be available for consultation, intervention, and decisions about patient care; and

(3) supervise no more than two externs at any given time and have no more than a total of two externs in his or her overall externship program at a time; and

(4) inform patients with a written signed consent form outlining the responsibility of the extern and the scope and limits of practice; and

(5) prescribe all herbal, nutritional, homeopathic and any natural substances. Any recommendations of these substances by the extern must be signed by the externship supervisor; and

(6) approve the diagnosis and treatment plan and oversee the techniques of oriental medicine and delivery of patient care; and

(7) notify the board in writing, within five days working days, when the extern enters into an extern supervisory contract with the externship supervisor or terminates the externship participation.

**B.** The externship supervisor shall be responsible for the delivery of competent professional services, obtaining patient consents, and maintaining patient records.

**C.** The externship supervisor shall document approval and oversight of diagnosis, treatment, and patient care in the patient's permanent file.

**D.** The externship supervisor shall terminate the externship relationship if the externship supervisor has the reasonable belief that the extern has violated the act or the rules. The externship supervisor shall notify the board, in writing, within five working days that the externship relationship is terminated and give the reasons for the termination.

[16.2.14.11 NMAC - Rp, 16.2.14.11 NMAC, 2/11/2022]

#### **16.2.14.12 ISSUANCE OF EXTERNSHIP SUPERVISOR REGISTRATION:**

Upon approval of an application for externship supervisor registration that fulfills the requirements listed below, the board shall issue an externship supervisor registration. In the interim between regular board meetings, whenever a qualified applicant for externship supervisor registration has filed his or her application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary externship supervisor registration that will suffice until the next regular meeting of the board. In no event shall the externship supervisor begin supervising an extern until the externship supervisor registration or interim temporary externship supervisor registration is issued by the board. The application requirements for an externship supervisor registration shall be receipt of the following by the board:

**A.** the fee for application for externship supervisor registration specified in 16.2.10 NMAC;

**B.** an application for externship supervisor registration that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

**C.** proof of five years of clinical experience; and

**D.** proof of maintaining a clinical facility; and

**E.** proof of appropriate professional and facility insurance; and

**F.** an affidavit as provided on the "extern supervisor registration application" stating that the applicant understands that:

**(1)** the scope of practice of an extern shall be limited to the practice of acupuncture and oriental medicine as defined in the act and 16.2.2 NMAC, except that the extern shall not prescribe or administer any herbal, nutritional, homeopathic or any other medicines or substances; when diagnosing and treating a patient, the extern shall practice only within the limits of his or her education and training; the extern shall possess and apply the knowledge, and use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to their limited clinical experience; and

**(2)** the extern certification shall expire automatically 12 months after the date of issuance unless the certificate expires sooner for any of the following reasons:

**(a)** upon licensure;

**(b)** if the extern fails the board's clinical skills examination more than once; or

**(c)** if the extern is no longer under the supervision of the externship supervisor; and

**(3)** in no event shall an extern practice under extern certification(s) for more than a total of 12 months or after failing the board's clinical skills examination more than once; the extern certification is not renewable; exceptions for good cause shall not apply to the extern certification; and

**(4)** the extern supervisor shall not be a member of the extern's family or a member of the extern's household or have a conflict of interest with the extern as defined in 16.2.14.19 NMAC; and

**G.** an affidavit as provided on the "extern supervisor registration application" stating that the applicant understands that the externship supervisor shall:

**(1)** provide a clinical environment where the extern is able to further his or her knowledge and apply acupuncture and oriental medicine theory and techniques; and

**(2)** directly supervise the extern on the premises of the treating facility at all times and be available for consultation, intervention, and decisions about patient care; and

**(3)** supervise no more than two externs at any given time and have no more than two externs in his or her externship program at a time; and

**(4)** inform patients with a written signed consent form outlining the responsibility of the extern and the scope and limits of practice; and

**(5)** prescribe all herbal, nutritional, homeopathic and any natural substances; any recommendations of these substances by the extern must be signed by the externship supervisor; and

**(6)** approve the diagnosis and treatment plan and oversee the techniques of oriental medicine and delivery of patient care; and

**(7)** notify the board in writing, within five days working days, when the extern enters into an extern supervisory contract with the externship supervisor or terminates the externship participation; and

**(8)** be responsible for the delivery of competent professional services, obtaining patient consents, and maintaining patient records; and

**(9)** document approval and oversight of diagnosis, treatment, and patient care in the patient's permanent file; and

(10) terminate the externship relationship if the externship supervisor has the reasonable belief that the extern has violated the act or the rules or if a conflict of interest arises during the supervision; the externship supervisor shall notify the board, in writing, within five working days that the externship relationship is terminated and give the reasons for the termination; and

(11) the extern supervisor must notify the board within ten days if the extern supervisor's address changes; and

(12) the board may refuse to issue, or may suspend, or revoke any license, externship supervisor registration or externship supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC.

[16.2.14.12 NMAC - Rp, 16.2.14.12 NMAC, 2/11/2022]

#### **16.2.14.13 CHANGE OF EXTERNSHIP SUPERVISOR:**

If the externship relationship terminates before the expiration of the extern certification, the extern may reapply to be supervised by another externship supervisor by filing the appropriate forms required by the board. The extern certification time limit of 12 months shall remain the same and shall not be extended.

[16.2.14.13 NMAC - Rp, 16.2.14.13 NMAC, 2/11/2022]

#### **16.2.14.14 SCOPE OF PRACTICE OF AN EXTERN:**

The scope of practice of an Extern shall be limited to the practice of acupuncture and oriental medicine as defined in the Act and 16.2.2 NMAC, except that the Extern shall not prescribe or administer any herbal, nutritional, homeopathic or any other medicines or substances. When diagnosing and treating a patient, the Extern shall practice only within the limits of his or her education and training. The Extern shall possess and apply the knowledge, and use the skill and care ordinarily used by reasonably well-qualified Doctors of Oriental Medicine practicing under similar circumstances, giving due consideration to their limited clinical experience.

[16.2.14.14 NMAC - Rp, 16.2.14.14 NMAC, 2/11/2022]

#### **16.2.14.15 COMPENSATION:**

Any compensation contract is solely between the Externship Supervisor and the Extern and is not the province of the Board.

[16.2.14.15 NMAC - Rp, 16.2.14.15 NMAC, 2/11/2022]

#### **16.2.14.16 EXTERN LIMITATIONS:**

In no event shall an extern practice under extern certification(s) for more than a total of 12 months or after failing the board's clinical skills examination more than once. The extern certification is not renewable. Exceptions for good cause shall not apply to the extern certification.

[16.2.14.16 NMAC - Rp, 16.2.14.16 NMAC, 2/11/2022]

#### **16.2.14.17 EXPIRATION OF AN EXTERN CERTIFICATION:**

An Extern certification shall expire automatically 12 months after the date of issuance unless the certificate expires sooner for any of the following reasons:

- A. Upon licensure;
- B. If the Extern fails the Board's Clinical Skills Examination more than once; or
- C. If the Extern is no longer under the supervision of the Externship Supervisor.

[16.2.14.17 NMAC - Rp, 16.2.14.17 NMAC, 2/11/2022]

#### **16.2.14.18 GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE, CERTIFICATION OR REGISTRATION:**

The Board may refuse to issue, or may suspend, or revoke any license, Extern certification or Externship Supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in section 61-14A-17 NMSA 1978 of the Act and clarified in 16.2.12 NMAC.

[16.2.14.18 NMAC - Rp, 16.2.14.18 NMAC, 2/11/2022]

#### **16.2.14.19 EXTERN SUPERVISOR CONFLICT OF INTEREST:**

The externship supervisor shall not be a member of the extern's family or a member of the extern's household. "Member of the extern's family" means a spouse, child, stepchild, grandchild, parent, grandparent, sibling, uncle, aunt, niece, or nephew, or other relative by blood, marriage, or legal process with whom the supervisor has or has had a close familial relationship. The supervisor shall not have a conflict of interest with the extern, such as a past or present familial, social, fiduciary, business, financial, or physician-patient relationship, that impairs or compromises or appears to impair or compromise the supervisor's neutrality, independence, or objectivity. If a conflict of interest arises during the supervision, the supervisor shall immediately report the conflict of interest to the board and shall cease supervision of the extern.

[16.2.14.19 NMAC - Rp, 16.2.14.19 NMAC, 2/11/2022]

### **PART 15: INACTIVE LICENSE**

**16.2.15.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.15.1 NMAC - Rp, 16.2.15.1 NMAC, 2/11/2022]

**16.2.15.2 SCOPE:**

All licensed and inactive licensed doctors of oriental medicine.

[16.2.15.2 NMAC - Rp, 16.2.15.2 NMAC, 2/11/2022]

**16.2.15.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 15, NMSA 1978.

[16.2.15.3 NMAC - Rp, 16.2.15.3 NMAC, 2/11/2022]

**16.2.15.4 DURATION:**

Permanent.

[16.2.15.4 NMAC - Rp, 16.2.15.4 NMAC, 2/11/2022]

**16.2.15.5 EFFECTIVE DATE:**

February 11, 2022 unless a later date is cited at the end of a section.

[16.2.15.5 NMAC - Rp, 16.2.15.5 NMAC, 2/11/2022]

**16.2.15.6 OBJECTIVE:**

This part defines the requirements for renewal of licenses and the procedures to place an active license on inactive status or to reinstate the license to active status.

[16.2.15.6 NMAC - Rp, 16.2.15.6 NMAC, 2/11/2022]

**16.2.15.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.15.7 NMAC - Rp, 16.2.15.7 NMAC, 2/11/2022]

**16.2.15.8 INACTIVE LICENSE GENERAL PROVISIONS:**

A licensee in good standing is eligible to have his or her license placed on inactive status. A licensee who failed to renew his or her license by July 31st shall renew the license in accordance with the provisions of 16.2.8.10 NMAC, 16.2.8.11 NMAC and 16.2.8.12 NMAC before the licensee can apply for an inactive license.

**A.** The board will not accept an inactive license application from a licensee who is under investigation for violations of the act or who has an active complaint pending before the board with the exception of an impaired licensee who is participating in a rehabilitation plan approved by the board. Impaired means the inability to practice acupuncture and oriental medicine with reasonable skill and safety to patients as a result of mental illness or habitual or excessive use or abuse of alcohol or drugs as defined in the Controlled Substances Act, Sections 30-31-1 NMSA 1978 et seq.

**B.** An inactive licensee shall not practice acupuncture and oriental medicine, as defined in the act, in New Mexico. An inactive licensee shall not represent himself or herself as a doctor of oriental medicine in public statements that include, but are not limited to, paid or unpaid advertising, brochures, printed or copied materials, electronic or digital media, directory listings, personal resumes or curricula vitae, business cards, interviews or comments for use in media, statements in legal proceedings, lectures and public presentations. An inactive licensee shall not teach acupuncture and oriental medicine at an educational program.

**C.** Providing or offering to provide oriental medical services, engaging in the practice of acupuncture and oriental medicine or teaching acupuncture and oriental medicine at an educational program by an inactive licensee shall be grounds for disciplinary action by the board for unprofessional conduct and potentially for other appropriate reasons pursuant to Section 61-14A-17 NMSA 1978 of the Act and 16.2.12 NMAC.

**D.** An inactive licensee shall comply with the disciplinary requirements of Section 61-14A-17 NMSA 1978 of the act and 16.2.12 NMAC.

[16.2.15.8 NMAC - Rp, 16.2.15.8 NMAC, 2/11/2022]

#### **16.2.15.9 INACTIVE LICENSE APPLICATION:**

A licensee in good standing may apply to have his or her license placed on inactive status. Upon approval of an application for an inactive license that fulfills the requirements listed below, the board shall place the license on inactive status. The application requirements for an inactive license shall be receipt of the following by the board:

**A.** the administrative fee for inactive license application specified in 16.2.10 NMAC paid by check or money order in U.S. funds; and

**B.** an inactive license application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

**C.** an affidavit provided on the inactive license application form as to whether the applicant since last renewing his or her license with the board:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

**(2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

**(3)** is in arrears on a court-ordered child support payment; or

**(4)** has violated any provision of the act or the rules; and

**D.** an official license history since last renewing his or her license with the board, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture, oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

**E.** an affidavit as provided on the inactive license application form stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.9 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq; and

**(2)** an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-

14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1, NMSA 1978, et seq.; and

**F.** an affidavit as provided on the inactive license application form stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine; and

(2) the applicant must notify the board within 10 days if the applicant's address changes; and

(3) an inactive licensee shall comply with any continuing education requirements established by the board; and

(4) an inactive license shall expire after 15 years; and

(5) an inactive licensee shall not practice acupuncture and oriental medicine, as defined in the act, in New Mexico; an inactive licensee shall not represent himself or herself as a doctor of oriental medicine in public statements that include, but are not limited to, paid or unpaid advertising, brochures, printed or copied materials, electronic or digital media, directory listings, personal resumes or curricula vitae, business cards, interviews or comments for use in media, statements in legal proceedings, lectures and public presentations; an inactive licensee shall not teach acupuncture and oriental medicine at an educational program; and

(6) providing or offering to provide oriental medical services, engaging in the practice of acupuncture and oriental medicine or teaching acupuncture and oriental medicine at an educational program by an inactive licensee shall be grounds for disciplinary action by the board for unprofessional conduct and potentially for other appropriate reasons pursuant to Section 61-14A-17 NMSA 1978 of the Act and 16.2.12 NMAC; and

(7) an inactive licensee shall comply with the appropriate requirements of Section 61-14A-17 NMSA 1978 of the Act and 16.2.12 NMAC; and

(8) the board will not accept an inactive license application from a licensee who is under investigation for violations of the act or who has an active complaint pending before the board with the exception of an impaired licensee who is participating in a rehabilitation plan approved by the board; and

**G.** an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language

original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.15.9 NMAC - Rp, 16.2.15.9 NMAC, 2/11/2022]

#### **16.2.15.10 INACTIVE LICENSE RENEWAL:**

An inactive license shall be renewed by July 31st of every year. Upon approval of an application for inactive license renewal that fulfills the requirements listed below, the board shall renew the inactive license. The application requirements for inactive license renewal shall be receipt of the following by the board:

**A.** the administrative fee for inactive license renewal specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process; and

**B.** an inactive license application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

**C.** an affidavit as provided on the inactive license renewal form stating that the applicant understands that:

**(1)** the applicant must notify the board within ten days if the applicant's address changes; and

**(2)** an inactive license shall expire after 15 years; and

**(3)** an inactive license must be renewed annually.

[16.2.15.10 NMAC - Rp, 16.2.15.10 NMAC, 2/11/2022]

#### **16.2.15.11 INACTIVE LICENSE EXPIRATION:**

An inactive license that is not renewed by September 30 shall expire and the person shall reapply for licensure as a new applicant.

[16.2.15.11 NMAC - Rp, 16.2.15.11 NMAC, 2/11/2022]

#### **16.2.15.12 INACTIVE LICENSE REINSTATEMENT GENERAL PROVISIONS:**

An inactive licensee whose license has been inactive for varying periods up to 15 years may apply to have the inactive license reinstated. The following provisions apply:

**A.** applicants for inactive license reinstatement who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.;

**B.** applicants for inactive license reinstatement who provides the board with false information or makes a false statement to the board may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq;

**C.** the board will not approve an inactive license reinstatement application from an inactive licensee who is under investigation for violations of the act or who has an active complaint pending before the board;

**D.** the board will not approve an inactive license reinstatement application from an impaired inactive licensee, or an impaired inactive licensee who is currently participating in a rehabilitation plan approved by the board until the rehabilitation plan is successfully completed. Impaired means the inability to practice acupuncture and oriental medicine with reasonable skill and safety to patients as a result of mental illness or habitual or excessive use or abuse of alcohol or drugs as defined in the Controlled Substances Act, Section 30-31-1 NMSA 1978 et seq.; and

**E.** once an inactive license has been reinstated, the licensee may not apply for inactive license status again for five years.

[16.2.15.12 NMAC - Rp, 16.2.15.12 NMAC, 2/11/2022]

### **16.2.15.13 INACTIVE LICENSE REINSTATEMENT APPLICATION - 5 YEARS OR LESS:**

An inactive licensee whose license has been inactive for five years or less may apply to have their license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

**A.** the administrative fee for inactive license reinstatement application specified in 16.2.10 NMAC paid by check or money order in U.S. funds;

**B.** an inactive license reinstatement application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

**C.** an affidavit as provided on the inactive license reinstatement application form as to whether the applicant since last renewing his license with the board:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

**(2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

**(3)** is in arrears on a court-ordered child support payment; or

**(4)** has violated any provision of the act or the rules;

**D.** an official license history since last renewing his or her license with the board, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture, oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

**E.** an affidavit as provided on the inactive license renewal application form stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq; and

**(2)** an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978 et seq.;

**F.** an affidavit as provided on the inactive license renewal application form stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

(2) the applicant must notify the board within 10 days if the applicant's address changes; and

(3) the applicant shall not practice acupuncture and oriental medicine in New Mexico until the applicant receives a new active license issued by the board except as provided in Paragraph (2) of Subsection B of 16.2.15.14 NMAC or Paragraph (2) of Subsection D of 16.2.15.15 NMAC;

**G.** an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

**H.** satisfactory proof as determined by the board of completion of any continuing education requirements established by the board for all years the license was on inactive status.

[16.2.15.13 NMAC - Rp, 16.2.15.13 NMAC, 2/11/2022]

#### **16.2.15.14 INACTIVE LICENSE REINSTATEMENT APPLICATION - 5 TO 10 YEARS:**

An inactive licensee whose license has been inactive for more than five years and less than ten years may apply to have their inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

**A.** fulfillment of the requirements of 16.2.15.13 NMAC; and

**B.** either of the following:

(1) proof of clinical experience, as defined in 16.2.1.7 NMAC for at least two out of every three years in another jurisdiction where the inactive licensee was licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine, while the license was on inactive status; or

(2) proof of completion of 300 hours of clinical experience as an extern supervised by an externship supervisor as part of an externship as provided in 16.2.14 NMAC.

[16.2.15.14 NMAC - Rp, 16.2.15.14 NMAC, 2/11/2022]

**16.2.15.15 INACTIVE LICENSE REINSTATEMENT APPLICATION - MORE THAN 10 YEARS:**

An inactive licensee whose license has been inactive for more than 10 years may apply to have their inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

- A. fulfillment of the requirements of 16.2.15.13 NMAC;
- B. passing the clinical skills examination;
- C. passing the board approved jurisprudence examination; and
- D. either of the following:

(1) proof of clinical experience, as defined in 16.2.1.7 NMAC for at least two out of every three years in another jurisdiction where the inactive licensee was licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine, while the license was on inactive status; or

(2) proof of completion of 600 hours of clinical experience as an extern supervised by an externship supervisor as part of an externship as provided in 16.2.14 NMAC.

[16.2.15.15 NMAC - Rp, 16.2.15.15 NMAC, 2/11/2022]

**16.2.15.16 INACTIVE LICENSE EXPIRATION:**

An inactive license that has been inactive for more than 15 years shall expire and the person who was previously licensed shall be required to apply as a new applicant.

[16.2.15.16 NMAC - Rp, 16.2.15.16 NMAC, 2/11/2022]

**PART 16: AURICULAR DETOXIFICATION**

**16.2.16.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.16.1 NMAC - Rp, 16.2.16.1 NMAC, 2/11/2022]

**16.2.16.2 SCOPE:**

Doctors of oriental medicine, certified auricular detoxification specialist applicants, certified auricular detoxification specialists, auricular detoxification specialist supervisor applicants, auricular detoxification specialist supervisors, auricular detoxification specialist training program applicants, auricular detoxification specialist training programs, treatment programs and treatment program applicants.

[16.2.16.2 NMAC - Rp, 16.2.16.2 NMAC, 2/11/2022]

**16.2.16.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-4.1 NMSA 1978.

[16.2.16.3 NMAC - Rp, 16.2.16.3 NMAC, 2/11/2022]

**16.2.16.4 DURATION:**

Permanent.

[16.2.16.4 NMAC - Rp, 16.2.16.4 NMAC, 2/11/2022]

**16.2.16.5 EFFECTIVE DATE:**

February 11, 2022 unless a later date is cited at the end of a section.

[16.2.16.5 NMAC - Rp, 16.2.16.5 NMAC, 2/11/2022]

**16.2.16.6 OBJECTIVE:**

Part 16 establishes the requirements regarding the training and certification of a certified auricular detoxification specialist, the scope of practice of a certified auricular detoxification specialist, the requirements for registration of an auricular detoxification specialist supervisor, the responsibilities of an auricular detoxification specialist supervisor, the approval of an auricular detoxification specialist training program, and the approval of a treatment program. Part 16 establishes the provisions for the renewal or expiration of a certified auricular detoxification specialist certification, auricular detoxification specialist training program and a substance abuse treatment program. Part 16 establishes the grounds for denial, suspension or revocation of a certified auricular detoxification specialist certification, an auricular detoxification specialist supervisor registration, an auricular detoxification specialist training program approval and a treatment program approval.

[16.2.16.6 NMAC - Rp, 16.2.16.6 NMAC, 2/11/2022]

**16.2.16.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC.

[16.2.16.7 NMAC - Rp, 16.2.16.7 NMAC, 2/11/2022]

**16.2.16.8 CERTIFIED AURICULAR DETOXIFICATION SPECIALISTS GENERAL REQUIREMENTS:**

**A.** A certified auricular detoxification specialist applicant who has been subject to any action or proceeding described in Subsection H of 16.2.16.10 NMAC or who has violated the act or the rules, may be subject to disciplinary action, including denial, suspension or revocation of certification, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

**B.** A certified auricular detoxification specialist applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of certification, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.

[16.2.16.8 NMAC - Rp, 16.2.16.8 NMAC, 2/11/2022]

**16.2.16.9 CERTIFIED AURICULAR DETOXIFICATION SPECIALISTS TRAINING AND EXAMINATION REQUIREMENTS:**

A certified auricular detoxification specialist applicant shall provide satisfactory proof that he or she has successfully completed a board approved auricular detoxification specialist training program as defined in 16.2.16.26 NMAC that specifies successful completion of:

**A.** clean needle technique training; and

**B.** a board approved clean needle technique examination; and

**C.** the board approved jurisprudence examination covering the act and the rules with a score of not less than ninety percent.

[16.2.16.9 NMAC - Rp, 16.2.16.9 NMAC, 2/11/2022]

**16.2.16.10 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST CERTIFICATION APPLICATION:**

Upon approval of a certified auricular detoxification specialist application that fulfills the requirements listed below, the board shall issue a certified auricular detoxification specialist certification that will be valid until July 31 following the initial certification. In the interim between regular board meetings, whenever a qualified applicant for certified auricular detoxification specialist certification has filed his or her application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary certified auricular detoxification specialist certification that will suffice until the next regular meeting of the board. In no event shall the applicant begin the practice of auricular detoxification until the certified auricular detoxification specialist certification or interim temporary certified auricular detoxification specialist certification is issued by the board. The application requirements for certified auricular detoxification specialist certification shall be receipt of the following by the board:

**A.** the auricular detoxification specialist certification application fee specified in 16.2.10 NMAC; and

**B.** an application for certified auricular detoxification specialist certification that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number if the applicant has one; and

**C.** two passport-type photographs of the applicant taken not more than six months prior to the submission of the application; and

**D.** a copy of the applicant's high school diploma or high school general equivalency diploma (GED) or diploma of higher education; and

**E.** a copy of the applicant's certificate of successful completion of a board approved auricular detoxification specialist training program; and

**F.** the name of the auricular detoxification supervisor(s) registered with the board who will supervise the applicant if known; and

**G.** an affidavit as provided on the certified auricular detoxification specialist application form as to whether the applicant:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, the practice of auricular detoxification, the provision of medical or counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

**(2)** has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, the practice of auricular detoxification, the provision of medical or counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

**(3)** is in arrears on a court-ordered child support payment; or

**(4)** has violated any provision of the act or the rules; and

**H.** an affidavit as provided on the certified detoxification specialist application form attesting the disciplinary record of the applicant with regard to each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, under any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

**I.** an affidavit as provided on the certified auricular detoxification specialist application form certifying that all documents submitted with the form are true and faithful copies of the original; and

**J.** an affidavit as provided on the certified auricular detoxification specialist application form certifying a record free of convictions for drug or alcohol related offenses for at least two consecutive years before the submission of the certified auricular detoxification specialist application; and

**K.** an affidavit as provided on the certified auricular detoxification specialist application form stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection G of 16.2.16.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of certification, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.; and

**(2)** an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of certification, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.; and

**(3)** the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification; and

**(4)** the certified auricular detoxification specialist certification must be renewed annually by July 31; and

**(5)** if the relationship with an auricular detoxification specialist supervisor terminates for any reason, to continue working, the certified auricular detoxification specialist must arrange to be supervised by another auricular detoxification specialist supervisor and notify the board within five working days; and

**(6)** the applicant must notify the board within ten days if the applicant's address changes; and

**(7)** the board may refuse to issue, or may suspend, or revoke any license, certified auricular detoxification specialist certification or auricular detoxification specialist supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC; and

**L.** an affidavit as provided on the certified auricular detoxification specialist application form stating that the applicant understands that a certified auricular detoxification specialist is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency and only within a board approved treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency:

**(1)** auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure or other board approved auricular procedures; and

**(2)** the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure or other board approved auricular procedure and that the board approved devices that do not penetrate the skin are: seeds, grains, stones, metal balls, magnets and any small sterilized, spherical object that is non-reactive with the skin; and

**M.** a board approved clean needle technique examination and the board approved jurisprudence examination covering the act and the rules with passing scores of not less than 90%;

**N.** an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the translator certifying that the translation is a true and faithful translation of the original; each affidavit shall be

signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.16.10 NMAC - Rp, 16.2.16.10 NMAC, 2/11/2022]

**16.2.16.11 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST SCOPE OF PRACTICE AND TITLE:**

**A.** A certified auricular detoxification specialist, or CADS is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency, only within a board approved treatment program that focuses on disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency, and only under the supervision of one or more auricular detoxification specialist supervisor(s) registered with the board:

(1) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure, or other board approved auricular procedure; and

(2) the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure, or other board approved auricular procedure; and

**B.** the board approved devices that do not penetrate the skin of the ear are:

(1) seeds or grains;

(2) stones;

(3) metal balls;

(4) magnets; and

(5) any small sterilized, spherical object that is non reactive with the skin; and

**C.** a certified auricular detoxification specialist shall use the title certified auricular detoxification specialist or CADS.

[16.2.16.11 NMAC - Rp, 16.2.16.11 NMAC, 2/11/2022]

**16.2.16.12 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST RENEWAL GENERAL REQUIREMENTS:**

**A.** Except as provided otherwise in the act, or in these rules, or pursuant to other State law, including but not limited to the board's right to deny an application for renewal

pursuant to Section 61-14A-17 NMSA 1978, and the Parental Responsibility Act, Section 40-5A-1, NMSA 1978, et seq., each certified auricular detoxification specialist shall be granted renewal of his or her certification for one year upon receipt and approval by the board or its designee, completion of the requirements specified in 16.2.16.13 NMAC.

**B.** Any applicant for renewal who is licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act, shall provide an affidavit regarding the disciplinary record of the applicant since last renewing his or her certification with the board.

**C.** Any applicant for renewal who has been subject to any action or proceeding comprehended by Subsection D of 16.2.16.13 NMAC, may be subject to disciplinary action at any time, including denial, suspension or revocation of certification, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

**D.** Any applicant for renewal who provides the board with false information or makes a false statement to the board may be subject to disciplinary action at any time, including denial, suspension or revocation of certification, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.

[16.2.16.12 NMAC - Rp, 16.2.16.12 NMAC, 2/11/2022]

### **16.2.16.13 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST RENEWAL:**

Upon approval of a certified auricular detoxification specialist renewal application that fulfills the requirements listed below, the board shall renew the certification, which shall be valid until July 31 of the next year. The application requirements for certification renewal shall be receipt of the following by the board:

**A.** the auricular detoxification specialist certification renewal fee specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process; and

**B.** a certified auricular detoxification specialist renewal application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number; and

**C.** the name of the auricular detoxification specialist supervisor(s) registered with the board who will supervise the applicant if known and notice of which of these is to be the primary supervisor; and

**D.** an affidavit as provided on the certified auricular detoxification specialist renewal form as to whether the applicant since last receiving or renewing his or her certification with the board:

**(1)** has been subject to any disciplinary action in any jurisdiction related to the practice of auricular detoxification, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

**(2)** has been a party to litigation in any jurisdiction related to the applicant's practice of auricular detoxification, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

**(3)** is in arrears on a court-ordered child support payment; or

**(4)** has violated any provision of the act or the rules; and

**E.** an affidavit as provided on the certified auricular detoxification specialist renewal form certifying a record free of convictions for drug or alcohol related offenses for a minimum of one year prior to application for renewal; and

**F.** an affidavit as provided on the certified auricular detoxification specialist renewal form stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq. and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq; and

**(2)** an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.; and

**G.** an affidavit as provided on the certified auricular detoxification specialist renewal form stating that the applicant understands that:

**(1)** the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification and supervision; and

(2) the certification must be renewed annually by July 31; and

(3) the applicant must notify the board within ten days if the applicant's address changes; and

H. if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits; and

I. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the translator certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

J. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board.

[16.2.16.13 NMAC - Rp, 16.2.16.13 NMAC, 2/11/2022]

#### **16.2.16.14 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST LATE RENEWAL:**

A certified auricular detoxification specialist whose application to renew their certification is received late at the board's office during the 60 day period following the required date of renewal shall have their certification renewed if the applicant for late certification renewal completes the requirements of 16.2.16.13 NMAC and pays the auricular detoxification specialist certification late renewal fee specified in 16.2.10 NMAC.

[16.2.16.14 NMAC - Rp, 16.2.16.14 NMAC, 2/11/2022]

#### **16.2.16.15 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST EXPIRED CERTIFICATION:**

The certification of a certified auricular detoxification specialist who has not renewed his or her certification, including any required continuing education requirements, within the 60 day period following the required date of renewal is expired and that certified auricular detoxification specialist shall not practice auricular detoxification. Such an applicant seeking valid certification shall apply with the board as a new applicant.

[16.2.16.15 NMAC - Rp, 16.2.16.15 NMAC, 2/11/2022]

#### **16.2.16.16 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST INACTIVE STATUS:**

A certified auricular detoxification specialist in good standing may place their certification on inactive status for up to three years by notifying the board of their intention to do so. Renewal fees will not be due during the period of inactivity. The certified auricular detoxification specialist shall not engage in the practice of auricular detoxification while the certification is inactive. If certification has not been reactivated within three years of its being placed on inactive status, the certification shall be considered expired. Should the certified auricular detoxification specialist wish to reactivate an inactive certification, they may do so by notifying the board, and with board approval, performing eight complete auricular detoxification treatments directly supervised by a registered auricular detoxification supervisor within a board-approved training or treatment program within three months prior to reactivation; satisfying any additional requirements for certification imposed by the board at the time of recertification; paying a single auricular detoxification specialist certification renewal fee specified in 16.2.10 NMAC; and complying with all other requirements of 16.2.16.13 NMAC.

[16.2.16.16 NMAC - Rp, 16.2.16.16 NMAC, 2/11/2022]

#### **16.2.16.17 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR REQUIREMENTS AND RESPONSIBILITIES:**

**A.** The auricular detoxification specialist supervisor shall:

- (1)** be a licensed doctor of oriental medicine;
- (2)** be registered with the board as an auricular detoxification specialist supervisor;
- (3)** supervise no more than 30 certified auricular detoxification specialists;
- (4)** be accessible for consultation directly or by telephone to a certified auricular detoxification specialist under his or her supervision;
- (5)** directly visit each certified auricular detoxification specialist under his supervision at the treatment program site at intervals of not more than six weeks with the first visit occurring not more than two weeks after supervision has begun for the first year, then at least once per year thereafter at the supervisor's discretion with regular meetings by electronic methods (telephone, email, teleconferencing as examples) at intervals to be determined by the supervisor;
- (6)** be responsible for having each certified auricular detoxification specialist under their supervision require each patient to complete a written, signed consent form

outlining the responsibilities of the certified auricular detoxification specialist, the nature of the treatment, expected outcomes, and the scope and limits of practice;

(7) ensure that the certified auricular detoxification specialist is following a board approved treatment protocol; and

(8) notify the board in writing, within five working days, when a certified auricular detoxification specialist enters into a supervisory relationship with the auricular detoxification specialist supervisor or the supervisory relationship is terminated; and

**B.** an auricular detoxification specialist supervisor shall be responsible for the delivery of competent, professional services and ensuring that patient consents are obtained; and

**C.** the auricular detoxification specialist supervisor shall terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules; in such case the auricular detoxification specialist supervisor shall notify the board and the certified auricular detoxification specialist's employer, in writing, within five working days that the supervisory relationship is terminated and give in writing the reasons for the termination.

[16.2.16.17 NMAC - Rp, 16.2.16.17 NMAC, 2/11/2022]

#### **16.2.16.18 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR REGISTRATION APPLICATION:**

Upon approval of an auricular detoxification specialist supervisor registration application that fulfills the requirements listed below, the board shall issue an auricular detoxification specialist supervisor registration that will be valid until July 31 following the initial registration. In the interim between regular board meetings, whenever a qualified applicant for auricular detoxification specialist supervisor registration has filed their application and complied with all other requirements of this section, the board's chair or an authorized representative of the board may grant an interim temporary auricular detoxification specialist supervisor registration that will suffice until the next regular meeting of the board. In no event shall the auricular detoxification specialist supervisor begin supervising a certified auricular detoxification specialist until the auricular detoxification specialist supervisor registration or interim temporary auricular detoxification specialist supervisor registration is issued by the board. The application requirements for an auricular detoxification specialist supervisor registration shall be receipt of the following by the board:

**A.** the auricular detoxification specialist supervisor registration application fee specified in 16.2.10 NMAC;

**B.** proof of successful completion of an official national acupuncture detoxification association (NADA) course, or another board-approved training program, or a CV demonstrating experience, or education in the field of harm reduction and alcoholism, substance abuse and chemical dependency at least equivalent to that provided in a NADA training, and three letters of reference attesting to the applicant's competence and experience in the field of auricular treatment for harm reduction, auricular treatment of alcoholism, substance abuse or chemical dependency;

**C.** an application for auricular detoxification specialist supervisor registration that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

**D.** the names of all certified auricular detoxification specialists certified with the board who are under the supervision of the applicant;

**E.** an affidavit as provided on the auricular detoxification specialist supervisor registration application form stating that the applicant understands that:

**(1)** a certified auricular detoxification specialist is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency and only within a board approved substance abuse treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency:

**(a)** auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure or other board approved procedure; and

**(b)** the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure and that the board approved devices that do not penetrate the skin are: seeds, grains, stones, metal balls, magnets and any small sterilized, spherical object that is non-reactive with the skin; and

**(2)** the auricular detoxification specialist supervisor shall not be a member of the certified auricular detoxification specialist's family or a member of the certified auricular detoxification specialist's household or have a conflict of interest with the certified auricular detoxification specialist as defined in 16.2.16.21 NMAC; exceptions may be made by the board on an individual basis due to limited availability of certified auricular detoxification specialists or supervisors; and

**(3)** the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification and supervision; and

**(4)** the board may refuse to issue, or may suspend, or revoke any license or auricular detoxification specialist supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the Act and clarified in 16.2.12 NMAC; and

**F.** an affidavit as provided on the auricular detoxification specialist supervisor registration application form stating that the applicant understands that the auricular detoxification specialist supervisor shall:

**(1)** be registered with the board as an auricular detoxification specialist supervisor;

**(2)** supervise no more than 30 certified auricular detoxification specialists;

**(3)** be accessible for consultation directly or by telephone to a certified auricular detoxification specialist under their supervision;

**(4)** directly visit each certified auricular detoxification specialist under his supervision at the treatment program site at intervals of not more than six weeks for the first year, then at least once per year thereafter at the supervisor's discretion with regular meetings by electronic methods (telephone, email, teleconferencing as examples) at intervals to be determined by the supervisor;

**(5)** verify that each certified auricular detoxification specialist under their supervision has had each patient sign a consent form outlining the responsibilities of the certified auricular detoxification specialist, the nature of the treatment, expected outcomes, and the scope and limits of practice;

**(6)** ensure that the certified auricular detoxification specialist is using a board approved treatment protocol;

**(7)** notify the board in writing, within five days working days, when a certified auricular detoxification specialist enters into a supervisory relationship with the auricular detoxification specialist supervisor or the supervisory relationship is terminated;

**(8)** be responsible for the delivery of competent professional services and ensuring that patient consents have been obtained;

**(9)** terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules or if a conflict of interest arises during the supervision; the auricular detoxification specialist supervisor shall notify the board and the CADS's employer, in writing, within five working days that the supervisory relationship is terminated and give in writing the reasons for the termination; and

(10) notify the board within ten days if the auricular detoxification supervisor's address changes or phone number changes.

[16.2.16.18 NMAC - Rp, 16.2.16.18 NMAC, 2/11/2022]

**16.2.16.19 CHANGE OF SUPERVISOR:**

If the auricular detoxification specialist supervisor relationship terminates for any reason, each party must notify the board in writing within five working days of this fact.

[16.2.16.19 NMAC - Rp, 16.2.16.19 NMAC, 2/11/2022]

**16.2.16.20 COMPENSATION:**

Any compensation contract is solely between the auricular detoxification specialist supervisor and the certified auricular detoxification specialist's employing program or agency and is not the province of the board.

[16.2.16.20 NMAC - Rp, 16.2.16.20 NMAC, 2/11/2022]

**16.2.16.21 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR  
CONFLICT OF INTEREST:**

An auricular detoxification specialist supervisor shall not be a member of the certified auricular detoxification specialist's family or a member of the certified auricular detoxification specialist's household. "Member of the certified auricular detoxification specialist's family" means a spouse, child, stepchild, grandchild, parent, grandparent, sibling, uncle, aunt, niece, or nephew, or other relative by blood, marriage, or legal process with whom the supervisor has or has had a close familial relationship. The supervisor shall not have a conflict of interest with the certified auricular detoxification specialist, such as a past or present familial, social, fiduciary, business, financial, or physician-patient relationship, that impairs or compromises or appears to impair or compromise the supervisor's neutrality, independence, or objectivity. If a conflict of interest arises during the supervision, the supervisor shall immediately report the conflict of interest to the board and shall cease supervision of the certified auricular detoxification specialist. Exceptions may be made by the board on an individual basis due to limited availability of certified auricular detoxification specialists or supervisors.

[16.2.16.21 NMAC - Rp, 16.2.16.21 NMAC, 2/11/2022]

**16.2.16.22 [RESERVED]**

**16.2.16.23 [RESERVED]**

**16.2.16.24 [RESERVED]**

**16.2.16.25 [RESERVED]**

**16.2.16.26 AURICULAR DETOXIFICATION SPECIALIST TRAINING PROGRAM APPROVAL:**

Upon approval of an auricular detoxification specialist training program approval application that fulfills the requirements listed below, the board shall issue an auricular detoxification specialist training program approval that will be valid until July 31 following the initial registration. In the interim between regular board meetings, whenever a qualified applicant for auricular detoxification specialist training program approval has filed an application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary auricular detoxification specialist training program approval that will suffice until the next regular meeting of the board. The application requirements for an auricular detoxification specialist training program approval shall be receipt of the following by the board:

**A.** the auricular detoxification specialist training program approval application fee specified in 16.2.10 NMAC; and

**B.** an application for auricular detoxification specialist training program approval that is complete and in English on a form provided by the board that shall include the applicant's name, address, phone number, fax number and email address, if available; and

**C.** a curriculum that shall include at least:

**(1)** 30 hours of classroom didactic education covering the following subjects related to auricular detoxification: history and overview of the auricular detoxification profession; point descriptions, and locations and use of the NADA five auricular point national acupuncture detoxification association (NADA) procedure or other board approved procedures; acupuncture needle description, insertion and removal techniques, the use of devices that do not penetrate the skin of the ear; trial treatment (explanation of what happens during a treatment and practice on class members); public health and laws and regulations; exposure control; clean needle technique training; occupational health and safety administration (OSHA) requirements; integration of auricular detoxification within the treatment program; concepts of acupuncture and oriental medicine as related to addiction and recovery (the concept of "empty fire", etc.); client management issues and strategies (special populations); ethical and legal issues (confidentiality, HIPAA, the pertinent laws and rules of the state of New Mexico, etc.); and the nature of addiction and recovery; and

**(2)** 40 client hours (40 successfully completed treatments) under direct supervision by a board approved CADS supervisor at a site and with a supervisor pre-approved in writing by the training program, documented by a HIPAA-compliant form in which the privacy of clients is respected; and

**D.** an affidavit as provided on the auricular detoxification specialist training program approval application form stating that the applicant understands that:

**(1)** the auricular detoxification specialist training program must provide each person who successfully completes the approved program with a certification of completion; and

**(2)** the auricular detoxification specialist training program registration must be renewed annually by July 31; and

**(3)** the auricular detoxification specialist training program must notify the board within ten days if the program's address or phone number changes; and

**(4)** the board may refuse to issue, or may suspend, or revoke any auricular detoxification specialist training program approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the Act and clarified in 16.2.12 NMAC; and

**E.** the name or names of the trainer(s) who shall be teaching in the program and copies of their qualifications as trainers from NADA or other oriental medicine and auricular acupuncture drug detoxification, harm reduction, substance abuse or relapse-prevention-related education and experience approved by the board to train auricular detoxification specialist trainers; and

**F.** approval of a training program shall entail recognition that its trainers have the status of certified auricular detoxification specialists and CADS supervisors within and for the purpose of and for the duration of a training course.

[16.2.16.26 NMAC - Rp, 16.2.16.26 NMAC, 2/11/2022]

#### **16.2.16.27 AURICULAR DETOXIFICATION SPECIALIST TRAINING PROGRAM RENEWAL:**

Upon approval of an auricular detoxification specialist training program renewal application that fulfills the requirements listed below, the board shall renew the approval, which shall be valid until July 31 of the next year. The application requirements for approval renewal shall be receipt of the following by the board:

**A.** the auricular detoxification specialist training program approval renewal fee specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process; and

**B.** an application for auricular detoxification specialist training program renewal that is complete and in English on a form provided by the board that shall include the applicant's name, address, phone number, fax number and email address, if available; and

**C.** an affidavit as provided on the auricular detoxification specialist training program renewal of approval application form stating that the program continues to provide at a minimum the curriculum required by the board in 16.2.16.26 NMAC; and

**D.** an affidavit as provided on the auricular detoxification specialist training program renewal of approval application form stating that the applicant understands that:

(1) the auricular detoxification specialist training program must provide each person who successfully completes the approved program with a certificate of completion; and

(2) the auricular detoxification specialist training program registration must be renewed annually by July 31; and

(3) the auricular detoxification specialist training program must notify the board within 10 days if the program's address or phone number changes; and

(4) the board may refuse to issue, or may suspend, or revoke any auricular detoxification specialist training program approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC; and

**E.** if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits.

[16.2.16.27 NMAC - Rp, 16.2.16.27 NMAC, 2/11/2022]

#### **16.2.16.28 TREATMENT PROGRAM APPROVAL:**

All treatment programs focused on disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that are officially recognized by a federal, state or local government agency shall automatically be approved by the board. Upon approval of a treatment program application for approval that fulfills the requirements listed below, the board shall issue a treatment program approval. In the interim between regular board meetings, whenever a qualified applicant for a treatment program approval has filed an application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary treatment program approval that will suffice until the next regular meeting of the board. The application requirements for a treatment program approval shall be receipt of the following by the board:

**A.** the treatment program approval application fee specified in 16.2.10 NMAC;

**B.** an application for treatment program approval that is complete and in English on a form provided by the board that shall include the applicant's name, address, phone number, fax number and email address, if available, and:

(1) affidavit that the treatment program is for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency;

(2) whether the facility is at a fixed address or is mobile;

(3) the name of the director of the program;

(4) the number and qualifications of the treatment staff; and

(5) the name of the auricular detoxification supervisor and the certified auricular detoxification specialist, if known; and

**C.** an affidavit as provided on the treatment program approval application form stating that the facility has access to a toilet and a sink; and

**D.** an affidavit as provided on the treatment program approval application form stating that the applicant understands that:

(1) the treatment program must notify the board within 10 days if the program's address or phone number changes; and

(2) the board may refuse to issue, or may suspend, or revoke any treatment program approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC.

[16.2.16.28 NMAC - Rp, 16.2.16.28 NMAC, 2/11/2022]

#### **16.2.16.29 GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE, CERTIFICATION, REGISTRATION OR APPROVAL:**

The board may refuse to issue, or may suspend, or revoke any license, certification, registration or approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC (Part 12 of the rules).

[16.2.16.29 NMAC - Rp, 16.2.16.29 NMAC, 2/11/2022]

### **PART 17: LICENSURE BY ENDORSEMENT**

#### **16.2.17.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.17.1 NMAC - Rp, 16.2.17.1 NMAC, 2/11/2022]

**16.2.17.2 SCOPE:**

All applicants for licensure by endorsement as doctors of oriental medicine.

[16.2.17.2 NMAC - Rp, 16.2.17.2 NMAC, 2/11/2022]

**16.2.17.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-4, 6, 8, 9 and 10, NMSA 1978.

[16.2.17.3 NMAC - Rp, 16.2.17.3 NMAC, 2/11/2022]

**16.2.17.4 DURATION:**

Permanent.

[16.2.17.4 NMAC - Rp, 16.2.17.4 NMAC, 2/11/2022]

**16.2.17.5 EFFECTIVE DATE:**

February 11, 2022, unless a later date is cited at the end of a section.

[16.2.17.5 NMAC - Rp, 16.2.17.5 NMAC, 2/11/2022]

**16.2.17.6 OBJECTIVE:**

Part 17 lists the requirements that an applicant for licensure by endorsement must fulfill in order to apply for licensure as a doctor of oriental medicine.

[16.2.17.6 NMAC - Rp, 16.2.17.6 NMAC, 2/11/2022]

**16.2.17.7 DEFINITIONS:**

Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[16.2.17.7 NMAC - Rp, 16.2.17.7 NMAC, 2/11/2022]

**16.2.17.8 GENERAL REQUIREMENTS:**

**A.** An applicant for licensure by endorsement shall have five years of clinical experience, within the last six years as defined in 16.2.1.7 NMAC immediately preceding application.

**B.** An applicant for licensure by endorsement must be licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine in another state or jurisdiction of the United States.

**C.** Any applicant for licensure by endorsement who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

**D.** Any applicant for licensure by endorsement who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and to the Uniform Licensing Act Section 61-1-1 NMSA 1978, et seq.

[16.2.17.8 NMAC - Rp, 16.2.17.8 NMAC, 2/11/2022]

#### **16.2.17.9 EDUCATIONAL PROGRAM REQUIREMENTS:**

**A.** An applicant for licensure by endorsement shall provide proof that he completed an educational program in acupuncture that fulfilled the requirements of the national certification commission for acupuncture and oriental medicine in place in 1992 or if graduated after 1992 is in compliance with the educational program requirements in 16.2.7 NMAC or that was accredited by the accreditation commission for acupuncture and herbal medicine, ACAHM.

**B.** If the educational program is no longer in existence, or if the applicant's records are not available for good cause, the applicant for licensure by endorsement shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept as adequate and sufficient or reject such evidence presented in lieu of the records otherwise required.

**C.** If an applicant graduated before 1992 from an educational program lacking annual approval status from the board for the year of graduation, as defined in 16.2.7.10 NMAC, then the applicant shall apply for a single instance review. The applicant must obtain an approval of the educational program for use by a single applicant and will need to submit the following to the board:

(1) the required application fee as specified in 16.2.10 NMAC, paid by check or money order in U.S. funds; and

(2) an application on a form prescribed by the board, completed and in English, that contains the matriculation date for the educational program, the information necessary to verify that the standards of professional education required by 16.2.17.9 NMAC and an official copy of the curriculum.

[16.2.17.9 NMAC - Rp, 16.2.17.9 NMAC, 2/11/2022; A, 4/25/2023]

#### **16.2.17.10 INITIAL LICENSURE BY ENDORSEMENT APPLICATION:**

Upon approval of a licensure by endorsement application that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure. The application requirements for licensure by endorsement shall be receipt of the following by the board:

**A.** the fee for application for licensure by endorsement specified in 16.2.10 NMAC;

**B.** a licensure by endorsement application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

**C.** two passport-type photographs of the applicant taken not more than six months prior to the submission of the application;

**D.** an affidavit as provided on the initial licensure by endorsement application form as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture or oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

(3) is in arrears on a court-ordered child support payment; or

(4) has violated any provision of the act or the rules; and

**E.** an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

**F.** an affidavit as provided on the initial licensure by endorsement application form stating that the applicant understands that:

**(1)** an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1, NMSA 1978 et seq.; and

**(2)** an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1, NMSA 1978, et seq.; and

**G.** an affidavit as provided on the initial licensure by endorsement application form stating that the applicant understands that:

**(1)** the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

**(2)** the license must be renewed annually by July 31; and

**(3)** the applicant must notify the board within 10 days if the applicant's address changes; and

**H.** a copy of the applicant's certificate or diploma from an educational program evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC; this copy shall include on it an affidavit certifying that it is a true copy of the original;

**I.** a copy of the applicant's transcript from the educational program in acupuncture or oriental medicine evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC; this copy shall include on it an affidavit certifying that it is a true copy of the original;

**J.** a copy of the applicant's license, certificate, registration or legal authority to practice acupuncture or oriental medicine in another state or jurisdiction of the United States;

**K.** proof of clinical experience as required in Subsection A of 16.2.17.8 NMAC;

**L.** proof of successful completion of the examinations required below in 16.2.17.11 NMAC; and

**M.** an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.17.10 NMAC - Rp, 16.2.17.10 NMAC, 2/11/2022]

#### **16.2.17.11 EXAMINATION REQUIREMENTS:**

The following requirements shall be received at the board's office within 24 months of the receipt of the initial licensure by endorsement application:

**A.** proof of successful completion of one of the following examination options:

**(1)** the national certification commission for acupuncture and oriental medicine (NCCAOM) comprehensive written exam (acupuncture portion);

**(2)** the NCCAOM foundations of oriental medicine module and the acupuncture module if completed after June 2004;

**(3)** the NCCAOM comprehensive written exam (Chinese herbology portion);

or

**(4)** the NCCAOM foundations of oriental medicine module and the Chinese herbology module if completed after June 2004; and

**B.** proof of successful completion of the NCCAOM approved clean needle technique course;

**C.** proof of successful completion of the New Mexico clinical skills examination specified in 16.2.4.10 NMAC; and

D. proof of successful completion of the board approved and board administered jurisprudence examination specified in 16.2.4.10 NMAC.

[16.2.17.11 NMAC - Rp, 16.2.17.11 NMAC, 2/11/2022]

**16.2.17.12 DOCUMENTS IN A FOREIGN LANGUAGE:**

All documents submitted in a foreign language must be accompanied by an accurate translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an applicant's application shall be at the expense of the applicant.

[16.2.17.12 NMAC - Rp, 16.2.17.12 NMAC, 2/11/2022]

**16.2.17.13 SUFFICIENCY OF DOCUMENT:**

The board shall determine the sufficiency of the documentation that supports the application for licensure by endorsement. The board may, at its discretion, request further proof of qualifications or require a personal interview with any applicant to establish his or her qualifications. If requested by the board, all further proof of qualifications shall be received at the board office at least 35 days before the clinical skills examination date. Any required personal interview will be scheduled as determined by the board.

[16.2.17.13 NMAC - Rp, 16.2.17.13 NMAC, 2/11/2022]

**16.2.17.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE:**

All documentation required for licensure by endorsement shall be received at the board office no later than 24 months after the initial application for licensure by endorsement is received at the board office.

[16.2.17.14 NMAC - Rp, 16.2.17.14 NMAC, 2/11/2022]

**16.2.17.15 NOTIFICATION OF LICENSURE:**

The applicant for licensure by endorsement shall be notified of approval or denial of his or her completed application requirements including examination requirements by mail postmarked no more than 21 days from the board's receipt of all required documentation. The board shall issue a license to all applicants who have met the requirements of 16.2.17 NMAC.

[16.2.17.15 NMAC - Rp, 16.2.17.15 NMAC, 2/11/2022]

#### **16.2.17.16 EXPIRATION AND ABANDONMENT OF APPLICATION:**

If all licensure by endorsement application requirements have not been met within 24 months of the initial licensure by endorsement application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the licensure by endorsement application is abandoned and the applicant for licensure by endorsement wants to reapply, the applicant for licensure by endorsement shall be required to submit the completed current licensure by endorsement application form, pay the current application fee and satisfy the requirements for licensure by endorsement in effect at the time of the new licensure by endorsement application. The board shall notify the applicant for licensure by endorsement of pending abandonment of the licensure by endorsement application by mail postmarked at least 60 days before the date of abandonment which is the expiration of the 24 month deadline for completing all requirements for licensure by endorsement. The board shall notify the applicant for licensure by endorsement of abandonment of the application by mail postmarked no more than 21 days after the date of abandonment.

[16.2.17.16 NMAC - Rp, 16.2.17.16 NMAC, 2/11/2022]

### **PART 18: EDUCATIONAL COURSES FOR EXPANDED PRACTICE CERTIFICATION**

#### **16.2.18.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.18.1 NMAC - Rp, 16.2.18.1 NMAC, 6/16/2015]

#### **16.2.18.2 SCOPE:**

All doctors of oriental medicine who are certified for expanded practice or who are applicants for certification for expanded practice, as well as all educational courses and applicants for approval of educational courses.

[16.2.18.2 NMAC - Rp, 16.2.18.2 NMAC, 6/16/2015]

#### **16.2.18.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1.

[16.2.18.3 NMAC - Rp, 16.2.18.3 NMAC, 6/16/2015]

**16.2.18.4 DURATION:**

Permanent.

[16.2.18.4 NMAC - Rp, 16.2.18.4 NMAC, 6/16/2015]

**16.2.18.5 EFFECTIVE DATE:**

June 16, 2015, unless a later date is cited at the end of a section.

[16.2.18.5 NMAC - Rp, 16.2.18.5 NMAC, 6/16/2015]

**16.2.18.6 OBJECTIVE:**

Part 18 lists the prerequisites, educational course approval requirements, class hours, curriculum knowledge and skills for certification in each of the four following expanded practice categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

[16.2.18.6 NMAC - Rp, 16.2.18.6 NMAC, 6/16/2015]

**16.2.18.7 DEFINITIONS:**

Refer to definitions in Section 7 of 16.2.1 NMAC.

[16.2.18.7 NMAC - N, 6/16/2015]

**16.2.18.8 GENERAL REQUIREMENTS FOR EDUCATIONAL COURSE APPROVAL:**

The board shall approve an educational course for a specific category of expanded practice upon completion of the following general requirements and the specific requirements listed for the specific category of expanded practice educational course approval. All courses shall adhere to ICE credentialing standards. All references to application in this section refer to the educational course application.

**A.** The educational course shall provide at least the minimum number of hours of education in the areas listed for the specific category of educational course hours. One hour of education shall be equal to that defined by the accreditation commission for acupuncture and herbal medicine (ACAHM). The education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine.

**B.** The educational course application shall include a description of the education being provided as required by the educational course general curriculum defined in

16.2.18.11 NMAC and the educational course curriculum defined for the specific category of expanded practice for which the educational course is applying for approval.

**C.** The educational course application shall include the curriculum vitae for all teachers, and proposed substitute teachers all classes shall be taught by qualified teachers approved by the board, provided the following conditions are met:

(1) the education in the pharmacology of the authorized substances shall be taught by a licensed pharmacist, Pharm D or a Ph.D. in pharmacology; and

(2) the education in the clinical therapeutic use of the authorized substances shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the authorized substances.

**D.** The educational course application shall include documentation that all required clinical practice hours shall have a teacher to student ratio of at least one [teacher to no more than eight students.

**E.** The educational course application shall include examples of the test questions that students enrolled in the course are required to successfully pass in order to ensure competence in all required areas. Testing methodology shall be approved by the board and testing shall be administered, subject to approval by a credentialed PhD psychometrician, as described in the ICE credentialing standards and as approved by the board. The educational course shall send all student test scores and evaluation scores directly to the board.

**F.** The educational course application shall include an example of the certificate that shall be given for successful completion of the educational course.

**G.** Each educational course shall be completed within two years of commencement of that course.

**H.** A student who is allergic or hypersensitive to an authorized substance may be excused from participating in clinical practice when such an authorized substance is being used.

**I.** A board member or an agent of the board has the authority to observe, audit and evaluate educational courses at any time after an application has been filed. A course audit or evaluation may result in denial, suspension or revocation of the course's approval by the board in accordance with law.

**J.** The educational course provider shall specify whether the organization offering the educational course is a sole proprietorship, partnership, LLC, corporation or non-profit corporation and shall provide proof of such legal business status.

**K.** An educational course shall submit a new application on the form approved by the board, pay the appropriate fee defined in 16.2.10 NMAC and comply with all other new application requirements if any of the following changes:

- (1) ownership;
- (2) faculty; and
- (3) curriculum.

**L.** An educational course shall inform the board in writing, provided that the educational course certifies that all factors defined in Subsection J of 16.2.18.8 NMAC remain unchanged, if any of the following changes:

- (1) name;
- (2) address; and
- (3) phone number.

[16.2.18.8 NMAC - Rp, 16.2.18.7 NMAC, 6/16/2015; A, 4/25/2023]

#### **16.2.18.9 EDUCATIONAL COURSE APPROVAL BOARD REQUIREMENTS:**

**A.** The board shall have final authority for approval of all educational courses including classes and teachers.

**B.** The board shall notify the applicant in writing by mail postmarked no more than 75 days after the receipt of the initial application as to whether the application is complete or if not complete, what documentation is needed to complete the application.

**C.** If the requested information is not received at the board office within 75 days after notification the board shall notify the applicant in writing by mail that the application has expired.

**D.** Teaching must commence for an approved course within six months of approval.

**E.** In the interim between regular board meetings the expanded practice Rx committee or an authorized representative of the board shall issue an interim temporary educational course approval to a qualified applicant who has filed, with the board, a complete application and complied with all requirements for educational course approval. The interim temporary educational course approval shall automatically expire on the date of the next regular board meeting and final educational course approval shall only be granted by the board. If the application is denied, the notice of denial shall state the reason the application was denied.

**F.** If the application is expired or is denied, the applicant will have to reapply as a new applicant.

[16.2.18.9 NMAC - Rp, 16.2.18.8 NMAC, 6/16/2015]

#### **16.2.18.10 EDUCATIONAL COURSE PREREQUISITES:**

**A.** An applicant for an educational course in expanded practice leading to certification must be a NM licensed doctor of oriental medicine in good standing.

**B.** The basic injection course is a prerequisite to injection therapy certification and intravenous therapy certification.

**C.** Prior to enrolling in any expanded practice educational course, the applicant shall submit proof of completion of at least three college or university credit hours (30-45) contact hours in a course in pharmacology from an accredited institution. A board approved on-line course is acceptable or the applicant may sit for a pharmacology final exam at an accredited institution to satisfy this requirement.

**D.** If applying for basic injection therapy, injection therapy or intravenous therapy, the applicant shall submit proof of completion of a four hour American heart association approved CPR or basic life support (BLS) course; a current card that shall remain current until the next July 31 annual renewal cycle will serve as proof.

[16.2.18.10 NMAC - Rp, 16.2.18.9 NMAC, 6/16/2015]

#### **16.2.18.11 EDUCATIONAL COURSE GENERAL CURRICULUM:**

Each educational course shall provide the doctor of oriental medicine, who successfully completes the course, with the following entry level general knowledge and skills, as well as the specific knowledge and skills, at the current professional standard of care within the context of an integrative healthcare system, defined for each specific category of expanded practice education.

**A.** Expanded practice and prescriptive authority and oriental medicine: knowledge of how the principles of the developmental system of oriental medicine such as yin, yang, qi and xue apply to the expanded practice certifications.

**B.** Biomedical knowledge: anatomy, physiology, pathology, endocrinology, biochemistry, pharmacology and diagnostic options sufficient to provide a foundation required for the specific category of expanded practice.

**C.** Pharmacology knowledge:

**(1)** of the biochemistry, pharmacology, clinical application, safety and handling, side effects, interactions, contraindications, safeguards and emergency

procedures for all authorized substances in the formulary defined for the relevant specific category of expanded practice;

**(2)** of how to make a differential diagnosis relative to the prescription or administration of authorized substances in the formulary defined for the relevant specific category of expanded practice;

**(3)** of the potency and appropriate dosage of single and combined authorized substances in the formulary defined for the relevant specific category of expanded practice;

**(4)** and skill in utilizing appropriate clinic based aseptic technique; and

**(5)** of the compounding requirements of the USP 797 with regard to the authorized substances in the formulary defined for the relevant specific category of expanded practice.

**D. Referral:**

**(1)** knowledge and understanding of the limits of their training, and skill and when it is appropriate to refer; and

**(2)** knowledge of the options available regarding referral including an understanding of the potential benefit or contraindications of all categories of expanded practice.

**E. Emergency care (previous CPR/BLS certification):**

**(1)** knowledge of how to recognize a medical emergency situation arising in the clinic and what emergency outcomes may arise relative to performing the authorized diagnostic and therapeutic procedures and the prescription or administration of the specifically authorized substances, what procedures and substances are best for managing each emergency situation and whom to contact for emergency support and care;

**(2)** skill in providing first aid and basic life support until the medical emergency team arrives;

**(3)** appropriate initial screening for potential allergic or adverse reactions;

**(4)** skill in identifying and responding to adverse or allergic reactions or mild to severe; vasovagal reactions with knowledge of appropriate support measures depending on the type of reaction:

**(a)** patient reassurance;

- (b) patient positioning;
- (c) oral OTC diphenhydramine (benadryl) if appropriate;
- (d) inhaled oxygen;
- (e) inhaled OTC epinephrine (primatine mist) or IM injected epinephrine if appropriate; and
- (f) emergency ambulance transport;

(5) the immediate and longer term indications of inadvertent pneumothorax and the appropriate procedure for patient care and guidance in such situations.

**F.** Record keeping, storage and dispensing of dangerous drugs and controlled substances and knowledge of:

- (1) the proper storage requirements in the clinic for the drugs, dangerous drugs and controlled substances in the specifically authorized formulary;
- (2) how to keep accurate records of all authorized drugs, dangerous drugs and controlled substances obtained, stored, compounded, administered or dispensed; and
- (3) skill in handling and using appropriate clean or aseptic technique for all drugs, dangerous drugs and controlled substances in the specifically authorized formulary.

**G.** Pharmaceutical law knowledge of:

- (1) the appropriate areas of New Mexico pharmaceutical law;
- (2) USP 797 that relates to compounding of the authorized substances in the formulary defined for the relevant specific category of expanded practice; and
- (3) drugs, dangerous drugs, and controlled substances and what dangerous drugs or controlled substances are or are not authorized under the provisions of the specific category or categories of expanded practice for which he is certified.

**H.** Scope of practice knowledge:

- (1) of the areas of the New Mexico Acupuncture and Oriental Medicine Practice Act and rules that are appropriate to the scope of practice of a doctor or oriental medicine certified for the specific category of expanded practice;

(2) understanding of what diagnostic or therapeutic procedures are authorized by the specific category of expanded practice; and

(3) understanding what substances in a specific formulary are authorized for use by doctors of oriental medicine certified for the specific category of expanded practice.

[16.2.18.11 NMAC - Rp, 16.2.18.10 NMAC, 6/16/2015]

#### **16.2.18.12 BASIC INJECTION THERAPY EDUCATIONAL COURSE APPROVAL:**

The board shall approve a basic injection therapy educational course after the educational course provider submits to the board:

- A. the completed application form provided by the board;
- B. the payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;
- C. documentation of having complied with all educational course approval general requirements defined in Section 8 of 16.2.18 NMAC;
- D. documentation demonstrating that it will provide the educational course general curriculum defined in Section 11 of 16.2.18 NMAC;
- E. documentation demonstrating that it will provide the basic injection therapy educational course hours defined in Section 13 of 16.2.18 NMAC; and
- F. documentation demonstrating that it will provide the basic injection therapy educational course curriculum defined in Section 14 of 16.2.18 NMAC; and
- G. documentation demonstrating that proposed test instruments have been reviewed and approved by a credentialed PhD psychometrician, as described in the ICE credentialing standards. A passing grade of 70 percent is required for certification to demonstrate learned knowledge.

[16.2.18.12 NMAC - Rp, 16.2.18.11 NMAC, 6/16/2015]

#### **16.2.18.13 BASIC INJECTION THERAPY EDUCATIONAL COURSE HOURS:**

The education offered shall consist of a minimum total of 58 contact hours with at least the minimum number of hours of education in the areas listed below:

- A. eight hours in pharmacology and biomedical differential diagnosis relative to the prescription, administration, compounding and dispensing of the authorized substances in the basic injection therapy formulary including homeopathic medicines;

**B.** two hours in the drawing and compounding of the authorized substances intended for injection in compliance with USP 797, utilizing approved aseptic technique and proper record keeping for storage and dispensing of substances; at least half of the required hours shall be clinical practice;

**C.** 14 hours in orthopedic and neurological evaluation; at least half of these required hours shall be clinical practice;

**D.** two hours in the theory and practice of vapocoolant spray and stretch techniques using the authorized vapocoolants; at least half of these required hours shall be clinical practice;

**E.** 28 hours in the theory and practice of injection therapy including: 11 hours of trigger point therapy and injection of acupuncture points; 11 hours of basic mesotherapy; six hours of basic neural therapy, and therapeutic injections (vitamins), using the authorized substances in the basic injection therapy formulary; at least half of these required hours shall be clinical practice;

**F.** one hour in pharmaceutical law as provided by the New Mexico board of pharmacy;

**G.** one in oriental medicine scope of practice relative to the authorized substances and techniques; and

**H.** a minimum of two hours in the use of inhaled oxygen O<sub>2</sub> and IM epinephrine for emergency use.

[16.2.18.13 NMAC - Rp, 16.2.18.12 NMAC, 6/16/2015; A, 1/4/2020]

#### **16.2.18.14 BASIC INJECTION THERAPY EDUCATIONAL COURSE CURRICULUM:**

The basic injection therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in Section 11 of 16.2.18 NMAC and the following specific skills and knowledge of:

**A.** orthopedic and neurological physical exam and differential diagnosis:

- (1)** anatomy regions to be examined and treated;
- (2)** the most common orthopedic pain differential diagnoses for these areas as well as other medical differential diagnoses that should be ruled out;
- (3)** skill in interpreting physical exam signs in context as evidence for or against the differential diagnoses;

**(4)** the most important treatment options for these differential diagnoses including but not limited to injection therapy, spray and stretch therapy, exercise, physical medicine, manipulation, manual medicine, acupuncture, moxibustion, medical therapy with herbal medicine, supplements, homeopathic medicines and diet therapy;

**(5)** which basic imaging methods, if any, are useful in the examination of the above differential diagnoses; and

**(6)** and skill in selecting and performing the most appropriate basic orthopedic and neurologic physical examination methods including but not limited to the most basic forms of reflex testing, motor power testing, sensory exam, common orthopedic provocations, ligament stretch testing, accurate palpation and marking of anatomic landmarks, ligament and tendon compression testing and myofascial trigger point compression;

**B.** general injection therapy knowledge of:

**(1)** the needles, syringes and other equipment used to perform the various types of injection therapy;

**(2)** appropriate aseptic techniques and clean needle procedures and techniques, and necessity of compliance with USP 797;

**(3)** the various solutions used in the various styles of injection therapy and skill in properly drawing and compounding into syringes the authorized substances intended for injection, using approved aseptic technique; in compliance with USP 797;

**(4)** how to generate and carry out a comprehensive treatment plan that addresses the causative factors leading to pain and dysfunction from the perspective of the understanding of each style of injection therapy, offers post treatment palliation and provides post therapy recommendations to support rehabilitation and prevent recurrence;

**(5)** how to explain to the patient the purpose of the therapy, the expected outcome and possible complications of the therapy that could occur;

**(6)** understanding that injection therapy techniques authorized for the basic injection therapy certification are limited to intradermal, subcutaneous and intramuscular, injections; and

**(7)** the anatomical locations that are relatively safe for injection therapy, as well as those locations that should be avoided for injection therapy;

**C.** acupuncture point injection therapy knowledge of:

**(1)** how acupuncture point injections can complement traditional acupuncture;

- (2) the conditions that can be treated with acupuncture point injections; and
- (3) skill in injecting acupuncture points;

**D.** trigger point therapy knowledge of:

- (1) what a trigger point is, what the causative factors leading to trigger points are, what the most common perpetuating factors are and how to recognize and identify the most common pain referral patterns in the head, back, hip and extremities;
- (2) how to locate and palpate trigger points; and
- (3) skill in locating, injecting and spraying and stretching the most commonly treated trigger points and muscles;

**E.** neural therapy knowledge of:

- (1) the relationship between interference fields, the autonomic nervous system, pain and disease;
- (2) skill in identifying common interference fields in the body; and
- (3) skill in injecting common neural therapy injection sites such as peripheral nerves, scars, tonsils, intercutaneous and subcutaneous sites;

**F.** mesotherapy knowledge of:

- (1) the mechanism of action of mesotherapy injections for pain and sports medicine and cosmetic treatment; and
- (2) skill in injecting using mesotherapy methodology;

**G.** therapeutic injections knowledge of:

- (1) how to evaluate the patient and determine a treatment plan with appropriate dosage, using appropriate authorized substances; and
- (2) skill in performing therapeutic injections at appropriate anatomical locations and depths.

[16.2.18.14 NMAC - Rp, 16.2.18.13 NMAC, 6/16/2015]

**16.2.18.15 INJECTION THERAPY EDUCATIONAL COURSE APPROVAL:**

The board shall approve an injection therapy educational program requirements:

- A. the completed application form provided by the board;
- B. payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;
- C. documentation that it will comply with all educational course approval general requirements defined in 16.2.18.8 NMAC;
- D. documentation demonstrating that it will provide the educational course general curriculum defined in 16.2.18.11 NMAC;
- E. documentation demonstrating that it will provide the injection therapy educational course hours defined in 16.2.18.17 NMAC;
- F. documentation demonstrating that it will provide the injection therapy educational course curriculum defined in 16.2.18.18 NMAC; and
- G. documentation demonstrating that proposed test instruments have been reviewed and approved by a credentialed PhD psychometrician as described in the ICE credentialing standards. A passing grade of seventy (70) percent is required for certification to demonstrate learned knowledge.

[16.2.18.15 NMAC - Rp, 16.2.18.14 NMAC, 6/16/2015]

#### **16.2.18.16 INJECTION THERAPY COURSE PREREQUISITES:**

Only a New Mexico licensed DOM, in good standing, and board certified in basic injection therapy, may apply for an injection therapy educational course.

[16.2.18.16 NMAC - Rp, 16.2.18.15 NMAC, 6/16/2015]

#### **16.2.18.17 INJECTION THERAPY EDUCATIONAL COURSE HOURS:**

The education shall be completed within two (2) years of commencement of the course as specified in Subsection G of 16.2.18.7 NMAC and consists of a minimum total of 115 hours and with at least the minimum number of hours of education in the areas listed below:

- A. eight hours in pharmacology and relevant pharmaceutical law, including compliance with USP 797 differential diagnosis relative to the selection, prescription, compounding and administration, of the authorized substances in the injection therapy formulary listed in Paragraph (2) of Subsection F of 16.2.20.8 NMAC, and the use of some of these substances as pain medicine: upon completion and certification in injection therapy some of these substances can be used with previously learned basic injection techniques including trigger point, mesotherapy, and neural therapy techniques;

**B.** four hours in the art and practice of phlebotomy in order to safely perform injection of ozone or platelet rich plasma when considered as appropriate therapeutic intervention and at least half of the required hours shall be in clinical practice; a certificate of completion of a board approved course in phlebotomy is acceptable;

**C.** 15 hours in a board approved course in oxidative medicine;

**D.** 52 hours to include:

- (1)** the scientific principles of prolotherapy;
- (2)** aseptic technique as it relates to injecting a joint;
- (3)** detailed anatomy of joints, supporting soft tissue structures, and specific injection sites;
- (4)** orthopedic and neurological functional evaluation;
- (5)** the use of platelet rich plasma and prolozone;
- (6)** theory and practice of advanced neural therapy techniques;
- (7)** differentiation and selection of authorized substances in the injection therapy formulary as defined in Paragraph (2) of Subsection F of 16.2.20.8 NMAC; and
- (8)** at least half of these required hours shall be clinical practice;

**E.** 30 hours of diagnostic musculoskeletal ultrasound and ultrasound guided musculoskeletal procedures from a board approved course; and

**F.** six hours in the theory and practice of advanced injection therapy techniques including: mesotherapy for cellulite reduction, refer to Subsection F of 16.2.18.14 NMAC and apitherapy: at least half of these hours shall be in clinical practice; a certificate of completion from a board approved course in advanced mesotherapy or apitherapy will be considered to meet these hours.

[16.2.18.17 NMAC - Rp, 16.2.18.16 NMAC, 6/16/2015]

#### **16.2.18.18 INJECTION THERAPY EDUCATIONAL COURSE CURRICULUM:**

The injection therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in Sections 11 and 14 of 16.2.18 NMAC and the following specific knowledge and skills in:

**A.** regenerative injection therapy (RIT or prolotherapy):

(1) understanding of the scientific principles of prolotherapy, its application, alternatives, risks and consequences;

(2) recognizing the most common pain patterns generated from injured and lax ligaments of the joints of the extremities, lumbar and sacral regions;

(3) the concept of tissue regeneration and proliferation and how it can be promoted in the body;

(4) injecting some of the most commonly treated ligamentous, tendonous, and cartilaginous and intra-articular structures of the joints of the extremities, lumbar and sacral regions;

(5) how to perform regional anesthesia or a nerve block for pain relief; and

(6) the use of diagnostic musculoskeletal ultrasound and ultrasound guided procedures;

**B. orthopedic and neurological physical exam and differential diagnosis:**

(1) anatomy of the regions to be examined and treated;

(2) selecting and performing orthopedic and neurologic physical examination methods including but not limited to reflex testing, motor power testing, sensory exam, common orthopedic provocations, ligament stretch testing, accurate palpation and marking of anatomic landmarks, ligament and tendon compression testing;

(3) interpreting physical exam signs in context as evidence for or against the differential diagnoses;

(4) most common orthopedic pain differential diagnoses for these areas as well as other medical differential diagnoses that should be ruled out; and

(5) the most important treatment options for these differential diagnoses;

**C. how to generate and carry out a comprehensive treatment plan that addresses the causative factors leading to pain and dysfunction from the perspective of the understanding of each style of injection therapy, offers post treatment palliation and provides post therapy recommendations to support rehabilitation and prevent recurrence:**

(1) how to explain to the patient the purpose of the therapy, the expected outcome and possible complications of the therapy that could occur; and

(2) anatomical locations that are relatively safe for injection therapy, as well as those locations that should be avoided for injection therapy;

**D.** perform phlebotomy and collect and centrifuge blood to be used for platelet rich plasma injection; knowledge of diagnostic and physical exam findings which indicate the need for platelet rich plasma as a treatment modality;

**E.** advanced neural therapy techniques; knowledge and skills as described in Section 14 of 16.2.18 NMAC of basic injection;

**F.** advanced mesotherapy;

**(1)** how to evaluate and treat the patient with cellulite including determination of a treatment plan, utilizing appropriate substance(s) and dosing to accomplish treatment goals;

**(2)** how to evaluate and treat fat;

**(3)** technique of injections to reduce fat or cellulite; and

**(4)** mechanisms of action of substances used for cellulite and fat reduction;

**G.** apitherapy;

**(1)** knowledge of and skill in performing apitherapy; and

**(2)** understanding theory and application of apitherapy, expected outcomes, benefits and potential risks and complications.

[16.2.18.18 NMAC - Rp, 16.2.18.17 NMAC, 6/16/2015]

#### **16.2.18.19 INTRAVENOUS THERAPY EDUCATIONAL COURSE APPROVAL REQUIREMENTS FOR CERTIFICATION:**

The board will approve an intravenous therapy educational course for certification after the educational course provider submits to the board:

**A.** the completed application form provided by the board;

**B.** the payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;

**C.** documentation of having complied with all educational course approval general requirements defined in Section 8 of 16.2.18 NMAC;

**D.** documentation demonstrating that it will provide the educational course general curriculum defined in Section 10 of 16.2.18 NMAC;

**E.** documentation demonstrating that it will provide the intravenous therapy educational course hours defined in Section 20 of 16.2.18 NMAC;

**F.** documentation demonstrating that it will provide the intravenous therapy educational course curriculum defined in Section 21 of 16.2.18 NMAC; and

**G.** documentation that proposed test instruments have been reviewed and approved by a credentialed PhD psychometrician, as described in the ICE credentialing standards.

[16.2.18.19 NMAC - N, 6/16/2015]

#### **16.2.18.20 INTRAVENOUS THERAPY COURSE PREREQUISITES:**

Only a New Mexico licensed DOM, in good standing, and board certified in basic injection therapy, may apply for an intravenous therapy educational course in expanded practice.

**A.** Proof of current BLS/CPR certification that will be current for two years from an American heart association provider.

**B.** Proof of completion of at least three semester hours of college level biochemistry from an accredited institution that provides evaluation of competencies by examination. A board approved college level on line course is acceptable.

[16.2.18.20 NMAC - N, 6/16/2015]

#### **16.2.18.21 INTRAVENOUS THERAPY EDUCATIONAL COURSE HOURS:**

The intravenous therapy educational coursework shall be completed within two years of commencement of the course, Subsection G of 16.2.18.8 NMAC, and shall consist of a minimum of 137 total hours and with the minimum number of hours of education in the areas listed below:

**A.** eight hours in the pharmacology, biochemistry, relevant pharmaceutical law, including 16.19.36 NMAC, differential diagnosis and clinical application relative to the selection, prescription, compounding and administration of the authorized substances in the intravenous therapy formulary;

**B.** ten hours in the studying, drawing and sterile compounding, (in compliance with USP 797) of the authorized substances intended for infusion and injection utilizing approved aseptic technique and proper record keeping, and storage of substances. At least half of these required hours shall be clinical practice;

**C.** 24 hours in all aspects of safely performing phlebotomy, intravenous infusions and intravenous pushes including calculation of osmolarity. At least half of these

required hours shall be clinical practice with documented evidence of having prepared and started at least 10 IV's. Proof of completion of a board approved phlebotomy course may be applied toward a portion of these hours;

**D.** 24 hours in oxidative medicine as defined in Paragraph (39) of Subsection B of 16.2.1.7 NMAC, including; ozone therapy, ultraviolet blood irradiation (photoluminescence), hyperbaric oxygen therapy and the use of oxygen therapeutically. At least half of these required hours shall be in clinical practice;

**E.** 24 hours in nutritional IV's; vitamin C, meyers cocktails, vitamins, minerals, and amino acids;

**F.** 24 hours in detoxification, utilizing glutathione, phosphatidylcholine and calcium EDTA including practice standards that meet the requirement guidelines from the College of Physician and Surgeons of Alberta, on file in the board office;

**G.** 16 hours in blood chemistry analysis: including instruction of normal value ranges, critical values, clinical implications of abnormal values, and whether these values warrant reconsideration of proceeding with any intravenous therapy;

**H.** five hours in urine analysis: including evaluation of unprovoked and provoked nutrient and toxic element testing;

**I.** one hour in pharmaceutical law as provided by the New Mexico board of pharmacy; and

**J.** one hour in oriental medicine scope of practice relative to the authorized substances and techniques.

[16.2.18.21 NMAC - N, 6/16/2015]

#### **16.2.18.22 INTRAVENOUS THERAPY EDUCATIONAL COURSE CURRICULUM:**

The intravenous therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the knowledge and skills defined in Section 10 of 16.2.18 NMAC and the following specific knowledge and skills.

**A.** Pharmaceutical law: knowledge of compatibility and sterile compounding procedures of authorized substances in the intravenous therapy formulary in compliance with the compounding requirements of the USP-797.

**B.** Diagnostic phlebotomy knowledge of:

**(1)** and skill in drawing blood for diagnostic purposes using appropriate aseptic procedure;

(2) needles, lancets, winged sets, syringes, vacutainer tubes, and other equipment used to draw blood for diagnostic purposes; and

(3) the various blood tests most relevant to the protocols being taught.

**C. Intravenous therapy knowledge of:**

(1) and skill in the use of the equipment used for intravenous infusions;

(2) equipment used for an intravenous push;

(3) equipment used for injecting a bolus into an infusion;

(4) local anatomy of common infusion sites and skill in selecting an appropriate infusion site;

(5) authorized substances that are appropriate or not appropriate for intravenous infusion or injection from the intravenous therapy formulary;

(6) concept and importance of osmolarity, pH and skill in determining pH and calculating a given solution's osmolarity using an osmolarity chart simple algebraic equation or computer software;

(7) prerequisite lab tests that should be evaluated prior to initiating intravenous therapy of any kind;

(8) and skill in preparing and administering an intravenous push, intravenous infusion and injecting a bolus into an IV infusion; and

(9) possible complications that could occur during an intravenous infusion or push and how to identify, treat and manage these complications.

**D. Oxidative medicine, photo-oxidation and the use of oxygen therapeutically knowledge of:**

(1) biochemistry of oxidative medicine including the biological electron transfer sequence (BETS) oxidation and reduction (redox) reactions;

(2) and skill in the relevant clinical application and use of the authorized substances in the intravenous therapy formulary;

(3) history, physics, equipment and therapeutic use of ultraviolet blood irradiation (photoluminescence);

(4) history, physics, physiology and therapeutic use, contraindications and safety considerations of hyperbaric oxygen chamber therapy; and

(5) blood borne pathogen training.

E. Detoxification and chelation therapy knowledge of:

(1) diagnostic tools available for determining and tracking the therapeutic elimination of body burden of toxic elements including hair analysis, blood analysis and urinalysis with provocation agents;

(2) how to determine that the kidneys, colon and liver are functioning appropriately prior to commencement of detoxification or chelation diagnostic and therapeutic procedures;

(3) critical importance of, and methods for, optimizing kidney and bowel function, and phase 1/phase 2 liver detox pathways, prior to and during detoxification or chelation therapy, how to recognize when these systems are overburdened and what to do if they are overburdened;

(4) biochemistry, clinical use, and safety concerns relevant to all modes of administration of the authorized substances used in detoxification or chelation therapy; and

(5) how to explain to the patient the purpose of the therapy, the expected outcome, alternatives and possible complications of the therapy that could occur.

[16.2.18.22 NMAC- N, 6/16/2015]

#### **16.2.18.23 INTRAVENOUS THERAPY EXPANDED PRACTICE CERTIFICATION:**

The board shall only issue certification to applicants after successful completion of the Intravenous Therapy Expanded Practice Course, and successful completion and documentation of a practicum to include 150 hours under the supervision of a board approved physician and three hundred (300) individual patients to be completed within two years of completion of the coursework.

[16.2.18.23 NMAC - N, 6/16/2015]

#### **16.2.18.24 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE APPROVAL:**

The board shall have final authority for approval of a bioidentical hormone educational program upon completion of the following requirements. The educational course shall submit to the board:

A. the completed application form provided by the board;

**B.** payment of the application fee for expanded practice educational course approval specified in 16.2.10 NMAC;

**C.** documentation that it will comply with all educational course approval general requirements defined in Section 8 of 16.2.18 NMAC;

**D.** documentation demonstrating that it will provide the educational course general curriculum defined in Section 11 of 16.2.18 NMAC;

**E.** documentation demonstrating that it will provide the bioidentical hormone therapy educational course hours defined in Section 25 of 16.2.18 NMAC;

**F.** documentation demonstrating that it will provide the bioidentical hormone therapy educational course curriculum defined in Section 26 of 16.2.18 NMAC; and

**G.** documentation demonstrating that proposed test instruments have been reviewed and approved by a credentialed PhD psychometrician, as described in the ICE credentialing standards. A passing grade of 70 percent is required for certification to demonstrate learned knowledge.

[16.2.18.24 NMAC - Rp, 16.2.18.19 NMAC, 6/16/2015]

#### **16.2.18.25 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE HOURS:**

The bioidentical hormone educational course shall consist of a minimum total of 80 hours of education, with at least 27 hours of practical experience defined in Subsections B, C, D, E, and F below:

**A.** eight hours in the pharmacology of bioidentical hormones;

**B.** 18 hours in an overview of the endocrine system, including the anatomy and interactive physiology of the hypothalamic-pituitary-adrenal-thyroid (HPAT) and gonadal axis, the stress response and normal adrenal and thyroid function; also to include normal male and female sex hormone physiology; at least half of these hours shall be in practice or review of case studies;

**C.** 20 hours in theory and practice of endocrinology including evaluation and treatment of the patient with hormonal dysfunction and imbalances including but not limited to; adrenal fatigue, auto-immune endocrine disorders, hypothyroid, hyperthyroid, men's hormone imbalances and women's hormonal imbalances pre, peri and post menopause and consideration and assessment for treatment with bio-identical hormone replacement therapy, BHRT; at least half of these hours will be in practice or review of case studies;

**D.** 14 hours in blood chemistry analysis including but not limited to; CBC, CMP, LFT, lipids, ferritin, homocysteine, vitamin D, iodine, hs CRP, fibrinogen, ANA, ESR, HgBAIC, insulin antibodies;

**E.** two hours in urine analysis;

**F.** 16 hours in the assessment and treatment of hormone and neurotransmitter imbalances through blood, urine and saliva hormone testing and evaluation; appropriate treatment options for the biomedical differential diagnoses including, but not limited to; adrenal fatigue, thyroid imbalances, andropause, menopausal syndrome, and other male and female hormone imbalances; at least half of these hours shall be in practice or case study review;

**G.** one hour in pharmaceutical law as provided by the New Mexico board of pharmacy; and

**H.** one hour in oriental medicine scope of practice relative to the prescription or administration of the authorized substances.

[16.2.18.25 NMAC - Rp, 16.2.18.20 NMAC, 6/16/2015; A, 1/4/2020]

#### **16.2.18.26 BIOIDENTICAL HORMONE THERAPY EDUCATIONAL COURSE CURRICULUM:**

The bioidentical hormone therapy educational course curriculum shall provide the doctor of oriental medicine, who successfully completes the course, with the educational course general curriculum knowledge and skills defined in Section 11 of 16.2.18 NMAC and the following specific knowledge and skills:

**A.** bioidentical hormone therapy;

**(1)** anatomy, physiology, endocrinology, pathology, biochemistry, pharmacology, diagnostic and referral options including imaging, and clinical strategies with a focus on hormone pathways, neurotransmitter imbalances, precursors and intermediaries relevant to bioidentical hormone therapy;

**(2)** how to perform a diagnosis of the various aspects of the endocrine and neurotransmitter system using blood, urine, and saliva testing;

**(3)** the application, clinical use, dosage, dosage adjustment or discontinuation consequences and safety concerns relevant to all modes of administration of the authorized substances; and

**(4)** how to explain to the patient the purpose, expected outcome, risks and possible complications of bioidentical hormone therapy as well as the advantages of bioidentical hormone therapy, relative to non-bioidentical hormone therapy;

**B. non-hormone therapy:**

**(1)** how to optimize hormone balance using authorized substances that are not hormones or are hormone precursors, and the benefits and limits of such therapy; and

**(2)** how to explain to the patient the purpose, expected outcome, risks and possible complications of non-hormone therapy as well as the advantages of non-hormone therapy relative to bioidentical hormone therapy.

[16.2.18.26 NMAC - Rp, 16.2.18.21 NMAC, 6/16/2015]

**PART 19: EXPANDED PRACTICE CERTIFICATIONS**

**16.2.19.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.19.1 NMAC - Rp, 16.2.19.1 NMAC, 6/16/2015]

**16.2.19.2 SCOPE:**

All doctors of oriental medicine who are certified for expanded practice or who are applicants for certification for expanded practice, as well as all educational programs and students enrolled in an educational program.

[16.2.19.2 NMAC - Rp, 16.2.19.2 NMAC, 6/16/2015]

**16.2.19.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1.

[16.2.19.3 NMAC - Rp, 16.2.19.3 NMAC, 6/16/2015]

**16.2.19.4 DURATION:**

Permanent.

[16.2.19.4 NMAC - Rp, 16.2.19.4 NMAC, 6/16/2015]

**16.2.19.5 EFFECTIVE DATE:**

June 16, 2015, unless a later date is cited at the end of a section.

[16.2.19.5 NMAC - Rp, 16.2.19.5 NMAC, 6/16/2015]

#### **16.2.19.6 OBJECTIVE:**

This part lists the certification requirements for each of the following expanded practice categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

[16.2.19.6 NMAC - Rp, 16.2.19.6 NMAC, 6/16/2015]

#### **16.2.19.7 DEFINITIONS:**

**A.** The definitions in this section are in addition to those in the act and Section 7 of 16.2.1 NMAC.

**B.** The following definition applies to the rules and the act: "educational course" is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice; an educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

**C.** The following definitions are from 16.19.36 NMAC for clarification of regulations for doctors of oriental medicine, certified in expanded practice;

**(1)** "Air changes per hour" (ACPH) means the number of times a volume of air equivalent to the room passes through the room each hour.

**(2)** "Ante-area" means an ISO Class 8 or better area where personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high-particulate generating activities are performed. It is also a transition area that:

**(a)** provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

**(b)** reduces the need for the heating, ventilating, and air-conditioning (HVAC) control system to respond to large disturbances.

**(3)** "Aseptic Technique" means proper manipulation of preparations to maintain sterility

**(4)** "ASHP" American Society of Health-Systems Pharmacists.

**(5)** "Beyond-use date" (BUD) means the date, or as appropriate, date and time, after which a compounded preparation is not to be used and is determined from the date and time the preparation is compounded.

**(6) "Biological safety cabinet" (BSC)** means a ventilated cabinet that provides ISO Class 5 environment for CSP's, provides personnel, preparation, and environmental protection having an open front with inward airflow for personnel protection, downward high-efficiency particulate air (HEPA)-filtered laminar airflow for preparation protection, and HEPA-filtered exhausted air for environmental protection.

**(7) "Buffer area"** means an area where the primary engineering control (PEC) is physically located. Activities that occur in this area include the staging of components and supplies used when compounding CSP's.

**(8) "Certification"** means independent third party documentation declaring that the specific requirements have been met.

**(9) "Cleanroom"** means a room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

**(10) "Closed system vial-transfer device"** means a vial-transfer system that allows no venting or exposure of substances to the environment.

**(11) "Compounded sterile preparations" (CSP's)** include, but are not limited, to the following dosage forms which must be sterile when administered to patients:

**(a)** parenteral preparations;

**(b)** aqueous bronchial and nasal inhalations;

**(c)** injections (e.g. colloidal dispersions, emulsions, solutions, suspensions);

**(d)** irrigations for wounds and body cavities;

**(e)** ophthalmic drops and ointments; and

**(12) "Compounding aseptic isolator" (CAI)** means an enclosed ISO Class 5 environments for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment should not occur unless the air has first passed through a microbial retentive filter (HEPA minimum).

**(13) "Critical area"** means an ISO Class 5 environment.

**(14) "Critical site"** means a location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room

or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

**(15) "Direct compounding area" (DCA)** means a critical area within the ISO Class 5 primary engineering control (PEC) where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

**(16) "Disinfectant"** means an agent that frees from infection and destroys disease-causing pathogens or other harmful microorganisms, but may not kill bacterial and fungal spores. It refers to substances applied to inanimate agents, usually a chemical agent, but sometimes a physical one.

**(17) "Home care"** means health care provided in the patient's home (not a hospital or skilled nursing facility) by either licensed health professionals or trained caregivers. May include hospice care.

**(18) "Immediate use"** means administration begins not later than one hour following the start of the compounding procedure. Use of Immediate use products is reserved to those events in which delay in preparation would subject the patient to additional risk due to delay in therapy and meeting USP/NF 797 (Immediate-Use CSP Provision) criteria.

**(19) "ISO 5"** means air containing no more than 100 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3520 particles per cubic meter).

**(20) "ISO 7"** means air containing no more than 10,000 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (352,000 particles per cubic meter).

**(21) "ISO 8"** means air containing no more than 100,000 particles per cubic foot of air of a size at least 0.5 micron or larger in diameter (3,520,000 particles per cubic meter).

**(22) "Laminar airflow"** means a non-turbulent, non-mixing streamline flow of air in parallel layers.

**(23) "Laminar airflow workbench" (LAFW)** means a ventilated cabinet for compounding of sterile preparations. Provides preparation protection with high-efficiency particulate air (HEPA) filtered laminar airflow, ISO Class 5. Airflow may be horizontal (back to front) or vertical (top to bottom) in direction.

**(24) "Media-fill test"** means a test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as soybean-casein digest medium is substituted

for the actual drug product to simulate admixture compounding. The issues to consider in the development of a media-fill test are media-fill procedures, media selection, fill volume, incubation, time, and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

**(25) "Multiple-dose container"** means a multiple-unit container for articles or preparations intended for parenteral administration only and usually containing antimicrobial preservatives. Once opened or entered, a multiple dose container with antimicrobial preservative has a BUD of 28 days unless otherwise specified by the manufacturer.

**(26) "Negative pressure room"** means a room that is at a lower pressure than the adjacent spaces and therefore, the net flow of air is into the room.

**(27) "Parenteral product"** means any preparation administered by injection through one or more layers of skin tissue.

**(28) "Personal protective equipment" (PPE)** means items such as gloves, gowns, respirators, goggles, face shields, and others that protect individual workers from hazardous physical or chemical exposures.

**(29) "Plan of care"** means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

**(a)** description of actual or potential drug therapy problems and their proposed solutions;

**(b)** a description of desired outcomes of drug therapy provided;

**(c)** a proposal for patient education and counseling; and

**(d)** a plan specifying proactive objective and subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and noncompliance) and the frequency with which monitoring is to occur.

**(30) "Positive pressure room"** means a room that is at a higher pressure than the adjacent spaces and, therefore, the net airflow is out of the room.

**(31) "Preparation"** means a CSP that is a sterile drug or nutrient compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber; the article may or may not contain sterile products.

**(32) "Product"** means a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the FDA. Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

**(33) "Quality assurance"** means a program for the systematic monitoring and evaluation of the various aspects of a service or facility to ensure that standards of quality are being met.

**(34) "Quality control"** means a system for verifying and maintaining a desired level of quality in a preparations or process, as by planning, continued inspection, and corrective action as required.

**(35) "Single-dose container"** means a single-dose, or a single-unit, container for articles or preparations intended for parenteral administration only. It is intended for a single use. Examples of single-dose containers include prefilled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

**(36) "Secondary engineering control"** means the ante area and buffer area or cleanroom in which primary engineering controls are placed.

**(37) "Segregated compounding area"** means a designated space, either a demarcated area or room, that is restricted to preparing low-risk level CSP's with 12-hour or less BUD. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of CSP's and shall be void of activities and materials that are extraneous to sterile compounding.

**(38) "Standard operating procedure" (SOP)** means a written protocol detailing the required standards for performance of tasks and operations within a facility.

**(39) "Sterile"** means free from bacteria or other living microorganisms.

**(40) "Sterilization by filtration"** means passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

**(41) "Sterilizing grade membranes"** means membranes that are documented to retain 100 percent of a culture of 10<sup>7</sup> microorganisms of a strain of *Brevundimonas* (*Pseudomonas*) *diminuta* per square centimeter of membrane surface under a pressure of not less than 30 psi. Such filter membranes are nominally at 0.22 μm or 0.2 μm porosity, depending on the manufacturer's practice.

**(42) "Unidirectional flow"** means airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

**(43) "USP 797"** United States Pharmacopeia Chapter 797 Pharmaceutical Compounding.

**(44) "Sterile Preparations"** - This general Chapter provides procedures and requirements for compounding sterile preparations. General Chapter 797 describes conditions and practices to prevent harm to patients that could result from microbial

contamination, excessive bacterial endotoxins, variability in intended strength, unintended chemical and physical contaminants, and ingredients of inappropriate quality in compounded sterile preparations.

**(45) "USP/NF standards"** means United States pharmacopeia/national formulary.

[16.2.19.7 NMAC - Rp, 16.2.19.7 NMAC, 6/16/2015]

#### **16.2.19.8 EXPANDED PRACTICE CERTIFICATION GENERAL PROVISIONS:**

The four categories of expanded practice certification authorized by 61-14A-8.1, NMSA 1978 and defined in 16.2.19 NMAC that include, basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy shall all include the following provisions:

**A.** a doctor of oriental medicine or enrolled in an educational course shall be authorized to perform the techniques and shall have the prescriptive authority, for the duration of the course, to administer and compound the substances that are authorized in the expanded practice formulary for which he is studying under the supervision of the board approved teacher for that educational course; under other circumstances the student shall not be authorized to obtain, prescribe or dispense such substances;

**B.** upon receipt of a current copy of CPR/BLS card the board shall annually renew the expanded practice certifications of a doctor of oriental medicine in good standing if the licensee has completed all continuing education required by 16.2.9 NMAC;

**C.** all expanded practice and prescriptive authority certifications shall automatically terminate when licensure as a doctor of oriental medicine:

**(1)** is placed on inactive status as specified in 16.2.15 NMAC;

**(2)** expires as specified in 16.2.8 NMAC; or

**(3)** is suspended, revoked or terminated for any reason as defined in 16.2.12 NMAC;

**D.** Proof of completion of an ASHP course relative to USP 797 is required for the first time renewal of basic injection therapy.

**E.** an expanded practice certification that is revoked or terminated shall not be reinstated; the doctor of oriental medicine must reapply for expanded practice certification as a new applicant;

**F.** all expanded practice certifications that were automatically terminated due to inactive status, expiration or suspension as specified in Subsection E of 16.2.19.8

NMAC, shall be automatically reinstated when licensure as a doctor of oriental medicine is reinstated, provided that:

- (1) all fees required by 16.2.10 NMAC have been paid;
- (2) all continuing education requirements specified in 16.2.9 NMAC have been completed; and
- (3) all other relevant, reinstatement provisions, required by board rule, have been completed;

**G.** each year the board may review the expanded practice formularies for necessary amendments; when new substances are added to a formulary, appropriate education in the use of the new substances shall be approved and required by the board and the board of pharmacy for doctors of oriental medicine applying for new certification or as continuing education for renewal of the applicable expanded practice certification or certifications;

**H.** a doctor of oriental medicine certified for a category of expanded practice under 16.2.19 NMAC that authorizes the use of testosterone, a controlled substance, and any other drug that is classified as a controlled substance, shall register with the federal DEA (drug enforcement agency) prior to obtaining, prescribing, administering, compounding or dispensing the controlled substance;

**I.** a doctor of oriental medicine certified for expanded practice, when prescribing, shall use prescription pads printed with his or her name, address, telephone number, license number and his or her specific expanded practice certifications; if a doctor of oriental medicine is using a prescription pad printed with the names of more than one doctor of oriental medicine, the above information for each doctor of oriental medicine shall be on the pad and the pad shall have a separate signature line for each doctor of oriental medicine; each specific prescription shall indicate the name of the doctor of oriental medicine for that prescription and shall be signed by the prescribing doctor of oriental medicine;

**J.** a doctor of oriental medicine certified for expanded practice shall always, when diagnosing and treating a patient, use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine similarly certified and practicing under similar circumstances, giving due consideration to the locality involved; failure to comply with this fundamental requirement may result in denial, suspension or revocation of licensure or certification, or other disciplinary measures, pursuant to the provisions of the act, Section 61-14A-17, NMSA 1978, and the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978;

**K.** when a doctor of oriental medicine is certified for injection therapy, this certification automatically supersedes his certification for basic injection therapy; and

L. the provisions for certification transition from extended prescriptive authority (Rx1) and expanded prescriptive authority (Rx2) to the expanded practice categories specified in 16.2.19 NMAC.

[16.2.19.8 NMAC - Rp, 16.2.19.8 NMAC, 6/16/2015]

**16.2.19.9 EXPANDED PRACTICE CERTIFICATION BOARD REQUIREMENTS:**

A. The board shall have final authority for certification of all applicants.

B. The board shall notify the applicant in writing by mail postmarked no more than 30 days after the receipt of the initial application as to whether the application is complete or incomplete and missing specified application documentation.

C. The board shall notify the applicant in writing by mail postmarked no more than 30 days after the notice of receipt of the complete application sent out by the board, whether the application is approved or denied.

D. If the application is denied, the notice of denial shall state the reason the application was denied.

E. In the interim between regular board meetings the board's chairman or an authorized designee of the board shall approve an expanded practice certification to a qualified applicant who has filed, with the board, a complete application and complied with all requirements for expanded practice certification. The temporary expanded practice certification will be ratified by the board on the date of the next regular board meeting. Final expanded practice certification shall only be granted by the board.

F. the board shall maintain a list of each doctor of oriental medicine who is certified for each expanded practice category and shall notify the New Mexico board of pharmacy of all such certified licensees;

G. The board shall have the authority to deny, suspend, revoke or otherwise discipline an expanded practice certification, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31, NMSA 1978, for reasons authorized in the act and clarified in 16.2.12 NMAC.

[16.2.19.9 NMAC - Rp, 16.2.19.9 NMAC, 6/16/2015]

**16.2.19.10 EXPANDED PRACTICE SCOPE OF PRACTICE:**

**(from 16.2.2.10 NMAC):**

A. In addition to the scope of practice outlined in section 16.2.2 NMAC for a doctor of oriental medicine in New Mexico, the scope of practice for those certified in expanded practice shall include certification in any or all of the following modules: (61-14A-8.1B,

NMSA 1978) basic injection therapy, injection therapy, intravenous therapy and bio-identical hormone therapy as specified in 16.2.19 NMAC.

**B.** The scope of practice for those doctors of oriental medicine certified in expanded practice shall also include the expanded practice and prescriptive authority defined in 61-14A-8.1C, NMSA 1978.

[16.2.19.10 NMAC - Rp, 16.2.19.10 NMAC, 6/16/2015]

#### **16.2.19.11 BASIC INJECTION THERAPY CERTIFICATION:**

The board shall issue, to a doctor of oriental medicine, certification for basic injection therapy upon completion of the course prerequisites including 30 hours of Pharmacology as specified in Section 9 of 16.2.18 NMAC and the following requirements.

**A.** The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

**B.** The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

**C.** The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

**D.** The doctor of oriental medicine shall submit, with the application, proof of successful completion of the basic injection therapy educational course specified in 16.2.18 NMAC.

[16.2.19.11 NMAC - Rp, 16.2.19.11 NMAC, 6/16/2015]

#### **16.2.19.12 INJECTION THERAPY CERTIFICATION:**

The board shall issue to a doctor of oriental medicine, certification for injection therapy, upon completion of the following requirements.

**A.** The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

**B.** The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

**C.** The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

**D.** The doctor of oriental medicine shall submit, with the application, proof of:

(1) current certification by the board for basic injection therapy; or

(2) any course combining basic injection therapy and injection therapy, as they are specified in the board's rules, or otherwise in accordance with law, must be completed within two years of the start of the course.

E. The doctor of oriental medicine shall submit, with the application, proof of successful completion of the injection therapy educational course approved by the board.

[16.2.19.12 NMAC - Rp, 16.2.19.12 NMAC, 6/16/2015]

#### **16.2.19.13 INTRAVENOUS THERAPY CERTIFICATION:**

The board shall issue to a doctor of oriental medicine, certification for intravenous therapy, upon completion of the course prerequisites including board certification in basic injection therapy, and three hours of college level biochemistry, and the following requirements.

A. The doctor of oriental medicine shall be a doctor of oriental medicine in good standing.

B. The doctor of oriental medicine shall submit to the board the completed application form provided by the board.

C. The doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC.

D. The doctor of oriental medicine shall submit, with the application, proof of successful completion of an intravenous therapy educational course approved by the board.

[16.2.19.13 NMAC - Rp, 16.2.19.13 NMAC, 6/16/2015]

#### **16.2.19.14 INTRAVENOUS THERAPY EXPANDED PRACTICE CERTIFICATION:**

The board shall only issue certification to applicants after successful completion of the Intravenous Therapy Expanded Practice Course, and successful completion and documentation of a practicum to include 300 hours under the supervision of a board approved physician and 150 individual patients to be completed within two years of completion of the coursework.

[16.2.19.14 NMAC - N, 6/16/2015]

#### **16.2.19.15 BIOIDENTICAL HORMONE THERAPY CERTIFICATION:**

The board shall issue to a doctor of oriental medicine, certification for bioidentical hormone therapy, upon completion of the following requirements:

- A.** the doctor of oriental medicine shall be a doctor of oriental medicine in good standing;
- B.** the doctor of oriental medicine shall submit to the board the completed application form provided by the board;
- C.** the doctor of oriental medicine shall pay the application fee for expanded practice certification specified in 16.2.10 NMAC; and
- D.** the doctor of oriental medicine shall submit, with the application, proof of successful completion of the bioidentical hormone therapy educational course approved by the board.

[16.2.19.15 NMAC - Rp, 16.2.19.14 NMAC, 6/16/2015]

#### **16.2.19.16 EXPANDED PRACTICE CERTIFICATION RENEWAL:**

If a doctor of oriental medicine certified for expanded prescriptive authority does not complete all expanded prescriptive authority continuing education requirements specified in Section 9 of 16.2.9 NMAC before the end of the 60-day grace period, the expanded prescriptive authority certification is expired and that licensee shall not be certified for expanded prescriptive authority until the continuing education is completed. Provided that all other renewal requirements have been received by the board, such a licensee shall continue to be licensed as a doctor of oriental medicine and is authorized for that scope of practice but shall not be authorized for the relevant expanded prescriptive authority scope of practice. For an expired expanded prescriptive authority certification, if a properly completed application for certification renewal, including proof of completion of the required expanded prescriptive authority continuing education, is received at the board office within one year of the last regular renewal date, the expanded prescriptive authority certification shall be renewed if all the requirements of late certification renewal during the 60-day grace period provided by 61-14A-15, NMSA 1978 are completed, in addition to the requirements of Section 11 of 16.2.8 NMAC, and the licensee also pays the fee for expired certification renewal specified in 16.2.10 NMAC. The licensee must notify the board of the correct current mailing address and of any address changes within ten days of the change. A doctor of oriental medicine who fails to renew an expired license by the next July 31 annual license renewal date or who fails to complete any required continuing education specific to his prescriptive authority certification shall be required to reapply as a new applicant for expanded practice, certification the expired license number of any doctor of oriental medicine certified in expanded practice who fails to renew in a timely manner in accordance with board rules. The Board will promptly report to the board of Pharmacy when the expired license is renewed or reinstated.

[16.2.19.16 NMAC - Rp, 16.2.19.15 NMAC, 6/16/2015]

**16.2.19.17 TRANSITION PROVISIONS:**

**A.** A doctor of oriental medicine, previously certified for extended prescriptive authority including prolotherapy, (Rx1) as of the effective date of this section, shall be automatically certified for basic injection therapy and prolotherapy using previously taught and appropriate injection routes and only substances listed in Paragraph (1) of Subsection F of 16.2.20.8 NMAC under the provisions of Section of 16.2.19.11 NMAC.

**B.** A doctor of oriental medicine, previously certified for the expanded prescriptive authority (Rx2) as of the effective date of this section, shall be automatically certified for:

(1) injection therapy under the provisions of Section 16.2.19.12 NMAC basic injection therapy certification is automatically superseded by injection therapy certification;

(2) intravenous therapy under the provisions of Section of 16.2.19.13 NMAC;  
and

(3) bioidentical hormone therapy under the provisions of Section of 16.2.19.15 NMAC.

[16.2.19.17 NMAC - Rp, 16.2.19.16 NMAC, 6/16/2015; A, 1/4/2020]

**16.2.19.18 LICENSE DESIGNATION:**

The designation for expanded practice shall follow the license number on the license and shall reflect the respective modules of certification: Rx basic injection, Rx injection, Rx intravenous, Rx hormones.

[16.2.19.18 NMAC - Rp, 16.2.19.17 NMAC, 6/16/2015]

**16.2.19.19 ULTRASOUND CREDENTIALING:**

A licensed doctor of oriental medicine may utilize musculoskeletal diagnostic ultrasound and ultrasound guidance of procedures with the RMSK credential from the Alliance for Physician Certification & Advancement or APCA, or the Registered Musculoskeletal Sonographer credential from ARDMS, the American Registry of Diagnostic Sonography. A licensed doctor of oriental medicine (DOM) who wishes to practice diagnostic musculoskeletal ultrasound and ultrasound guidance of procedures shall register with the board of acupuncture and oriental medicine (BAOM) to be provisionally credentialed to practice diagnostic musculoskeletal ultrasound and ultrasound guided procedures upon completion of a minimum of 30 hours in BAOM approved courses. Within 36 months of provisional credentialing, the doctor of oriental medicine shall submit to the BAOM proof of scheduling for RMSK testing with APCA or Registered Musculoskeletal

Sonographer testing with ARDMS. If the provisional credentialing period is continued to 36 months without ARDMS RMSK or APCA RMSK credentialing, the provisionally credentialed DOM shall submit proof of 30 hours of continuing education in courses approved by the BAOM. Provisional credentialing shall lapse within 48 months of initial provisional credentialing. Ultrasound credentialing does not require certification in expanded practice.

[16.2.19.19 NMAC - Rp, 16.2.19.18 NMAC, 6/16/2015; A, 1/4/2020]

## **PART 20: EXPANDED PRACTICE FORMULARY**

### **16.2.20.1 ISSUING AGENCY:**

New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.20.1 NMAC - Rp/E, 16.2.20.1 NMAC, 06/15/2010; Re-pr, 11/28/10]

### **16.2.20.2 SCOPE:**

All doctors of oriental medicine who are certified for expanded practice, or who are enrolled in an educational course, or who are applicants for certification for expanded practice, as well as all educational courses.

[16.2.20.2 NMAC - Rp/E, 16.2.20.2 NMAC, 06/15/2010; Re-pr, 11/28/10]

### **16.2.20.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-8.1 NMSA 1978.

[16.2.20.3 NMAC - Rp/E, 16.2.20.3 NMAC, 06/15/2010; Re-pr, 11/28/10]

### **16.2.20.4 DURATION:**

Permanent.

[16.2.20.4 NMAC - Rp/E, 16.2.20.4 NMAC, 06/15/2010; Re-pr, 11/28/10]

### **16.2.20.5 EFFECTIVE DATE:**

June 15, 2010 unless a later date is cited at the end of a section.

[16.2.20.5 NMAC - Rp/E, 16.2.20.5 NMAC, 06/15/2010; Re-pr, 11/28/10]

### **16.2.20.6 OBJECTIVE:**

This part lists the formulary for each of the following expanded practice certification categories: basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

[16.2.20.6 NMAC - Rp/E, 16.2.20.6 NMAC, 06/15/2010; Re-pr, 11/28/10]

#### **16.2.20.7 DEFINITIONS**

**[RESERVED]**

#### **16.2.20.8 EXPANDED PRACTICE FORMULARIES GENERAL PROVISIONS:**

The following general provisions shall apply to the expanded practice general formulary and each specific formulary for each specific expanded practice category that follows in this rule:

A. drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act;

B. all substances from threatened or endangered species, as determined by the convention on the international trade in endangered species of wild fauna and flora and the U.S. fish and wildlife service (<http://endangered.fws.gov/>), shall be automatically eliminated from expanded practice formularies;

C. definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in the expanded practice formularies;

D. a doctor of oriental medicine shall comply with all federal and state laws that pertain to obtaining, possessing, prescribing, compounding, administering and dispensing any drug;

E. a substance shall only be approved for use if procured in compliance with all federal and state laws; the various expanded practice formularies do not supersede such laws; and

F. the following drugs, dangerous drugs and controlled substances are authorized in the modes of administration that are specified except as limited or restricted by federal or state law:

(1) **basic injection certification and prescriptive authority:** shall include topical vapocoolants the intradermal intramuscular, and subcutaneous injection of: homeopathic medicines; dextrose; enzymes except urokinase; hyaluronic acid; minerals; sarapin; sodium chloride; sterile water; and vitamins;

(2) **injection certification and prescriptive authority:**

(a) all substances from basic injection module; and

(b) all non-epidural, non intrathecal injection of: alcohol, amino acids, autologous blood and blood products and appropriate anticoagulant, live cell products, ozone, bee venom, beta glucans, caffeine collagenase, dextrose, dimethyl sulfoxide, gammaglobulin, glucose, glucosamine, glycerin, hyaluronidase, methylsulfonylmethane, phenol, phosphatidylcholine, procaine, sodium hyaluronate, sodium morrhuate, therapeutic serum;

(3) **intravenous certification and prescriptive authority:** amino acids, calcium ethylenediaminetetraacetic acid, dextrose, glutathione, homeopathic medicines, lactated ringers, minerals, phosphatidylcholine, sodium bicarbonate sodium chloride, sodium morrhuate, sterile water, water soluble vitamins, autologous blood and blood products with appropriate anticoagulant, live cell products, ozone, and ultraviolet radiation of blood with appropriate anticoagulant except that authority is not provided for total parenteral nutrition;

(4) **non-injectable bioidentical hormone certification and prescriptive authority:** 7-keto dehydroepiandrosterone (7 keto DHEA), cortisone, dehydroepiandrosterone (DHEA), dihydrotestosterone, estradiol (E2), estriol (E3), estrone (E1), hydrocortisone, pregnenolone, progesterone, testosterone, tetraiodothyronine (T4), levothyroxine, thyroxine (T4), & triiodothyronine (T3) combination, triiodothyronine, liothyronine (T3), desiccated thyroid;

G. applicable to any of the four certifications above: subcutaneous or intramuscular injection of epinephrine, inhaled oxygen, and additives necessary to stabilize, preserve or balance pH of approved substances.

[16.2.20.8 NMAC - Rp/E, 16.2.20.8 NMAC, 06/15/2010; Re-pr & A, 11/28/10; A, 02/08/13]

## **PART 21: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS [REPEALED]**

### **16.2.21.1 ISSUING AGENCY [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.2.21.2 SCOPE [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.2.21.3 STATUTORY AUTHORITY [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.2.21.4 DURATION [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.2.21.5 EFFECTIVE DATE [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.2.21.6 OBJECTIVE [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.2.21.7 DEFINITIONS [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.2.21.8 APPLICATION REQUIREMENTS [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.2.21.9 RENEWAL REQUIREMENTS [REPEALED]:**

[This part was repealed December 27, 2022.]

## **CHAPTER 3: ATHLETIC TRAINERS**

### **PART 1: GENERAL PROVISIONS**

**16.3.1.1 ISSUING AGENCY:**

NM Regulation and Licensing Department New Mexico Athletic Trainers Practice Board,  
Post Office Box 25101, Santa Fe, New Mexico 87504.

[1-16-00; 16.3.1.1 NMAC - Rn, 16 NMAC 3.1.1, 8-16-01]

**16.3.1.2 SCOPE:**

All individuals who wish to practice the profession of athletic training in the State of New Mexico and individuals offering services in association or associated with athletic training.

[1-16-00; 16.3.1.2 NMAC – Rn, 16 NMAC 3.1.2, 8-16-01]

**16.3.1.3 STATUTORY AUTHORITY:**

These Rules are promulgated pursuant to the Athletic Trainers practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[1-16-00; 16.3.1.3 NMAC – Rn, 16 NMAC 3.1.3, 8-16-01]

**16.3.1.4 DURATION:**

Permanent.

[1-16-00; 16.3.1.4 NMAC – Rn, 16 NMAC 3.1.4, 8-16-01]

**16.3.1.5 EFFECTIVE DATE:**

January 16, 2000, unless a later date is cited at the end of a section.

[1/16/2000; 16.3.1.5 NMAC - Rn, 16 NMAC 3.1.5, 8/16/2001; A, 12/24/2021]

**16.3.1.6 OBJECTIVE:**

The objective of Part 1 Chapter 3 is to define terms relevant to athletic training and define the boards responsibilities to the board operations.

[1-16-00; 16.3.1.6 NMAC – Rn, 16 NMAC 3.1.6, 8-16-01]

**16.3.1.7 DEFINITIONS:**

As used in these regulations:

**A. "act"** means the Athletic Trainers Practice Act, Sections 61-14D-1 through 61-14D-20, NMSA 1978;

**B. "licensed physician"** means a licensed physician who assumes responsibility for providing medical consultative support to the athletic trainer's practice, whether on a regular or temporary basis; the term may include a school or team physician provided a written acknowledgement by the physician is made part of the school or team records;

**C. "licensing year"** means the period from September 1 of any year through August 31 of the following year;

**D. "NATA"** means the national athletic trainers association;

**E. "BOC"** means the board of certification for the athletic trainer;

**F. "current CPR certification"** means completion within the preceding twelve months of a course in cardio pulmonary resuscitation approved by the American red

cross or American heart association; the code of ethics adopted shall be the current code of ethics of the national athletic trainers association or its successor organization;

**G. "athlete's surgeon"** means the physician or surgeon who is rendering services for the athlete and who prescribes therapeutic treatment and care for the athlete's post-surgical condition;

**H. "Disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[1/16/2000; 16.3.1.7 NMAC - Rn & A, 16 NMAC 3.1.7, 8/16/2001; A, 12/24/2021]

### **16.3.1.8 BOARD OPERATIONS:**

**A. License display.** A valid license must be displayed and must be visible to the public in the primary place of employment or business of the athletic trainer. A licensee must practice athletic training under the name inscribed on the license.

**B. Board elections.** At the first board meeting of each calendar year the board shall elect, by majority vote of the members present, a chairman and vice chairman. Officers will serve a one-year term of office. A vacancy, which occurs in any office, shall be filled, by a majority vote of the board members present, at the first board meeting following the vacancy.

**C. Quorum.** A quorum of the board is three members. A quorum is necessary to conduct official business.

**D. Telephone or video conferences, or virtual means.** If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through a telephone or video conference, or virtual means. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

**E. Board meetings.** The board shall meet at least annually. Additional meetings shall be held as necessary to conduct the business of the board. Meetings may be convened at the call of the chair, or upon written request of three board members.

**F. Member attendance at meetings.** Board members are required to attend board meetings as scheduled by the board. Any member failing to attend three consecutive meetings shall be deemed to have resigned and shall be recommended to the governor for removal, unless the absences are excused by the board chair.

**G. Excused absences.** Board members may be excused from attending meetings for any of the following reasons: illness, family emergency, military service, death in the immediate family, or for any other reason deemed appropriate by the board chair.

H. Open meeting resolution. The board shall review the Open Meetings Act and adopt an open meeting resolution at the first meeting in each calendar year.

I. Public records. Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record as of the time of filing with the board.

J. Inspection of public records. The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16 NMSA 1978. The board administrator is the custodian of the board's records. Individuals may make oral or written request to inspect the public records of the board. If the request is made in writing it must include the name, address and phone number of the individual seeking access. Requests for access to public records will be processed in a timely manner. If the inspection is not permitted within 3 business days, the custodian will notify the individual requesting access to the records in writing and explain when the records will be made available. The board may provide copies of public records upon request and upon payment of a reasonable copying fee, except as may be ordered by a court of competent jurisdiction. No person shall remove original board documents from the board office. The board maintains files for all individuals. Information in an individual's file is a matter of public record except for the following:

(1) letters of reference;

(2) test scores;

(3) medical reports and/or records of chemical dependency, physical or mental examinations or treatment.

K. Parental Responsibility Act Compliance: The Parental Responsibility Compliance Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, is incorporated in full into these rules.

[1/16/2000; 16.3.1.8 NMAC - Rn, 16 NMAC 3.1.8, 8/16/200; A, 12/24/2021]

## **PART 2: SCOPE OF PRACTICE**

### **16.3.2.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board  
Post Office Box 25101, Santa Fe, New Mexico 87504.

[1-16-00; 16.3.2.1NMAC - Rn, 16 NMAC 3.2.1, 8-16-01]

### **16.3.2.2 SCOPE:**

All individuals who wish to practice the profession of athletic training in the State of New Mexico.

[1-16-00; 16.3.2.2 NMAC - Rn, 16 NMAC 3.2.2, 8-16-01]

**16.3.2.3 STATUTORY AUTHORITY:**

These Rules are promulgated pursuant to the Athletic Trainers practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[1-16-00; 16.3.2.3 NMAC - Rn, 16 NMAC 3.2.3, 8-16-01]

**16.3.2.4 DURATION:**

Permanent.

[1-16-00; 16.3.2.4 NMAC - Rn, 16 NMAC 3.2.4, 8-16-01]

**16.3.2.5 EFFECTIVE DATE:**

January 16, 2000, unless a later date is cited at the end of a section or paragraph.

[1-16-00; 16.3.2.5 NMAC - Rn, 16 NMAC 3.2.5, 8-16-01]

**16.3.2.6 OBJECTIVE:**

Specifies the National Athletic Trainers Association and the New Mexico Athletic Trainers Association to serve as guidelines in the absence of specific direction in the Act or regulations and outlines records to be kept by the professionals.

[1-16-00; 16.3.2.6 NMAC - Rn, 16 NMAC 3.2.6, 8-16-01]

**16.3.2.7 DEFINITIONS:**

[RESERVED]

**16.3.2.8 SCOPE OF PRACTICE:**

The practice of athletic training includes preventive services, emergency care, clinical assessment, therapeutic intervention and rehabilitation of injuries and medical conditions of athletes. Athletic trainers act as allied medical providers through collaboration with licensed physicians, pursuant to the written prescription, standing order or protocol of a licensed physician. In the absence of specific direction in the act or these regulations as to standards of practice, the standards of practice established by the national athletic trainers association, the BOC and the New Mexico athletic trainers association shall serve as guidelines.

**A.** The current competencies in athletic training issued by the NATA, the BOC or its successor organization are adopted as establishing the standard of practice and the authorized use of exercise and physical modalities by persons licensed under these regulations. Information for obtaining a copy of the competencies in athletic training may be obtained by calling or writing the board office.

**B.** The athletic trainer shall maintain the name and address of the licensed physician and standing orders or protocols which are currently established for the athletic trainer's practice. These records must be provided upon the request of the board or their designee.

**C.** The athletic trainer shall maintain records which shall include:

(1) documentation in accordance with Subsection B or 16.3.2.8 NMAC;

(2) athlete's case records which shall be confidential and consistent with the NATA's or its successor organization's current code of ethics.

[1/16/2000; 16.3.2.8 NMAC - Rn & A, 16 NMAC 3.2.8, 8/16/2001; A, 12/24/2021]

### **PART 3: [RESERVED]**

### **PART 4: LICENSURE BY EXAMINATION**

#### **16.3.4.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board  
Post Office Box 25101 Santa Fe, New Mexico 87504.

[1-16-00; 16.3.4.1NMAC - Rn, 16 NMAC 3.4.1, 8-16-01]

#### **16.3.4.2 SCOPE:**

All individuals who wish to apply to practice the profession of athletic training in the state of New Mexico.

[1-16-00; 16.3.4.2 NMAC - Rn, 16 NMAC 3.4.2, 8-16-01]

#### **16.3.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[1-16-00; 16.3.4.3 NMAC - Rn, 16 NMAC 3.4.3, 8-16-01]

#### **16.3.4.4 DURATION:**

Permanent.

[1-16-00; 16.3.4.4 NMAC - Rn, 16 NMAC 3.4.4, 8-16-01]

**16.3.4.5 EFFECTIVE DATE:**

January 16, 2000, unless a later date is cited at the end of a section.

[1-16-00; 16.3.4.5 NMAC - Rn, 16 NMAC 3.4.5, 8-16-01; A, 11-23-06]

**16.3.4.6 OBJECTIVE:**

Outlines and details requirements for individuals applying for licensure in the state of New Mexico.

[1-16-00; 16.3.4.6 NMAC - Rn, 16 NMAC 3.4.6, 8-16-01]

**16.3.4.7 DEFINITIONS:**

[RESERVED]

**16.3.4.8 APPLICANTS FOR LICENSURE BY EXAMINATION:**

Applicants for licensure by examination must possess the following qualifications and provide the required documentation with the application.

**A.** Application for licensure shall be made on forms prescribed by the board.

- (1) Completed application signed and dated.
- (2) Applications must be accompanied by the required fee, which shall be non-refundable.
- (3) Education requirements: holds a baccalaureate degree.
- (4) Current BOC certification.
- (5) Current competence in cardiopulmonary resuscitation (CPR) and; use of automated electrical defibrillator units (AED).

**B.** Documentation required for licensure:

- (1) completed application;
- (2) one hundred twenty-five (\$125.00) application fee (non-refundable);

- (4) proof of current BOC certification;
- (5) proof of current competence in CPR and; use of AED;
- (6) demonstrates professional competence by satisfactorily passing the New Mexico jurisprudence examination; and
- (7) demonstrates professional competency by satisfactorily passing the BOC examination; and
- (8) proof of disqualifying criminal convictions as provided in 16.3.4.9 NMAC, if applicable.

**C.** Each applicant must, in addition to the other requirements, pass an examination on the New Mexico laws and regulations pertaining to the practice of athletic training before an initial license may be issued (jurisprudence examination).

[1/16/2000; 16.3.4.8 NMAC - Rn & A, 16 NMAC 3.4.8, 8/16/2001; A, 11/23/2006; A, 12/24/2021; A, 12/30/2022]

#### **16.3.4.9 CRIMINAL CONVICTIONS:**

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

- (1) homicide or manslaughter;
- (2) trafficking, or trafficking in controlled substances;
- (3) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse, neglect or abandonment;
- (7) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, commercial gambling or receiving stolen property;
- (8) practicing medicine without a license;
- (9) failure to comply with a proclamation of the governor;

**(10)** harboring or aiding a felon, tampering with evidence, or tampering with public documents;

**(11)** possession of a controlled substance, violations of the administrative provisions of the Controlled Substance Act, or engaging in other acts prohibited by the Controlled Substance Act;

**(12)** delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior;

**(13)** intentionally selling an imitation controlled substance to a person under the age of eighteen years;

**(14)** manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;

**(15)** falsification of documents in connection with the Medicaid Fraud Act, failure to retain records in connection with the Medicaid Fraud Act, or obstruction of investigation in connection with the Medicaid Fraud Act;

**(16)** willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

**(17)** willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;

**(18)** selling or giving alcoholic beverages to minors;

**(19)** giving false testimony or information as to any matter material to an examination by the Superintendent of Insurance; or

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

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this section.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this section.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Athletic Trainer Practice Act, regardless of whether the individual was

convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this section.

**E.** In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this section.

[16.3.4.9 NMAC – N, 12/24/2021]

## **PART 5: PROVISIONAL PERMITS**

### **16.3.5.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board  
P.O. Box 25101 Santa Fe New Mexico 87504.

[1-16-00; 16.3.5.1 NMAC - Rn, 16 NMAC 3.5.1, 8-16-01]

### **16.3.5.2 SCOPE:**

All individuals who wish to apply to practice the profession of athletic training in the state of New Mexico and meet the requirements but have not taken or passed the examination.

[1-16-00; 16.3.5.2 NMAC - Rn, 16 NMAC 3.5.2, 8-16-01]

### **16.3.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[1-16-00; 16.3.5.3 NMAC - Rn, 16 NMAC 3.5.3, 8-16-01]

### **16.3.5.4 DURATION:**

Permanent.

[1-16-00; 16.3.5.4 NMAC - Rn, 16 NMAC 3.5.4, 8-16-01]

**16.3.5.5 EFFECTIVE DATE:**

January 16, 2000, unless a later date is cited at the end of a section.

[1-16-00; 16.3.5.5 NMAC - Rn, 16 NMAC 3.5.5, 8-16-01; A, 11-23-06]

**16.3.5.6 OBJECTIVE:**

Outlines and details requirements for individuals applying for a provisional permit to practice athletic training in the state of New Mexico.

[1-16-00; 16.3.5.6 NMAC - Rn, 16 NMAC 3.5.6, 8-16-01]

**16.3.5.7 DEFINITIONS:**

**[RESERVED]**

**16.3.5.8 PROVISIONAL PERMITS:**

Will grant to individuals meeting all requirements except the national certification exam. The provisional permit will be valid no more than six months. No individual will be issued more than two provisional permits.

[1-16-00; 16.3.5.8 NMAC - Rn, 16 NMAC 3.5.8, 8-16-01; A, 11-23-06]

**PART 6: EXAMINATIONS**

**16.3.6.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board  
P.O. Box 25101 Santa Fe, New Mexico 87504.

[1-16-00; 16.3.6.1 NMAC - Rn, 16 NMAC 3.6.1, 8-16-01]

**16.3.6.2 SCOPE:**

Examination requirements for all individuals who wish to apply to practice the profession of athletic training in the state of New Mexico.

[1-16-00; 16.3.6.2 NMAC - Rn, 16 NMAC 3.6.2, 8-16-01]

**16.3.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[1-16-00; 16.3.6.3 NMAC - Rn, 16 NMAC 3.6.3, 8-16-01]

**16.3.6.4 DURATION:**

Permanent.

[1-16-00; 16.3.6.4 NMAC - Rn, 16 NMAC 3.6.4, 8-16-01]

**16.3.6.5 EFFECTIVE DATE:**

January 16, 2000, unless a later date is cited at the end of a section.

[1-16-00; 16.3.6.5 NMAC - Rn, 16 NMAC 3.6.5, 8-16-01; A, 11-23-06]

**16.3.6.6 OBJECTIVE:**

Outlines and details the examination requirements and procedures for individuals applying for licensure by examination.

[1-16-00; 16.3.6.6 NMAC - Rn, 16 NMAC 3.6.6, 8-16-01]

**16.3.6.7 DEFINITION:**

**[RESERVED]**

**16.3.6.8 EXAMINATIONS:**

**A.** The board will accept the following examinations as proof of professional competence:

- (1) the board of certification for athletic trainers examination; and
- (2) New Mexico jurisprudence exam (seventy percent passing score).

**B.** Candidate who wishes to appeal failure on an examination must notify the board in writing within ten days of receipt of examination results.

**C.** An ADA covered applicant who requests special accommodation (particularly when the request involves assistance in taking the examination) must make the request in writing; must support the request with a medical statement confirming the need for the accommodation and the board will either grant or deny the request. Requests must be submitted with the application. The board will consider each request on a case-by case basis.

D. Applicants who fail to obtain the minimum required passing score must submit a new application, including the application fee and all documentation. Applicant must pay the examination fee for each administration of examination.

[1/16/2000; 16.3.6.8 NMAC - Rn & A, 16 NMAC 3.6.8, 8/16/2001; A, 11/23/2006; A, 12/24/2021]

## **PART 7: ANNUAL RENEWAL OF LICENSES**

### **16.3.7.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board  
Post Office Box 25101 Santa Fe, New Mexico 87504.

[1-16-00; 16.3.7.1 NMAC - Rn, 16 NMAC 3.7.1, 8-16-01]

### **16.3.7.2 SCOPE:**

Licensee requirements for the annual renewal of athletic trainers licenses in the state of New Mexico.

[1-16-00; 16.3.7.2 NMAC - Rn, 16 NMAC 3.7.2, 8-16-01]

### **16.3.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[1-16-00; 16.3.7.3 NMAC - Rn, 16 NMAC 3.7.3, 8-16-01]

### **16.3.7.4 DURATION:**

Permanent.

[1-16-00; 16.3.7.4 NMAC - Rn, 16 NMAC 3.7.4, 8-16-01]

### **16.3.7.5 EFFECTIVE DATE:**

January 16, 2000, unless a later date is cited at the end of a section.

[1-16-00; 16.3.7.5 NMAC - Rn, 16 NMAC 3.7.5, 8-16-01; A, 11-23-06]

### **16.3.7.6 OBJECTIVE:**

Outlines and details the renewal requirements and procedures for the renewal of the athletic trainers license.

[1-16-00; 16.3.7.6 NMAC - Rn, 16 NMAC 3.7.6, 8-16-01]

**16.3.7.7 DEFINITIONS:**

[RESERVED]

**16.3.7.8 ANNUAL RENEWAL OF LICENSES:**

**A.** All licenses expire annually on August 31st. Initial licenses, including expedited licenses, may be issued for a period greater than 12 months, but less than 24 months, in order to align the license expiration date with the board's renewal cycle.

**B.** Licensees shall be responsible for filing a current mailing address and name change with the board.

**C.** Each person licensed under the act shall renew his/her license annually on or before the expiration date by submitting a renewal application, the renewal fee, proof of current CPR certification, AED certification and proof of current BOC certification.

**D.** Failure to submit the required documents and fees by August 31st shall cause the license to lapse and the license holder must refrain from practicing.

**E.** The licensee may renew within a 30 day grace period, by submitting payment of the renewal fee of \$165.00, late fee of \$75.00 and compliance with all renewal requirements. Failure to renew a license within the thirty-day grace period shall cause the license to automatically expire.

**F.** A license that has not renewed within the 30 days of expiration is automatically expired and the applicant must reapply as a new applicant.

[1/16/2000; 16.3.7.8 NMAC - Rn, 16 NMAC 3.7.8, 8/16/2001; A, 11/23/2006; A, 12/24/2021; A, 12/30/2022]

**16.3.7.9 CONTINUING EDUCATION REQUIREMENTS:**

Each licensee shall be required to maintain good standing with BOC CEU requirements.

[16.3.7.9 NMAC - N, 8/16/2001; A, 11/23/2006; A, 12/24/2021]

**16.3.7.10 INACTIVE STATUS:**

**A.** A licensed person may request inactive status by notifying the board in writing before the expiration of current license.

**B.** A licensed person whose license has been placed on inactive status may not provide the services authorized by an active license.

**C.** A licensed person who practices with an inactive license is subject to disciplinary action by the board.

**D.** The inactive status period shall last two years from the date the license was placed on inactive status.

**E.** An inactive status license may be reactivated upon the board receiving the request for reactivation; board staff shall send a reactivation of license notice.

**F.** Along with the complete reactivation application, the licensee must include renewal fee, reactivation fee, and proof of current BOC Certification.

**G.** The activation application and required enclosures must be postmarked or hand-delivered to the board office no later than two years from the December 30 of the year in which the license or registration was placed on inactive status. Failure to do so will cause the license to expire, lapse, and become null and void. Reactivation applications received with a postmark date or hand-delivered after December 30 will be returned to the expired licensee because the license may no longer be activated.

[16.3.7.10 NMAC - N, 11/23/2006, A; 12/24/2021]

## **PART 8: FEES**

### **16.3.8.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board  
Post Office Box 25101 Santa Fe, New Mexico 87504.

[1-16-00; 16.3.8.1 NMAC - Rn, 16 NMAC 3.8.1, 8-16-01]

### **16.3.8.2 SCOPE:**

Applicant and licensure fees required for licensing, renewals penalties, and other miscellaneous items in order to practice as an athletic trainer in the state of New Mexico.

[1-16-00; 16.3.8.2 NMAC - Rn, 16 NMAC 3.8.2, 8-16-01]

### **16.3.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[1-16-00; 16.3.8.3 NMAC - Rn, 16 NMAC 3.8.3, 8-16-01]

### **16.3.8.4 DURATION:**

Permanent.

[1-16-00; 16.3.8.4 NMAC - Rn, 16 NMAC 3.8.4, 8-16-01]

**16.3.8.5 EFFECTIVE DATE:**

January 16, 2000, unless a later date is cited at the end of a section.

[1-16-00; 16.3.8.5 NMAC - Rn, 16 NMAC 3.8.5, 8-16-01; A, 11-23-06]

**16.3.8.6 OBJECTIVE:**

Outlines and details the fee requirements for licensure, exams, renewals, penalties and other miscellaneous items.

[1-16-00; 16.3.8.6 NMAC - Rn, 16 NMAC 3.8.6, 8-16-01]

**16.3.8.7 DEFINITIONS:**

Reserved

**16.3.8.8 FEES:**

The board will charge the following fees, which are non-refundable:

- A.** one hundred twenty five dollars (\$125.00) application fee;
- B.** one hundred dollars (\$100.00) fee for a provisional athletic trainer permit;
- C.** one hundred dollars (\$100.00) initial licensing fee;
- D.** one hundred and sixty five dollars (\$165.00) annual renewal fee;
- E.** seventy-five dollars (\$75.00) late renewal fee;
- F.** ten dollars (\$10.00) fee for replacement or duplicate of a license;
- G.** twenty dollars (\$20.00) fee for address labels of the New Mexico licensed athletic trainers;
- H.** ten dollars (\$10.00) fee for address lists of New Mexico licensed athletic trainers;
- I.** ten dollars (\$10.00) fee for written license verification;
- J.** fifty dollars (\$50.00) fee for CEU approval;

K. twenty-five dollars (\$25.00) charge for return checks;

L. ten dollars (\$10.00) administrative fee.

[1-16-00; 16.3.8.8 NMAC - Rn, 16 NMAC 3.8.8, 8-16-01; A, 8-9-02; A, 11-23-06]

## **PART 9: DISCIPLINARY PROCEEDINGS**

### **16.3.9.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board  
Post Office Box 25101 Santa Fe, New Mexico 87504.

[16.3.9.1 NMAC - Rp, 16.3.9.1 NMAC, 12/24/2021]

### **16.3.9.2 SCOPE:**

Outlines the disciplinary process taken if a violation of the athletic act or regulation occurs while licensed as an athletic trainer in the state of New Mexico.

[16.3.9.2 NMAC - Rp, 16.3.9.2 NMAC, 12/24/2021]

### **16.3.9.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[16.3.9.3 NMAC - Rp, 16.3.9.3 NMAC, 12/24/2021]

### **16.3.9.4 DURATION:**

Permanent.

[16.3.9.4 NMAC - Rp, 16.3.9.4 NMAC, 12/24/2021]

### **16.3.9.5 EFFECTIVE DATE:**

December 24, 2021, unless a later date is cited at the end of a section.

[16.3.9.5 NMAC - Rp, 16.3.9.5 NMAC, 12/24/2021]

### **16.3.9.6 OBJECTIVE:**

Outlines and details the process and procedures for disciplinary action against an athletic trainer found in violations of act or regulations.

[16.3.9.6 NMAC - Rp, 16.3.9.6 NMAC, 12/24/2021]

**16.3.9.7 DEFINITIONS:**

**[RESERVED]**

**16.3.9.8 DISCIPLINARY PROCEEDINGS:**

**A.** Disciplinary proceedings may be initiated by the board upon the receipt of a sworn complaint of any person, including any member of the board.

**B.** Upon receipt of a sworn complaint, the board staff, with the concurrence of the board's attorney or a member of the board, shall determine if the allegation may involve a violation of the statute or regulations. Upon determination of a potential violation the staff will initiate an investigation of the allegations.

**C.** In accordance with the provisions of the Uniform Licensing Act, the board may take action against the licensee.

**D.** In addition the board may offer the licensee an informal type of discipline, including but not limited to, a letter of reprimand, in lieu of initiating formal proceedings. In these instances, the board shall notify the licensee of the following:

(1) that a letter of reprimand has been officially proposed;

(2) that the licensee has an opportunity to review the contents of the letter of reprimand and provide comments and accepts the form of discipline thereto;

(3) that a copy of the letter of reprimand will remain in the files of the board for a specified period of time and the fact thereof shall be admissible in evidence, if relevant, during the course of any subsequent formal proceeding conducted pursuant to the Uniform Licensing Act.

**E.** A letter of reprimand issued pursuant to this rule shall be signed by the board chair and served upon the licensee by certified mail. Copies of the reprimand shall be furnished to the members of the board and board counsel.

**F.** The fact that a licensee has received a letter of reprimand shall be a matter of public record. The complainant shall be informed that the practitioner has been reprimanded.

**G.** Neither the action or inaction of the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[16.3.9.8 NMAC - Rp, 16.3.9.8 NMAC, 12/24/2021]

## **PART 10: EMERGENCY LICENSURE**

### **16.3.10.1 ISSUING AGENCY:**

New Mexico athletic trainer practice board.

[16.3.10.1 NMAC - Rp, 16.3.10.1 NMAC, 12/30/2022]

### **16.3.10.2 SCOPE:**

The provisions in Part 10 of Chapter 3 apply to all applicants for expedited licensure.

[16.3.10.2 NMAC - Rp, 16.3.10.2 NMAC, 12/30/2022]

### **16.3.10.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Athletic Trainer Practice Act, Sections 61-14D-1 to -19 NMSA 1978.

[16.3.10.3 NMAC - Rp, 16.3.10.3 NMAC, 12/30/2022]

### **16.3.10.4 DURATION:**

Permanent.

[16.3.10.4 NMAC - Rp, 16.3.10.4 NMAC, 12/30/2022]

### **16.3.10.5 EFFECTIVE DATE:**

December 30, 2022, unless a later date is cited at the end of a section.

[16.3.10.5 NMAC - Rp, 16.3.10.5 NMAC, 12/30/2022]

### **16.3.10.6 OBJECTIVE:**

The objective of Part 10 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.3.10.6 NMAC - Rp, 16.3.10.6 NMAC, 12/30/2022]

### **16.3.10.7 DEFINITIONS:**

**A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.3.10.8 NMAC; and

(2) any foreign country included in 16.3.10.9 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.3.10.7 NMAC - Rp, 16.3.10.7 NMAC, 12/30/2022]

### **16.3.10.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

**A.** No state or territory of the United States that currently licenses, registers, or certifies athletic trainers is disapproved or excluded from expedited licensure under Section 61-14D-4.1 NMSA 1978, of the Athletic Trainer Practice Act.

**B.** An applicant may not apply for expedited licensure on the basis of practice in any jurisdiction that does not license, register, or certify athletic trainers, including each of the following:

- (1) American Samoa
- (2) California
- (3) Guam
- (4) Northern Mariana Islands
- (5) Puerto Rico
- (6) Virgin Islands

[16.3.10.8 NMAC - Rp, 16.3.10.8 NMAC, 12/30/2022]

**16.3.10.9 [RESERVED]:**

[16.3.10.9 NMAC - N, 11/23/2006; Repealed 12/30/2022]

**16.3.10.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of current licensure in an eligible jurisdiction as defined in these rules;
- (3) Certificate of good standing for the license held by the applicant in an eligible jurisdiction; and
- (4) Payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-14D-16 NMSA 1978:

- (1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.3.10.10 NMAC – N, 12/30/2022]

**16.3.10.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) proof of current licensure in another jurisdiction;
- (3) certificate of good standing for the license held by the applicant in another jurisdiction, including a branch of the United States armed forces.
- (4) Submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
  - (e) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-14D-16 NMSA 1978:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.3.10.11 NMAC - N, 12/30/2022]

#### **16.3.10.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular license issued by the board and must be renewed on or before August 31 of each year, as provided by 16.3.7.8 NMAC. Initial licenses, including expedited licenses, may be issued for a period greater than twelve months, but less than twenty-four months, in order to align the license expiration date with the board's renewal cycle.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, upon renewal, the licensee must also satisfy the following examination requirements:

(1) The licensee shall be required to pass the New Mexico jurisprudence examination.

(2) If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the BOC examination, the licensee shall be required to do so as a prerequisite to license renewal.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.3.10.12 NMAC - N, 12/30/2022]

## **PART 11: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

### **16.3.11.1 ISSUING AGENCY:**

Regulation and Licensing Department New Mexico Athletic Trainers Practice Board,  
Post Office Box 25101, Santa Fe, NM 87504.

[16.3.11.1 NMAC - N, 7/23/15]

**16.3.11.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.3.11.2 NMAC - N, 7/23/15]

**16.3.11.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[16.3.11.3 NMAC - N, 7/23/15]

**16.3.11.4 DURATION:**

Permanent.

[16.3.11.4 NMAC - N, 7/23/15]

**16.3.11.5 EFFECTIVE DATE:**

July 23, 2015, unless a later date is cited at the end of a section.

[16.3.11.5 NMAC - N, 7/23/15]

**16.3.11.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to Section 61-1-34 NMSA 1978.

[16.3.11.6 NMAC - N, 7/23/2015; A, 12/24/2021]

**16.3.11.7 DEFINITIONS:**

**A. "License"** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

**B. "Licensing Fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

**C. "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**D. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Athletic Trainers Practice Act.

**E. "Veteran"** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.3.11.7 NMAC - N, 7/23/2015; A, 12/24/2021]

#### **16.3.11.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the athletic trainers practice board.

**B.** The applicant shall provide a completed application that includes the following information:

- (1) Applicant's full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) date of birth;
- (5) current CPR/AED certification;
- (6) Current BOC certification;
- (7) proof as described in Subsection C below.

**C.** The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military order, and copy if marriage license;

(c) for spouse of deceased military service members: copy of decedent's DD214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the board/commissions as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for license, and any required fees.

**E.** Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**F.** A license issued pursuant to this section shall be valid for the time period that is specified in the Athletic Trainer Practice Act.

[16.3.11.8 NMAC - N, 7/23/2015; A, 12/24/2021]

#### **16.3.11.9 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance of a license set forth in 16.3.7 NMAC pursuant to Chapter 61, Article 14D NMSA 1978.

**B.** As a courtesy, the board/commission, will send via electronic mail license renewal notification to licensees or registrants before the license expiration date to the last known email address on file with the Athletic Trainers Practice Board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

**C.** The renewal application will be available online at the board's website and in paper copy if requested from the board office and must be received at the board office on or before August 31.

**D.** To renew a license, the licensee must submit the following documentation on or before August 31: a completed license renewal application, proof of current cardio pulmonary resuscitation (CPR) certification, automated electronic defibrillator units (AED) certification, proof of current board of certification (BOC) certification and the applicable renewal fee at the time of renewal.

[16.3.11.9 NMAC - N, 7/23/2015; A, 12/24/2021]

## **CHAPTER 4: CHIROPRACTIC PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.4.1.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.1.1 NMAC - Rp, 16.4.1.1 NMAC 8/10/2019]

#### **16.4.1.2 SCOPE:**

All licensed chiropractic physicians.

[16.4.1.2 NMAC - Rp, 16.4.1.2 NMAC 8/10/2019]

#### **16.4.1.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-2, 61-4-4, 61-4-6, 61-4-12 and 61-4-13 NMSA 1978.

[16.4.1.3 NMAC - Rp, 16.4.1.3 NMAC 8/10/2019]

#### **16.4.1.4 DURATION:**

Permanent.

[16.4.1.4 NMAC - Rp, 16.4.1.4 NMAC 8/10/2019]

#### **16.4.1.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.1.5 NMAC - Rp, 16.4.1.5 NMAC 8/10/2019]

#### **16.4.1.6 OBJECTIVE:**

To establish definitions, practicing without a license, annual registration displayed, duplicate license, change of address, advertising requirements and administrative fees. In doing so, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the board member to attend the meeting in person, and participation by such means shall constitute presence in person at the meeting. When a board member participates in a meeting by conference telephone or other similar communications equipment, each board member participating by telephone must be able to be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any board member who speaks during the meeting.

[16.4.1.6 NMAC - Rp, 16.4.1.6 NMAC 8/10/2019]

#### **16.4.1.7 DEFINITIONS:**

**A. "Advertising"** means any communication whatsoever, disseminated by any means whatsoever, to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.

**B. "Application for licensure"** applicants applying for licensure in New Mexico whether by examination or without examination must submit an application for licensure that will be provided by the board and available of the board site.

**C. "Application for licensure without examination"** applicants applying for licensure without examination are those who have held a chiropractic license in another jurisdiction.

**D. "Background findings"** the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is a danger to patients or is guilty of violating any of the provisions of the Chiropractic Physicians Practice Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall formally accept the approval of the application at the next scheduled meeting.

**E. "Board"** means the New Mexico chiropractic board.

**F. "Chiropractic"** means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column

and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescription and administration of all natural agents in all forms to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs, except as permitted by statute and corresponding regulation.

**G. "Chiropractic adjustment"** means the application of a precisely controlled force applied by hand or by mechanical device to a specific focal point on the anatomy for the purpose of creating a desired angular movement in the skeletal joint structures in order to eliminate or decrease interference with neural transmission or to correct or attempt to correct a vertebral subluxation using, as appropriate, short lever, high velocity, low amplitude line of correction force to achieve the desired angular movement or neuromuscular reflex response.

**H. "Chiropractic assistant"** means a person who practices under the on-premises supervision of a licensed chiropractic physician.

**I. "Chiropractic physician"** includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act.

**J. "Complaint/review committee"** an ad hoc committee established by the board to review all complaints and applicants with background findings. Complaint/review committee shall consist of one professional board member, one chiropractor with an active license for five years in New Mexico in good standing, the board's executive director, board's compliance liaison, and board's investigator. Recommendations regarding the complaints and licensure of the applicants will be given to the board at its next scheduled meeting.

**K. "Electronic signatures"** will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

**L. "Impairment fee"** means: that in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an impairment fee to be set aside for the purpose of the impaired practitioners program.

**M. "Licensure by examination"** applicants applying for licensure by examination in New Mexico are those candidates for licensure that have never held a chiropractic license in any other jurisdiction.

**N. "Mobilization"** means a non-thrusting manual therapy involving movement of a joint within its physiological range of motion. Mobilization is a passive movement within

the physiological joint space administered by a clinician for the purpose of increasing normalizing overall joint range of motion.

**O. "NBCE"** national board of chiropractic examiners.

**P. "PACE"** providers of approved continuing education.

**Q. "Pre-paid treatment plans"** include any agreement between a licensee and patient or prospective patient that includes payment or collection of money for treatment planned, anticipated or held in reserve to occur or potentially occur more than 14 days following the payment or collection of those monies.

**R. "Spinal manipulation or articular manipulation"** means the application of a direct thrust or leverage to move a joint of the spine or extremity articulation to the parapsycho-physiologic end range movement but without exceeding the limits of anatomical integrity.

**S. "Vertebral subluxation"** means a complex of functional, structural or pathological articular changes, or combination thereof, that compromise articular junction, neural integrity and may adversely influence organ system function or general health and well-being.

[16.4.1.7 NMAC - Rp, 16.4.1.7 NMAC 8/10/2019]

#### **16.4.1.8 PRACTICING WITHOUT A LICENSE:**

The practice of chiropractic without a license will constitute grounds to refuse an applicant the right to sit the examination or to be granted a license, and may be prosecuted as a misdemeanor as a first offense fourth degree felony for a second offense.

[16.4.1.8 NMAC - Rp, 16.4.1.8 NMAC 8/10/2019]

#### **16.4.1.9 ANNUAL REGISTRATION DISPLAYED:**

A copy of the license and certificate of annual registration shall at all times be displayed conspicuously in the office of the practitioner to whom it has been issued.

[16.4.1.9 NMAC - Rp, 16.4.1.9 NMAC 8/10/2019]

#### **16.4.1.10 DUPLICATE LICENSE:**

A duplicate license may be granted by the board to any practitioner upon proof of loss of the original license or an affidavit of need and payment of a fee as set forth in Subsection A of 16.4.1.13 NMAC.

[16.4.1.10 NMAC - Rp, 16.4.1.10 NMAC 8/10/2019]

**16.4.1.11 CHANGE OF ADDRESS:**

Any licensed chiropractor that changes their office or residence address must notify the board in writing within 15 days.

[16.4.1.11 NMAC - Rp, 16.4.1.11 NMAC 8/10/2019]

**16.4.1.12 [RESERVED]**

[16.4.1.12 NMAC - Rp, 16.4.1.12 NMAC 8/10/2019]

**16.4.1.13 [RESERVED]**

[16.4.1.13 NMAC - Rp, 16.4.1.13 NMAC 8/10/2019]

**16.4.1.14 INSPECTION OF PUBLIC RECORDS:**

The board operates in compliance with the Inspection of Public Records Act Sections 14-2-1 through 14-2-12 NMSA 1978. The board administrator is the custodial of the board's records.

[16.4.1.14 NMAC - Rp, 16.4.1.14 NMAC 8/10/2019]

**16.4.1.15 MALPRACTICE INSURANCE:**

Chiropractic physicians shall maintain continuous malpractice insurance coverage in amounts equal to or greater than the amounts defined in the Medical Malpractice Act Paragraph (1) of Subsection A of 41-5-5 NMSA 1978.

[16.4.1.15 NMAC - Rp, 16.4.1.15 NMAC 8/10/2019]

**16.4.1.16 PRE-PAID TREATMENT PLANS:**

Chiropractic physicians accepting pre-payment for services planned but not yet delivered must:

**A.** Establish an escrow account to hold all pre-payment funds.

**(1)** Funds may be removed from the escrow account following the delivery of services in such amounts equal to the chiropractors usual and customary charges for like services with any discounted percentage contained in the pre-paid agreement for the contracted treatment plan.

**(2)** Funds received in advance of the day services are delivered must be deposited into the escrow account in a timely manner.

**B.** The patient's file must contain the proposed treatment plan including enumeration of all aspects of evaluation, management and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.

**(1)** The patient's financial file must contain documents outlining any necessary procedures for refunding unused payment amounts in the event that either the patient or the doctor discharge the others services or therapeutic association.

**(2)** The treatment plan in such cases were prepayment is contracted must contain beginning and ending dates and a proposed breakdown of the proposed treatment frequency, types of modalities and procedures included in the contracted treatment and methods of evaluating the patients progress or serial outcome assessment plan and method of recording or assessing patient satisfaction.

**C.** A contract for services and consent of treatment document must be maintained in the patient's file that specifies the condition for which the treatment plan is formulated, prognosis and alternate treatment options.

**D.** The chiropractic physician is responsible for providing all treatment appropriate and necessary to address and manage the condition including unforeseen exacerbations or aggravations, within the chiropractic physicians licensure, that may occur during the course of time for which the contract is active. This does not include alternative services procured by the patient or treatment by providers other than the treating chiropractor or those under the chiropractors direct supervision.

**E.** If nutritional products or other hard goods including braces, supports or patient aids are to be used during the proposed treatment plan the patient documents must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee.

[16.4.1.16 NMAC - Rp, 16.4.1.16 NMAC 8/10/2019]

## **PART 2: TEMPORARY LICENSURE**

### **16.4.2.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101 Santa Fe, New Mexico 87504.

[16.4.2.1 NMAC - Rp, 16.4.2.1 NMAC, 8/10/2019]

### **16.4.2.2 SCOPE:**

All applicants.

[16.4.2.2 NMAC - Rp, 16.4.2.2 NMAC, 8/10/2019]

**16.4.2.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-8 NMSA 1978.

[16.4.2.3 NMAC - Rp, 16.4.2.3 NMAC, 8/10/2019]

**16.4.2.4 DURATION:**

Permanent.

[16.4.2.4 NMAC - Rp, 16.4.2.4 NMAC, 8/10/2019]

**16.4.2.5 EFFECTIVE DATE:**

August 10, 2019 unless a later date is cited at the end of a section.

[16.4.2.5 NMAC - Rp, 16.4.2.5 NMAC, 8/10/2019]

**16.4.2.6 OBJECTIVE:**

To provide requirements for the granting of a temporary license.

[16.4.2.6 NMAC - Rp, 16.4.2.6 NMAC, 8/10/2019]

**16.4.2.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.2.7 NMAC - Rp, 16.4.2.7 NMAC, 8/10/2019]

**16.4.2.8 [RESERVED]**

[16.4.2.8 NMAC - Rp, 16.4.2.8 NMAC, 8/10/2019]

**16.4.2.9 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Chiropractic physicians, currently licensed, actively practicing and in good standing and otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the

four months or remainder of the current licensing year, whichever is greater, following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) completion of all actions described in 16.4.4.8 NMAC.

**B.** The board may waive any or all of the aforementioned requirements for licensure except those contained in Subsection A of 16.4.4.8 NMAC.

**C.** The board may waive the specific forms required under 16.4.4.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D.** Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.4.4.8 NMAC.

**E.** Licensed issued under Provisions for Emergency Licensure shall expire on July 1 or the date 160 days following the issuance of emergency licensure whichever is greater, unless the board approves a renewal application. Application for renewal shall be made on or before the expiration of the emergency license to avoid late renewal fees, by completion of any and all remaining procedures described in 16.4.4.8 NMAC.

[16.4.2.9 NMAC - Rp, 16.4.2.9 NMAC, 8/10/2019]

#### **16.4.2.10 EMERGENCY LICENSE TERMINATION:**

**A.** The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under 16.4.4 NMAC;

(2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or attempting to procure a license under this section;

(3) expiration as defined in Subsection E of 16.4.2.9 NMAC;

(4) the results of the background check indicate negative findings.

**B.** Termination of an emergency license shall not preclude application for permanent licensure.

[16.4.2.10 NMAC - Rp, 16.4.2.10 NMAC, 8/10/2019]

### **PART 3: REQUIREMENTS FOR LICENSURE**

**16.4.3.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.3.1 NMAC - Rp, 16.4.3.1 NMAC, 8/10/2019]

**16.4.3.2 SCOPE:**

Chiropractors for licensure who must take a licensing examination for the state of New Mexico.

[16.4.3.2 NMAC - Rp, 16.4.3.2 NMAC, 8/10/2019]

**16.4.3.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections Subsection G of 61-4-3 and 61-4-4 NMSA 1978.

[16.4.3.1 NMAC - Rp, 16.4.3.1 NMAC, 8/10/2019]

**16.4.3.4 DURATION:**

Permanent.

[16.4.3.1 NMAC - Rp, 16.4.3.1 NMAC, 8/10/2019]

**16.4.3.5 EFFECTIVE DATE:**

August 10, 2019 unless a later date is cited at the end of a section.

[16.4.3.1 NMAC - Rp, 16.4.3.1 NMAC, 8/10/2019]

**16.4.3.6 OBJECTIVE:**

To outline the documents necessary for candidates who must complete the application process for examination.

[16.4.3.1 NMAC - Rp, 16.4.3.1 NMAC, 8/10/2019]

**16.4.3.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.3.1 NMAC - Rp, 16.4.3.1 NMAC, 8/10/2019]

#### **16.4.3.8 APPLICATION FOR LICENSURE:**

**A.** The board shall recognize successful completion of all parts of the examination conducted by the national board of chiropractic examiners. If the applicant has not completed all IV parts and physiotherapy of the national board of examiner then the New Mexico chiropractic board shall examine each applicant in the act of chiropractic adjusting, procedures and methods as shall reveal the applicant's qualifications. The board may waive the requirements for the board administered examination and request proof of satisfactory completion of any missing exam conducted by the national board of chiropractic examiners at the time of the applicant's graduation from chiropractic college. The applicant must also complete the state jurisprudence exam with a score of at least seventy five percent. No application for licensure under the Chiropractic Physician Practice Act, Sections 61-4-1 through 61-4-17 NMSA 1978, shall be deemed complete until the board's administrator certifies that the application contains all of the following:

- (1)** a completed application form;
- (2)** a nonrefundable application fee of \$350.00 payable by cashier's check or money order;
- (3)** letter size, copy of original chiropractic diploma;
- (4)** 2" x 2" photograph attached to the application;
- (5)** transcript from the national board of chiropractic examiners (parts I, II, III, IV and physiotherapy exam), demonstration a passing score;
- (6)** all transcripts must be sent directly from each agency to the New Mexico board;
- (7)** verification of licensure and good standing in any state where the applicant holds a current or inactive license must be sent directly from a state licensing agency to the New Mexico board;
- (8)** the applicant has had no disciplinary action imposed, or criminal convictions, applicant agrees to a national practitioners databank, a federation of chiropractic licensing boards background check, and will sign a criminal record releases.

**B.** All applications deemed completed by the board's administer shall be forwarded to the board's licensing committee with all the supporting information related to the applications. After review of the applications and supporting information the committee shall submit their recommendations to the board for consideration.

**C.** No applicant shall be reviewed for approval until the application is complete.

**D.** If an applicant does not meet the minimal requirements as set forth above, applicant may, at the discretion of the board, be required to take and pass part I, II, III, IV, physiotherapy exam, other NBCE specialty examination or the special purpose examination (SPEC) of the national boards, or any combination thereof.

**E.** The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.

[16.4.3.1 NMAC - Rp, 16.4.3.1 NMAC, 8/10/2019]

## **PART 4: LICENSURE WITHOUT EXAMINATION**

### **16.4.4.1 ISSUING AGENCY:**

New Mexico Chiropractic Board.

[16.4.4.1 NMAC - Rp, 16.4.4.1 NMAC, 12/27/2022]

### **16.4.4.2 SCOPE:**

The provisions in Part 4 of Chapter 4 apply to applicants for expedited licensure, also referred to as license without examination.

[16.4.4.1 NMAC - Rp, 16.4.4.1 NMAC, 12/27/2022]

### **16.4.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-8 NMSA 1978 and the Uniform Licensing Act, Section 61-1-31.1 NMSA 1978.

[16.4.4.3 NMAC - Rp, 16.4.4.3 NMAC, 12/27/2022]

### **16.4.4.4 DURATION:**

Permanent.

[16.4.4.4 NMAC - Rp, 16.4.4.4 NMAC, 12/27/2022]

### **16.4.4.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[16.4.4.5 NMAC - Rp, 16.4.4.5 NMAC, 12/27/2022]

### **16.4.4.6 OBJECTIVE:**

To promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.4.4.6 NMAC - Rp, 16.4.4.6 NMAC, 12/27/2022]

#### **16.4.4.7 DEFINITIONS:**

##### **A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.4.4.8 NMAC; and

(2) any foreign country included in 16.4.4.8 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board pursuant to Section 61-4-8 NMSA 1978, and also referred to in the act as a license without examination.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.4.4.7 NMAC - Rp, 16.4.4.7 NMAC, 12/27/2022]

#### **16.4.4.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-4-8 NMSA 1978 of the Chiropractic Physician Practice Act:

**A.** American Samoa and the Northern Mariana Islands, on the grounds that education and licensure examination requirements cannot be determined to be consistent with those requirements in New Mexico.

**B.** New York, on the grounds that New York's licensure examination requirements are not consistent with the licensing requirements in New Mexico.

[16.4.4.8 NMAC - Rp, 16.4.4.8 NMAC, 12/27/2022]

**16.4.4.9 EXPEDITED LICENSURE APPLICATION:**

**A.** The board shall issue an expedited license to a chiropractic physician who:

- (1) is a graduate of a standard college of chiropractic;
- (2) holds a valid and unrestricted license, in good standing, in an eligible jurisdiction;
- (3) has been a licensed chiropractor for at least two years immediately prior to application in New Mexico.

**B.** In accordance with Section 61-1-31.1 NMSA 1978, a candidate for expedited licensure must submit to the board a complete application containing the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing from an eligible jurisdiction as defined in these rules;
- (3) payment of the required application and license fee pursuant to 16.4.22 NMAC.

**C.** An expedited license application shall not be deemed complete until the applicant has submitted, and board staff is in receipt of, all of the materials required by subsection B, including documentation from third parties.

**D.** Upon receipt of a complete application, board staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**E.** If the applicant has a potentially disqualifying criminal conviction, or the board may have other cause to deny the application pursuant to Section 61-4-10 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.4.4.9 NMAC - N, 12/27/2022]

**16.4.4.10 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing from another jurisdiction, including a branch of the United States armed forces; and
- (3) submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copies of military service member's military orders, and marriage license;
  - (c) for spouses of deceased military service members: copies of decedent's DD 214 and marriage license;
  - (d) for dependent children of military service members: copies of military service member's orders listing dependent child or a copy of military orders, and one of the following: a copy of birth certificate, military service member's federal tax return, or other governmental or judicial documentation establishing dependency; or
  - (e) for veterans (retired or separated): proof of honorable discharge, such as a copy of DD Form 214, DD Form 215, DD form 256, DD Form, 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and board staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, board staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-4-10 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fees or renewal fees for the first three years of licensure with the board.

[16.4.4.10 NMAC - N, 12/27/2022]

#### **16.4.4.11 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license, including an expedited licensure issued to a military member under 16.4.4.10 NMAC, shall be valid for the same length of time as a regular license issued by the board and must be renewed on or before July 1 of each year, as provided by 16.4.9.8 NMAC.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules. However, if the licensee has not passed the following examinations in another jurisdiction that are required for licensure in New Mexico pursuant to 16.4.6.8 NMAC, the licensee must pass the exam prior to applying for renewal:

(1) the board's jurisprudence exam;

(2) the national board exams I, II, III, and IV; and

(3) the physiotherapy exam conducted by the national board of chiropractic examiners.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.4.4.11 NMAC - N, 12/27/2022]

### **PART 5: CRITERIA FOR DETERMINATION OF EQUIVALENCY TO COUNCIL OF CHIROPRACTIC EDUCATION C.C.E.**

#### **16.4.5.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.5.1 NMAC - Rp, 16.4.5.1 NMAC 8/10/2019]

**16.4.5.2 SCOPE:**

All chiropractic physicians.

[16.4.5.2 NMAC - Rp, 16.4.5.2 NMAC 8/10/2019]

**16.4.5.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-5 NMSA 1978.

[16.4.5.3 NMAC - Rp, 16.4.5.3 NMAC 8/10/2019]

**16.4.5.4 DURATION:**

Permanent.

[16.4.5.4 NMAC - Rp, 16.4.5.4 NMAC 8/10/2019]

**16.4.5.5 EFFECTIVE DATE:**

August 10, 2019 unless a later date is cited at the end of a section.

[16.4.5.5 NMAC - Rp, 16.4.5.5 NMAC 8/10/2019]

**16.4.5.6 OBJECTIVE:**

To establish C.C.E. equivalency standards for chiropractic colleges.

[16.4.5.6 NMAC - Rp, 16.4.5.6 NMAC 8/10/2019]

**16.4.5.7 DEFINITIONS:**

Refer to 16.4.1.7 NMAC.

[16.4.5.7 NMAC - Rp, 16.4.5.7 NMAC 8/10/2019]

**16.4.5.8 CRITERIA FOR DETERMINATION OF EQUIVALENCY TO C.C.E.:**

Any chiropractic college that is not accredited by the council of chiropractic education (C.C.E.) must have:

**A.** recognition of the program by the Canadian, European or Australasian councils on chiropractic education; and

**B.** any other chiropractic accrediting bodies that the board may determine to be equivalent to the C.C.E. - USA; and

**C.** clinical competencies equal to or greater than those of C.C.E.

[16.4.5.8 NMAC - Rp, 16.4.5.8 NMAC 8/10/2019]

## **PART 6: EXAMINATIONS**

### **16.4.6.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, P.O. Box 25101, Santa Fe, New Mexico 87504.

[16.4.6.1 NMAC - Rp, 16.4.6.1 NMAC 8/10/2019]

### **16.4.6.2 SCOPE:**

Chiropractic applicants who apply for licensure by examination.

[16.4.6.2 NMAC - Rp, 16.4.6.2 NMAC 8/10/2019]

### **16.4.6.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-6.B NMSA 1978.

[16.4.6.3 NMAC - Rp, 16.4.6.3 NMAC 8/10/2019]

### **16.4.6.4 DURATION:**

Permanent.

[16.4.6.4 NMAC - Rp, 16.4.6.4 NMAC 8/10/2019]

### **16.4.6.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.6.5 NMAC - Rp, 16.4.6.5 NMAC 8/10/2019]

### **16.4.6.6 OBJECTIVE:**

To establish procedures that applicants for examination must follow.

[16.4.6.6 NMAC - Rp, 16.4.6.6 NMAC 8/10/2019]

#### **16.4.6.7 DEFINITIONS:**

Refer to 16.4.1.7 NMAC.

[16.4.6.7 NMAC - Rp, 16.4.6.7 NMAC 8/10/2019]

#### **16.4.6.8 EXAMINATIONS:**

The Chiropractic Physician Practice Act provides that the board shall examine candidates for licensure in the act of chiropractic adjusting, producers and methods as shall reveal the applicant's qualifications; provided that the board may waive the requirements for the board administered examination upon satisfactory completion of the examination conducted by the national board of chiropractic examiners. The board will accept successful completion of all parts of the examination conducted by the national board of chiropractic examiners.

**A.** National boards: an applicant for licensure by examination must have passed the national board exams I, II, III, and IV and physiotherapy conducted by the national board of chiropractic examiners with a passing score required by the national board of chiropractic examiners.

**B.** Jurisprudence exam: all licensure applicants must successfully pass the board's jurisprudence exam.

**(1)** The applicant will receive the jurisprudence examination with instructions from the board office after the board receives both the application and the application fees.

**(2)** To complete the jurisprudence examination, the applicant will use the statutes and rules and regulations of the board.

**(3)** The applicant must pass the jurisprudence exam with a minimum score of 75%.

**(4)** Applicants may retake the examination as many times necessary to achieve a passing grade.

**(5)** The jurisprudence examination may be developed for on-line access and available through the board web site.

[16.4.6.8 NMAC - Rp, 16.4.6.8 NMAC 8/10/2019]

### **PART 7: IMPAIRED PRACTITIONER PROGRAMS**

#### **16.4.7.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, P.O. Box 25101, Santa Fe, New Mexico 87504.

[16.4.7.1 NMAC - Rp, 16.4.7.1 NMAC 8/10/2019]

**16.4.7.2 SCOPE:**

All licensed chiropractic physicians.

[16.4.7.2 NMAC - Rp, 16.4.7.2 NMAC 8/10/2019]

**16.4.7.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, (Sections 61-4-1 through 17 NMSA 1978).

[16.4.7.3 NMAC - Rp, 16.4.7.3 NMAC 8/10/2019]

**16.4.7.4 DURATION:**

Permanent.

[16.4.7.4 NMAC - Rp, 16.4.7.4 NMAC 8/10/2019]

**16.4.7.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.7.5 NMAC - Rp, 16.4.7.5 NMAC 8/10/2019]

**16.4.7.6 OBJECTIVE:**

To clarify the procedures identified in the Impaired Health Care Provider Act.

[16.4.7.6 NMAC - Rp, 16.4.7.6 NMAC 8/10/2019]

**16.4.7.7 DEFINITIONS:**

**A.** Impaired physicians programs is defined as programs that protect the public and educate the chiropractic physicians.

**B.** Programs may monitor, educate and intercede in the prevention and treatment of chiropractic physicians impaired or at risk of impairment.

**C.** All impairment fees received shall be designated for these programs.

[16.4.7.7 NMAC - Rp, 16.4.7.7 NMAC 8/10/2019]

**16.4.7.8 COMPLAINTS:**

Anyone may file a complaint with the board if they have reasonable cause to believe a chiropractor is impaired by:

- A. mental illness;
- B. physical illness, including but not limited to deterioration through the aging process or loss of motor skills;
- C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act; or
- D. habitual or excessive use or abuse of alcohol.

[16.4.7.8 NMAC - Rp, 16.4.7.8 NMAC 8/10/2019]

**16.4.7.9 PROCESS:**

Complaints received in the board office that allege impaired practice will be processed in the following manner, unless there are exceptional circumstances which require the board to consider the complaint without referral to the complaint committee because of a potential threat to the health or safety of the licensee or patients.

- A. The complaint committee of the board shall review the complaint to determine if the board has jurisdiction over the matter and if the complaint may have merit.
- B. The complaint committee may conduct a preliminary investigation to determine if the allegations in the complaint are supported by facts.
- C. Upon completion of the review and or investigation, the complaint committee shall submit its recommendations to the board.
- D. The board shall determine if an examination to ascertain impaired practice is required.

[16.4.7.9 NMAC - Rp, 16.4.7.9 NMAC 8/10/2019]

**16.4.7.10 DISCIPLINARY ACTION:**

No action or investigation or proceedings under the Impaired Health Care Provider Act (61-7-1 through 12 NMSA 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Chiropractic Physician Practice Act (61-4-1 through 17 NMSA 1978).

[16.4.7.10 NMAC - Rp, 16.4.7.10 NMAC 8/10/2019]

## **PART 8: DISCIPLINARY PROCEEDINGS**

### **16.4.8.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.8.1 NMAC - Rp, 16.4.8.1 NMAC 4/9/2022]

### **16.4.8.2 SCOPE:**

The provisions of 16.4.8 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a chiropractor licensed by the board.

[16.4.8.2 NMAC - Rp, 16.4.8.2 NMAC 4/9/2022]

### **16.4.8.3 STATUTORY AUTHORITY:**

16.4.8 NMAC is promulgated pursuant to the Chiropractic Physician Practice Act, Section 61-4-10 NMSA 1978 and the Uniform Licensing Act, 60-1-1 through -36 NMSA 1978.

[16.4.8.3 NMAC - Rp, 16.4.8.3 NMAC 4/9/2022]

### **16.4.8.4 DURATION:**

Permanent.

[16.4.8.4 NMAC - Rp, 16.4.8.4 NMAC 4/9/2022]

### **16.4.8.5 EFFECTIVE DATE:**

April 9, 2022, unless a later date is cited at the end of a section.

[16.4.8.5 NMAC - Rp, 16.4.8.5 NMAC 4/9/2022]

### **16.4.8.6 OBJECTIVE:**

To establish the procedures for filing complaints against licensees and applicants, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.

[16.4.8.6 NMAC - Rp, 16.4.8.6 NMAC 4/9/2022]

#### **16.4.8.7 DEFINITIONS:**

[RESERVED]

#### **16.4.8.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and complaint/review committee. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act, the Chiropractic Physician Practice Act, and the Impaired Practitioners Act.

[16.4.8.8 NMAC - Rp, 16.4.8.8 NMAC 4/9/2022]

#### **16.4.8.9 ACTIONS:**

**A.** The board may penalize, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Chiropractic Physician Practice Act, the Uniform Licensing Act, the Impaired Healthcare Care Providers Act, these Rules, or discipline imposed by other governing bodies.

**B.** The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

**C.** The board may at its discretion hire investigators to investigate complaints made to the board regarding chiropractic physicians.

**D.** Licensees shall bear all costs of disciplinary proceedings unless exonerated.

[16.4.8.9 NMAC - Rp, 16.4.8.9 NMAC 4/9/2022]

#### **16.4.8.10 GUIDELINES:**

The board shall use the following as guidelines for disciplinary action.

**A. "Gross incompetence" or "gross negligence"** means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

**B. "Unprofessional conduct"** means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof. This includes, but is not limited to, the use of any instrument or device in a manner that is not

in accordance with the customary standards and practices of the chiropractic profession;

- (2) representing to a patient that a manifestly incurable condition or sickness, disease or injury can be cured;
- (3) willfully or negligently divulging a professional confidence;
- (4) failure to release to a patient copies of that patient's records and x-rays;
- (5) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by consultation with individuals having special skills, knowledge, and experience;
- (6) failure of a chiropractor to comply with and following advertising guidelines as set in 16.4.1.12 NMAC;
- (7) failure to use appropriate infection control techniques and sterilization procedures;
- (8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another chiropractor licensed or applying for licensure by the board;
- (9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient;
- (10) intentionally engaging in sexual contact with a patient other than his spouse during the doctor-patient relationship;
- (11) the use of a false, fraudulent or deceptive statement in any document connected with the practice of chiropractic;
- (12) fraud, deceit or misrepresentation in any renewal or reinstatement application;
- (13) violation of any order of the board, including any probation order;
- (14) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician who renders care as a chiropractic assistant under 16.4.19 NMAC of these rules;
- (15) cheating on an examination for licensure;
- (16) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice chiropractic;

(17) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act (Chapter 61, Article 4 NMSA 1978) or rules and regulations promulgated by the board and filed in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978);

(18) has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

(19) has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractic was based upon acts by the licensee similar to acts described in this section and by board rules;

(20) failure to report to the board within 90 days any adverse action taken after due process has been afforded to the licensee by:

(a) another licensing jurisdiction;

(b) any health care entity, not involving disputes over fees;

(c) any governmental agency, not involving disputes overseas;

(d) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section.

(21) failure to furnish the board, its investigators or representatives with information requested by the board;

(22) abandonment of patients;

(23) providing a false, materially incomplete, factually unsupported opinion or opinions which are not congruent with current teachings and standards of care as taught in CCE accredited chiropractic colleges in a peer review, records review, independent medical examination, or chiropractic examination.

[16.4.8.10 NMAC - Rp, 16.4.8.10 NMAC 4/9/2022]

#### **16.4.8.11 COMPLAINT/REVIEW COMMITTEE:**

The complaint/review committee of the board is authorized to:

**A.** carry out the instructions of the board in the investigation and processing of complaints against licensees.

**B.** disciplinary actions taken by the board shall be reported as required to the following entities:

(1) national practitioner databank-healthcare integrity and protection databank "NPDB-HIPD";

(2) federation of chiropractic licensing boards "FCLB";

(3) or their successors.

[16.4.8.11 NMAC - Rp, 16.4.8.11 NMAC 4/9/2022]

#### **16.4.8.12 DISQUALIFYING CRIMINAL CONVICTIONS:**

A "disqualifying criminal conviction" means a conviction for a crime that is job-related for the position in question and consistent with business necessity. Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license or certificate by the board:

##### **A. Physical Harm to Others:**

(1) Section 30-2-1 NMSA 1978, "Murder".

(2) Section 30-2-3 NMSA 1978, "Manslaughter".

(3) Section 30-3-1 NMSA 1978, "Assault".

(4) Section 30-3-4 NMSA 1978, "Battery".

(5) Section 30-6-1 NMSA 1978, "Abandonment or abuse of a child".

(6) Section 30-4-1 NMSA 1978, "Kidnapping".

(7) Section 30-4-3 NMSA 1978, "False imprisonment".

(8) Section 30-9-19, NMSA 1978, "Sexual assault".

(9) Section 30-47-4 NMSA 1978, "Abuse of a care facility resident".

(10) Section 30-47-5 NMSA 1978, "Neglect of a care facility resident".

##### **B. Property Damage:**

(1) Section 30-15-1 NMSA 1978, "Criminal damage to property".

(2) Section 30-7-5 NMSA 1978, "Dangerous use of explosives".

(3) Section 30-15-1.1 NMSA 1978, "Unauthorized graffiti on personal or real property."

(4) Section 30-17-5 NMSA 1978, "Arson and negligent arson".

**C. Fraud:**

(1) Section 30-16-6 NMSA 1978, "Fraud".

(2) Section 7-1-73 "NMSA 1978, Tax fraud".

(3) Sections 59A-16C-1 to -17 NMSA 1978, , violations of the Insurance fraud act.

(4) Section 30-28-2 "NMSA 1978, Conspiracy".

(5) Section 30-44-4 NMSA 1978, "Falsification of documents" under the Medicaid Fraud Act.

(6) Section 30-44-5 NMSA 1978, "Failure to retain records in connection with the Medicaid Fraud Act".

(7) Section 30-44-6 NMSA 1978, "Obstruction of Investigation in connection with the Medicaid Fraud Act".

(8) Section 30-44-7 NMSA 1978, "Medicaid fraud".

(9) Section 30-51-4 NMSA 1978, "Money laundering".

**D. Theft:**

(1) Section 30-14-8 NMSA 1978, "Breaking and entering".

(2) Section 30-16-1 NMSA 1978, "Larceny".

(3) Section 30-16-2 "NMSA 1978, Robbery".

(4) Section 30-16-3 NMSA 1978, "Burglary".

(5) Section 30-16-20 NMSA 1978, "Shoplifting".

(6) Section 30-16-24.1 NMSA 1978, "Theft of identity".

(7) Section 30-16-26 NMSA 1978, "Theft of a credit card".

(8) Section 30-16-11 NMSA 1978, "Receiving stolen property".

(9) Section 30-47-6 NMSA 1978, "Exploitation of a care facility resident's property".

**E. Financial Crimes:**

(1) Section 30-16-8 NMSA 1978, "Embezzlement".

(2) Section 30-16-9 NMSA 1978, "Extortion".

(3) Section 30-16-10 NMSA 1978, "Forgery".

(4) Section 30-41-1 NMSA 1978, "Soliciting and receiving illegal kickbacks".

(5) Section 30-42-4 NMSA 1978, "Racketeering".

**F. Drug Offenses:**

(1) Section 30-31-20 NMSA 1978, "Trafficking of controlled substances".

(2) Section 30-31-21 NMSA 1978, "Distribution to a minor".

(3) Section 30-31-22 NMSA 1978, "Intentionally distributing or possessing with intent to distribute a controlled substance".

(4) Section 30-31-23 NMSA 1978, "Possession of controlled substances".

(5) Section 30-31-24 NMSA 1978, "Violations of the administrative provisions of the Controlled Substances Act".

(6) Section 30-31-25 "NMSA 1978, Engaging in other acts prohibited by the Controlled Substances Act".

(7) Section 30-31-25.1 NMSA 1978, "Delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior".

(8) Section 30-31A-4 NMSA 1978, "Manufacturing, distributing or possessing with intent to distribute an imitation controlled substance".

(9) Section 30-31A-5 NMSA 1978, "Intentionally selling an imitation controlled substance to a person under the age of eighteen years".

(10) Section 30-31A-6 NMSA 1978, "Intentionally possessing an imitation controlled substance with the intent to distribute".

(11) Section 30-31B-12 NMSA 1978, "Certain violations of the Drug Precursor Act".

(12) Section 30-6-3 NMSA 1978, "Contributing to the delinquency of a minor".

**G. Sex Crimes:**

(1) Section 30-37A-1 NMSA 1978, "Unauthorized distribution of sensitive images".

(2) Section 30-37-3.2 NMSA 1978, "Child solicitation by electronic communication device".

(3) Section 30-37-3.3 NMSA 1978, "Criminal sexual communication with a child".

(4) Section, 30-52-1 NMSA 1978, "Human trafficking".

(5) Section 30-9-11 NMSA 1978, "Criminal sexual penetration".

(6) Section 30-9-12 NMSA 1978, "Criminal sexual contact".

(7) Section 30-9-13 NMSA 1978, "Criminal sexual contact of a minor".

(8) Section 30-9-14.3 NMSA 1978, "Aggravated indecent exposure".

(9) Section 30-6A-3 NMSA 1978, "Sexual exploitation of children".

(10) Section 30-6A-4 NMSA 1978, "Sexual exploitation of children by prostitution".

(11) Subsection P of Section 29-11A-4 NMSA 1978, "Failure to register as required by sex offender registration and notification act".

**H. Abuse of animals:**

(1) Section 30-18-1 NMSA 1978, "Cruelty to animals or extreme cruelty to animals".

(2) Section 30-18-3 NMSA 1978, "Unlawful branding of animals".

(3) Section 30-18-6 NMSA 1978, "Transporting stolen livestock".

(4) Section 30-18-9 NMSA 1978, "Dog fighting or cock fighting".

(5) Section 30-18-12 NMSA 1978, "Injury to livestock".

**I. Miscellaneous:**

- (1) Section 30-3A-3 NMSA 1978, "Stalking".
- (2) Section 30-20-12 NMSA 1978, "Use of telephone to terrify, intimidate, threaten, harass, annoy or offend another.
- (3) Section 66-8-102 NMSA 1978, "Driving under the influence of intoxicating liquor or drugs".
- (4) Section 61-6-20 NMSA 1978, "Practicing medicine without a license".
- (5) Section 61-6-25 NMSA 1978, "Making a false statement under oath or submitting a false affidavit, in connection with the Medical Practice Act".
- (6) Section 26-1-26 NMSA 1978, "Violation of the New Mexico Drug, Device and Cosmetic Act".
- (7) Section 12-10-20 NMSA 1978, "Failure to comply with proclamation of the governor".

**J.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed under this section.

**K.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed under this section.

**L.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Chiropractor Physician Practice Act, Sections 61-4-1 to -17 NMSA 1978, or the Uniform Licensing Act, Section 61-1-1 to-36 NMSA 1978, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in under this section.

**M.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in 16.4.8.11 NMAC.

[16.4.8.12 NMAC - N, 4/9/2022]

## **PART 9: LICENSE RENEWAL PROCEDURES**

### **16.4.9.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.9.1 NMAC - Rp, 16.4.9.1 NMAC 8/10/2019]

### **16.4.9.2 SCOPE:**

All licensed chiropractic physicians.

[16.4.9.2 NMAC - Rp, 16.4.9.2 NMAC 8/10/2019]

### **16.4.9.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-13 and Section 61-4-14 NMSA 1978.

[16.4.9.3 NMAC - Rp, 16.4.9.3 NMAC 8/10/2019]

### **16.4.9.4 DURATION:**

Permanent.

[16.4.9.4 NMAC - Rp, 16.4.9.4 NMAC 8/10/2019]

### **16.4.9.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.9.5 NMAC - Rp, 16.4.9.5 NMAC 8/10/2019]

### **16.4.9.6 OBJECTIVE:**

To establish procedures for the annual renewal of licenses.

[16.4.9.6 NMAC - Rp, 16.4.9.6 NMAC 8/10/2019]

### **16.4.9.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC.)

[16.4.9.7 NMAC - Rp, 16.4.9.7 NMAC 8/10/2019]

#### **16.4.9.8 LICENSE RENEWAL PROCEDURES:**

**A.** In accordance with Section 61-4-13 and Section 61-4-14 NMSA 1978, of the New Mexico Chiropractic Physician Practice Act, the board establishes the following procedures for license renewal.

**(1)** Renewal notice. On or before June 1st of each year, the chiropractic board shall mail to the last address on file with the board a renewal notice to each person licensed to practice chiropractic in New Mexico.

**(2)** Renewal. The license shall expire at midnight on June 30th of each year. The board may renew the license upon receipt from the licensee, the nonrefundable license renewal fee, along with a properly filled out original form with signature, and copies of continuing education certificate plus any applicable nonrefundable penalty fees.

**(3)** Renewal deadline. Each licensee shall submit the nonrefundable license renewal fee and properly completed application to the board postmarked on or before July 1 of the year for which the nonrefundable license renewal fee is requested.

**(4)** Penalty fees. A licensee shall submit to the board, in addition to the nonrefundable license renewal fee, a nonrefundable penalty fee as set forth in Paragraph (3) of Subsection A of 16.4.1.13 NMAC.

**(5)** Impairment fee. In addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60.00 per renewal period.

**(6)** The board during each renewal cycle will complete a random audit of continuing education hours. The board may select by accepted regulation and licensing department random computer process, up to ten percent of the renewing applicants. Individuals selected must submit proof of all continuing education for that cycle. The records indicated in 16.4.10.8 NMAC are acceptable forms of documentation of continuing education records. Continuing education records must be maintained for three years following the renewal cycle in which they are earned and they may be obtained by the board at any time.

**B.** Notice. By July 31st of each year, the board shall send, by certified mail, to the address on file with the board, a forfeiture notice to each licensee who has not made the application for license renewal. The notice shall state that:

**(1)** the licensee has failed to make application for renewal;

- (2) the amount of renewal and late fees;
- (3) the information required about continuing education hours which must be submitted to renew the license;
- (4) the licensee may voluntarily retire the license or the licensee may apply for a permissive temporary cancellation, by notifying the board in writing;
- (5) any person whose license has been placed on inactive status over one year but less than two may apply to reactivate licensure status at any time. Documentation required must include:
  - (a) reactivation application;
  - (b) reactivation application fee of \$200;
  - (c) evidence of meeting all continuing education requirements (for the current year);
- (6) failure to respond to the notice by the date specified, which date must be at least 31 days after the forfeiture notice is sent by the board, either by submitting the renewal application and applicable fees, or the information required about continuing education hours, or by notifying the board that the licensee has voluntarily retired the license, or has applied for permissive temporary cancellation, shall result in forfeiture of the license to practice chiropractic in New Mexico upon order of the board;
- (7) the board may select by accepted regulation and licensing department random computer processes, up to ten percent of the renewal applicants which may be submitted for background findings review.

[16.4.9.8 NMAC - Rp, 16.4.9.8 NMAC 8/10/2019]

## **PART 10: CONTINUING EDUCATION**

### **16.4.10.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.10.1 NMAC - Rp, 16.4.10.2 NMAC 8/10/2019]

### **16.4.10.2 SCOPE:**

All licensed chiropractic physicians.

[16.4.10.2 NMAC - Rp, 16.4.10.2 NMAC 8/10/2019]

### **16.4.10.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsections F and G of Section 61-4-3 NMSA 1978.

[16.4.10.3 NMAC - Rp, 16.4.10.3 NMAC 8/10/2019]

### **16.4.10.4 DURATION:**

Permanent.

[16.4.10.4 NMAC - Rp, 16.4.10.4 NMAC 8/10/2019]

### **16.4.10.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.10.5 NMAC - Rp, 16.4.10.5 NMAC 8/10/2019]

### **16.4.10.6 OBJECTIVE:**

To establish continuing education requirements for chiropractic physicians to renew their licenses in the state of New Mexico.

[16.4.10.6 NMAC - Rp, 16.4.10.6 NMAC 8/10/2019]

### **16.4.10.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.10.7 NMAC - Rp, 16.4.10.7 NMAC 8/10/2019]

### **16.4.10.8 CONTINUING EDUCATION:**

**A.** In accordance with Section 61-4-3 NMSA 1978, New Mexico Chiropractic Physician Practice Act, chiropractic physicians licensed in New Mexico are required to complete a minimum of 16 hours of board approved continuing education annually by the time of license renewal. Credit hours may be earned at any time during the annual reporting period, July 1 through June 30, immediately preceding annual renewal. Credit hours are calculated as a "contact hour" i.e. a 60 minute hour.

**B.** Each chiropractor renewing a license shall attest that they have obtained the required hours of continuing education on the renewal form. The board will select by random regulation and licensing department (RLD) computer processes, no less than ten percent of renewal applications for audit to verify completion of acceptable

continuing education. Audit requests will be included with the renewal notice and those selected chiropractors will be asked to submit proof of compliance with the continuing education requirements. The board may audit continuing education records at any time. Continuing education (CE) records must be maintained for three years following the renewal cycle in which they are earned.

**C.** The board will approve continuing education programs which in its determination, advance the professional skills, risk management understanding and knowledge of the licensee that is directly related to the practice of chiropractic art, science or philosophy. Practice building and self-motivational courses, and courses that are determined not to have significant or a direct relationship to the safe and effective practice of chiropractics; or such portions of those programs or courses, may not be approved. There will be no charge to a licensee for individual request for approval.

**D.** The board may determine that, in its opinion, a particular course or area of professional education is of such importance or addresses an area of special need as it pertains to public protection that all licensees shall be required to take the course of study as a part of or in addition to the CE requirements:

**(1)** the declaration of a mandatory course must be made by a majority vote of the board at a regular scheduled meeting;

**(2)** the course title, approved instructors (if appropriate), locations of course delivery or methods of securing approved print or electronic presentations of the course must be communicated to all licensed New Mexico chiropractors on or before September 1st of the year that the course is made mandatory;

**(3)** the mandatory nature of courses so designated shall expire on June 30th of the current licensing year or the determination must be renewed by a majority vote of the board at a regular scheduled meeting and the extension of the mandatory nature communicated to all active licensees on or before September 1st.

**E.** Seminars and continuing education programs that meet board criteria as stated in Subsection C of 16.4.10.8 NMAC, will be approved after a properly submitted application has been received and payment of the assessed fee as set forth in Paragraph (4) of Subsection A of 16.4.1.13 NMAC. This includes the following:

**(1)** officiating during national board examinations shall be credited to the professional members of the board as approved hours of continuing education;

**(2)** those courses that have secured accreditation through the Federation of Chiropractic Licensing Boards "FCLB" and carry the providers of approved continuing education "PACE" designation;

**(3)** webinar, teleseminar, compact disc (CD), videotaped or audiotaped courses produced or endorsed by approved entities may be accepted for continuing education credit:

**(a)** the completion of such education shall be supported through record keeping with a letter, memo or on a form approved by the board, that includes the dates, times, vendors' or presenters' name/s, and total hours claimed for each course;

**(b)** the licensee's retained records must include the following statement, "I swear or affirm that I viewed or listened to these continuing education courses in their entirety on the dates and times specified in this document";

**(c)** a maximum of eight hours may be obtained through these distance learning methods unless specific individual approval by the board is obtained.

**(4)** Based on the agreement set forth between the board and PACE, PACE approved courses shall be required to submit to the board an application with the appropriate assessed fee, but shall not be required to submit to the board the items listed in Paragraphs (1) through (6) of Subsection F of 16.4.10.8 NMAC.

**F.** All entities, sponsoring institutions, or organizations requesting approval of seminars or continuing education programs must be submitted to the board office in writing by the licensee or sponsoring entity must include:

- (1)** course title, objective and format;
- (2)** sponsoring entity;
- (3)** total class hours;
- (4)** method for certification of attendance; or documentation of completion of program;
- (5)** instructors credentials; and
- (6)** courses that in the boards opinion enhance the professional practice procedures, risk management, clinical skills or the doctor's ability to understand and operate within managed care guidelines and regulations will be considered for approval.

**G.** The board may waive or extend the time for completion of the annual continuing education requirement if the licensee has reached the age of 70 years or if the licensee files with the board the statement of a licensed physician certifying the physical inability of the licensee to attend a seminar.

**H.** Licensees serving in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

**(1)** The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

**(2)** Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the United States during the renewal cycle, or apply for an emergency deferral.

**(3)** All renewal fees shall be waived while the licensee is practicing or residing outside the country serving in the military or under armed services contract.

**(4)** The board may waive any and all deadlines by special request of licensee in active military service or under armed services or federal contract requiring absence from the jurisdiction.

**I.** Any excess continuing education hours that are above the minimum educational requirement in any applicable compliance period may not be "carried over" in order to meet the minimum educational requirements in any succeeding compliance period. A licensee shall only count continuing education hours completed for the present renewal period.

**J.** Any licensee licensed between March 1 and June 30, of a renewal year is not required to submit continuing education credits for license renewal for that renewal period. If the licensee has been licensed for longer than four months before their first renewal period, the licensee is required to meet all continuing education requirements as set forth in 16.4.10.8 NMAC and if a licensee holds an advanced chiropractic certificate, the licensee is required to meet the continuing education requirements in 16.4.15.10 NMAC.

**K.** All licensees shall comply with the requirements of this regulation on or before July 1st of each year.

**L.** This rule supersedes all prior continuing education rules.

**M.** Seminars or continuing education programs meeting the board's criteria as stated in Subsection C of 16.4.15.10 NMAC for advanced practice continuing education shall be approved upon receipt of a properly executed application and payment of the fees required in 16.4.22.8 NMAC:

**N.** All seminars or educational programs that are provided for both doctors of chiropractic and advanced practice chiropractors continuing education shall be submitted to the board for approval at least 90 days in advance of the start of the

program whenever possible and shall meet the requirements set forth in Paragraph (1) through (6) of Subsection F of 16.4.10.8 NMAC.

[16.4.10.8 NMAC - Rp, 16.4.10.8 NMAC 8/10/2019]

## **PART 11: FORFEITURE OF LICENSE**

### **16.4.11.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.11.1 NMAC - Rp, 16.4.11.1 NMAC 8/10/2019]

### **16.4.11.2 SCOPE:**

All licensed chiropractic physicians.

[16.4.11.2 NMAC - Rp, 16.4.11.2 NMAC 8/10/2019]

### **16.4.11.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-14 NMSA 1978.

[16.4.11.3 NMAC - Rp, 16.4.11.3 NMAC 8/10/2019]

### **16.4.11.4 DURATION:**

Permanent.

[16.4.11.4 NMAC - Rp, 16.4.11.4 NMAC 8/10/2019]

### **16.4.11.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.11.5 NMAC - Rp, 16.4.11.5 NMAC 8/10/2019]

### **16.4.11.6 OBJECTIVE:**

To establish forfeiture procedures.

[16.4.11.6 NMAC - Rp, 16.4.11.6 NMAC 8/10/2019]

### **16.4.11.7 DEFINITIONS:**

Refer to 16.4.1 NMAC.

[16.4.11.7 NMAC - Rp, 16.4.11.7 NMAC 8/10/2019]

**16.4.11.8 DATE OF FORFEITURE:**

The board will send a notice of forfeiture by July 31st of each year as set forth in Subsection B of 16.4.9.8 NMAC. If the application for renewal, including required information about continuing education and the annual and late fees, or request for inactive status is not received by September 1st of each year, the license shall be canceled and the licensee shall forfeit the right to practice chiropractic in the state of New Mexico. By the order of the board, the forfeiture shall not be considered a disciplinary action against the licensee.

[16.4.11.8 NMAC - Rp, 16.4.11.8 NMAC 8/10/2019]

**PART 12: CLASSIFICATION OF CHIROPRACTIC LICENSURE**

**16.4.12.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.12.1 NMAC - Rp 16.4.12.1 NMAC 8/10/2019]

**16.4.12.2 SCOPE:**

All chiropractic physicians.

[16.4.12.2 NMAC - Rp 16.4.12.2 NMAC 8/10/2019]

**16.4.12.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-13 and 61-4-14 NMSA 1978.

[16.4.12.3 NMAC - Rp 16.4.12.3 NMAC 8/10/2019]

**16.4.12.4 DURATION:**

Permanent.

[16.4.12.4 NMAC - Rp 16.4.12.4 NMAC 8/10/2019]

**16.4.12.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.12.5 NMAC - Rp 16.4.12.5 NMAC 8/10/2019]

**16.4.12.6 OBJECTIVE:**

To designate licensure status.

[16.4.12.6 NMAC - Rp 16.4.12.6 NMAC 8/10/2019]

**16.4.12.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.12.7 NMAC - Rp 16.4.12.7 NMAC 8/10/2019]

**16.4.12.8 LICENSURE STATUS:**

**A.** There shall be two licensure statuses.

**(1)** Active. An active license entitles a chiropractic physician to engage in the practice of chiropractic by providing professional services to patients within the state of New Mexico. This status may be maintained by following the license renewal procedures as set forth in Subsection A of 16.4.9.8 NMAC and by payment of the required fee as set forth in Subparagraph (a) of Paragraph (2) of Subsection A of 16.4.1.13 NMAC.

**(2)** Inactive. An inactive license may be held by a chiropractic physician not engaging in the active practice of chiropractic in New Mexico. This status may be maintained by payment of the required fee as set forth in Subparagraph (b) of Paragraph (2) of Subsection A of 16.4.1.13 NMAC. Continuing education is not required while on inactive status. Inactive status will not be granted for a period of less than one year. The board may consider a petition by the licensee for early reinstatement due to undue hardship or special circumstances.

**B.** Change in licensure status - A change from one status to another shall require a written request to the board.

**C.** A change from inactive status to active status shall require a written license renewal application sent by the board, fulfillment of the continuing education requirements for the year in which the applicant petitions for a change in status and payment of reinstatement of license fees, active renewal fees, impairment fees, and any late fees required by the board. Applicant must include in the application, evidence that applicant meets the current requirements for licensure. If the applicant has been on inactive license status and not been in active practice in another jurisdiction for two or more years and desires to return to active status, a competency test may be required in

addition to any other materials deemed reasonably necessary to assure the public safety.

[16.4.12.8 NMAC - Rp 16.4.12.8 NMAC 8/10/2019]

## **PART 13: REINSTATEMENT OF CHIROPRACTIC LICENSURE**

### **16.4.13.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.13.1 NMAC - Rp 16.4.13.1 NMAC 8/10/2019]

### **16.4.13.2 SCOPE:**

All chiropractic physicians.

[16.4.13.2 NMAC - Rp 16.4.13.2 NMAC 8/10/2019]

### **16.4.13.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Section 61-4-14 NMSA 1978.

[16.4.13.3 NMAC - Rp 16.4.13.3 NMAC 8/10/2019]

### **16.4.13.4 DURATION:**

Permanent.

[16.4.13.4 NMAC - Rp 16.4.13.4 NMAC 8/10/2019]

### **16.4.13.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.13.5 NMAC - Rp 16.4.13.5 NMAC 8/10/2019]

### **16.4.13.6 OBJECTIVE:**

To establish reinstatement procedures for chiropractic physicians.

[16.4.13.6 NMAC - Rp 16.4.13.6 NMAC 8/10/2019]

### **16.4.13.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.13.7 NMAC - Rp 16.4.13.7 NMAC 8/10/2019]

#### **16.4.13.8 REINSTATEMENT OF CHIROPRACTIC LICENSURE:**

**A.** Any person whose license has been suspended, revoked or which has lapsed may apply to the board for reinstatement of the license at any time within two years of the suspension, revocation or lapse.

(1) In making application for reinstatement, the applicant should state why the license should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement.

(2) Applicant must include in the application, evidence that applicant meets the current requirements for licensure.

(3) Any licensed chiropractor applying for reinstatement of a license must pay all back renewal and penalty fees for each year of suspension, revocation or lapse, an application fee as set forth in Subparagraph (d) of Paragraph (1) of Subsection A of 16.4.22.8 NMAC and provide proof of attendance of continuing education hours as set forth in Subsection A of 16.4.10.8 NMAC for each year of suspension, revocation or lapse to a maximum of two years.

**B.** The board may require an applicant to complete certain education or training requirements, in addition to any continuing education requirements; to be completed prior to or after reinstatement to ensure that the applicant is competent to practice chiropractic. The board may, in its discretion, require that an applicant for reinstatement take and pass a written examination as prescribed by the board.

**C.** Upon receipt of an application for reinstatement, the board shall grant the applicant a hearing, at which time the applicant may appeal to the board to reinstate the license.

**D.** After two years, the applicant must apply for licensure without examination.

**E.** Applicant agrees to a national practitioner databank and a federation of chiropractic licensing board's (FCLB) background check.

**F.** Chiropractic physicians seeking reinstatement of advance practice certification registration because of suspension or lapse must meet the requirements established by the board under Subsection G of 16.4.15.8 NMAC.

[16.4.13.8 NMAC - Rp 16.4.13.8 NMAC 8/10/2019, A 4/9/2022]

### **PART 14: MANAGEMENT OF MEDICAL RECORDS**

**16.4.14.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.14.1 NMAC - Rp 16.4.14.1 NMAC, 8/10/2019]

**16.4.14.2 SCOPE:**

Chiropractors for licensure who must take a licensing examination for the state of New Mexico.

[16.4.14.2 NMAC - Rp 16.4.14.2 NMAC, 8/10/2019]

**16.4.14.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-3.G and 61-4-4 NMSA 1978.

[16.4.14.3 NMAC - Rp 16.4.14.3 NMAC, 8/10/2019]

**16.4.14.4 DURATION:**

Permanent.

[16.4.14.4 NMAC - Rp 16.4.14.4 NMAC, 8/10/2019]

**16.4.14.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.14.5 NMAC - Rp 16.4.14.5 NMAC, 8/10/2019]

**16.4.14.6 OBJECTIVE:**

This part establishes requirements and procedures for management of chiropractic records.

[16.4.14.6 NMAC - Rp 16.4.14.6 NMAC, 8/10/2019]

**16.4.14.7 DEFINITIONS:**

**"Chiropractic record"** means all information maintained by a chiropractic physician relating to the past, present or future physical or mental health of a patient, and for the provision of health care to a patient. This information includes, but is not limited to, the chiropractic physician's notes, reports summaries, and x-rays and laboratory and other

diagnostic test results. A patient's complete chiropractic record includes information generated and maintained by the chiropractic physician, as well as information provided to chiropractic physician by the patient, by any other physician who has consulted with or treated the patient, and other information acquired by the chiropractic physician about the patient in connection with the provision of health care to the patient.

[16.4.14.7 NMAC - Rp 16.4.14.7 NMAC, 8/10/2019]

#### **16.4.14.8 RELEASE OF CHIROPRACTIC RECORDS:**

Chiropractic physicians must provide complete copies of medical records to a patient or to another physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the chiropractic physician should act as the patient's advocate and work to facilitate the patient's request for records.

**A.** Medical records may not be withheld because an account is overdue or a bill for treatment medical records, or other services is owed.

**B.** A reasonable cost-based charge may be made for the cost of duplicating and mailing chiropractic records. A reasonable charge is not more than \$25 and \$0.25 per page. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Chiropractic physicians charging for the cost of reproduction of 16.4.1 NMAC medical records shall give consideration to the ethical and professional duties owed to other physicians and their patients.

[16.4.14.8 NMAC - Rp 16.4.14.8 NMAC, 8/10/2019]

#### **16.4.14.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:**

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current chiropractic physician to the new treating physician. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating physician.

**A.** Whenever possible, active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice.

**B.** Whenever possible, patients should be notified within at least 30 days after the death of their chiropractic physician.

**C.** Notification shall be through a notice in newspaper in the local practice area, and should include responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address. To reach a maximum number of patients, the notification must run a minimum of two times per month for three months. In addition to a notice in the newspaper, notification may also be through an individual letter to the patient's last known address. Notification shall also be sent to the board.

**D.** A chiropractic physician or chiropractic physician group should not withhold patient lists or other information from a departing chiropractic physician that is necessary for notification of patients.

**E.** Patients of a chiropractic physician who leaves a group practice must be notified the chiropractic physician is leaving, notified of the chiropractic physician's new address and offered the opportunity to have their medical records transferred to the departing chiropractic physician at his new practice.

**F.** When a practice is sold, all active patients must be notified that the chiropractic physician is transferring the practice to another chiropractic physician or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another physician or entity of their choice.

[16.4.14.9 NMAC - Rp 16.4.14.9 NMAC, 8/10/2019]

#### **16.4.14.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS:**

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes a violation of Paragraph (16) of Subsection A of 61-4-10 NMSA 1978 Chiropractic physicians must post a written copy of their policy or their employer's policy for medical record retention, maintenance and destruction.

**B.** Written medical record policy shall include:

- (1)** responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;
- (2)** how the records can be obtained or transferred;
- (3)** how long the records will be maintained before they are destroyed; and
- (4)** cost of obtaining copies of records, and of recovering records/transferring records.

**C.** Chiropractic physicians must retain medical records that they own for at least two years beyond what is required by state insurance laws and by medicare and medicaid regulations. Medical records for patients who are minors must be retained for at least two years beyond the date that the patient is 18 years old.

**D.** A log must be kept of all charts destroyed, including the patient's name and date of record destruction.

[16.4.14.10 NMAC - Rp 16.4.14.10 NMAC, 8/10/2019]

## **PART 15: CHIROPRACTIC ADVANCED PRACTICE CERTIFICATION REGISTRY**

### **16.4.15.1 ISSUING AGENCY:**

New Mexico Board of Chiropractic Examiners.

[16.4.15.1 NMAC - N, 3/31/2009]

### **16.4.15.2 SCOPE:**

All chiropractic practitioners who are certified for advanced practice or who are applicants for certification for advanced practice.

[16.4.15.2 NMAC - N, 3/31/2009]

### **16.4.15.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Chiropractic Examiners Practice Act Sections 61-4-2, 61-4-4, 61-4-6, 61-4-12 and 61-4-13 NMSA 1978.

[16.4.15.3 NMAC - N, 3/31/2009]

### **16.4.15.4 DURATION:**

Permanent.

[16.4.15.4 NMAC - N, 3/31/2009]

### **16.4.15.5 EFFECTIVE DATE:**

March 31, 2009, unless a later date is cited at the end of a section.

[16.4.15.5 NMAC - N, 3/31/2009]

### **16.4.15.6 OBJECTIVE:**

16.4.15 NMAC lists the requirements for advanced practice registration including course approval, formulary, continuing education, registration, application and fees.

[16.4.15.6 NMAC - N, 3/31/2009]

**16.4.15.7 DEFINITIONS:**

A. "Chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the prescription and administration of all natural agents in all forms to assist in the healing act, such as food, water, heat, light, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs, except as provided by the board by rule and regulation.

B. "Certified advanced practice chiropractic physician" means advanced practice chiropractor who shall have prescriptive authority for therapeutic and diagnostic purposes as authorized by statute and stated by the board in 16.4.15.11 NMAC.

C. "Chiropractic physician" includes doctor of chiropractic, chiropractor, doctor of chiropractic and medicine chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act. Chiropractors are physicians that attempt to improve the quality of life, relieve pain and suffering and promote health and wellness with evidence-based and patient centered care as taught in their chiropractic educational institutions. The chiropractic profession, through its institutions, professional associations, continuing educational providers and requirements teaches its health care professionals to use natural treatments, therapeutic interventions and patient education to promote health and wellness when indicated by the evidence and with other interventions as taught within chiropractic educational institutions and providers of approved continuing education instruction when necessary to safely treat individuals with disease, deformity, disability and neuromusculoskeletal maladies.

D. "Nationally recognized credentialing agency" means agency that has been recognized by the board and may be updated annually. Any educational institution allowed to provide clinical and didactic programs credited toward advanced practice certification must have concurrent approval from the New Mexico medical board and the New Mexico board of chiropractic examiners.

E. "Chiropractic formulary" shall mean those substances that have been approved for use by the chiropractor registered in advanced practice by the chiropractic board and as by statute with consensus between the New Mexico medical board and New Mexico board of pharmacy.

[16.4.15.7 NMAC - N, 3/31/2009; A, 7/23/2010; A, 1/30/15; A, 2/13/2015]

#### **16.4.15.8 ADVANCED PRACTICE REGISTRATION GENERAL PROVISIONS:**

Advanced practice registration is authorized by Subsection C of 61-4-9.1 NMSA 1978 of the act and defined in 61-4-9.2 NMSA 1978 and allows the use of approved substances through injection for therapeutic purposes.

**A.** A chiropractic physician shall have the prescriptive authority to administer through injection and prescribe the compounding of substances that are authorized in the advanced practice formulary. Those with active registration are allowed prescription authority that is limited to the current formulary as agreed on by the New Mexico board of chiropractic examiners and as by statute, by the New Mexico board of pharmacy and the New Mexico medical board. The New Mexico board of chiropractic examiners shall maintain a registry of all chiropractic physicians who are registered in advanced practice and shall notify the New Mexico board of pharmacy of all such current registered licensees no later than September 1st of each licensing period.

**B.** Chiropractic physicians applying for registry shall submit to the board:

(1) documentation that the doctor has successfully completed a competency examination administered by a nationally recognized credentialing agency or after December 31, 2012 successfully completed a graduate degree in a chiropractic clinical practice specialty;

(2) documentation that the chiropractic physician has successfully completed 90 clinical and didactic hours of education provided by an institution approved by the New Mexico medical board and the New Mexico board of chiropractic examiners;

(3) an application provided by the board for registry of the advanced practice certification.

**C.** A chiropractic physician without advanced practice certification may administer, dispense and prescribe any natural substance that is to be used in an oral or topical manner so long as that substance is not considered a dangerous drug.

**D.** The board shall annually renew the advanced practice certification registration of a doctor of chiropractic medicine in good standing if the licensee has completed all continuing education required by 16.4.10 NMAC.

**E.** All advanced practice certification registrations shall automatically terminate when licensure as a doctor of chiropractic medicine:

(1) is placed on inactive status as stated in Paragraph (2) of Subsection A of 16.4.12.8 NMAC; or

(2) is suspended, revoked or terminated for any reason as stated in 16.4.8.10 NMAC; or

(3) is not renewed prior to the annual renewal date (July 1).

**F.** All advanced practice certification registrations that were automatically terminated pursuant to Subsection E of 16.4.15.8 NMAC shall be automatically reinstated when licensure as a chiropractic physician is reinstated, provided that:

(1) all fees required by 16.4.22.8 NMAC have been paid; and

(2) all continuing education requirements stated in Subsection C of 16.4.15.10 NMAC have been completed; and

(3) any other reinstatement provisions, required by board rule, have been completed.

**G.** An advanced practice registration that is suspended or revoked by the board for any reason listed under 16.4.8.10 NMAC, shall not be reinstated. The chiropractic physician must reapply for advanced practice certification registration as a new applicant.

**H.** Each year the board may review the advanced practice formularies for necessary amendments. When new substances are added to a formulary, appropriate education in the use of the new substances may be approved and required by the board for chiropractic physician applying for registration or as continuing education for renewal of the applicable advanced practice registration. All amendments to the formulary shall be made following consensus of the NM board of medicine, NM pharmacy board and the NM board of chiropractic examiners.

**I.** A chiropractic physician certified for advanced practice under 16.4.15.11 NMAC that includes the use of controlled substances shall register with the federal DEA (drug enforcement agency) prior to obtaining, prescribing, administering, compounding the controlled substance.

**J.** A chiropractic physician registered in advanced practice, when prescribing, shall use prescription pads printed with his or her name, address, telephone number, license number and his or her advanced practice certification. If a chiropractic physician is using a prescription pad printed with the names of more than one chiropractic physician the above information for each chiropractic physician shall be on the pad and the pad

shall have a separate signature line for each chiropractic physician. Each specific prescription shall indicate the name of the chiropractic physician for that prescription and shall be signed by the prescribing chiropractic physician.

[16.4.15.8 NMAC - N, 3/31/2009; A, 7/23/2010; A, 1/30/15; A, 2/13/2015, A, 4/9/2022]

**16.4.15.9 ADVANCED PRACTICE REGISTRATION - BOARD REQUIREMENTS:**

A. The board shall have final authority for registration of all applicants.

B. The board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the receipt of the initial application as to whether the application is complete or incomplete and missing specified application documentation.

C. The board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the notice of receipt of the complete application sent out by the board, whether the application is approved or denied.

D. If the application is denied, the notice of denial shall state the reason the application was denied.

E. In the interim between regular board meetings the board's chairman or an authorized representative of the board may certify a chiropractic physician into the advanced practice registry to an applicant who has filed with the board a complete application and complied with all requirements for advanced practice registration.

F. The board shall have the authority to deny, suspend, revoke or otherwise discipline an expanded practice certification, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in the act and clarified in Paragraph (24) of Subsection B of 16.4.8.10 NMAC.

[16.4.15.9 NMAC - N, 3/31/2009]

**16.4.15.10 FEES, RENEWAL AND CONTINUING EDUCATION:**

A. A fee of \$100 shall accompany the initial application. When that application is approved a fee of \$100 shall be submitted for registry of the advanced practice certification.

B. A fee of \$100 shall be assessed for all renewal applications, in addition to the standard fee for renewal of the chiropractic license.

C. Chiropractic physicians seeking renewal of advanced practice certification registration shall have completed 10 hours of continuing education, in addition to the required number of continuing education hours for the general chiropractic licensure, from an approved institution as stated in 16.4.10 NMAC or as approved by the board.

The continuing education should include pharmacology, toxicology, medication administration or pharmacognosy appropriate to the current formulary and procedures authorized to be performed by the advanced practice chiropractic certification.

[16.4.15.10 NMAC - N, 3/31/2009; A, 1/30/2015, A, 4/9/2022]

**16.4.15.11 CHIROPRACTIC FORMULARY:**

A. Hormones for topical, sublingual, oral use

- (1) estradiol
- (2) progesterone
- (3) testosterone
- (4) desicated thyroid

B. Muscle relaxers; cyclobenzaprine

C. NSAIDs - prescription strength

- (1) ibuprofen
- (2) naproxen

D. Prescription medications for topical use

- (1) NMDC Ca2 dextromethorphan
- (2) NSAIDSs
  - (a) ketoprofen
  - (b) piroxicam
  - (c) naproxen
  - (d) ibuprofen
  - (e) diclofenac
- (3) muscle relaxers; cyclobenzaprine
- (4) sodium chanel antagonist; lidocaine

E. Homeopathics requiring prescription

F. Other substances by injection

- (1) sterile water
- (2) sterile saline
- (3) sarapin or its generic
- (4) caffeine
- (5) procaine HCL
- (6) epinephrine
- (7) homeopathic for injection

G. Glutathione for inhalation

[16.4.15.11 NMAC - N, 09/11/2009; A, 7/23/2010; A, 11/13/11; A, 04/30/2014]

**16.4.15.12 [RESERVED]**

[16.4.15.12 NMAC - N, 11/13/11; Repealed, 1/30/15]

**PART 16: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

**16.4.16.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.16.1 NMAC - Rp 16 NMAC 4.16.1, 8/10/2019]

**16.4.16.2 SCOPE:**

All chiropractic physicians.

[16.4.16.2 NMAC - Rp 16 NMAC 4.16.2, 8/10/2019]

**16.4.16.3 STATUTORY AUTHORITY:**

Parental Responsibility Act Ch. 25, Laws of 1995, Sections 40-5A-1 to 40-5A-13 NMSA 1978.

[16.4.16.3 NMAC - Rp 16 NMAC 4.16.3, 8/10/2019]

**16.4.16.4 DURATION:**

Permanent.

[16.4.16.4 NMAC - Rp 16 NMAC 4.16.4, 8/10/2019]

**16.4.16.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section or paragraph.

[16.4.16.5 NMAC - Rp 16 NMAC 4.16.5, 8/10/2019]

**16.4.16.6 OBJECTIVE:**

This part establishes the requirements and possible penalties for non-compliance of the Parental Responsibility Act.

[16.4.16.6 NMAC - Rp 16 NMAC 4.16.6, 8/10/2019]

**16.4.16.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this part.

[16.4.16.7 NMAC - Rp 16 NMAC 4.16.7, 8/10/2019]

**16.4.16.8 PARENTAL RESPONSIBILITY ACT COMPLIANCE:**

**A.** The board adopts this rule pursuant to the Parental Responsibility Act (Ch. 25, Laws of 1995 40-5A-1 TO 40-5a-13 NMSA 1978). All terms defined in the Parental Responsibility Act shall have the same meanings in this rule.

**B.** If an applicant or licensee is not in compliance with a judgment or order for support, the board:

- (1) shall deny an application for license;
- (2) shall deny the renewal of a license; and
- (3) has grounds for suspension or revocation of a license.

**C.** Upon determination that the name and social security number of an applicant or licensee appears on a certified list of obligors not in compliance with a judgment or order for support provided by the human services department, the board shall:

- (1) notify the licensee that the licensee's name is on the certified list and that the licensee must provide the board with a subsequent certified statement from the

human services department or court order stating that the licensee is in compliance with such judgment or order for support; or

(2) commence a formal proceeding under Subsection C of 16.4.16.8 NMAC to take the appropriate action under Subsection A of 16.4.16.8 NMAC.

**D.** Prior to taking any action specified in Subsection A of 16.4.16.8 NMAC, the board shall serve upon the applicant or licensee a written notice stating that the board has grounds to take such action and that the board shall take such action unless the applicant or licensee:

(1) mails a letter (certified mail return receipt requested) within 20 days after service of the notice requesting a hearing; or

(2) provides the board, within 30 days of the date of the notice, a certified statement from the human services department or court order stating that the applicant or licensee is in compliance with a judgment or order of support.

**E.** In any hearing under this rule relevant evidence shall include, but not be limited to, the following:

(1) A certified statement from the human services department stating that the applicant or licensee is not in compliance with a judgment or order for support is prima facie evidence that requires the board to take any action under Subsection A of 16.4.16.8 NMAC of this rule, unless:

(2) The applicant or licensee can provide the board with a subsequent certified statement from the human service department or court order stating that the applicant or licensee is in compliance with such judgment or order for support. Such statement of compliance shall preclude the board from taking any action specified in Subsection A of 16.4.16.8 NMAC.

(3) Any other evidence which the applicant or licensee presents to evidence of compliance with a judgment or order of support.

**F.** When an action is taken under this rule solely because the applicant or licensee is not in compliance with a judgment or order of support, the board's order shall state that the application or license shall be reinstated upon presentation of a subsequent certified statement of compliance from the human services department or upon presentment of other proof of compliance.

**G.** Proceedings under this rule shall be governed by the Uniform Licensing Act, Section 61-1-1 NMSA 1978 et seq. (Repl. Pamp. 1993).

[16.4.16.8 NMAC - Rp 16 NMAC 4.16.8, 8/10/2019]

## **PART 17: SUPERVISION OF INTERNS**

### **16.4.17.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.17.1 NMAC - Rp 16 NMAC 4.17.1, 8/10/2019]

### **16.4.17.2 SCOPE:**

All chiropractic physicians.

[16.4.17.2 NMAC - Rp 16 NMAC 4.17.2, 8/10/2019]

### **16.4.17.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of Section 61-4-3 NMSA 1978.

[16.4.17.3 NMAC - Rp 16 NMAC 4.17.3, 8/10/2019]

### **16.4.17.4 DURATION:**

Permanent.

[16.4.17.4 NMAC - Rp 16 NMAC 4.17.4, 8/10/2019]

### **16.4.17.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.17.5 NMAC - Rp 16 NMAC 4.17.5, 8/10/2019]

### **16.4.17.6 OBJECTIVE:**

To establish requirements for supervising chiropractic physicians to safely train interns.

[16.4.17.6 NMAC - Rp 16 NMAC 4.17.6, 8/10/2019]

### **16.4.17.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.17.7 NMAC - Rp 16 NMAC 4.17.7, 8/10/2019]

#### **16.4.17.8 SUPERVISION OF INTERNS PRE AND POST:**

**A.** The purpose for the intern program in New Mexico shall be to safely complete advanced training for the under graduate and graduate chiropractic intern in the areas including, but not limited to, history taking, exams, imaging procedures, proper shielding and radiation monitoring procedures and interpretation, patient report of findings, treatment recommendations, treatment room control, staff management, general clinic policies, problem solving skills, team concepts, goal setting, administrative skills, and other training the doctor may feel appropriate to complete the intern's advanced chiropractic training. This purpose enhances the professional training of the intern, the chiropractic college curriculum, the teaching skills of the doctor, the professional status of the profession of chiropractic and the professional standard of chiropractic health care available to New Mexico consumers.

**B.** Supervising doctor must have a current New Mexico license in "good standing" with the board and have been in active practice for at least three years.

**C.** Supervising doctor must have written verification from the college that intern or unlicensed graduate of a council on chiropractic education (CCE), or board approved equivalent thereof, accredited chiropractic college sanctioned intern program, and the doctor must assure compliance to the guidelines of the intern program.

**D.** Supervising doctor must personally train intern in chiropractic procedure.

**E.** Supervising doctor must be physically in the same building and immediately available in order for the intern to adjust any patient.

**F.** Public must be informed that the intern is an "intern chiropractor, not licensed in the state", and must sign an informed consent document approved by the board to this effect.

**G.** The supervising doctor must consult with intern prior to the intern's initial treatment of any patient.

**H.** Supervising doctor must continue to supervise progress of the patient and must personally treat the patient at least every third visit, or at any time there is a significant change in the patient's condition.

**I.** Supervising doctor may allow intern to assist in various exams and therapies after being trained and cleared by the supervising doctor on proper chiropractic procedures.

**J.** The supervising doctor must inform the college and the board if the intern is deemed professionally incompetent in diagnosis or treatment or if the intern has other personal habits (alcoholism, drug addiction, moral turpitude, etc.) that would be unsafe for the public.

**K.** A supervising doctor may not supervise more than two interns at one time. The board must approve the training of more than four interns in any individual or group practice at the same time.

**L.** Supervising doctor must register with the New Mexico board of chiropractic examiners the interns' names, the college they are from, and the term of the internship, and provide proof of malpractice insurance for the supervising doctor in minimum amount of \$100,000 per person - \$300,000 per occurrence coverage, at least 15 days before the first day of the internship.

**M.** Supervising doctor must sign an affidavit agreeing to abide by the rule as set forth in 16.4.17 NMAC.

**N.** The board is to be sent a copy of any regular report sent to the college involving the intern at the time the report is sent to the college.

[16.4.17.8 NMAC - Rp 16 NMAC 4.17.8, 8/10/2019]

#### **16.4.17.9 CHIROPRACTIC INSURANCE CONSULTANTS AND PEER REVIEW CONTRACTORS:**

**A.** Chiropractic insurance consultants and peer review contractors advise insurance companies, third-party administrators and other similar entities of New Mexico standards of:

(1) recognized and accepted chiropractic services and procedures permitted by the New Mexico chiropractic statute, usual and customary practices and procedures and administrative rules; and

(2) the propriety of chiropractic diagnosis and care.

**B.** All licensees who review chiropractic records for the purposes of determining the adequacy or sufficiency of chiropractic treatments, or the clinical indication for those treatments, shall notify the board annually that they are engaged in those activities and of the location where those activities are performed.

**C.** Any person or professional shall not hold themselves out as chiropractic insurance consultants or provide chiropractic peer review services unless they meet the following requirements:

(1) hold a current chiropractic license in New Mexico;

(2) have practiced chiropractic in the state of New Mexico during the immediately preceding five years;

(3) are actively involved in a chiropractic practice during the term of employment as a chiropractic insurance consultant or peer review consultant; active practice includes but is not limited to maintaining an office location and providing clinical care to patients that comprises more than fifty percent of their total compensable work product.

[16.4.17.9 NMAC - Rp 16 NMAC 4.17.9, 8/10/2019]

## **PART 18: PRACTICE PROCEDURES**

### **16.4.18.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.18.1 NMAC - Rp 16 NMAC 4.18.1, 8/10/2019]

### **16.4.18.2 SCOPE:**

All chiropractic physicians.

[16.4.18.2 NMAC - Rp 16 NMAC 4.18.2, 8/10/2019]

### **16.4.18.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of 61-4-3 NMSA 1978, Subsection D of 61-4-6 NMSA 1978, and Subsection B of 61-4-9 NMSA 1978.

[16.4.18.3 NMAC - Rp 16 NMAC 4.18.3, 8/10/2019]

### **16.4.18.4 DURATION:**

Permanent.

[16.4.18.4 NMAC - Rp 16 NMAC 4.18.4, 8/10/2019]

### **16.4.18.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.18.5 NMAC - Rp 16 NMAC 4.18.5, 8/10/2019]

### **16.4.18.6 OBJECTIVE:**

To establish practice procedures to include diagnostic procedures, meridian therapy, obstetrics, invasive therapeutic procedures, imaging examinations, chiropractic rehabilitation of the neuromusculoskeletal system, manipulation under anesthesia and spinal manipulation.

[16.4.18.6 NMAC - Rp 16 NMAC 4.18.6, 8/10/2019]

#### **16.4.18.7 DEFINITIONS:**

(Refer to 16.4.1 NMAC).

[16.4.18.7 NMAC - Rp 16 NMAC 4.18.7, 8/10/2019]

#### **16.4.18.8 DIAGNOSTIC PROCEDURES:**

**A.** Chiropractic physicians being primary care providers are authorized to perform diagnostic procedures specified in this regulation, on the general population ranging from pediatrics through geriatrics, which shall include the authority to perform and take.

- (1)** Medical case history.
- (2)** Physical examination of all body systems including, but not limited to:
  - (a)** skin, hair, nails, head, eyes, ears, nose, throat and teeth;
  - (b)** cardio-vascular and respiratory system, including auscultation;
  - (c)** thorax and abdomen, including breast and rectal examination, when clinically appropriate;
  - (d)** genito-urinary and reproductive system, to include vaginal and prostate examination, when clinically appropriate;
  - (e)** musculo-skeletal system;
  - (f)** neurological system.

**B.** Authority to order diagnostic procedures. Chiropractic physicians are authorized to order any diagnostic procedure reasonably necessary to clinically correlate a physical examination to a diagnostic impression, which shall include, but not be limited to:

- (1)** laboratory procedures involving the collection of human fluids such as saliva, blood, urine, vaginal and seminal fluids, hair, feces;
- (2)** EEG, EKG, ECG and surface or needle EMG;

(3) imaging procedures such as x-ray, CT scan, MRI, nuclear scans, PET scans, SPECT, ultrasonography, thermography or other pertinent diagnostic studies.

**C. Authority to perform diagnostic procedures.**

(1) Chiropractic physicians are required to perform appropriate diagnostic procedures reasonably necessary to clinically correlate a physical examination to a diagnostic impression, (excluding surgical procedures and invasive procedures not herein specified), including but not limited to the collection and testing of human fluids, such as saliva, blood, urine, vaginal and seminal fluids, hair, feces, and conventional radiography.

(2) Chiropractic physicians who are trained in a course of doctoral or post-doctoral studies certified with an accredited institution recognized by the board are authorized to perform diagnostic procedures, including but not limited to MRI, CT, nuclear scans, ultrasonography; thermography, B.E.A.M., EEG, EKG, ECG and surface or needle EMG.

[16.4.18.8 NMAC - Rp 16 NMAC 4.18.8, 8/10/2019]

**16.4.18.9 MERIDIAN THERAPY:**

**A.** Chiropractors who practice meridian therapy must do so in conjunction with standard chiropractic adjusting and/or manipulative techniques.

**B.** Chiropractors who practice meridian therapy may not advertise or promote themselves in the media to be acupuncturists unless licensed pursuant to the Acupuncture Act.

**C.** Dry needling is a physical intervention that uses a filiform needle to stimulate trigger points, diagnose and treat neuromuscular pain and functional movement deficits; is based on the western medical concepts; requires an examination and diagnosis, and treats specific anatomic entities selected according to physical signs. Dry needling does not include the stimulation of auricular distal points.

[16.4.18.9 NMAC - Rp 16 NMAC 4.18.9, 8/10/2019]

**16.4.18.10 OBSTETRICS:**

**A.** No chiropractor shall undertake to deliver a human child or to assist the mother of the child during such delivery, except in cases of emergency or where another practitioner of the healing arts whose license authorizes him or her to deliver human children is present and actively participating in the delivery.

**B.** Nothing in this regulation shall preclude a chiropractor from undertaking to provide prenatal care to a pregnant woman provided that the chiropractor affirmatively

advises the woman that it would be unlawful for the chiropractor to deliver the child and that the patient should make arrangements with another practitioner of the healing arts whose license authorizes him or her to deliver human children to attend the woman during her delivery; and provided further that during the course of the delivery the chiropractor refrains from any cutting of human tissues, including but not limited to the cutting of the umbilical cord.

**C.** Nothing in this regulation shall be construed to prevent a licensed chiropractor from obtaining a license in another healing arts profession which includes the delivery of human babies in the normal scope of its practice and from practicing obstetrics pursuant to such a second healing arts license.

[16.4.18.10 NMAC - Rp 16 NMAC 4.18.10, 8/10/2019]

#### **16.4.18.11 IMAGING EXAMINATION:**

**A.** The following requirements for imaging examination have been established because of concerns about over-radiation and unnecessary X-ray exposure. The following should appear on films:

- (1) patient's name and age;
- (2) doctor's name, facility name, and address;
- (3) date of study;
- (4) left or right marker;
- (5) other markers as indicated;
- (6) adequate collimation;
- (7) gonad shielding, where applicable.

**B.** Minimum of A-P and lateral views are necessary for any regional study unless clinically justified.

**C.** As clinical evidence indicates, it may be advisable to produce multiple projections where there is an indication of possible fracture, significant pathology, congenital defects, or when an individual study is insufficient to make a comprehensive diagnosis/analysis.

**D.** Each film should be of adequate density, contrast, and definition, and no artifacts should be present.

E. The subjective complaints, if any, and the objective findings substantiating the imaging study must be documented in the patient record.

F. These rules are intended to complement and not supersede those rules adopted by the environmental improvement board set forth in x-rays in the healing arts, 20.3.6 NMAC including but not limited to the requirement of certification.

[16.4.18.11 NMAC - Rp 16 NMAC 4.18.11, 8/10/2019]

#### **16.4.18.12 CHIROPRACTIC EXERCISE AND THERAPUTIC TREATMENT OF THE NEUROMUSCULOSKETLETAL SYSTEM:**

Chiropractic physicians may prescribe or administer all necessary mechanical, hygienic and sanitary measures incident to the care of the body including but not limited to air, sound, cold, diet, nutritional adjuncts, exercise, heat, light, massage, physical culture, rest, ultrasound, water, oxygen and electricity and other devices used for the delivery of chiropractic physiologic therapeutic procedures.

[16.4.18.12 NMAC - Rp 16 NMAC 4.18.12, 8/10/2019]

#### **16.4.18.13 MANIPULATION UNDER ANESTHESIA:**

Chiropractic physicians who can demonstrate training in a course of doctoral or post-doctoral studies certified within an accredited institution recognized by the board are authorized to perform manipulation under anesthesia, with that anesthesia administered by an appropriate, licensed provider.

[16.4.18.13 NMAC - Rp 16 NMAC 4.18.13, 8/10/2019]

### **PART 19: CHIROPRACTIC ASSISTANTS**

#### **16.4.19.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.19.1 NMAC - Rp 16 NMAC 4.19.1, 8/10/2019]

#### **16.4.19.2 SCOPE:**

All chiropractic physicians and chiropractic assistants.

[16.4.19.2 NMAC - Rp 16 NMAC 4.19.2, 8/10/2019]

#### **16.4.19.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of Section 61-4-3 and Subsection D of 61-4-5 NMSA 1978.

[16.4.19.3 NMAC - Rp 16 NMAC 4.19.3, 8/10/2019]

**16.4.19.4 DURATION:**

Permanent.

[11/16/97; Recompiled 12/31/01]

**16.4.19.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section or paragraph.

[16.4.19.5 NMAC - Rp 16 NMAC 4.19.5, 8/10/2019]

**16.4.19.6 OBJECTIVE:**

To establish educational requirements and duties for chiropractic assistants and defines supervision of a chiropractic physician and define supervision of a chiropractic physician.

[16.4.19.6 NMAC - Rp 16 NMAC 4.19.6, 8/10/2019]

**16.4.19.7 DEFINITIONS:**

(Refer to subsection D of 16.4.1.7 NMAC).

[16.4.19.7 NMAC - Rp 16 NMAC 4.19.7, 8/10/2019]

**16.4.19.8 CHIROPRACTIC ASSISTANT:**

**A.** The minimum education requirement for a chiropractic assistant is high school graduation or equivalent with a minimum of three months of supervised training in the specific duties and procedures the chiropractic assistant will perform.

**B.** The chiropractic assistant can, under the supervision of the chiropractic physician, perform diagnostic tests and administer the use of any or all natural agencies imbued with the healing act such as food, water, heat, cold, electrical mechanical appliances, herbs, nutritional supplements and homeopathic remedies.

**C.** As used in this section, the term "under the supervision of the chiropractic physician" means that:

(1) the chiropractic physician shall have a current New Mexico license in "good standing" with the board;

(2) the chiropractic physician shall personally train the chiropractic assistant in any procedure they practice; and

(3) the chiropractic physician must be physically present in the same building and immediately available in order for the chiropractic assistant to treat the patient.

[16.4.19.8 NMAC - Rp 16 NMAC 4.19.8, 8/10/2019]

## **PART 20: ADVERTISING**

### **16.4.20.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.20.1 NMAC - Rp 16.4.20.1 NMAC, 8/10/2019]

### **16.4.20.2 SCOPE:**

All licensed chiropractic physicians.

[16.4.20.2 NMAC - Rp 16.4.20.2 NMAC, 8/10/2019]

### **16.4.20.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Sections 61-4-2, 61-4-4, 61-4-6, 61-4-12 and 61-4-13 NMSA 1978.

[16.4.20.3 NMAC - Rp 16.4.20.3 NMAC, 8/10/2019]

### **16.4.20.4 DURATION:**

Permanent.

[16.4.20.4 NMAC - Rp 16.4.20.4 NMAC, 8/10/2019]

### **16.4.20.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.20.5 NMAC - Rp 16.4.20.5 NMAC, 8/10/2019]

### **16.4.20.6 OBJECTIVE:**

To establish guidelines for advertising which must be followed by all licensed chiropractic physicians and non-licensed chiropractic practice owners.

[16.4.20.6 NMAC - Rp 16.4.20.6 NMAC, 8/10/2019]

#### **16.4.20.7 DEFINITIONS:**

Refer to 16.4.1.7 NMAC.

[16.4.20.7 NMAC - Rp 16.4.20.7 NMAC, 8/10/2019]

#### **16.4.20.8 STATEMENT OF POLICY:**

It is the policy of the board that advertising by licensed practitioners of chiropractic should be regulated in order to fulfill the duty of the state of New Mexico to protect the health, safety and welfare of its residents, while not abridging any rights guaranteed to the practitioners or to the public by the Constitution of the United States and the Constitution of the state of New Mexico as construed by the United States supreme court and the New Mexico supreme court. To that end, the board permits the dissemination of legitimate information to the public concerning the science of chiropractic and individual practitioners thereof. Such dissemination of information must be done in accordance with this rule which is designed to reasonably facilitate the flow of accurate information and prevent fraudulent, false, deceptive, misleading or confusing advertising. Advertising not contrary to the prohibitions in this rule shall be deemed an appropriate means of informing the public of the availability of professional services.

[16.4.20.8 NMAC - Rp 16.4.20.8 NMAC, 8/10/2019]

#### **16.4.20.9 CERTAIN ADVERTISING PROHIBITED:**

**A.** Any chiropractor who disseminates or causes to be disseminated or allows to be disseminated any advertising which is in any way fraudulent, false, deceptive, misleading or confusing, shall be deemed to be in violation of the Chiropractic Physician Practice Act.

**B.** Fraudulent, false, deceptive, misleading or confusing advertising includes, but is not limited, to:

- (1)** advertising which contains a misrepresentation of any fact or facts;
- (2)** advertising which, because of its contents or the context in which it is presented, fails to disclose relevant or material facts or makes only partial disclosure of relevant or material facts;

**(3)** advertising which makes claims of, or conveys the impression of superior professional qualifications which cannot be substantiated by the chiropractor;

**(4)** advertising which contains distorted claims or statements about any individual chiropractor, chiropractic group or chiropractic office, clinic or center;

**(5)** advertising which creates unjustified expectations of beneficial treatment or successful cures;

**(6)** advertising which guarantees the results of any service, painless treatment, or which promises to perform any procedure painlessly;

**(7)** advertising which in any way appeals to fears, ignorance or anxieties regarding a persons state of health or physical or mental well-being;

**(8)** advertising which in any way intimidates or exerts undue pressure on the recipient;

**(9)** advertising which fails to conspicuously identify the chiropractor or chiropractors referred to in the advertising as practitioners of chiropractic by use of the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic", or "doctors of chiropractic";

**(10)** advertising which fails to be conspicuously identified as "chiropractic" advertising;

**(11)** advertising which fails to conspicuously identify the chiropractic practice, office, clinic or center being advertised by a name which includes the term "chiropractor", "chiropractors", "chiropractic", "chiropractic physician", "chiropractic physicians", "doctor of chiropractic" or "doctors of chiropractic";

**(12)** advertising which invades the field of practice of other licensed healthcare practitioners when the chiropractor is not allowed by rule or license to practice such profession;

**(13)** advertising which appears in a classified directory or listing, or otherwise under a heading which, when considered alone or together with the advertisement, does not accurately convey the professional status of the chiropractor or the professional services being advertised;

**(14)** advertising which concerns a transaction that is in itself illegal;

**(15)** advertising which employs testimonials which, by themselves or when taken together with the remainder of the advertisement intimidate, exert undue pressure on, or otherwise improperly influence the recipient.

**C.** Advertising which offers gratuitous services or discounts in connection with professional services; provided, however, that advertising may offer gratuitous services or discounts if:

**(1)** such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services which may be needed or appropriate in individual cases, and the possible range of such additional charges if such charges may be incurred;

**(2)** such advertising is not otherwise false, fraudulent, deceptive, misleading or confusing;

**(3)** such advertising offering a "spinal examination", "examination" or "scoliosis examination" or using any other similar phrase includes, at a minimum, the following tests or procedures: blood pressure, weight, height, reflexes, pulse, range of motion and orthopedic tests appropriate to the history; and

**(4)** such advertising offering "an examination" or using any other similar phrase includes the taking of a detailed problem focused history of the patient as it relates to the presenting complaints, and an appropriate neurological, orthopedic, and chiropractic physical examination including, where professionally indicated, the taking, developing and interpretation of x-rays and the performance and interpretation of laboratory or other specialized tests when necessary to establish a diagnosis; such x-rays and laboratory and other specialized tests must constitute a diagnostically complete study.

**D.** Advertisements may quote fixed prices for specific routine services if such advertising clearly and conspicuously states whether or not additional charges may be incurred for related services and the possible range of such additional charges if such charges may be incurred. A routine service is one which is not so unique that a fixed rate cannot meaningfully be established.

**E.** Chiropractors, their agents or any representatives who engage in telemarketing are required to inform the parties they call at the beginning of the call:

**(1)** who they are (caller's name);

**(2)** who they represent (clinic/doctor); and

**(3)** chiropractors, their agents or representatives engaging in telemarketing, either directly or through others, shall keep a voice recorded log of all phone call conversations and a written log to include date, telephone number, and the name of every person called; all such chiropractors, their agents or representatives shall keep such logs for a period of three years from the date of the telemarketing.

**F.** No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall misrepresent to the person called any association with an insurance company, other licensed health care provider or another chiropractor or group of chiropractors, nor shall such solicitor promise successful chiropractic treatment of injuries, or make any other misrepresentation of whatever kind for the purpose of selling chiropractic services.

**G.** No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall engage in such practices during hours prohibited by applicable municipal ordinance or state law, or in the absence of either, then other than between the hours 9 a.m. and 8 p.m. local time.

**H.** No chiropractor engaging in, or authorizing another to engage in, telemarketing of prospective patients shall make more than one telephone call to any telephone number unless requested by the recipient to call again.

**I.** No chiropractor shall advertise directly or indirectly, through any device or artifice, that the advertising chiropractor will not collect from any prospective patient, that patient's insurance deductible or co-payment obligations arising by virtue of any medical insurance policy provided for the payment, in whole or in part, of any chiropractor's charge. The words free initial consultation must be explicitly explained what a consultation consist of and at exactly what point charges begin to accrue with clear delineation between a free consultation and an exam with treatment for which services will be charged. At no time can any representation in regards to payment for services be misleading to the consumer or patient and it must be stated up front that if the patient decides to accept the care that they will be charged for all services and that payment will be expected whether it be from the patient, third-party payor, insurance, or medpay.

**J.** No applicant for licensure to practice chiropractic, and no unlicensed practitioner, shall advertise chiropractic services in this state in any way.

**K.** All advertisements by a chiropractor must include the full name of the chiropractor as it appears on his or her chiropractic license followed by the letters D.C. or the designation "chiropractor", "chiropractic physician" or "doctor of chiropractic".

**L.** Any form of solicitation offered to individuals whose identities are known through the use of any form of public record, including but not limited to police reports, shall be reviewed and approved by the board and re-approved annually. Unless specifically disapproved by the committee designated by the board the copy submitted may be used for patient solicitation. If approved or disapproved, that information shall be communicated to the submitting doctor within 30 days of submission. The submitting physician has the right to request a determination be made by the full board at its next scheduled meeting. The board holds the right during each renewal cycle to complete a random audit of all written materials, and mandatory voice recordings of all phone

conversations for a period up to three years following any telemarketing procedures from public record.

**M.** Any direct, individual contact by a licensee or the agent of a licensee with prospective patients through the use of public records, including but not limited to police or accident reports is prohibited.

**N.** The script for any telemarketing advertising shall be submitted to the board for approval and must be resubmitted yearly for ongoing use by any licensee or their agent.

[16.4.20.9 NMAC - Rp 16.4.20.9 NMAC, 8/10/2019]

## **PART 21: [RESERVED]**

## **PART 22: FEES**

### **16.4.22.1 ISSUING AGENCY:**

New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.22.1 NMAC - Rp 16.4.22.1 NMAC, 8/10/2019]

### **16.4.22.2 SCOPE:**

All licensed chiropractic physicians and non-licensee owners.

[16.4.22.2 NMAC - Rp 16.4.22.2 NMAC, 8/10/2019]

### **16.4.22.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of chiropractic in New Mexico and are promulgated pursuant to and in accordance with the Chiropractic Physician Practice Act, Subsection F of 61-4-7 and Subsection B of 61-4-13 NMSA 1978.

[16.4.22.3 NMAC - Rp 16.4.22.3 NMAC, 8/10/2019]

### **16.4.22.4 DURATION:**

Permanent.

[16.4.22.4 NMAC - N, 8/20/2012]

### **16.4.22.5 EFFECTIVE DATE:**

August 10, 2019, unless a later date is cited at the end of a section.

[16.4.22.5 NMAC - Rp 16.4.22.5 NMAC, 8/10/2019]

**16.4.22.6 OBJECTIVE:**

To establish annual administrative fees.

[16.4.22.6 NMAC - Rp 16.4.22.6 NMAC, 8/10/2019]

**16.4.22.7 DEFINITIONS:**

Refer to 16.4.1.7 NMAC.

[16.4.22.7 NMAC - Rp 16.4.22.7 NMAC, 8/10/2019]

**16.4.22.8 ADMINISTRATIVE FEES:**

**A.** In accordance with Subsection F of Section 61-4-7 and Subsection B of Section 61-4-13 NMSA 1978 of the New Mexico Chiropractic Physicians Practice Act, the board of chiropractic examiners establishes the following nonrefundable fees:

- (1) Initial application for licensure/certification:
  - (a) application fee \$350;
  - (b) expedited license application fee \$200;
  - (c) initial license fee \$350;
  - (d) advanced practice certification application fee \$100.
- (2) Reinstatement and reactivation:
  - (a) reinstatement of license \$125 (in addition to back renewal and penalty fees for each year, not to exceed two years);
  - (b) reactivation application fee \$200.
- (3) Annual renewal fees:
  - (a) active \$300;
  - (b) inactive \$100;
  - (c) advanced practice certification \$100;

(d) impairment fee of \$25 in addition to the license renewal fee, each chiropractor subject to renewal will be assessed an amount not to exceed \$60 per renewal period;

(e) penalty for late renewal \$100 (per month or portion of a month for which the license renewal fee is in arrears, the penalty not to exceed \$1000).

(4) Continuing education seminars and programs:

(a) continuing education fee individual course \$50;

(b) continuing education seminars and programs provided by entities or organizations that meet the criteria established by the board under Subsections E and F of 16.4.10.8 NMAC and who intend to submit approval for more than 10 but less than 25 continuing education programs or seminars will be assessed a fee of \$500.

(5) Any requests for approval that exceed 25 continuing education programs or seminars will be assessed a fee of:

(a) \$50/program or seminar or;

(b) a fee of \$500 if approval is for more than 10 but less than 25 continuing education programs or seminars.

(6) Miscellaneous fees listed below will be approved annually by the board and made available by the board office upon request:

(a) photocopying \$0.25;

(b) written license verifications \$25;

(c) list of licensees \$75;

(d) duplicate licenses \$25;

(e) duplicate renewal certificate \$25;

(f) copies of statutes, rules and regulations are free online at board web site.

**B.** The board shall annually designate that proportion of renewal fees which shall be used for the exclusive purposes of investigating and funding hearings regarding complaints against chiropractic physicians.

[16.4.22.8 NMAC - Rp 16.4.22.8 NMAC, 8/10/2019, A, 4/9/2022, A, 12/27/2022]

## **PART 23: LICENSURE FOR MILITARY VETERANS, SPOUSES, AND VETERANS [REPEALED]**

### **16.4.23.1 ISSUING AGENCY [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.2 SCOPE [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.3 STATUTORY AUTHORITY [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.4 DURATION [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.5 EFFECTIVE DATE [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.6 OBJECTIVE [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.7 DEFINITIONS [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.8 APPLICATION REQUIREMENTS [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.9 FEES [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.4.23.10 RENEWAL REQUIREMENTS [REPEALED]:**

[This part was repealed December 27, 2022.]

## **CHAPTER 5: DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)**

## **PART 1: GENERAL PROVISIONS**

### **16.5.1.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.1.1 NMAC - Rp, 16.5.1.1NMAC, 5/31/2023]

### **16.5.1.2 SCOPE:**

The provisions in 16.5.1 NMAC apply to all parts of Chapter 5 and provide relevant information to all licensees or certificate holders or anyone affected or interested in the licensing and regulation of dentists, dental hygienists and dental assistants, dental therapists, and non-dentist owners.

[16.5.1.2 NMAC - Rp, 16.5.1.2 NMAC, 5/31/2023]

### **16.5.1.3 STATUTORY AUTHORITY:**

Section 61-5A-1 through Section 61-5A-29, NMSA 1978, (Repl. Pamp. 1996). 16.5.1.10 NMAC is authorized by Subsection C of Section 10-15-1 NMSA 1978, (Repl. Pamp. 1993) 16.5.1.11 NMAC and 16.5.1.12 NMAC are authorized by Section 14-2-1 through 14-2-16, NMSA 1978, (Repl. Pamp. 1993). 16.5.1.26 NMAC is authorized by Section 14-16-18, NMSA 1978.

[16.5.1.3 NMAC - Rp, 16.5.1.3 NMAC, 5/31/2023]

### **16.5.1.4 DURATION:**

Permanent.

[16.5.4 NMAC - Rp, 16.5.4 NMAC, 5/31/2023]

### **16.5.1.5 EFFECTIVE DATE:**

May 31, 2023, unless a different date is cited at the end of a section.

[16.5.1.5 NMAC - Rp, 16.5.1.5 NMAC, 5/31/2023]

### **16.5.1.6 OBJECTIVE:**

The objective of Part 1 is to set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16.

[16.5.1.6 NMAC - Rp, 16.5.1.6 NMAC, 5/31/2023]

### **16.5.1.7 DEFINITIONS:**

**A. Definitions beginning with the letter "A":**

(1) **"Act"** means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

(2) **"Assessment"** means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

(3) **"Authorization"** means written or verbal permission from a dentist to a dental hygienist, dental assistant, dental therapist, community dental health coordinator, expanded function dental auxiliary, or dental student to provide specific tests, treatments or regimes of care.

**B. Definitions beginning with the letter "B": [RESERVED]**

**C. Definitions beginning with the letter "C":**

(1) **"CDCA/WREB/CITA"** means the commission of dental competency assessments, the western regional examining board and the council of interstate testing agencies; a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(2) **"CITA"** means the council of interstate testing agencies, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(3) **"Close personal supervision"** means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

(4) **"Consulting dentists"** means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

(5) **"CRDTS"** means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(6) **"Current patients of record"** means the New Mexico licensed dentist has seen the patient in the practice in the last 12 months.

#### **D. Definitions beginning with the letter "D":**

(1) **"Dental hygiene-focused assessment"** means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

(2) **"Dental record"** means electronic, photographic, radiographic or manually written records.

(3) **"Diagnosis"** means the identification or determination of the nature or cause of disease or condition.

(4) **"Direct supervision"** means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(a) is physically present throughout the performance of the act;

(b) orders, controls and accepts full professional responsibility for the act performed;

(c) evaluates and approves the procedure performed before the patient departs the care setting; and

(d) is capable of responding immediately if any emergency should arise.

(5) **"Disqualifying criminal conviction"** means a conviction for a crime that is job-related for the position in question and consistent with business necessity.

#### **E. Definitions beginning with the letter "E":**

(1) **"Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(2) **"Extenuating circumstances"** are defined as a serious, physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

#### **F. Definitions beginning with the letter "F": [RESERVED]**

**G. Definitions beginning with the letter "G":** **"General supervision"** means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, dental therapist, or community dental health coordinator and the execution of the procedures in accordance

with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

**H. Definitions beginning with the letter "H": [RESERVED]**

**I. Definitions beginning with the letter "I":**

(1) **"Impaired Act"** means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978.

(2) **"Indirect supervision"** means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant, dental therapist, or dental student as defined in 61-5A-3 NMSA 1978.

**J. Definitions beginning with the letter "J": "Jurisprudence exam"** means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene, dental therapy and dental assisting in the state of New Mexico.

**K. Definitions beginning with the letter "K": [RESERVED]**

**L. Definitions beginning with the letter "L": "Licensee"** means an individual who holds a valid license to practice dentistry, dental therapy or dental hygiene in New Mexico. This also includes non-dentist owners who are licensed in New Mexico.

**M. Definitions beginning with the letter "M": "Mobile dental facility"** means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

**N. Definitions beginning with the letter "N":**

(1) **"NERB/CDCA"** means the former north east regional board of dental examiners, now called the commission of dental competency assessments, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(2) **"Non-dentist owner"** means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in Subsection G of Section 61-5A-5 NMSA 1978.

**O. Definitions beginning with the letter "O": [RESERVED]**

**P. Definitions beginning with the letter "P":**

(1) **"Palliative procedures"** means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

(2) **"Portable dental unit"** means a non-facility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

(3) **"Professional background service"** means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

(4) **"Protective patient stabilization"** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.

(5) **"Provider"** means a provider of dental health care services, including but not limited to dentists, dental hygienists, dental therapists, community dental health coordinators and dental assistants, including expanded function dental auxiliaries.

**Q. Definitions beginning with the letter "Q": [RESERVED]**

**R. Definitions beginning with the letter "R": [RESERVED]**

**S. Definitions beginning with the letter "S":**

(1) **"Specialist"** means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.

(2) **"SRTA"** means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(3) **"Supervising dentist"** means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

(4) **"Supervision"** means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

**T. Definitions beginning with the letter "T":**

(1) **"Teledentistry"** means a dentist's, dental hygienist's or dental therapist's use of electronic information, imaging and communication technologies, including interactive audio, video and data communications as well as store-and-forward technologies, to provide and support dental health care delivery, diagnosis, consultation, treatment, transfer of dental data and education."

(2) **"Third Party payer"** means an organization other than the patient (1st party) or the health care provider (2nd party) involved in the financing of personal health services.

**U. Definitions beginning with the letter "U": [RESERVED]**

**V. Definitions beginning with the letter "V": [RESERVED]**

**W. Definitions beginning with the letter "W":**

(1) **"WREB"** means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

(2) **"Written authorization"** means a signed and dated prescription from a supervising dentist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

**X. Definitions beginning with the letter "X": [RESERVED]**

**Y. Definitions beginning with the letter "Y": [RESERVED]**

**Z. Definitions beginning with the letter "Z": [RESERVED]**

[16.5.1.7 NMAC - Rp, 16.5.1.7 NMAC, 5/31/2023]

**16.5.1.8 LICENSE DISPLAY:**

A valid license, certificates or permits must be displayed and must be visible to the public in each place of employment or business of the licensee.

[16.5.1.8 NMAC - Rp, 16.5.1.8 NMAC, 5/31/2023]

**16.5.1.9 RESPONSIBILITY OF LICENSEE OR CERTIFICATE HOLDER:**

**A.** It is the responsibility of the licensee or certificate holder to keep the board informed of a current mailing address. All correspondence, including renewal forms, will

be mailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of address.

**B.** The board must be informed of current practice address(s) for all licensees or certificate holders. Any change in practice address(s) must be reported to the board in writing within 30 days of the change.

[16.5.1.9 NMAC - Rp, 16.5.1.9 NMAC, 5/31/2023]

#### **16.5.1.10 SEVERABILITY:**

If any part of these rules are held invalid by a court of competent jurisdiction, the remaining provisions of the rules shall remain in force and effect, unless otherwise determined by a court of competent jurisdiction.

[16.5.1.10 NMAC - Rp, 16.5.1.10 NMAC, 5/31/2023]

#### **16.5.1.11 TELEPHONE CONFERENCES:**

As authorized by Subsection C of Section 10-15-1 NMSA 1978 of the Open Meetings Act, NMSA 1978, when it is difficult or impossible for a member of the board or committee to attend a meeting in person, the member may participate through a conference telephone. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board or committee who speaks during the meeting.

[16.5.1.11 NMAC - Rp, 16.5.1.11 NMAC, 5/31/2023]

#### **16.5.1.12 PUBLIC RECORDS:**

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the board. Upon notification of the defendant, the notice of contemplated action, or the pre notice of contemplated action settlement agreed upon prior to the issuance of an notice of contemplated action and the information contained in the complaint file becomes a public record and subject to disclosure. With the exemption of voluntarily admission to a monitored treatment program shall not be public record. (Refer to 61-5A-25, NMSA 1978).

[16.5.1.12 NMAC - Rp, 16.5.1.12 NMAC, 5/31/2023]

#### **16.5.1.13 INSPECTION OF PUBLIC RECORDS:**

The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16, NMSA 1978. The board administrator is the custodian of the board's records.

[16.5.1.13 NMAC - Rp, 16.5.1.13 NMAC, 5/31/2023]

**16.5.1.14 NON-PUBLIC RECORDS:**

The following records are considered confidential and are not subject to public inspection:

- A.** letters of reference, if applicable;
- B.** medical reports or records of chemical dependency, physical or mental examinations or treatment as outlined in the rules governing the impaired practitioner program;
- C.** examination scores;
- D.** the contents of any examination used to test for an individual's knowledge or competence;
- E.** investigative files;
- F.** written and oral communication relating to actual or potential disciplinary action, including complaints; and
- G.** matters of opinion.

[16.5.1.14 NMAC - Rp, 16.5.1.14 NMAC, 5/31/2023]

**16.5.1.15 GUIDELINES FOR APPROVED CONTINUING EDUCATION:**

**A.** Continuing education is defined as dental related education that contributes to the existing knowledge base of a licensee or certificate holder, which would include but not limited to; treatment modalities, advances in science, patient health, safety, and management; practice and workplace management for the practice of dentistry, dental therapy, dental hygiene and dental assisting.

**B. Credit hours:**

- (1) one hour of credit will be granted for every hour of contact instruction.
- (2) eight hours shall be the maximum number of continuing education credits granted in a single day.

**C. Approved providers and sponsors:** The following providers are approved for delivering continuing education.

(1) local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional associations or organizations; and affiliate organization using their approved CE program designations.

(2) institutions accredited by the United States department of education.

(3) Federal and State Governmental agencies such as military dental division or the Veterans Administration.

(4) hospitals and medical clinics.

(5) board approved study clubs as further defined in Subsection H of 16.5.1.15 NMAC.

**D. Approved methods for acquiring continuing education:**

(1) attendance at scientific meetings or sessions.

(2) live virtual webinars. (i.e., courses conducted live, in real-time with the ability to interact with the speaker.

(3) Self-study. A method of instruction that is self-paced such as those offered through magazines, articles, pre-recorded audio or video recordings which are viewed or listened to at a later date.

(a) a post instruction examination must be successfully completed for all self-study methods.

(b) a licensee is allowed a maximum of 30 hours in the category of self-study per triennial renewal period.

(4) Medical education courses that are accredited by the American council for continuing medical education (ACCME) shall be limited to eight hours per triennial period.

(5) Courses not sponsored by a recognized provider as indicated in Subsection C of 16.5.1.15 NMAC may be approved for credit by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters.

**E. Basic life support (BLS) or cardiopulmonary resuscitation (CPR). A licensee is eligible to receive hour for hour credit for course taken to acquire this certification.**

(1) Certification must be acquired through a live hands-on course or through a hybrid method where demonstration of skills is still required.

- (2) Certification acquired through a self-study only course, is not allowed.

**F. Additional approved activities eligible for continuing education credit:**

(1) presenting. An original presentation by a licensee is eligible to receive hour for hour credit for preparation and delivery of such presentation. A licensee shall be allowed a maximum of eight hours each triennial period. The licensee shall retain as proof of such presentation an outline, date, place and sponsor of the presentation.

(2) clinical examiners for regional boards. A licensee participating in the training and calibration sessions of a regional board examination shall be allowed a maximum of 24 hours each triennial period.

(3) volunteer for the board or committee. A non-board or non-committee licensee volunteering for the board of committee may receive up to 10 hours of continuing education for board approved activities; including serving as a hearing officer, investigator, mentor, or monitor.

(4) approved charitable events. A licensee participating in a board or dental hygiene committee approved charitable event shall be allowed a maximum of eight hours each triennial period.

(5) graduate or post-graduate. Courses taken by a licensee at institutions of higher education for the purpose of receiving a dental related degree, advanced degree or certificate are eligible for continuing education credit. A licensee shall be allowed 10 hours per semester credit hour, as assigned in the course catalogue of the educational institution.

(6) professional training programs. Such as those taken for acquiring expanded certifications or education. Examples include but not limited to, trainings for local anesthesia and expanded function dental auxiliary certification. When given by an approved provider as defined in Subsection C of 16.5.1.15 NMAC.

(7) academic Teaching. A licensee who instructs as a full, part, or adjunct faculty, at a dental related program is allowed a maximum of 5 continuing education hours per semester credit hour that is taught at an institution of higher education. Not to exceed a maximum of 10 credit hours per triannual renewal.

(8) jurisprudence exam. A licensee or certificate holder may take the board's open book jurisprudence examination, up to once a year, and be granted three hours of continuing education credit for successfully passing the exam with a score of seventy-five percent or above. There will be a twenty-five dollar (\$25) administrative fee for the exam to cover the cost of handling.

**G. Course limitations and courses not allowed.**

(1) Courses that are primarily in relationship to maximizing income, billing, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period.

(2) Courses dealing largely with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to dental care may not be used to fulfill continuing education requirements.

(3) CE received as part of declaratory decree or as a result of disciplinary order shall not count toward the total triennial continuing education hours needed by the licensee. or certificate holder.

**H. Approved study clubs. The board may approve study clubs which meet the following criteria:**

(1) Composed of not less than five licensees with elected officers, written bylaws, and regular meetings.

(2) Organized for the purpose of scientific study.

(3) The approved club must keep records of continuing education information or material presented the number of hours and the members in attendance; audio-visual recordings or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material.

**I. Verification of course attendance. The following documents, or combination of documents, may be used to verify attendance in the required continuing education:**

(1) course certificate with the course title, content, presenter, sponsor and hours;

(2) pamphlet of course with same information as requested on certificate along with proof of purchase;

(3) course attendance sheet submitted from the sponsor;

(4) course code or statement of attendance from presenter or sponsor of licensee attendance;

(5) for out of state courses and meetings when certificates or sign-in sheets are not available, the licensee may provide a copy of the registration form, with a copy of courses in printed form which were offered, identify the ones attended, along with information regarding travel and lodging accommodations for the meeting;

(6) licensee is responsible for maintaining records of all CEUs for one year following the renewal cycle.

[16.5.1.15 NMAC - Rp, 16.5.1.15 NMAC, 5/31/2023]

#### **16.5.1.16 CONTROL AND PREVENTION OF BLOODBORNE INFECTIONS:**

The following rules are enacted to prevent transmission of the human immunodeficiency virus (HIV), hepatitis B infectious state (i.e. acute infection and chronic carriers only) (HBV), the hepatitis C virus (HCV), and other blood borne infections.

**A. Requirements for providers.** Any provider licensed or certified by the New Mexico board of dental health care must comply with the guidelines established in this rule. A provider who fails to use appropriate infection control techniques and sterilization procedures to protect patients may be subject to disciplinary action by the board.

**B. Infection control as a standard of care.** In offices and facilities providing dental services, compliance with the following policies and procedures are required to further reduce the low risk of infection:

(1) implementation of policies and procedures to minimize occupational exposure to potentially infectious materials (e.g. blood); guidelines or recommendations of the American dental association, American dental hygienists' association, center for disease control, and the occupational safety and health administration must be followed;

(2) strict adherence to infection control practices and universal barrier precautions are mandatory in all dental care settings and shall include sterilization of instruments and hand pieces, after each use, by any acceptable sterilization technique as currently recognized by the center for disease control; and

(3) policies and procedures must be implemented to report and manage patient and provider exposure to blood; affected individuals must be notified when exposure may constitute a significant risk of transmission of blood borne infection; the notification must include the nature of possible infection, but need not include the identity of the provider should the provider be the known source of infection.

**C. Infection control training.** All providers shall have formal training in infection control techniques. Training is a requirement for licensure, as well as for renewal of all licenses and certificates. The course must be approved in accordance with 16.5.1.15 NMAC or sponsored by the occupational safety and health administration.

**D. Evaluation of provider with blood borne infection.**

(1) Counseling and testing recommended. The board and committee strongly recommend counseling and testing of any provider for HIV, HBV, HCV and other blood borne infections.

(2) Evaluation of individual cases. Providers who have transmissible blood borne infections and who perform invasive procedures which might cause increased risk of transmission are strongly urged to submit to a voluntary evaluation process established by the New Mexico department of health. Individual evaluations conducted under the auspices of the New Mexico department of health will be strictly confidential unless that agency recommends practice restrictions. The New Mexico department of health will notify the board and committee of recommended practice restrictions. Any violation of practice restrictions will be considered grounds for disciplinary action by the board and committee.

(3) Impairment evaluation. If a dental health care provider licensed or certified by the board has a functional impairment due to blood borne infection or other medical impairment, they must contact the impaired committee of the board.

#### **E. Confidentiality for dental health care workers.**

(1) The board and committee recognize providers are not required to disclose blood borne infections to patients or employers unless they cannot perform the essential duties of their job or practice, or unless the provider poses a danger to patient safety.

(2) Any retrospective studies of New Mexico providers shall be carried out under the guidance and direction of the New Mexico department of health.

[16.5.1.16 NMAC - Rp, 16.5.1.16 NMAC, 5/31/2023]

#### **16.5.1.17 BOARD OF DENTAL HEALTH CARE:**

**A. Officers.** The board shall elect a chair, vice-chair, and secretary-treasurer at the first regularly scheduled meeting in each calendar year.

**B. Committee members.** Two dentist members and two public members from the board shall be elected to serve as members of the dental hygienists committee at the first regularly scheduled meeting in each calendar year.

[16.5.1.17 NMAC - Rp, 16.5.1.17 NMAC, 5/31/2023]

#### **16.5.1.18 DENTAL HYGIENIST COMMITTEE:**

**A. Officers.** The committee shall elect a chair, vice-chair, and secretary at the first regularly scheduled meeting in each calendar year.

**B. Board members.** Two dental hygienists members of the committee shall be elected to serve as members of the board of dental health care by a simple majority vote at the first regularly scheduled meeting in the calendar year.

[16.5.1.18 NMAC - Rp, 16.5.1.18 NMAC, 5/31/2023]

**16.5.1.19 BOARD AND COMMITTEE MEETINGS:**

The board and committee shall meet at least four times a year, regular meetings shall not be more than 120 days apart, and only two of those meetings may be public rules hearings.

[16.5.1.19 NMAC - Rp, 16.5.1.19 NMAC, 5/31/2023]

**16.5.1.20 [RESERVED]:**

[16.5.1.20 NMAC - Rp, 16.5.1.20 NMAC, 5/31/2023]

**16.5.1.21 CONSULTING SERVICES; CLAIMS REVIEW BY INSURANCE COMPANIES OR THIRD PARTY PAYERS:**

A dentist who reviews dental insurance or third party payment claims for patients being treated by a dentist in New Mexico must meet the following requirements:

**A.** be a current New Mexico licensed dentist; and

**B.** within 60 days, of initial agreement or contract with insurance company or third party payer, the reviewing dentist must provide the board office with the dentist's license number and name of the insurance company or third party payer for which the dentist is providing claims review services.

[16.5.1.21 NMAC - Rp, 16.5.1.21 NMAC, 5/31/2023]

**16.5.1.22 LEGAL EXPERT WITNESS REQUIREMENTS:**

A dentist who testifies in a malpractice case(s) or legal case(s) involving New Mexico licensed dentists and procedures performed in New Mexico must also be a current New Mexico licensed dentist and in good standing.

[16.5.1.22 NMAC - Rp, 16.5.1.22 NMAC, 5/31/2023]

**16.5.1.23 PARENTAL RESPONSIBILITY ACT; DELEGATION OF AUTHORITY:**

The authority of the New Mexico board of dental health care to issue a notice of contemplated action, to refer cases in which a notice of contemplated action has been issued for administrative prosecution, to hold hearings and issue decision and orders to any licensee or applicant for licensure whose name appears on the certified list issued

by the New Mexico department of human services, as provided in Section 40-5A-1, et seq., NMSA 1978, may be delegated to the New Mexico regulation and licensing department. This section shall not be construed to deprive the board of its authority to issue a notice of contemplated action for any violation of the Parental Responsibility Act, to refer a case for administrative prosecution, hold a hearing or issue a decision and order for any violation of the Parental Responsibility Act.

[16.5.1.23 NMAC - Rp, 16.5.1.23 NMAC, 5/31/2023]

#### **16.5.1.24 RECORD KEEPING:**

All records of patient treatment must be maintained for at least six years. If a dentist or non-dentist owner retires or is no longer practicing in New Mexico, the dentist or non-dentist owner must provide the following documentation to the board office:

- A. actual date of retirement or date of no longer practicing in New Mexico;
- B. proof of written notification to all patients currently under active treatment; and

C. the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients in the 12 previous months to the date of closing practice, the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.1.24 NMAC - Rp, 16.5.1.24, 5/31/2023]

#### **16.5.1.25 CODE OF ETHICS:**

Unless otherwise stated in the rules or statute, the board, licensees and certificate holders shall refer to the most recent version of the American dental association (ADA) code of ethics for guidance.

[16.5.1.25 NMAC - Rp, 16.5.1.25 NMAC, 5/31/2023]

#### **16.5.1.26 ELECTRONIC SIGNATURES:**

The board will accept electronic signatures on all applications and renewals submitted for professional licensure under the Dental Health Care Act, Sections 61-5A-1 to-30, NMSA 1978.

[16.5.1.26 NMAC - Rp, 16.5.1.26 NMAC, 5/31/2023]

#### **16.5.1.27 PROTECTIVE PATIENT STABILIZATION:**

Unless otherwise stated in rules or statute, the board, licensees and certificate holders shall refer to the American academy of pediatric dentistry's guidelines on protective patients stabilization.

[16.5.1.27 NMAC - Rp, 16.5.1.27 NMAC, 5/31/2023]

#### **16.5.1.28 MOBILE DENTAL FACILITIES AND PORTABLE DENTAL UNITS:**

Dentists and dental hygienists that perform services in mobile dental facilities or use portable dental units shall use the following guidelines:

- A.** Maintain all records, either paper or electronic in a secure form or location.
- B.** Provide to the board, upon request, all treatment records and locations of treatment.
- C.** Provide to the board, upon request, the name, address, and contact information of the owner/operator of the mobile dental facility.
- D.** Provide each patient, parent, or guardian with the name(s) of the dentist or hygienist providing treatment and contact information immediately after treatment.
- E.** Have agreements in place with New Mexico licensed dentists for any immediate follow-up care.
- F.** Dentists and hygienists shall display a copy of their license and registration within or directly outside the mobile dental facility or areas in which portable dental units are utilized. Exceptions:
  - (1) occasional services provided to a patient of record of a fixed dental office who is treated outside of the dental office;
  - (2) services publicly funded and provided solely as a public health measure;
  - (3) services provided to a patient by an accredited dental or dental hygiene school;
  - (4) services by a dentist, physician, or CRNA providing sedation in a dental office;
  - (5) collaborative hygienists in compliance with rules established in 16.5.17 NMAC.

[16.5.1.28 NMAC - Rp, 16.5.1.28 NMAC, 5/31/2023]

### **16.5.1.29 ADVERTISING, PROMOTIONS AND SPECIALTY RECOGNITIONS FOR ALL LICENSEES:**

This rule applies to advertising in all types of media that is directed to the public. No dentist, dental hygienist, non-dentist owner, or their representatives shall advertise in any form of communication in a manner that is misleading, deceptive, or false. The licensee will be responsible for any third party making such false claims or misleading advertising on their (licensee's) behalf.

#### **A. Definitions:**

(1) for the purposes of this section, "advertising/advertisement" is:

(a) any written or printed communication for the purpose of soliciting, describing, or promoting a dentist's, hygienist's, non-dentist owner's licensed activity, including, but not limited to, a brochure, letter, pamphlet, newspaper, directory listing, periodical, business card or other similar publication;

(b) any radio, television, internet, computer network or similar airwave or electronic transmission which solicits or promotes the dental practice'

(c) "advertising" or "advertisement" does not include any of the following;

(i) any printing or writing on buildings, uniforms or badges, where the purpose of the writing is for identification;

(ii) any printing or writing on memoranda or other communications used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of the dental practice;

(iii) any printing or writing on novelty objects or dental care products.

(2) "bait advertising" is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise or services, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise or services of the type so advertised. See 16 U.S.C Section 238.

#### **B. General requirements:**

(1) at the time any type of advertisement is placed, the licensee must in good faith possess and provide to the board upon request information that would substantiate the truthfulness of any assertion, omission, or claim set forth in the advertisement;

(2) the board recognizes that clinical judgment must be exercised by a dentist or dental hygienist. Therefore, a good faith diagnosis that the patient is not an appropriate candidate for the advertised dental or dental hygiene service or product is not a violation of this rule;

(3) licensee shall be responsible for, and shall approve any advertisement made on behalf of the dental or dental hygiene practice, except for brand advertising, i.e. advertising that is limited to promotion of the name of the practice or dental corporation. The licensee shall maintain a record documenting their approval and shall maintain such record for a period of three years.

**C.** The term false advertising means advertising, including labeling, which is misleading in any material respect; and in determining whether any advertising is misleading, there shall be taken into account among other things not only representations made by statement, word, design, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising related under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. See Section 57-15-2 NMSA 1978. Misleading, deceptive, or false advertising includes, but is not limited to the following, and if substantiated, is a violation and subject to disciplinary action by the board:

(1) a known material misrepresentation of fact;

(2) the omission of a fact necessary to make the statement considered as a whole not materially misleading;

(3) advertising that is intended to be or is likely to create an unjustified expectation about the results the dentist or dental hygienist can achieve;

(4) advertising that contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purpose of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Individual experiences are not a substitute for scientific research. Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;

(5) the false or misleading use of a claim regarding licensure, certification, registration, permitting, listing, education, professional memberships or an unearned degree;

(6) advertising that uses patient testimonials unless the following conditions are met:

(a) the patient's name , address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the Board upon request by the board;

(b) dentists or dental hygienists who advertise dental or dental hygiene services, which are the subject of the patient testimonial, must have actually provided these services to the patient making the testimonial;

(c) if compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such testimonial must include a statement that the patient has been compensated for such testimonial;

(d) a specific release and consent for the testimonial shall be obtained from the patient;

(e) any testimonial shall indicate that results may vary in individual cases;

(7) advertising that makes an unsubstantiated medical claim or is outside the scope of dentistry, unless the dentist or dental hygienist holds a license, certification, or registration in another profession and the advertising and or claim is within the scope authorized by the license, certification, or registration in another profession;

(8) advertising that makes unsubstantiated promises or claims, including but not limited to claims that the patient will be cured;

(9) the use of bait advertising as outlined in federal trade commission guidelines;

(10) advertising that includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind if it does not indicate that it is a paid endorsement;

(11) advertising that infers or gives the appearance that such advertisement is a news item without using the phrase "paid advertisement";

(12) the promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;

(13) the use of any personal testimonial by the licensee attesting to a quality or competence of a service or treatment.

(14) advertising that claims to provide services at a specific rate and fails to disclose that a dental benefit plan may provide payment for all or part of the services;

(15) print advertising that contains all applicable conditions and restrictions of an offer that is not clearly legible or visible. The board will consider font size and positioning within the advertisement as to what is determined as false, misleading or deceptive;

(16) audio advertising that contains all applicable conditions and restrictions that is broadcast at different speed and volume of the main recording and offer;

(17) failure to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's or non-dentist owner's name(s), address and contact information or direct reference where the name of the dentist(s) or non-dentist owner(s) can be found, including, but not limited to, an internet website;

(18) failure to update website(s) wherein the names of the current dentist(s) are for each office location within 30 days of the change;

(19) failure to practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

(20) failure to practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;

(21) advertising or making claims that a licensee or practice claims to be superior to any other licensee or practice, including, but not limited to, descriptions of being "the highest quality", a "super-dentist" or "super-general dentist/practitioner", "specially-trained hygienist", "hygienist specializing in non-surgical periodontics", or similar;

**D. Specialty Practice and Advertising:** the board may discipline a dentist for advertising or otherwise holding himself/herself out to the public as a practicing a dental specialty unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation (CODA) in one to the specialty areas of dentistry recognized by the American dental association. See Subsection E and F of Section 61-5A-12 NMSA 1978.

**E. Acronyms:** In addition to those acronyms required by law pertaining to one's business entity such as professional corporation (P.C.) or limited liability company (L.L.C.), dentists or dental hygienists may only use DDS, DMD, RDH, MD, PhD, MA, MS, BA, BS. Any credential that does not meet this requirement must be completely spelled out.

[16.5.1.29 NMAC - Rp, 16.5.1.29 NMAC, 5/31/2023]

**16.5.1.30 CRIMINAL OFFENDERS EMPLOYMENT ACT:**

Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify and applicant from receiving or retaining a license or certificate by the board.

**A. Physical harm to others:**

- (1) murder;
- (2) manslaughter;
- (3) assault;
- (4) battery;
- (5) abandonment of a child resulting in death or great bodily harm;
- (6) abuse of a child;
- (7) kidnapping;
- (8) false imprisonment;
- (9) sexual assault.

**B. Property damage:**

- (1) shooting at property;
- (2) criminal damage to property;
- (3) dangerous use of explosives;
- (4) graffiti;
- (5) arson.

**C. Fraud:**

- (1) misrepresentation fraudulent statements or alterations of documents;
- (2) improper sale, disposal, removal or concealing of encumbered property;

- (3) tax fraud;
- (4) conspiracy;
- (5) medicaid, medicare or insurance fraud;
- (6) money laundering.

**D. Theft:**

- (1) breaking and entering;
- (2) larceny;
- (3) robbery;
- (4) burglary;
- (5) shoplifting;
- (6) I.D. theft;
- (7) credit card or other financial information;
- (8) receiving or transferring stolen property.

**E. Financial crimes:**

- (1) embezzlement;
- (2) extortion;
- (3) Receiving stolen property;
- (4) forgery;
- (5) receiving illegal kickbacks;
- (6) racketeering;
- (7) falsification of documents;
- (8) white collar crimes.

**F. Drug offenses:**

- (1) drug trafficking;
- (2) possession;
- (3) contributing to the delinquency of a minor.

**G. Sex crimes:**

- (1) distribution of pornography;
- (2) human trafficking;
- (3) criminal sexual penetration or contact;
- (4) failure to register with the sex offender and notification act.

**H. Any crimes identified under Section 61-5A-21, NMSA 1978.**

**I. Miscellaneous:**

- (1) felon in possession of a firearm;
- (2) bribery of an official;
- (3) accepting a bribe;
- (4) gambling and gaming crimes;
- (5) stalking;
- (6) terrify, intimidate, threaten, harass, annoy or offend another;
- (7) escape from incarceration;
- (8) DWI;
- (9) practicing a profession without a license or on a revoked or suspended license;
- (10) violation of the subdivision act, mortgage foreclosure act, mortgage loan company act or uniform money services act.
- (11) violation of the controlled substance act.

**J.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in 16.5.1.30 NMAC.

**K.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in 16.5.1.30 NMAC.

**L.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Dental Health Care Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in 16.5.1.30 NMAC.

**M. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:**

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in 16.5.1.30 NMAC.

[16.5.1.30 NMAC - Rp, 16.5.1.30 NMAC, 5/31/2023]

## **PART 2: IMPAIRED PRACTITIONER PROGRAM**

### **16.5.2.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.2.1 NMAC - Rn & A, 16 NMAC 5.2.1, 04/17/06]

### **16.5.2.2 SCOPE:**

The provisions of Part 2 of Chapter 5 apply to all dentists and dental hygienists who hold a current license or retired license or who are applying for licensure in New Mexico.

[9/30/96; 16.5.2.2 NMAC - Rn, 16 NMAC 5.2.2, 04/17/06]

### **16.5.2.3 STATUTORY AUTHORITY:**

Part 2 is promulgated pursuant to the Impaired Dentists and Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978 (1996 Repl Pamp.).

[9/30/96; 16.5.2.3 NMAC - Rn, 16 NMAC 5.2.3, 04/17/06]

**16.5.2.4 DURATION:**

Permanent.

[9/30/96; 16.5.2.4 NMAC - Rn, 16 NMAC 5.2.4, 04/17/06]

**16.5.2.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.2.5 NMAC - Rn & A, 16 NMAC 5.2.5, 04/17/06]

**16.5.2.6 OBJECTIVE:**

To clarify the procedures identified in the Impaired Dentists and Hygienists Act.

[9/30/96; 16.5.2.6 NMAC - Rn, 16 NMAC 5.2.6, 04/17/06]

**16.5.2.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.2.7 NMAC - Rn, 16 NMAC 5.2.7, 04/17/06]

**16.5.2.8 COMPLAINTS:**

Anyone may file a complaint with the board if they have reasonable cause to believe a dentist or dental hygienist is impaired by:

A. mental illness;

B. physical illness, including but not limited to deterioration through the aging process or loss of motor skills;

C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act; or

D. habitual or excessive use or abuse of alcohol.

[9/30/96; 16.5.2.8 NMAC - Rn, 16 NMAC 5.2.8, 04/17/06]

### **16.5.2.9 PROCESS:**

Complaints received in the board office that allege impaired practice will be processed in the following manner.

A. The complaint committee of the board shall review the complaint to determine if the board has jurisdiction over the matter and if the complaint may have merit.

B. If the complaint committee has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene is unable to practice with reasonable skill and safety to patients because of a condition listed in 16.5.2.8 NMAC, the committee shall refer the matter to the board.

C. The board shall designate an examining committee consisting of two licensed dentists or two licensed hygienists, if the licensee is a dental hygienist and two licensed physicians, one of whom shall be a psychiatrist who is knowledgeable and experienced in the field of chemical dependency if a question of mental illness or dependency is involved.

(1) The board may consider nominations from the New Mexico dental association for dentist members or the New Mexico dental hygienists' association for dental hygienist members of the examining committee; the board may consider nominations from the New Mexico medical society for the physician members of the committee; and

(2) no current member of the board or dental hygienists committee shall be a member of an examining committee.

D. The examining committee shall examine a licensee referred by the board to determine the licensee's fitness to practice dentistry or dental hygiene with reasonable skill and safety to patients, on a restricted or unrestricted basis. The committee may recommend intervention as necessary.

(1) The examining committee shall order the licensee to appear before it for hearing. The committee shall give the licensee 15 days notice of the time and place for the hearing and the reason for the examination. Notice shall be served personally or by registered or certified mail with return receipt requested;

(2) if the examining committee feels that a mental or physical examination of the licensee is necessary to determine the licensee's fitness to practice, the committee shall order the licensee to submit to the examination;

(a) a person licensed to practice dentistry or dental hygiene gives consent to submit to a mental or physical examination when directed to do so by the committee by practicing dentistry or dental hygiene or filing an annual registration; the licensee also

waives objections on the grounds of privileged communication to the admissibility of the report of the examining committee to the board or dental hygienists committee; and

(b) a licensee who submits to a diagnostic mental or physical examination as ordered by the examining committee has a right to designate an individual to be present at the examination and make an independent report to the board or dental hygienists committee;

(3) failure of a licensee to appear for an examining committee hearing or submit to a mental or physical examination shall be reported to the board or dental hygienists committee; this may be grounds for the immediate and summary suspension of the licensee's license to practice dentistry or dental hygiene unless the failure is due to circumstances beyond the licensee's control; the suspension remains in effect until further order of the board;

(4) the examining committee shall report its findings and recommendations to the board.

[9/30/96; 16.5.2.9 NMAC - Rn, 16 NMAC 5.2.9, 04/17/06; A, 06/14/12]

#### **16.5.2.10 VOLUNTARY RESTRICTION OF LICENSE:**

A licensee may request a restriction to practice under his/her license. The request must be in writing to the board or the dental hygienists committee. The board or the dental hygienists committee has the authority to attach stipulations to the licensee's licensure, if appropriate and to waive commencement of any proceedings.

A. As a condition for accepting a voluntary limitation, the board may require a licensee to:

(1) agree to and accept care, counseling or treatment by physicians or other appropriate health care providers acceptable to the board; and

(2) participate in a program of education prescribed by the board; or

(3) practice under the direction of a dentist acceptable to the board for a specified period of time.

B. A violation of any of the conditions of the voluntary limitation of practice by the licensee shall be cause for the refusal of renewal, or the suspension or revocation of the license by the board.

C. Removal of a voluntary restriction on a license is subject to the procedure for reinstatement of a license.

[9/30/96; 16.5.2.10 NMAC - Rn, 16 NMAC 5.2.10, 04/17/06; A, 06/14/12; A, 01-15-15]

### **16.5.2.11 ACTION ON THE REPORT OF THE EXAMINING COMMITTEE:**

The recommendations by the examining committee are advisory and are not binding on the board. The board or the dental hygienists committee may accept or reject a recommendation by the committee to permit a licensee to practice dentistry or dental hygiene with or without any restrictions or may refer the matter back to the examining committee for further examination or report. In the absence of a voluntary agreement for restriction of her/his license, a licensee shall be entitled to a hearing before the board in accordance with the procedures in the Uniform Licensing Act and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed.

[16.5.2.11 NMAC - N, 06/14/12]

### **16.5.2.12 PROCEEDINGS:**

The board may proceed formally against a licensee under the Impaired Dentists and Dental Hygienists Act in accordance with the procedures contained in the Uniform Licensing Act. When the licensee is a dental hygienist, the board shall act upon the recommendation of the dental hygienists committee on all procedures in the Impaired Dentists and Dental Hygienists Act.

A. At the conclusion of a hearing, the board shall make the following findings:

(1) whether or not the licensee is impaired by one of the conditions listed in 16.5.2.8 NMAC;

(2) whether or not such impairment does in fact limit the licensee's ability to practice dentistry or dental hygiene skillfully and safely;

(3) to what extent such impairment limits the licensee's ability to practice dentistry or dental hygiene skillfully and safely and whether the board or the dental hygienists committee finds that the impairment is such that the license should be suspended, revoked or restricted; and

(4) if the finding recommends suspension or restriction, then the board shall make specific recommendations as to the length and nature of the suspension or restriction and how it shall be carried out and supervised.

B. In addition to the findings listed in Subsection A of 16.4.2.12 NMAC, at the conclusion of a hearing, the board or the dental hygienists committee shall make a determination of the merits and may order one or more of the following:

(1) placement of the licensee on probation on such terms and conditions as it deems proper for the protection of the public;

(2) suspension or restriction of the license of the licensee to practice dentistry or dental hygiene for the duration of the licensee's impairment;

(3) revocation of the license of the licensee to practice dentistry or dental hygiene; or

(4) reinstatement of the license of the licensee to practice dentistry or dental hygiene without restriction.

C. The board may temporarily suspend the license of any licensee without a hearing, simultaneously with the institution of proceedings under the Uniform Licensing Act if it finds that the evidence in support of the determination of the examining committee is clear and convincing and that the licensee's continuation in practice would constitute an imminent danger to public health and safety.

D. Neither the record of the proceedings nor any order entered against a licensee may be used against the licensee in other legal proceeding except upon judicial review.

[16.5.2.12 NMAC - N, 06/14/12]

#### **16.5.2.13 DISCIPLINARY ACTION:**

No action or examination or proceedings under the Impaired Dentists and Dental Hygienists Act precludes the board from investigating or acting simultaneously, in its sole discretion, under the Dental Health Care Act.

[16.5.2.13 NMAC - N, 06/14/12]

#### **16.5.2.14 REINSTATEMENT OF LICENSE:**

A licensee whose license has been restricted, suspended or revoked under the Impaired Dentists of Dental Hygienists Act, voluntarily or by action of the board, shall have a right at reasonable intervals to petition for reinstatement of the license and to demonstrate that the licensee can resume the competent practice of dentistry or dental hygiene with reasonable skill and safety to patients.

A. The licensee shall make the petition in writing. If the licensee is a dental hygienist, the dental hygienists committee shall be advised and given all information so that its recommendation can be given to the board.

B. Once the board receives a licensee's petition for reinstatement, it shall be referred to the examination committee for an examination of the licensee.

C. The board, in its discretion, upon written recommendation of the examination committee, may restore the license of the licensee on a general or limited basis.

[16.5.2.14 NMAC - N, 06/14/12]

**16.5.2.15 [RESERVED]**

[16.5.2.14 NMAC - N, 06/14/12; Repealed, 01/15/15]

**PART 3: MANDATORY REPORTING REQUIREMENTS**

**16.5.3.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.3.1 NMAC - Rn & A, 16 NMAC 5.3.1, 04/17/06]

**16.5.3.2 SCOPE:**

The provisions of Part 3 of Chapter 5 apply to all dentists, dental therapists, non-dentist owners and dental hygienists licensed to practice in New Mexico.

[9/30/1996; 16.5.3.2 NMAC - Rn, 16 NMAC 5.3.2, 4/17/2006; A, 5/30/2021]

**16.5.3.3 STATUTORY AUTHORITY:**

Sections 61-5A-21 and 61-5A-23 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.3.3 NMAC - Rn, 16 NMAC 5.3.3, 04/17/06]

**16.5.3.4 DURATION:**

Permanent.

[9/30/96; 16.5.3.4 NMAC - Rn, 16 NMAC 5.3.4, 04/17/06]

**16.5.3.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.3.5 NMAC - Rn & A, 16 NMAC 5.3.5, 04/17/06]

**16.5.3.6 OBJECTIVE:**

To establish mandatory reporting requirements for adverse events and incidents against licensed dentists, dental therapists, non-dentist owners and dental hygienists.

[9/30/1996; 16.5.3.6 NMAC - Rn, 16 NMAC 5.3.6, 4/17/2006; A, 5/30/2021]

### **16.5.3.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.3.7 NMAC - Rn, 16 NMAC 5.3.7, 04/17/06]

### **16.5.3.8 ADVERSE EVENTS AND INCIDENTS WHICH MUST BE REPORTED BY THE LICENSEE:**

As a condition of licensure, any licensee who seeks or holds an active license, or temporary or public service license in New Mexico, or a retired licensee who seeks to reactivate their license within three years after retirement, must report the following adverse events and incidents in a written report to the board office within thirty days of that event or incident:

- A. conviction of a felony or misdemeanor, other than a traffic violation;
- B. any payment in settlement of a claim, or satisfaction of judgment, in a dental malpractice action personally or by a third party;
- C. any professional review action in which membership status in a health care facility is revoked or suspended; or
- D. discipline by any other state licensing authority;
- E. any known morbidity or mortality arising as a direct result of examination, prescription, diagnosis or treatment by a licensee which results in hospitalization or treatment of the patient by emergency personnel.

[5/31/95, 12/15/97; 16.5.3.8 NMAC - Rn, 16 NMAC 5.3.8, 04/17/06; A, 07/19/10; A, 01/09/12]

### **16.5.3.9 DISPOSITION OF REPORTS:**

The reporting of the incidents or events listed in Section 8 of this part shall be maintained in a separate file and shall not be disclosed except as provided by law. Information contained in this report may be used by the board, or its investigators, to establish to the satisfaction of the board that the licensee is competent, is of good moral character, and continues to practice in a professional manner to the standards of care expected of its licensees.

[5/31/95; 9/30/96; 16.5.3.9 NMAC - Rn, 16 NMAC 5.3.9, 04/17/06]

### **16.5.3.10 USE OF REPORTS:**

The board at its discretion may further evaluate, or investigate circumstances leading to the incident or event, and for good cause, or for the proper protection of the public initiate disciplinary action against the licensee in accordance with procedures contained in the Uniform Licensing Act, or evaluate the licensee's ability to practice with reasonable skill and safety to patients in accordance with procedures contained in the Impaired Dentists and Hygienists Act.

[5/31/95; 9/30/96; 16.5.3.10 NMAC - Rn, 16 NMAC 5.3.10, 04/17/06]

#### **16.5.3.11 VIOLATIONS:**

Violations of the provisions of Part 3 of Chapter 5 may result in suspension or revocation of the license to practice as a dentist, dental therapist, non-dentist owner or dental hygienist in accordance with Section 61-5A-21 NMSA 1978.

[5/31/1995; 9/30/1996; 16.5.3.11 NMAC - Rn, 16 NMAC 5.3.11, 4/17/2006; A, 5/30/2021]

### **PART 4: EMERGENCY LICENSURE AND CERTIFICATION PROVISIONS**

#### **16.5.4.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.4.1 NMAC - Rp, 16.5.5.6 NMAC, 5/31/2023]

#### **16.5.4.2 SCOPE:**

The provisions of 16.5.4 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who qualifies to obtain a license or certification under the provisions for emergency licensure in New Mexico.

[16.5.4.2 NMAC - Rp, 16.5.4.2 NMAC, 5/31/2023]

#### **16.5.4.3 STATUTORY AUTHORITY:**

Section 61-5A-1 through Section 61-5A-30 NMSA 1978 (1996 Repl. Pamp.).

[16.5.4.3 NMAC - Rp, 16.5.4.3 NMAC, 5/31/2023]

#### **16.5.4.4 DURATION:**

Permanent.

[16.5.4.4 NMAC - Rp, 16.5.4.4 NMAC, 5/31/2023]

#### **16.5.4.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.4.5 NMAC - Rp, 16.5.4.5 NMAC, 5/31/2023]

**16.5.4.6 OBJECTIVE:**

To establish rules to govern the emergency licensure or certification for all licensee and certificate holders affected by a declared disaster.

[16.5.4.6 NMAC - Rp, 16.5.4.6 NMAC, 5/31/2023]

**16.5.4.7 DEFINITIONS:**

**[RESERVED]**

**16.5.4.8 REQUIREMENTS FOR EMERGENCY LICENSURE:**

**A.** Dentists, dental hygienists, dental assistants, expanded function dental auxiliary, dental therapists and community dental health coordinators currently licensed or certified and in good standing, or otherwise meeting the requirements for New Mexico licensure or certification in a state in which a federal disaster has been declared, may be licensed or certified in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application;

(2) licensing qualifications and documentation requirements 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC for Dentists, 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC for Dental Hygienists, 16.5.33 NMAC for Dental Assistants 16.5.42 NMAC for Expanded Function Dental Auxiliary and 16.5.50 NMAC for Community Dental Health Coordinators, and 16.5.61 NMAC for dental therapists;

(3) other required information and documentation will be the name and address of employer, copy of diploma, copy of current active license or certificate in good standing in another state, or verification of licensure, copy of DEA license if applicable; a license or certificate will not be granted without a practice location; the board will query the national practitioners databank, American association of dental examiners and other state dental boards where the practitioner has ever held a license or certificate; if any or all of this information or documents are not available or destroyed in a disaster, an affidavit certifying this will be required.

**B.** The board may waive the following requirements for licensure:

(1) application fee;

(2) background check by a professional background information service; and

(3) transcripts from an ADA accredited program.

**C.** The board may waive the specific forms required under the requirements for licensure or certification if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D.** Nothing in this section shall constitute a waiver of the requirements for licensure or certification for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC, dental therapists in 16.5.61 NMAC and community dental health coordinator as required in 16.5.50 NMAC.

**E.** Licenses and certifications issued under the emergency provision shall expire four months, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made 30 days prior to the date of expiration and may be renewed no more than once. The applicant must obtain a permanent or temporary license or certification within eight months of the issuance of the initial emergency license or certificate. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license or certification renewal. The board will renew an emergency license or certificate for a period of four months for the following renewal fees:

(1)	dentists	\$100.00 emergency license renewal fee;
(2)	dental hygienists	\$ 50.00 emergency license renewal fee;
(3)	dental assistants	\$ 10.00 emergency certificate renewal fee;
(4)	expanded function dental auxiliary	\$ 10.00 emergency certificate renewal fee;
(5)	community dental health coordinator	\$ 10.00 emergency certificate renewal fee;
(6)	dental therapists	\$10.00 emergency certificate renewal fee.

**F.** Licensees issued a license or certificate under the emergency provision are subject to all provisions of the Dental Health Care Act, Article 5A and the rules and regulations, Title 16 Chapter 5, specifically the disciplinary proceedings Section 61-5A-21 NMSA 1978.

[16.5.4.8 NMAC - Rp, 16.5.4.8 NMAC, 5/31/2023]

#### **16.5.4.9 EMERGENCY LICENSE TERMINATION:**

**A.** The emergency license or certification shall terminate upon the following circumstances:

(1) the issuance of a permanent or temporary license for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC, dental therapists in 16.5.61 NMAC and community dental health coordinators as required in 16.5.50 NMAC; or

(2) proof that the emergency license or certificate holder has engaged in fraud, deceit, misrepresentation in procuring or attempting to procure a license or certificate under this section.

**B.** Termination of an emergency license or certificate shall not preclude application for permanent licensure or certification.

[16.5.4.9 NMAC - Rp, 16.5.4.9 NMAC, 5/31/2023]

## **PART 5 MAC: DENTISTS, FEES**

### **16.5.5.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.5.1 NMAC - Rp, 16.5.5.1 NMAC, 12/27/2022]

### **16.5.5.2 SCOPE:**

The provisions of 16.5.5 NMAC apply to all applicants for licensure; to active, expedited, retired, expired and suspended licensees; and to anyone who requests a list or labels of licensed dentists, multiple copies of the law or rules, or copies of public records.

[16.5.5.2 NMAC - Rp, 16.5.5.2 NMAC, 12/27/2022]

### **16.5.5.3 STATUTORY AUTHORITY:**

16.5.5 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 NMSA 1978 (1996 Repl. Pamp.).

[16.5.5.3 NMAC - Rp, 16.5.5.3 NMAC, 12/27/2022]

### **16.5.5.4 DURATION:**

Permanent.

[16.5.5.4 NMAC - Rp, 16.5.5.4 NMAC, 12/27/2022]

**16.5.5.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[16.5.5.5 NMAC - Rp, 16.5.5.5 NMAC, 12/27/2022]

**16.5.5.6 OBJECTIVE:**

To establish fees to generate revenue adequate to fund the cost of program administration.

[16.5.5.6 NMAC - Rp, 16.5.5.6 NMAC, 12/27/2022]

**16.5.5.7 DEFINITIONS:**

**[RESERVED]**

[16.5.5.7 NMAC - Rp, 16.5.5.7 NMAC, 12/27/2022]

**16.5.5.8 FEES:**

- A. All fees are non-refundable.
- B. Application for licensure by examination fee is \$600, which includes the initial licensing period.
- C. Application for licensure by credential fee is \$850, which includes the initial licensing period.
- D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.
- E. Triennial renewal fee for all dental licensees is \$550.
  - (1) Impaired fee is \$30 per triennial renewal period plus renewal fee.
  - (2) Late renewal fee of \$100 after July 1 through September 1 plus renewal and impaired fees.
  - (3) Cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.
- F. Triennial renewal fee for inactive license is \$90.

**G. Temporary license fees:**

- (1) 48- hour license, application fee of \$50, license fee of \$50;
- (2) six- month license, application fee of \$100, license fee of \$200;
- (3) 12- month license, application fee of \$100, license fee of \$300;
- (4) 12- license for student enrolled in residency program, application fee of \$25.00, license fee of \$50.00.

**H. Anesthesia permit fees:**

- (1) nitrous oxide permit fee is \$25;
- (2) minimal sedation permit fee is \$25;
- (3) moderate sedation permit fee is \$300;
- (4) deep sedation and general anesthesia permit fee is \$300.

**I. Reinstatement fee is \$400.**

**J. Application for licensure for inactive status is \$50.**

**K. Non-dentist owner fees.**

- (1) Application for licensure fee is \$300, which includes the initial licensing period.
- (2) Triennial renewal fee of \$150.
- (3) Late renewal fee of \$100 after July 1 through September 1 plus renewal fee.
- (4) Cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal and late fee.

**L. Administrative and duplication fees:**

- (1) duplicate license fee is \$25;
- (2) multiple copies of the statute or rules are \$10 each;
- (3) copy fees are \$0.25 per page;

(4) list of current dental licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) mailing labels of current dental licensees is \$300.

**M.** Expedited licensure fees. The fees for expedited licensure submitted pursuant to Subsection B of Section 61-5A-14 NMSA 1978 are a \$100 application fee and a \$300 license fee.

[16.5.5.8 NMAC - Rp, 16.5.5.8 NMAC, 12/27/2022]

## **PART 6: DENTISTS, LICENSURE BY EXAMINATION**

### **16.5.6.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.6.1 NMAC - Rp, 16.5.6.1 NMAC, 5/31/2023]

### **16.5.6.2 SCOPE:**

The provisions of 16.5.6 NMAC apply to all applicants for licensure by examination as a general dentist or specialty practitioner.

[16.5.6.2 NMAC - Rp, 16.5.6.2 NMAC, 5/31/2023]

### **16.5.6.3 STATUTORY AUTHORITY:**

16.5.6 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-12, NMSA 1978, (Repl. Pamp. 1996).

[16.5.6.3 NMAC - Rp, 16.5.6.3 NMAC, 5/31/2023]

### **16.5.6.4 DURATION:**

Permanent.

[16.5.6.4 NMAC - Rp, 16.5.6.4 NMAC, 5/31/2023]

### **16.5.6.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.6.5 NMAC - Rp, 16.5.6.5 NMAC, 5/31/2023]

### **16.5.6.6 OBJECTIVE:**

To establish the requirements for application for licensure as a dentist by examination.

[16.5.6.6 NMAC - Rp, 16.5.6.6 NMAC, 5/31/2023]

#### **16.5.6.7 DEFINITIONS:**

For the purposes of these rules, "dental public health" is specialty practice focused on preventing and controlling dental diseases and promoting dental health through organized community efforts. Since the diplomat examination does not test clinical skills, dentists licensed based on diplomat status shall not practice clinical dentistry.

[16.5.6.7 NMAC - Rp, 16.5.6.7 NMAC, 5/31/2023]

#### **16.5.6.8 PREREQUISITE REQUIREMENTS FOR GENERAL PRACTICE LICENSE:**

Each applicant for a license to practice dentistry by examination must possess the following qualifications:

**A.** graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA 1978;

**B.** successfully completed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978;

**C.** passed a board approved clinical examination which includes hands-on periodontal and restorative procedures, the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to a board accepted examining agent for examination; and

(2) results of the clinical examination must be sent directly to the board office; and

**D.** completed the jurisprudence exam with a score of at least seventy five percent; the applicant shall schedule the exam through the board office;

**E.** the board requires a background status report from a board designated professional background service the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.6.8 NMAC - Rp, 16.5.6.8 NMAC, 5/31/2023]

#### **16.5.6.9 PREREQUISITE REQUIREMENTS FOR SPECIALTY LICENSE:**

Each applicant for a license to practice a dental specialty by examination must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area:

**A.** graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA; and

**B.** a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in Subsection E of Section 61-5A-12 NMSA 1978 in one of the following specialty areas:

- (1) dental public health,
- (2) endodontics,
- (3) oral and maxillofacial surgery,
- (4) orthodontics and dento-facial orthopedics,
- (5) oral pathology,
- (6) pediatric dentistry,
- (7) periodontology,
- (8) prosthodontics, or
- (9) other specialties approved by the American dental association;

**C.** successfully completed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978;

**D.** passed a specialty clinical examination approved by the board; the results of the exam are valid in New Mexico for a period not to exceed five years; examination results must be sent directly to the board office;

**E.** an applicant in any specialty defined above for which there is no specialty clinical examination may substitute diplomat status for the examination;

**F.** completed the jurisprudence exam with a score of at least seventy five percent; the applicant shall schedule the exam through the board office; and

**G.** the board requires a level II background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.6.9 NMAC - Rp, 16.5.6.9 NMAC, 5/31/2023]

#### **16.5.6.10 DOCUMENTATION REQUIREMENTS:**

Each applicant for a license by examination must submit the required fees and following documentation:

- A.** completed application; applications are valid for one year from the date of receipt;
- B.** official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;
- C.** a copy of clinical examination score card or certificate from the appropriate specialty board;
- D.** copy of national board examination certificate or score card;
- E.** proof of having taken a course in infection control technique or graduation from dental school within the past 12 months;
- F.** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross; or the American safety and health institute (ASHI); cannot be a self-study course;
- G.** the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse; and
- H.** the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;
- I.** the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;
- J.** verification of licensure in all states where the applicant holds or has held a license in good standing to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a seal, and must attest to the status, issue date, license number, and other information contained on the form;

**K.** in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

[16.5.6.10 NMAC - Rp, 16.5.6.10 NMAC, 5/31/2023]

**16.5.6.11 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as set forth in Subsection D of 16.5.5.8 NMAC to re-take the exam.

[16.5.6.11 NMAC - Rp, 16.5.6.11 NMAC, 5/31/2023]

**16.5.6.12 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

**A.** Initial dental licenses are issued for a period not to exceed three years, as defined in Section 16.5.11.8 NMAC.

**B.** Any application that cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting.

[16.5.6.12 NMAC - Rp, 16.5.6.12 NMAC, 5/31/2023]

**PART 7: DENTISTS, TEMPORARY OR PUBLIC SERVICE LICENSURE**

**16.5.7.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9-30-96; 16.5.7.1 NMAC - Rn & A, 16 NMAC 5.7.1, 12-14-00]

**16.5.7.2 SCOPE:**

The provisions of 16.5.7 NMAC apply to all dentists applying for a temporary or a public service license to practice in New Mexico.

[9-30-96; 16.5.7.2 NMAC - Rn, 16 NMAC 5.7.2, 12-14-00; A, 01-09-12]

**16.5.7.3 STATUTORY AUTHORITY:**

16.5.7 NMAC is promulgated pursuant to the Dental Health Care Act, NMSA 1978 Section 61-5A-14.

[9-30-96; 16.5.7.3 NMAC - Rn, 16 NMAC 5.7.3, 12-14-00]

**16.5.7.4 DURATION:**

Permanent.

[9-30-96; 16.5.7.4 NMAC - Rn, 16 NMAC 5.7.4, 12-14-00]

**16.5.7.5 EFFECTIVE DATE:**

September 30, 1996, unless a different date is cited at the end of a section.

[9-30-96; 16.5.7.5 NMAC - Rn, 16 NMAC 5.7.5, 12-14-00; A, 09-18-10]

**16.5.7.6 OBJECTIVE:**

To establish the requirements for application for temporary or public service licensure as a dentist.

[9-30-96; 16.5.7.6 NMAC - Rn, 16 NMAC 5.7.6, 12-14-00; A, 01-09-12]

**16.5.7.7 DEFINITIONS:**

**A.** "Entity" means a dental or dental hygiene organization, foundation or officially recognized study club, which has a constitution, bylaws and whose officers or board of trustees are dentists or dental hygienists licensed in good standing in the state.

**B.** "Good standing" means having an active dental license in a jurisdiction for a period of at least three consecutive years immediately preceding the date of application, and a minimum of five years of dental licensure. The board shall consider stipulations, disciplinary, or administrative actions taken against a licensee by the issuing agency, within the previous five years, when determining whether a license is in good standing.

**C.** "In the state" or "in this state" means that a program has a physical presence in New Mexico in the form of a facility and a permanent faculty.

[9-30-96; 16.5.7.7 NMAC - Rn, 16 NMAC 5.7.7, 12-14-00; A, 01-09-12]

**16.5.7.8 CATEGORIES OF TEMPORARY OR PUBLIC SERVICE LICENSES:**

Applications for a temporary or a public service New Mexico dental license may be issued in the following categories for specific purposes if education and experience requirements are met.

**A.** Clinical educator. Dentists, not currently licensed in New Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for 48 hours; if the course lasts longer than two days, additional 48 hour licenses may be requested upon payment of the applicable fees; a temporary license may not be issued for less than 48 hours.

**B.** A student who is enrolled in a commission of dental accreditation (CODA) dental specialty program or a commission of dental accreditation (CODA) general practice dental residency program, or an advanced education in general dentistry program, who holds a current, valid license in good standing in another US jurisdiction, may be granted a temporary 48 hour license for the purpose of observing or assisting a licensed New Mexico practitioner in cases for educational purposes.

**C.** A resident or student enrolled in a commission of dental accreditation (CODA) accredited program in the state of New Mexico may be granted a public service license for up to 12 months. This public service license shall be automatically renewed annually only for the purpose of completing the education program and shall not be valid once the residency or educational program is completed or the applicant is no longer enrolled, provided:

**(1)** the program in this state is accredited by the commission on dental accreditation (CODA);

**(2)** the residency program maintains a physical presence in New Mexico, including:

**(a)** a faculty and staff full time in New Mexico who holds a license in New Mexico in good standing in accordance with the degree they hold; and

**(b)** a facility in the state where residency students may attend lectures, seminars and receive clinical instruction;

**(3)** public service license for a dental resident or student may not be converted to any other public service license or license by credentials;

**(4)** the applicant must practice under the sponsorship of or be associated with a dentist holding a current license in good standing in this state;

**(5)** upon application by a resident or student, the participating residency or education program must supply documentation to the board of its accreditation status, faculty and facilities in New Mexico; and

**(6)** successful completion of a clinical board examination is not a requirement for a public service license to be granted to a student or resident under this section.

**D.** Clinical practice in underserved area or state institutions. A dentist may be granted temporary licensure to practice in a state institution, a program approved or maintained by the New Mexico department of health (NMDOH), or a program or clinic designated by the New Mexico department of health (NMDOH), as dental care underserved area (DCUA). The New Mexico department of health (NMDOH) may recommend to the New Mexico board of dental health care, counties, communities, county census divisions, or in the case of urban areas, neighborhoods, zip codes, and census tracts to be considered as dental care underserved areas (DCUA's). Areas recommended as DCUA's may reflect those areas designated by the federal government as dental health professional shortage areas (DHPSA). The New Mexico board of dental health care will request annually from NMDOH a written report of which areas are recommended as DCUA's and will update the listing throughout the year as appropriate. The New Mexico board of dental health care may designate DCUA's based upon these recommendations:

**(1)** the temporary license holder is restricted to work exclusively in the institution or program named on the application or the temporary license certificate;

**(2)** a temporary license for clinical practice in an underserved area or state institution is valid for 12 months and shall expire at the end of that period; the board may re-issue the temporary license for three additional 12 month periods; each license reissue must be approved by the board; the licensee must contact the board office three months prior to the expiration date to begin the re-issue process;

**(3)** the New Mexico board of dental health care shall rely upon the listing of recommended practices in underserved areas or state institutions, and the listing of recommended DCUA's provided by NMDOH in its review of applications for clinical practice in underserved areas; temporary licenses will be reissued only for sites and DCUA's that remain on the recommended listings by the New Mexico department of health;

**(4)** the applicant shall provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist in good standing, and bearing the signature of both; and

**(5)** the applicant shall provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist in good standing and bearing the signature of both;

**(6)** a temporary license to practice in an underserved area may be converted to a license by credentials provided the applicant:

**(a)** meets all requisite requirements listed in 16.5.8 NMAC and provides all documentation as required in 16.5.8.10 NMAC of these rules, with exception of the requirement to have a license in good standing for five years;

**(b)** practices for at least 1000 hours per year under a temporary license in an underserved area for three consecutive years; one year of credit will be granted for;

**(c)** has no complaints under board investigation, actions pending or actions taken against the applicant's temporary license;

**(d)** has renewed the temporary license yearly, and has paid the required license fees;

**(e)** has maintained the same continuing education requirements of regularly licensed dentists as set forth in 16.5.10 NMAC of these rules; the annual continuing education requirements are to be based upon 1/3 prorated share of those required of a licensee applying for license renewal on a triennial basis; and

**(f)** applies for conversion of a temporary license to a license by credentials pursuant to 16.5.7.15 NMAC of these rules.

**E.** Emergency practitioner. Out of state specialists needed for emergency care in a hospital may be granted a temporary license:

**(1)** the information normally given in official documentation may be given in written or verbal form because of the emergency nature of the license;

**(2)** this category will be given a 48 hour temporary license but it may be extended in 48 hour increments until the dentist can leave the patient to the care of others; and

**(3)** the New Mexico licensed dentist acting as the sponsor for the temporary licensee must be responsible for the validity of the following credentials:

**(a)** the license number in the state in which the applicant resides and practices, and the current status of the license;

**(b)** proof of liability insurance; and

**(c)** verification of status of hospital credentials in state of residence or practice.

**F.** Replacement practitioner. A dentist may be granted temporary licensure for six or 12 months to work exclusively with patients in the practice of a New Mexico licensed dentist who is unable to practice dentistry because of physical or mental illness, injury, pregnancy, impairment, physical absence, or other condition approved by the board:

**(1)** the temporary license holder is restricted to work exclusively in the practice named on the application; and

**(2)** a temporary license as a replacement practitioner is valid for no longer than 12 months, and may not be re-issued.

**G.** Presumptive public service licensure for a charitable dental project. A dentist not holding a license in the state may be granted a presumptive public service license for up to 72 hours to participate in a board approved charitable project. Except as noted in this section the dentist shall otherwise be subject to the provisions of the dental practice act and the rules and regulations of the board. The presumptive public service license is valid only when:

**(1)** the charitable project is approved by the board at least 45 days prior to the scheduled event;

**(2)** the dentist receives no compensation for participating in the project;

**(3)** the project is sponsored by an entity as defined in 16.5.7.7 NMAC and that entity has been approved by the board to undertake the charitable project;

**(4)** the dentist holds a license in good standing in another jurisdiction and the license is verified by the sponsoring entity;

**(5)** the dentist has graduated from and holds a diploma from a dental school accredited by the commission on dental accreditation and a copy of the diploma is on file with the sponsoring entity;

**(6)** upon request the out-of-state dentist shall produce copies of their diploma and license in another jurisdiction;

**(7)** the dental care provided is within the scope and limits of the license the dentist holds in the other jurisdiction;

**(8)** the out-of-state dentist works under the indirect supervision of a dentist licensed in good standing in this state who is present at the charitable project;

**(9)** patients who receive dental care during the charitable project will be given a list of dentists whom they can contact if post-operative care is needed;

**(10)** a charitable public service license is not eligible for conversion to any other public service, regular license; or license by credentials; and

**(11)** no fee shall be required by the board for the presumptive public service license for a charitable project.

[3-17-73, 3-16-94, 4-15-94, 5-31-95, 9-30-96; 16.5.7.8 NMAC - Rn & A, 16 NMAC 5.7.8, 12-14-00; A, 3-29-02; A, 07-17-08; A, 09-18-10; A, 01-09-12; A, 01-15-15]

### **16.5.7.9 PREREQUISITE REQUIREMENTS FOR TEMPORARY AND PUBLIC SERVICE LICENSURE:**

Presumptive public service practitioners as defined in Subsection G of 16.5.7.8 NMAC are not required to comply with Subsection D, E and F of this section. Residents or students as defined in Subsection C of 16.5.7.8 NMAC are not required to comply with Subsection C, E and F of this section. All other applicants for temporary or public service licensure must possess each of the following qualifications:

**A.** graduated and received a diploma from an accredited dental school or college as defined in NMSA 61-5A-12, A;

**B.** if the temporary or public service license is for a practice specialty, the applicant must have obtained a postgraduate degree or certificate from an accredited dental college, school of dentistry or other residency program that is accredited by the commission on dental accreditation;

**C.** hold a valid license in good standing from another state or territory of the United States;

**D.** applicants requesting a six or 12 month temporary or public service license must pass the jurisprudence exam with a score of at least a 75 percent;

**E.** for those applying for an initial temporary or public service license in public health dentistry or as a replacement practitioner, the board requires a level III background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fee directly to a board designated professional background service to initiate this service; the license may be provisionally issued while awaiting the report from a board designated professional background service; and

**F.** must have successfully passed clinical examination through WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board; the results of the clinical examination must be sent directly to the board office.

[3-14-73, 5-31-95; 16.5.7.9 NMAC - Rn & A, 16 NMAC 5.7.9, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 09-18-10; A, 01-09-12; A, 06-14-12]

### **16.5.7.10 DOCUMENTATION REQUIREMENTS:**

Except as otherwise required by Subsection F of 16.5.7.8 NMAC, presumptive public service practitioners do not need to comply with the following for temporary or public service licensure. Residents or students as defined in Subsection C of 16.5.7.8 NMAC shall provide only documents described in Subsection F of this section. All other applicants for temporary or public service licensure shall submit the required fees and following documentation:

**A.** completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

**B.** verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall include an embossed seal, and shall attest to the status, issue date, license number, expiration date and other information contained on the form;

**C.** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

**D.** an affidavit from the New Mexico licensed dentist who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform; applicants for temporary licensure in underserved areas and state institutions shall:

(1) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both; or

(2) provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist and bearing the signature of both;

(3) report any changes in supervision or oversight of the temporary licensee to the board within 30 days of the change; and

(4) provide proof of acceptable liability insurance coverage;

**E.** in addition, applicants requesting temporary licensure in public health dentistry or as a replacement practitioner shall submit the following:

(1) official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card;

(3) copy of clinical examination score card or certificate from the accepted examining agent;

(4) proof of having taken a course in infection control technique within the past 12 months;

(5) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

(6) the board will obtain verification of applicant status from the national practitioners data bank; and

(7) a level III status report from a board designated professional background service shall be received directly from a board designated professional background service; the results of the background check shall either indicate no negative findings, or if there are negative findings, those findings will be considered by the board; the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

(8) in addition to the documentation required above, an applicant for temporary licensure in a specialty area shall request official transcripts from the residency program or postgraduate training program to be sent directly to the board office from the accredited program.

**F.** Residents or students as defined in Subsection C of 16.5.7.8 NMAC shall submit the required fees and following documentation:

(1) completed application signed and notarized with a passport quality photo taken within six months; applications are valid for one year from the date of receipt;

(2) official transcripts in the event that official transcripts are not available at the time of application, a letter from the dean of the dental school or college, on official letterhead, verifying the applicant's successful completion of all required courses, may be submitted but must be supplemented with final graduation documentation no later than 45 days from the start of the residency program.

(3) copy of national board examination certificate or score card;

(4) proof of having taken a course in infection control technique within the past 12 months or have graduation from dental school within the past 12 months;

(5) pass the jurisprudence exam with a score of at least 75 percent;

(6) if resident or student has or holds a license to practice dentistry or other health care profession they shall submit verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall include an embossed seal, and shall attest to the status, issue date, license number, expiration date and other information contained on the form; and

(7) issue date of the license will correspond with the first date of the residency start date.

[3-14-73, 5-31-95, 9-30-96; 16.5.7.10 NMAC - Rn, 16 NMAC 5.7.10, 12-14-00; A, 06-14-01; A, 3-29-02, A, 07-16-07; A, 09-18-10; A, 01-09-12; A, 06-14-12; A, 12-16-15]

#### **16.5.7.11 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in Subsection D of 16.5.5 NMAC to retake the exam.

[9-30-96; 16.5.7.11 NMAC - Rn, 16 NMAC 5.7.11, 12-14-00; A, 01-09-12]

#### **16.5.7.12 LICENSURE PROCEDURES:**

Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

**A. Emergency Practitioner:** Upon receipt of the necessary credentials from the practitioner and the verification from the sponsoring dentist, a professional member of the board or board administrator may declare the practitioner a temporary licensee of record and submit such information to the practitioner, sponsoring dentist, or the hospital.

**B.** Any application which cannot be approved by the delegate of the board will be reviewed by the entire Board at the next scheduled meeting.

[3-14-73, 5-31-95, 9-30-96; 16.5.7.12 NMAC - Rn, 16 NMAC 5.7.12, 12-14-00; A, 12-16-15]

#### **16.5.7.13 RE-ISSUE PROCEDURES:**

To remain eligible for temporary or public service licensure; temporary or public service license holders who are eligible for re-issue per 16.5.7.8 NMAC must contact the board office three months prior to the expiration date to begin the re-issue process. All requirements regarding re-issue are the same as the initial application as defined in 16.5.7.10 NMAC. The form, application and fee and proof of 20 hours of continuing education must be post-marked on or before the expiration date.

[12-15-97; 16.5.7.13 NMAC - Rn, 16 NMAC 5.7.13, 12-14-00; A, 09-18-10; A, 01-09-12]

#### **16.5.7.14 LIMITATION ON PRACTICE:**

Temporary or public service licensees shall engage in only those activities specified on the temporary or public service license for the time period designated.

**A.** Temporary or public service licensees shall only practice under the sponsorship or in association with a licensed New Mexico dentist or dental hygienist.

**B.** Temporary or public service licensees and the approved sponsor or associate are responsible for compliance with the act and these rules.

[3-14-73, 5-31-95, 12-15-97, 16.5.7.14 NMAC - Rn, 16 NMAC 5.7.14, 12-14-00; A, 01-09-12]

#### **16.5.7.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS:**

**A.** Following the completion of the requirements listed in 16.5.7.8 NMAC of these rules, the temporary licensee may complete an application for licensure by credentials.

**B.** Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials.

**C.** Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for license by credentials.

**D.** Upon receipt of a complete application the board shall issue a New Mexico license by credentials unless there is any action pending against the temporary license. Then at the discretion of the board or it's agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials will be halted and the temporary license will no longer be renewed.

**E.** Conversion of a temporary license to practice dentistry does not allow conversion of a temporary anesthesia permit into one lasting more than the initial 12 months. After the 12 month period, an additional permit requires successful completion of an additional anesthesia exam and a facilities inspection. See Subsection C of 16.5.15.15 NMAC.

[16.5.7.15 NMAC - N, 3-29-02; A, 07-16-07; A, 01-09-12; A, 06-14-12]

### **PART 8: DENTISTS, LICENSURE BY CREDENTIALS**

#### **16.5.8.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.8.1 NMAC - Rp, 16.5.6.1 NMAC, 5/31/2023]

**16.5.8.2 SCOPE:**

The provisions of 16.5.8 NMAC apply to all applicants for licensure as a general or specialty dentist by credentials.

[16.5.8.2 NMAC - Rp, 16.5.8.2 NMAC, 5/31/2023]

**16.5.8.3 STATUTORY AUTHORITY:**

16.5.8 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-12 NMSA 1978.

[16.5.8.3 NMAC - Rp, 16.5.8.3 NMAC, 5/31/2023]

**16.5.8.4 DURATION:**

Permanent.

[16.5.8.4 NMAC- Rp, 16.5.8.4 NMAC, 5/31/2023]

**16.5.8.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.8.5 NMAC - Rp, 16.5.8.5 NMAC, 5/31/2023]

**16.5.8.6 OBJECTIVE:**

To establish the requirements for application for licensure as a dentist by credentials held through licensure in another state(s).

[16.5.8.6 NMAC - Rp, 16.5.8.6 NMAC, 5/31/2023]

**16.5.8.7 DEFINITIONS:**

**License in "good standing"** is defined as having an active dental license in a jurisdiction for a period of at least three consecutive years immediately preceding the date of application, and a minimum of five years of dental licensure. The board shall consider stipulations, disciplinary or administrative actions taken against a licensee by the issuing agency, within the previous five years, when determining whether a license is in "good standing".

[16.5.8.7 NMAC – Rp, 16.5.8.7 NMAC, 5/31/2023]

#### **16.5.8.8 PREREQUISITE REQUIREMENTS FOR LICENSURE IN GENERAL PRACTICE:**

Each applicant for licensure as a general dentist by credentials must possess the following qualifications:

**A.** graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA 1978;

**B.** completed 60 hours of approved continuing education during the past 36 months in compliance with 16.5.1.15 NMAC of these rules;

**C.** passed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978;

**D.** passed the jurisprudence exam with a score of at least seventy-five percent;

**E.** holds a current active license in good standing by clinical examination in another state or territory of the United States, or has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application;

**F.** passed a clinical examination approved by the board;

**G.** the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules;

**H.** the board requires a background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.8.8 NMAC - Rp, 16.5.8.8 NMAC, 5/31/2023]

#### **16.5.8.9 PREREQUISITE REQUIREMENTS FOR LICENSE IN SPECIALTY PRACTICE:**

Any dentist who has taken a clinical examination accepted by the board and who has completed and passed a CODA accredited specialty program in one of the ADA recognized specialties may be issued a specialty license by the board. Each applicant for a license to practice a dental specialty by credentials must possess the following

qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.

**A.** Graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA 1978.

**B.** Have a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in Subsection E of Section 61-5A-12 NMSA 1978, in one of the specialty areas of dentistry recognized by the ADA.

**C.** Completed 60 hours of continuing education during the past 36 months in compliance with 16.5.1.15 NMAC of these rules.

**D.** Successfully completed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978.

**E.** An applicant in any specialty defined in Subsection E of 16.5.8.9 NMAC for which there is no specialty examination may substitute diplomat status for the examination.

**F.** Successfully completed an examination for diplomat status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology, other specialties approved by the American dental association; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomat status given by the American board of public health dentistry.

**G.** Completed the jurisprudence exam with a score of at least seventy-five percent.

**H.** Hold a current active license in good standing by examination in another state or territory of the United States.

**I.** The board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

**J.** The board requires a level II background status report from a board designated professional background service. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.8.9 NMAC - Rp, 16.5.8.9 NMAC, 5/31/2023]

#### **16.5.8.10 DOCUMENTATION REQUIREMENTS:**

Each applicant for licensure by credentials must submit the required fees and following documentation:

- A.** completed application; applications are valid for one year from the date of receipt;
- B.** official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;
- C.** copy of national board examination certificate or scorecard;
- D.** copy of clinical examination score card or certificate from the accepted examining agent;
- E.** proof of having taken a course in infection control technique within the past twelve months;
- F.** proof of current life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;
- G.** the board will obtain verification of applicant status from the national practitioner's data bank and the American association of dental examiners clearinghouse;
- H.** verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a seal, and must attest to the status, issue date, license number, and other information contained on the form;
- I.** a status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;
- J.** the board may deny, stipulate or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act,

the Impaired Dentist and Hygienist Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

**K.** proof of 60 hours of continuing education during the 36 months prior to licensure in compliance with 16.5.1.15 NMAC of these rules;

**L.** dentists employed in uniform service practice shall furnish:

(1) a copy of the most recent commissioned officers effectiveness report, or equivalent, issued by the uniformed service dental service, and

(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

**M.** applicants for specialty by credentials in one of the following applicants for specialty license must submit: official transcripts from the residency program or postgraduate training program, sent directly to the board office from the accredited program;

**N.** certificate of diplomat status from the specialty board, must be sent directly to the board office; and

**O.** successfully completed an examination for diplomat status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomat status given by the American board of public health dentistry;

**P.** supplemental information may be requested by the board.

[16.5.8.10 NMAC - Rp, 16.5.8.10 NMAC, 5/31/2023]

#### **16.5.8.11 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in Subsection D of 16.5.5.8 NMAC to re-take the exam.

[16.5.8.11 NMAC - Rp, 16.5.8.11 NMAC, 5/31/2023]

#### **16.5.8.12 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all documentation and fees, the secretary-treasurer or delegate of the board will review and may approve the application when the applicant holds a valid license obtained through clinical exam. The board shall formally accept the approval of the application at the next scheduled meeting. All applications for licensure by credentials based on uniform service practice will be taken to the board for review and final determination of eligibility for licensure at the next scheduled meeting.

**A.** Initial dental licenses are issued for a period not to exceed three years as defined in 16.5.11.8 NMAC.

**B.** Any application that cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting.

[16.5.8.12 NMAC - Rp, 16.5.8.12 NMAC, 5/31/2023]

### **PART 9: NON-DENTIST OWNERS**

#### **16.5.9.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.9.1 NMAC - Rp, 16.5.9.1 NMAC, 5/31/2023]

#### **16.5.9.2 SCOPE:**

The provisions of 16.5.9 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who wishes to own a practice and is not a dentist or collaborative practice dental hygienist licensed in New Mexico.

[16.5.9.2 NMAC - RP, 16.5.9.2 NMAC, 5/31/2023]

#### **16.5.9.3 STATUTORY AUTHORITY:**

Sections 61-5A-1 through Section 61-5A-30 NMSA 1978.

[16.5.9.3 NMAC - Rp, 16.5.9.3 NMAC, 5/31/2023]

#### **16.5.9.4 DURATION:**

Permanent.

[16.5.9.4 NMAC - Rp, 16.5.9.4 NMAC, 5/31/2023]

#### **16.5.9.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.9.5 NMAC - Rp, 16.5.9.5 NMAC, 5/31/2023]

#### **16.5.9.6 OBJECTIVE:**

To set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16, and to all persons and entities affected or regulated by Chapter 5 of Title 16.

[16.5.9.6 NMAC - Rp, 16.5.9.6 NMAC, 5/31/2023]

#### **16.5.9.7 DEFINITIONS:**

**A. "Employee"** means a licensee of the board employed or contracted with a non-dentist owner for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or enters into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

**B. "Exempted entities"** not included in non-dentist owner, under the following stipulations an entity may function as a non-dentist owner without a New Mexico license:

- (1) government agencies providing dental services within affiliated facilities;
- (2) government agencies engaged in providing public health measures to prevent dental disease;
- (3) spouses of a deceased licensed dentist or dental hygienists for a period of one year following the death of the licensee;
- (4) accredited school of dentistry, dental hygiene or dental assisting providing dental services solely in an education setting only;
- (5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;
- (6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;
- (7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent person; and
- (8) hospitals licensed by the department of health.

**C. "Non-dentist owner"** means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed

dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services.

[16.5.9.7 NMAC - Rp, 16.5.9.7 NMAC, 5/31/2023]

#### **16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER:**

To employ and contract for dental services, a non-dentist owner shall apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board.

**A.** unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

**B.** the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

**C.** if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

**D.** non-dentist owner shall notify the board in writing within 30 days of any changes in ownership;

**E.** non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

**F.** non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);

**G.** non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

**H.** non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

I. the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

J. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

K. no person other than a New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment, including, referrals or prescriptions of laboratory services;

L. non-dentist owners shall maintain patient records for a minimum of six years; and

M. a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

N. the non-dentist owner shall be subject to the provisions of 16.5.58 NMAC.

[16.5.9.8 NMAC - Rp, 16.5.9.8 NMAC, 5/31/2023]

#### **16.5.9.9 RESPONSIBILITY OF DENTISTS AND DENTAL HYGIENIST EMPLOYED BY A NON-DENTIST OWNER:**

Dentists and dental hygienists employed by a non-dentist owner shall report such employment in their initial and renewal applications, including the name, address and phone number of the non-dentist owner or corporation, and the name of their immediate manager or supervisor.

[16.5.9.9 NMAC - Rp, 16.5.9.9 NMAC, 5/31/2023]

#### **16.5.9.10 DOCUMENTATION REQUIREMENTS:**

Each applicant for a non-dentist owner license shall submit a completed application obtained from the board office with the required fees and the following documentation:

A. completed application signed by the individual that is the non-dentist owner or by the president of the parent corporation; applications are valid for one year from the date of receipt;

B. the board requires a board designated professional background service report; the applicant will apply and pay fees directly to a board designated professional

background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporation entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporation in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

**C.** passed the jurisprudence examination with a score of at least seventy-five percent;

**D.** non-dentist owner(s) shall comply with Subsection C of this section within six months of the effective date of the rule;

**E.** verification of licensure in all states where the non-dentist owner holds or has held a license, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form; and

**F.** the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public.

[16.5.9.10 NMAC - Rp, 16.5.9.10 NMAC, 5/31/2023]

#### **16.5.9.11 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

**A. Initial license:** Non-dentist owner licenses are issued for a period not to exceed three years. The licensee shall apply for renewal on a triennial basis.

**B. Posting:** The license and subsequent renewal certificates shall be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

**C. License:** This license is non-transferable.

**D. Renewal:** After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are considered expired.

(1) A completed renewal application with appropriate fees shall be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration.

**E. Late renewals:** Renewal applications post-marked after July 1 and prior to August 1 of the renewal year shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of ten-dollars (\$10) per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

**F. Fees:**

- |     |                    |        |
|-----|--------------------|--------|
| (1) | Initial Licensure: | \$300. |
| (2) | Renewal:           | \$150. |

[16.5.9.11 NMAC - Rp, 16.5.9.11 NMAC, 5/31/2023]

**16.5.9.12 PREREQUISITES FOR NON-DENTIST OWNER:**

Each applicant for licensure as a non-dentist owner shall possess the following:

**A.** a corporate entity must be registered in New Mexico; and

**B.** an individual non-dentist owner(s) or agent of a corporation shall pass the New Mexico jurisprudence examination with seventy-five percent.

[16.5.9.12 NMAC - Rp, 16.5.9.12 NMAC, 5/31/2023]

**PART 10: DENTISTS, CONTINUING EDUCATION REQUIREMENTS**

**16.5.10.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.10.1 NMAC - Rp, 16.5.10.1 NMAC, 12/14/2019]

**16.5.10.2 SCOPE:**

The provisions of Part 10 of Chapter 5 apply to all licensed dentists who are applying to renew their license.

[16.5.10.2 NMAC - Rp, 16.5.10.2 NMAC, 12/14/2019]

**16.5.10.3 STATUTORY AUTHORITY:**

Part 10 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978 (1996 Repl. Pamp.).

[16.5.10.3 NMAC - Rp , 16.5.10.3 NMAC, 12/14/2019]

**16.5.10.4 DURATION:**

Permanent.

[16.5.10.4 NMAC - Rp , 16.5.10.4 NMAC, 12/14/2019]

**16.5.10.5 EFFECTIVE DATE:**

December 14, 2019, unless a later date is cited at the end of a section.

[16.5.10.5 NMAC - Rp, 16.5.10.5 NMAC, 12/14/2019]

**16.5.10.6 OBJECTIVE:**

To establish criteria for continuing education for dentists licensed in New Mexico.

[16.5.10.6 NMAC - Rp , 16.5.10.6 NMAC, 12/14/2019]

**16.5.10.7 DEFINITIONS:**

[RESERVED]

[16.5.10.7 NMAC - Rp , 16.5.10.7 NMAC, 12/14/2019]

**16.5.10.8 HOURS REQUIRED:**

60 hours of continuing education, a maximum of 30 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC.

Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 20 hours per full year of the initial licensing period. Initial licenses issued for less than a full year do not require continuing education for the first renewal.

[16.5.10.8 NMAC - Rp , 16.5.10.8 NMAC, 12/14/2019]

#### **16.5.10.9 COURSES REQUIRED:**

Continuing education coursework must contribute directly to the practice of dentistry and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal.

**A.** Proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be self-study course.

**B.** Infection control. As further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

**C.** Anesthesia/Sedation: Any dentist holding a minimal, moderate or deep sedation/general anesthesia permit is required to follow continuing education requirements as set forth in 16.5.15.20 NMAC.

**D.** Management of pain with controlled substances. Any dentists who holds a Federal drug enforcement administration registration to prescribe controlled substances shall successfully complete three continuing dental or medical education hours, as defined in Part 16.5.57 NMAC, in appropriate courses that shall include:

- (1) an understanding of the pharmacology and risks of controlled substances,
- (2) a basic awareness of the problems of abuse, addiction and diversion,
- (3) awareness of state and federal regulations for the prescription of controlled substances, and
- (4) management of the treatment of pain.

[16.5.10.9 NMAC - Rp, 16.5.10.9 NMAC, 12/14/2019]

#### **16.5.10.10 VERIFICATION OF CONTINUING EDUCATION:**

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements.

Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[16.5.10.10 NMAC - Rp, 16.5.10.10 NMAC, 12/14/2019]

#### **16.5.10.11 EMERGENCY DEFERRAL:**

**A.** Licensee unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

**B.** Licensee practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

**(1)** The board must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence.

**(2)** Upon return to the US, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[16.5.10.11 NMAC - Rp , 16.5.10.11 NMAC, 12/14/2019]

### **PART 11: DENTISTS, LICENSE EXPIRATION AND RENEWAL**

#### **16.5.11.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.11.1 NMAC - Rn & A, 16 NMAC 5.11.1, 04/17/06]

#### **16.5.11.2 SCOPE:**

The provisions of Part 11 of Chapter 5 apply to all dentists with a license to practice in New Mexico.

[9/30/96; 16.5.11.2 NMAC - Rn, 16 NMAC 5.11.2, 04/17/06]

#### **16.5.11.3 STATUTORY AUTHORITY:**

Part 11 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.11.3 NMAC - Rn, 16 NMAC 5.11.3, 04/17/06]

**16.5.11.4 DURATION:**

Permanent.

[9/30/96; 16.5.11.4 NMAC - Rn, 16 NMAC 5.11.4, 04/17/06]

**16.5.11.5 EFFECTIVE DATE:**

September 30, 1996, unless a different date is cited at the end of a section.

[9/30/96; 16.5.11.5 NMAC - Rn & A, 16 NMAC 5.11.5, 04/17/06]

**16.5.11.6 OBJECTIVE:**

To establish procedures for license issuance, expiration and renewal.

[9/30/96; 16.5.11.6 NMAC - Rn, 16 NMAC 5.11.6, 04/17/06]

**16.5.11.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.11.7 NMAC - Rn, 16 NMAC 5.11.7, 04/17/06]

**16.5.11.8 LICENSE EXPIRATION:**

Initial licenses expire on July 1, in the third year of licensure. No license will be issued for longer than 36 months or less than 25 months.

[11/6/83...9/30/96; 12/15/97, 8/16/99; 16.5.11.8 NMAC - Rn, 16 NMAC 5.11.8, 04/17/06]

**16.5.11.9 RENEWAL PERIOD AND EXPIRATION:**

After the initial license period, dental licenses expire every three years on June 30. Dental licenses not renewed by July 1, are considered expired.

[9/13/69...9/30/96; 8/16/99; 16.5.11.9 NMAC - Rn & A, 16 NMAC 5.11.9, 04/17/06]

**16.5.11.10 RENEWAL PROCESS:**

A completed renewal application, accompanied by the required fees as set forth in 16.5.5.8 NMAC, along with the required proof of completion of 60 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1, of the renewal year.

[3/14/73...9/30/96; 8/16/99; 16.5.11.10 NMAC - Rn & A, 16 NMAC 5.11.10, 04/17/06]

**16.5.11.11 LICENSEE RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion, and may result in the assessment of a late renewal fee as set forth in 16.5.5.8 NMAC.

[6/4/95; 16.5.11.11 NMAC - Rn & A, 16 NMAC 5.11.11, 04/17/06]

**16.5.11.12 RENEWAL AFTER JUNE 30:**

Renewal applications post-marked after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.10.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.5.8 NMAC.

[3/14/73...9/30/96; 8/16/99; 16.5.11.12 NMAC - Rn & A, 16 NMAC 5.11.12, 04/17/06]

**16.5.11.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1:**

Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.10.8 NMAC, along with the triennial renewal fee, impairment fee, late fee and the cumulative late fee as set forth in 16.5.5.8 NMAC.

[3/14/73...5/31/95; 16.5.11.13 NMAC - Rn & A, 16 NMAC 5.11.13, 04/17/06]

**16.5.11.14 RENEWAL APPLICATION UNDELIVERABLE:**

If the notice of renewal is returned to the board office and the licensee has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[5/31/95, 8/16/99; 16.5.11.14 NMAC - Rn, 16 NMAC 5.11.14, 04/17/06]

**PART 12: DENTISTS, RETIREMENT, INACTIVE AND REINSTATEMENT**

**16.5.12.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9-30-96; 16.5.12.1 NMAC - Rn & A, 16 NMAC 5.12.1, 12-14-00]

**16.5.12.2 SCOPE:**

The provisions of 16.5.12 NMAC apply to all licensed dentists who plan to retire or reinstate an active license to practice dentistry in New Mexico.

[9-30-96; 16.5.12.2 NMAC - Rn, 16 NMAC 5.12.2, 12-14-00]

**16.5.12.3 STATUTORY AUTHORITY:**

16.5.12 NMAC is promulgated pursuant to the Dental Health Care Act, NMSA 1978, Section 61-5A-17 (1996 Repl. Pamp.).

[9-30-96; 16.5.12.3 NMAC - Rn, 16 NMAC 5.12.3, 12-14-00]

**16.5.12.4 DURATION:**

Permanent.

[9-30-96; 16.5.12.4 NMAC - Rn, 16 NMAC 5.12.4, 12-14-00]

**16.5.12.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9-30-96; 16.5.12.5 NMAC - Rn, 16 NMAC 5.12.5, 12-14-00; A, 04-17-06]

**16.5.12.6 OBJECTIVE:**

To establish the requirements and procedures to place an active dental license in retirement status, inactive status or to reinstate the license to active status.

[9-30-96; 16.5.12.6 NMAC - Rn, 16 NMAC 5.12.6, 12-14-00, A, 03-06-05]

**16.5.12.7 DEFINITIONS:**

**[RESERVED]**

[9-30-96; 16.5.12.7 NMAC - Rn, 16 NMAC 5.12.7, 12-14-00]

**16.5.12.8 RETIREMENT:**

A license to practice dentistry may be placed in retirement status one time through the following procedures:

A. the request for retirement status must be made in writing to the board office prior to the expiration of the current license; dentists with an active practice located in New Mexico must include the following information:

- (1) the actual date of retirement;
- (2) proof of written notification of approaching retirement to all patients currently under active treatment;
- (3) the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of retirement; the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records;

B. all dentists requesting retirement status may include a list of any continuing education courses taken since the last license renewal, including documentation required in 16.5.10 NMAC; and

C. board staff shall acknowledge receipt of the request for retirement status and at the next meeting of the board the request for retirement will be placed on the agenda; upon board approval of retirement status the licensee will be exempt from payment of the triennial renewal fees during the period of retirement;

D. the board may deny a request for retirement status if there are any current or pending complaints or disciplinary actions against the licensee;

E. a licensee desiring to go from active to inactive must sign a waiver and stipulation provided by the board foregoing the three year retirement.

[3-14-73...5-31-95, 9-30-96; 16.5.12.8 NMAC - Rn, 16 NMAC 5.12.8, 12-14-00, A, 03-06-05; A, 01-09-12]

#### **16.5.12.9 INACTIVE:**

A license to practice dentistry may be placed in inactive status one time through the following procedures.

A. The request for inactive status must be made by an application obtained from the board office prior to the expiration of the current license or the three-year eligibility of retirement status. Dentists with an active practice located in New Mexico must include the following information:

- (1) the actual date of inactivation request;

(2) proof of written notification of approaching inactive status to all patients currently under active treatment;

(3) the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of inactive status; the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

B. All dentists requesting inactive status shall include a list of any continuing education courses taken since the last license renewal, including documentation as set forth in 16.5.10 NMAC.

C. The board may deny a request for inactive status if there are any current or pending complaints or disciplinary actions against the licensee.

[3-14-73...5-31-95, 12-15-97; 16.5.12.9 NMAC - Rn & A, 16 NMAC 5.12.9, 12-14-00; N, 03-06-05; A, 04-17-06; A, 01-09-12]

#### **16.5.12.10 REINSTATEMENT FROM RETIREMENT STATUS:**

A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in 16.5.12.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) 20 hours of approved continuing education courses related to the clinical practice of dentistry, per year of retirement; at least 20 of these hours must be in the 12 months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(3) proof of infection control course within the past 12 months; and

(4) 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

- (1) drug enforcement administration (DEA), and
- (2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners' data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, expiration date and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of retirement and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from retirement status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in retirement status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a retired license is not requested after three years of retirement, and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.12.10 NMAC - Rn, 16.5.12.9 NMAC & A, 03-06-05; A, 04-17-06; A, 07-16-07; A, 07-19-10; A, 01-09-12]

#### **16.5.12.11 REINSTATEMENT FROM INACTIVE STATUS:**

A licensee whose license has been placed in inactive status may request reinstatement to active license status within nine years of the date of inactivation as indicated in 16.5.12.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee and proof of the following continuing education courses:

(1) 20 hours of approved continuing education courses related to the clinical practice of dentistry, per year of inactivation; at least 20 of these hours must be in the 12 months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(3) proof of infection control course within the past 12 months;

(4) proof of medical emergency course during the past 12 months; and

(5) 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA); and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners' data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of inactivation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from inactive status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in inactive status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of an inactive license is not requested after nine years of inactivation, application for a new license must be made by examination or credentials

in order to practice dentistry in New Mexico or six years if the licensee signs affidavit foregoing three years for retirement as defined in 16.5.12.8 NMAC.

[16.5.12.11 NMAC - N, 03-06-05; A, 04-17-06; A, 07-16-07; A, 07-19-10; A, 01-09-12]

## **PART 13: DENTISTS, LICENSE REVOCATION FOR NON-RENEWAL**

### **16.5.13.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.13.1 NMAC - Rn & A, 16 NMAC 5.13.1, 04/17/06]

### **16.5.13.2 SCOPE:**

The provisions of Part 13 of Chapter 5 apply to all dentists licensed in New Mexico who do not submit an application for license renewal within 60 days of the expiration date.

[9/30/96; 16.5.13.2 NMAC - Rn, 16 NMAC 5.13.2, 04/17/06]

### **16.5.13.3 STATUTORY AUTHORITY:**

Part 13 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.13.3 NMAC - Rn, 16 NMAC 5.13.3, 04/17/06]

### **16.5.13.4 DURATION:**

Permanent.

[9/30/96; 16.5.13.4 NMAC - Rn, 16 NMAC 5.13.4, 04/17/06]

### **16.5.13.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.13.5 NMAC - Rn & A, 16 NMAC 5.13.5, 04/17/06]

### **16.5.13.6 OBJECTIVE:**

To establish the procedures and policies for dental licenses that are not renewed within 60 days of the date of expiration.

[9/30/96; 16.5.13.6 NMAC - Rn, 16 NMAC 5.13.6, 04/17/06]

#### **16.5.13.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.13.7 NMAC - Rn, 16 NMAC 5.13.7, 04/17/06]

#### **16.5.13.8 REVOCATION OF LICENSE FOR NON-RENEWAL:**

Unless an application for license renewal is received by the board office, or post-marked, before September 1, the license shall be revoked for non-renewal.

[3/14/73, 5/31/95; 16.5.13.8 NMAC - Rn, 16 NMAC 5.13.8, 04/17/06; A, 07/17/08]

#### **16.5.13.9 REINSTATEMENT OF REVOKED LICENSE:**

Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation shall re-apply as a new applicant and meet all requirements for initial licensure.

A. Applicants for reinstatement shall provide verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession within the previous year. Verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[3/14/73, 5/31/95; 16.5.13.9 NMAC - Rn, 16 NMAC 5.13.9, 04/17/06; A, 07/16/07; A, 01/09/12]

### **PART 14: DENTISTS, ADJUNCTIVE DENTAL SERVICES**

#### **16.5.14.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.14.1 NMAC - N, 7/17/2013]

#### **16.5.14.2 SCOPE:**

The provisions of Part 14 of Chapter 5 apply to all dentists for the administration of adjunctive dental services.

[16.5.14.2 NMAC - N, 7/17/2013]

**16.5.14.3 STATUTORY AUTHORITY:**

Part 14 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-4, NMSA 1978, (Repl. Pamp. 1996).

[16.5.14.3 NMAC - N, 7/17/2013]

**16.5.14.4 DURATION:**

Permanent.

[16.5.14.4 NMAC - N, 7/17/2013]

**16.5.14.5 EFFECTIVE DATE:**

July 17, 2013, unless a later date is cited at the end of a section.

[16.5.14.5 NMAC - N, 7/17/2013]

**16.5.14.6 OBJECTIVE:**

To establish guidelines for the administration of the defined adjunctive dental services in a dental office located in New Mexico.

[16.5.14.6 NMAC - N, 7/17/2013]

**16.5.14.7 DEFINITIONS:**

**A. "Adjunctive dental services"** means additional procedures, as recognized by the board, used for increasing efficiency, safety, outcome, or performance of dental treatment, including, but not limited to, cosmetic procedures or therapies.

**B. "Botulinum toxin"** means a neurotoxin that temporarily reduces muscle contraction.

**C. "Dermal fillers"** means a resorbable substance injected below the skin surface to reduce lines, wrinkles, or facial grooves, and for the purpose of this rule, are for the oral and maxillofacial regions of the body.

**D. "Obstructive sleep apnea"** means a spectrum of abnormal breathing during sleep that occurs when there is partial or complete collapse of the airway.

**E. "Sleep-related breathing disorders"** includes, for the purpose of this section, snoring, upper airway resistance syndrome, and obstructive sleep apnea. These disorders must be diagnosed by a physician.

**F. "Upper airway resistance syndrome"** is a partial collapse of the airway that is an intermediate form of abnormal breathing between snoring and obstructive sleep apnea.

[16.5.14.7 NMAC - N, 7/17/2013; A, 12/14/2019]

#### **16.5.14.8 ADMINISTRATION OF BOTULINUM NEUROTOXIN (BOTOX) AND DERMAL FILLERS:**

The board does not issue permits for the administration of botox or dermal fillers. The board does not regulate dental materials of any type; however, due to the rising utilization of these materials by dentists, the board sets forth the following requirements.

**A.** Before administering botulinum neurotoxin or dermal fillers, in connection with the practice of dentistry as defined in Section 61-5A-4, NMSA 1978, a dentist must receive satisfactory training at a dental institution accredited by the commission on dental accreditation (CODA) or successfully completed a board approved continuing education course of instruction that includes a minimum of the following:

- (1) patient assessment and consultation for botulinum neurotoxin and dermal fillers;
- (2) indications and contraindications for these techniques;
- (3) safety and risk issues for botulinum neurotoxin/dermal fillers injectable therapy;
- (4) proper preparation and delivery techniques for desired outcomes;
- (5) enhancing and finishing esthetic dentistry cases with dermal fillers;
- (6) botulinum neurotoxin treatment of temporomandibular dysfunction;
- (7) knowledge of adverse reactions and management and treatment of possible complications;
- (8) patient evaluation of best esthetic and therapeutic outcomes;
- (9) integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans; and

**(10)** 16 hours total, including eight hours minimum live patient hands-on training including diagnosis, treatment planning and proper dosing and delivery of botox and dermal fillers;

**B.** Botulinum neurotoxin and dermal fillers shall only be administered in dental offices using universal precautions as required by the federal centers for disease control.

**C.** All dental auxiliaries are prohibited from administering either botulinum neurotoxin or dermal fillers.

**D.** Continuing education courses shall be approved by the academy of general dentistry (AGD) program approval for continuing education (PACE), American dental association (ADA) continuing education recognition program (CERP) or other dental or medical entities accepted by the board.

[16.5.14.17 NMAC - N, 7/17/2013]

#### **16.5.14.9 GUIDELINES FOR DENTISTS TREATING SLEEP-RELATED BREATHING DISORDERS:**

**A.** Dentists treating patients that have been diagnosed by a physician with sleep-related breathing disorders, including, but not limited to, primary snoring, upper airway resistance syndrome or obstructive sleep apnea are to follow these guidelines published by the American dental association, the American academy of dental sleep medicine and American academy of sleep medicine.

**(1)** "the role of dentistry in the treatment of sleep-related breathing disorders" (American dental association).

**(2)** "dental sleep medicine standards for screening, treating and managing adults with sleep-related breathing disorders" (American academy of dental sleep medicine).

**(3)** "clinical practice guideline for the treatment of obstructive sleep apnea and snoring with oral appliance therapy: an update for 2015" (Joint statement, American academy of sleep medicine and American academy of dental sleep medicine).

**B.** Dentists cannot diagnose sleep related breathing disorders, but are a vital partner in treating these conditions in collaboration with medical colleagues.

[16.5.14.9 NMAC - N, 12/14/2019]

### **PART 15: DENTISTS ANESTHESIA/SEDATION ADMINISTRATION**

#### **16.5.15.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.15.1 NMAC - Rp, 16.5.15.1 NMAC, 5/31/2023]

**16.5.15.2 SCOPE:**

The provisions of Part 15 of Chapter 5 apply to all dentists who hold or who are applying for certification to administer anesthesia or analgesia.

[16.5.15.2 NMAC - Rp, 16.5.15.2 NMAC, 5/31/2023]

**16.5.15.3 STATUTORY AUTHORITY:**

Part 15 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61.5A-22 NMSA 1978 (1996 Repl. Pamp.).

[16.5.15.3 NMAC - Rp, 16.5.15.3 NMAC, 5/31/2023]

**16.5.15.4 DURATION:**

Permanent.

[16.5.15.4 NMAC - Rp, 16.5.15.4 NMAC, 5/31/2023]

**16.5.15.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.15.5 NMAC - Rp, 16.5.15.5 NMAC, 5/31/2023]

**16.5.15.6 OBJECTIVE:**

**A.** To establish guidelines and procedures for the regulation of dentists who administer nitrous oxide inhalation analgesia, anxiolysis, minimal sedation, moderate sedation (formerly conscious sedation I and II), and deep sedation, or general anesthesia in an office located in New Mexico. Unless otherwise defined in this Part 15, the board will reference the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists" and "guidelines for teaching pain control and sedation to dentists and dental students".

**B.** These guidelines are not meant to regulate the existing precedent where New Mexico licensed dentists may have hospital privileges to provide anesthesia/sedation to dental patients in the operating room or emergency room based on their training, education and policy of the hospital.

[16.5.15.6 NMAC - Rp, 16.5.15.6 NMAC, 5/31/2023]

#### 16.5.15.7 DEFINITIONS:

**A. "Anxiolysis"** the diminution or elimination or reduction of anxiety without a concomitant reduction of the patient's awareness or ability to react to stimuli. For the purposes of these rules, only a single dose of a single drug within the normal therapeutic dose is allowed.

**B. "American society of anesthesiologists (ASA) classification"** is the physical status classification system as defined by the American society of anesthesiologists.

**C. "Combination inhalation-enteral sedation (combined conscious sedation)"** - conscious sedation using inhalation and enteral agents. Nitrous oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation or general anesthesia.

**D. "CODA"** means the commission on dental accreditation.

**E. "Conscious sedation"** means a minimally depressed level of consciousness that retains the patients' ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than conscious sedation. For the purposes of this chapter, conscious sedation is further defined as minimal and moderate sedation.

**F. "Deep sedation"** means an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof.

**G. "Enteral"** means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (ie oral, rectal, sublingual).

**H. "End tidal carbon dioxide (ETCO<sub>2</sub>) capnography"** means monitoring of the concentration or partial pressure of end tidal carbon dioxide in respiratory gases.

**I. "General anesthesia"** means an induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

**J. "Minimal sedation"** means a minimally depressed level of consciousness, produced by a pharmacological method that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile and verbal commands. Although cognitive function and coordination may be modestly impaired, ventilation and cardiovascular functions are unaffected. If more than one enteral drug is administered to achieve the desired effect, with or without concurrent use of nitrous oxide inhalation, the guidelines for moderate sedation must apply. The administration of an enteral drug exceeding the maximum recommended single dose during a single appointment is considered to be moderate sedation. Concomitant use of nitrous oxide with any sedative agent may produce minimal, moderate or deep sedation or general anesthesia.

**K. "Moderate sedation"** means a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain patent airway, and spontaneous ventilation is adequate, cardiovascular function is usually maintained. In accord with this particular definition, the drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. A patient whose response is reflex withdrawal from painful stimuli is considered to be in a deeper state than that moderate sedation.

**L. "Monitor"** means to constantly watch or check on the condition of the patient.

**M. "Nitrous oxide inhalation analgesia"** means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

**N. "Parenteral"** means any technique of administration in which the drug is injected through the dermis or into blood vessel (i.e.,; intramuscular, subcutaneous, or intravenous injections).

**O. "Prescribed administration"** means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist's authorization.

**P. "Titration"** means the incremental dosing of an intravenous or inhalation drug until the desired effect is reached. One must know if the previous dose of the drug has taken full effect before administering additional increments.

[16.5.15.7 NMAC - Rp, 16.5.15.7 NMAC, 5/31/2023]

#### **16.5.15.8 REQUIREMENT TO BE REGISTERED OR CERTIFIED:**

Dentists who administer nitrous oxide inhalation analgesia in New Mexico are required to be registered with the board. Dentists who administer minimal sedation, moderate

sedation, deep sedation, or general anesthesia in New Mexico are required to obtain an anesthesia permit from the board. Any dentist who fails to comply with these rules may be subject to disciplinary action by the board. Anesthesia permits valid on the effective date of this rule continue to be valid until the expiration date indicated on the permit.

**A. Permit requirements:** (In order of increasing complexity higher level permit includes all lower level permits within the scope of that permit).

(1) Anxiolysis only: No permit necessary (single drug/single dose, within the normal therapeutic dose for anxiolysis).

(2) Nitrous oxide alone: Permit required, no practitioner or facility exam required.

(3) Minimal sedation: Permit required, no exam of practitioner or facility, affidavit of compliance required (single enteral drug, with or without nitrous oxide, below the maximum recommended dose).

(4) Moderate sedation: Permit required, affidavit of compliance, oral, written, and facility exam required at the discretion of the board or its anesthesia committee (single enteral drugs above the maximum recommended dose, multiple enteral drugs, enteral drug plus nitrous oxide, any parenteral drugs).

(5) Deep sedation/general anesthesia: Permit required, affidavit of compliance, practitioner and facility exam required at the discretion of the board or its anesthesia committee.

**B. Facility limitations:** If the dentist of a facility approved for a sedation permit utilizes a certified registered nurse anesthetist (CRNA) to provide the sedation, the CRNA may only administer sedation up to the permit level of the operating dentist and the facility.

[16.5.15.8 NMAC - Rp, 16.5.15.8 NMAC, 5/31/2023]

#### **16.5.15.9 ANESTHESIA COMMITTEE:**

**A. Appointment:** All members of the anesthesia committee serve at the pleasure of the board. The board chair will appoint members to serve on the anesthesia committee for five year terms beginning on July 1. Individuals for consideration may be nominated by the New Mexico dental association, any local dental society, or the anesthesia committee.

**B. Terms:** Each member shall be appointed to serve a term of five years, however, the appointments shall be staggered so that no more than forty percent of the members will expire in any given year.

**C. Committee composition:** The anesthesia committee shall consist of licensed dentists, including at least one board certified oral and maxillofacial surgeon, one general dentist, one dentist board member, one dentist not engaged in the use of sedation techniques, and when possible, representatives of other interested dental specialties. Each anesthesia committee member should be currently practicing some form of sedation and be currently qualified as an examiner, except the non-sedating dentist.

**D. Duties:** Establish policies and procedures for the evaluation of applications, inspections of facilities, and examination of applicants; make recommendations to the board in regard to each application; report to the board, as needed, at regularly scheduled board meetings the status of activities of the anesthesia committee; inform the board of any licensee who fails to cooperate with the requirements for application, registration or renewal of permits; inspect facilities upon request of the board; and upon request, assist the board in the investigation of complaints concerning the administration of anesthesia or analgesia.

**E. Designated examiners:** The anesthesia committee chair may appoint a designated examiner with an anesthesia permit of an equal or greater level to perform evaluations on licensed dental applicants to serve at the pleasure of the New Mexico board of dental health care (NMBODHC) chair. This designated examiner must be actively practicing his anesthesia level to be considered by the board.

[16.5.15.9 NMAC - Rp, 16.5.15.9 NMAC, 5/31/2023]

#### **16.5.15.10 PEDIATRIC GUIDELINES:**

Unless otherwise described in this section, all anesthesia for patients 12 years and under shall follow the American academy of pediatric dentistry's "guideline for monitoring and management of pediatric patients during and after sedation for diagnostic and therapeutic procedures".

[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 5/31/2023]

#### **16.5.15.11 ADMINISTRATION OF ENTERAL ANXIOLYSIS:**

**A. Registration:** No permit required. Enteral anxiolysis consist of the administration of a single dose enteral drug, not in combination with nitrous oxide or another drug, that does not exceed the normal therapeutic single dose of the drug recommended by the manufacturer in published literature. Anxiolytic drugs should be within the scope of practice and prescriptive authority of the practitioner. Anxiolytic drugs are for the sole purpose of diminution of anxiety related to dental treatment.

**B. Education/training:** it is assumed that all dentists who have successfully completed a course of study at an accredited dental school have the education for this level of anxiolysis.

(1) The dentist must have an active current dental license, current drug enforcement administration (DEA) registration and current New Mexico controlled substances registration and be registered with the New Mexico board of pharmacy.

(2) Each dentist who administers or auxiliary who monitors enteral anxiolysis shall have current basic life support certification.

**C. Facility/records:** The dentist must have appropriate equipment to monitor vital signs and appropriate emergency equipment and drugs for the anxiolytic agent used.

(1) Records should reflect the dose and drug administered.

(2) Records should reflect how the patient was released from the office and if accompanied by a driver.

(3) All administration of anxiolytic drugs shall be under the indirect supervision or prescription of a dentist.

[16.5.15.11 NMAC - Rp, 16.5.15.11 NMAC, 5/31/2023]

#### **16.5.15.12 ADMINISTRATION OF NITROUS OXIDE INHALATION ANALGESIA:**

**A. Registration:** Permit required, each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon request. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

**B. Education/qualifications:** Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(1) completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training that includes a minimum of 14 hours of course time and management of clinical cases.

(2) each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification.

(3) current permit holder's education would be grandfathered by the New Mexico laws in effect at the time of original issue of their permit. However, safety standards must be updated to current state and ADA guidelines.

**C. Facility/records:** The dental facility shall have adequate equipment which includes fail-safe features and a twenty five percent minimum oxygen flow and an effective scavenging system.

(1) all use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist holding a nitrous oxide permit.

(2) the patient's records shall reflect evidence of appropriate monitoring by qualified dental personnel of vital signs, including blood pressure, pulse, and respiratory rate. Dose (percent) of nitrous oxide time of administration and time of release of patient should be recorded.

[16.5.15.12 NMAC - Rp, 16.5.15.12 NMAC, 5/31/2023]

### **16.5.15.13 ADMINISTRATION OF MINIMAL SEDATION:**

**A.** Minimal sedation is the use of a single enteral drug in a single or divided doses to achieve the desired effect as described in the definitions. The total dose of the single enteral drug shall not exceed the maximum recommended dose for the drug as recommended by the manufacturer and as published in scientific literature. Doses above this maximum recommended dose are considered moderate sedation, and moderate sedation guidelines will apply. A single drug combined with nitrous oxide may produce minimal, moderate, deep sedation or general anesthesia. It is the responsibility of the dentist to titrate the level of nitrous oxide to achieve only minimal sedation. If more than one enteral drug is administered to achieve the desired anxiolytic/sedation effect, with or without the concomitant use of nitrous oxide, the guidelines for moderate sedation will apply.

**B. Registration:** Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve minimal sedation shall be registered with the board. An application form will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in 16.5.15.19 NMAC. Administration of minimal sedation without registration is a violation of these rules and may result in disciplinary action against the licensee.

**C. Education/qualifications:** The dentist must have completed a course of training while a student in an accredited school of dentistry or through board approved post graduate training. To administer minimal sedation the dentist must satisfy the following criteria:

(1) training to a level of competency in a minimal sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students".

(2) courses must include 16 hours of course time plus clinically oriented experiences during which competency in enteral and combined nitrous oxide-enteral minimal sedation is demonstrated.

(a) if the training received was pre-doctoral, while in dental school, the applicant should submit proof of course content completed as included in a course description from the dental education program.

(b) if the course of study was postgraduate training, proper course completion forms must be submitted.

(3) Each dentist administering and auxiliary monitoring, minimal sedation shall have current basic life support certification.

**D. Facility/records:** The facility in which minimal sedation is administered must comply with the following:

(1) have adequate equipment to monitor patient's vital signs;

(2) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, pulse oximetry, and respiratory rate during procedures and effect of medication;

(3) all use of enteral medication shall be under the indirect supervision of a licensed dentist;

(4) shall verify the patient has other means of transportation to be released from the office;

(5) administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of practice and prescriptive authority of the dentist so as not to produce conscious sedation; does not require the dentist to hold a minimal sedation permit;

(6) a log of drugs used, dosage or amount of drug used and date of administration must be maintained separate from the patient's record;

(7) ASA classification of the patient and informed consent is required.

[16.5.15.13 NMAC - Rp, 16.5.15.13 NMAC, 5/31/2023]

**16.5.15.14 ADMINISTRATION OF MODERATE SEDATION (Formerly conscious sedation I and II):**

**A.** Moderate sedation may be achieved by several methods: The end point of sedation, as in the definition, is the important factor. Drugs used here should have a wide safety margin so as to not allow patients to easily slide to deep sedation or general anesthesia. The dentist should also be aware that titrating an enteral dose of medication is difficult due to onset of action and multiple variables.

(1) moderate enteral sedation (previously conscious sedation I) is achieved by the use of: single enteral drugs in doses as needed up to and above the maximum recommended single dose, or two or more enteral drugs used in combination, or single or multiple enteral drugs combined with nitrous oxide;

(2) moderate parenteral sedation (previously conscious sedation II) is achieved by the use of single or multiple parenteral drugs, with or without nitrous oxide.

**B. Registration:** Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve moderate sedation shall be registered with the board. Moderate sedation permits are issued for a specific practice location (facility). An application form will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in 16.5.15.19 NMAC. Administration of moderate sedation without registration is a violation of these rules and may result in disciplinary action against the licensee.

**C. Education/qualifications:** To administer moderate sedation by any means the dentist must satisfy one of the following criteria:

(1) training to a level of competency in moderate sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students". The above involves completion of 60 hours of didactic instruction and administration of moderate sedation for at least 20 individually managed patients in a pre-doctoral program at a CODA accredited school, verifiable by the board, or in a post-doctoral continuing education program acceptable to the board and its anesthesia committee; or

(2) completion of CODA accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage moderate sedation as described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students".

**D.** To administer moderate enteral sedation, the dentist must have current certification in basic life support. Moderate enteral sedation does not require ET/CO<sub>2</sub> capnography monitoring.

**E.** To administer moderate parenteral sedation, the dentist must have current certification in advanced cardiac life support. Moderate parenteral sedation does require ETCO<sub>2</sub> capnography or precordial stethoscope monitoring.

**F.** Auxiliary clinical personnel must have current certification in basic life support.

**G.** The dentist must sign an affidavit of compliance. An oral and written examination administered by the anesthesia committee or designee will be required if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel on the applicant's part to meet with an examiner. The applicant's facility may also be subject to inspection and approval by the anesthesia committee or its designated examiner.

**H.** Current permit holder's sedation education would be grandfathered in by board rules in effect at the time of original issue of their permit. However, safety standards must be updated to the current board and American dental association (ADA) guidelines.

**I. Facility/records:**

(1) the dentist must maintain a properly equipped facility for the administration of moderate sedation, staffed with supervised auxiliary personnel capable of handling procedures, problems and emergencies that may arise;

(2) the facility along with the dentist providing the sedation will be evaluated. The moderate sedation permit is valid only at the facility approved by the permit;

(3) the patients shall be monitored and records shall reflect that the pre-operative patient evaluation, including American society of anesthesiologists (ASA) classification, pre-operative preparation, electrocardiogram (ECG) (for parenteral sedation), pulse oximetry, and blood pressure. ETCO<sub>2</sub> capnography or precordial stethoscope monitoring is only required for moderate parenteral sedation. Recovery and discharge also needs to be performed and documented in accordance with the current "ADA guidelines for the use of sedation and general anesthesia by dentists";

(4) a facility permitted for moderate sedation does not allow for the use of deep sedation or general anesthesia in that facility regardless of the licensee providing anesthesia;

(5) a log of drugs used, dosage or amount of drugs used and date of administration must be maintained separate from the patient's record;

(6) informed consent is required.

**J. Restrictions:** A dentist with a moderate sedation (formerly conscious sedation II) permit shall not administer or employ any agent(s) which has a narrow margin for

maintaining consciousness, or is federally classified as a general anesthetic including, but not limited to:

- (1) ultra-short acting barbiturates including, but not limited to, sodium methohexital, thiopental, and thiamylal;
- (2) alkylphenols-propofol (diprivan) including precursors or derivatives;
- (3) neuroleptic agents;
- (4) dissociative agents - i.e. ketamine;
- (5) etomidate, and similarly acting drugs;
- (6) volatile inhalational agents; or
- (7) any quantity of agent(s) or technique(s), or any combination thereof, that renders a patient deeply sedated or generally anesthetized.

**K.** The drugs/techniques enumerated in Subsection J of 16.5.15.14 NMAC are presumed to produce general anesthesia and may only be used by a licensee holding a valid deep sedation/general anesthesia permit issued by the board, or by a corresponding licensing board if the licensee is not a dentist (eg., MD, CRNA).

[16.5.15.14 NMAC - Rp, 16.5.15.14 NMAC, 5/31/2023]

#### **16.5.15.15 ADMINISTRATION OF DEEP SEDATION/GENERAL ANESTHESIA:**

**A. Registration:** Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve deep sedation or general anesthesia (DS/GA) shall be registered with the board. DS/GA permits are issued for a specific practice location (facility). An application form and affidavit of compliance will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in 16.5.15.19 NMAC. Administration of DS/GA without registration is a violation of these rules and may result in disciplinary action against the licensee. The dentist must sign an affidavit of compliance. An oral and written examination administered by the anesthesia committee or designee will be required if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel by the applicant to meet with an examiner. The applicant's facility is also subject to inspection and approval by the anesthesia committee or its designated examiner.

#### **B. Education/qualifications:**

- (1) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements

described in the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(2) completion of a CODA accredited post-doctoral training program (e.g. oral and maxillofacial surgery, dental anesthesiology), which affords comprehensive and appropriate training necessary to administer and manage deep sedation/general anesthesia, commensurate with these rules;

**C.** Current permit holders' sedation education would be grandfathered by the New Mexico laws in effect at the time of original issue of their permit. However, safety standards must be updated to current board and ADA guidelines.

**D. Facility/records:**

(1) the dentist maintains a properly equipped facility for the administration of deep sedation or general anesthesia in accordance with the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(2) the office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto;

(3) the dentist must have current advanced cardiac life support certification (ACLS) and auxiliary clinical personnel have current basic life support certification;

(4) the patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, ASA classification, ECG, pulse oximetry, blood pressure and ETCO<sub>2</sub> capnography monitoring recovery, discharge and documentation was performed in accordance with the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(5) the dentist passes the examination and receives approval after facility inspection, or affidavit acceptance, by the anesthesia committee or designated examiner;

(6) a log of drugs used, dosage or amount of drugs and date of administration must be maintained separate from the patient's record;

(7) informed consent is required;

(8) a dentist administering deep sedation/general anesthesia must document current, successful completion of an advanced cardiac life support (ACLS) course, or an equivalent as approved by the anesthesia committee;

**E. Anesthesia permit at large:** This permit allows the holder to provide sedation and anesthesia services to patients in dental offices on an out-patient basis. The holder

of the "anesthesia permit at large" assumes all responsibility for the administration of the sedation or general anesthesia in the dental office.

(1) to hold an "anesthesia permit at large" a dentist must meet the requirements in Section 16.5.15.15 NMAC deep sedation/general anesthesia, and is only available for dentist anesthesiologists and oral and maxillofacial surgeons;

(2) the holder of a "permit at large" may be evaluated and inspected by the anesthesia committee as deemed necessary to assure safety to the public;

(3) the holder of such a permit agrees to have available at all times all monitors, emergency equipment, and other necessary drugs and materials when administering conscious sedation, deep sedation, and general anesthesia;

(4) the permit holder will inform the board of all dental facilities where anesthesia services are to be provided and follow all other procedures as outlined in 16.5.15.15 NMAC, deep sedation/general anesthesia.

[16.5.15.15 NMAC - Rp, 16.5.15.12 NMAC, 5/31/2023]

#### **16.5.15.16 SEDATION/ANESTHESIA PROVIDED BY OUTSIDE PERSONNEL:**

##### **A. Provided by dentists (DDS or DMD) or physicians (MD or DO):**

(1) administration of sedation by another duly qualified dentist or physician requires the operating dentist to have completed a course in advanced cardiac life support (no certification necessary) and to have current certification in basic life support;

(2) the operating dentist must ensure that the dentist/physician DS/GA permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of parenteral sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. For DS/GA, advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available. Appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan;

(3) a dental facility utilizing a dentist or physician for deep sedation/general anesthesia, needs to be registered with the board and must submit verifying forms of the residency-trained dentist/physician's general anesthesia training, hospital credentials, and current license and anesthesia permits to practice in the state of New Mexico.

##### **B. Provided by certified registered nurse anesthetists (CRNA):**

(1) administration by a qualified certified nurse anesthetist (CRNA) requires the operating dentist to have oversight of the CRNA to perform sedation. If the dentist of a facility approved for sedation utilizes a CRNA to provide the sedation, the CRNA may only administer sedation up to the permit level of the facility and the dentist.

(2) the operating dentist shall ensure that the CRNA is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the staff of an accredited New Mexico hospital in the community in which the anesthesia occurs. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all the anesthetists used.

(3) the operating dentist, working with a CRNA, is responsible for the adequacy of the facility, and aiding in the treatment of emergencies associated with the administration of parenteral sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. The CRNA is responsible for the sedation administration.

[16.5.15.16 NMAC - Rp, 16.5.15.13 NMAC, 5/31/2023]

#### **16.5.15.17 REPORTING ADVERSE INCIDENTS:**

**A.** Each licensed dentist must submit a written report to the board within thirty days after any significant morbidity or mortality or other incident which results in temporary or permanent physical or mental injury of a patient during, or as a result of, nitrous oxide inhalation analgesia, conscious sedation administered via oral, rectal, or parenteral routes, deep sedation, or general anesthesia.

**B.** The report is required regardless of the need for hospitalization after the incident and shall include the following:

- (1) description of the dental procedure;
- (2) description of the pre-operative physical condition of the patient;
- (3) list of drugs and dosage administered and route of administration;
- (4) description in detail of techniques utilized in administering the drugs utilized;
- (5) the names of auxiliary personnel in attendance; and
- (6) description of the adverse occurrence to include the following: detailed description of symptoms of any incident; treatment initiated on the patient; response of the patient to the treatment; description of the patient's condition on termination of treatment; and copies of the patient record, medical history and operative report.

[16.5.15.17 NMAC - Rp, 16.5.15.14 NMAC, 5/31/2023]

**16.5.15.18 FAILURE TO REPORT:**

Failure to comply with the reporting requirements of 16.5.15.17 NMAC of this part shall be grounds for disciplinary action against the licensee. In accordance with the provisions of the Uniform Licensing Act, the board may take any actions enumerated in 16.5.16 NMAC, including revocation of the sedation/anesthesia permit.

[16.5.15.18 NMAC - Rp, 16.5.15.15 NMAC, 5/31/2023]

**16.5.15.19 PERMIT APPLICATION PROCEDURE FOR MINIMAL AND MODERATE SEDATION, AND DEEP SEDATION/GENERAL ANESTHESIA:**

**A.** Applications may be obtained from the board office. The completed application, accompanied by the required permit fee as defined in 16.5.5 NMAC, the application is forwarded to the anesthesia committee for evaluation. After review of the completed application and any other documentation, including a signed affidavit of compliance (if required), the anesthesia committee may recommend a permit for minimal, moderate, or deep sedation/general anesthesia. An oral and written examination of the applicant applying for moderate parenteral sedation or deep sedation/general anesthesia may be required, as described in Subsection B of 16.5.15.19 NMAC.

**B.** Examination/evaluation: The anesthesia committee will require an oral and written examination of emergency protocols and practices from the applicant dentist for moderate parenteral sedation and deep sedation/general anesthesia, if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel by the applicant dentist to meet with an evaluator. This along with the original application, cases examples supplied, and affidavit of compliance will be used to evaluate the competency of the applicant. If an office inspection is needed, the evaluator may need to schedule a facility inspection with the applicant. The anesthesia committee uses the American association of oral and maxillofacial surgeon's office anesthesia evaluation manual as a guide for the examinations. Incomplete applications will be returned by the anesthesia committee to the board office with a clear indication of the deficient areas.

**C.** After receipt of proper documentation, completion of an affidavit of compliance, and the successful passing of the oral and written examination (if required), the anesthesia committee and the secretary-treasurer of the board may issue a permit to administer the level of sedation for which the applicant was approved. Ratification of this permit will occur at the next regular scheduled meeting, unless substantial subsequent evidence compels the board to deny or delay approval of the permit.

**D.** Final action: after final evaluation of the application and examination results, the anesthesia committee recommends final action on the application to the board. The board makes final determination on approval of the permit. If an application is

determined incomplete for failure to meet the requirements of 16.5.15 NMAC, the areas of non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.19 NMAC - Rp, 16.5.15.16 NMAC, 5/31/2023]

#### **16.5.15.20 PERMIT EXPIRATION AND RENEWAL:**

**A. Expiration:** Sedation/anesthesia permits are issued for six years from the last day of the month in which the initial permit was issued. Nitrous oxide analgesia permits do not expire.

**B. Renewal:** Renewal applications will not be sent to each dentist prior to the expiration date of the sedation/anesthesia permit. It is the responsibility of the permit holder to start the renewal process within six months prior to the expiration date. The completed application, along with the required fee must be returned to the board office prior to permit expiration. The permit renewal application will be forwarded to the anesthesia committee, which will renew the permit holder's affidavits for administration and facility or examine the permit holder as required. The anesthesia committee may require the applicant applying for a renewal permit to pass another oral examination and the facility used by the dentist may be subject to another inspection. This decision will be based on credentials of the applicant or past experience with sedation treatments.

#### **C. Education requirements:**

(1) minimal sedation - holders of permits in minimal sedation must have a minimum of eight hours of continuing education every six-year renewal period in medical emergencies, air way management, pharmacology, or anesthesia related topics;

(2) moderate sedation (formerly conscious sedation I and II), deep sedation and general anesthesia - holders of permits for moderate sedation, deep sedation or general anesthesia must have a minimum of 16 hours of continuing education every six-year renewal period in medical emergencies, airway management, pharmacology, or anesthesia related topics.

**D. New facility evaluation:** a dentist who holds a moderate sedation, deep sedation or general anesthesia permit and who relocates his practice requires a new facility permit based on re-examination, or affidavit of compliance. A new permit fee will be charged.

**E. Re-examination/evaluation:** The board may require a re-examination or a re-evaluation of the credentials, facilities, equipment, personnel, and procedures of a permit holder to determine if the dentist is currently qualified to administer anesthesia. The board or its agents shall notify the dentist to be re-examined or re-evaluated 180

days in advance of permit expiration. The notification will indicate the content and format of the examination/evaluation.

**F.** Permit expiration: Failure of a dentist to renew his license and permit, or to schedule a required office re-evaluation within thirty days of receipt of the notification, or failure on the part of the licensee to successfully complete the examination/evaluation, will cause the permit to expire.

**G.** Verification of continuing education: The board requires verification of continuing education credits for sedation. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for 6 years following the renewal cycle in which they are earned. Additionally, and at renewal time, holders of any permit level may be requested to demonstrate competency in maintenance of airway patency to the anesthesia committee, it's designated examiner or the board either on a "board approved" simulator, or other device as may be acceptable to the board. There may be an announced audit of any permit holder by the anesthesia committee or by the board designated examiner during the permitted time for the purpose of demonstrating airway management and airway competency, either on the board designated model or other device approved by the board.

[16.5.15.20 NMAC - Rp, 16.5.15.17 NMAC, 5/31/2023]

## **PART 16: DENTISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS**

### **16.5.16.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.16.1 NMAC - Rp, 16.5.16.1 NMAC, 12/14/2019]

### **16.5.16.2 SCOPE:**

The provisions of Section 16.5.16 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a dentist licensed by the board.

[16.5.16.2 NMAC - Rp, 16.5.16.2 NMAC, 12/14/2019]

### **16.5.16.3 STATUTORY AUTHORITY:**

Section 16.5.16 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).

[16.5.16.3 NMAC - Rp, 16.5.16.3 NMAC, 12/14/2019]

**16.5.16.4 DURATION:**

Permanent.

[16.5.16.4 NMAC - Rp, 16.5.16.4, 12/14/2019]

**16.5.16.5 EFFECTIVE DATE:**

December 14, 2019, unless a later date is cited at the end of a section.

[16.5.16.5 NMAC - Rp, 16.5.16.5 NMAC, 12/14/2019]

**16.5.16.6 OBJECTIVE:**

To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.

[16.5.16.6 NMAC - Rp, 16.5.16.6 NMAC, 12/14/2019]

**16.5.16.7 DEFINITIONS:**

**A. "Addiction"** means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

**B. "Chronic pain"** means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

**C. "Direct reference"** means a phone number or website where names and contact information of the licensee can be referenced.

**D. "Drug abuser"** means a person who takes a drug or drugs for other than legitimate medical purposes.

**E. "Pain"** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or damage.

**F. "Patient abandonment"** means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

**G. "Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**H. "Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.5.16.7 NMAC - Rp, 16.5.16.7 NMAC, 12/14/2019]

#### **16.5.16.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act, the Dental Health Care Act or the Impaired Dentists and Dental Hygienists Act.

[16.5.16.8 NMAC - Rp, 16.5.16.8 NMAC, 12/14/2019]

#### **16.5.16.9 ACTIONS:**

**A.** The board may fine, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

**B.** The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the Act or Rules.

[16.5.16.9 NMAC - Rp, 16.5.16.9 NMAC, 12/14/2019]

#### **16.5.16.10 GUIDELINES:**

The board shall use the following as guidelines for disciplinary action.

**A. "Gross incompetence" or "gross negligence"** means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

**B. "Unprofessional conduct"** means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

**(2)** failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

**(3)** failure to release to a patient copy of that patient's records and x-rays within 15 business days regardless whether patient has an outstanding balance;

**(4)** failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience, including:

**(a)** an owner dentist or supervisor causing an employee dentist to make a referral for dental treatment based on contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by referral to another practitioner, and failure to notify the patient of such contractual obligations for referrals;

**(b)** an owner dentist or supervisor causing an employee dentist to use a dental laboratory due to contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by the use of another dental laboratory.

**(5)** failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

**(6)** failure of a dentist to comply with advertising and specialty recognition rules as defined in 16.5.1.29 NMAC.

**(7)** failure to use appropriate infection control techniques and sterilization procedures;

**(8)** deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

**(9)** accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

**(10)** prescribe, dispense or administer drugs outside the scope of dental practice;

**(11)** charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

**(12)** sexual misconduct;

**(13)** breach of ethical standards, an inquiry into which the board will begin by reference to the most current code of ethics of the American dental association;

**(14)** the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

**(15)** employing abusive billing practices;

**(16)** fraud, deceit or misrepresentation in any application;

**(17)** violation of any order of the board, including any probation order;

**(18)** injudicious prescribing, administration, or dispensing of any drug or medicine;

**(19)** failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

**(20)** negligent supervision of a dental hygienist or dental assistant;

**(21)** cheating on an examination for licensure; or

**(22)** failure to comply with the terms of a signed collaborative practice agreement;

**(23)** failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care as defined in Section 16.5.17 NMAC;

**(24)** assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

**(25)** failure to make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;

(26) conviction of either a misdemeanor or a felony punishable by incarceration;

(27) aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient abandonment;

(29) habitually addicted as defined in Section 61.5A-21 4 & 6 or Subsection C and D of Section 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, Section (30-31-1 NMSA 1978) or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board within 10 business days of request, its investigators or representatives with information requested by the board;

(31) failure to appear before the board when requested by the board in any disciplinary proceeding;

(32) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 seq.;

(33) fraudulent record keeping;

(34) failure to properly install amalgam separator as defined in Section 16.5.58 NMAC;

(35) failure to properly operate and maintain amalgam separator as defined in 16.5.58 NMAC; and

(36) failure to properly dispose of amalgam waste as defined in Section 16.5.58 NMAC.

[16.5.16.10 NMAC - Rp, 16.5.16.10, 12/14/2019]

#### **16.5.16.11 INVESTIGATIVE SUBPOENAS:**

The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations.

[16.5.16.11 NMAC - Rp, 16.5.16.11 NMAC, 12/14/2019]

#### **16.5.16.12 REVOCATION OF LICENSE FOR DISCIPLINARY ACTIONS:**

A licensee whose license is revoked for disciplinary actions shall:

**A.** provide proof of written notification of practice closure to all patients currently under active treatment;

**B.** notification to patients should include where and how dental treatment records may be obtained and contact information for dentists available; and

**C.** provide to the board the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of closure; the notification to the board shall include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.16.12 NMAC - Rp, 16.5.16.12 NMAC, 12/14/2019]

### **16.5.16.13 REINSTATEMENT OF REVOKED LICENSE FOR DISCIPLINARY ACTIONS:**

A licensee whose license has been revoked for disciplinary actions may request reinstatement of the license after the terms of the settlement agreement have been met. Upon approval from the board and receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

**A.** Along with the completed application, the request for reinstatement shall include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

**(1)** 20 hours of approved continuing education courses related to the clinical practice of dentistry, per year of revocation; at least 20 of these hours shall be in the 12 months previous to the request;

**(2)** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

**(3)** proof of infection control course within the past 12 months; and

**(4)** 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of revocation as well as any continuing education taken during the revoked period.

**B.** Applicant shall authorize the following agencies to send verification of status directly to the board office:

**(1)** drug enforcement administration (DEA); and

**(2)** American association of dental examiners clearinghouse.

**C.** The board will obtain electronic verification of applicant status from the national practitioners' data bank.

**D.** Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

**E.** The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of revocation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license may be reinstated and the previous license number reassigned. The reinstated license will expire as defined in Section 16.5.11 NMAC.

**F.** A dentist with a license in revocation status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

**G.** If reinstatement of a revoked license is not requested within three years after settlement agreement has been met, application for a new license shall be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.16.13 NMAC - Rp, 16.5.16.13, 12/14/2019]

**16.5.16.14 REINSTATEMENT OF SUSPENDED LICENSE FOR DISCIPLINARY ACTIONS:**

For licenses suspended for greater than six months; a licensee whose license has been suspended for disciplinary actions in addition to meeting the terms of the settlement agreement shall also meet the following conditions before reinstatement of licensure:

**A.** verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form;

**B.** the board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of suspension and information on any existing impairment; the reinstated license will expire as defined in Section 16.5.11 NMAC; and

**C.** a dentist with a license in suspended status may not practice dentistry in New Mexico until proof of active licensure is approved by the board and issued by the board office.

[16.5.16.14 NMAC - Rp, 16.5.16.14 NMAC, 12/14/2019]

## **PART 17: DENTISTS AND DENTAL HYGIENISTS, COLLABORATIVE PRACTICE**

### **16.5.17.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.17.1 NMAC - Rp, 16.5.17.1 NMAC, 5/31/2023]

### **16.5.17.2 SCOPE:**

The provisions of 16.5.17 NMAC apply to all dentists, dental hygienists and dental assistants who work in a collaborative practice arrangement.

[16.5.17.2 NMAC - Rp, 16.5.17.2 NMAC, 5/31/2023]

### **16.5.17.3 STATUTORY AUTHORITY:**

16.5.17 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-4 NMSA 1978.

[16.5.17.3 NMAC - Rp, 16.5.17.3 NMAC, 5/31/2023]

### **16.5.17.4 DURATION:**

Permanent.

[16.5.17.4 NMAC - Rp, 16.5.17.4 NMAC, 5/31/2023]

### **16.5.17.5 EFFECTIVE DATE:**

May 31, 2023, unless a different date is cited at the end of a section.

[16.5.17.5 NMAC - Rp, 16.5.17.5 NMAC, 5/31/2023]

### **16.5.17.6 OBJECTIVE:**

To regulate the collaborative practice of dental hygiene in New Mexico.

[16.5.17.6 NMAC - Rp, 16.5.17.6 NMAC, 5/31/2023]

### **16.5.17.7 DEFINITIONS:**

**A. "Acting consulting dentist"** means a dentist who meets the qualifications of a consulting dentist who agrees to act as the consulting dentist when that dentist will be

away from his/her practice for more than two weeks. An approved collaborative agreement shall be signed by the acting consulting dentist and the licensed dental hygienist prior to the consulting dentist leaving.

**B. "Collaborative practice agreement"** means a written agreement between a dentist who meets the qualifications of 16.5.17.9 NMAC to be a consulting dentist as defined in 16.5.17 NMAC of these rules, and a collaborative practice dental hygienist. This agreement shall follow the format as determined by the board and committee. A new agreement shall be signed and submitted to the board for approval each renewal period.

**C. "Collaborative practice of dental hygiene"** means the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Subsection B of Section of 61-5A-4 NMSA 1978, in a cooperative working relationship with a consulting dentist but without general supervision, as set forth by the rules jointly established by the board and committee.

**D. "Consulting (collaborative) dentist"** means a dentist who meets the qualifications specified in 16.5.17.9 NMAC of this rule and who agrees to serve or continues to serve as a patient's dentist of record in collaboration and consultation with the practice dental hygienist as specified in the rules.

**E. "Non-participating dentist"** is a dentist who does not wish to collaborate with a collaborative practice dental hygienist.

**F. "Standard collaborative practice protocols"** is the protocol to be used by the collaborative practice dental hygienist to treat a patient, as specified in 16.5.17.13 NMAC of this part.

**G. "Verbal prescription or orders"** means instructions not communicated in written form, shall be recorded in the patient's record or the protocol agreement by both the collaborative hygienist and the consulting dentist when given.

**H. "Written prescription orders"** means instructions from the consulting dentist to the collaborative hygienist to perform those allowable treatments requiring diagnosis and treatment plan, subject to the limitations of 16.5.17.12 NMAC of these rules, or directions written to modify the standard collaborative practice protocols, or the collaborative practice agreement.

[16.5.17.7 NMAC - Rp, 16.5.17.7 NMAC, 5/31/2023]

## **16.5.17.8 CERTIFICATION FOR TE COLLABORATIVE PRACTICE OF DENTAL HYGIENE:**

The board, based on the recommendation of the dental hygienists committee, will certify qualified dental hygienists for collaborative practice.

**A.** Prerequisite requirements for certification. Each applicant for certification as a collaborative practice dental hygienist shall possess the following qualifications:

- (1) possess a current New Mexico dental hygiene license in good standing;
- (2) have been engaged in the active practice of dental hygiene as defined in Subsection B of Section 61-5A-4 NMSA1978 of the act for not less than:
  - (a) 2400 hours of active practice for the past 18 months; or
  - (b) a total of 3,000 hours of active practice and has been engaged in active practice for two of the past three years;
- (3) meet the educational criteria for licensure in Subsection A of Section 61-5A-13 NMSA 1978 of the act; and
- (4) have 15 hours of continuing education in clinical dental hygiene in the 12 months prior to certification, which includes courses in infection control and medical emergencies.

**B.** Documentation requirements. Each applicant for certification as a collaborative practice dental hygiene shall submit a completed application, the required fees and following documentation:

- (1) verification of a current active license;
- (2) proof of the active practice of dental hygiene as defined in 16.5.17.8 NMAC of this part; this proof may be in the form of letters from employers, supervisors of dental clinics of one of the uniformed services of the United States, or faculty administrators of accredited schools; if this documentation cannot be obtained, the applicant may request to provide other proof of the required hours to the committee for consideration;
- (3) basic life support (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;
- (4) proof of 15 hours of continuing education related to the clinical practice of dental hygiene; and
- (5) a copy of a signed collaborative practice agreement between a dental hygienist and a consulting dentist.

**C. Renewal requirements.** Each dental hygienist certified for collaborative practice shall:

(1) submit a completed renewal application for certification for collaborative practice, along with the triennial renewal application for their license, accompanied by the required fees as defined in 16.5.18 NMAC;

(2) complete 60 hours of continuing education every triennial renewal period; if the initial certification period is less than three years, the required continuing education will be prorated at 20 hours per full year of certification; 60 hours to include:

(a) basic life support (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(b) infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

(c) medical emergencies: as for new certification defined in Paragraph (4) of Subsection A of 16.5.17.8 NMAC;

(3) submit a current list of all consulting dentists to the board with each renewal application; and

(4) submit a copy of the signed collaborative practice agreement(s) and protocols between a dental hygienist and a consulting dentist per renewal period.

[16.5.17.8 NMAC - Rp, 16.5.17.8 NMAC, 5/31/2023]

#### **16.5.17.9 QUALIFICATIONS FOR CONSULTING DENTISTS:**

A consulting dentist shall meet the following qualifications:

**A.** possess a current New Mexico dental license in good standing;

**B.** maintains an active clinical general dentistry or public health practice within the state and within a reasonable referral distance from the collaborative dental hygiene practice as determined by the board upon recommendation of the dental hygienists committee.

[16.5.17.9 NMAC - Rp, 16.5.17.9 NMAC, 5/31/2023]

#### **16.5.17.10 RESPONSIBILITIES OF A CONSULTING DENTIST:**

The consulting dentist shall:

- A.** in collaboration with the dental hygienist, provide for the patient's additional needed dental care;
- B.** be available to provide consultation to the collaborative practice dental hygienist;
- C.** make provisions for a qualified acting consulting dentist to act in his/her place should he/she be away from his practice for more than two weeks;
- D.** maintain an appropriate level of contact and communication with the collaborative practice dental hygienist;
- E.** in conjunction with the collaborative practice dental hygienist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;
- F.** assure that each collaborative practice dental hygienist is duly licensed and certified for collaborative practice by the board of dental health care;
- G.** maintain a separate and distinct collaborative practice agreement with each collaborative practice dental hygienist for whom he/she serves as a consulting dentist;
- H.** provide verbal or written prescriptions to the collaborative practice dental hygienist for those procedures requiring a diagnosis;
- I.** provide verbal or written prescriptions to the collaborative practice dental hygienist when the consulting dentist deems it appropriate to provide exception to the standardized protocols;
- J.** provide a written prescription within seven business days following a verbal prescription or order;
- K.** maintain in the patients record a duplicate of the written prescriptions or orders as described in Subsection H through Subsection J of 16.5.17.10 NMAC;
- L.** provide a written diagnosis and treatment recommendations from the records provided by the collaborative practice dental hygienist to the patient and the hygienist within 30 days of receipt of such records;
- M.** each collaborative agreement will be kept on file by the collaborative practice dental hygienist and the consulting dentist, the basic format of the agreement will be provided with the application by the board.

[16.5.17.10 NMAC - Rp, 16.5.17.10 NMAC, 5/31/2023]

#### **16.5.17.11 RESPONSIBILITIES OF A COLLABORATIVE PRACTICE DENTAL HYGIENIST:**

The collaborative practice dental hygienist shall:

**A.** refer each patient for a dental examination every 12 months, as well as anyone who may require further dental services, to the patient's consulting dentist or to a dental specialist in the case of an emergency;

**B.** in conjunction with the consulting dentist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;

**C.** assure that each consulting dentist is duly licensed by the board of dental health care; by verification with the board office;

**D.** maintain a collaborative practice agreement with each consulting dentist; and

**E.** maintain an appropriate level of contact and communication with the consulting dentist;

**F.** contact the patient's dentist of record, if not a consulting dentist, prior to treating the patient to give the dentist the option of becoming a consulting dentist;

**G.** offer the patient a choice of the collaborative practice dental hygienist's consulting dentists if the patient's dentist of record chooses to be a non-participating dentist;

**H.** not to perform any treatment if the patient does not have an active consulting dentist on record with the collaborative practice dental hygienist;

**I.** follow the standardized protocol unless modified by the consulting dentist by prescription or order;

**J.** follow the verbal and written prescriptions and orders of the consulting dentist for those treatments requiring a diagnosis;

**K.** forward all records and x-rays, or duplicates, to the consulting dentist within 14 days;

**L.** assure that each consulting dentist meets the requirements of a consulting dentist as stated in 16.5.17.9 NMAC;

**M.** a copy of the collaborative agreement shall be on file with the board office; any changes to this agreement shall be filed with the board office within 60 days.

**N.** the collaborative dental hygienist shall be subject to provisions of 16.5.58 NMAC.

[16.5.17.11 NMAC - Rp, 16.5.17.11 NMAC, 5/31/2023]

## **16.5.17.12 COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:**

**A.** A dental hygienist in a collaborative practice may perform the procedures in a dental hygienist's scope of practice listed in 16.5.29 NMAC without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee.

**B.** A collaborative practice dental hygienist may have more than one consulting dentist.

**C.** A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

**D.** The collaborative practice dental hygienist may own and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

**E.** The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing Act, against a dental hygienist certified in collaborative practice.

**F.** Collaborative dental hygienist can administer local anesthesia under general supervision as defined in 16.5.28.8 NMAC and 16.5.28.12 NMAC.

**G.** A collaborative dental hygienist may assess for pit and fissure sealants without a dentist's evaluation as provided in Subsection D of 16.5.29.8 NMAC.

**H.** A collaborative dental hygienists may prescribe, administer and dispense topically applied fluoride and topically applied antimicrobials as provided for in 16.5.29.11 NMAC.

**I.** Perform dental hygiene focused assessment.

**J.** A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the general supervision of a dentist; and only if certified to do so through the committee and ratified by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) shall be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice

dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every six months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental hygienist as in 16.5.17.12 NMAC, shall be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in residential or long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/order from the consulting dentist; such treatments include but are not limited to, root planing, sealant application in presence of cavitation, administration of therapeutic agents and other services defined in Subsection B of Section 61-5A-4 NMSA 1978 as within the scope of dental hygiene practice but which require a dentist's diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist;

(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;

(8) provide in office bleaching systems unless under indirect supervision of a consulting dentist.

**K.** Effective July 1, 2015, a collaborative practice hygienist who owns a dental practice shall register with the board as a non-dentist owner. No additional license or fee is required for this registration. A collaborative practice hygienist who owns a dental practice must notify the board, in writing, if the dental practice has been sold or has closed.

[16.5.17.12 NMAC - Rp, 16.5.17.12 NMAC, 5/31/2023]

**16.5.17.13 STANDARD COLLABORATIVE PRACTICE PROTOCOLS:**

All protocols will include but are not limited to: review of health history charting of existing teeth and restorations, periodontal charting as necessary, and notations of potential pathology. Protocols may be amended upon written order of the consulting dentist. Time intervals for these protocols shall be established in the collaborative practice agreement as provided in Subsection G of 16.5.17.13 NMAC.

**A.** Protocols for children 12 and under:

- (1) appropriate panoramic or occlusal x-rays;
- (2) two bitewing x-rays;
- (3) prophylaxis/scaling;
- (4) topical fluoride treatment;
- (5) other radiographs as indicated by consultation with the dentist.

**B.** Protocols for teenagers:

- (1) appropriate panoramic or full mouth radiographs;
- (2) two or four bitewing x-rays;
- (3) prophylaxis/scaling;
- (4) topical fluoride treatment;
- (5) other radiographs as indicated by consultation with the dentist.

**C.** Protocols for adults:

- (1) full mouth or panoramic radiograph;
- (2) bitewing radiographs annually;
- (3) complete periodontal charting;
- (4) prophylaxis/scaling or gross debridement and consultation with the consulting dentist if periodontal assessment suggests periodontal involvement.

**D.** All other procedures not listed in the protocols shall require a prescription from the consulting dentist as stated in Subsections H and N of 16.5.17.10 NMAC.

**E.** Guidelines for patient release forms, to include a disclaimer signed by the patient or legal guardian that the dental hygiene services rendered do not preclude the need for routine examinations by a dentist.

**F.** Both the consulting dentist and the collaborative practice dental hygienist shall sign a copy of this or amended protocol and keep on file.

**G.** Changes to practice protocol and agreements shall be prescribed in writing by the consulting dentist and recorded by both the consulting dentist and the collaborative practice dental hygienist.

[16.5.17.13 NMAC - Rp, 16.5.17.13 NMAC, 5/31/2023]

#### **16.5.17.14 DENTAL ASSISTANTS IN COLLABORATIVE DENTAL HYGIENE PRACTICE:**

Collaborative practice dental hygienists may work with and supervise dental assistants, including dental assistants certified to perform functions as defined in 16.5.39 NMAC of these rules.

[16.5.17.14 NMAC - Rp, 16.5.17.14 NMAC, 5/31/2023]

### **PART 18: DENTAL HYGIENISTS, FEES**

#### **16.5.18.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.18.1 NMAC - Rp, 16.5.18.1 NMAC, 12/27/2022]

#### **16.5.18.2 SCOPE:**

The provisions of 16.5.18 NMAC apply to all applicants for licensure; to active, expedited, retired, expired and suspended licenses; to anyone who requests a list or labels of licensed dental hygienists, multiple copies of the law or rules, or copies of public records.

[16.5.18.2 NMAC - Rp, 16.5.18.2 NMAC, 12/27/2022]

#### **16.5.18.3 STATUTORY AUTHORITY:**

16.5.18 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-14 NMSA 1978 (1996 Repl. Pamp.).

[16.5.18.3 NMAC - Rp, 16.5.18.3 NMAC, 12/27/2022]

**16.5.18.4 DURATION:**

Permanent.

[16.5.18.4 NMAC - Rp, 16.5.18.4 NMAC, 12/27/2022]

**16.5.18.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[16.5.18.5 NMAC - Rp, 16.5.18.5 NMAC, 12/27/2022]

**16.5.18.6 OBJECTIVE:**

To establish fees to generate revenue to support the cost of program administration.

[16.5.18.6 NMAC - Rp, 16.5.18.6 NMAC, 12/27/2022]

**16.5.18.7 DEFINITIONS:**

**[RESERVED]**

[16.5.18.7 NMAC - Rp, 16.5.18.7 NMAC, 12/27/2022]

**16.5.18.8 FEES:**

**A.** All fees are non-refundable.

**B.** Application fee for licensure by examination is \$350, which includes the initial licensing period.

**C.** Application fee for licensure by credentials is \$400, which includes the initial licensing period.

**D.** An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

**E.** Triennial renewal fee for all dental hygienist licensee is \$325:

- (1) impaired fee is \$15 per triennial renewal period plus renewal fee;
- (2) late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees;
- (3) cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

**F. Fees for collaborative practice:**

- (1) application for certification for collaborative practice fee is \$150;
- (2) renewal of certification for collaborative practice fee is \$50 at the time of each triennial license renewal; the initial fee will be prorated at \$20 per full year of certification.

**G. Fees for temporary licenses and application:**

- (1) 48 hour license, application fee of \$50, license fee of \$50;
- (2) six month license, application fee of \$100, license fee of \$100;
- (3) 12 month license, application fee of \$100, license fee of \$150.

**H. Application for certification in local anesthesia fee:**

- (1) by examination - \$40;
- (2) by credentials - \$100 for application and credential review.

**I. Reinstatement fee is \$200.**

**J. Application for licensure for inactive status is \$50.**

**K. Administrative fees:**

- (1) duplicate license fee is \$25;
- (2) multiple copies of the statute or rules are \$10 each;
- (3) copies cost \$0.25 per page;
- (4) list of current dental hygiene licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and
- (5) mailing labels of current dental hygiene licensees is \$300.

**L. Expedited licensure fees.** The fees for expedited licensure submitted pursuant to Subsection B of Section 61-5A-14 NMSA 1978 are a \$100 application fee and a \$150 license fee.

[16.5.18.8 NMAC - Rp, 16.5.18.8 NMAC, 12/27/2022]

**PART 19: DENTAL HYGIENISTS, LICENSURE BY EXAMINATION**

**16.5.19.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.19.1 NMAC – Rp, 16.5.19.1 NMAC, 5/31/2023]

**16.5.19.2 SCOPE:**

The provisions of Part 19 of Chapter 5 apply to all applicants for licensure as a dental hygienist by examination. Part 19 also applies to dental hygienists previously licensed in New Mexico who have allowed their license to expire and do not qualify for licensure by credentials.

[16.5.19.2 NMAC - Rp, 16.5.19.2 NMAC, 5/31/2023]

**16.5.19.3 STATUTORY AUTHORITY:**

Part 19 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-13 NMSA 1978.

[16.5.19.3 NMAC - Rp, 16.5.19.3 NMAC, 5/31/2023]

**16.5.19.4 DURATION:**

Permanent.

[16.5.19.4 NMAC - Rp, 16.5.19.4 NMAC, 5/31/2023]

**16.5.19.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.19.5 NMAC – Rp, 16.5.19.5 NMAC, 5/31/2023]

**16.5.19.6 OBJECTIVE:**

To establish the requirements for application for licensure by examination.

[16.5.19.6 NMAC - Rp, 16.5.19.6 NMAC, 5/31/2023]

**16.5.19.7 DEFINITIONS:**

**[RESERVED]**

[16.5.19.7 NMAC - Rp, 16.5.19.7 NMAC, 5/31/2023]

### **16.5.19.8 PREREQUISITE REQUIREMENTS FOR LICENSE:**

Each applicant for licensure as a dental hygienist by examination must possess the following qualifications:

**A.** graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13 NMSA 1978;

**B.** passed the dental hygiene national board examination as defined in Section 61-5A-13 NMSA 1978;

**C.** passed a clinical examination approved by the committee and ratified by the board; the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to a board accepted examining agent for examination, and

(2) results of the clinical examination must be sent directly to the board office; and

**D.** passed the jurisprudence examination with a score of at least seventy-five percent;

**E.** the committee requires a background status report from a board designated professional background service the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.19.8 NMAC - Rp, 16.5.19.8 NMAC, 5/31/2023]

### **16.5.19.9 DOCUMENTATION REQUIREMENTS:**

Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

**A.** completed application, applications are valid for one year from the date of receipt;

**B.** official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

**C.** copy of clinical examination score card or certificate;

**D.** copy of national board examination certificate or score card;

**E.** proof of having taken a course in infection control technique or graduation from dental hygiene school within the past 12 months;

**F.** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self/study course;

**G.** verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form; and

**H.** the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the committee.

[16.5.19.9 NMAC - Rp, 16.5.19.9 NMAC, 5/31/2023]

#### **16.5.19.10 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in Subsection D of 16.5.18.8 NMAC to re-take the exam.

[16.5.19.10 NMAC - Rp, 16.5.19.10 NMAC, 5/31/2023]

#### **16.5.19.11 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, and successful completion of the examination requirements, a committee member will review the application and may approve for licensure. The recommendation of the committee will be given to the board to formally accept the approval of the application at the next scheduled meeting.

**A.** Initial dental hygiene licenses are issued for a period not to exceed three years, as defined in Part 24.

**B.** Any application that cannot be approved by the committee member will be reviewed by the entire committee at the next scheduled meeting.

[16.5.19.11 NMAC - Rp, 16.5.19.11 NMAC, 5/31/2023]

## **PART 20: DENTAL HYGIENISTS, LICENSURE BY CREDENTIALS**

**16.5.20.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.20.1 NMAC - Rp, 16.5.20.1 NMAC, 5/31/2023]

**16.5.20.2 SCOPE:**

The provisions of 16.5.20 NMAC apply to all applicants for licensure as a dental hygienist who are currently licensed in another state by examination.

[16.5.20.2 NMAC - Rp, 16.5.20.2 NMAC, 5/31/2023]

**16.5.20.3 STATUTORY AUTHORITY:**

16.5.20 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-13 NMSA 1978.

[16.5.20.3 NMAC - Rp, 16.5.20.3 NMAC, 5/31/2023]

**16.5.20.4 DURATION:**

Permanent.

[16.5.20.4 NMAC - Rp, 16.5.20.4 NMAC, 5/31/2023]

**16.5.20.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.20.5 NMAC - Rp, 16.5.20.5 NMAC, 5/31/2023]

**16.5.20.6 OBJECTIVE:**

To establish the requirements for applicants for dental hygiene licensure based on their licensure and practice in another state.

[16.5.20.6 NMAC - Rp, 16.5.20.6 NMAC, 5/31/2023]

**16.5.20.7 DEFINITIONS:**

[RESERVED]

[16.5.20.7 NMAC - Rp, 16.5.20.7 NMAC, 5/31/2023]

**16.5.20.8 PREREQUISITE REQUIREMENTS FOR LICENSE:**

Each applicant for licensure as a dental hygienist by credentials must possess the following qualifications:

**A.** graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13, NMSA 1978 of the act;

**B.** completed 15 hours of continuing education during the past year; these hours must meet the qualifications as defined in 16.5.1.15 NMAC;

**C.** passed the dental hygiene national board examination as defined in Subsection A of Section 61-5A-13., NMSA 1978;

**D.** passed the jurisprudence examination with a score of at least seventy-five percent;

**E.** holds a current active license in good standing obtained through a clinical examination in another state or territory of the United States;

**F.** the committee requires a background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service;

**G.** all licenses held by the applicant must have been in good standing for two years prior to application;

**H.** the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

[16.5.20.8 NMAC - Rp, 16.5.20.8 NMAC, 5/31/2023]

#### **16.5.20.9 DOCUMENTATION REQUIREMENTS:**

Each applicant for licensure by credentials must submit the required fees and following documentation:

**A.** completed application, applications are valid for one year from the date of receipt;

**B.** official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

**C.** copy of national board examination certificate or score card;

**D.** proof of having taken a course in infection control technique within the past 12 months;

**E.** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

**F.** proof of 15 hours of continuing education during the 12 months prior to application;

**G.** a status report must be received at the board office directly from a board designated professional background service; the results of the board designated professional background service background check must either indicate no negative findings or, if there are negative findings, those findings will be considered by the committee:

(1) the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

(2) supplemental information may be requested by the committee; and

**H.** verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.

[16.5.20.9 NMAC – Rp, 16.5.20.9 NMAC, 5/31/2023]

#### **16.5.20.10 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence examination must submit the re-examination fee as defined in Subsection D of 16.5.18 NMAC to re-take the exam.

[16.5.20.10 NMAC - Rp, 16 NMAC, 5/31/2023]

#### **16.5.20.11 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, and successful completion of the jurisprudence examination, a designee of the committee will review the application and may approve for licensure. The recommendation of the committee will be given to the board to formally accept the approval of the application at the next scheduled meeting.

**A.** Initial dental hygiene licenses are issued for a period not to exceed three years as defined in 16.5.24 NMAC.

**B.** Any application which cannot be approved by the delegate of the committee will be reviewed by the entire committee at the next scheduled meeting.

[16.5.20.11 NMAC - Rp, 16.5.20.11, 5/31/2023]

## **PART 21: DENTAL HYGIENISTS, TEMPORARY OR PUBLIC SERVICE LICENSURE**

### **16.5.21.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care

[9-30-96; 16.5.21.1 NMAC - Rn & A, 16 NMAC 5.21.1, 12-30-02]

### **16.5.21.2 SCOPE:**

The provisions of Part 21 of Chapter 5 apply to all dental hygienists applying for a temporary or public service license to practice in New Mexico.

[9-30-96; 16.5.21.2 NMAC - Rn, 16 NMAC 5.21.2, 12-30-02; A, 01-09-12]

### **16.5.21.3 STATUTORY AUTHORITY:**

Part 21 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, NMSA 1978 61-5A-14 (1996 Repl. Pamp.).

[9-30-96; 16.5.21.3 NMAC - Rn, 16 NMAC 5.21.3, 12-30-02]

### **16.5.21.4 DURATION:**

Permanent.

[9-30-96; 16.5.21.4 NMAC - Rn, 16 NMAC 5.21.4, 12-30-02]

### **16.5.21.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9-30-96; 16.5.21.5 NMAC - Rn & A, 16 NMAC 5.21.5, 12-30-02]

### **16.5.21.6 OBJECTIVE:**

To establish the requirements for application for temporary or public service licensure as a dental hygienist.

[9-30-96; 16.5.21.6 NMAC - Rn, 16 NMAC 5.21.6, 12-30-02; A, 01-09-12]

#### **16.5.21.7 DEFINITIONS:**

A. "Entity" means a dental or dental hygiene organization, foundation or officially recognized study club, which has a constitution, bylaws and whose officers or board of trustees are dentists or dental hygienists licensed in good standing in the state.

B. "Good standing" means having an active dental hygiene license in a jurisdiction for a period of at least two consecutive years immediately preceding the date of application. The committee as ratified by the board shall consider stipulations, disciplinary, or administrative actions taken against a licensee by the issuing agency, within the previous two years, when determining whether a license is in good standing.

C. "In the state" or "in this state" means that a program has a physical presence in New Mexico in the form of a facility and a permanent faculty.

[9-30-96; 16.5.21.7 NMAC - Rn, 16 NMAC 5.21.7, 12-30-02; A, 01-09-12]

#### **16.5.21.8 CATEGORIES OF TEMPORARY OR PUBLIC SERVICE LICENSES:**

Temporary or public service dental hygiene licenses may be issued in the following categories for specific purposes, if education and experience requirements are met.

##### A. Clinical educator.

(1) Dental hygienists, not currently licensed in New Mexico, who provide continuing education or training that includes clinical demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for 48 hours (two days). If the course lasts longer than two days, additional 48 hour licenses may be requested upon payment of the applicable fees.

(2) Dental hygienists, not currently licensed in New Mexico, who intend to serve as a faculty member of an accredited dental hygiene program must apply for a temporary or public service license. The temporary or public service license is issued for 12 months and may be renewed one time. Temporary or public service licensees must be granted a license under the provisions of 16.5.19 NMAC or 16.5.21.15 NMAC prior to the expiration date of the temporary or public service license to continue uninterrupted practice of dental hygiene in New Mexico.

B. Public health dental hygiene. A dental hygienist may be granted temporary or public service licensure to practice in a state institution, public health clinic or public health program approved or maintained by the New Mexico department of health. The

temporary or public service license holder is restricted to work exclusively in the institution or program named on the application. A temporary or public service license may be issued for six or 12 months and may be renewed one time. Temporary or public service licensees must be granted a license under the provisions of 16.5.19 NMAC or 16.5.21.15 NMAC prior to the expiration date of the temporary or public service license to continue uninterrupted practice of dental hygiene in New Mexico.

C. Presumptive public service licensure for charitable dental hygiene projects: A dental hygienist not holding a license in the state may be granted a presumptive public service license for up to 72 hours to participate in a committee approved, and ratified by the board, charitable project. Except as noted in this section the dental hygienist shall otherwise be subject to the provisions of the dental practice act and the rules and regulations of the board. The presumptive public service license is valid only when:

- (1) the charitable project is approved by the committee and ratified by the board 45 days prior to the scheduled event;
- (2) the dental hygienist receives no compensation for participating in the project;
- (3) the project is sponsored by an entity as defined in 16.5.21.7 NMAC and that entity has been approved by the committee, and ratified by the board, to undertake the charitable project;
- (4) the dental hygienist holds a license in good standing in another jurisdiction and the license is verified by the sponsoring entity;
- (5) the dental hygienist has graduated from and holds a diploma from a dental hygiene school accredited by the commission on dental accreditation and a copy of the diploma is on file with the sponsoring entity;
- (6) upon request of the out-of-state dental hygienist shall produce copies of their diploma and license in another jurisdiction;
- (7) the dental hygiene care provided is within the scope and limits of the license the dental hygienist holds in the other jurisdiction;
- (8) the out-of-state dental hygienist works under the indirect supervision of a dentist licensed in this state who is present at the charitable project;
- (9) patients who receive dental hygiene care during the charitable project will be given a list of dentists whom they can contact if post-operative care is needed;
- (10) a charitable public service license is not eligible for conversion to any other temporary or public service, regular license, or license by credentials, and

(11) no fee shall be required by the board for the presumptive public service license for a charitable project.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.8 NMAC - Rn & A, 16 NMAC 5.21.8, 12-30-02; A, 09-18-10; A, 01-09-12; A, 12-15-12]

#### **16.5.21.9 REQUIREMENTS FOR TEMPORARY OR PUBLIC SERVICE LICENSURE:**

Presumptive public service dental hygienist as defined in Subsection C of 16.5.21.8 NMAC are not required to comply with Subsection C of this section. All other applicants for temporary or public service licensure must possess each of the following qualification:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13; and

B. hold a valid license obtained through a clinical examination in another state or territory of the United States;

C. applicants requesting a six or 12 month temporary or public service license are required to successfully complete the jurisprudence examination.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.9 NMAC - Rn, 16 NMAC 5.21.9, 12-30-02; A, 09-18-10; A, 01-09-12]

#### **16.5.21.10 DOCUMENTATION REQUIREMENTS:**

Except as otherwise required by Subsection C of 16.5.21.8 NMAC, presumptive public service dental hygienist do not need to comply with the following for presumptive public service licensure. All other applicants for temporary or public service licensure must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

C. copies of all valid licenses and a letter from the applicant attesting to the status of each license;

D. an affidavit from the New Mexico licensed dental hygienist or dentist who will sponsor the applicant, attesting to the qualifications of the applicant and the activities the applicant will perform;

E. a list of activities to be practiced and the time period for which the temporary or public service license is requested;

F. in addition, applicants requesting temporary or public service licensure in public health must submit the following documentation:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card; and

(3) proof of having taken a course in infection control technique within the past 12 months.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.10 NMAC - Rn, 16 NMAC 5.21.10, 12-30-02; A, 04-16-08; A, 09-18-10; A, 01-09-12]

#### **16.5.21.11 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence examination must submit the re-examination fee as defined in Subsection D of 16.5.18.8 NMAC to re-take the exam.

[9-30-96; 16.5.21.11 NMAC - Rn, 16 NMAC 5.21.11, 12-30-02; A, 09-18-10; A, 01-09-12]

#### **16.5.21.12 LICENSURE PROCEDURE:**

**A. Clinical Educator:** Upon receipt of a completed application, including all required documentation and fees, a Committee member will review the application and may approve for licensure. The license will be read into the Committee and Board records at the next scheduled meeting.

**B. Public Health Dental Hygiene:** Upon receipt of a completed application, including all required documentation and fees, and successful completion of the jurisprudence examination, a Committee member will review the application and may approve for licensure. The license will be read into the Committee and Board records at the next scheduled meeting.

[3-14-73, 9-30-96; 16.5.21.12 NMAC - Rn & A, 16 NMAC 5.21.12, 12-30-02]

### **16.5.21.13 LIMITATION ON LICENSE:**

A. Temporary or public service licensees shall engage in only those activities specified on the temporary or public service license for the time period designated.

B. Temporary or public service licensees shall only practice under the sponsorship, or in association with, a licensed New Mexico dental hygienist or dentist.

C. Temporary or public service licensees and the approved sponsor or associate are responsible for compliance with the act and these rules.

[3-14-73, 5-31-95; 16.5.21.13 NMAC - Rn, 16 NMAC 5.21.13, 12-30-02; A, 01-09-12]

### **16.5.21.14 RE-ISSUE PROCEDURES:**

To remain eligible for temporary or public service licensure; temporary or public service license holders who are eligible for reissue per Paragraph (2) of Subsection A and Subsection B of 16.5.21.8 NMAC must contact the board office three months prior to the expiration date to begin the re-issue process. All requirements regarding re-issue are the same as the initial application as defined in 16.5.21.8 NMAC. The application, fee and proof of 15 hours of continuing education must be post-marked on or before the expiration date.

[16.5.21.14 NMAC - N, 12-30-02; A, 09-18-10; A, 01-09-12]

### **16.5.21.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS OR EXAMINATION:**

Temporary licenses may be renewed once for a 12 month time period. After that renewal the license is no longer eligible for re-issue. If uninterrupted practice of dental hygiene in New Mexico is desired after two years, then a temporary licensee must convert to a dental hygiene license by credentials or examination. Only temporary licenses previously issued for 12 months are eligible for conversion to a permanent license by credential or examination.

A. Following the completion of the requirements for licensure, some of which were submitted with the temporary application, the applicant will complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials or examination.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for license by credentials or examination.

D. Upon receipt of a complete application a committee member shall approve a New Mexico license by credential or examination unless there is any action pending against the temporary license. Then at the discretion of the committee or its agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials or examination will be halted and the temporary license will no longer be renewed.

[16.5.21.15 NMAC - N, 12-30-02; A, 09-18-10; A, 01-09-12]

## **PART 22: [RESERVED]**

## **PART 23: DENTAL HYGIENISTS, CONTINUING EDUCATION REQUIREMENTS**

### **16.5.23.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.23.1 NMAC - Rn & A, 16 NMAC 5.23.1, 04/17/06]

### **16.5.23.2 SCOPE:**

The provisions of Part 23 of Chapter 5 apply to all licensed dental hygienists who are applying to renew their license.

[9/30/96; 16.5.23.2 NMAC - Rn, 16 NMAC 5.23.2, 04/17/06]

### **16.5.23.3 STATUTORY AUTHORITY:**

Part 23 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.23.3 NMAC - Rn, 16 NMAC 5.23.3, 04/17/06]

### **16.5.23.4 DURATION:**

Permanent.

[9/30/96; 16.5.23.4 NMAC - Rn, 16 NMAC 5.23.4, 04/17/06]

### **16.5.23.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.23.5 NMAC - Rn & A, 16 NMAC 5.23.5, 04/17/06]

**16.5.23.6 OBJECTIVE:**

To establish criteria for continuing education for dental hygienists licensed in New Mexico.

[9/30/96; 16.5.23.6 NMAC - Rn, 16 NMAC 5.23.6, 04/17/06]

**16.5.23.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.23.7 NMAC - Rn, 16 NMAC 5.23.7, 04/17/06]

**16.5.23.8 HOURS REQUIRED:**

45 hours of continuing education, a maximum of 30 hours can be on-line, webinars or self-study are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 15 hours per full year of the initial licensing period. Initial licenses issued for less than a full year do not require continuing education for the first renewal.

[11/21/75, 5/31/95; 16.5.23.8 NMAC - Rn, 16 NMAC 5.23.8, 04/17/06; A, 01/09/12]

**16.5.23.9 COURSES REQUIRED:**

Continuing education coursework must contribute directly to the practice of dental hygiene and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal:

A. basic life support (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

B. infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

[11/21/75, 4/12/92, 5/21/93, 5/31/95, 9/30/96; 16.5.23.9 NMAC - Rn & A, 16 NMAC 5.23.9, 04/17/06; A, 04/16/08; A, 07/19/10; A, 01/09/12]

**16.5.23.10 VERIFICATION OF CONTINUING EDUCATION:**

The committee will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements.

Continuing education records may be audited by the committee at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[5/21/93, 9/30/96; 16.5.23.10 NMAC - Rn, 16 NMAC 5.23.10, 04/17/06]

#### **16.5.23.11 EMERGENCY DEFERRAL:**

A. A licensee unable to fulfill the continuing education requirements may apply to the committee for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the committee.

B. A licensee practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The committee must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence.

(2) Upon return to the US, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[3/11/89, 9/30/96; 16.5.23.1 NMAC - Rn, 16 NMAC 5.23.1, 04/17/06; A, 01/09/12]

## **PART 24: DENTAL HYGIENISTS, LICENSE EXPIRATION AND RENEWAL**

#### **16.5.24.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.24.1 NMAC - Rn & A, 16 NMAC 5.24.1, 04/17/06]

#### **16.5.24.2 SCOPE:**

The provisions of Part 24 of Chapter 5 apply to all dental hygienists with a license to practice in New Mexico.

[9/30/96; 16.5.24.2 NMAC - Rn, 16 NMAC 5.24.2, 04/17/06]

#### **16.5.24.3 STATUTORY AUTHORITY:**

Part 24 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.24.3 NMAC - Rn, 16 NMAC 5.24.3, 04/17/06]

**16.5.24.4 DURATION:**

Permanent.

[9/30/96; 16.5.24.4 NMAC - Rn, 16 NMAC 5.24.4, 04/17/06]

**16.5.24.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.24.5 NMAC - Rn & A, 16 NMAC 5.24.5, 04/17/06]

**16.5.24.6 OBJECTIVE:**

To establish procedures for license issuance, expiration and renewal.

[9/30/96; 16.5.24.6 NMAC - Rn, 16 NMAC 5.24.6, 04/17/06]

**16.5.24.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.24.7 NMAC - Rn, 16 NMAC 5.24.7, 04/17/06]

**16.5.24.8 LICENSE EXPIRATION:**

Initial licenses expire on July 1 in the third year of licensure. No license will be issued for longer than 36 months or less than 25 months.

[11/6/83, 9/30/96, 12/15/97, 8/16/99; 16.5.24.8 NMAC - Rn, 16 NMAC 5.24.8, 04/17/06]

**16.5.24.9 RENEWAL PERIOD AND EXPIRATION:**

After the initial license period, dental hygiene licenses expire every three years on June 30. Dental hygiene licenses not renewed by July 1 are considered expired.

[3/14/73, 9/30/96, 8/16/99; 16.5.24.9 NMAC - Rn & A, 16 NMAC 5.24.9, 04/17/06]

**16.5.24.10 RENEWAL PROCESS:**

A completed renewal application, accompanied by the required fee as set forth in 16.5.18.8 NMAC, along with the required proof of completion of 45 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1, of the renewal year.

[3/14/73, 9/30/96, 8/16/99; 16.5.24.10 NMAC - Rn & A, 16 NMAC 5.24.10, 04/17/06]

**16.5.24.11 LICENSEE RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion and may result in the assessment of a late renewal fee as set forth in 16.5.18.8 NMAC.

[5/31/95; 16.5.24.11 NMAC - Rn & A, 16 NMAC 5.24.11, 04/17/06]

**16.5.24.12 RENEWAL AFTER JUNE 30:**

Renewal applications post-marked after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 45 hours of continuing education as set forth in 16.5.23.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.18.8 NMAC.

[3/14/73, 9/30/96, 8/16/99; 16.5.24.12 NMAC - Rn & A, 16 NMAC 5.24.12, 04/17/06]

**16.5.24.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1:**

Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 45 hours of continuing education as set forth in 16.5.23.8 NMAC, along with the triennial renewal fee, impairment fee, late fee and the cumulative late fee as set forth in 16.5.18.8 NMAC.

[3/14/73, 5/31/95; 16.5.24.13 NMAC - Rn & A, 16 NMAC 5.24.13, 04/17/06]

**16.5.24.14 RENEWAL APPLICATION UNDELIVERABLE:**

If the notice of renewal is returned to the office and the licensee has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[5/31/95; 16.5.24.14 NMAC - Rn, 16 NMAC 5.24.14, 04/17/06]

**PART 25: DENTAL HYGIENISTS, RETIREMENT, INACTIVE AND REINSTATEMENT**

**16.5.25.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9-30-96; 16.5.25.1 NMAC - Rn & A, NMAC 5.25.1, 12-14-00]

**16.5.25.2 SCOPE:**

The provisions of 16.5.25 NMAC apply to all licensed dental hygienists who plan to retire or reinstate an active license to practice dental hygiene in New Mexico.

[9-30-96; 16.5.25.2 NMAC - Rn, 16 NMAC 5.25.2, 12-14-00]

**16.5.25.3 STATUTORY AUTHORITY:**

16.5.25 NMAC is promulgated pursuant to the Dental Health Care Act, NMSA 1978, Section 61-5A-17 (1996 Repl. Pamp.)

[9-30-96; 16.5.25.3 NMAC - Rn, 16 NMAC 5.25.3, 12-14-00]

**16.5.25.4 DURATION:**

Permanent.

[9-30-96; 16.5.25.4 NMAC - Rn, 16 NMAC 5.25.4, 12-14-00]

**16.5.25.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9-30-96; 16.5.25.5 NMAC - Rn, 16 NMAC 5.25.5, 12-14-00; A, 12-30-02]

**16.5.25.6 OBJECTIVE:**

To establish the requirements and procedures to place an active dental hygiene license in retirement status, inactive status or to reinstate the license to active status.

[9-30-96; 16.5.25.6 NMAC - Rn, 16 NMAC 5.25.6, 12-14-00; A, 03-06-05]

**16.5.25.7 DEFINITIONS:**

**[RESERVED]**

[9-30-96; 16.5.25.7 NMAC - Rn, 16 NMAC 5.25.7, 12-14-00]

**16.5.25.8 RETIREMENT:**

A license to practice dental hygiene may be placed in retirement status one time through the following procedures.

A. The request for retirement status must be made in writing to the board office prior to the expiration of the current license. The written request must include the following information:

- (1) the actual date of retirement; and
- (2) a list of any continuing education courses taken since the last active and/or inactive license renewal, including documentation required in section 16.5.1.15 NMAC.

B. Board staff shall acknowledge receipt of the request for retirement status and at the next meeting of the committee the request for retirement will be placed on the agenda. Upon committee recommendation and board approval of retirement status the licensee will be exempt from payment of the triennial renewal fees during the period of retirement.

C. The committee may recommend denial of a request for retirement status if there are any current or pending complaints or disciplinary actions against the licensee.

D. A licensee desiring to go from active to inactive must sign a waiver and stipulation provided by the board foregoing the three year retirement.

[3-14-73...3-16-94, 5-31-95, 9-30-96; 16.5.25.8 NMAC - Rn, 16 NMAC 5.25.8, 12-14-00; A, 03-06-05]

#### **16.5.25.9 INACTIVE:**

A license to practice dental hygiene may be placed in inactive status one time through the following procedures.

A. The request for inactive status must be made by an application obtained from the board office prior to the expiration of the current license or the three-year eligibility of retirement status. The written request must include the following information:

- (1) the actual date of inactivation request; and
- (2) a list of any continuing education courses taken since the last license renewal, including documentation set forth in 16.5.1.15 NMAC.

B. Board staff shall acknowledge receipt of application for inactive status and at the next meeting of the committee the request for inactivation will be placed on the agenda.

C. The committee may recommend denial of a request for inactive status if there are any current or pending complaints or disciplinary actions against the licensee.

[3-14-73, 3-11-89, 5-31-95, 9-30-96, 1-1-99; 16.5.25.9 NMAC - Rn & A, 16 NMAC

5.25.9, 12-14-00; A, 12-30-02; N, 03-06-05; A, 04-17-06]

#### **16.5.25.10 REINSTATEMENT FROM RETIREMENT STATUS:**

A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, a completed application, and proof of the following continuing education courses.

(1) There will be 10 CE hours/year of retirement, up to 30 hours, required for reinstatement.

(2) The requirements of the infection control hours and the basic life support hours taken in the past 12 months may be included toward these required hours:

(a) proof of infection control course within the past 12 months;

(b) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(c) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

(3) Verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession. Verification must be sent directly to the board office from the other state boards, must include a raised seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.

B. The request for reinstatement from retirement status, including a statement of the applicant's activities during the period of retirement and any existing impairments, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in retirement status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of a retired license is not requested within three years of retirement and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico.

[16.5.25.10 NMAC - Rn, 16.5.25.9 NMAC, 03-06-05 & A, 03-06-05; A, 04-16-08; A, 07-19-10; A, 01-09-12]

#### **16.5.25.11 REINSTATEMENT FROM INACTIVE STATUS:**

A licensee whose license has been placed in inactive status may request reinstatement of the inactive license to active license status within nine years of the date of inactive status as indicated in 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) there will be 10 CE hours for each year of inactive status required for reinstatement; the hours may be accumulated at any time during the year(s) of inactivation; the requirements of the infection control hours and the basic life support hours, and medical emergency course taken in the past 12 months may be included toward these required hours;

(2) proof of infection control course within the past 12 months;

(3) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(4) proof of medical emergency course during the past 12 months;

(5) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period; and

(6) verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification must be sent directly to the board office from the other states boards, must include a raised seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.

B. The request for reinstatement from inactive status, including a statement of the applicant's activities during the period of inactivation and any existing impairment, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in inactive status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of an inactive license is not requested within nine years of inactivation, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico or the license must be permanently retired.

[16.5.25.11 NMAC - N, 03-06-05; A, 04-17-06; A, 04-16-08; A, 07-19-10; A, 01-09-12]

## **PART 26: DENTAL HYGIENISTS, LICENSE REVOCATION FOR NON-RENEWAL**

### **16.5.26.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.26.1 NMAC - Rn & A, 16 NMAC 5.26.1, 04/17/06]

### **16.5.26.2 SCOPE:**

The provisions of Part 26 of Chapter 5 apply to all dental hygienists licensed in New Mexico who do not submit an application for license renewal within 60 days of the license expiration date.

[9/30/96; 16.5.26.2 NMAC - Rn, 16 NMAC 5.26.2, 04/17/06]

### **16.5.26.3 STATUTORY AUTHORITY:**

Part 26 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.26.3 NMAC - Rn, 16 NMAC 5.26.3, 04/17/06]

### **16.5.26.4 DURATION:**

Permanent.

[9/30/96; 16.5.26.4 NMAC - Rn, 16 NMAC 5.26.4, 04/17/06]

**16.5.26.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.26.5 NMAC - Rn & A, 16 NMAC 5.26.5, 04/17/06]

**16.5.26.6 OBJECTIVE:**

To establish the procedures and policies for revocation of expired licenses and the reinstatement of a license revoked for non-renewal.

[9/30/96; 16.5.26.6 NMAC - Rn, 16 NMAC 5.26.6, 04/17/06]

**16.5.26.7 DEFINITIONS:**

[RESERVED]

[9/30/96; 16.5.26.7 NMAC - Rn, 16 NMAC 5.26.7, 04/17/06]

**16.5.26.8 REVOCATION OF LICENSE FOR NON-RENEWAL:**

Unless an application for license renewal is received by the board office, or post-marked, before September 1, the license shall be revoked for non-renewal.

[3/14/73, 5/31/95; 16.5.26.8 NMAC - Rn, 16 NMAC 5.26.8, 04/17/06; A, 7/17/08]

**16.5.26.9 REINSTATEMENT OF REVOKED LICENSE FOR NON-RENEWAL:**

A. Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation shall apply as a new applicant and meet all requirements for initial licensure.

B. Applicants for reinstatement shall provide for verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession within the previous year. Verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

C. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, a dental hygienists committee member, will review and may approve the application. The committee may formally accept the approval of the application at the next scheduled meeting.

[3/14/73...5/31/95, 1/1/99; 16.5.26.9 NMAC - Rn, 16 NMAC 5.26.9, 04/17/06; A, 04/16/08; A, 01/09/12]

## **PART 27: [RESERVED]**

## **PART 28: DENTAL HYGIENISTS, LOCAL ANESTHESIA CERTIFICATION**

### **16.5.28.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.28.1 NMAC - Rp, 16.5.28.1 NMAC, 5/31/2023]

### **16.5.28.2 SCOPE:**

The provisions of Part 28 of Chapter 5 apply to all dental hygienist who hold or who are applying for certification to administer local anesthesia.

[16.5.28.2 NMAC - Rp, 16.5.28.2 NMAC, 5/31/2023]

### **16.5.28.3 STATUTORY AUTHORITY:**

Part 28 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-6 NMSA 1978 (1996 Repl. Pamp.).

[16.5.28.3 NMAC - Rp, 16.5.28.3 NMAC, 5/31/2023]

### **16.5.28.4 DURATION:**

Permanent.

[16.5.28.4 NMAC - Rp, 16.5.28.4 NMAC, 5/31/2023]

### **16.5.28.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.28.5 NMAC - Rp, 16.5.28.5 NMAC, 5/31/2023]

### **16.5.28.6 OBJECTIVE:**

To establish guidelines and procedures for the regulation of dental hygienists who administer local anesthesia in an office located in New Mexico.

[16.5.28.6 NMAC - Rp, 16.5.28.6, 5/31/2023]

#### **16.5.28.7 DEFINITIONS:**

"Two consecutive years" means at least 1200 hours per year for two consecutive year.

[16.5.28.7 NMAC - Rp, 16.5.28.7 NMAC, 5/31/2023]

#### **16.5.28.8 REQUIREMENT TO BE CERTIFIED:**

Local anesthesia administration is not included as a function of dental hygiene licensure; it may only be performed by dental hygienists who have been separately certified by the committee to perform the expanded function. The administration of local anesthesia requires the indirect supervision of a dentist. Local anesthesia may only be administered by a dental hygienist under general supervision as outlined in 16.5.28.11 NMAC.

[16.5.28.8 NMAC - Rp, 16.5.28.8 NMAC, 5/31/2023]

#### **16.5.28.9 CERTIFICATION BY CURRICULUM OR NON-CURRICULUM:**

Applicants for certification in local anesthesia by curriculum or exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

##### **A. Qualifications:**

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) proof of successful completion of educational coursework in local anesthesia, by either;

(a) curriculum: successful completion of an educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, or

(b) non-curriculum: successful completion of a board approved continuing educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC.

(3) Successfully pass a board approved examination, the results of the exam are valid in New Mexico for a period not to exceed five years. If the educational coursework in local anesthesia was obtained by;

(a) curriculum: a board approved written local anesthesia exam is required.

(b) non-curriculum: a board approved written and clinical local anesthesia exam is required.

#### **B. Documentation:**

(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;

(2) proof of successful completion of educational coursework in local anesthesia;

(a) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as part of the regular curriculum for the dental hygiene degree; or

(b) copy of certificate showing successful completion of a board approved continuing education program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC.

(3) certificate or score card from a board approved exam indicating successful completion and date of local anesthesia exam, as required per Paragraph (9) of Subsection A of 16.5.28 NMAC.

[16.5.28.9 NMAC - Rp, 16.5.28.9 NMAC, 5/31/2023]

#### **16.5.28.10 CERTIFICATION BY CREDENTIALS:**

Applicants for certification in local anesthesia by credentials must possess the following qualifications and submit the required fees and documentation, along with a completed application.

#### **A. Qualifications:**

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of educational coursework in local anesthesia by;

(a) curriculum: successful completion of an educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, or

(b) non-curriculum: successful completion of a board approved continuing educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC; and

(3) successfully pass a board approved examination, the results of the exam do not have to be within a specific time frame. If educational coursework in local anesthesia was obtained by;

(a) curriculum: a board approved written local anesthesia exam is required.

(b) non-curriculum: a board approved written and clinical local anesthesia exam is required.

(4) administration of local anesthesia in the practice of dental hygiene for at least three of the past five years.

#### **B. Documentation:**

(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;

(2) proof of successful completion of educational coursework in local anesthesia;

(a) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as part of the regular curriculum for the dental hygiene degree, or

(b) copy of certificate showing successful completion of a board approved continuing education program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC; and

(3) proof of active certification to administer local anesthesia;

(a) letter of verification from each jurisdiction where the applicant holds a certificate for administering local anesthesia, or if the jurisdiction doesn't supply licensees with a separate certification, then a letter is needed stating that local anesthesia is not a separate designation from the license but is part of the dental

hygiene license; sent directly form the board in each jurisdiction, and describing any disciplinary action taken against the applicant; and

(b) if the applicants previous license includes the local anesthesia designation or certification is expired or inactive the applicant must show proof of completion of a board approved continuing education course in administration of local anesthesia that includes a hand on-portion. Continuing education course must comply with requirements in 16.5.1.15 NMAC.

(4) proof of administration of local anesthesia while engaged in the practice of dental hygiene in at least three of the past five consecutive years; proof may be by notarized letters from employers, supervisors of dental clinics of the uniformed services of the United States, or faculty administrators of schools of dental hygiene or dentistry.

[16.5.28.10 NMAC - Rp, 16.5.28.10 NMAC, 5/31/2023]

#### **16.5.28.11 CERTIFICATION OF LOCAL ANESTHESIA UNDER GENERAL SUPERVISION:**

An applicant for certification in local anesthesia under general supervision must possess the following qualifications and submit the following documentation along with a completed application.

**A.** An applicant must possess the following qualifications:

(1) have a current active license in good standing to practice dental hygiene in New Mexico;

(2) possess a New Mexico certification to administer local anesthesia under the indirect supervision of a licensed dentist; and

(3) have administered 20 cases of local anesthesia under the indirect supervision of a dentist during two consecutive years.

**B.** An applicant must provide the board office with the following documentation:

(1) a copy of a current New Mexico dental hygiene license;

(2) a copy of the applicant's certificate to administer local anesthesia under indirect supervision; and

(3) a signed affidavit, on a board-approved form, from the supervising dentist attesting to the applicant's qualifications for a certificate to administer local anesthesia under general supervision. The affidavit is valid for subsequent or additional locations in which the applicant may practice.

[16.5.28.11 NMAC - Rp, 16.5.28.11 NMAC, 5/31/2023]

#### **16.5.28.12 CERTIFICATION PROCEDURE:**

Upon receipt of a completed local anesthesia application, including all required documentation and fees, a committee member or designee of the committee will review the application and determine eligibility for certification.

[16.5.28.11 NMAC - Rp, 16.5.28.11 NMAC, 5/31/2023]

#### **16.5.28.13 LIMITATIONS OF LOCAL ANESTHESIA ADMINISTRATION:**

Administration of local anesthetic under general supervision may occur when:

**A.** certification has been received as defined in Section 16.5.28.11 NMAC and meets the following requirements:

(1) the supervising or consulting dentist has written or verbally ordered local anesthetic for the specific patient; and

(2) verbal orders shall be converted to written record or electronic record in the patient's dental record; and

**B.** emergency medical services are available by:

(1) local 911 service with a response time of less than 10 minutes; or

(2) by arrangement with a local physician(s), oral surgeon, or other medical or dental professional holding an advanced cardiovascular life support (ACLS) certification; this arrangement to provide emergency services shall be in writing and on file in the board office with the dental hygienists license; and

**C.** indirect supervision is required for continuing education and clinical examinations.

[16.5.28.12 NMAC - Rp, 16.5.28.13 NMAC, 5/31/2023]

### **PART 29: DENTAL HYGIENISTS, PRACTICE**

#### **16.5.29.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.29.1 NMAC - Rn & A, 16 NMAC 5.29.1, 04/17/06]

#### **16.5.29.2 SCOPE:**

The provisions of Part 29 of Chapter 5 apply to all active license holders and all dental hygienists working in New Mexico.

[9/30/96; 16.5.29.2 NMAC - Rn, 16 NMAC 5.29.2, 04/17/06]

**16.5.29.3 STATUTORY AUTHORITY:**

Part 29 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-3 and 61-5A-4 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.29.3 NMAC - Rn, 16 NMAC 5.29.3, 04/17/06]

**16.5.29.4 DURATION:**

Permanent.

[9/30/96; 16.5.29.4 NMAC - Rn, 16 NMAC 5.29.4, 04/17/06]

**16.5.29.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.29.5 NMAC - Rn & A, 16 NMAC 5.29.5, 04/17/06]

**16.5.29.6 OBJECTIVE:**

To establish allowable practice settings, scope of practice and limitations on dental hygiene practice in New Mexico.

[9/30/96; 16.5.29.6 NMAC - Rn, 16 NMAC 5.29.6, 04/17/06]

**16.5.29.7 DEFINITIONS:**

**A.** "Cavitation" means a break in the continuous, solid surface of the enamel of a tooth, created either by genetic formation or demineralization.

**B.** "Dental hygiene-focused assessment" means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

**C.** "Laser" means light amplification by stimulated emission of radiation used for the therapeutic treatment of the head and neck or oral cavity.

**D.** "Topical therapeutic agents" means agents applied to the teeth or gingiva that have a therapeutic effect locally with limited or no systemic effect.

[9/30/96; 16.5.29.7 NMAC - Rn, 16 NMAC 5.29.7, 04/17/06; A, 01/09/12; A, 01/04/14]

### **16.5.29.8 SCOPE OF PRACTICE:**

A dental hygienist may perform dental hygiene services as defined in NMSA 1978, Section 61-5A-4 B thru F NMSA 1978 of the act with the supervision defined. In addition, a licensed hygienist may:

**A.** prescribe, administer or dispense therapeutic agents as per the formulary as defined in Subsection C of 16.5.29.11 NMAC;

**B.** function as an expanded function dental auxiliary after passing the certifying exam and completing the apprenticeship accepted by the board;

**C.** function as a community dental health coordinator after completing a program certified by the board;

**D.** except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

**E.** except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

**F.** administration of local anesthesia as defined in 16.5.28 NMAC; and

**G.** such other closely related services as permitted by the rules of the committee and the board.

**H.** Effective July 1, 2015, a dental hygienist who owns a dental practice must register as a non-dentist owner. No additional license or fee is required for this registration. A dental hygienist who owns a dental practice must notify the board, in writing, if the dental practice has been sold or has closed.

[10-21-70, 5-31-95; 16.5.29.8 NMAC - Rn, 16 NMAC 5.29.8, 04-17-06; A, 01-09-12; A, 12-15-12; A, 01-04-14; A, 01-15-15; A, 04-16-15; A, 12-16-15]

### **16.5.29.9 LIMITATIONS ON PRACTICE:**

Dental hygienists shall not perform, or attempt to perform, the following services or procedures:

**A.** removal of, or addition to, the hard or soft tissues of the oral cavity, other than diseased crevicular tissue;

**B.** placement or insertion of any permanent filling material;

**C.** diagnosis and dental treatment planning;

**D.** the final fitting, adaptation, seating and cementation of any fixed or removable dental appliance or restoration, including but not limited to inlays, crowns, bands, space maintainers, habit devices or splints;

**E.** final impressions for restorations or prosthetic appliances;

**F.** irrigation and medication of canal, cone try-in, reaming, filing, or filling of root canals;

**G.** other services defined as the practice of dentistry in Section 61-5A-4 (A) of the act and not specifically listed in Section 61-5A-4 (B) and (C) NMSA 1978, unless exempted by regulation; and

**H.** apply pit and fissure sealants without a dentist evaluation in cases where the tooth does exhibit cavitation of the enamel surface.

[3/14/73, 4/10/81, 3/11/89, 5/31/95; 16.5.29.9 NMAC - Rn, 16 NMAC 5.29.9, 04/17/06; A, 01/09/12]

#### **16.5.29.10 [RESERVED]**

[5/31/95, 12/15/97; 16.5.29.10 NMAC - Rn, 16 NMAC 5.29.10, 04/17/06; A, 04/16/08; A, 01/09/12; Repealed, 12/15/12]

#### **16.5.29.11 DENTAL HYGIENISTS PRESCRIPTIVE AUTHORITY:**

A dental hygienist may prescribe, administer and dispense a fluoride supplement, topically applied fluoride, and topically applied antimicrobials from the following formulary under the following stipulations.

**A.** A New Mexico licensed dentist shall supervise, at least by general supervision the prescribing, administration or dispensing by the hygienist. In a collaborative hygiene practice the formulary used by the dental hygienist and situations for each therapeutic agent must be set forth in the collaborative practice agreement. Dental hygienists shall keep as part of the patient record a clear documentation of the therapeutic agent prescribed, administered or dispensed, the date and reason.

**B.** Under no circumstances shall a dental hygienist be allowed to prescribe, dispense or administer:

**(1)** drugs whose primary effect is systemic; and

**(2)** dangerous drugs or controlled substances as defined in the pharmacy act (NMSA 1978, Section 61-11-1 et seq.) controlled substances act (NMSA 1978, Sections

31-30-1 et seq.) or Drug Device and Cosmetic Act (NMSA 1978, Sections 26-1-1 et seq.).

**C.** Dental hygienists may prescribe from the following list:

- (1)** fluoride supplements (all using sodium fluoride);
  - (a)** tablets - 0.5 mg, 1.1 mg, 2.2 mg;
  - (b)** lozenges - 2.21 mg;
  - (c)** drops - 1.1 mg/mL;
- (2)** topical anti-caries treatments (all using sodium fluoride unless otherwise stated);
  - (a)** toothpastes - 1.1% or less (or stannous fluoride 0.4%);
  - (b)** topical gels - 1.1% or less (or stannous fluoride 0.4%);
  - (c)** oral rinses - 0.05%, 0.2%, 0.44%, 0.5%;
  - (d)** oral rinse concentrate (used in periodontal disease) - 0.63% stannous fluoride;
  - (e)** fluoride varnish - 5 %;
  - (f)** prophy pastes (containing approximately 1.23% sodium fluoride and used for cleaning and polishing procedures as part of professional dental prophylaxis treatment);
- (3)** topical anti-infectives:
  - (a)** chlorhexidine gluconate ;
  - (b)** tetracycline impregnated fibers (inserted subgingivally into the periodontal sulcus);
  - (c)** doxycycline hyclate periodontal gel (inserted subgingivally into the periodontal sulcus); and
  - (d)** minocycline hydrochloride periodontal paste (inserted subgingivally into the periodontal sulcus).

[16.5.29.11 NMAC - N, 01/09/12; A, 01/04/14]

### **16.5.29.12 THERAPEUTIC USE OF LASERS:**

The board does not issue permits for the use of lasers by hygienists in soft tissue curettage, sulcular debridement and tissue disinfection in periodontal therapy. Due to the rising utilization of lasers by dental hygienists, the committee and board sets forth the following requirements:

**A.** a New Mexico licensed dental hygienist may use laser devices that are approved by the U.S. food and drug administration under the indirect supervision of a New Mexico licensed dentist;

**B.** the hygienist must successfully complete an educational program on laser use that is a minimum of 6 hours and includes hand-on clinical simulation training; the course shall comply with current guidelines as outlined in 16.5.1.15 NMAC for continuing education;

**C.** a certificate of successful course completion from the dental laser training entity shall be posted in a conspicuous location within the dental facility;

**D.** all promotion or advertising of dental laser treatment shall comply with current requirements as outlined in Subsection B of 16.5.30.10.NMAC, identifying the "supervising dentist" as responsible for the provision of or the supervision of the laser procedure;

**E.** dental laser treatment shall not be designated to a dental assistant.

[16.5.29.12 NMAC - N, 01/04/14]

## **PART 30: DENTAL HYGIENISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS**

### **16.5.30.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.30.1 NMAC - Rp, 16.5.30.1 NMAC, 12/14/2019]

### **16.5.30.2 SCOPE:**

The provisions of 16.5.30 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensed dental hygienist.

[16.5.30.2 NMAC - Rp, 16.5.30.2 NMAC, 12/14/2019]

### **16.5.30.3 STATUTORY AUTHORITY:**

16.5.30 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21, NMSA 1978, (Repl. Pamp. 1996).

[16.5.30.3 NMAC - Rp, 16.5.30.3 NMAC, 12/14/2019]

**16.5.30.4 DURATION:**

Permanent.

[16.5.30.4 NMAC - Rp, 16.5.30.4 NMAC, 12/14/2019]

**16.5.30.5 EFFECTIVE DATE:**

December 14, 2019, unless a later date is cited at the end of a section.

[16.5.30.5 NMAC - Rp, 16.5.30.5 NMAC, 12/14/2019]

**16.5.30.6 OBJECTIVE:**

To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.

[16.5.30.6 NMAC - Rp, 16.5.30.6 NMAC, 12/14/2019]

**16.5.30.7 DEFINITIONS:**

**A. "Addiction"** means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

**B. "Chronic pain"** means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

**C. "Direct reference"** means a phone number or website where names and contact information of the dental hygienists(s) can be referenced.

**D. "Drug abuser"** means a person who takes a drug or drugs for other than legitimate medical purposes.

**E. "Pain"** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or and damage.

**F. "Patient abandonment"** means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

**G. "Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**H. "Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.5.30.7 NMAC - Rp, 16.5.30.7 NMAC, 12/14/2019]

#### **16.5.30.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act.

[16.5.30.8 NMAC - Rp, 16.5.30.8 NMAC, 12/14/2019]

#### **16.5.30.9 ACTIONS:**

**A.** The committee may assess fines, deny, revoke, suspend, stipulate, or otherwise limit a license if it is determined the licensee is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

**B.** The committee may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

**C.** The committee shall take into consideration the dual role of dental hygienists as professionals and employees when taking disciplinary action against a licensee. In the event the complaint is ruled to be based primarily in the role of employee, the committee may share the findings with the board so appropriate action may be considered for the employer/dentist.

[16.5.30.9 NMAC - Rp, 16.5.30.9, 12/14/2019]

#### **16.5.30.10 GUIDELINES:**

The committee shall define the following as guidelines for disciplinary action.

**A. "Gross incompetence" or "gross negligence"** means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

**B. "Unprofessional conduct"** means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental hygiene profession;

(2) failure to advise the patient in simple understandable terms of the treatment rendered, the expectations for success, and the responsibility the patient must assume;

(3) failure to inform dentist or patient of periodontal assessment;

(4) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(5) sexual misconduct;

(6) failure to use appropriate infection control techniques and sterilization procedures;

(7) breach of ethical standards, an inquiry into which the committee will begin by reference to the most recent version of the American dental hygienists association's code of ethics;

(8) fraud, deceit or misrepresentation in any application;

(9) violation of any order of the committee, and ratified by the board, including any probation order;

(10) injudicious administration of any drug or medicine;

(11) failure to report to the committee or board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental hygiene or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

**(12)** deliberate and willful failure to reveal, at the request of the committee, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the committee or board; and

**(13)** cheating on an examination for licensure;

**(14)** failure of a dental hygienist to comply with advertising rules in 16.5.1.29 NMAC;

**(15)** failure of a collaborative practice dental hygienists to refer a patient for dental care; or

**(16)** failure of a collaborative practice dental hygienist to comply with the terms of a signed collaborative practice agreement;

**(17)** failure of a collaborative practice dental hygienist to professionally and effectively communicate with a patient's dentist of record, or consulting dentist, in a professional manner in regard to a shared patient's care under 16.5.17 NMAC of these rules;

**(18)** failure of a collaborative dental hygienist to comply with the advertisement rules as defined in 16.5.1.29 NMAC;

**(19)** failure to practice dental hygiene under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board;

**(20)** failure to practice dental collaborative hygiene without displaying his/her full name as it appears on the license issued by the board on the entrance door of each office;

**(21)** assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

**(22)** conviction of either a misdemeanor or a felony punishable by incarceration;

**(23)** aiding and abetting a dental auxiliary who is not properly certified;

**(24)** patient abandonment;

**(25)** habitually addicted as defined in Paragraph (4) & (6) of Subsection A of Section 61.5A-21 and Subsections C and D of Section 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, Section 30-31-1 NMSA 1978 or habitual or excessive use or abuse of alcohol;

(26) failure of the licensee to furnish the committee within 10 business days of request; its investigators or representatives with information requested by the committee, and ratified by the board;

(27) failure to appear before the board when requested by the committee, and ratified by the board, in any disciplinary proceeding; and

(28) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 seq., NMSA1978.

[16.5.30.10 NMAC - Rp, 16.5.30.10 NMAC, 12/14/2019]

#### **16.5.30.11 INVESTIGATIVE SUBPOENAS:**

The complaint committee of the committee is authorized to issue action investigative subpoenas and to employ experts with regard to pending investigations.

[16.5.30.11 NMAC - Rp, 16.5.30.11 NMAC, 12/14/2019]

#### **16.5.30.12 REVOCATION OF COLLABORATIVE LICENSE FOR DISCIPLINARY ACTIONS:**

A collaborative practice licensee whose license is revoked for disciplinary actions shall:

**A.** provide proof of written notification of practice closure to all patients currently under active treatment;

**B.** notification to patients should include where and how dental treatment records may be obtained and contact information for dentists available; and

**C.** provide to the board the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of closure; the notification to the board shall include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.30.12 NMAC - Rp, 16.5.30.12 NMAC, 12/14/2019]

#### **16.5.30.13 REINSTATEMENT OF REVOKED LICENSE FOR DISCIPLINARY ACTIONS:**

A licensee whose license has been revoked for disciplinary actions may request reinstatement of the license after the terms of the settlement agreement have been met. Upon approval from the committee, and ratified by the board, and receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

**A.** Along with the completed application, the request for reinstatement shall include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

**(1)** 20 hours of approved continuing education courses related to the clinical practice of dental hygiene, per year of revocation; at least 20 of these hours shall be in the 12 months previous to the request;

**(2)** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

**(3)** proof of infection control course within the past 12 months; and

**(4)** 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of revocation as well as any continuing education taken during the revoked period.

**B.** Applicant shall authorize the American association of dental examiners clearinghouse to send verification of status directly to the board office.

**C.** The board will obtain electronic verification of applicant status from the national practitioners' data bank.

**D.** Verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession. Verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

**E.** The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of revocation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license may be reinstated and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

**F.** A dental hygienist with a license in revocation status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

**G.** If reinstatement of a revoked license is not requested within three years after settlement agreement has been met, application for a new license shall be made by examination or credentials in order to practice dental hygiene in New Mexico.

[16.5.30.13 NMAC - Rp, 16.5.30.13 NMAC, 12/14/2019]

#### **16.5.30.14 REINSTATEMENT OF SUSPENDED LICENSE FOR DISCIPLINARY ACTIONS:**

For licenses suspended for greater than six months; a licensee whose license has been suspended for disciplinary actions in addition to meeting the terms of the settlement agreement shall also meet the following conditions before reinstatement of licensure:

**A.** verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form;

**B.** the board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of suspension and information on any existing impairment; the reinstated license will expire as defined in 16.5.11 NMAC; and

**C.** a dental hygienist with a license in suspended status may not practice dental hygiene in New Mexico until proof of active licensure is approved by the board and issued by the board office.

[16.5.30.14 NMAC - Rp, 16.5.30.14 NMAC, 12/14/2019]

### **PART 31: [RESERVED]**

### **PART 32: DENTAL ASSISTANTS, FEES**

#### **16.5.32.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.32.1 NMAC - Rn & A, 16 NMAC 5.32.1, 04/17/06]

#### **16.5.32.2 SCOPE:**

The provisions of Part 32 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified dental assistants or other public records.

[9/30/96; 16.5.32.2 NMAC - Rn, 16 NMAC 5.32.2, 04/17/06]

#### **16.5.32.3 STATUTORY AUTHORITY:**

Part 32 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.32.3 NMAC - Rn, 16 NMAC 5.32.3, 04/17/06]

**16.5.32.4 DURATION:**

Permanent.

[9/30/96; 16.5.32.4 NMAC - Rn, 16 NMAC 5.32.4, 04/17/06]

**16.5.32.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.32.5 NMAC - Rn & A, 16 NMAC 5.32.5, 04/17/06]

**16.5.32.6 OBJECTIVE:**

To establish fees to generate revenue to support the cost of program administration.

[9/30/96; 16.5.32.6 NMAC - Rn, 16 NMAC 5.32.6, 04/17/06]

**16.5.32.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.32.7 NMAC - Rn, 16 NMAC 5.32.7, 04/17/06]

**16.5.32.8 FEES:**

A. all fees are non-refundable;

B. application fee: \$50;

C. examination fee not to exceed \$100 per exam;

D. triennial renewal fee: \$50;

E. late penalty fee: \$25.00;

F. duplicate certificate fee: \$10.00;

G. list of current certificate holders: \$300; an annual list of current certificate holders is available to the professional association upon request at no cost;

H. labels of current certificate holders: \$300;

I. reinstatement fee: \$15.00;

J. DXTR rental fee, per day: \$15.00;

K. copies cost \$0.25 per page.

[9/7/84, 3/7/88, 4/12/92, 5/31/95, 9/30/96; 16.5.32.8 NMAC - Rn, 16 NMAC 5.32.8, 04/17/06; A, 07-16-07; A, 07-17-08; A, 06-10-09]

## **PART 33: DENTAL ASSISTANTS, REQUIREMENTS FOR CERTIFICATION**

### **16.5.33.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.33.1 NMAC - Rp, 16.5.33.1 NMAC, 5/31/2023]

### **16.5.33.2 SCOPE:**

The provisions of 16.5.33 NMAC apply to all applicants for certification as a dental assistant in New Mexico. 16.5.33 NMAC also applies to dental assistants previously certified in New Mexico who have allowed their certificate to expire.

[16.5.33.2 NMAC - Rp, 16.5.33.2 NMAC, 5/31/2023]

### **16.5.33.3 STATUTORY AUTHORITY:**

16.5.33 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-5 and Section 61-5A-6 NMSA 1978 (1996 Repl. Pamp.).

[16.5.33.3 NMAC - Rp, 16.5.33.3 NMAC, 5/31/2023]

### **16.5.33.4 DURATION:**

Permanent.

[16.5.33.4 NMAC - Rp, 16.5.33.4 NMAC, 5/31/2023]

### **16.5.33.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.33.5 NMAC - Rp, 16.5.33.5 NMAC, 5/31/2023]

### **16.5.33.6 OBJECTIVE:**

To establish the requirements for certification for dental assistants to perform expanded functions. These rules address applicants being certified via the following tracks:

- A. independent preparation for the requirements;
- B. attendance in a dental assisting program;
- C. attendance in an accredited dental hygiene school; and

D. New residents of New Mexico with current certificates in expanded functions in their previous state (credentials).

[16.5.33.6 NMAC - Rp, 16.5.33.6 NMAC, 5/31/2023]

#### **16.5.33.7 DEFINITIONS:**

A. "**DANB**" means the dental assisting national board.

B. "**Direct supervision**" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed;
- (3) evaluates and approves the procedure performed before the patient departs the care setting; and
- (4) is capable of responding immediately if any emergency should arise.

C. "**General supervision**" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

D. "**Indirect supervision**" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in Section 61-5A-3 NMSA 1978.

E. "**Limited certificate**" means a radiographic certificate that limits the holder to take only extra oral dental films.

F. "**Rubber cup coronal polishing**" means the use of a rubber cup or a bristle brush to remove soft debris and stain from above the gingival margin.

**G. "Supervision"** means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

**H. "Training program"** means a course of study resulting in applicant eligibility for expanded function certification.

[16.5.33.7 NMAC - Rp, 16.5.33.7 NMAC, 5/31/2023]

#### **16.5.33.8 REQUIREMENTS:**

**A.** A licensee shall not allow dental assistants to perform oral radiography under any level of supervision that are not certified or in authorized training by the New Mexico board of dental health care.

**B.** A licensee shall not allow dental assistants to perform coronal polishing, topical fluoride application, or application of pit and fissure sealants under general supervision without certification by the board.

**C.** Dental assistants who perform oral radiography under any level of supervision are required to be certified by the board. Dental assistants who perform coronal polishing, application of topical fluoride or, application of pit and fissure sealants both intra and extra oral radiography under general supervision are required to be certified by the board except those enrolled in a recognized dental assisting program and complying with the following:

- (1) have completed the didactic portion of the radiography curriculum;
- (2) are exposing radiographs with supervision of a licensee or an assistant certified in radiography; and
- (3) if exposing x-rays on a human must have a written prescription from a dentist.

**D.** Expanded function certification offered by the board is distinct from certification offered by DANB. DANB certification gives the individual the right to use the initials C.D.A after their name, but does not qualify the individual to perform expanded functions without being certified by the board.

[16.5.33.8 NMAC - Rp, 16.5.33.8 NMAC, 5/31/2023]

#### **16.5.33.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR DENTAL RADIOGRAPHY:**

**A. Education requirements:**

(1) study by independent preparation or in a training course on radiation health and safety within the past 36 months; and

(2) have assisted with or observed five cases of full mouth intra oral radiographic series or five extra oral radiographs if applying for a limited certificate.

#### **B. Examination requirements:**

(1) Pass the board or DANB written examination on radiation health and safety.

(2) After passing the board or DANB written exam must apply to the board for a training permit which allows the dental assistant to perfect radiography technique. The permit is valid for six months after passing the written exam.

(3) Pass the technique test demonstrating proficiency in the exposure of a full-mouth intra oral radiographic series or panoramic film as established by the board within six months of passing the written exam.

(4) If an applicant chooses to provide only a panoramic film the certificate holder is limited to taking only extra oral films.

(5) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra oral radiographic series of radiographs or a panoramic film, develop, mount, and label the films. The exam must be done independently and submitted to the board office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two board or committee members and serve as the technique test required for certification.

(6) Pass the take home jurisprudence examination.

(7) When extenuating circumstances exist as defined in 16.5.1.7 NMAC, and the dental assistant cannot submit to the board exposed radiographs, the dental assistant may request an extension of time. The request must be put in writing and submitted to the board office prior to the deadline.

#### **C. Exemptions:**

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[16.5.33.9 NMAC - Rp, 16.5.33.9 NMAC, 5/31/2023]

**16.5.33.10 EDUCATION AND EXAMINATION REQUIREMENTS FOR RUBBER CUP CORONAL POLISHING AND APPLICATION OF TOPICAL FLUORIDE CERTIFICATION:**

**A. Education requirements:** Study by independent preparation or in a training course on rubber cup coronal polishing and application of topical fluoride and have assisted with or observed five cases of rubber cup coronal polishing on children and adults and five applications of topical fluoride.

**B. Examination requirements:**

(1) pass a board or DANB written examination on rubber cup coronal polishing and application of topical fluoride;

(2) perform the technique while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and application of topical fluoride on five adults and children and five applications of topical fluoride on children; and

(3) pass the take home jurisprudence examination.

**C. Exemptions:**

(1) a dental hygiene student enrolled in an accredited school of dental hygiene having passed a curriculum for rubber cup coronal polishing and application of topical fluoride may be granted a certificate without meeting the other requirements of this section;

(2) a dental assistant who is certified to perform rubber cup coronal polishing and application of topical fluoride in another state with requirements not less stringent than those in New Mexico may be certified based on credentials;

(3) a dental assistant who holds a current CDA certification issued by DANB may be issued a certificate for rubber cup coronal polishing and application of topical fluoride without meeting the other requirements of this section.

[16.5.33.10 NMAC - Rp, 16.5.33.10 NMAC, 5/31/2023]

**16.5.33.11 EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS FOR APPLICATION OF PIT AND FISSURE SEALANTS CERTIFICATION:**

**A. Experience requirements:** The applicant must have 2080 hours of clinical chair side dental assisting within the two years prior to applying for certification.

**B. Education requirements:**

- (1) study by independent preparation or a training course on pit and fissure sealant application; and
- (2) assisted with and observed application of 12 pit and fissure sealants.

**C. Examination requirements:**

- (1) pass a board or DANB examination on the application of pit and fissure sealants;
- (2) following successful completion of the examination, apply pit and fissure sealants while being personally observed by a licensed dentist or dental hygienist on five patients;
- (3) pass the take home jurisprudence examination.

**D. Exemptions:**

- (1) a dental hygiene student enrolled in an accredited school of dental hygiene having passed a curriculum for pit and fissure sealants and rubber cup coronal polishing, may be granted a certificate without meeting the other requirements of this section;
- (2) a dental assistant who is certified to perform application of pit and fissure sealants in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[16.5.33.11 NMAC - Rp, 16.5.33.11 NMAC, 5/31/2023]

**16.5.33.12 REQUIRED DOCUMENTATION:**

Each applicant for an expanded function dental assistant certificate must submit to the board or its agent the required fees and following documentation.

**A.** Completed application and the completed jurisprudence take home exam. Applications are valid for one year from the date of receipt.

**B.** Dental radiography:

- (1) proof of passing the board or DANB written examination on radiation health and safety;
- (2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in radiography verifying the applicant has:

(a) assisted with and observed five cases of full-mouth intra oral radiographic series or five panoramic films if applying for a limited certification; and

(b) that upon reaching competency, the applicant independently exposed the radiographs submitted for technique examination;

(3) the completed full mouth intra oral radiographic series or a panoramic film as required for the technique exam described in 16.5.33.9 NMAC.

**C. Rubber cup coronal polishing and application of topical fluoride:**

(1) proof of passing the board or DANB written examination for rubber cup coronal polishing and application of topical fluoride;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and topical fluoride application that the applicant has:

(a) assisted with and observed five cases of rubber cup coronal polishing on adults and children and five applications of topical fluoride on children; and

(b) while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing, application of topical fluoride provided rubber cup coronal polishing on five adults and five children; and, provide applications of topical fluoride on five children.

**D. Pit and fissure sealants:**

(1) proof of passing the board approved examination on application of pit and fissure sealants;

(2) an affidavit from a supervising dentist or dental hygienist verifying that the applicant has:

(a) assisted with and observed placement of 12 pit and fissure sealants; and

(b) while being personally observed by a dentist or dental hygienist, the applicant successfully place pit and fissure sealants on six patients.

(3) proof of 2080 hours of chair side dental assisting experience within two years immediately prior to application for certification;

(4) the completed jurisprudence exam.

[16.5.33.12 NMAC - Rp, 16.5.33.12 NMAC, 5/31/2023]

### **16.5.33.13 CERTIFICATION BY CREDENTIALS:**

Applicants for certification by credentials must possess the following qualifications:

**A.** verification of certification in all states where the applicant holds or has held a certificate to practice dental assisting; verification must be sent directly to the board office from the other state(s) board, must include a seal, and must attest to the status, issue date, expiration date, certification number, and other information contained on the form;

**B.** an official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function; or

**C.** proof of current, valid, certification as a CDA issued by DANB; and

**D.** all certifications, letters and validations must be received directly by the board office from the state, institution, or DANB;

**E.** the board may deny, stipulate, or otherwise limit a certification if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

**F.** pass the jurisprudence exam with a score of at least seventy-five percent;

**G.** all certificates held by the applicant must have been in good standing for two years prior to application; and

**H.** the board may deny, stipulate, or otherwise limit a certification if it is determined the applicant holds or has held a certification in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act or these rules.

[16.5.33.13 NMAC - Rp, 16.5.33.13 NMAC, 5/31/2023]

### **16.5.33.14 RE-EXAMINATION PROCEDURE:**

**A.** An applicant who does not obtain a passing score on the required written exam must re-apply and pay the required fees in order to retake the examination.

**B.** Applicants for certification in radiography will be allowed to submit radiographs for the technique exam three times. With each failure the supervising dentist, dental hygienist, or dental assistant certified in dental radiography will be notified of their responsibility for training the applicant.

C. After a third failure, the applicant and supervising dentist, dental hygienist, or dental assistant certified in radiography will be required to submit to the board a plan for remediation, including steps that will be taken to assure clinical competency.

[16.5.33.14 NMAC - Rp, 16.5.33.14 NMAC, 5/31/2023]

**16.5.33.15 CERTIFICATION PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees the Secretary-Treasurer or delegate of the board will review the application and determine eligibility for certification. The certificate must be displayed so that it is visible to the public.

[16.5.33.15 NMAC - Rp, 16.5.33.15 NMAC, 5/31/2023]

**16.5.33.16 [RESERVED]**

[16.5.33.16 NMAC - Rp, 16.5.33.16 NMAC, 5/31/2023]

**PART 34: [RESERVED]**

**PART 35: DENTAL ASSISTANTS, CERTIFICATE EXPIRATION AND RENEWAL**

**16.5.35.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.35.1 NMAC - Rn & A, 16 NMAC 5.35.1, 04/17/06]

**16.5.35.2 SCOPE:**

The provisions of Part 35 of Chapter 5 apply to all dental assistants with a certificate to practice expanded functions in New Mexico.

[9/30/96; 16.5.35.2 NMAC - Rn, 16 NMAC 5.35.2, 04/17/06]

**16.5.35.3 STATUTORY AUTHORITY:**

Part 35 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.35.3 NMAC - Rn, 16 NMAC 5.35.3, 04/17/06]

**16.5.35.4 DURATION:**

Permanent.

[9/30/96; 16.5.35.4 NMAC - Rn, 16 NMAC 5.35.4, 04/17/06]

**16.5.35.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.35.5 NMAC - Rn & A, 16 NMAC 5.35.5, 04/17/06]

**16.5.35.6 OBJECTIVE:**

To establish the requirements and procedures for renewal and expiration of expanded function certificates for dental assistants.

[9/30/96; 16.5.35.6 NMAC - Rn, 16 NMAC 5.35.6, 04/17/06]

**16.5.35.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.35.7 NMAC - Rn, 16 NMAC 5.35.7, 04/17/06]

**16.5.35.8 CERTIFICATE EXPIRATION:**

Initial certificates will expire on July 1 following the second year of certification. No certificate will be issued for longer than 36 months or less than 25 months.

[5/31/95, 12/15/97, 8/16/99, 9/30/96; 16.5.35.8 NMAC - Rn, 16 NMAC 5.35.8, 04/17/06]

**16.5.35.9 RENEWAL PERIOD AND EXPIRATION:**

After the initial license period, certifications for expanded function expire every three years on June 30. Certificates that are not renewed by July 1 are considered expired.

[9/7/84...9/30/96, 8/16/99; 16.5.35.9 NMAC - Rn & A, 16 NMAC 5.35.9, 04/17/06]

**16.5.35.10 RENEWAL PROCESS:**

A completed renewal application, accompanied by the required fee as set forth in 16.5.32.8 NMAC, along with the required proof of completion of 30 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1 of the renewal year.

[5/31/95, 9/30/96, 8/16/99, 2/14/00; 16.5.35.10 NMAC - Rn & A, 16 NMAC 5.35.10, 04/17/06]

#### **16.5.35.11 CERTIFICATE HOLDER RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received for any reason. It is the certificate holders responsibility to make timely request for the renewal form if one has not been received thirty days prior to certificate expiration.

[5/31/95, 9/30/96; 16.5.35.11 NMAC - Rn, 16 NMAC 5.35.11, 04/17/06]

#### **16.5.35.12 RENEWAL AFTER JUNE 30:**

Renewal applications post-marked after July 1 and prior to August 1 of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 30 hours of continuing education as set forth in 16.5.36.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.32.8 NMAC.

[5/31/95, 9/30/96, 8/16/99; 16.5.35.12 NMAC - Rn & A, 16 NMAC 5.35.12, 04/17/06]

#### **16.5.35.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1:**

Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 30 hours of continuing education as set forth in 16.5.36.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.32.8 NMAC.

[5/31/95, 9/30/96, 8/16/99; 16.5.35.13 NMAC - Rn & A, 16 NMAC 5.35.13, 04/17/06]

#### **16.5.35.14 RENEWAL APPLICATION UNDELIVERABLE:**

If the notice of renewal is returned to the office and the certificate holder has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[5/31/95; 16.5.35.14 NMAC - Rn, 16 NMAC 5.35.14, 04/17/06]

### **PART 36: DENTAL ASSISTANTS, CONTINUING EDUCATION REQUIREMENTS**

#### **16.5.36.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.36.1 NMAC - Rn & A, 16 NMAC 5.36.1, 04/17/06]

#### **16.5.36.2 SCOPE:**

The provisions of Part 36 of Chapter 5 apply to all dental assistants with current expanded function certification who are applying to renew their certificate.

[9/30/96; 16.5.36.2 NMAC - Rn, 16 NMAC 5.36.2, 04/17/06]

**16.5.36.3 STATUTORY AUTHORITY:**

Part 36 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.36.3 NMAC - Rn, 16 NMAC 5.36.3, 04/17/06]

**16.5.36.4 DURATION:**

Permanent.

[9/30/96; 16.5.36.4 NMAC - Rn, 16 NMAC 5.36.4, 04/17/06]

**16.5.36.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.36.5 NMAC - Rn & A, 16 NMAC 5.36.5, 04/17/06]

**16.5.36.6 OBJECTIVE:**

To establish the requirements for the renewal of expanded function certificates for dental assistants.

[9/30/96; 16.5.36.6 NMAC - Rn, 16 NMAC 5.36.6, 04/17/06]

**16.5.36.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.36.7 NMAC - Rn, 16 NMAC 5.36.7, 04/17/06]

**16.5.36.8 HOURS REQUIRED:**

30 hours of continuing education are required during each triennial renewal cycle. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 10 hours per year for individuals licensed for less than three years.

[8/11/89, 9/30/96, 12/15/97; 16.5.36.8 NMAC - Rn, 16 NMAC 5.36.8, 04/17/06; A, 01/09/12]

#### **16.5.36.9 COURSES REQUIRED:**

Continuing education coursework must contribute directly to the practice of dental assisting. The following courses are required for license renewal:

A. three hours of radiographic technique or safety and protection;

B. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

C. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association the American red cross or the American safety and health institute (ASHI); cannot be a self-study course.

[8/11/89, 5/21/93, 5/31/95, 9/30/96; 16.5.36.9 NMAC - Rn & A, 16 NMAC 5.36.9, 04/17/06; A, 07/16/07; A, 07/19/10; A, 01/09/12]

#### **16.5.36.10 VERIFICATION OF CONTINUING EDUCATION:**

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[5/31/95, 9/30/96; 16.5.36.10 NMAC - Rn, 16 NMAC 5.36.10, 04/17/06; A, 01/09/12]

#### **16.5.36.11 EMERGENCY DEFERRAL:**

A certificate holder who is unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

[5/31/95, 9/30/96; 16.5.36.11 NMAC - Rn, 16 NMAC 5.36.11, 04/17/06; A, 01/09/12]

### **PART 37: DENTAL ASSISTANTS, CERTIFICATE REVOCATION FOR NON-RENEWAL**

#### **16.5.37.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.37.1 NMAC - Rn & A, 16 NMAC 5.37.1, 04/17/06]

**16.5.37.2 SCOPE:**

The provisions of Part 37 of Chapter 5 apply to all dental assistants with expanded function certification who do not submit an application for certificate renewal within 60 days of the expiration date.

[9/30/96; 16.5.37.2 NMAC - Rn, 16 NMAC 5.37.2, 04/17/06]

**16.5.37.3 STATUTORY AUTHORITY:**

Part 13 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.37.3 NMAC - Rn, 16 NMAC 5.37.3, 04/17/06]

**16.5.37.4 DURATION:**

Permanent.

[9/30/96; 16.5.37.4 NMAC - Rn, 16 NMAC 5.37.4, 04/17/06]

**16.5.37.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.37.5 NMAC - Rn & A, 16 NMAC 5.37.5, 04/17/06]

**16.5.37.6 OBJECTIVE:**

To establish the procedures and policies for revocation of expired expanded function dental assisting certificates and the reinstatement of certificates revoked for non-renewal.

[9/30/96; 16.5.37.6 NMAC - Rn, 16 NMAC 5.37.6, 04/17/06]

**16.5.37.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.37.7 NMAC - Rn, 16 NMAC 5.37.7, 04/17/06]

**16.5.37.8 REVOCATION OF CERTIFICATE FOR NON-RENEWAL:**

Unless an application for certificate renewal is received by the board office, or post-marked, before September 1, the certificate shall be revoked for non-renewal.

[5/31/95, 9/30/96; 16.5.37.8 NMAC - Rn, 16 NMAC 5.37.8, 04/17/06; A, 07/17/08]

#### **16.5.37.9 REINSTATEMENT OF REVOKED CERTIFICATE:**

Within one year of the revocation notice, the certificate may be reinstated by payment of renewal, late and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must re-apply as a new applicant and meet all requirements for initial certification.

A. Applicants for reinstatement must provide verification of licensure in all states where the applicant holds or has held a license to practice dental assisting, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[5/31/95, 9/30/96, 1/1/99; 16.5.37.9 NMAC - Rn, 16 NMAC 5.37.9, 04/17/06; A, 07/16/07]

### **PART 38: [RESERVED]**

### **PART 39: DENTAL ASSISTANTS, PRACTICE AND SUPERVISION**

#### **16.5.39.1 ISSUING AGENCY:**

The provisions of Part 39 of Chapter 5 apply to all dental assistants with current expanded function certification.

[16.5.39.2 NMAC - Rp, 16.5.39.2 NMAC, 5/31/2023]

#### **16.5.39.2 SCOPE:**

The provisions of Part 39 of Chapter 5 apply to all dental assistants with current expanded function certification.

[16.5.39.2 NMAC - Rp, 16.5.39.2 NMAC, 5/31/2023]

#### **16.5.39.3 STATUTORY AUTHORITY:**

Part 39 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-5 and 61-5A-6 NMSA 1978 (1996 Repl. Pamp.).

[16.5.39.3 NMAC - Rp, 16.5.39.3 NMAC, 5/31/2023]

**16.5.39.4 DURATION:**

Permanent.

[16.5.39.4 NMAC - Rp, 16.5.39.4 NMAC, 5/31/2023]

**16.5.39.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.39.5 NMAC - Rp, 16.5.39.5 NMAC, 5/31/2023]

**16.5.39.6 OBJECTIVE:**

To establish those procedures, which may be provided by dental assistants, the procedures which require expanded function certification, and the procedures which may not be performed by dental assistants, regardless of certification or supervision.

[16.5.39.6 NMAC - Rp, 16.5.39.6 NMAC, 5/31/2023]

**16.5.39.7 DEFINITIONS:**

**[RESERVED]**

[16.5.39.7 NMAC - Repealed, 5/31/2023]

**16.5.39.8 PRACTICE AND REQUIRED SUPERVISION:**

Dental assistants may provide any basic supportive dental procedure, not excluded elsewhere in rule or in statute if the procedure is performed under the indirect supervision of a dentist. The following expanded function procedures may be performed without certification under indirect supervision as long as the procedure is approved by the dentist or dental hygienist upon completion:

- A. rubber cup coronal polishing (not to be represented as a prophylaxis);
- B. application of topical fluoride;
- C. pit and fissure sealant application.

[16.5.39.8 NMAC - Rp, 16.5.39.8 NMAC, 5/31/2023]

### **16.5.39.9 PROCEDURES REQUIRING CERTIFICATION:**

The following procedures are allowable under general supervision if the dental assistant is certified by the Board:

- A.** Place and expose dental radiographs;
- B.** Rubber cup coronal polishing;
- C.** Application of topical fluoride; and
- D.** Pit and fissure sealants.

[16.5.39.9 NMAC - Rp, 16.5.39.9 NMAC, 5/31/2023]

### **16.5.39.10 NON-ALLOWABLE PROCEDURES:**

Licensees may not delegate the performance of the following procedures to auxiliary personnel:

- A.** removal of, or addition to, the hard or soft tissue of the oral cavity;
- B.** diagnosis and treatment planning;
- C.** final impressions, to include physical and digital impressions, for multiple-unit restorations or prosthetic appliances;
- D.** final fitting and adaptation of prostheses;
- E.** final fitting, adaptation, seating and cementation of any fixed or removable dental appliance or restoration, including but not limited to inlays, crowns, space maintainers, habit devices, anti-snoring or sleep apnea appliances or splints;
- F.** irrigation and medication of canals, cone try-in, reaming, filing or filling of root canals;
- G.** other services defined as the practice of dentistry or dental hygiene in Subsection A, B and C of Section 61-5A-4 NMSA 1978;
- H.** bleaching or whitening teeth without direct or indirect supervision of a dentist; and
- I.** laser-assisted non-surgical periodontal treatment.

[16.5.39.10 NMAC - Rp, 16.5.39.10 NMAC, 5/31/2023]

## **PART 40: DENTAL ASSISTANTS, DISCIPLINARY PROCEEDINGS**

### **16.5.40.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[9/30/96; 16.5.40.1 NMAC - Rn & A, 16 NMAC 5.40.1, 04/17/06]

### **16.5.40.2 SCOPE:**

The provisions of Part 40 of Chapter 5 apply to all active certificate holders and applicants for certification. These provisions may also be of interest to anyone who may wish to file a complaint against a dental assistant certified by the board.

[9/30/96; 16.5.40.2 NMAC - Rn, 16 NMAC 5.40.2, 04/17/06]

### **16.5.40.3 STATUTORY AUTHORITY:**

Part 40 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-6 and 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).

[9/30/96; 16.5.40.3 NMAC - Rn, 16 NMAC 5.40.3, 04/17/06]

### **16.5.40.4 DURATION:**

Permanent.

[9/30/96; 16.5.40.4 NMAC - Rn, 16 NMAC 5.40.4, 04/17/06]

### **16.5.40.5 EFFECTIVE DATE:**

September 30, 1996, unless a later date is cited at the end of a section.

[9/30/96; 16.5.40.5 NMAC - Rn & A, 16 NMAC 5.40.5, 04/17/06]

### **16.5.40.6 OBJECTIVE:**

To establish the procedures for filing complaints against certificate holders, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a certificate holder which are considered incompetent or unprofessional practice.

[9/30/96; 16.5.40.6 NMAC - Rn, 16 NMAC 5.40.6, 04/17/06]

### **16.5.40.7 DEFINITIONS:**

**[RESERVED]**

[9/30/96; 16.5.40.7 NMAC - Rn, 16 NMAC 5.40.7, 04/17/06]

**16.5.40.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Dental Health Care Act.

[5/31/95; 16.5.40.8 NMAC - Rn, 16 NMAC 5.40.8, 04/17/06]

**16.5.40.9 ACTIONS:**

A. The board may issue fines, deny, revoke or suspend, or otherwise limit a certificate if the board determines the certificate holder is guilty of violating any of the provisions outlined in the Act, the Uniform Licensing Act, or these rules.

B. The board may reprimand, censure, stipulate and may require certificate holders to fulfill additional continuing education hours within limited time constraints for violations of the act or the rules.

C. The board shall take into consideration the role of dental assistants as employees when taking disciplinary action against a certificate holder. In the event the complaint is ruled to be based primarily on the assistant's role as employee, the board may consider appropriate action against the employer/dentist.

[5/31/95, 8/15/95; 16.5.40.9 NMAC - Rn, 16 NMAC 5.40.9, 04/17/06]

**16.5.40.10 GUIDELINES:**

The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of dental assisting;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

- D. fraud, deceit or misrepresentation in any application;
- E. cheating on an examination for expanded function certification;
- F. performing any procedure which requires certification unless so certified;
- G. injudicious administration of any drug or medicine;
- H. conviction of either a misdemeanor or a felony punishable by incarceration; and
- I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.

[10/16/92, 8/15/95, 9/30/96; 16.5.40.10 NMAC - Rn, 16 NMAC 5.40.10, 04/17/06; A, 07/16/07; A, 07/19/10; A, 06/14/12; A, 07/17/13]

#### **16.5.40.11 INVESTIGATIVE SUBPOENAS:**

The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations.

[8/15/95; 16.5.40.11 NMAC - Rn, 16 NMAC 5.40.11, 04/17/06; A, 07/16/07; A, 07/17/08]

### **PART 41: EXPANDED FUNCTION DENTAL AUXILIARY, FEES**

#### **16.5.41.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.41.1 NMAC - N, 01/09/12]

#### **16.5.41.2 SCOPE:**

The provisions of Part 41 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified expanded function dental auxiliary or other public records.

[16.5.41.2 NMAC - N, 01/09/12]

#### **16.5.41.3 STATUTORY AUTHORITY:**

Part 41 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 NMSA 1978.

[16.5.41.3 NMAC - N, 01/09/12]

**16.5.41.4 DURATION:**

Permanent.

[16.5.41.4 NMAC - N, 01/09/12]

**16.5.41.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.41.5 NMAC - N, 01/09/12]

**16.5.41.6 OBJECTIVE:**

To establish fees to generate revenue to support the cost of program administration.

[16.5.41.6 NMAC - N, 01/09/12]

**16.5.41.7 DEFINITIONS:**

**[RESERVED]**

**16.5.41.8 FEES:**

A. all fees are non-refundable;

B. application fee: \$100;

C. board examination fee not to exceed \$100 per exam;

D. triennial renewal fee: \$100;

E. late penalty fee: \$25.00;

F. duplicate certificate fee: \$10.00;

G. list of current certificate holders: \$300; an annual list of current certificate holders is available to the professional association upon request at no cost;

H. labels of current certificate holders: \$300;

I. reinstatement fee: \$15.00;

J. copies cost \$0.25 per page.

[16.5.41.8 NMAC - N, 01/09/12]

## **PART 42: EXPANDED FUNCTION DENTAL AUXILIARY, REQUIREMENTS FOR CERTIFICATION**

### **16.5.42.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.42.1 NMAC - Rp, 16.5.42.1 NMAC, 5/31/2023]

### **16.5.42.2 SCOPE:**

The provisions of Part 42 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified expanded function dental auxiliary or other public records.

[16.5.42.2 NMAC - Rp, 16.5.42.2 NMAC, 5/31/2023]

### **16.5.42.3 STATUTORY AUTHORITY:**

Part 42 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-5, 61-5A-6 and 61-5A-6.1 NMSA 1978.

[16.5.42.3 NMAC - Rp, 16.5.42.3 NMAC, 5/31/2023]

### **16.5.42.4 DURATION:**

Permanent.

[16.5.42.4 NMAC - Rp, 16.5.42.4 NMAC, 5/31/2023]

### **16.5.42.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.42.5 NMAC - Rp, 16.5.42.5 NMAC, 5/31/2023]

### **16.5.42.6 OBJECTIVE:**

To establish the requirements for certification for expanded function dental auxiliary to perform expanded functions. These rules address applicants being certified via the following tracks.

**A.** Completed an expanded function dental auxiliary program at an institution where the dental assisting program is accredited by the joint commission on dental accreditation (CODA).

**B.** Independent preparation for dental assistants that have five years' experience and prepare independently for the requirements.

**C.** Candidates who possess a current certificate in good standing in expanded function dental auxiliary from another state or jurisdiction (credentials).

[16.5.42.6 NMAC - Rp, 16.5.42.6 NMAC, 5/31/2023

#### **16.5.42.7 DEFINITIONS:**

**A. "Apprenticeship"** means a period of time in which an EFDA candidate is closely supervised by a supervising dentist and demonstrates competency on patients in EFDA duties as defined under 16.5.46.9 NMAC. The supervising dentist assumes all responsibility and liability for the training and actions of an EFDA candidate and must attest to their competency.

**B. "Close personal supervision"** means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of a EFDA candidate to the board.

**C. "Continuous employment"** means 1,000 hours per year for any five consecutive years.

**D. "Direct supervision"** means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed; and
- (3) evaluates and approves the procedure performed before the patient departs the care setting.

**E. "Expanded function dental auxiliary"** EFDA means a dental assistant, dental hygienist or other dental auxiliary that has received education specific to the duties delineated by the board for an EFDA, and has met the educational and certifying exam standards set by the board for an EFDA, and works under the direct supervision of a NM licensed dentist to perform the functions allowed under this section.

**F. "Placing and shaping restorations"** means the act of placing dental filling material(s) directly into a cavity preparation previously prepared by a dentist, and shaping, finishing and polishing the restoration so that it has proper occlusal form, contacts, anatomy and margins prior to final approval by the dentist.

**G. "Supervising dentist"** means a New Mexico licensed dentist who has no current action or inquires pending by the board and who provides supervision, instruction and recommendation for an EFDA candidate to the board.

[16.5.42.7 NMAC - Rp, 16.5.42.7 NMAC, 5/31/2023]

**16.5.42.8 REQUIREMENTS:**

EFDA who performs the duties defined under 16.5.46.9 NMAC are required to be certified by the board.

[16.5.42.8 NMAC - Rp, 16.5.42.8 NMAC, 5/31/2023]

**16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL AUXILIARY:**

**A.** satisfactory completion of an expanded function dental auxiliary course at an institution where the dental assisting program is accredited by the joint commission on dental accreditation, and approved by the board. The applicant must be certified in all four expanded functions as defined in 16.5.33 NMAC; or

**B.** for dental auxiliaries that have five years' experience and "independent preparation" for the requirements:

(1) applicant must have a minimum of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(2) achieved certification in all expanded functions as defined in 16.5.33 NMAC;

(3) taken a course of study in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function and passed a post-test approved by the board verifying readiness for taking the certification examination;

(4) recommended for an expanded function dental auxiliary (EFDA) certification by the supervising dentist as defined in Subsection G of 16.5.42.7 NMAC;

(5) instructors must have higher or same level of licensure or certification in respective courses they are teaching;

**C.** pass a clinical examination accepted by the board for certification of EFDA;

**D.** completed the jurisprudence examination with a score of at least seventy five percent;

**E.** exemptions; an expanded function dental auxiliary who is certified to perform EFDA duties in another state or jurisdiction with requirements not less stringent than those in New Mexico may be certified based on credentials;

**F.** after passing a board accepted examination or being certified by credentials, EFDA candidates must complete an apprenticeship under the close personal supervision of a supervising dentist;

(1) the board will send to the EFDA candidate upon receipt of the completed application the following:

(a) permit to start apprenticeship to be displayed during apprenticeship; and

(b) affidavit form to be signed by supervising dentist at start and completion of apprenticeship;

(2) the affidavit shall state that the supervising dentist assures that the EFDA candidate is competent in the procedures allowed by an EFDA and that the supervising dentist assumes full responsibility and liability for the training and actions of the EFDA;

(3) once the permit is issued by the board office the EFDA candidate has 180 days to complete the apprenticeship; (a grace period of no more than 60 days may be granted by the board chair or vice-chair) and

(4) upon completion of the apprenticeship the candidate must return the EFDA permit and the signed affidavit to the board; once the permit and signed affidavit have been received and verified by the board a certificate for EFDA may be issued.

[16.5.42.9 NMAC - Rp, 16.5.42.9 NMAC, 5/31/2023]

#### **16.5.42.10 REQUIRED DOCUMENTATION:**

Each applicant for an expanded function dental auxiliary certification shall submit to the board or its agent the required fees and the following documentation. Applications are valid for one year from the date of receipt by the board; after one year, the applicant shall submit to the board a new application.

**A.** Each application for licensure who completed an EFDA program as defined in Subsection A of 16.5.42.9 NMAC must submit the following documentation:

(1) completed application;

(2) official transcripts or certification verifying successful completion of an EFDA program accredited by the commission on dental accreditation;

(3) copy of clinical examination accepted by the board for certification as EDFA; the results of the exam are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination;

(b) results of the clinical examination shall be sent directly to the board office;  
and

(4) affidavit letter from supervising dentists.

(5) proof of certifications in all 4 expanded functions as defined in 16.5.33 NMAC no later than July 1, 2019.

**B.** An applicant who has not graduated from a program as defined in Subsection A of 16.5.42.9 NMAC can apply for certification if they meet all requirements in Subsection B, C, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application;

(2) shall provide proof of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(3) shall have achieved certification in all expanded functions as defined in 16.5.33 NMAC;

(4) shall provide proof of successful completion of courses in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function;

(5) shall provide an affidavit executed on dentist letterhead from a supervising dentist recommending the applicant for EFDA certification and verifying the applicant's competency; and

(6) copy of clinical examination score card or certificate.

**C.** Certification by credentials: Applicants can apply for certification by credentials if they meet all requirements as defined in Subsections A, C, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application;

(2) verification of a current active certification in good standing from another state; and

(3) copy of clinical examination score card or certificate; the results of the examination are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination, and

(b) the results of the clinical examination must be sent directly to the board office; and

(4) affidavit letter from the supervising dentist of competency.

[16.5.42.10 NMAC - Rp, 16.5.42.10 NMAC, 5/31/2023]

#### **16.5.42.11 CERTIFICATION PROCEDURE:**

Upon receipt of a completed application, including all required documentation, signed affidavit and fees, the secretary-treasurer or delegate of the board will review the application and determine eligibility for certification.

**A.** Initial certificates are issued for a period not to exceed three years.

**B.** The certificate must be displayed so that it is visible to the public.

[16.5.42.11 NMAC - Rp, 16.5.42.11 NMAC, 5/31/2023 1/9/2012]

#### **16.5.42.12 TIMELINE FOR PREVIOUSLY ISSUED EFDA PERMITS AND EXPANDED FUNCTIONS:**

All current EFDA certification permit holders must have all four expanded functions as defined in 16.5.33 NMAC no later than July 1, 2019. EFDA permits will suspend automatically if such expanded functions certifications are not current. Once those expanded functions are certified, the EFDA permit will become valid until its regular expiration period.

[16.5.42.12 NMAC - Rp, 16.5.42.12 NMAC, 5/31/2023]

### **PART 43: EXPANDED FUNCTION DENTAL AUXILIARY, CERTIFICATION EXPIRATION AND RENEWAL**

#### **16.5.43.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.43.1 NMAC - N, 01/09/12]

#### **16.5.43.2 SCOPE:**

The provisions of Part 43 of Chapter 5 apply to all expanded function dental auxiliary with a certificate to practice expanded functions in New Mexico.

[16.5.43.2 NMAC - N, 01/09/12]

**16.5.43.3 STATUTORY AUTHORITY:**

Part 43 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[16.5.43.3 NMAC - N, 01/09/12]

**16.5.43.4 DURATION:**

Permanent.

[16.5.43.4 NMAC - N, 01/09/12]

**16.5.43.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.43.5 NMAC - N, 01/09/12]

**16.5.43.6 OBJECTIVE:**

To establish the requirements and procedures for renewal and expiration of certificates for expanded function dental auxiliary.

[16.5.43.6 NMAC - N, 01/09/12]

**16.5.43.7 DEFINITIONS:**

**[RESERVED]**

**16.5.43.8 CERTIFICATE EXPIRATION:**

Initial certificates will expire on July 1 following the second year of certification. No certificate will be issued for longer than 36 months or less than 25 months.

[16.5.43.8 NMAC - N, 01/09/12]

**16.5.43.9 RENEWAL PERIOD AND EXPIRATION:**

After the initial certification period, certifications for expanded function expire every three years on June 30. Certificates that are not renewed by July 1 are considered expired.

[16.5.43.9 NMAC - N, 01/09/12]

**16.5.43.10 RENEWAL PROCESS:**

A completed renewal application, accompanied by the required fee as set forth in 16.5.41.8 NMAC, along with the required proof of completion of 36 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1 of the renewal year.

[16.5.43.10 NMAC - N, 01/09/12]

**16.5.43.11 CERTIFICATE HOLDER RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received for any reason. It is the certificate holders responsibility to make timely request for the renewal form if one has not been received 30 days prior to certificate expiration.

[16.5.43.11 NMAC - N, 01/09/12]

**16.5.43.12 RENEWAL AFTER JUNE 30:**

Renewal applications post-marked after July 1 and prior to August 1 of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.44.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.41.8 NMAC.

[16.5.43.12 NMAC - N, 01/09/12]

**16.5.43.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1:**

Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.44.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.41.8 NMAC.

[16.5.43.13 NMAC - N, 01/09/12]

**16.5.43.14 RENEWAL APPLICATION UNDELIVERABLE:**

If the notice of renewal is returned to the office and the certificate holder has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[16.5.43.14 NMAC - N, 01/09/12]

## **PART 44: EXPANDED FUNCTION DENTAL AUXILIARY, CONTINUING EDUCATION REQUIREMENTS**

### **16.5.44.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.44.1 NMAC - N, 01/09/12]

### **16.5.44.2 SCOPE:**

The provisions of Part 44 of Chapter 5 apply to all expanded function dental auxiliary with current expanded function dental auxiliary certification who are applying to renew their certificate.

[16.5.44.2 NMAC - N, 01/09/12]

### **16.5.44.3 STATUTORY AUTHORITY:**

Part 44 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[16.5.44.3 NMAC - N, 01/09/12]

### **16.5.44.4 DURATION:**

Permanent.

[16.5.44.4 NMAC - N, 01/09/12]

### **16.5.44.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.44.5 NMAC - N, 01/09/12]

### **16.5.44.6 OBJECTIVE:**

To establish the requirements for the renewal of expanded function dental auxiliary certificates.

[16.5.44.6 NMAC - N, 01/09/12]

### **16.5.44.7 DEFINITIONS:**

**[RESERVED]**

#### **16.5.44.8 HOURS REQUIRED:**

36 hours of continuing education, a maximum of 12 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 12 hours per year for individuals certified for less than three years.

[16.5.44.8 NMAC - N, 01/09/12]

#### **16.5.44.9 COURSES REQUIRED:**

Continuing education coursework must contribute directly to the practice of expanded function dental auxiliary. The following courses are required for certification renewal:

A. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period;

B. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course; and

C. 12 hours in restorative dentistry.

[16.5.44.9 NMAC - N, 01/09/12]

#### **16.5.44.10 VERIFICATION OF CONTINUING EDUCATION:**

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[16.5.44.10 NMAC - N, 01/09/12]

#### **16.5.44.11 EMERGENCY DEFERRAL:**

A certificate holder who is unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

[16.5.44.11 NMAC - N, 01/09/12]

## **PART 45: EXPANDED FUNCTION DENTAL AUXILIARY, CERTIFICATE REVOCATION FOR NON-RENEWAL**

### **16.5.45.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.45.1 NMAC - N, 01/09/12]

### **16.5.45.2 SCOPE:**

The provisions of Part 45 of Chapter 5 apply to all expanded function dental auxiliary with expanded function certification who do not submit an application for certificate renewal within 60 days of the expiration date.

[16.5.45.2 NMAC - N, 01/09/12]

### **16.5.45.3 STATUTORY AUTHORITY:**

Part 45 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[16.5.45.3 NMAC - N, 01/09/12]

### **16.5.45.4 DURATION:**

Permanent.

[16.5.45.4 NMAC - N, 01/09/12]

### **16.5.45.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.45.5 NMAC - N, 01/09/12]

### **16.5.45.6 OBJECTIVE:**

To establish the procedures and policies for revocation of expired expanded function dental auxiliary certificates and the reinstatement of certificates revoked for non-renewal.

[16.5.45.6 NMAC - N, 01/09/12]

**16.5.45.7 DEFINITIONS:**

**[RESERVED]**

**16.5.45.8 REVOCATION OF CERTIFICATE FOR NON-RENEWAL:**

Unless an application for certificate renewal is received by the board office, or post-marked, before September 1, the certificate shall be revoked for non-renewal.

[16.5.45.8 NMAC - N, 01/09/12]

**16.5.45.9 REINSTATEMENT OF REVOKED CERTIFICATE:**

Within one year of the revocation notice, the certificate may be reinstated by payment of renewal, late and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must re-apply as a new applicant and meet all requirements for initial certification.

A. Applicants for reinstatement must provide verification of certification in all states where the applicant holds or has held a certificate to practice expanded function dental auxiliary, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, expiration date, certificate number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked certification application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[16.5.45.9 NMAC - N, 01/09/12]

**PART 46: EXPANDED FUNCTION DENTAL AUXILIARY, PRACTICE AND SUPERVISION**

**16.5.46.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.46.1 NMAC - N, 01/09/12]

**16.5.46.2 SCOPE:**

The provisions of Part 46 of Chapter 5 apply to all expanded function dental auxiliary with current certification.

[16.5.46.2 NMAC - N, 01/09/12]

**16.5.46.3 STATUTORY AUTHORITY:**

Part 46 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, 61-5A-5, 61-5A-6 and 61-5A-6.1 NMSA 1978, (1996 Repl. Pamp.).

[16.5.46.3 NMAC - N, 01/09/12]

**16.5.46.4 DURATION:**

Permanent.

[16.5.46.4 NMAC - N, 01/09/12]

**16.5.46.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.46.5 NMAC - N, 01/09/12]

**16.5.46.6 OBJECTIVE:**

To establish those procedures which shall be provided by an expanded function dental auxiliary, the procedures which require expanded function dental auxiliary certification, and the procedures which shall not be performed by an expanded function dental auxiliary, regardless of certification or supervision.

[16.5.46.6 NMAC - N, 01/09/12]

**16.5.46.7 DEFINITIONS:**

"Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- A. is physically present throughout the performance of the act;
- B. orders, controls and accepts full professional responsibility for the act performed;  
and
- C. evaluates and approves the procedure performed before the patient departs the care setting.

[16.5.46.7 NMAC - N, 01/09/12]

**16.5.46.8 PRACTICE AND REQUIRED SUPERVISION:**

EFDA duties set forth in 16.5.46.9 NMAC are allowed under the direct supervision of a NM licensed dentist, provided the dentist has:

- A. prepared the cavity or tooth for the restorative procedure;
- B. instructed the EFDA on the particular elements of this individual case;
- C. fully examined and evaluated the procedure carried out by the EFDA, and corrected or replaced any deficiency found in the EFDA work, before allowing the patient to leave the treatment facility;
- D. the dentist is ultimately responsible for the quality of care and the quality of the final restorative procedure carried out by the EFDA as defined in 16.5.16 NMAC and Subsection N of Section 61-5A-3 of the Dental Health Care Act; and
- E. not more than two EFDA, performing expanded functions, per licensed dentist present in office.

[16.5.46.8 NMAC - N, 01/09/12]

#### **16.5.46.9 ALLOWABLE DUTIES UNDER DIRECT SUPERVISION:**

The following EFDA procedures are allowable under direct supervision as set forth in 16.5.46.8 NMAC.

- A. Placing and shaping of direct restorative materials into cavity preparations completed by a dentist; EFDA may use instrumentation as necessary and proper for this purpose.
- B. Taking of impressions for permanent fixed or removable prosthetics involving single teeth, to include digital impressions. These include single crowns or single tooth replacement prosthetics. EFDA shall NOT take final impressions for multiple units of single crowns, bridges, cast framework partial dentures or full dentures final impressions.
- C. Cement permanent or provisional restorations with temporary or provisional cement, provided the permanent cementation will be completed or monitored by the dentist within six months.
- D. Place pit and fissure sealants under supervision as certification or licensure allows.
- E. Place temporary or sedative restorations in open carious lesions after hand excavation of gross decay and debris. If pain is perceived by the patient dentist shall evaluate lesion before completion by EFDA. The EFDA shall NOT use any automated

method to clean out the lesion or prepare the tooth, including but not limited to high speed, slow speed, air abrasion, ultrasonic, laser etc.

F. The EFDA may place temporary or sedative restorative material into unprepared tooth fractures as a palliative measure. The EFDA shall NOT use any automated method to clean out the fracture or prepare the tooth, including but not limited to high speed, slow speed, air abrasion, ultrasonic, laser etc.

G. Remove residual orthodontic bracket or band cement or resin from teeth after the brackets or bands have been removed by the dentist performing the orthodontic treatment, or to prepare the tooth or teeth for re-cementation of a debonded bracket or band. This removal of cement/resin may include the use of instrumentation, as necessary and proper for this purpose.

H. Perform preliminary fitting and shaping of stainless steel crowns which shall undergo final evaluation and cementation by a dentist.

I. In emergency situation recement temporary or permanent crowns or bridges using provisional cement under the general supervision of a dentist and when instructed to do so by the dentist provided the permanent cementation will be completed or monitored by the dentist within six months.

[16.5.46.9 NMAC - N, 01/09/12; A, 06/14/12; A. 01/04/14]

#### **16.5.46.10 NON-ALLOWABLE PROCEDURES:**

EFDA shall not perform any other procedure, duty or function as an EFDA under any level of supervision that is not expressly listed in 16.5.46.9 NMAC.

[16.5.46.10 NMAC - N, 01/09/12]

### **PART 47: EXPANDED FUNCTION DENTAL AUXILIARY, DISCIPLINARY PROCEEDINGS**

#### **16.5.47.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.47.1 NMAC - N, 01/09/12]

#### **16.5.47.2 SCOPE:**

The provisions of Part 47 of Chapter 5 apply to all active certificate holders and applicants for certification. These provisions may also be of interest to anyone who may wish to file a complaint against a expanded function dental auxiliary certified by the board.

[16.5.47.2 NMAC - N, 01/09/12]

**16.5.47.3 STATUTORY AUTHORITY:**

Part 47 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-6 and 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).

[16.5.47.3 NMAC - N, 01/09/12]

**16.5.47.4 DURATION:**

Permanent.

[16.5.47.4 NMAC - N, 01/09/12]

**16.5.47.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.47.5 NMAC - N, 01/09/12]

**16.5.47.6 OBJECTIVE:**

To establish the procedures for filing complaints against certificate holders, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a certificate holder which are considered incompetent or unprofessional practice.

[16.5.47.6 NMAC - N, 01/09/12]

**16.5.47.7 DEFINITIONS:**

[RESERVED]

**16.5.47.8 COMPLAINTS:**

Disciplinary proceedings shall be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Dental Health Care Act.

[16.5.47.8 NMAC - N, 01/09/12]

**16.5.47.9 ACTIONS:**

A. The board may issue fines, deny, revoke or suspend, or otherwise limit a certificate if the board determines the certificate holder is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, or these rules.

B. The board may reprimand, censure, stipulate and may require certificate holders to fulfill additional continuing education hours within limited time constraints for violations of the act or the rules.

C. The board shall take into consideration the role of expanded function dental auxiliary as employees when taking disciplinary action against a certificate holder. In the event the complaint is ruled to be based primarily on the expanded function dental auxiliary's role as employee, the board may consider appropriate action against the employer/dentist.

[16.5.47.9 NMAC - N, 01/09/12]

#### **16.5.47.10 GUIDELINES:**

The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of one's certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of expanded function dental auxiliary;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any application;

E. cheating on an examination for expanded function dental auxiliary certification;

F. performing any procedure which requires certification unless so certified;

G. injudicious administration of any drug or medicine;

H. conviction of either a misdemeanor or a felony punishable by incarceration; and

I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.

[16.5.47.10 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13]

**16.5.47.11 INVESTIGATIVE SUBPOENAS:**

The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations.

[16.5.47.11 NMAC - N, 01/09/12]

**PART 48: [RESERVED]**

**PART 49: COMMUNITY DENTAL HEALTH COORDINATOR, FEES**

**16.5.49.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.49.1 NMAC - N, 01/09/12]

**16.5.49.2 SCOPE:**

The provisions of Part 49 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified community dental health coordinators or other public records.

[16.5.49.2 NMAC - N, 01/09/12]

**16.5.49.3 STATUTORY AUTHORITY:**

Part 49 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 NMSA 1978.

[16.5.49.3 NMAC - N, 01/09/12]

**16.5.49.4 DURATION:**

Permanent.

[16.5.49.4 NMAC - N, 01/09/12]

**16.5.49.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.49.5 NMAC - N, 01/09/12]

**16.5.49.6 OBJECTIVE:**

To establish fees to generate revenue to support the cost of program administration.

[16.5.49.6 NMAC - N, 01/09/12]

**16.5.49.7 DEFINITIONS:**

[RESERVED]

**16.5.49.8 FEES:**

A. all fees are non-refundable;

B. application fee: \$100;

C. board examination fee not to exceed \$100 per exam;

D. triennial renewal fee: \$100;

E. late penalty fee: \$25.00;

F. duplicate certificate fee: \$10.00;

G. list of current certificate holders: \$300; an annual list of current certificate holders is available to the professional association upon request at no cost;

H. labels of current certificate holders: \$300;

I. reinstatement fee: \$15.00;

J. copies cost \$0.25 per page.

[16.5.49.8 NMAC - N, 01/09/12]

**PART 50: COMMUNITY DENTAL HEALTH COORDINATOR,  
REQUIREMENTS FOR CERTIFICATION**

**16.5.50.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.50.1 NMAC - N, 01/09/12]

**16.5.50.2 SCOPE:**

The provisions of Part 50 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of community dental health coordinators or other public records.

[16.5.50.2 NMAC - N, 01/09/12]

**16.5.50.3 STATUTORY AUTHORITY:**

Part 50 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-5 and 61-5A-6 NMSA 1978.

[16.5.50.3 NMAC - N, 01/09/12]

**16.5.50.4 DURATION:**

Permanent.

[16.5.50.4 NMAC - N, 01/09/12]

**16.5.50.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.50.5 NMAC - N, 01/09/12]

**16.5.50.6 OBJECTIVE:**

To establish the requirements for certification as a community dental health coordinator for applicants from various educational backgrounds and professional tracks.

[16.5.50.6 NMAC - N, 01/09/12]

**16.5.50.7 DEFINITIONS:**

A. "Community based field experience" means a hands on internship/apprenticeship where the CDHC gets to use their skills under supervision of a licensed New Mexico dentist or hygienist.

B. "Community dental health coordinator" CDHC means a dental assistant, dental hygienist or other trained personnel certified by the board as a community dental health coordinator to provide educational, preventive and limited palliative care and assessment services working collaboratively under the general supervision of a licensed New Mexico dentist.

C. "Community health promotion" means courses that teach social work skills such as, building social networks, health advocacy for individuals and communities, mapping

out social and health support networks, cultural competency, communication skills, interpersonal skills, interviewing skills, behavioral assessment and management, developing community programs, teaching and training skills, legal and ethical issues.

D. "Continuous employment" means 1,000 hours per year for five consecutive years.

E. "Dental skills" means courses in basic dental knowledge, emergency vs. routine care needs, recognition of dental conditions, gross anatomy of head and neck and oral structures, gathering and recording information, clinical record keeping, caries, periodontal disease, oral and external cancer evaluation, palliative care, and financing dental care.

F. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in the facility as designated by the rules of the board.

G. "Limited palliative procedures" means procedures ordered by the dentist to help relieve pain or to improve an emergency situation that a patient is experiencing. These procedures must be within the scope of the community dental health coordinator.

H. "Teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic and treatment planning services in cooperation with another dentist, a dental hygienist, a community dental health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

[16.5.50.7 NMAC - N, 01/09/12]

#### **16.5.50.8 REQUIREMENTS:**

Community dental health coordinator who performs the duties defined under 16.5.54 NMAC are required to be certified by the board.

[16.5.50.8 NMAC - N, 01/09/12]

#### **16.5.50.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR COMMUNITY DENTAL HEALTH COORDINATOR:**

Each applicant for a certification for community dental health coordinator must possess the following qualifications, through one of the following pathways:

A. Applicants for CDHC shall meet the following requirements for certification:

- (1) shall have high school diploma (or equivalent) or college level degree;
- (2) shall have board certification in radiography, rubber cup coronal polishing and topical flouride and pit and fissure expanded functions;
- (3) completed the jurisprudence exam with a score of at least 75 percent; and
- (4) successful completion of CDHC program approved by the board.

B. Pathways/educational tracks: applicants may have earned other college level degree(s) and certifications in their respective field(s) of study, such as, but not limited to, registered dental hygienists, certified dental assistant, dental assistant, expanded function dental auxiliary and other non-dental professionals. Credits earned in these educational fields may be applied for credit towards the CDHC education program as determined by the sponsoring institution.

C. Approved programs: board approved CDHC programs shall include the following guidelines for course study in order to prepare the applicant to a level consistent with the definitions as listed in 16.5.50.7 NMAC and duties as outlined in 16.5.54.9 NMAC:

- (1) education in community health promotion;
- (2) education in dental skills; and
- (3) education in community-based field experience.

D. Credit shall be given by the approved program of coursework, certifications, or degrees already earned. Proof of these credits is the responsibility of the institution of the approved program.

[16.5.50.9 NMAC - N, 01/09/12]

#### **16.5.50.10 REQUIRED DOCUMENTATION:**

Each applicant for community dental health coordinator certification must submit to the board or its agent the required fees and following documentation. Applications are valid for one year from the date of receipt:

A. proof of official transcripts with required courses for certification; official transcripts verifying successfully passing all required coursework as defined in 61-5A-6 of the act;

B. passed the jurisprudence exam with a score of at least 75 percent;

C. submit to the board the names of the dentists(s) working in a supervisory capacity to the CDHC coordinator.

[16.5.50.10 NMAC - N, 01/09/12]

**16.5.50.11 CERTIFICATION PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees the secretary-treasurer or delegate of the board will review the application and determine eligibility for certification.

- A. Initial certificates are issued for a period not to exceed three years.
- B. The certificate must be displayed so that it is visible to the public.

[16.5.50.11 NMAC - N, 01/09/12]

**PART 51: COMMUNITY DENTAL HEALTH COORDINATOR,  
CERTIFICATION EXPIRATION AND RENEWAL**

**16.5.51.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.51.1 NMAC - N, 01/09/12]

**16.5.51.2 SCOPE:**

The provisions of Part 51 of Chapter 5 apply to all community dental health coordinators with a certificate to practice as a community dental health coordinator in New Mexico.

[16.5.51.2 NMAC - N, 01/09/12]

**16.5.51.3 STATUTORY AUTHORITY:**

Part 51 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[16.5.51.3 NMAC - N, 01/09/12]

**16.5.51.4 DURATION:**

Permanent.

[16.5.51.4 NMAC - N, 01/09/12]

**16.5.51.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.51.5 NMAC - N, 01/09/12]

**16.5.51.6 OBJECTIVE:**

To establish the requirements and procedures for renewal and expiration of certificates for community dental health coordinator.

[16.5.51.6 NMAC - N, 01/09/12]

**16.5.51.7 DEFINITIONS:**

**[RESERVED]**

**16.5.51.8 CERTIFICATE EXPIRATION:**

Initial certificates will expire on July 1 following the second year of certification. No certificate will be issued for longer than 36 months or less than 25 months.

[16.5.51.8 NMAC - N, 01/09/12]

**16.5.51.9 RENEWAL PERIOD AND EXPIRATION:**

After the initial certification period, certifications for community dental health coordinator expire every three years on June 30. Certificates that are not renewed by July 1 are considered expired.

[16.5.51.9 NMAC - N, 01/09/12]

**16.5.51.10 RENEWAL PROCESS:**

A completed renewal application, accompanied by the required fee as set forth in 16.5.49.8 NMAC, along with the required proof of completion of 36 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1 of the renewal year.

[16.5.51.10 NMAC - N, 01/09/12]

**16.5.51.11 CERTIFICATE HOLDER RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received for any reason. It is the certificate holders responsibility to make timely request for the renewal form if one has not been received 30 days prior to certificate expiration.

[16.5.51.11 NMAC - N, 01/09/12]

**16.5.51.12 RENEWAL AFTER JUNE 30:**

Renewal applications post-marked after July 1 and prior to August 1 of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.52.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.49.8 NMAC.

[16.5.51.12 NMAC - N, 01/09/12]

**16.5.51.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1:**

Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.52.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.49.8 NMAC.

[16.5.51.13 NMAC - N, 01/09/12]

**16.5.51.14 RENEWAL APPLICATION UNDELIVERABLE:**

If the notice of renewal is returned to the office and the certificate holder has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[16.5.51.14 NMAC - N, 01/09/12]

**PART 52: COMMUNITY DENTAL HEALTH COORDINATOR, CONTINUING EDUCATION REQUIREMENTS**

**16.5.52.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.52.1 NMAC - N, 01/09/12]

**16.5.52.2 SCOPE:**

The provisions of Part 52 of Chapter 5 apply to all community dental health coordinators with current expanded function certification who are applying to renew their certificate.

[16.5.52.2 NMAC - N, 01/09/12]

**16.5.52.3 STATUTORY AUTHORITY:**

Part 52 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pam.).

[16.5.52.3 NMAC - N, 01/09/12]

**16.5.52.4 DURATION:**

Permanent.

[16.5.52.4 NMAC - N, 01/09/12]

**16.5.52.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.52.5 NMAC - N, 01/09/12]

**16.5.52.6 OBJECTIVE:**

To establish the requirements for the renewal of community dental health coordinator certificates.

[16.5.52.6 NMAC - N, 01/09/12]

**16.5.52.7 DEFINITIONS:**

[RESERVED]

**16.5.52.8 HOURS REQUIRED:**

36 hours of continuing education, a maximum of 12 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 12 hours per year for individuals certified for less than three years.

[16.5.52.8 NMAC - N, 01/09/12; A, 06/14/12]

**16.5.52.9 COURSES REQUIRED:**

Continuing education coursework must contribute directly to the practice of community dental health coordinator. The following courses are required for certificate renewal:

A. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period;

B. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red

cross, or the American safety and health institute (ASHI); cannot be a self-study course; and

C. 12 hours in preventive or emergency dentistry.

[16.5.52.9 NMAC - N, 01/09/12; A, 06/14/12]

**16.5.52.10 VERIFICATION OF CONTINUING EDUCATION:**

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[16.5.52.10 NMAC - N, 01/09/12]

**16.5.52.11 EMERGENCY DEFERRAL:**

A certificate holder who is unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

[16.5.52.11 NMAC - N, 01/09/12]

**PART 53: COMMUNITY DENTAL HEALTH COORDINATOR, CERTIFICATE REVOCATION FOR NON-RENEWAL**

**16.5.53.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.53.1 NMAC - N, 01/09/12]

**16.5.53.2 SCOPE:**

The provisions of Part 53 of Chapter 5 apply to all community dental health coordinators with certification who do not submit an application for certificate renewal within 60 days of the expiration date.

[16.5.53.2 NMAC - N, 01/09/12]

**16.5.53.3 STATUTORY AUTHORITY:**

Part 53 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[16.5.53.3 NMAC - N, 01/09/12]

**16.5.53.4 DURATION:**

Permanent.

[16.5.53.4 NMAC - N, 01/09/12]

**16.5.53.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.53.5 NMAC - N, 01/09/12]

**16.5.53.6 OBJECTIVE:**

To establish the procedures and policies for revocation of expired community dental health coordinator certificates and the reinstatement of certificates revoked for non-renewal.

[16.5.53.6 NMAC - N, 01/09/12]

**16.5.53.7 DEFINITIONS:**

**[RESERVED]**

**16.5.53.8 REVOCATION OF CERTIFICATE FOR NON-RENEWAL:**

Unless an application for certificate renewal is received by the board office, or post-marked, before September 1, the certificate shall be revoked for non-renewal.

[16.5.53.8 NMAC - N, 01/09/12]

**16.5.53.9 REINSTATEMENT OF REVOKED CERTIFICATE:**

Within one year of the revocation notice, the certificate may be reinstated by payment of renewal, late and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must re-apply as a new applicant and meet all requirements for initial certification.

A. Applicants for reinstatement must provide verification of certification in all states where the applicant holds or has held a certificate to practice as a community dental

health coordinator, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, expiration date, certification number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked certification application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[16.5.53.9 NMAC - N, 01/09/12]

## **PART 54: COMMUNITY DENTAL HEALTH COORDINATOR, PRACTICE AND SUPERVISION**

### **16.5.54.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.54.1 NMAC - N, 01/09/12]

### **16.5.54.2 SCOPE:**

The provisions of Part 54 of Chapter 5 apply to all community dental health coordinators with current certification.

[16.5.54.2 NMAC - N, 01/09/12]

### **16.5.54.3 STATUTORY AUTHORITY:**

Part 54 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, 61-5A-5 and 61-5A-6 NMSA 1978, (1996 Repl. Pamp.).

[16.5.54.3 NMAC - N, 01/09/12]

### **16.5.54.4 DURATION:**

Permanent.

[16.5.54.4 NMAC - N, 01/09/12]

### **16.5.54.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.54.5 NMAC - N, 01/09/12]

#### **16.5.54.6 OBJECTIVE:**

To establish those procedures which may be provided by a community dental health coordinator, the procedures which require community dental health coordinator certification, and the procedures which may not be performed by an community dental health coordinator, regardless of certification or supervision.

[16.5.54.6 NMAC - N, 01/09/12]

#### **16.5.54.7 DEFINITIONS:**

A. "Cavitation" means a break in the continuous, solid surface of the enamel of a tooth, created either by genetic formation or demineralization.

B. "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed; and
- (3) evaluates and approves the procedure performed before the patient departs the care setting.

C. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, community dental health coordinator or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

D. "Limited palliative procedure(s)" means procedures ordered by the dentist to help relieve pain or to improve an emergency situation that a patient is experiencing. These procedures must be within the scope of practice of the CDHC.

E. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

F. "Teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

G. "Tooth fracture" means the fracture or loss of tooth structure due to trauma or chewing. The defect has little or no caries present.

H. "Unexcavated carious lesion" means an open carious lesion in a tooth that is cleaned of loose debris by rinsing or use of cotton pellets. Caries attached to the tooth will not be removed.

[16.5.54.7 NMAC - N, 01/09/12]

#### **16.5.54.8 PRACTICE AND REQUIRED SUPERVISION:**

Community dental health coordinator duties set forth in 16.5.54.9 NMAC are allowed under the general supervision of a New Mexico licensed dentist. The community dental health coordinator may provide educational preventive and limited palliative care and assessment services while working collaboratively under the general supervision of a dentist.

[16.5.54.8 NMAC - N, 01/09/12]

#### **16.5.54.9 ALLOWABLE DUTIES UNDER GENERAL SUPERVISION:**

The following community dental health coordinator procedures are allowable under general supervision as set forth in 16.5.54.8 NMAC:

- A. take a complete health and dental history;
- B. expose and develop necessary radiographs as ordered by the supervising dentist or as established in protocol by a supervising dentist;
- C. observe and transmit patient data through teledentistry means to a dentist;
- D. place temporary and sedative restorative materials in unexcavated carious lesions and unprepared tooth fractures;
- E. transmit prescription or medication orders on the direct order of a dentist;
- F. CDHC may provide the following limited palliative procedures:
  - (1) application of hot/cold compresses to the face or mouth;
  - (2) instruct patient in the uses of various rinses containing salt, sodium bicarbonate, chlorhexidine, etc. as ordered by the dentist;
  - (3) instruct patients as to the proper use and dosage of over the counter or prescribed medications recommended by the supervising dentists;

- (4) place avulsed teeth in the proper preservation solution for transport to a dentist;
  - (5) apply pressure compresses to intraoral wounds;
  - (6) performance of any other palliative procedures as directly instructed by the supervising dentist, and within the scope of practice of the CDHC;
  - (7) instruct the patient on brushing, flossing, gingival massage or cleaning for gingival inflammation or infection;
- G. patient and community education on an individual basis or with groups within the community to improve dental health and dental health awareness;
- H. act as an advocate for patients and the community in accessing dental care; and
- I. rubber cup coronal polishing, which is not to be represented as a prophylaxis, topical application of fluorides; application of pit and fissure sealants when previously authorized by the supervising dentist or dental hygienist and cavitation of the enamel is not present.

[16.5.54.9 NMAC - N, 01/09/12; A, 06/14/12]

#### **16.5.54.10 NON-ALLOWABLE PROCEDURES:**

CDHC may not perform any other procedure, duty or function under any level of supervision that is not expressly listed in 16.5.54.9 NMAC.

[16.5.54.10 NMAC - N, 01/09/12]

### **PART 55: COMMUNITY DENTAL HEALTH COORDINATOR, DISCIPLINARY PROCEEDINGS**

#### **16.5.55.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.55.1 NMAC - N, 01/09/12]

#### **16.5.55.2 SCOPE:**

The provisions of Part 55 of Chapter 5 apply to all active certificate holders and applicants for certification. These provisions may also be of interest to anyone who may wish to file a complaint against a community dental health coordinator certified by the board.

[16.5.55.2 NMAC - N, 01/09/12]

**16.5.55.3 STATUTORY AUTHORITY:**

Part 55 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-5, 61-5A-6 and 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).

[16.5.55.3 NMAC - N, 01/09/12]

**16.5.55.4 DURATION:**

Permanent.

[16.5.55.4 NMAC - N, 01/09/12]

**16.5.55.5 EFFECTIVE DATE:**

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.55.5 NMAC - N, 01/09/12]

**16.5.55.6 OBJECTIVE:**

To establish the procedures for filing complaints against certificate holders, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a certificate holder which are considered incompetent or unprofessional practice.

[16.5.55.6 NMAC - N, 01/09/12]

**16.5.55.7 DEFINITIONS:**

[RESERVED]

**16.5.55.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Dental Health Care Act.

[16.5.55.8 NMAC - N, 01/09/12]

**16.5.55.9 ACTIONS:**

A. The board may issue fines, deny, revoke or suspend, or otherwise limit a certificate if the board determines the certificate holder is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, or these rules.

B. The board may reprimand, censure, stipulate and may require certificate holders to fulfill additional continuing education hours within limited time constraints for violations of the act or the rules.

C. The board shall take into consideration the role of community dental health coordinator as employees when taking disciplinary action against a certificate holder. In the event the complaint is ruled to be based primarily on the community dental health coordinator's role as employee, the board may consider appropriate action against the employer/dentist.

[16.5.55.9 NMAC - N, 01/09/12]

**16.5.55.10 GUIDELINES:**

The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of community dental health coordinator;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any application;

E. cheating on an examination for community dental health coordinator certification;

F. performing any procedure which requires certification unless so certified;

G. injudicious administration of any drug or medicine;

H. conviction of either a misdemeanor or a felony punishable by incarceration; and

I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.

[16.5.55.10 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13]

**16.5.55.11 INVESTIGATIVE SUBPOENAS:**

The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations.

[16.5.55.11 NMAC - N, 01/09/12]

**PART 56: PARENTAL RESPONSIBILITY COMPLIANCE**

**16.5.56.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.56.1 NMAC - N, 06/14/12]

**16.5.56.2 SCOPE:**

This part applies to disciplinary proceedings by an issuing agency pursuant to the Parental Responsibility Act against a license, certificate, registration or permit required to engage in a profession or occupation.

[16.5.56.2 NMAC - N, 06/14/12]

**16.5.56.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA1978.

[16.5.56.3 NMAC - N, 06/14/12]

**16.5.56.4 DURATION:**

Permanent.

[16.5.56.4 NMAC - N, 06/14/12]

**16.5.56.5 EFFECTIVE DATE:**

June 14, 2012, unless a later date is cited at the end of a section.

[16.5.56.5 NMAC - N, 06/14/12]

**16.5.56.6 OBJECTIVE:**

This part is intended to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license, certificate, registration or permit required for dentists, dental hygienists, dental assistants, expanded function dental auxiliaries, community dental health coordinators, dental therapists and non-dentist owners for dental practices.

[16.5.56.6 NMAC - N, 6/14/2012; A, 5/30/2021]

#### **16.5.56.7 DEFINITIONS:**

A. All terms defined in the Parental Responsibility Act shall have the same meanings in this part unless defined below.

B. As used in this part.

(1) "Board" means the New Mexico board of dental health care or any entity to which it has delegated authority to pursue violations of the Parental Responsibility Act.

(2) "HSD" means the New Mexico human services department.

(3) "License" means a license, certificate, registration or permit issued by the board that a person is required to have to engage in a profession or occupation in New Mexico.

(4) "Statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support, and has complied with subpoenas or warrants relating to paternity or child support proceedings.

(5) "Statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with judgment and order for support or has not complied with subpoenas or warrants relating to paternity or child support proceedings.

[16.5.56.7 NMAC - N, 06/14/12]

#### **16.5.56.8 PARENTAL RESPONSIBILITY ACT; DELEGATION OF AUTHORITY:**

The authority of the New Mexico board of dental health care to issue a notice of contemplated action, to refer cases in which a notice of contemplated action has been issued for administrative prosecution, to hold hearings and issue decision and orders to any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq., may be delegated to the New Mexico regulation and licensing department. This section shall not be construed to deprive the board of its authority to issue a notice

of contemplated action for any violation of the Parental Responsibility Act, to refer a case for administrative prosecution, hold a hearing or issue a decision and order for any violation of the Parental Responsibility Act.

[16.5.56.8 NMAC - N, 06/14/12]

**16.5.56.9 DISCIPLINARY PROCEEDINGS:**

A. Disciplinary action: If an applicant or licensee is not in compliance with a judgment and order for support, or has not complied with subpoenas or warrants, relating to paternity or child support proceedings the board shall follow:

- (1) shall deny an application for licensure;
- (2) shall deny the renewal of a license; and
- (3) has grounds for suspension or revocation of a license.

B. Certified list: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support or who have not complied with subpoenas or warrants relating to paternity or child support proceedings, the board shall match the certified list against the current list of applicants and licensees. Upon the later receipt of an application for licensure or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

C. Initial action: Upon determination that an applicant or licensee appears on the certified list, the board shall:

(1) commence a formal proceeding under Subsection D of 16.5.56.8 NMAC to take the appropriate action under Subsection A of 16.5.56.8 NMAC; or

(2) for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance by the earlier of the application for license renewal or a specified date not to exceed six months, if the licensee fails to provide the statement, the board shall commence formal proceeding under Subsection D of 16.5.56.8 NMAC.

D. Notice of contemplated action: Prior to taking any action specified in Subsection A of 16.5.56.8 NMAC, the board shall serve upon the applicant or licensee a written notice stating that:

(1) the board has grounds to take such action, and that the board shall take such action unless the licensee or applicant:

(a) mails a letter (certified mail, return receipt requested) within 20 days after service of the notice requesting a hearing; or

(b) provides the board, within 30 days of the date of the notice, with a statement of compliance; and

(2) if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

E. Evidence and proof: If any hearing under this part, relevant evidence is limited to the following:

(1) a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under Subsection A of 16.5.56.8 NMAC unless:

(2) the applicant or licensee can provide the board with subsequent statement of compliance which shall preclude the board from taking any action based solely on the prior statement of non-compliance.

F. Order: When an action is taken under this part solely because the applicant or licensee is not in compliance with a judgement and order for support or has not complied with subpoenas or warrants relating to paternity or child support proceedings the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplication or reinstatement of lapsed license.

G. Procedures: Proceedings under this part shall be governed by the Uniform Licensing Act, NMSA 1978, Section 61-1-1 *et seq.*, or any other adjudicatory procedures adopted by the board.

[16.5.56.9 NMAC - N, 06/14/12]

## **PART 57: MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES**

### **16.5.57.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.57.1 NMAC - N, 7/17/2013]

### **16.5.57.2 SCOPE:**

This part applies to all New Mexico dental board licensees who hold a federal drug enforcement administration registration.

[16.5.57.2 NMAC - N, 7/17/2013]

**16.5.57.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with Section 61-5A-4, NMSA 1978, of the Dental Health Care Act and the Pain Relief Act, Sections 24-2D-1 through 24-2D-6, NMSA 1978.

[16.5.57.3 NMAC - N, 7/17/2013]

**16.5.57.4 DURATION:**

Permanent.

[16.5.57.4 NMAC - N, 7/17/2013]

**16.5.57.5 EFFECTIVE DATE:**

July 17, 2013, unless a later date is cited at the end of a section.

[16.5.57.5 NMAC - N, 7/17/2013]

**16.5.57.6 OBJECTIVE:**

It is the position of the board that dentists have an obligation to treat pain, and that a wide variety of drugs including controlled substances may be prescribed for that purpose. When such controlled substances are used, they should be prescribed in adequate doses and for the appropriate length of time after a thorough dental evaluation has been completed.

[16.5.57.6 NMAC - N, 7/17/2013]

**16.5.57.7 DEFINITIONS:**

**A. "Addiction"** means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

**B. "Accepted guideline"** means the most current clinical pain management guideline developed by the American geriatrics society or the American pain society or

a clinical pain management guideline based on evidence and expert opinion that has been accepted by the New Mexico medical board.

**C. "Acute pain"** means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

**D. "Chronic pain"** means pain that persists after reasonable dental efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months "chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

**E. "Clinical expert"** means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**F. "Drug abuser"** means a person who takes a drugs or controlled substances for other than legitimate dental purposes.

**G. "Opioid analgesic"** means buprenorphine, butorphanol, codeine, hydrocodone, hydromorphone, levorphanol, meperidine, methadone, morphine, nalbuphine, oxycodone, ocymorphone, pentazocine and propoxyphene as well as their brand names, isomers and combinations.

**H. "Opioid antagonist"** means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body, including naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

**I. "Pain"** means acute or chronic pain or both.

**J. "Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**K. "Prescription monitoring program (PMP)"** means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data is used to support efforts in education, research, enforcement, and abuse prevention.

**L. "Therapeutic purpose"** means the use of pharmaceutical and non-pharmaceutical dental treatment that conforms substantially to accepted guidelines for pain management.

**M. "Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.5.57.7 NMAC - N, 7/17/2013; A, 12/14/2019]

#### **16.5.57.8 GUIDELINES:**

The following regulations shall be used by the board to determine whether a dentist's prescriptive practices as consistent with the appropriate treatment of pain.

**A.** The treatment of pain with drugs or controlled substances is a legitimate dental practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

**B.** The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

**(1)** A dentist shall complete an evaluation. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication for or contra-indication against the use of controlled substance.

**(2)** A dentist shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The dentist shall consider an integrative approach to pain management.

**(3)** A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

**(4)** The dentist shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

**(5)** Complete and accurate records of care provided and drugs or controlled substances prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for controlled substances shall include indications for use.

**(6)** The management of patients needing chronic pain control requires monitoring by the dentist. The dentist shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. Chronic pain patients shall receive all chronic pain management prescriptions from one dentist and one pharmacy whenever possible.

**(7)** In addition, a dentist shall consult, when indicated by the patient's condition, with health care professionals who are experienced in the area of chronic pain control; such professionals need not be those who specialize in pain control.

**(8)** If, in a dentist's opinion, a patient is seeking pain medication for reasons that are not medically justified, the dentist is not required to prescribe controlled substances for the patient.

**(9)** A dentist who prescribes, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist. With respect to a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the dentist, the dentist shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the dentist prescribes, distributes or dispenses an opioid analgesic each calendar year.

**(10)** A dentist who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist.

**C.** The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate indication for the treatment prescribed; documented change or persistence of the recognized indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the dentist's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

**D.** The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

**E.** A dentist who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Dental Health Care Act or board rules.

[16.5.57.8 NMAC - N, 7/17/2013; A, 12/14/2019]

#### **16.5.57.9 DENTISTS TREATED WITH CONTROLLED SUBSTANCES:**

Dentists who have chronic pain and are being treated with controlled substances shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on controlled substances while continuing to practice.

[16.5.57.9 NMAC - N, 7/17/2013]

#### **16.5.57.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

The intent of the New Mexico board of dental health care in requiring participation in the PMP is to assist dentists in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

**A.** Any dentist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in the PMP inquiry and reporting.

**B.** A dentist may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a dentist's delegate may obtain a report from the state's prescription monitoring program, the dentist is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of the report in the patient's medical record.

**C.** Before a dentist prescribes or dispenses for the first time a controlled substance in Schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the dentist shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the dentist shall review similar reports from adjacent states. The dentist shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V

for each patient. The dentist shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a dentist from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** A dentist does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V;

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

**F.** Upon review of a prescription monitoring report for a patient, the dentist shall identify and be aware of a patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than 12 consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Paragraph (10) of Subsection F of 16.5.57 NMAC, the dentist shall refer to the guidelines outlined in 16.5.57.8 NMAC

[16.5.57.10 NMAC - N, 07/17/2013; A, 3/15/2017]

#### **16.5.57.11 PAIN MANAGEMENT CONTINUING EDUCATION:**

This section applies to all New Mexico dentists who hold a federal drug enforcement administration registration to prescribe controlled substances. Pursuant to the Pain Relief Act in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

**A.** Immediate requirements effective July 17, 2013. Between July 17, 2013 and no later than June 30, 2014, all board licensees who hold a federal drug enforcement administration registration to prescribe controlled substances shall complete no less than three continuing dental or medical education hours in appropriate courses that shall include:

- (1) an understanding of the pharmacology and risks on controlled substances,
- (2) a basic awareness of the problems of abuse, addiction and diversion,
- (3) awareness of state and federal regulations for the prescription of controlled substances,
- (4) management of the treatment of pain, and
- (5) dentists who have taken continuing education hours in these educational elements between July 1, 2012 and July 17, 2013 and reviewed this rule, may apply those hours toward the required three continuing education hours described in this section.

**B.** Triennial requirements: Beginning with the July 1, 2014 triennial renewal date, all New Mexico dentist licensees who hold a federal drug enforcement administration registration shall be required to complete and submit three continuing education hours; these hours shall count toward the 60 continuing education hours required during each triennial cycle. Appropriate courses shall include all of the educational elements described in Subsection A of this section. The applicability of such courses toward fulfillment of the continuing education requirement is subject to board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The three continuing education hours completed prior to July 1, 2014, as defined in Subsection A, may be included as part of the required continuing education hours in pain management in either the triennial cycle in which those hours are completed or the triennial cycle immediately thereafter.

**C.** Requirements for new licensees: All New Mexico dental licensees who hold a federal drug enforcement administration registration, whether or not the New Mexico license is the licensee's their first license, shall complete three continuing education hours in pain management during the first year of licensure. These three continuing education hours completed prior to the first renewal may be included as part of the hours required in Subsection B of this section.

**D.** The continuing education requirements of this section shall be included in the total continuing education requirements as set forth in 16.5.10 NMAC.

[16.5.57.11 NMAC - N, 7/17/2013; A, 1/11/2015]

**16.5.57.12 NOTIFICATION:**

In addition to the notice of procedures set forth in the State Rules Act Chapter 14, Article 4, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 57 of the New Mexico dental board rule;

**A.** health care practitioner's under its jurisdiction; and

**B.** a health care practitioner being investigated by the board in relation to the practitioner's pain management services.

[16.5.57.12 NMAC - N, 7/17/2013]

## **PART 58: DENTAL AMALGAM WASTE**

### **16.5.58.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.58.1 NMAC - N, 01-04-14]

### **16.5.58.2 SCOPE:**

The provisions of Part 58 of Chapter 5 apply to all New Mexico dental offices.

[16.5.58.2 NMAC - N, 01-04-14]

### **16.5.58.3 STATUTORY AUTHORITY:**

Part 58 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, NMSA 1978, 61-5A-10 (2013) and the Dental Amalgam Waste Reduction Act, NMSA 1978, Sections 61-5C-1 to 6 (2013).

[16.5.58.3 NMAC - N, 01-04-14]

### **16.5.58.4 DURATION:**

Permanent.

[16.5.58.4 NMAC - N, 01-04-14]

### **16.5.58.5 EFFECTIVE DATE:**

January 4, 2014, unless a later date is cited at the end of a section.

[16.5.58.5 NMAC - N, 01-04-14]

### **16.5.58.6 OBJECTIVE:**

To promote the safe disposal of dental amalgam waste generated in dental offices.

[16.5.58.6 NMAC - N, 01-04-14]

**16.5.58.7 DEFINITIONS:**

A. "Amalgam" means a dental restorative material that is typically composed of mercury, silver, tin, and copper, along with other metallic elements, and that is used by a dentist to restore a cavity in a tooth.

B. "Amalgam separator" means a device that removes dental amalgam from the waste stream prior to discharge into either the local public wastewater system or a private septic system and that meets minimum removal efficiency in accordance with international standards contained in *ISO 11143, dental equipment-amalgam separators*, published by the international organization for standardization.

C. "Dental office" means a fixed physical structure in which dental services are provided to patients by dentists and dental professionals licensed or certified by the New Mexico board of dental health care under the management of a licensed owner, operator, or designee.

[16.5.58.7 NMAC - N, 01-04-14]

**16.5.58.8 AMALGAM SEPARATOR; INSTALLATION REQUIREMENTS:**

A. On or before December 31, 2014, the licensed owner(s), operator(s) or designee(s) of a dental office shall:

(1) install an appropriately sized amalgam separator system on each wastewater drain at the licensee or certificate holder's dental office; the amalgam separator system must, at a minimum, comply with international standard contained in *ISO 11143*; and

(2) within 90 days of installation, report to the board office and to the local water treatment authority where applicable the type, model, and size of the amalgam separator system, and the date the amalgam separator system became operational.

B. Exemption: An amalgam separator shall not be required for the offices or clinical sites of:

(1) a dental office that is not engaged in amalgam placement, removal or modification;

(2) an orthodontists;

(3) a periodontist;

- (4) an oral and maxillofacial surgeons;
- (5) an oral and maxillofacial radiologists;
- (6) an oral pathologists; or
- (7) a portable dental office without a fixed connection for wastewater discharge.

C. Licensed owner(s), operator(s) or designee(s) of a dental office with an existing amalgam separator must be in compliance with *ISO 11143* and shall report the type, model and size of the amalgam separator system to the board no later than December 31, 2014.

[16.5.58.8 NMAC - N, 01-04-14; A, 01-15-15]

#### **16.5.58.9 RECORD KEEPING AND REPORTING:**

A. The board shall require all licensed owner(s), operator(s) or designee(s) of a dental office to verify, on each initial application and each triennial renewal that they are in compliance with Part 58 of Chapter 5.

B. Licensed owner(s), operator(s) or designee(s) of a dental office shall maintain records of operation, maintenance, and recycling or disposal of amalgam waste for the three years prior to their triennial license renewal; records shall include the following information:

- (1) dates of maintenance;
- (2) dates separator contents were recycled; and
- (3) name of the staff or contractor performing the service.

C. Upon the board's inspection for cause, the licensed owner(s), operator(s) or designee(s) shall demonstrate proper installation, operation, maintenance, and recycling or disposal of amalgam waste in accordance with the amalgam separator manufacture's recommendations.

[16.5.58.9 NMAC - N, 01-04-14]

#### **16.5.58.10 COMPLIANCE AND ENFORCEMENT:**

Failure to comply with Part 58 of Chapter 5 will constitute "unprofessional conduct" and may subject the licensed owner(s), operator(s) or designee(s) of a dental office to disciplinary action; willful and persistent noncompliance with the provisions of Part 58 of

Chapter 5 and the Dental Amalgam Waste Reduction Act shall result in disciplinary action.

[16.5.58.10 NMAC - N, 01-04-14]

## **PART 59: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENT CHILDREN AND VETERANS**

### **16.5.59.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.59.1 NMAC - Rp, 16.5.59.1 NMAC, 12/27/2022]

### **16.5.59.2 SCOPE:**

The provisions in Part 59 of Chapter 5 apply to applicants for expedited licensure pursuant to Subsection B of 61-5A-14 NMSA 1978 and Subsection B of 61-1-34 NMSA 1978.

[16.5.59.2 NMAC - Rp, 16.5.59.2 NMAC, 12/27/2022]

### **16.5.59.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Section 61-1-34 of the Uniform Licensing Act, Section 61-1-1 to 34 NMSA1978, (1957, as amended through 2013) and the Dental Health Care Act Sections 61-5A-1 through 61-5A -30 NMSA 1978.

[16.5.59.3 NMAC - Rp, 16.5.59.3 NMAC, 12/27/2022]

### **16.5.59.4 DURATION:**

Permanent.

[16.5.59.4 NMAC - Rp, 16.5.59.4 NMAC, 12/27/2022]

### **16.5.59.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[16.5.59.5 NMAC - Rp, 16.5.59.5 NMAC, 12/27/2022]

### **16.5.59.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for all applicants pursuant to Subsection B of 61-5A-14 and Section 61-1-34 NMSA 1978.

[16.5.59.6 NMAC - Rp, 16.5.59.6 NMAC, 12/27/2022]

**16.5.59.7 DEFINITIONS:**

**A. "Eligible jurisdiction"** means:

(1) any state or territory of the United States except those included in the list of disapproved jurisdictions in 16.5.59.8 NMAC; and

(2) any foreign country included in 16.5.59.10. NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2, NMSA 1978.

**E. "License"** means a license, registration certificate of registration, certificate, permit or certification.

**F. "Licensing fee"** means a fee charged at the time an application for a professional or occupational license is submitted to the state agency, board or commission and any fee charged for the processing of the application for such license; "licensing fee" does not include a fee for an annual inspection or examination of a licensee or a fee charged for copies of documents, replacement license or other expenses related to a professional or occupational license.

**G. "Military service member"** means a person who is:

(1) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(2) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(3) the child of a person who is serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed

forces of the United States, including the national guard; provided that child is also a dependent of that person for federal income tax purposes.

**H. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined in the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico or any other licensing jurisdiction.

**I. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34, NMSA 1978.

[16.5.59.7 NMAC - Rp, 16.5.59.7 NMAC, 12/27/2022]

#### **16.5.59.8 EXPEDITED LICENSURE REQUIREMENTS AND APPLICATION:**

**A.** In accordance with Subsection B of Section 61-5A-14 and 61-1-31.1, NMSA 1978, the board may issue an expedited license to a qualified applicant who holds a valid license, in good standing, that was issued in another licensing jurisdiction and submits the following information to the board:

(1) a completed and signed application form;

(2) proof of a current license in good standing in an eligible jurisdiction as defined in these rules; and

(3) payment of the required application fee.

**B.** Successfully pass a New Mexico jurisprudence exam.

**C.** An expedited license application shall not be deemed complete until the applicant has submitted, and board staff is in receipt of, all of the materials required by Subsection A and B of 16.5.59.8 NMAC, including documentation by third parties.

**D.** Upon receipt of a complete application the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**E.** If the applicant has a potentially disqualifying criminal conviction or the board has other cause to deny the application pursuant to Section 61-5A-21, NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available, regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**F.** An expedited license issued pursuant to Subsection B of 61-5A-14 and 61-1-31.1, NMSA 1978 is a one-year provisional license that confers the same rights, privileges and responsibilities as regular licenses issued by the board.

**G.** Before the end of expedited license period and upon application, the board shall issue a regular license through its renewal process. However, if the licensee's prior licensing jurisdiction did not require examination, the licensee shall be required to pass a board approved clinical examination, as required by 16.5.6.8 NMAC and 16.5.19.8 NMAC, prior to issuing a regular license.

[16.5.59.8 NMAC - Rp, 16.5.59.8 NMAC, 12/27/2022]

#### **16.5.59.9 LIST OF DISAPPROVED LICENSING JURISDICTIONS FOR DENTISTS AND DENTAL HYGIENISTS:**

**A.** Pursuant to Subsection C of Section 61-5A-14 NMSA 1978 of the Dental Health Care Act, applicants for licensure as a dentist licensed in the following state and territories for the United States shall not be eligible for expedited licensure because the education requirements are not or cannot be determined to be, consistent with New Mexico:

(1) American Samoa;

(2) Puerto Rico; and;

(3) Washington.

**B.** Pursuant to Subsection C of Section 61-5A-14 NMSA 1978 of the Dental Health Care Act, applicants for licensure as a dental hygienist licensed in the following states and territories of the United States shall not be eligible for expedited licensure because the education requirements are not, or cannot be determined to be, consistent with New Mexico:

(1) American Samoa;

(2) Alabama;

- (3) Arizona;
- (4) Delaware;
- (5) Florida;
- (6) Mississippi;
- (7) New York;
- (8) Northern Mariana Islands;
- (9) Oregon;
- (10) Puerto Rico; and
- (11) Guam.

[16.5.59.9 NMAC - N, 12/27/2022]

#### **16.5.59.10 LIST OF APPROVED FOREIGN JURISDICTIONS:**

The board has not recognized any foreign jurisdictions from which it will accept an applicant for expedited licensure. However, the board will conduct a periodic review to determine if any amendments to this rule are warranted.

[16.5.59.10 NMAC - Rp, 16.5.59.10 NMAC, 12/27/2022]

#### **16.5.59.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** An applicant for expedited licensure under Section 61-1-34, NMSA 1978 shall submit to the board a complete application containing the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and
- (3) submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-5A-21 NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

**F.** An expedited license issued to a military service member or veteran pursuant to Section 61-1-34, NMSA 1978, shall be valid for the same length of time as a regular initial license issued by the board.

**G.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the examination requirements set forth in 16.5.6 NMAC, 16.5.19 NMAC, 16.5.33 NMAC, 16.5.42 NMAC, 16.5.50 NMAC, and 16.5.61 NMAC.

[16.5.59.11 NMAC - N, 12/27/2022]

## **PART 60: DENTAL THERAPISTS, FEES**

### **16.5.60.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.60.1 NMAC - N, 5/30/2021]

### **16.5.60.2 SCOPE:**

The provisions of 16.5.60 NMAC apply to all applicants for licensure; to active, retired, expired and suspended licenses; to anyone who requests a list or labels of licensed dental therapists, multiple copies of the law or rules, or copies of public records.

[16.5.60.2 NMAC - N, 5/30/2021]

### **16.5.60.3 STATUTORY AUTHORITY:**

16.5.60 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 and Paragraph (5) of Subsection A of 61-5A-13.1 NMSA 1978.

[16.5.60.3 NMAC - N, 5/30/2021]

### **16.5.60.4 DURATION:**

Permanent.

[16.5.60.4 NMAC - N, 5/30/2021]

### **16.5.60.5 EFFECTIVE DATE:**

May 30, 2021, unless a later date is cited at the end of a section.

[16.5.60.5 NMAC - N, 5/30/2021]

### **16.5.60.6 OBJECTIVE:**

To establish fees to generate revenue to support the cost of program administration.

[16.5.60.6 NMAC - N, 5/30/2021]

### **16.5.60.7 DEFINITIONS:**

**[RESERVED]**

[16.5.60.7 NMAC - N, 5/30/2021]

#### **16.5.60.8 FEES:**

- A.** All fees are non-refundable.
- B.** Application fee for licensure is \$250, which includes the initial licensing period.
- C.** An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.
- D.** Triennial renewal fee for all dental therapist licensee is \$150:
  - (1)** late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees;
  - (2)** cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.
- E.** Fees for temporary licenses and application:
  - (1)** forty-eight hour license, application fee of \$50, license fee of \$50;
  - (2)** six month license, application fee of \$100, license fee of \$100;
  - (3)** twelve month license, application fee of \$100, license fee of \$150.
- F.** Reinstatement fee is \$200.
- G.** Application for licensure for inactive status is \$50.
- H.** Administrative fees:
  - (1)** duplicate license fee is \$25;
  - (2)** multiple copies of the statute or rules are \$10 each;
  - (3)** copies cost \$0.25 per page;
  - (4)** list of current dental therapist licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and
  - (5)** mailing labels of current dental therapist licensees is \$300.

[16.5.60.8 NMAC - N, 5/30/2021]

### **PART 61: DENTAL THERAPISTS, LICENSURE AND CERTIFICATION**

**16.5.61.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.61.1 NMAC - Rp, 16.5.61.1 NMAC, 5/31/2023]

**16.5.61.2 SCOPE:**

The provisions of 16.5.61 NMAC apply to all applicants for licensure as a dental therapist.

[16.5.61.2 NMAC - Rp, 16.5.61.2 NMAC, 5/31/2023]

**16.5.61.3 STATUTORY AUTHORITY:**

16.5.61 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-13.1-3 NMSA 1978.

[16.5.61.3 NMAC - Rp, 16.5.61.3 NMAC, 5/31/2023]

**16.5.61.4 DURATION:**

Permanent.

[16.5.61.4 NMAC - Rp, 16.5.61.4 NMAC, 5/31/2023]

**16.5.61.5 EFFECTIVE DATE:**

May 31, 2023, unless a later date is cited at the end of a section.

[16.5.61.5 NMAC - Rp, 16.5.61.5 NMAC, 5/31/2023]

**16.5.61.6 OBJECTIVE:**

To establish the requirements for application for licensure as a dental therapist.

[16.5.61.6 NMAC - Rp, 16.5.61.6 NMAC, 5/31/2023]

**16.5.61.7 DEFINITIONS:**

**"Dental therapy post-graduate clinical experience"** means a clinical education program as defined in Section 61-5A-13.1 NMSA 1978 to provide advanced training for dental therapists in patient treatment and technical competency.

[16.5.61.7 NMAC - Rp, 16.5.61.7 NMAC, 5/31/2023]

### **16.5.61.8 PREREQUISITE REQUIREMENTS FOR DENTAL THERAPIST LICENSE:**

Each applicant for a license to practice dental therapy must possess the following qualifications:

- A.** licensed as a dental hygienist in New Mexico;
- B.** graduated and received a degree from an accredited dental therapy education program as defined in Section 61-5A-13.1 NMSA 1978;
- C.** passed a clinical examination approved by the board; the results of the clinical examination are valid in New Mexico for a period not to exceed five years:
  - (1) the applicant shall apply directly to a board accepted examining agent for examination, and
  - (2) results of the clinical examination must be sent directly to the board office.
- D.** Take and pass the New Mexico jurisprudence exam for dental therapy.

[16.5.61.8 NMAC - Rp, 16.5.61.8 NMAC, 5/31/2023]

### **16.5.61.9 DOCUMENTATION REQUIREMENTS:**

Each applicant for a license must submit the required fees and following documentation:

- A.** completed application; applications are valid for one year from the date of receipt;
- B.** official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental therapy education program, to be sent directly to the board office from the accredited program;
- C.** a copy of clinical examination score card;
- D.** proof of having taken a course in infection control technique or graduation from a dental therapy program within the past 12 months;
- E.** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross; or the American safety and health institute (ASHI); cannot be a self-study course;
- F.** the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Impaired Dentists and

Hygienists Act, or if it is determined that the applicant poses a threat to the welfare of the public;

**G.** verification of licensure in all states where the applicant holds or has held a license in good standing to practice dental therapy, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a seal, and must attest to the status, issue date, license number, and other information contained on the form.

[16.5.61.9 NMAC - Rp, 16.5.61.9 NMAC, 5/31/2023]

#### **16.5.61.10 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

**A.** Initial dental therapist licenses are issued for a period not to exceed three years, as defined in 16.5.63.8 NMAC.

**B.** Any application that cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting.

[16.5.61.10 NMAC - Rp, 16.5.61.10 NMAC, 5/31/2023]

#### **16.5.61.11 DENTAL THERAPY POST-GRADUATE CLINICAL EXPERIENCE:**

A dental therapist shall qualify to perform the procedures as stated in Section 61-5A-13.2 NMSA 1978 under general supervision, upon successful completion of a dental post-graduate clinical experience and submission to the board office of the following documentation.

**A.** a current active license in good standing to practice dental therapy in New Mexico;

**B.** proof of successful completion from a dental therapy post-graduate clinical experience which;

- (1) meets criteria developed and approved by the board;
- (2) is sanctioned by a regionally accredited educational institution with a program accredited by the commission on dental accreditation; and
- (3) provides advanced training:

(a) of at least 2000 hours following completion of a CODA accredited dental therapy education program: or

(b) of at least 1500 hours following completion of a CODA accredited dental therapy education program and applicant can document active practice experience as a dental hygienist for five years or more.

**C.** There is no fee associated for filing this documentation.

**D.** The board will re-issue the dental therapy license with a designation of the completion of the post graduate clinical experience.

[16.5.61.11 NMAC - Rp, 16.5.61.11 NMAC, 5/31/2023]

## **PART 62: DENTAL THERAPISTS, CONTINUING EDUCATION REQUIREMENTS**

### **16.5.62.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.62.1 NMAC - N, 5/30/2021]

### **16.5.62.2 SCOPE:**

The provisions of Part 62 of Chapter 5 apply to all licensed dental therapists who are applying to renew their license.

[16.5.62.2 NMAC - N, 5/30/2021]

### **16.5.62.3 STATUTORY AUTHORITY:**

Part 62 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978.

[16.5.62.3 NMAC - N, 5/30/2021]

### **16.5.62.4 DURATION:**

Permanent.

[16.5.62.4 NMAC - N, 5/30/2021]

### **16.5.62.5 EFFECTIVE DATE:**

May 30, 2021, unless a later date is cited at the end of a section.

[16.5.62.5 NMAC - N, 5/30/2021]

**16.5.62.6 OBJECTIVE:**

To establish criteria for continuing education for dental therapists licensed in New Mexico.

[16.5.62.6 NMAC - N, 5/30/2021]

**16.5.62.7 DEFINITIONS:**

**[RESERVED]**

[16.5.62.7 NMAC - N, 5/30/2021]

**16.5.62.8 HOURS REQUIRED:**

15 hours of continuing education in addition to the 45 hours required for the dental hygiene license, a maximum of fifty percent of the required 15 hours can be on-line, webinars or self-study are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at 20 hours per full year of the initial licensing period. Initial licenses issued for less than a full year do not require continuing education for the first renewal.

[16.5.62.8 NMAC - N, 5/30/2021]

**16.5.62.9 COURSES REQUIRED:**

A minimum of 15 hours per triennial renewal cycle in any of in any of the following subjects are required for dental therapist license renewal:

- A. dental materials and restorative technique.
- B. palliative care.
- C. pediatric dentistry.
- D. geriatric dentistry.

[16.5.62.9 NMAC - N, 5/30/2021]

**16.5.62.10 VERIFICATION OF CONTINUING EDUCATION:**

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be

asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[16.5.62.10 NMAC - N, 5/30/2021]

#### **16.5.62.11 EMERGENCY DEFERRAL:**

**A.** A licensee unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

**B.** A licensee practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

**(1)** The board must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence.

**(2)** Upon return to the US, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[16.5.62.11 NMAC - N, 5/30/2021]

### **PART 63: DENTAL THERAPISTS, LICENSE EXPIRATION AND RENEWAL**

#### **16.5.63.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.63.1 NMAC - N, 5/30/2021]

#### **16.5.63.2 SCOPE:**

The provisions of Part 63 of Chapter 5 apply to all dental therapists with a license to practice in New Mexico.

[16.5.63.2 NMAC - N, 5/30/2021]

#### **16.5.63.3 STATUTORY AUTHORITY:**

Part 24 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978.

[16.5.63.3 NMAC - N, 5/30/2021]

**16.5.63.4 DURATION:**

Permanent.

[16.5.63.4 NMAC - N, 5/30/2021]

**16.5.63.5 EFFECTIVE DATE:**

May 30, 2021, unless a later date is cited at the end of a section.

[16.5.63.5 NMAC - N, 5/30/2021]

**16.5.63.6 OBJECTIVE:**

To establish procedures for license issuance, expiration and renewal.

[16.5.63.6 NMAC - N, 5/30/2021]

**16.5.63.7 DEFINITIONS:**

[RESERVED]

[16.5.63.7 NMAC - N, 5/30/2021]

**16.5.63.8 LICENSE EXPIRATION:**

Initial licenses expire on July 1 in the third year of licensure. No license will be issued for longer than 36 months or less than 25 months.

[16.5.63.8 NMAC - N, 5/30/2021]

**16.5.63.9 RENEWAL PERIOD AND EXPIRATION:**

After the initial license period, dental therapy licenses expire every three years on June 30. Dental therapy licenses not renewed by July 1 are considered expired.

[16.5.63.9 NMAC - N, 5/30/2021]

**16.5.63.10 RENEWAL PROCESS:**

A completed renewal application, accompanied by the required fee as set forth in 16.5.60.8 NMAC, along with the required proof of completion of 60 hours of continuing education as set forth in 16.5.62.8 NMAC. The completed renewal application must be post-marked on or before July 1, of the renewal year.

[16.5.63.10 NMAC - N, 5/30/2021]

**16.5.63.11 LICENSEE RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. Incomplete renewal applications shall be returned to the licensee for completion and may result in the assessment of a late renewal fee as set forth in 16.5.60.8 NMAC.

[16.5.63.11 NMAC - N, 5/30/2021]

**16.5.63.12 RENEWAL AFTER JUNE 30:**

Renewal applications post-marked after July 1, and prior to August 1, of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.62.8 NMAC, along with the triennial renewal fee, impairment fee and the late fee as set forth in 16.5.60.8 NMAC.

[16.5.63.12 NMAC - N, 5/30/2021]

**16.5.63.13 RENEWAL AFTER AUGUST 1 AND BEFORE SEPTEMBER 1:**

Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 60 hours of continuing education as set forth in 16.5.62.8 NMAC, along with the triennial renewal fee, impairment fee, late fee and the cumulative late fee as set forth in 16.5.60.8 NMAC.

[16.5.63.13 NMAC - N, 5/30/2021]

**16.5.63.14 RENEWAL APPLICATION UNDELIVERABLE:**

If the notice of renewal is returned to the office and the licensee has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[16.5.63.14 NMAC - N, 5/30/2021]

**PART 64: DENTAL THERAPISTS, LICENSE REVOCATION FOR NON-RENEWAL**

**16.5.64.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.64.1 NMAC - N, 5/30/2021]

**16.5.64.2 SCOPE:**

The provisions of Part 64 of Chapter 5 apply to all dental therapists licensed in New Mexico who do not submit an application for license renewal within 60 days of the license expiration date.

[16.5.64.2 NMAC - N, 5/30/2021]

**16.5.64.3 STATUTORY AUTHORITY:**

Part 64 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978.

[16.5.64.3 NMAC - N, 5/30/2021]

**16.5.64.4 DURATION:**

Permanent.

[16.5.64.4 NMAC - N, 5/30/2021]

**16.5.64.5 EFFECTIVE DATE:**

May 30, 2021, unless a later date is cited at the end of a section.

[16.5.64.5 NMAC - N, 5/30/2021]

**16.5.64.6 OBJECTIVE:**

To establish the procedures and policies for revocation of expired licenses and the reinstatement of a license revoked for non-renewal.

[16.5.64.6 NMAC - N, 5/30/2021]

**16.5.64.7 DEFINITIONS:**

**[RESERVED]**

[16.5.64.7 NMAC - N, 5/30/2021]

**16.5.64.8 REVOCATION OF LICENSE FOR NON-RENEWAL:**

Unless an application for license renewal is received by the board office, or post-marked, before September 1, the license shall be revoked for non-renewal.

[16.5.64.8 NMAC - N, 5/30/2021]

#### **16.5.64.9 REINSTATEMENT OF REVOKED LICENSE FOR NON-RENEWAL:**

**A.** Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation shall apply as a new applicant and meet all requirements for initial licensure.

**B.** Applicants for reinstatement shall provide for verification of licensure in all states where the applicant holds or has held a license to practice dental therapy, or other health care profession within the previous year. Verification shall be sent directly to the board office from the other state(s) board, shall include a seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

**C.** Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, a dental board member, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[16.5.64.9 NMAC - N, 5/30/2021]

### **PART 65: DENTAL THERAPISTS, PRACTICE**

#### **16.5.65.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.65.1 NMAC - N, 5/30/2021]

#### **16.5.65.2 SCOPE:**

The provisions of Part 65 of Chapter 5 apply to all active dental therapy license holders and all dental therapists working in New Mexico.

[16.5.65.2 NMAC - N, 5/30/2021]

#### **16.5.65.3 STATUTORY AUTHORITY:**

Part 65 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-13.2 NMSA 1978.

[16.5.65.3 NMAC - N, 5/30/2021]

#### **16.5.65.4 DURATION:**

Permanent.

[16.5.65.4 NMAC - N, 5/30/2021]

**16.5.65.5 EFFECTIVE DATE:**

May 30, 2021, unless a later date is cited at the end of a section.

[16.5.65.5 NMAC - N, 5/30/2021]

**16.5.65.6 OBJECTIVE:**

To establish allowable practice settings, scope of practice and limitations on dental therapy practice in New Mexico.

[16.5.65.6 NMAC - N, 5/30/2021]

**16.5.65.7 DEFINITIONS:**

**A. "Atraumatic restorative therapy"** means a temporary or sedative restoration in an open carious lesions after excavation of gross decay and debris without the use of mechanical preparation.

**B. "Dental therapy practice agreement"** means a contract between the supervising dentist and a dental therapist that outlines the parameters of care, level of supervision, and protocols to be followed while performing dental therapy procedures on patients under the supervising dentists and dental therapists care.

**C. "Dental therapy post-graduate clinical experience "** as defined in Subsection N of 61-5A-3 NMSA 1978, means advanced training in patient management and technical competency:

(1) that is approved by the board, based on educational and supervisory criteria developed by the board and established by board rule;

(2) that is sanctioned by a regionally accredited educational institution with a program accredited by the commission on dental accreditation;

(3) that consists of two thousand hours of advanced training or, if the dental therapy educational program graduate has five years of experience as a dental hygienist, one thousand five hundred hours of advanced training; and

(4) for which the dental therapist may have received compensation.

[16.5.65.7 NMAC - N, 5/30/2021]

**16.5.65.8 SCOPE OF PRACTICE:**

A dental therapist shall provide care in accordance with a dental therapy practice agreement; provided that the dental therapy practice agreement is limited to the following activities:

**A. UNDER GENERAL SUPERVISION:**

- (1) oral evaluation and assessment of dental disease;
- (2) formulation of an individualized treatment plan as authorized by a supervising dentist;
- (3) place and shape direct restorations without mechanical preparation;
- (4) impressions for single-tooth removable prosthesis;
- (5) temporary cementation;
- (6) atraumatic restorative therapy;
- (7) temporary and sedative restorations;
- (8) extraction of primary teeth without radiological evidence of roots;
- (9) palliative treatments;
- (10) fabrication and placement of temporary crowns;
- (11) recementation of permanent crowns;
- (12) removal and nonsurgical placement of space maintainers;
- (13) repairs and adjustments to prostheses;
- (14) tissue conditioning;
- (15) administration of analgesics, anti-inflammatory substances and antibiotics that a supervising dentist orders;
- (16) other closely related procedures that the board authorizes through rules it has adopted and promulgated;
- (17) all procedures within the scope of practice of a dental hygienist;

**B. UNDER INDIRECT SUPERVISION:**

(1) preparation and direct restoration of cavities in primary and permanent teeth; and

(2) fitting, shaping and cementing of stainless steel crowns on teeth prepared by a dentist; and.

**C. DENTAL THERAPISTS WITH POST-GRADUATE CLINICAL EXPERIENCE:** A dental therapist that has completed a dental therapy post-graduate clinical experience, who has been certified by the board, may perform the following procedures under general supervision:

(1) preparation and direct restoration of cavities in primary and permanent teeth; and

(2) fitting, shaping and cementing of stainless steel crowns on teeth prepared by a dentist:

**D.** A dental therapist may treat a patient prior to a dentist's examination or diagnosis, subject to a dental therapy practice agreement.

[16.5.65.8 NMAC - N, 5/30/2021]

#### **16.5.65.9 LIMITATIONS ON PRACTICE:**

Dental therapists shall not perform, or attempt to perform, the following services or procedures:

**A.** diagnosis;

**B.** dental treatment planning that has not been authorized by a supervising dentist;

**C.** the final fitting, adaptation, seating and cementation of any fixed or removable dental appliance or restoration except stainless steel crowns on teeth prepared by a dentist and the cementation of single tooth crowns previously cemented by a dentist;

**D.** final impressions for restorations or prosthetic appliances except single tooth removable prostheses;

**E.** administration of substances outside of a dental hygienist prescriptive authority as defined in 16.5.29.11 NMAC or under the orders of a prescribing dentist;

**F.** other services defined as the practice of dentistry in Subsection A of Section 61-5A-4 NMSA 1978 of the act and not specifically listed in Subsection B and C of Section 61-5A-4 NMSA 1978, unless exempted by regulation.

[16.5.65.9 NMAC - N, 5/30/2021]

#### **16.5.65.10 DENTAL THERAPY PRACTICE AGREEMENT:**

**A.** Prior to performing any of the services authorized under Sections 61-5A-13.2 and 61-5A-13.3 NMSA 1978, a dental therapist must enter into a written dental therapist practice agreement with a New Mexico licensed dentist. The agreement must include:

- (1)** practice settings where services may be provided, which may include:
  - (a)** a facility operated by a nonprofit community dental organization;
  - (b)** a health facility operated by the federal Indian health service;
  - (c)** a health facility that a tribe operates under Section 638 of the federal Indian Self-Determination and Education Assistance Act;
  - (d)** a federally qualified health center;
  - (e)** a facility certified by the federal centers for medicare and medicaid services as a "federally qualified health center look-alike" facility;
  - (f)** a private residence or a facility in which an individual receives long-term community-based services under the state's medicaid program;
  - (g)** a long-term care facility;
  - (h)** a private residence, when exclusively to treat an individual who, due to disease, disability or condition, is unable to receive care in a dental facility; or
  - (i)** an educational institution engaged in the training of dental therapists accredited by the commission on dental accreditation;
- (2)** the parameters of care that may be provided by the dental therapist, including the level of supervision required by the supervising dentist and what treatment is permitted within the scope of practice prior to the dentist examining the patient;
- (3)** a protocol to manage medical emergencies in each setting where the therapist provides care;
- (4)** protocols for administering and dispensing medications; and

**B.** A dental therapy practice agreement shall be prepared, amended and submitted to the board using a template tool provided by the New Mexico board of dental health care. The agreement template shall be an online-based tool maintained by the board. Electronic signatures are required.

**C.** Dental therapy practice agreements must be signed and maintained by the supervising dentist(s) and the dental therapist and renewed whenever there is any change in the agreement, including but not limited to, a dentist or dental therapist that has left the practice or organization, any change in employment or ownership that affects the relationship between the dental therapist and the supervising dentist, or similar. The agreement shall be updated via the board template and on file with the board office. Electronic signatures are required.

[16.5.65.10 NMAC - N, 5/30/2021]

## **PART 66: DENTAL THERAPISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS**

### **16.5.66.1 ISSUING AGENCY:**

New Mexico Board of Dental Health Care.

[16.5.66.1 NMAC - N, 5/30/2021]

### **16.5.66.2 SCOPE:**

The provisions of 16.5.66 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensed dental therapist.

[16.5.66.2 NMAC - N, 5/30/2021]

### **16.5.66.3 STATUTORY AUTHORITY:**

16.5.66 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21, NMSA 1978.

[16.5.66.3 NMAC - N, 5/30/2021]

### **16.5.66.4 DURATION:**

Permanent.

[16.5.66.4 NMAC - N, 5/30/2021]

### **16.5.66.5 EFFECTIVE DATE:**

May 30, 2021, unless a later date is cited at the end of a section.

[16.5.66.5 NMAC - N, 5/30/2021]

### **16.5.66.6 OBJECTIVE:**

To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.

[16.5.66.6 NMAC - N, 5/30/2021]

#### **16.5.66.7 DEFINITIONS:**

**A. "Addiction"** means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

**B. "Chronic pain"** means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

**C. "Drug abuser"** means a person who takes a drug or drugs for other than legitimate medical purposes.

**D. "Pain"** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or and damage.

**E. "Patient abandonment"** means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

**F. "Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**G. "Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.5.66.7 NMAC - N, 5/30/2021]

#### **16.5.66.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act.

[16.5.66.8 NMAC - N, 5/30/2021]

#### **16.5.66.9 ACTIONS:**

**A.** The board may assess fines, deny, revoke, suspend, stipulate, or otherwise limit a license if it is determined the licensee is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

**B.** The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

**C.** The board shall take into consideration the dual role of dental therapists as professionals and employees when taking disciplinary action against a licensee.

[16.5.66.9 NMAC - N, 5/30/2021]

#### **16.5.66.10 GUIDELINES:**

The board shall define the following as guidelines for disciplinary action.

**A. "Gross incompetence" or "gross negligence"** means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

**B. "Unprofessional conduct"** means, but is not limited to because of enumeration:

**(1)** performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental therapy profession;

**(2)** failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

**(3)** failure to release to a patient copy of that patient's records and x-rays within 15 business days regardless whether patient has an outstanding balance;

**(4)** failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

**(5)** failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

- (6)** failure to inform dentist or patient of periodontal assessment;
- (7)** failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;
- (8)** sexual misconduct;
- (9)** failure to use appropriate infection control techniques and sterilization procedures;
- (10)** breach of ethical standards, an inquiry into which the board will begin by reference to the most recent version of the American dental association's code of ethics;
- (11)** fraud, deceit or misrepresentation in any application;
- (12)** violation of any order of the board, and ratified by the board, including any probation order;
- (13)** injudicious administration of any drug or medicine;
- (14)** failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental therapy or professional association or society, in lieu of, and while under disciplinary investigation by any authority;
- (15)** deliberate and willful failure to reveal, at the request of the board, applying for licensure by the board or board; and
- (16)** cheating on an examination for licensure;
- (17)** failure of a dental therapist to comply with advertising guidelines as outlined in in 16.5.1 NMAC;
- (18)** assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;
- (19)** failure to make available to current patients of record a reasonable method of contacting the treating dental therapist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted supervising dentist deems it necessary for the patient's well-being;
- (20)** conviction of either a misdemeanor or a felony punishable by incarceration;

(21) aiding and abetting a dental auxiliary who is not properly certified;

(22) patient abandonment;

(23) habitually addicted as defined in Subsection 4 & 6 of Section 61-5A-21 NMSA 1978 and Subsections C and D of 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, 30-31-1 NMSA 1978 or habitual or excessive use or abuse of alcohol;

(24) failure of the licensee to furnish the board within 10 business days of request; its investigators or representatives with information requested by the board, and ratified by the board;

(25) failure to appear before the board when requested by the board, and ratified by the board, in any disciplinary proceeding; and

(26) failure of compliance with the Parental Responsibility Act Section 40-5A-3 seq., NMSA 1978.

[16.5.66.10 NMAC - N, 5/30/2021]

#### **16.5.66.11 INVESTIGATIVE SUBPOENAS:**

The complaint committee of the board is authorized to issue action investigative subpoenas and to employ experts with regard to pending investigations.

[16.5.66.11 NMAC - N, 5/30/2021]

#### **16.5.66.12 REVOCATION OF DENTAL THERAPISTS LICENSE FOR DISCIPLINARY ACTIONS:**

A dental therapist licensee whose license is revoked for disciplinary actions shall:

**A.** provide proof of written notification of practice closure to all patients currently under active treatment;

**B.** notification to patients should include where and how dental treatment records may be obtained and contact information for dentists available; and

**C.** provide to the board the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of closure; the notification to the board shall include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.66.12 NMAC - N, 5/30/2021]

### **16.5.66.13 REINSTATEMENT OF REVOKED LICENSE FOR DISCIPLINARY ACTIONS:**

A licensee whose license has been revoked for disciplinary actions may request reinstatement of the license after the terms of the settlement agreement have been met. Upon approval from the board, and ratified by the board, and receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

**A.** Along with the completed application, the request for reinstatement shall include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

**(1)** 20 hours of approved continuing education courses related to the clinical practice of dental hygiene and dental therapy, per year of revocation; at least 20 of these hours shall be in the 12 months previous to the request;

**(2)** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

**(3)** proof of infection control course within the past 12 months; and

**(4)** 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of revocation as well as any continuing education taken during the revoked period.

**B.** Applicant shall authorize the American association of dental examiners clearinghouse to send verification of status directly to the board office.

**C.** The board will obtain electronic verification of applicant status from the national practitioners' data bank.

**D.** Verification of licensure in all states where the applicant holds or has held a license to practice dental therapy, or other health care profession. Verification shall be sent directly to the board office from the other state(s) board, shall include a seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

**E.** The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of revocation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license may be reinstated and the previous license number reassigned. The reinstated license will expire as defined in 16.5.63 NMAC.

**F.** A dental therapist with a license in revocation status may not practice dental therapy in New Mexico until proof of active licensure is received from the board office.

**G.** If reinstatement of a revoked license is not requested within three years after settlement agreement has been met, application for a new license shall be made by examination or credentials in order to practice dental therapy in New Mexico.

[16.5.66.13 NMAC - N, 5/30/2021]

#### **16.5.66.14 REINSTATEMENT OF SUSPENDED LICENSE FOR DISCIPLINARY ACTIONS:**

For licenses suspended for greater than six months; a licensee whose license has been suspended for disciplinary actions in addition to meeting the terms of the settlement agreement shall also meet the following conditions before reinstatement of licensure:

**A.** verification of licensure in all states where the applicant holds or has held a license to practice dental therapy, or other health care profession; verification shall be sent directly to the board office from the other state(s) board, shall include a seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form;

**B.** the board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of suspension and information on any existing impairment; the reinstated license will expire as defined in 16.5.63 NMAC; and

**C.** a dental therapist with a license in suspended status may not practice dental therapy in New Mexico until proof of active licensure is approved by the board and issued by the board office.

[16.5.66.14 NMAC - N, 5/30/2021]

## **CHAPTER 6: NAPRAPATHIC PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.6.1.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.1.1 NMAC - N, 09-30-04; A, 9-22-11]

#### **16.6.1.2 SCOPE:**

This part applies to the board, the naprapathic task force, licensees, applicants, and the general public.

[16.6.1.2 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.1.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.1.3 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.1.4 DURATION:**

Permanent.

[16.6.1.4 NMAC - N, 09-30-04]

**16.6.1.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.1.5 NMAC - N, 09-30-04]

**16.6.1.6 OBJECTIVE:**

This part establishes definitions of terms for rules filed in this chapter, the purpose and organization structure of the naprapathic task force, requirements for display of license, unlicensed practices prohibition, record keeping requirements and inspection of public records limitations.

[16.6.1.6 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.1.7 DEFINITIONS:**

A. "**Applicant**" means a person who is applying to be licensed for the first time as a naprapath in New Mexico.

B. "**Naprapath**" means a person who practices naprapathy licensed by the board and has met all requirements.

C. "**Naprapathy**" means a branch of medicine that focuses on the evaluation and treatment of neuro-musculoskeletal conditions. Doctors of naprapathy are connective tissue specialists.

D. "**Board**" means the medical board.

E. "**Fund**" means the New Mexico medical board fund.

F. "**License**" means an authorization by the board that permits a person to practice naprapathy in the state.

G. "**Licensee**" means a person licensed by the board to practice naprapathy.

H. "**Advertising**" means any communication whatsoever, disseminated by any means whatsoever, to or before the public or any portion thereof, with the intent of furthering the purpose, either directly or indirectly, of selling professional services, educating the public, or including members of the public to enter into any obligation relating to such professional services.

I. "**Revocation**" means a permanent loss of licensure.

J. "**Suspension**" means a loss of licensure for a certain period, after which the person may be required to file for reinstatement.

K. "**Complaint**" means a sworn written complaint.

L. "**Complainant**" means the complaining party of the complaint filed against a licensee or applicant for licensure, who is regulated by the medical board.

M. "**Respondent**" means a licensee or applicant for licensure who is regulated by the board.

N. "**Notice of contemplated action**" means the administrative process used by the board for a licensee or applicant for licensure to be afforded notice and an opportunity to be heard in a formal hearing before the board has any authority to take any action which could result in denial, suspension, revocation, restricting, monitoring, censuring, etc., of a license or application or licensure.

O. "**Military service member**" means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

P. "**Recent veteran**" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a naprapathic license pursuant to section 16.10.2.17. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

[16.6.1.7 NMAC - N, 09-30-04; A, 9-22-11; A, 10-11-13]

#### **16.6.1.8 PURPOSE OF THE NAPRAPATHIC TASK FORCE:**

The naprapathic task force shall advise the board regarding licensure of naprapaths, approval of naprapathy curricula and any other matters that are necessary to ensure the training and licensure of naprapaths.

[16.6.1.8 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.1.9 ORGANIZATION:**

A. The naprapathic task force is created under the direction of the board.

B. The naprapathic task force shall be composed of no fewer than two licensees, appointed by the board, who are residents of the state. Vacancies on the naprapathic task force shall be filled by appointment by the board.

[16.6.1.9 NMAC - N, 09-30-04; A, 07-31-08; A, 9-22-11]

**16.6.1.10 DISPLAY OF LICENSE:**

Every licensee must display a current license issued by the board in a conspicuous location where the holder practices naprapathy.

[16.6.1.10 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.1.11 UNLICENSED PRACTICE:**

A. Persons practicing naprapathy without a license, misrepresenting themselves or aiding and abetting unlicensed practice may be fined up to \$1000.00 after notice and hearing.

B. Aiding unauthorized practice: The naprapath shall not aid or abet another person in his or her professional credentials or illegally engaging in the practice of naprapathy.

[16.6.1.11 NMAC - N, 09-30-04]

**16.6.1.12 RECORD KEEPING:**

Every naprapath shall keep a record of naprapathic examinations and treatments made that shall include the names of persons examined and treated. The records shall be signed by the licensed naprapath and preserved by him/her in the office in which the professional service was rendered. The records shall be preserved by the naprapath for a period no less than three (3) years after the last date of service. A copy of the patient's file shall be provided, upon written request, to the person examined and treated or to his/her designee.

[16.6.1.12 NMAC - N, 09-30-04]

### **16.6.1.13 INSPECTION OF PUBLIC RECORDS:**

Refer to Title 16, Chapter 10, Part 1 of the New Mexico medical board rules.

[16.6.1.13 NMAC - N, 09-30-04; A, 9-22-11]

## **PART 2: CODE OF CONDUCT**

### **16.6.2.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.2.1 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.2.2 SCOPE:**

This part applies to applicants and licensees.

[16.6.2.2 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.2.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.2.3 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.2.4 DURATION:**

Permanent.

[16.6.2.4 NMAC - N, 09-30-04]

### **16.6.2.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.2.5 NMAC - N, 09-30-04]

### **16.6.2.6 OBJECTIVE:**

This part establishes the ethical requirements for applicants and licensees.

[16.6.2.6 NMAC - N, 09-30-04]

### **16.6.2.7 DEFINITIONS:**

**[RESERVED]**

**16.6.2.8 CODE OF CONDUCT:**

Refer to the American naprapathic association (ANA) code of conduct.

[16.6.2.8 NMAC - N, 09-30-04]

**PART 3: FEES**

**16.6.3.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.3.1 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.3.2 SCOPE:**

This part applies to applicants, licensees, continuing education program providers and the general public.

[16.6.3.2 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.3.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.3.3 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.3.4 DURATION:**

Permanent.

[16.6.3.4 NMAC - N, 09-30-04]

**16.6.3.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.3.5 NMAC - N, 09-30-04]

**16.6.3.6 OBJECTIVE:**

This part establishes the fee structure for application, licensure, license renewal, inactive status, reactivation, reinstatement and miscellaneous charges.

[16.6.3.6 NMAC - N, 09-30-04]

**16.6.3.7 DEFINITIONS:**

[RESERVED]

**16.6.3.8 FEES:**

**All fees payable to the board are non-refundable.**

**A. INITIAL LICENSURE FEE:** The initial application for licensure fee shall be three hundred twenty dollars (\$320.00).

**B. RENEWAL APPLICATION FEE:** The renewal application fee shall be two hundred dollars (\$200.00) annually due no later than July 1st of each licensure year. In the event that a licensee fails to renew their license by the deadline of any renewal year, the board shall assess a late fee per 16.6.3.8 C NMAC. Any initial license that is granted on or after April 1st of that licensure year but before the license expiration date of June 30th will be good until the following licensure year and the licensee will not be required to pay the renewal application fee for the first year.

**C. LATE FEES:**

**(1)** Any licensure renewal application that is post-marked past the deadline of July 1st, shall be charged a late fee as follows:

**(a)** Late fee of eighty (\$80.00) is assessed for all naprapathic practitioners who renew their license to active status, and provide the required renewal application documentation per Subsection B of 16.6.3.7 NMAC after July 1 but no later than August 15 of that renewal year.

**(b)** Late fee of one hundred sixty (\$160.00) for all naprapathic practitioners who renew their license to active status, and provide the required renewal application documentation per Subsection B of 16.6.3.7 NMAC after August 16 but by October 1 of that renewal year.

**(2)** Any licensee who renews their license by October 1, must submit a renewal application accompanied by the renewal application fee and late fee per Subsection B of 16.6.3.7 NMAC. If the licensee fails to renew their license by October 1 the licensee must reinstate their license as set forth in the reinstatement procedures per Subsection E of 16.6.3.8 NMAC.

**D. INACTIVE STATUS FEE:** A licensee may submit a request in writing to the board office to be placed on inactive status. The fee for inactive status is twenty-five dollars (\$25.00). Once a license is placed on inactive status, the licensee cannot practice naprapathy in New Mexico.

**E. REINSTATEMENT APPLICATION FEE FOR EXPIRED STATUS:** Any expired licensee requesting to reinstate their license, will be required to pay a two hundred dollars (\$200.00) reinstatement fee, and a renewal application fee of two hundred dollars (\$200.00), and submit a reinstatement application. The applicant may be required to re-take the national examination at the discretion of the board.

**F. MISCELLANEOUS CHARGES:**

(1)	license list	\$ 25.00
(2)	license labels	\$ 50.00
(3)	list/labels for commercial use	\$150.00
(4)	copy fee; per page	\$ 1.00

[16.6.3.8 NMAC - N, 9/30/2004; A, 7/31/2008; A, 5/24/2010; A, 9/22/2011; A, 2/8/2022]

**PART 4: LICENSE EXPIRATION AND RENEWAL**

**16.6.4.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.4.1 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.4.2 SCOPE:**

This part applies to applicants and licensees.

[16.6.4.2 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.4.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.4.3 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.4.4 DURATION:**

Permanent.

[16.6.4.4 NMAC - N, 09-30-04]

**16.6.4.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.4.5 NMAC - N, 09-30-04]

**16.6.4.6 OBJECTIVE:**

This part establishes the requirements for license renewal.

[16.6.4.6 NMAC - N, 09-30-04]

**16.6.4.7 DEFINITIONS:**

[RESERVED]

**16.6.4.8 LICENSE EXPIRATION AND RENEWAL:**

A. **License renewal:** Each licensee shall renew their license annually, postmarked on or before July 1<sup>st</sup> of every year by remitting to the board office a renewal fee as set forth in Subsection C of 16.6.3.8 NMAC with the renewal application form provided by the board. Continuing education hours shall be documented yearly and submitted with renewal application form.

B. **Licensee responsibility:** Renewal application notices will be mailed to the last known address on file with the board office. It is the responsibility of the licensee to keep the board informed of any changes in address or phone numbers. Failure to receive the application notice shall not relieve the licensee of the responsibility of renewing their license(s) before the expiration date.

C. **Late renewal after July 1<sup>st</sup>:** The licensee must pay a late fee as set forth in Subsection D of 16.6.3.8 NMAC. If a licensee renews their license by October 1<sup>st</sup>. they must submit a renewal application accompanied by the renewal fee and the late fee.

D. **Late renewal after October 1<sup>st</sup>:** The licensee must reinstate the license. If the licensee fails to renew their license by October 1<sup>st</sup> the licensee must reinstate their license as set forth in the reinstatement procedures of the board.

[16.6.4.8 NMAC - N, 09-30-04; A, 07-31-08; A, 05-24-10]

**PART 5: INACTIVE STATUS, REINSTATEMENT**

**16.6.5.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.5.1 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.5.2 SCOPE:**

Any licensed naprapaths who have held a license to practice in New Mexico can inactivate a license, reinstate an inactive license or reinstate a license from expired status.

[16.6.5.2 NMAC - N, 9/30/2004; A, 9/22/2011; A, 2/8/2022]

**16.6.5.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.5.3 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.5.4 DURATION:**

Permanent.

[16.6.5.4 NMAC - N, 09-30-04]

**16.6.5.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.5.5 NMAC - N, 09-30-04]

**16.6.5.6 OBJECTIVE:**

This part establishes the requirements for placement of a license on inactive status, reinstatement from inactive status and reinstatement from expired status.

[16.6.5.6 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.5.7 DEFINITIONS:**

[RESERVED]

**16.6.5.8 INACTIVE STATUS:**

**A.** A current licensee in good standing is eligible to be placed on inactive status.

**B.** A licensee who wishes to be placed on inactive status shall notify the board office in writing before their license expires. The board will acknowledge receipt of the notification.

**C.** A licensee shall pay the fees established in Subsection D of 16.6.3.8 NMAC to be placed on inactive status by July 1st.

**D.** An inactive licensee is required to submit proof of continuing education required by an active licensee as defined in Subsection C of 16.6.6.8 NMAC.

**E.** Once a license is placed on inactive status, the licensee shall not practice naprapathy in New Mexico.

**F.** A licensee on inactive status shall at all times comply with the provisions of the code of conduct.

[16.6.5.8 NMAC - N, 9/30/2004; A, 5/24/2010; A, 2/8/2022]

#### **16.6.5.9 REINSTATEMENT FROM INACTIVE STATUS:**

Any inactive licensee requesting to reinstate their license is required to:

**A.** pay the reinstatement fee and renewal application fee as defined in Subsection E of 16.6.3.8 NMAC;

**B.** submit a reinstatement application provided by the board office;

**C.** submit 30 continuing professional education (CPE) hours for every year the licensee has been inactive as defined in 16.6.6 NMAC;

**D.** submit verification of licensure, if licensed or previously licensed in another state(s) or jurisdiction; verification shall be sent directly to the board office from the issuing state(s) or jurisdiction; and

**E.** the applicant may be required to take the national examination at the discretion of the board.

[16.6.5.9 NMAC - N, 5/24/2010; A, 9/22/2011; A, 2/8/2022]

#### **16.6.5.10 REINSTATEMENT FROM EXPIRED STATUS:**

Any licensee requesting to reinstate their license is required to:

**A.** pay the reinstatement application fee and renewal application fee as defined in Subsection F of 16.6.3.8 NMAC;

**B.** submit a reinstatement application provided by the board office;

**C.** submit 30 continuing professional education (CPE) hours for every year the license has been expired as defined in 16.6.6 NMAC;

D. submit verification of licensure, if licensed or previously licensed, in another state(s) or jurisdiction; verification shall be sent directly to the board office from the issuing state(s) or jurisdiction; and;

E. the applicant may be required to take the national examination at the discretion of the board.

[16.6.5.10 NMAC - N, 5/24/2010; A, 9/22/2011; A, 2/8/2022]

## **PART 6: CONTINUING EDUCATION**

### **16.6.6.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.6.1 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.6.2 SCOPE:**

This part applies to licensed naprapaths as well as naprapaths who have previously held a license to practice in New Mexico and wish to reinstate an inactive license or reinstate a license from expired status.

[16.6.6.2 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.6.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.6.3 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.6.4 DURATION:**

Permanent.

[16.6.6.4 NMAC - N, 09-30-04]

### **16.6.6.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.6.5 NMAC - N, 09-30-04]

### **16.6.6.6 OBJECTIVE:**

This part establishes continuing education requirements for license renewal.

[16.6.6.6 NMAC - N, 09-30-04]

**16.6.6.7 DEFINITIONS:**

[RESERVED]

**16.6.6.8 CONTINUING EDUCATION:**

A. The licensee shall report thirty (30) hours of continuing professional education hours (CPE) per year at the time of renewal. Three (3) of the thirty (30) continuing education hours shall be in ethics.

B. The naprapathic task force shall make recommendations to the board for approval of continuing education courses that meet standard requirements.

C. A licensee that has allowed a license to expire and is seeking reinstatement, must conform to continuing education licensure requirements from the date the license expired.

[16.6.6.8 NMAC - N, 09-30-04; A, 05-24-10; A, 9-22-11]

**PART 7: LICENSURE BY ENDORSEMENT AND EXAMINATION**

**16.6.7.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.7.1 NMAC - N, 10-1-04; A, 9-22-11]

**16.6.7.2 SCOPE:**

This part applies to naprapathic practitioners applying for licensure in New Mexico.

[16.6.7.2 NMAC - N, 10/1/2004; A, 9/22/2011; A, 2/8/2022]

**16.6.7.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.7.3 NMAC - N, 10-1-04; A, 9-22-11]

**16.6.7.4 DURATION:**

Permanent.

[16.6.7.4 NMAC - N, 10-1-04]

**16.6.7.5 EFFECTIVE DATE:**

October 1, 2004, unless a later date is cited at the end of a section.

[16.6.7.5 NMAC - N, 10-1-04]

**16.6.7.6 OBJECTIVE:**

This part establishes the requirements for licensure by endorsement.

[16.6.7.6 NMAC - N, 10-1-04]

**16.6.7.7 DEFINITIONS:**

[RESERVED]

**16.6.7.8 LICENSURE REQUIREMENTS:**

A license may be issued to practice naprapathy to individuals who satisfy the following criteria:

- A.** is at least twenty-one years of age;
- B.** has graduated from a two year college-level program or an equivalent program approved by the board after consultation with the naprapathic task force per 16.6.1.8 NMAC;
- C.** has completed, in not less than three years, a four year academic curriculum in naprapathy, that is approved by the board after consultation with the naprapathic task force, and the person has successfully completed 132 hours of academic credit, including 66 credit hours in basic science courses with emphasis on the study of connective tissue, and 66 credit hours in clinical naprapathic science, theory and application;
- D.** passed the national examination administered by the national board of naprapathic examiners (NBNE) and provides the board with evidence of successful completion or holds a current valid license in good standing as a naprapath in another state(s), or jurisdiction that licenses naprapaths;
- E.** provide two letters of recommendation from individuals licensed as a naprapath, in good standing, at the time the letters were written;

F. provide verification of all work experience in the past three years;

G. verification of licensure, if licensed or previously licensed in another state or jurisdiction; verification must be sent directly to the board office from the issuing state(s) or jurisdiction; and;

H. has met all other requirements of the Naprapathic Practice Act.

[16.6.7.8 NMAC - N, 10/1/2004; A, 5/24/2010; A, 9/22/2011; A, 10/11/2013; A, 2/8/2022]

#### **16.6.7.9 LICENSURE DOCUMENTATION REQUIREMENTS:**

Each applicant for licensure must submit the required fees and following documentation:

A. completed application with a nonrefundable processing and initial licensure fee per Subsection A of 16.6.3 NMAC;

B. official transcripts from the accredited programs as defined in Subsections B and C of 16.6.7.8 NMAC;

C. certified copy of national board of naprapathic examination (NBNE) certificate;

D. provide two letters of recommendation from individuals licensed as naprapaths, in good standing at the time the letter is written;

E. provide verification of all work experience in the past three years; and

F. submit verification of licensure, if currently or previously licensed in another state(s) or jurisdiction, verification must come directly from the issuing state(s) or jurisdiction; verification must include the state seal or international equivalent and must attest to the status, issue date and license number.

[16.6.7.9 NMAC - N, 5/24/2010; A, 10/11/2013; A, 2/8/2022]

#### **16.6.7.10 [RESERVED]**

[16.6.7.10 NMAC - N, 5/24/2010; A, 10/11/2013; Repealed, 2/8/2022]

#### **16.6.7.11 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION.**

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking

expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.6.7.11 NMAC - N, 10-11-13]

## **PART 8: PRACTICE PROCEDURES**

### **16.6.8.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.8.1 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.8.2 SCOPE:**

This part applies to applicants and licensees.

[16.6.8.2 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.8.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.8.3 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.8.4 DURATION:**

Permanent.

[16.6.8.4 NMAC - N, 09-30-04]

### **16.6.8.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.8.5 NMAC - N, 09-30-04]

### **16.6.8.6 OBJECTIVE:**

This part establishes diagnostic procedures, meridian therapy and rehabilitation of the neuromusculoskeletal system.

[16.6.8.6 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.8.7 DEFINITIONS:**

**[RESERVED]**

**16.6.8.8 DIAGNOSTIC PROCEDURES:**

**A.** Naprapathic practitioners are authorized to perform diagnostic procedures specified in this regulation, which shall include the authority to perform and take:

- (1)** medical case history;
- (2)** physical examination of all body systems including, but not limited to:
  - (a)** skin, hair, nails, head, eyes, ears, nose;
  - (b)** cardiovascular and respiratory system, including auscultation;
  - (c)** musculoskeletal system;
  - (d)** neurological system.

**B.** Naprapathic practitioners are authorized to order any diagnostic procedure from any recognized laboratory or imaging facility reasonably necessary to clinically correlate a physical examination to a diagnostic impression; which shall include, but not be limited to laboratory procedures involving the collection of human fluids, such as saliva, blood, urine, hair, feces and special imaging, such as x-ray; CT scan, MRI, nuclear scans, ultrasonography, thermography, EEG, EKG, ECG and surface or needle EMG.

[16.6.8.8 NMAC - N, 9/30/2004; A, 9/22/2011; A, 2/8/2022]

**16.6.8.9 MERIDIAN THERAPY:**

**A.** Naprapaths who practice meridian therapy shall do so in conjunction with standard naprapathic adjusting and manipulative techniques.

**B.** Naprapaths who practice meridian therapy may not advertise or promote themselves in the media to be acupuncturists unless licensed pursuant to the Acupuncture Act.

[16.6.8.9 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.8.10 REHABILITATION OF THE NEUROMUSCULOSKELETAL SYSTEM:**

Naprapathic practitioners may use all necessary mechanical, hygienic and sanitary measures incident to the care of the body including but not limited to air, sound, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and electricity.

[16.6.8.10 NMAC - N, 9/30/2004; A, 9/22/2011; A, 2/8/2022]

## **PART 9: SUPERVISION OF INTERNS**

### **16.6.9.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.9.1 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.9.2 SCOPE:**

This part applies to the applicants, intern naprapaths and licensees.

[16.6.9.2 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.9.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.9.3 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.9.4 DURATION:**

Permanent.

[16.6.9.4 NMAC - N, 09-30-04]

### **16.6.9.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.9.5 NMAC - N, 09-30-04]

### **16.6.9.6 OBJECTIVE:**

This part establishes the requirements for and supervision of interns.

[16.6.9.6 NMAC - N, 09-30-04]

### **16.6.9.7 DEFINITIONS:**

[RESERVED]

### **16.6.9.8 SUPERVISION OF INTERNS:**

**A.** The purpose for the intern program in New Mexico shall be to safely complete advanced training for the graduating naprapathic intern in the areas including, but not limited to, history taking, exams, patient report of findings, treatment recommendations, treatment room control, staff management, general clinic policies, problem solving skills, team concepts, goal setting, administrative skills, and other training the naprapathic practitioner may feel appropriate to complete the intern's advanced naprapathic training. This purpose enhances the professional training of the intern, the naprapathic college curriculum, the teaching skills of the naprapathic practitioner, the professional status of the profession of naprapathic and the professional standard of naprapathic health care available to New Mexico consumers.

**B.** Supervising naprapathic practitioner must have a current New Mexico license in "good standing" with the board and have been treating patients as a naprapathic practitioner for at least three years.

**C.** Supervising doctor must have written verification from the college that the intern is in a board approved equivalent thereof, accredited naprapathic college sanctioned intern program, and the naprapathic practitioner must assure compliance to the guidelines of the institution's intern program.

**D.** Supervising naprapathic practitioner must personally train intern in naprapathic procedure.

**E.** Supervising naprapathic practitioner must be physically in the clinic overseeing the intern to provide care for any patient.

**F.** Public must be informed that the intern is an "intern naprapath", not a licensed naprapathic practitioner in the state.

**G.** Supervising naprapathic practitioner may allow intern to assist in various exams and therapies on proper naprapathic procedures.

**H.** The supervising naprapathic practitioner must inform the college if the intern is deemed professionally competent in the diagnosis or treatment of naprapathic patients.

**I.** A supervising naprapathic practitioner may not supervise more than six interns at one time.

**J.** Supervising naprapathic practitioner shall register with the board the interns' names, the college they are from, and the term of the internship, and provide proof of malpractice insurance for the supervising naprapathic practitioner in a minimum amount of \$1,000,000 per person - \$3,000,000 per occurrence coverage, at least 15 days before the first day of the internship.

**K.** The board is to be sent a copy of any report sent to the college involving the intern at the time the report is sent to the college.

[16.6.9.8 NMAC - N, 9/30/2004; A, 5/24/2010; A, 9/22/2011; A, 2/8/2022]

## **PART 10: NAPRAPATHIC ASSISTANTS [REPEALED]**

[This part was repealed on May 24, 2010]

## **PART 11: PARENTAL RESPONSIBILITY ACT**

### **16.6.11.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.6.11.1 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.11.2 SCOPE:**

This part applies to the board, licensees, applicants, and the general public.

[16.6.11.2 NMAC - N, 09-30-04]

### **16.6.11.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to and in accordance with the Naprapathic Practice Act, Sections 61-12F-1 through 61-12F-11 NMSA 1978.

[16.6.11.3 NMAC - N, 09-30-04; A, 9-22-11]

### **16.6.11.4 DURATION:**

Permanent.

[16.6.11.4 NMAC - N, 09-30-04]

### **16.6.11.5 EFFECTIVE DATE:**

September 30, 2004, unless a later date is cited at the end of a section.

[16.6.11.5 NMAC - N, 09-30-04]

### **16.6.11.6 OBJECTIVE:**

This part establishes the requirements for compliance of the Parental Responsibility Act as it pertains to licensees and applicants for licensure.

[16.6.11.6 NMAC - N, 09-30-04]

#### **16.6.11.7 DEFINITIONS:**

A. "**HSD**" means the New Mexico human services department.

B. "**Statement of compliance**" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support.

C. "**Statement of non-compliance**" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and an order for support.

[16.6.11.7 NMAC - N, 09-30-04]

#### **16.6.11.8 PARENTAL RESPONSIBILITY ACT:**

A. The board adopts this section pursuant to the Parental Responsibility Act (Ch. 25, Laws of 1995).

B. All terms defined in the Parental Responsibility Act shall have the same meanings in this section.

[16.6.11.8 NMAC - N, 09-30-04]

#### **16.6.11.9 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the board:

A. shall deny an application for a license;

B. shall deny the renewal of a license; and

C. has grounds for suspension or revocation of the license.

[16.6.11.9 NMAC - N, 09-30-04]

#### **16.6.11.10 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board licensees and applicants. Upon the later receipt of an application for license or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

[16.6.11.10 NMAC - N, 09-30-04]

**16.6.11.11 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the board shall:

A. commence a formal proceeding in accordance with the Uniform Licensing Act (61-1-1 et seq.) to take the appropriate action pursuant to the Parental Responsibility Act; or

B. for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD for license renewal or a specified date not to exceed thirty days; if the licensee fails to provide this statement, the board shall commence a formal proceeding in accordance with the Uniform Licensing Act.

[16.6.11.11 NMAC - N, 09-30-04; A, 9-22-11]

**16.6.11.12 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action pursuant to the Uniform Licensing Act, the board shall serve upon the applicant or licensee a written notice stating that:

A. the board has grounds to take such action, and that the board shall take such action unless the licensee or applicant:

(1) mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the board, within thirty (30) days of the date of the notice, with a statement of compliance from HSD;

B. if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

[16.6.11.12 NMAC - N, 09-30-04]

**16.6.11.13 EVIDENCE AND PROOF:**

In any hearing pursuant to the Uniform Licensing Act, relevant evidence is limited to the following:

A. a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action pursuant to the Parental Responsibility Act, unless:

B. the applicant or licensee provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under the Uniform Licensing Act.

[16.6.11.13 NMAC - N, 09-30-04]

**16.6.11.14 ORDER:**

When a disciplinary action is taken pursuant to the Uniform Licensing Act solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for re-applications or reinstatement of lapsed licensees.

[16.6.11.14 NMAC - N, 09-30-04]

## **CHAPTER 7: MASSAGE THERAPISTS**

### **PART 1: GENERAL PROVISIONS**

**16.7.1.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.1.1 NMAC - Rp, 16.7.1.1 NMAC, 11/15/2019]

**16.7.1.2 SCOPE:**

This part applies to the board, licensees, registrants, applicants, and the general public.

[16.7.1.2 NMAC - Rp, 16.7.1.2 NMAC, 11/15/2019]

**16.7.1.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Subsections E and F of Section 61-12C-7, Subsection A of Section 61-12C-8 and Section 61-12C-11 NMSA 1978.

[16.7.1.3 NMAC - Rp, 16.7.1.3 NMAC, 11/15/2019]

**16.7.1.4 DURATION:**

Permanent.

[16.7.1.4 NMAC - Rp, 16.7.1.4 NMAC, 11/15/2019]

#### **16.7.1.5 EFFECTIVE DATE:**

November 15, 2019, unless a later date is cited at the end of a section.

[16.7.1.5 NMAC - Rp, 16.7.1.5 NMAC, 11/15/2019]

#### **16.7.1.6 OBJECTIVE:**

This part is to establish the requirements for display of licenses and certificates, name change, address change, verification of licensure procedures, board meetings, and inspection of public records.

[16.7.1.6 NMAC - Rp, 16.7.1.6 NMAC, 11/15/2019]

#### **16.7.1.7 DEFINITIONS:**

**A. "Academic hour"** means a credit hour or semester hour taken in an academic setting that is equivalent to 15 class or contact hours.

**B. "Active status"** means a license that is current and authorized the licensee or registrant to perform the practice or service authorized by the license or registration.

**C. "Board"** means the New Mexico board of massage therapy, hereinafter referred to as the board.

**D. "Board administrator" or "administrator"** means the staff person assigned certain express or implied executive and administrative function of the board as defined by board regulations or as required to carry out the provisions of the act.

**E. "Class hour" or "contact hour"** means no less than 50 minutes of any one-clock hour during which the student/massage therapist participates in a learning activity in the physical presence and under the tutelage of an instructor.

**F. "Client"** means a recipient of "professional services" or a massage therapy student. In the case of individuals not able to give legal consent their legal guardian shall be the client for decision making purposes.

**G. "Clinical practicum"** means that a student is providing hands-on massage therapy to members of the public under the supervision of a massage therapy instructor. That instructor must be physically present on the premises for advice and assistance. The student must be enrolled at a registered massage therapy school or being trained by a massage therapy instructor. Clinical practicum does not include classroom practice.

**H. "Compensation"** means a gain, whether monetary, trade or barter, for massage therapy services.

**I. "Complainant"** means the complaining party of a complaint filed against a licensee(s), registrant(s), or applicant(s) for licensure or registration.

**J. "Complaint"** means a sworn written complaint.

**K. "Confidential information"** means personally identifiable information revealed by a client.

**L. "Continuing Education Provider"** means:

(1) an individual who was an active New Mexico registered independent massage therapy instructor on February 4, 2019;

(2) a massage therapy school regulated by the requisite regulatory agency where the massage therapy school is located;

(3) a national or international professional association for massage therapists;

(4) an individual or an organization approved by a national or international massage therapy continuing education approval agency;

(5) a health care professional organization; or

(6) an accredited post-secondary educational institution.

**M. "Curriculum"** means the subject that will be taught, including the knowledge, skills, and abilities, as required in the course syllabus, that students will acquire from the course.

**N. "Examining agency"** means the national certification board for therapeutic massage and bodywork (NCBTMB) or the federation of state massage therapy boards (FSMTB), or other examination or certification agency approved by the board.

**O. "Expired status"** means a license that has not been reactivated from inactive status and can no longer be reactivated.

**P. "Grace period"** refers to the 60 day period following the renewal date when a massage therapist, licensee, or massage school registrant may renew a license or registration (that was not renewed timely) with a penalty fee. A licensee or registrant may still practice or provide the services authorized by the license or registration during those 60 days.

**Q. "Grace period status"** refers to the license or registration that has not been renewed by the renewal date assigned to it, but has not yet been placed on inactive status.

**R. "Hands-On"** refers to a massage modality or technique that involves palpation or soft tissue manipulation.

**S. "Inactive status"** occurs when a massage therapist's license is not renewed by the end of the grace period allowed for in the licensee's renewal cycle. A license can also be placed on inactive status for a period of two years. If the inactive license is not reactivated within those two years, it automatically expires, lapses and becomes null and void.

**T. "Inactive status period"** refers to a period not to exceed two years and only applies to massage therapists. Massage therapists may not practice during their inactive status period.

**U. "Jurisprudence"** means an examination covering the Massage Therapy Practice Act and the board's rules and regulations, 16.7 NMAC.

**V. "Lapsed status"** means the license or registration is null and void, is no longer valid and cannot be reactivated.

**W. "Licensee"** means a person whose professional conduct is subject to regulation by the board.

**X. "Manual"** means by use of hands or body.

**Y. "Massage therapist"** means a person licensed to practice massage therapy pursuant to the New Mexico Massage Therapy Practice Act, Subsection E of Section 61-12C-E NMSA 1978.

**Z. "Massage therapy"** means the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of pain; it is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms. "Massage therapy" does not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic, physical therapy, occupational therapy, acupuncture or podiatry is required by law.

**AA. "Massage Therapy Practice Act"** refers to Sections 61-12C-1 NMSA 1978 et seq. (as amended through 2019).

**BB. "Massage therapy school"** means a facility providing an educational program in massage therapy.

**CC.** "MBLEx" means the massage and bodywork licensing examination, as offered by the federation of state massage therapy boards "FSMTB".

**DD.** "Mechanical" means any tool or device that mimics or enhances the actions possible by the hands.

**EE.** "National certification examination" means the national certification examination for therapeutic massage and bodywork (NCETMB) or the national certification examination for therapeutic massage (NCETM).

**FF.** "Notice of contemplated action" means the administrative process used by the board for a licensee, registrant or applicant for licensure or registration to be afforded notice and an opportunity to be heard in a formal hearing before the board, before the board has authority to take any action which would result in denial, suspension, revocation, restriction, probation, monitoring, censuring, etc., of a license, registration, application or licensure or registration.

**GG.** "Null and void status" means the license or registration is no longer valid and cannot be reactivated.

**HH.** "Official examination results" means official pass/fail reports that the applicant has made arrangements to be sent directly to the board by the national certification board for therapeutic massage and bodywork or the federation of state massage therapy boards.

**II.** "Official transcripts" means those transcripts provided to the board office by the massage therapy school where the applicant received training.

**JJ.** "Permanent license" means a license issued once the applicant has met all the requirements for licensure as set forth in this regulation, but which must be kept updated by meeting the board's renewal and continuing education requirements, and which is subject to disciplinary action by the board for violations of the board's statute or regulations, up to an including revocation.

**KK.** "Professional massage therapy experience" means lawful massage therapy services performed for compensation.

**LL.** "Professional relationship" means a business relationship between a licensee and a client for the purpose of the client obtaining the licensee's "professional services.

**MM.** "Professional services" means all actions of the licensee in the context of a "professional relationship" with a client.

**NN.** "Related hands-on modalities" means manual therapies, not directly defined as massage therapy.

**OO.** "Renew" means to begin again after an interval of time; to make valid again for a further period.

**PP.** "Renewal date" means the deadline date upon which the license or registration must be made valid again for another period of time.

**QQ.** "Respondent" means a licensee, registrant or applicant for licensure or registration who is governed under the Massage Therapy Practice Act, and who is the subject of a complaint.

**RR.** "Sexual conduct" includes, but is not limited to, sexual intercourse, indecent exposure, sexual assault, non-therapeutic anogenital contact or any offer or agreement to engage in any such activities.

**SS.** "Soft tissue" includes skin, adipose, muscle and myofascial tissues.

**TT.** "Student" means an individual currently enrolled in or attending class(es) in a massage therapy program under the jurisdiction of the New Mexico state board of massage therapy.

**UU.** "Syllabus" means a detailed outline of a course including at least: the name of the course, course description, goals and objectives, required prerequisites, number of educational hours, detailed timeline, provisions for make-up work, required text, and reading resources, instructional materials and handouts, requirements for successful completion and method of evaluation.

**VV.** "Teaching assistant" means an individual who assists an instructor in class. Any instruction to students must be performed while under the direct supervision of the instructor.

**WW.** "Temporary license" means a license issued one-time only for a maximum period of three months to practice massage therapy while the application for permanent license is in process, and which may only be issued to applicants who have never sat for a licensing examination.

**XX.** "Treatment of soft tissues" is the repetitive manipulation of soft tissues from more than one anatomical point by manual or mechanical means to accomplish homeostasis or pain relief in the tissues being deformed.

**YY.** "Uniform Licensing Act" refers to Sections 61-1-1 NMSA 1978 et seq. (as amended through 2003).

[16.7.1.7 NMAC - Rp, 16.7.1.7 NMAC, 11/15/2019]

#### **16.7.1.8 SCOPE OF PRACTICE:**

As defined by the Massage Therapy Practice Act, the practice of massage therapy consists of the assessment of the soft tissue structures of the body; the treatment and prevention of physical dysfunction and pain of soft tissue; and joint movement within normal physiologic range of motion to relieve pain or to develop, maintain, rehabilitate or augment physical function.

[16.7.1.8 NMAC - Rp, 16.7.1.8 NMAC, 11/15/2019]

#### **16.7.1.9 MASSAGE THERAPY LICENSE AND REGISTRATION:**

##### **A. License/registration display:**

(1) A current license/registration must be displayed and must be visible to the public in the principal place of employment or business of the massage therapist or registrant;

(2) A licensee/registrant must practice massage therapy or provide massage therapy training under the name inscribed on the license or registration;

##### **B. Duplicate/replacement license or wall certificate:**

(1) The board will issue a duplicate/replacement license or upon receipt of a written request which states the reason for such duplication or replacement (for example: it was lost, stolen, destroyed; or name was legally changed). A replacement license is available for a fee as defined in Subsection D 16.7.3.8 NMAC; and

(2) The records of the board are to reflect that a duplicate/replacement license or wall certificate was issued.

##### **C. Name change:**

(1) Any name change requires that a replacement license or registration be issued. The board will issue a replacement license or registration upon receipt of a copy of the legal document (*only* marriage certificate, divorce decree or court order accepted). A change of name form is available from the board's website or from the board office; and

(2) A licensee or registrant not wishing to request a replacement license or registration must continue to use the name as initially issued on the license or registration, until the requirements of Paragraph 1 of Subsection C of 16.7.1.8 NMAC, above have been met.

**D. Address change:** Licenses and registrations are mailed to the license or registration holder's last mailing address as noted in the records of the board. Therefore, licensees and registrants shall maintain a current mailing address with the board by immediately notifying the board office in writing whenever a change of an

address has occurred. A change of address form is available from the board's website or from the board office.

**E. License and registration property of the board:** All licenses and registrations are the property of the board and will immediately be returned to the board upon request.

[16.7.1.9 NMAC - Rp, 16.7.1.9 NMAC, 11/15/2019]

#### **16.7.1.10 INSPECTION OF BOARD RECORDS:**

**A.** The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16 NMSA 1978.

**B.** The board administrator is the custodian of the board's records.

**C.** Any one may examine all public records in the board's custody, provided the person gives advance notice to the board administrator in accordance with the Inspection of Public Records Act.

**D.** The board may provide copies of public records upon request and upon payment of a copying fee in accordance with Subsection D of 16.7.3.8 NMAC, or as may be ordered by a court of competent jurisdiction.

**E.** Only the board's staff is authorized to remove original board documents from the board's office for the purpose of attending board or committee meetings or other board business.

**F.** The board office is not obligated to create lists, labels or any other materials that are not already in existence.

[16.7.1.10 NMAC - Rp, 16.7.1.10 NMAC, 11/15/2019]

#### **16.7.1.11 PUBLIC RECORDS:**

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following formal disciplinary proceedings conducted pursuant to the Uniform Licensing Act are matters of a public record as of the time of filing with or by the board.

[16.7.1.11 NMAC - Rp, 16.7.1.11 NMAC, 11/15/2019]

#### **16.7.1.12 NON-PUBLIC RECORDS:**

**A.** Except as provided herein and except as otherwise provided by law, the following records will be considered confidential and are not subject to public inspection:

- (1) letters of reference;
- (2) medical reports or records of chemical dependency, physical or mental examinations or treatment;
- (3) examination scores; the contents of any examination used to test for an individual's knowledge or competence;
- (4) investigative files; and
- (5) matters of opinion.

**B.** Only board members and board staff may have access to non-public records, unless approved by the board attorney or ordered by a court of competent jurisdiction.

[16.7.1.12 NMAC - Rp, 16.7.1.12 NMAC, 11/15/2019]

#### **16.7.1.13 TELEPHONE CONFERENCES:**

If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through telephone conference. Each member participating by telephone conference must be identified when speaking; all participants must be able to hear each other at the same time; and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.7.1.13 NMAC - Rp, 16.7.1.13 NMAC, 11/15/2019]

## **PART 2: PROFESSIONAL CONDUCT**

#### **16.7.2.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.2.1 NMAC - Rp 16.7.2.1 NMAC, 11/15/2019]

#### **16.7.2.2 SCOPE:**

This part applies to the conduct of licensees and applicants.

[16.7.2.2 NMAC - Rp 16.7.2.2 NMAC, 11/15/2019]

#### **16.7.2.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Subsection J of Section 61-12C-8 NMSA 1978.

[16.7.2.3 NMAC - Rp 16.7.2.3 NMAC, 11/15/2019]

**16.7.2.4 DURATION:**

Permanent.

[16.7.2.4 NMAC - Rp 16.7.2.4 NMAC, 11/15/2019]

**16.7.2.5 EFFECTIVE DATE:**

November 15, 2019, unless a different date is cited at the end of a section.

[16.7.2.5 NMAC - Rp 16.7.2.5 NMAC, 11/15/2019]

**16.7.2.6 OBJECTIVE:**

This part is to establish the standards against which the required professional conduct of a massage therapist is measured. Each licensee will be governed by this part whenever providing massage therapy services in a professional context. A violation of this part is sufficient reason for disciplinary action pursuant to the Massage Therapy Practice Act under the Uniform Licensing Act.

[16.7.2.6 NMAC - Rp 16.7.2.6 NMAC, 11/15/2019]

**16.7.2.7 DEFINITIONS:**

(Refer to 16.7.17 NMAC).

[16.7.2.7 NMAC - Rp 16.7.2.7 NMAC, 11/15/2019]

**16.7.2.8 CODE OF PROFESSIONAL CONDUCT:**

**A. Competence:** Each licensee and applicant shall:

(1) limit practice and instruction to the areas of competence in which proficiency has been gained through education, training, and experience and refer clients to other health professionals when appropriate;

(2) acknowledge the limitations of and contraindications to massage therapy and will not encourage unnecessary or unjustified treatment; and

(3) not delegate professional responsibilities to a person who is not qualified or licensed to perform them;

**B. Dual relationship:** It is presumed that a power imbalance exists in professional relationships between licensees and clients. Therefore each licensee, in interacting with

a client or former client to whom the licensee has at anytime within the previous three months rendered massage therapy or instruction, shall not engage in romantic or sexual conduct.

**C. Client welfare:** Each licensee and applicant shall:

- (1) conduct their business and professional activities with honesty and integrity;
- (2) obtain prior informed consent of the client regarding draping and treatment to ensure the safety, comfort and privacy of the client;
- (3) provide privacy for the client while the client is dressing or undressing;
- (4) modify or terminate treatment at the client's request, regardless of prior consent;
- (5) refuse to treat any person or part of the body for just and reasonable cause;
- (6) not undertake or continue treatment with a client when the licensee is impaired due to mental, emotional or physiologic conditions including substance or alcohol abuse;
- (7) maintain clean equipment, linens, clothing and work areas;
- (8) not engage in any verbally or physically abusive behavior; or
- (9) take unfair advantage of the client for financial gain.

**D. Confidentiality of clients:** Each licensee shall safeguard confidential information of the client, unless disclosure is required by law, court order, authorized by the client or absolutely necessary for the protection of the public.

**E. Representation of services:** Each licensee and applicant shall:

- (1) disclose to the client the schedule of fees for services prior to treatment;
- (2) not misrepresent directly or by implication of his professional qualifications such as type of licensure, education, experience, or areas of competence;
- (3) not falsify professional records;
- (4) include in any advertisement for massage;
  - (a) his full name as licensed with the board and license number; and

(b) the designation or abbreviation as a "licensed massage therapist" or "LMT" and "registered massage therapy school" or "RMTS".

(5) When offering gratuitous services or discounts in connection with professional services, each licensee must clearly and conspicuously state whether or not additional charges may be incurred by related services and the possible range of such additional charges; and

(6) not advertise massage therapy services or instruction, which contains:

(a) a false, fraudulent, misleading, deceptive statement; or

(b) suggestion of sexual stimulation.

**F. Violation of the law:** Each licensee and applicant shall *not*:

(1) violate any applicable statute or administrative regulation governing the practice of massage therapy;

(2) use fraud, misrepresentation, or deception in obtaining a massage therapy license or renewal, in passing a massage therapy licensing examination, in assisting another to obtain a massage therapy license or to pass a massage therapy licensing examination, in providing massage therapy services, or in conducting any other activity related to the practice of massage therapy; or

(3) be convicted of any crime that substantially relates to the qualifications, functions, or duties of a massage therapist.

**G. Resolving professional conduct issues:** Each licensee and applicant shall:

(1) have an obligation to be familiar with this part. Lack of knowledge of professional conduct standard is not itself a defense to a charge of unethical conduct;

(2) cooperate with investigations, proceedings, and resulting requirements of this part. Failure to cooperate is itself an ethics violation.

[16.7.2.8 NMAC - Rp 16.7.2.8 NMAC, 11/15/2019]

## **PART 3: FEES**

### **16.7.3.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.3.1 NMAC - Rp 16.7.3.1 NMAC, 11/15/2019]

**16.7.3.2 SCOPE:**

This part applies to licensees, registrants, and applicants for licensure and registration.

[16.7.3.2 NMAC - Rp 16.7.3.2 NMAC, 11/15/2019]

**16.7.3.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Section 61-12C-20 NMSA 1978.

[16.7.3.3 NMAC - Rp 16.7.3.3 NMAC, 11/15/2019]

**16.7.3.4 DURATION:**

Permanent.

[16.7.3.4 NMAC - Rp 16.7.3.4 NMAC, 11/15/2019]

**16.7.3.5 EFFECTIVE DATE:**

November 15, 2019, unless a later date is cited at the end of a section.

[16.7.3.5 NMAC - Rp 16.7.3.5 NMAC, 11/15/2019]

**16.7.3.6 OBJECTIVE:**

This part is to establish the required fees for application, examination, licensure, registration, renewal, reactivation of a license, duplicate/replacement license or certificate, verification of licensure or registration, and such other fees as determined by the board.

[16.7.3.6 NMAC - Rp 16.7.3.6 NMAC, 11/15/2019]

**16.7.3.7 DEFINITIONS:**

(Refer to 16.7.1.7 NMAC).

[16.7.3.7 NMAC - Rp 16.7.3.7 NMAC, 11/15/2019]

**16.7.3.8 FEE SCHEDULE:**

**A. Massage therapist:**

- (1) Application: \$75.00.

- (2) Initial license: Pro-rated at \$5.00 per month of initial license term.
- (3) Temporary license: \$25.00.
- (4) Expedited license: Pro-rated at \$5.00 per month of initial license term.
- (5) Biennial renewal: \$125.00.
- (6) Late renewal penalty: \$75.00.
- (7) Renewal during the grace period: \$125.00 plus late renewal penalty fee.
- (8) Reactivation from inactive status: \$125.00 plus late renewal penalty fee.
- (9) Review fee for "other" elective courses as provided in 16.7.4.14 NMAC: \$50.00.

**B. Massage therapy school:**

- (1) Registration: \$50.00.
- (2) Annual renewal: \$50.00.
- (3) Late renewal penalty: \$75.00.
- (4) Application review: \$400.00.
- (5) Curriculum change review: \$50.00.

**C. Administrative fees:**

- (1) Paper lists: \$50.00.
- (2) Labels: \$75.00.
- (3) Electronic list: \$125.00.
- (4) Replacement license: \$25.00.
- (5) Verification of license \$15.00.
- (6) Other administrative fees (at the discretion of the board or board administrator) not to exceed \$500.00.

**D. Continuing education fees:**

(1) One-time fee for course taught by a continuing education provider who was an active New Mexico registered independent massage therapy instructor on February 4, 2019: \$50.00.

(2) One-time application fee for a course taught by an individual or other entity who is not a continuing education provider, per each new course: \$50.00.

*E. All fees collected by the board are non-refundable.*

[16.7.3.8 NMAC - Rp 16.7.3.8 NMAC, 11/15/2019; A, 03/14/2023]

## **PART 4: REQUIREMENTS FOR LICENSURE BY EXAMINATION**

### **16.7.4.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.4.1 NMAC - Rp, 16.7.4.1 NMAC, 03/14/2023]

### **16.7.4.2 SCOPE:**

This part applies to applicants for licensure.

[16.7.4.2 NMAC - Rp, 16.7.4.2 NMAC, 03/14/2023]

### **16.7.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Massage Therapy Practice Act, Sections 61-12C-1 to -28 NMSA 1978.

[16.7.4.3 NMAC - Rp, 16.7.4.3 NMAC, 03/14/2023]

### **16.7.4.4 DURATION:**

Permanent.

[16.7.4.4 NMAC - Rp, 16.7.4.4 NMAC, 03/14/2023]

### **16.7.4.5 EFFECTIVE DATE:**

March 14, 2023, unless a later date is cited at the end of a section.

[16.7.4.5 NMAC - Rp, 16.7.4.5 NMAC, 03/14/2023]

### **16.7.4.6 OBJECTIVE:**

The objective of Part 4 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for licensure by examination and temporary licensure.

[16.7.4.6 NMAC - Rp, 16.7.4.6 NMAC, 03/14/2023]

#### **16.7.4.7 DEFINITIONS:**

(Refer to 16.7.1.7 NMAC).

[16.7.4.7 NMAC - Rp, 16.7.4.7 NMAC, 03/14/2023]

#### **16.7.4.8 LICENSE OR REGISTRATION REQUIRED:**

**A. Massage therapists:** A person must be licensed by the board in order to legally provide or offer to provide massage therapy as defined in 16.7.1.7 NMAC; or to use the title or represent themselves to be a massage therapist; or to use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist.

**B. Massage therapy schools:** Massage therapy schools must be registered by the board, as set forth in 16.7.5 NMAC, before they can legally operate and offer education, instruction or training in massage therapy.

[16.7.4.8 NMAC - Rp, 16.7.4.8 NMAC, 03/14/2023]

#### **16.7.4.9 LICENSURE EXEMPTIONS:**

**A.** The following are exempted from licensure by the board pursuant to the Massage Therapy Practice Act:

(1) qualified members of other recognized professions that are licensed or regulated under New Mexico law when rendering services within the scope of their licenses or regulations, provided that they do not represent themselves as massage therapists;

(2) students within the course of study of a registered massage therapy school; and

(3) sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practices are limited to hands, feet and ears; practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Rolfing structural integration, reiki, ortho-bionomy or ch'i gung; or practitioners of healing modalities not listed in this subsection who do not manipulate the soft tissues for therapeutic purposes.

**B.** An exempt practitioner who applies for a license pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of the act and rules of the board.

[16.7.4.9 NMAC - Rp, 16.7.4.9 NMAC, 03/14/2023]

#### **16.7.4.10 GENERAL PROVISIONS FOR LICENSURE BY EXAMINATION:**

**A. Age:** The applicant must be 18 years of age or older on the date the application is submitted.

**B. Pre-requisite education:** The applicant must have completed high school or its equivalent.

**C. Application fee:** The applicant must pay the required application-processing fee as set forth in Subsection D of 16.7.3.8 NMAC of the board's regulations.

**D. Application form:** The applicant must complete the application on an approved form; incomplete applications will not be accepted or will be returned to the applicant.

**E. First Aid and cardiopulmonary resuscitation (CPR):** The applicant must have completed four contact course hours of cardiopulmonary resuscitation (CPR) to include automatic external defibrillator (CPR/AED) and four contact course hours of first aid and must provide proof, with the application, of current certification in basic life support. No on-line courses will be accepted. Courses must be maintained in current standing.

[16.7.4.10 NMAC - Rp, 16.7.4.10 NMAC, 03/14/2023]

#### **16.7.4.11 MASSAGE SCHOOL REQUIREMENT:**

The applicant for licensure by examination as a massage therapist must have graduated from a massage therapy school approved to operate as a private post-secondary educational institution or its equivalent.

**A. Out-of-state or multiple schools:** The applicant who has graduated from an out-of-state massage therapy school or who has attended more than one massage therapy school must make arrangements for the school to provide the following items.

(1) the board's form "A" completed and submitted directly to the board by the massage therapy school(s) that the applicant attended as provided in 16.7.4.13 NMAC;

(2) an official transcript submitted directly to the board by the school(s) that meets the requirements in Subsection B of 16.7.4.11 NMAC;

(3) proof that the school is approved to operate as a private post-secondary educational institution or its equivalent. The respective state's department of higher

education usually grants this approval. The name of the agency or entity may vary from state to state.

**B. Official transcripts of massage therapy training:** The applicant shall make arrangements for official transcript(s) to be sent directly to the board by the educational institution documenting that the applicant has completed the minimum curricula of 650 hours of massage therapy training as provided in 16.7.4.12 NMAC.

(1) if more than one massage therapy school was attended, at least one official transcript must document a minimum of 300 class hours of training in massage therapy as defined in 16.7.4.7 NMAC above;

(2) continuing education (CE) or continuing education units (CEU) may be accepted toward the educational requirements for licensure;

(3) if official transcripts are not available due to unusual circumstances (example: school closure, destroyed records), the applicant will be responsible to provide satisfactory evidence to the board of completion of the required massage therapy training. The board shall consider such documentation on a case-by-case basis.

[16.7.4.11 NMAC - Rp, 16.7.4.11 NMAC, 03/14/2023]

#### **16.7.4.12 MINIMUM CURRICULA OF MASSAGE THERAPY TRAINING:**

The applicant for licensure by examination must have completed at least the 650 hour minimum curricula of massage therapy training. The massage therapy training must meet the following minimum curriculum requirements:

**A. one hundred sixty five (165) hours minimum of anatomy and physiology**, to include:

- (1) physiology;
- (2) anatomy;
- (3) kinesiology; and
- (4) 40 hours minimum of pathology.

**B. one hundred fifty (150) hours minimum of training in massage therapy** as defined in 16.7.1.7 NMAC.

(1) the massage therapy training shall include contraindications of massage therapy;

(2) a minimum of 100 hours of hands on training must be completed before the student is allowed to begin a clinical practicum as defined in 16.7.1.7 NMAC.

**C. seventy-five hours minimum of general instruction** to include.

- (1) business; effective October 31, 2021, minimum of 20 hours;
- (2) hydrotherapy; effective October 31, 2021, minimum of eight hours;
- (3) 30 hours minimum of professional ethics;
- (4) four hours of first aid; and
- (5) four hours of cardiopulmonary resuscitation to include automatic external defibrillation (CPR/AED).

**D. Electives may include:**

- (1) additional massage therapy;
- (2) related hands-on modalities;
- (3) additional anatomy and physiology;
- (4) clinical practicum (not to exceed 150 hours);
- (5) counseling;
- (6) herbology;
- (7) homeopathy;
- (8) nutrition;
- (9) breathing and stretching techniques;
- (10) theory; and
- (11) other courses with prior board approval. See 16.7.4.14 NMAC for instructions.

**E.** The total number of hours in the massage therapy program is a minimum of 650 hours.

**F.** If an applicant is missing a core curriculum course or is missing a small portion of the core curriculum to complete the 650 hour requirement, the applicant may obtain the

training course(s) from a continuing education provider, or from a massage therapy school that meets the requirements in 16.7.4.13 NMAC.

**G.** The board will accept professional work experience (not to exceed 150 hours) from applicants with documented proof accounting for all hours by completing Form C. These hours must have been performed legally and the applicant must provide proof of licensure or registration during the time the work was performed.

[16.7.4.12 NMAC - Rp, 16.7.4.12 NMAC, 03/14/2023]

#### **16.7.4.13 FORM "A" FROM MASSAGE SCHOOL REQUIREMENT:**

**A.** The following circumstances require that the applicant's massage school(s) submit a completed "form A for massage school" to the board office along with an official transcript and proof that the massage therapy school(s) is/was approved to operate as a private post-secondary educational institution or its equivalent at the time the applicant attended the school(s):

- (1) if the applicant attended a massage school that is located out-of-state; or
- (2) if the applicant has attended more than one massage therapy school whether in-state or out-of-state; or
- (3) if the applicant graduated from a massage therapy school more than two years ago.

**B.** The "form A for massage school" contains four sections corresponding to Subsections A, B, C, and D of 16.7.4.12 NMAC, and each section must be completed correctly to prevent delays in the applicant's licensure process.

(1) an hourly breakdown must be provided for each course/category/subject listed that the school provided in the curriculum that the applicant completed. If a subject is taught within another subject, the school should provide a written explanation on school letterhead and attached to the form "A";

(2) If there are no hours specified next to a course/category/subject, it will be an indication to the board that the course/category/subject was *not* part of the school's curriculum.

[16.7.4.13 NMAC - Rp, 16.7.4.13 NMAC, 03/14/2023]

#### **16.7.4.14 ELECTIVE COURSES IN THE "OTHER" CATEGORY:**

If an applicant has attended a massage therapy training program that is not a registered massage therapy school or provides proof of completion of elective courses that falls under the "other" category in Paragraph (11) of Subsection D of 16.7.4.12 NMAC, the

course(s) will be reviewed on a case-by-case basis and may be accepted by the board. The applicant must provide the following.

**A.** A separate written request for consideration of the course(s).

**B.** An official transcript that clearly names the course(s) to be considered.

**C.** A copy of the school catalog that clearly describes the course(s) to be considered. In accordance with Paragraph (2) of Subsection B of 16.7.4.11 NMAC, continuing education will *NOT* be accepted.

**D.** An administrative review fee as set forth in Paragraph (7) of Subsection A of 16.7.3.8 NMAC.

[16.7.4.14 NMAC - Rp, 16.7.4.14 NMAC, 03/14/2023]

#### **16.7.4.15 DOCUMENTS IN A FOREIGN LANGUAGE:**

Any document submitted in a foreign language must be accompanied by an accurate translation in English.

**A.** each translated document must bear the affidavit of the certified translator attesting to it being a true and complete translation of the original document;

**B.** the affidavit must also contain the translator's contact information, including name, address and phone number of the organization that granted the translator certification;

**C.** each translated document must bear a notary seal and signature swearing that the document is that of the applicants; and

**D.** translation of any document relevant to a person's application will be at the expense of the applicant.

[16.7.4.15 NMAC - Rp, 16.7.4.15 NMAC, 03/14/2023]

#### **16.7.4.16 SPECIFIC PROVISIONS FOR A TEMPORARY LICENSE:**

A license issued one time only for a maximum period of three months to practice massage therapy while the application for permanent license is in process, and which may only be issued to applicants who have never sat for a licensing examination.

##### **A. Qualifications for temporary license:**

(1) the applicant for temporary license must meet all the requirements set forth in 16.7.4.10 through 16.7.4.15 NMAC;

(2) the applicant for temporary license must not have previously sat for a certification examination for therapeutic massage and bodywork (NCETMB), the national certification examination for therapeutic massage (NCETM), the massage board licensing examination (MBLEx), or other examining or certification agency approved by the board;

(3) the applicant may obtain a temporary license while waiting to sit for the national examination;

(4) upon submitting the application for licensure, the applicant for a temporary license must submit a temporary license fee, as set forth in Subsection D of 16.7.3.8 NMAC;

(5) the board may deny issuance of a temporary license for the same reasons a permanent license may be denied.

#### **B. Issuance of the temporary license:**

(1) the applicant for temporary license may not begin work until the temporary license has been issued by the board, has been received by the licensee, and has been publicly posted in principal place of practice;

(2) the temporary licensee may *not* advertise in the yellow pages or other similar advertising book;

(3) the temporary licensee must keep the board informed at all times of any change in address and contact phone number(s).

#### **C. Surrender of temporary license required:**

(1) if a temporary license holder fails the national examination, the temporary license immediately becomes null and void and must be surrendered directly to the board office within 15 days of the examination date; and the privileges to practice authorized by the temporary license are no longer valid;

(2) expired or null and void temporary licenses shall be surrendered to the board;

(3) if an applicant, who holds a temporary license that must be surrendered, has misplaced or lost the temporary license and cannot return it to the board as required, the applicant must provide the board with an affidavit attesting that the license has been lost or misplaced and that the applicant is no longer practicing massage therapy.

#### **16.7.4.17 SPECIFIC PROVISION FOR PERMANENT LICENSURE:**

The applicant must meet all the requirements set forth in 16.7.4.10 through 16.7.4.15 NMAC, in addition to the following requirements:

**A. Jurisprudence examination:** The applicant for permanent licensure must successfully pass the board's jurisprudence examination as set forth in 16.7.10.8 NMAC.

**B.** Pass a licensing or certification exam approved by the board (including MBLEx, NCETM or NCETMB), and must make arrangements for the national examining agency to send official examination results, as defined in 16.7.4.7 NMAC, directly to the board.

**C. Licensure fee:** Upon written notification, sent by the board that the applicant has met all other requirements for licensure, the applicant must submit the initial license fee as stated in the notification based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

(1) the initial licensure fee must be paid in full before the permanent license will be issued;

(2) if the applicant fails to pay the initial license fee within 30 days of receipt of the notification of approval, the application will be deemed withdrawn and subject to the provisions in 16.7.4.19 NMAC.

[16.7.4.17 NMAC - Rp, 16.7.4.17 NMAC, 03/14/2023]

#### **16.7.4.18 APPLICATION EXPIRATION, WITHDRAWAL, AND DESTRUCTION:**

**A. Expiration or withdrawal of application:** The application for licensure expires as follows and all previously paid fees will be forfeited if:

(1) the applicant fails to complete all requirements for temporary or permanent licensure within one year from the date the applicant's application file is started by board office staff; or

(2) the applicant withdraws the application, either by notifying the board in writing or by not paying the initial license fee within the time allowed in Subsection C of 16.7.4.17 NMAC.

**B.** If the applicant still wishes to seek licensure after the application has expired or been withdrawn and it is still within one year after the application expired was withdrawn, the applicant shall complete the following procedure.

(1) submit a "reapplication form for withdrawn or expired application;"

- (2) submit whatever the application fee is at the time of reapplication;
- (3) complete any other requirements or submit any other documentation pending when the application was expired or withdrawn.

**C. Application destruction:** The board will maintain the expired or withdrawn application file for a period of one year after the expiration or withdrawal date.

- (1) after that date, the file will be purged from the board's records and destroyed;
- (2) the applicant whose application has been purged from the board's records must complete the entire application process again if, in the future, they are interested in licensure.

**D. Temporary license unavailable:** The option for a temporary license will no longer be available to a person whose application has expired, been withdrawn, or been destroyed from the board's records.

[16.7.4.18 NMAC - Rp 16.7.4.19 NMAC, 03/14/2023]

#### **16.7.4.19 INITIAL LICENSE PERIOD:**

Initial licenses, including initial licenses issued to applicants for expedited licensure by credentials, shall be issued for a period of up to two years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on October 31.

**A.** The first renewal cycle may be for as short a period as one year and the initial license fee may be prorated accordingly based on the fee structure set forth in Subsection A of 16.7.3.8 NMAC.

**B.** After the license is renewed the first time, the license will be scheduled into a biennial cycle and will be renewed every two years.

[16.7.4.19 NMAC - Rp 16.7.4.20 NMAC, 03/14/2023]

#### **16.7.4.20 DISPLAY OF LICENSE:**

While performing massage therapy the licensee must display their current license to practice massage therapy in a conspicuous place of their practice location or place of their business.

[16.7.4.20 NMAC - Rp 16.7.4.21 NMAC, 11/15/2019]

#### **16.7.4.21 ADDRESS AND EMPLOYMENT PRACTICE CHANGES:**

It is the licensee's responsibility to provide written notification to the board of any changes in addresses, phone numbers, and practice location(s) within 30 days in order that renewal notices and other correspondence from the board will be received by the licensee in a timely manner, and in order for the board to be able to maintain accurate licensing records. A form is available for this purpose from the board office or from the board's website at [www.rld.state.nm.us](http://www.rld.state.nm.us), or a letter to the board advising of the changes will also be adequate.

[16.7.4.21 NMAC - Rp 16.7.4.22 NMAC, 03/14/2023]

#### **16.7.4.22 ELECTRONIC APPLICATIONS:**

In accordance with the Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-21 NMSA 1978, the board or its designee will accept electronic application.

**A.** A person seeking licensure as a New Mexico massage therapist or registrant may do so by submitting an electronic application. Applicants shall submit all information as required by 16.7.4 NMAC.

**B.** A massage therapist may renew his or her license, and a registrant may renew his or her registration, electronically through a designated website provided by the board. A person renewing his or her license or certificate shall submit all documentation as required by 16.7.12 NMAC.

**C.** A massage therapist or registrant who is currently on inactive status may submit an electronic applications requesting reactivation of his or her license or registration. A person requesting reactivation of his or her license or registration shall submit all documentation as required by the Massage Therapy Practice Act, Section 61-12C-18 NMSA 1978, and 16.7.12.9 and 16.7.12.15 NMAC.

**D.** A person whose massage therapy license or registration has been suspended or revoked, or has expired, may in accordance with the Massage Therapy Act, the board's rules and any lawful board or court order, submit an electronic application seeking reinstatement. Applicants shall submit all information as required by the Massage Therapy Practice Act, NMSA 1978. Chapter 61, Article 12C NMSA and the board's rules.

[16.7.4.22 NMAC - Rp 16.7.4.23 NMAC, 03/14/2023]

#### **16.7.4.23 CRIMINAL CONVICTIONS:**

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

- (1) homicide or manslaughter;

- (2) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (3) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, promoting prostitution, accepting the earnings of a prostitute, human trafficking, willfully or knowingly failing to comply with the registration or verification requirements of the sex offender registration and notification act, or other related felony sexual offenses;
- (4) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property;
- (5) failure to comply with a proclamation of the governor; or
- (6) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of 16.7.4.24 NMAC.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of 16.7.4.24 NMAC.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Massage Therapy Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of 16.7.4.24 NMAC.

**E.** In connection with an application for licensure or license renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of 16.7.4.21 NMAC.

[16.7.4.23 NMAC - Rp 16.7.4.24 NMAC, 03/14/2023]

**16.7.4.24 [RESERVED]:**

## **PART 5: REQUIREMENTS FOR SCHOOLS**

### **16.7.5.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.5.1 NMAC - Rp 16.7.5.1 NMAC, 11/15/2019]

### **16.7.5.2 SCOPE:**

This part applies to applicants for a massage therapy school registration, and to registered massage therapy schools.

[16.7.5.2 NMAC - Rp 16.7.5.2 NMAC, 11/15/2019]

### **16.7.5.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Subsections B and F of Section 61-12C-8 NMSA 1978, and Section 61-12C-10 NMSA 1978.

[16.7.5.3 NMAC - Rp 16.7.5.3 NMAC, 11/15/2019]

### **16.7.5.4 DURATION:**

Permanent.

[16.7.5.4 NMAC - Rp 16.7.5.4 NMAC, 11/15/2019]

### **16.7.5.5 EFFECTIVE DATE:**

November 15, 2019 unless a later date is cited at the end of section.

[16.7.5.5 NMAC - Rp 16.7.5.5 NMAC, 11/15/2019]

### **16.7.5.6 OBJECTIVE:**

This part is to establish the minimum application requirements for massage therapy schools, and to establish the standards for registered massage therapy schools.

[16.7.5.6 NMAC - Rp 16.7.5.6 NMAC, 11/15/2019]

### **16.7.5.7 DEFINITIONS:**

(Refer to 16.7.1.7 NMAC).

[16.7.5.7 NMAC - Rp 16.7.5.7 NMAC, 11/15/2019]

### **16.7.5.8 REQUIREMENTS FOR REGISTRATION:**

At the time of application the applicant will provide the following information to the board.

**A.** A completed, legible application for licensure, which must either be typed or printed in black ink. Incomplete applications will not be accepted and will be returned to the applicant for completion.

**B.** A 650 hour curriculum that must meet the following minimum curricula requirements:

**(1) 165 hours minimum of anatomy and physiology, to include:**

**(a)** physiology;

**(b)** anatomy;

**(c)** kinesiology; and

**(d)** 40 hours minimum of pathology.

**(2) 150 hours minimum of massage therapy as defined in 16.7.1.7 NMAC.**

**(a)** Shall include contraindications of massage therapy.

**(b)** A minimum of 100 hours of hands on training must be completed before a student may begin clinical practicum, as defined in Subsection G of 16.7.1.7 NMAC.

**(3) 75 hours minimum of general instruction, to include:**

**(a)** business; effective October 31, 2021, minimum of 20 hours;

**(b)** hydrotherapy; effective October 31, 2021, minimum of eight hours;

**(c)** first aid – four hours;

**(d)** cardiopulmonary resuscitation and automatic external defibrillator (CPR/AED) four hours;

**(e)** 30 hours minimum of professional ethics.

**(4) Electives may include:**

- (a) additional massage therapy;
- (b) related hands-on modalities;
- (c) additional anatomy and physiology;
- (d) clinical practicum (not to exceed 150 hours);
- (e) counseling;
- (f) herbology;
- (g) homeopathy;
- (h) nutrition;
- (i) breathing and stretching techniques;
- (j) theory;
- (k) other, with prior board approval.

**C. Policies and procedures for board review**, including but not limited to:

- (1) enrollment and financial;
- (2) cancellation/withdrawal and refund;
- (3) grading method;
- (4) attendance and make up;
- (5) students conduct and discipline;
- (6) dress code;
- (7) hygiene protocol;
- (8) draping procedures;
- (9) evaluation forms;
- (10) curriculum;
- (11) advertising catalog;

(12) list of text books for all courses; and

(13) qualifications of instructors as provided in 16.7.5.12 NMAC.

**D.** Massage therapy school registration fee in accordance with Subsection C of 16.7.3.8 NMAC.

[16.7.5.8 NMAC - Rp 16.7.5.8 NMAC, 11/15/2019]

#### **16.7.5.9 INSPECTIONS OF SCHOOLS:**

The massage therapy school will be inspected by a board appointed inspector upon registration and thereafter as needed. Findings of the inspector will be reported to the board as part of the approval process. If an inspection reveals that a school is not in compliance with the board's laws or rules, the school will have 30 days to become compliant; at which time, the school will be re-inspected. If the school fails a second inspection, the board may take action against the school for non-compliance.

**A. Provisional registration:** A provisional registration will be given to a new school until the school is operating and available for inspection.

**B. Term of provisional registration:** The provisional registration will be valid no longer than one year from the date of issuance.

**C. Inspection criteria:** The inspector will observe and report on the following:

- (1) cleanliness of premises;
- (2) New Mexico state school registration and instructor's qualifications;
- (3) local business license posted;
- (4) posted complaint policy with board address and phone number available;
- (5) student clinic log;
- (6) student attendance log;
- (7) student files; and
- (8) equipment and teaching aids.

[16.7.5.9 NMAC - Rp 16.7.5.9 NMAC, 11/15/2019]

#### **16.7.5.10 STANDARDS FOR REGISTERED MASSAGE THERAPY SCHOOLS:**

**A.** Qualifications of all instructors must be documented and maintained on the premises of the registered massage therapy school.

**B.** Massage therapy school registrations will be renewed yearly.

**C.** Registered massage therapy schools will comply with 16.7.2 NMAC, Professional Conduct.

**D.** Registered massage therapy schools may charge the public a fee for the room usage during the time a student is performing massage therapy for clinical practicum training as defined in 16.7.5.7 NMAC.

[16.7.5.10 NMAC - Rp 16.7.5.10 NMAC, 11/15/2019]

#### **16.7.5.11 CHANGES AFFECTING REGISTRATION:**

Massage therapy school registrations issued by the board are not transferable. Any change in the business designation of a massage therapy school may have the legal effect of attempting to transfer the registration and of operating without a legal registration.

**A.** Any of the following changes will require a new registration, and hence, a new application for registration with the board;

**(1)** any change to the name of the school from that under which it was originally registered;

**(a)** The name of the massage therapy school must not tend to mislead the public, and shall not significantly resemble the business name of another registered massage therapy school.

**(b)** The name of the massage therapy school shall not be announced, used, or in any way be conveyed to the public until the new registration has been issued by the board.

**(2)** Any change of fifty percent or more of ownership of the stock in the corporation or of the shares in a partnership;

**(3)** Any change in the sole proprietorship.

**B.** A registered massage therapy school shall notify the board in writing within 30 days of any changes in instructional staff, curriculum, or other changes that may affect the programs offered, provided that the school shall not modify its curriculum to fall below the minimum requirements outlined in 16.7.5 NMAC.

[16.7.5.11 NMAC - Rp 16.7.5.11 NMAC, 11/15/2019]

### **16.7.5.12 QUALIFICATIONS FOR INSTRUCTORS WITHIN THE MINIMUM CURRICULA:**

All instructors providing hands-on massage therapy instruction within a registered massage therapy school's minimum curricula shall

- A.** hold a valid massage therapist license in New Mexico;
- B.** have completed at least 50 contact hours of instructional experience of professional teaching or workshop instruction; and
- C.** have practiced massage therapy for a minimum of two years within the past three years.

[16.7.5.12 NMAC - N, 11/15/2019]

### **16.7.5.13 SCHOOL DOCUMENTATION REQUIREMENTS FOR INSTRUCTORS WITHIN THE MINIMUM CURRICULA:**

**A.** All massage therapy schools shall provide to the board, both in initial applications for registration and as part of each renewal thereafter, a list of all instructors providing hands-on massage therapy instruction within their minimum curricula.

**B.** As part of an initial application for registration and as necessary in each renewal thereafter, a massage therapy school shall submit the following documentation pertaining to all instructors within its minimum curricula:

**(1)** Documentation verifying two years of professional massage therapy experience during the past three years, including a minimum of three of the following documents:

- (a)** income tax forms documenting massage therapy practice;
- (b)** verifiable letters from clients confirming receipt of massage therapy services from the applicant;
- (c)** proof of rent or lease of practice location or office space;
- (d)** proof of current association membership;
- (e)** proof of current professional insurance;
- (f)** copies of dated receipts for massage therapy practice-related supplies or furnishings that total a minimum of \$500;
- (g)** verifiable letters from employers; and

(h) work log consisting of appointment dates and time periods worked on clients.

(2) Documentation of completion of 50 contact hours of instructional experience of professional teaching or workshop instruction.

C. As part of any application for a renewal of a massage therapy school registration, the applicant shall submit a list of all instructors providing hands-on massage therapy instruction within their minimum curricula. A school shall only submit supporting documentation as to an instructor's qualifications if it has not previously provided such documentation to the board.

D. First Renewal Following Adoption of these Rules: All currently-registered massage therapy schools shall provide documentation to the board as to the qualifications of all instructors providing hands-on massage therapy instruction within their minimum curricula in their next renewal applications. A school does not need to submit supporting documentation as to an instructor's qualifications if that instructor was a registered massage therapy instructor, independent or school-based, as of February 4, 2019.

E. The board shall not grant an initial registration or a renewal application for any massage therapy school who fails to submit the necessary documentation related to its instructors within the minimum curricula.

[16.7.5.13 NMAC - N, 11/15/2019]

#### **16.7.5.14 REQUIREMENTS FOR TEACHING ASSISTANTS WITHIN THE MINIMUM CURRICULA:**

Registered massage therapy schools may utilize persons to assist massage therapy instructors within the minimum curricula in providing instruction to massage therapy students working toward obtaining their massage therapy license. Such persons shall be considered teaching assistants.

A. The teaching assistant must be a licensed massage therapist.

B. The teaching assistant must be supervised by a massage therapy instructor who is physically present in the room.

C. Experience as a teaching assistant shall apply to the 50-hour requirement outlined in Paragraph (3) of Subsection B of 16.7.6 NMAC.

D. It is the responsibility of the registered massage therapy school to ensure that the teaching assistant complies with the board's regulations.

[16.7.5.14 NMAC - N, 11/15/2019]

## **PART 6: REQUIREMENTS FOR INSTRUCTORS [REPEALED]**

[This part was repealed on November 15, 2019.]

## **PART 7: STUDENTS**

### **16.7.7.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.7.1 NMAC - Rp 16.7.7.1 NMAC 11/15/2019]

### **16.7.7.2 SCOPE:**

This part applies to students during massage therapy training.

[16.7.7.2 NMAC - Rp 16.7.7.2 NMAC 11/15/2019]

### **16.7.7.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Subsection B of Section 61-12C-6 NMSA 1978.

[16.7.7.3 NMAC - Rp 16.7.7.3 NMAC 11/15/2019]

### **16.7.7.4 DURATION:**

Permanent.

[16.7.7.4 NMAC - Rp 16.7.7.4 NMAC 11/15/2019]

### **16.7.7.5 EFFECTIVE DATE:**

November 15, 2019, unless a different date is cited at the end of a section.

[16.7.7.5 NMAC - Rp 16.7.7.5 NMAC 11/15/2019]

### **16.7.7.6 OBJECTIVE:**

This part is to establish rules for students during massage therapy training.

[16.7.7.6 NMAC - Rp 16.7.7.6 NMAC 11/15/2019]

### **16.7.7.7 DEFINITIONS:**

(Refer to 16.7.1.7 NMAC).

[16.7.7.7 NMAC - Rp 16.7.7. NMAC 11/15/2019]

**16.7.7.8 GENERAL PROVISIONS:**

**A.** Students not yet licensed may not charge for massage therapy services.

**(1)** Students may only accept voluntary unsolicited tips, gratuities and donations while practicing massage therapy under school endorsed functions, under the supervision of a massage therapy instructor;

**(2)** Students may not suggest either verbally or in writing, amounts of tips, gratuities or donations.

**B** Students may *not* provide massage therapy services without direct supervision of a massage therapy instructor.

**C.** Students may distribute identification cards which must include the school's name, address, and phone number; the student's name, and the word "student".

**D. Student complaints:**

**(1)** Complaints concerning the registered massage therapy school, instructor(s), or other student(s) should first be addressed through the registered massage therapy school's complaint policy;

**(2)** If the school does not resolve the complaint adequately, or in extreme circumstances, a complaint may be brought before the board in accordance with 16.7.14.8 NMAC.

**E.** Students will comply with 16.7.2 NMAC, Professional Conduct.

[16.7.7.8 NMAC - Rp 16.7.7.8 NMAC 11/15/2019]

**PART 8: EXPEDITED LICENSURE BY CREDENTIAL**

**16.7.8.1 ISSUING AGENCY:**

New Mexico Massage Therapy Board.

[16.7.8.1 NMAC - Rp, 16.7.8.1 NMAC, 03/14/2023]

**16.7.8.2 SCOPE:**

The provisions in Part 8 of Chapter 7 apply to all applicants for expedited licensure, also referred to as expedited licensure by credentials in Section 61-12C-16 NMSA 1978.

[16.7.8.1 NMAC - Rp, 16.7.8.1 NMAC, 03/14/2023]

**16.7.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Massage Therapy Practice Act, Sections 61-12C-1 to -28 NMSA 1978.

[16.7.8.3 NMAC - Rp, 16.7.8.3 NMAC, 03/14/2023]

**16.7.8.4 DURATION:**

Permanent.

[16.7.8.4 NMAC - Rp, 16.7.8.4 NMAC, 03/14/2023]

**16.7.8.5 EFFECTIVE DATE:**

March 14, 2023, unless a later date is cited at the end of a section.

[16.7.8.5 NMAC - Rp, 16.7.8.5 NMAC, 03/14/2023]

**16.7.8.6 OBJECTIVE:**

The objective of Part 8 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.7.8.6 NMAC - Rp, 16.7.8.6 NMAC, 03/14/2023]

**16.7.8.7 DEFINITIONS:**

**A. "Eligible jurisdiction"** means any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.7.8.8 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) Subsection E of Section 61-1-34 NMSA 1978.

**G. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.7.8.7 NMAC - Rp, 16.7.8.7 NMAC, 03/14/2023]

#### **16.7.8.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

**A.** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-12C-16 NMSA 1978 of the Massage Therapy Practice Act:

(1) U.S. Virgin Islands, on the grounds that the board cannot determine the education and training requirements for this jurisdiction; and

(2) Vermont, on the grounds that this jurisdiction does not impose educational or examination requirements.

**B.** An applicant may not apply for expedited licensure on the basis of practice in any jurisdiction that does not license, register, or certify massage therapists, including each of the following:

(1) American Samoa;

(2) California;

(3) Guam;

(4) Kansas;

(5) Minnesota;

(6) Northern Mariana Islands;

(7) Wyoming.

[16.7.8.8 NMAC - Rp, 16.7.8.8 NMAC, 03/14/2023]

**16.7.8.9 [RESERVED]:**

**16.7.8.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of current licensure in an eligible jurisdiction as defined in these rules;
- (3) certificate of good standing for the license held by the applicant in an eligible jurisdiction; and
- (4) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A of 16.7.8.10 NMAC, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12C-24.1 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.7.8.10 NMAC - N, 03/14/2023]

**16.7.8.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of current licensure in another jurisdiction;
- (3) certificate of good standing for the license held by the applicant in another jurisdiction, including a branch of the United States armed forces;
- (4) submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency.
  - (e) for veterans (retired or separated), proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12C-24.1 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.7.8.11 NMAC - N, 03/14/2023]

#### **16.7.8.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, upon renewal, the licensee must also satisfy the following examination requirements:

(1) The licensee shall be required to pass the New Mexico jurisprudence examination.

(2) If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the MBLEx, NCETM, or NCETMB, the licensee shall be required to pass one of these three examinations as a prerequisite to license renewal.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.7.8.12 NMAC - N, 03/14/2023]

### **PART 9: [RESERVED]**

### **PART 10: EXAMINATIONS**

#### **16.7.10.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.10.1 NMAC - Rp 16.7.10.1 NMAC, 11/15/2019]

#### **16.7.10.2 SCOPE:**

This part applies to massage therapy applicants for licensure.

[16.7.10.2 NMAC - Rp 16.7.10.2 NMAC, 11/15/2019]

### **16.7.10.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Sections 61-12C-13 and 61-12C-16 NMSA 1978.

[16.7.10.3 NMAC - Rp 16.7.10.3 NMAC, 11/15/2019]

### **16.7.10.4 DURATION:**

Permanent.

[16.7.10.4 NMAC - Rp 16.7.10.4 NMAC, 11/15/2019]

### **16.7.10.5 EFFECTIVE DATE:**

November 15, 2019, unless a later date is cited at the end of a section.

[16.7.10.5 NMAC - Rp 16.7.10.5 NMAC, 11/15/2019]

### **16.7.10.6 OBJECTIVE:**

This part is to establish the examination requirements for massage therapy licensure.

[16.7.10.6 NMAC - Rp 16.7.10.6 NMAC, 11/15/2019]

### **16.7.10.7 DEFINITIONS:**

(Refer to 16.7.1 NMAC).

[16.7.10.7 NMAC - Rp 16.7.10.7 NMAC, 11/15/2019]

### **16.7.10.8 JURISPRUDENCE EXAMINATION:**

**A.** All massage therapy licensure applicants applying for licensure by examination, and licensees that received their license under expedited licensure, prior to renewal of their license after initial licensure under expedited licensure must successfully pass the board's open-book jurisprudence examination.

(1) the applicant will receive the jurisprudence examination with instructions from the board office after the board office receives both the application and application fee;

(2) to complete the jurisprudence examination, the applicant will use the statute and regulations received either from the board or which the applicant downloaded from the board's website at [www.rld.state.nm.us](http://www.rld.state.nm.us);

(3) the applicant must pass the jurisprudence examination with a minimum score of seventy percent;

(4) the applicant must return the completed jurisprudence examination to the board office as required.

**B.** Applicants may retake the examination as many times as necessary to achieve a passing grade.

**C.** The jurisprudence examination shall not be reproduced or shared in any manner.

[16.7.10.8 NMAC - Rp 16.7.10.8 NMAC, 11/15/2019; A, 03/14/2023]

#### **16.7.10.9 LICENSING EXAMINATION:**

**A.** Applicants for massage therapy licensure must successfully pass a certification examination for therapeutic massage and bodywork (NCETMB), the national certification examination for therapeutic massage (NCETM) administered by the national certification board for therapeutic massage and bodywork (NCBTMB), the massage and bodywork licensing examination (MBLEx) administered by the federation of state massage therapy boards, or other examining or certification agency approved by the board.

**B.** The candidate must apply to take the NCETMB, NCETM or the MBLEx examination and meet the examining agency's requirements.

**C.** The applicant must ensure that the examining agency sends the official examination results directly to the board office.

[16.7.10.9 NMAC - Rp 16.7.10.9 NMAC, 11/15/2019]

#### **16.7.10.10 PROCEDURES TO RETAKE A LICENSING EXAMINATION:**

Applicants who fail to pass an examination must apply directly to the examining agency to retake the examination.

[16.7.10.10 NMAC - Rp 16.7.10.10 NMAC, 11/15/2019]

### **PART 11: CONTINUING EDUCATION**

#### **16.7.11.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.11.1 NMAC - Rp 16.7.11.1 NMAC 11/15/2019]

**16.7.11.2 SCOPE:**

This part applies to licensed massage therapists.

[16.7.11.2 NMAC - Rp 16.7.11.2 NMAC 11/15/2019]

**16.7.11.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Section 61-12C-17 NMSA 1978.

[16.7.11.3 NMAC - Rp 16.7.11.3 NMAC 11/15/2019]

**16.7.11.4 DURATION:**

Permanent.

[16.7.11.4 NMAC - Rp 16.7.11.4 NMAC 11/15/2019]

**16.7.11.5 EFFECTIVE DATE:**

November 15, 2019, unless a later date is cited at the end of a section.

[16.7.11.5 NMAC - Rp 16.7.11.5 NMAC 11/15/2019]

**16.7.11.6 OBJECTIVE:**

This part is to establish the continuing education requirements and procedures and to ensure that licensed massage therapists provide the highest quality professional service. Therefore, licensees should engage in education activities that foster this objective.

[16.7.11.6 NMAC - Rp 16.7.11.6 NMAC 11/15/2019]

**16.7.11.7 DEFINITIONS:**

(Refer to 16.7.1.7 NMAC).

[16.7.11.7 NMAC - Rp 16.7.11.7 NMAC 11/15/2019]

**16.7.11.8 GENERAL PROVISIONS:**

The board does not maintain a list of continuing education providers. The licensee must determine where to obtain the required continuing education.

**A.** As a condition for license renewal, each massage therapist licensed pursuant to the Massage Therapy Practice Act must complete 16 hours of continuing education of which up to eight hours can be taken on-line.

(1) continuing education must be completed within the 24 months immediately preceding the renewal date of October 31;

(2) excess hours cannot be carried over to future renewals;

(3) continuing education taken prior to the 24 month period will not be accepted;

(4) each licensee will maintain documentation of all completed continuing education, including contact information for the provider of each course.

**B. Audit process:** The board will audit continuing education to verify compliance.

(1) a minimum of ten percent of renewing licensees will be randomly selected for audit;

(2) audit requests may be included in the renewal notice;

(3) licensees not selected for audit shall attest to the completion of continuing education for the current renewal cycle;

(4) the board may audit any licensee's continuing education records at any time before the next scheduled license renewal;

(5) audited licensees who fail to provide the requested continuing education documentation are not eligible for license renewal.

[16.7.11.8 NMAC - Rp 16.7.11.8 NMAC 11/15/2019]

#### **16.7.11.9 CONTINUING EDUCATION REQUIREMENTS:**

**A.** The board will accept, towards a licensee's continuing education requirements, courses, seminars, workshops, or classes in an area related to the practice of massage therapy. This includes, but is not limited to:

(1) massage;

(2) bodywork;

(3) health care;

(4) psychology;

- (5) anatomy and physiology;
- (6) business;
- (7) insurance;
- (8) ethics;
- (9) professional development;
- (10) movement therapy;
- (11) stress management; and
- (12) exempt modalities as defined by Section 61-12C-5.1 NMSA 1978.

**B.** The board will also accept, towards a licensee's continuing education requirements, a licensee's publication of an article relating to massage therapy in a local, regional, or national publication. No more than 12 hours of continuing education credit shall be granted in any given renewal period for the publication of such an article. The number of continuing education hours shall be determined by the massage therapy board, provided that in the interim the board's staff may grant the continuing education hours to then be ratified at the next regular meeting of the board.

**C.** All massage therapists shall be required to complete a minimum of four hours of ethics training as part of the 16-hour requirement for each renewal period.

**D.** All massage therapists shall be required to complete a minimum of eight hours of live, in-person training as part of the 16-hour requirement for each renewal period.

**E.** Continuing education courses are the responsibility of every massage therapy licensee, and it is the obligation of each licensee to comply with these rules. A licensee's lack of knowledge as to whether a continuing education course was previously approved by the board will not be a valid justification or defense for a licensee's failure to comply with continuing education requirements.

[16.7.11.9 NMAC - Rp 16.7.11.9 NMAC 11/15/2019]

#### **16.7.11.10 CONTINUING EDUCATION COURSES TAUGHT BY CONTINUING EDUCATION PROVIDERS:**

**A.** The board will accept all courses offered by a continuing education provider, as defined in 16.7.1 NMAC and Section 61-12C-3 NMSA 1978, towards a licensee's continuing education requirements regardless of the location at which the course is taught.

**B.** Any continuing education provider who was an active New Mexico registered independent massage therapy instructor on February 4, 2019, must provide both the course syllabus and the required fee for each new course not previously approved by the board prior to such course being counted towards a licensee's continuing education requirements. This is a one-time requirement per continuing education course.

**C.** A course taught by a continuing education provider, as defined in Subsection 7 of 16.7.1 NMAC who was not an active New Mexico registered independent massage therapy instructor on February 4, 2019, does not require prior approval by the board before being counted towards a licensee's continuing education requirements.

[16.7.11.10 NMAC - Rp 16.7.11.10 NMAC 11/15/2019]

#### **16.7.11.11 OTHER CONTINUING EDUCATION COURSES:**

**A.** Applicants seeking the board's approval of other continuing education courses must submit the following documentation to the board:

- (1) completed application form;
- (2) course syllabus for the proposed course;
- (3) copy of any license, registration, or certification applicable to the course, if offered by the applicant's home jurisdiction;
- (4) proof of a minimum of two years' experience in the area of instruction;
- (5) applicant's up-to-date resume;
- (6) fee as outlined by 16.7.3.8 NMAC.

**B.** Technique courses will only be accepted towards a licensee's continuing education requirements if taught hands-on and live, in-person.

**C.** Provided that the applicant has submitted a complete application, the board will approve or deny the course's use towards a licensee's continuing application requirements based on the following non-exhaustive factors:

- (1) whether the applicant has violated any of the board's rules or the Massage Therapy Practice Act;
- (2) whether the applicant has any recent administrative disciplinary history in New Mexico or any other jurisdiction;

(3) whether the applicant was dishonest in his or her application, or has a history of criminal offenses that substantially relate to the practice of massage therapy or a failure to pay child support; and

(4) any other factor deemed relevant by the board.

D. Upon receipt of a complete application, the board's staff shall, with the consultation of the board's application committee, make a preliminary and tentative recommendation as to whether the application should be approved or denied. This recommendation will be conveyed to the applicant in writing within 30 days of the board's receipt of the completed application. The final decision will be made by the board at its next regularly-scheduled meeting.

E. In the event that the board's staff tentatively recommends the denial of an application, the applicant may request in writing the opportunity to be heard at the next regularly-scheduled board meeting. Where the applicant has made a request to be heard and the board votes to deny the application, the board will issue a final written decision no later than 15 business days following the board's meeting.

[16.7.11.11 NMAC - Rp 16.7.11.11 NMAC 11/15/2019]

## **PART 12: LICENSE/REGISTRATION RENEWAL**

### **16.7.12.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.12.1 NMAC - Rp, 16.7.12.1 NMAC, 11/16/2019]

### **16.7.12.2 SCOPE:**

This part applies to massage therapy licensees and massage therapy school registrants.

[16.7.12.2 NMAC - Rp, 16.7.12.2 NMAC, 11/16/2019]

### **16.7.12.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Sections 61-12C-17 and 61-12C-18 NMSA 1978.

[16.7.12.3 NMAC - Rp, 16.7.12.3 NMAC, 11/16/2019]

### **16.7.12.4 DURATION:**

Permanent.

[16.7.12.4 NMAC - Rp, 16.7.12.4 NMAC, 11/16/2019]

**16.7.12.5 EFFECTIVE DATE:**

November 16, 2019, unless a later date is cited at the end of a section.

[16.7.12.5 NMAC - Rp, 16.7.12.5 NMAC, 11/16/2019]

**16.7.12.6 OBJECTIVE:**

This part is to establish the requirements for renewal of massage therapy licenses and massage therapy school registrations as well as, the inactive status and reactivation of inactive massage therapy licenses.

[16.7.12.6 NMAC - Rp, 16.7.12.6 NMAC, 11/16/2019]

**16.7.12.7 DEFINITIONS:**

Refer to 16.7.1.7 NMAC - Definitions.

[16.7.12.7 NMAC - Rp, 16.7.12.7 NMAC, 11/16/2019]

**16.7.12.8 GENERAL PROVISIONS FOR ALL LICENSEES AND REGISTRANTS:**

**A. Administrative provisions relative to the renewal process:**

(1) Licenses and registrations expire on an annual or biennial basis on October 31. The specific annual or biennial schedule for each license or registration type is further detailed in 16.7.4.20 NMAC.

(2) A current license or registration renewal form shall be mailed to the last known address on file with the board.

(3) Each licensee and registrant must inform the board in writing, within 30 days of any change in contact information, such as address or telephone number.

(4) Failure to receive the renewal notice shall not relieve the licensee or registrant from the responsibility of renewing the license or registration by the renewal date.

(5) The licensee or registrant shall complete the renewal application form in the manner stated on the form. The form must be submitted with the requested documentation and required fee(s) as set forth in 16.7.3 NMAC.

(6) Incomplete renewal applications will be returned to the licensee or registrant for completion, which might result in the assessment of late penalty fees.

## **B. Grace period provisions:**

(1) Renewal applications for licenses or registrations postmarked or hand-delivered after October 31 must also be accompanied by the late renewal penalty fee established in 16.7.3 NMAC. If October 31 falls on a weekend, a renewal postmarked or hand-delivered on the next business day will be considered timely.

(2) After the renewal date of October 31, there is a 60 day grace period ending December 30 of the same year during which the license or registration may still be renewed, and during which the licensee or registrant may still practice or provide the services authorized by the license or registration.

(3) Massage therapists who have not renewed their licenses with a postmark date of December 30, or the next business day if December 30 falls on a weekend, will automatically be placed on inactive status as of December 31 of that year.

(4) Massage therapy schools that have not renewed their registrations with a postmark date of December 30, or the next business day if December 30 falls on a weekend, will automatically expire and become null and void immediately.

[16.7.12.8 NMAC - Rp, 16.7.12.8 NMAC, 11/16/2019]

## **16.7.12.9 INACTIVE STATUS FOR MASSAGE THERAPISTS:**

### **A. Inactive status issues for massage therapists:**

(1) Massage therapists whose licenses have been placed on inactive status may not provide the services authorized by the license.

(2) Massage therapists who practice with an inactive license are subject to disciplinary action by the board.

(3) The inactive status period shall last two years, beginning on the December 30 that the license or registration is placed on inactive status.

(4) The licensee must monitor the period of inactive status.

(5) The board will *not* send any notices of the upcoming expiration of inactive status to the licensees.

### **B. Reactivation from inactive status - therapists only:**

(1) Massage therapy licenses will expire if not reactivated within two years from the date the license was placed on inactive status.

(2) The required reactivation form must be requested from the board office a minimum of one month prior to the expiration of the inactive status period.

(3) The licensee shall return the reactivation form with the required proof of completion of continuing education as set forth in 16.7.11 NMAC, along with the reactivation fee and late renewal penalty fee as set forth in 16.7.3.NMAC.

(4) The reactivation application and required enclosures must be postmarked or hand-delivered to the board office no later than two years from the December 30 of the year in which the license or registration was placed on inactive status. Failure to do so will cause the license to expire, lapse, and become null and void.

(5) Reactivation applications received with a postmark date or hand-delivered after December 30 will be returned to the expired licensee because the license may no longer be reactivated.

[16.7.12.9 NMAC - Rp, 16.7.12.9 NMAC, 11/16/2019]

#### **16.7.12.10 MASSAGE THERAPISTS:**

**A.** Massage therapists will renew their licenses on or before the renewal date of October 31 of the biennial renewal cycle first established when their initial licenses were issued.

**B.** Some massage therapists will renew on the odd-numbered year, while others will renew on the even-numbered year.

**C.** The general provisions in 16.7.12.8, 16.7.12.9, and 16.7.12.10 NMAC explain the policy and procedure for massage therapist license renewal.

**D.** Massage therapists shall meet the continuing education requirements and shall maintain documentation of continuing education as set forth in 16.7.11 NMAC.

[16.7.12.10 NMAC - Rp, 16.7.12.10 NMAC, 11/16/2019]

#### **16.7.12.11 [RESERVED]**

[16.7.12.11 NMAC – Repealed, 11/16/2019]

#### **16.7.12.12 MASSAGE THERAPY SCHOOLS:**

**A.** Massage therapy school registrations shall be renewed annually by October 31 or by the next business day if the October 31 falls on a weekend.

**B.** The general provisions in 16.7.12.8 NMAC explain the general policy and procedure for massage therapy school renewal.

**C.** Registrants will submit a curriculum of the massage therapy training program annually to the board to document compliance with the course requirements set forth in 16.7.5 NMAC.

**D.** After the grace period, which ends on December 30, an owner/operator of a massage therapy school who has not renewed the school's registration shall no longer maintain, manage or operate the "massage therapy school" as defined in 16.7.12.7 NMAC or in Subsection F of Section 61-12C-3 NMSA 1978 of the Massage Therapy Practice Act, or offer education, instruction, or training in "massage therapy" as defined in Subsection E of Section 61-12C-3 NMSA 1978 of the Massage Therapy Practice Act.

**E.** The registration shall expire, lapse and become null and void if not timely renewed.

[16.7.12.12 NMAC - Rp, 16.7.12.12 NMAC, 11/16/2019]

**16.7.12.13 APPROVED RENEWAL APPLICATION:**

Upon approval of the licensee's or registrant's renewal application, the board will issue a renewal license or registration to the licensee or registrant.

[16.7.12.13 NMAC - Rp, 16.7.12.13 NMAC, 11/16/2019]

**16.7.12.14 RENEWAL LICENSE OR REGISTRATION DISPLAY:**

The renewal license or registration shall be displayed by the licensee or registrant in a conspicuous place in the licensee's or registrant's principal practice location or place of business.

[16.7.12.14 NMAC - Rp, 16.7.12.14 NMAC, 11/16/2019]

**16.7.12.15 EXPIRATION OF LICENSE OR REGISTRATION:**

**A.** If a massage therapist does not reactivate their license by the end of the inactive status period, the license will automatically expire without notice from the board and become null and void.

**B.** If a massage therapy school has not renewed its registration by the end of the 60-day grace period, the registration will automatically expire without notice from the board and will become null and void.

**C.** Expired licenses and registrations cannot be reactivated.

**D.** Licensees and registrants formerly licensed or registered by the board whose registrations have expired must make application to the board and comply with the same requirements as any previously unlicensed or unregistered applicant.

**E.** A former licensee or registrant with an expired license or registration may not provide or offer to provide massage therapy services, instruction, education or training in massage therapy as defined in Subsection E of Section 61-12C-3 NMSA 1978 of the Massage Therapy Practice Act or in Part 1 and Part 4 of the board's rules and regulations. Practicing or providing the services formerly authorized by the expired license or registration is a violation of the law and is subject to disciplinary action by the board.

[16.7.12.15 NMAC - Rp, 16.7.12.15 NMAC, 11/16/2019]

#### **16.7.12.16 UNLICENSED PRACTICE PROHIBITED:**

**A.** Massage therapists and massage therapy schools may not render or attempt to render massage therapy services or training and instruction as a massage therapy school without the required current and valid license or registration issued by the board as provided in Section 61-12C-27 NMSA 1978 of the Massage Therapy Practice Act.

**B.** In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp), any person, company, firm, or entity who is not licensed or registered by the board is subject to disciplinary actions and proceedings by the board if it is determined that they have been offering or providing massage therapy services or offering or providing educational training in massage therapy as a massage therapy school in New Mexico without a valid New Mexico license or registration.

**C.** The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against any person, company, firm, or entity that violates the Massage Therapy Practice Act by practicing without a valid New Mexico license.

**D.** In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of massage therapy or massage therapy education, the administrative costs, including investigative costs and the costs of conducting a hearing.

**E.** Reports of unlicensed practice may be reported to the board for investigation by phone, fax, mail, or e-mail. An approved complaint form is available from the board office or downloadable from the board's website at [www.rld.state.nm.us](http://www.rld.state.nm.us).

[16.7.12.16 NMAC - Rp, 16.7.12.16 NMAC, 11/16/2019]

### **PART 13: [RESERVED]**

### **PART 14: COMPLAINTS**

#### **16.7.14.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.14.1 NMAC - Rp 16.7.14.1 NMAC, 11/15/2019]

**16.7.14.2 SCOPE:**

This part applies to licensees, registrants, massage therapists, registered massage therapy schools and applicants for licensure or registration.

[16.7.14.2 NMAC - Rp 16.7.14.2 NMAC, 11/15/2019]

**16.7.14.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Massage Therapy Practice Act, Subsections H and K of Section 61-12C-8 NMSA 1978, and Section 61-12C-24 NMSA 1978.

[16.7.14.3 NMAC - Rp 16.7.14.3 NMAC, 11/15/2019]

**16.7.14.4 DURATION:**

Permanent.

[16.7.14.4 NMAC - Rp 16.7.14.4 NMAC, 11/15/2019]

**16.7.14.5 EFFECTIVE DATE:**

November 15, 2019 unless a different date is cited at the end of a section.

[16.7.14.5 NMAC - Rp 16.7.14.5 NMAC, 11/15/2019]

**16.7.14.6 OBJECTIVE:**

This part is to establish the procedures for processing complaints and taking disciplinary action against licensed massage therapists, registered massage therapy schools, and applicants for licensure or registration, for violation of the Massage Therapy Practice Act or any provisions of 16.7 NMAC.

[16.7.14.6 NMAC - Rp 16.7.14.6 NMAC, 11/15/2019]

**16.7.14.7 DEFINITIONS:**

(Refer to 16.7.1.7 NMAC).

[16.7.14.7 NMAC - Rp 16.7.14.7 NMAC, 11/15/2019]

**16.7.14.8 GENERAL PROVISIONS:**

- A. A complaint may be initiated in writing by any person.

**B.** Complaints shall be legible, either printed in black ink or typed.

**C.** Complaints shall contain factual allegations, constituting the alleged violations of any provisions of the Massage Therapy Practice Act and 16.7 NMAC.

[16.7.14.8 NMAC - Rp 16.7.14.8 NMAC, 11/15/2019]

**16.7.14.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:**

**A.** The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).

**B.** Upon receipt of a complaint the board's designee will:

**(1)** log in the date the complaint was received;

**(2)** determine whether the respondent is licensed, registered or an applicant for licensure or registration with the board;

**(3)** assign a complaint number and create an individual file; complaint numbering will begin with the last two digits of the year in which the complaint is filed, followed by the month, and will then continue sequentially (e.g., 96-01-001 first = complaint filed in January 1996);

**(4)** send the complainant written acknowledgment of receipt of the complaint;

**(5)** immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s).

[16.7.14.9 NMAC - Rp 16.7.14.9 NMAC, 11/15/2019]

**16.7.14.10 COMPLAINT COMMITTEE:**

**A.** The board chair will appoint a complaint committee consisting of at least one professional member of the board, who will chair the committee. The board chair may also appoint to the complaint committee the board administrator or a complaint manager.

**B.** The complaint committee will handle complaints in a confidential manner as required by law.

**C.** The complaint committee will review all complaints received by the board and make recommendations for disposition of the complaint to the full board in executive session.

**D.** No complaint committee meeting will be held without the presence of the professional board member.

**E.** A complaint committee member who believes they are is not capable of judging a particular complaint fairly on the basis of its own circumstances will not participate; another professional member will be appointed by the chair to serve as committee chair for the complaint being considered.

**F.** For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint.

**G.** The complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

**H.** If the complaint committee determines that further information is needed, it may issue investigative subpoenas pursuant to the Uniform Licensing Act; it may employ an investigator, experts, or other persons whose services are determined to be necessary to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons without prior approval of the board. The board administrator will determine budgetary availability and will contract for investigative services.

**I.** Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.

[16.7.14.10 NMAC - Rp 16.7.14.10 NMAC, 11/15/2019]

**16.7.14.11 BOARD ACTION:**

**A.** If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case will be closed.

**B.** The board's designee will send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.

**C.** If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action.

**D.** The board's designee will forward a complete copy of the complaint committee's report, including exhibits to the attorney general's office for assignment of an administrative prosecutor.

**E.** The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referring the complaint to district attorneys for prosecution of persons alleged to be practicing massage therapy without a proper license or registration.

**F.** Any board member who believes that they are not capable of judging a particular complaint fairly on the basis of its own circumstances will not participate in the decision to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.

**G.** Members of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than by making a recommendation to the board whether to issue a notice of contemplated action, and will not participate in the hearing, deliberation, or decision of the board.

[16.7.14.11 NMAC - Rp 16.7.14.11 NMAC, 11/15/2019]

#### **16.7.14.12 SETTLEMENT AGREEMENT:**

**A.** The board may enter into a settlement agreement with the licensee or registrant as a means of resolving the complaint.

**B.** Any proposed settlement agreement must be approved by the board, and must also be approved by the respondent, upon a knowing and intentional waiver by the respondent of their right to a hearing as provided by the Uniform Licensing Act.

**C.** The settlement agreement must be signed by either the licensee's attorney or the licensee must acknowledge that he or she has been advised to seek the advice of an attorney.

[16.7.14.12 NMAC - Rp 16.7.14.12 NMAC, 11/15/2019]

#### **16.7.14.13 NOTICE OF CONTEMPLATED ACTION:**

**A.** All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.

**B.** The board chair, or his/her designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including, but not limited to, matters related to discovery,

continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.

**C.** The hearing officer may make such orders as he or she determines may be necessary to implement the authority conferred by Subsection B of 16.7.14.13 NMAC above, including but not limited to discovery schedules, pleading schedules, and briefing schedules.

**D.** No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.

**E.** Licensees and registrants who have been found culpable and sanctioned by the board will be responsible for the payments of all costs of the disciplinary proceedings.

**F.** Any license or registration, including a wall certificate, issued by the board and subsequently suspended or revoked will be promptly returned to the board office, but no later than 30 days of receipt by the licensee or registrant of the board's order suspending or revoking the license.

[16.7.14.13 NMAC - Rp 16.7.14.13 NMAC, 11/15/2019]

## **PART 15: [RESERVED]**

## **PART 16: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

### **16.7.16.1 ISSUING AGENCY:**

Regulation and Licensing Department, Massage Therapy Board.

[16.7.16.1 NMAC - Rp 16.7.16.1 NMAC, 11/15/2019]

### **16.7.16.2 SCOPE:**

This part applies to all licensees and applicants for licensure under the New Mexico Massage Therapy Practice Act.

[16.7.16.2 NMAC - Rp 16.7.16.2 NMAC, 11/15/2019]

### **16.7.16.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Parental Responsibility Act Section 40-5A-1 et seq., NMSA 1978 (Ch. 25, Laws of 1995), the New Mexico Massage Therapy Practice Act, Section 61-12C-1 et seq., NMSA 1978 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

[16.7.16.3 NMAC - Rp 16.7.16.3 NMAC, 11/15/2019]

**16.7.16.4 DURATION:**

Permanent.

[16.7.16.4 NMAC - Rp 16.7.16.4 NMAC, 11/15/2019]

**16.7.16.5 EFFECTIVE DATE:**

November 15, 2019 unless a different date is cited at the end of a section.

[16.7.16.5 NMAC - Rp 16.7.16.5 NMAC, 11/15/2019]

**16.7.16.6 OBJECTIVE:**

This part is established to facilitate the operation of the Parental Responsibility Act as it pertains to licensees and applicants for licensure, by delegating authority to issue notices of contemplated action and to refer such cases for administrative prosecution to the board administrator.

[16.7.16.6 NMAC - Rp 16.7.16.6 NMAC, 11/15/2019]

**16.7.16.7 DEFINITIONS:**

Refer to 16.7.1.7 NMAC.

[16.7.16.7 NMAC - Rp 16.7.16.7 NMAC, 11/15/2019]

**16.7.16.8 DELEGATION OF AUTHORITY:**

The authority of the massage therapy board to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in 40-5A-1 NMSA 1978, et seq., and as provided further in 16.1.1 NMAC, of the New Mexico Administrative Code, which is incorporated herein by reference, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the New Mexico massage therapy board. 16.16.7 NMAC shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.7.16.8 NMAC - Rp 16.7.16.8 NMAC, 11/15/2019]

## **CHAPTER 8: COMMERCIAL AND MEDICAL CANNABIS**

## **PART 1      GENERAL PROVISIONS**

### **16.8.1.1      ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.1.1 NMAC – N, 08/24/2021]

### **16.8.1.2      SCOPE:**

This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.

[16.8.1.2 NMAC - N, 08/24/2021]

### **16.8.1.3      STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.1.3 NMAC - N, 08/24/2021]

### **16.8.1.4      DURATION:**

Permanent.

[16.8.1.4 NMAC - N, 08/24/2021]

### **16.8.1.5      EFFECTIVE DATE:**

August 24, 2021, unless a later date is cited at the end of a section.

[16.8.1.5 NMAC - N, 08/24/2021]

### **16.8.1.6      OBJECTIVE:**

The objective of Part 1 is to set forth the general provisions that apply to all of Chapter 8, and to all persons affected or regulated by Chapter 8 of Title 16.

[16.8.1.6 NMAC - N, 08/24/2021]

### **16.8.1.7      DEFINITIONS:**

Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

**A. Definitions beginning with "A":**

(1) **"Advisory committee"** means the cannabis regulatory advisory committee.

(2) **"Applicant"** means any person who is seeking to become licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

**B. Definitions beginning with "B":** **"Batch"** means, with regard to cannabis, an identified quantity of cannabis no greater than 15 pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which the same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

**C. Definitions beginning with "C":**

(1) **"Cannabis Regulation Act"** means the Cannabis Regulation Act, as enacted in Chapter 4, Sections 1 through 42 of New Mexico Laws of 2021, and as may be amended thereafter.

(2) **"Cannabis Waste"** means all parts of the plant genus Cannabis which may or may not contain a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination which has been designated as no longer usable cannabis.

(3) **"Carbon dioxide solvent"** means carbon dioxide in a liquid or supercritical state.

(4) **"CBD"** means cannabidiol, a cannabinoid and a non-psychoactive ingredient found in cannabis.

(5) **"CBDA"** means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

(6) **"Closed loop extraction system"** means a commercially manufactured extraction system that is sealed during operation and designed to recover all solvents used during the extraction process through a feedback loop.

(7) **"Concentrated cannabis product ("concentrate")"** means a cannabis product that is manufactured by a division approved mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains or that is intended to contain at the time of sale or distribution, no less than thirty-percent THC by weight.

#### **D. Definitions beginning with "D":**

(1) **"Delivery agreement"** means a contract between a licensed cannabis establishment and a licensed cannabis courier to deliver cannabis or cannabis products from the cannabis establishment directly to consumers as permitted under the provisions of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rule.

(2) **"Division"** means the cannabis control division.

(3) **"Diversion"** means the unlawful transfer of a cannabis plant, plant material, or cannabis product.

(4) **"Dried cannabis"** means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

**E. Definitions beginning with "E":** **"Extraction area"** means the area of a licensed manufacturer's processing facility that is designed for solvent-based extraction, which the division has inspected and approved for the area's designated use.

**F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G": [RESERVED]**

**H. Definitions beginning with "H":**

(1) **"Homogeneity"** means the reasonably equal dispersion of cannabinoids throughout a batch of cannabis product and within the cannabis product as packaged or as intended for sale.

(2) **"Hydrocarbon solvent"** means N-butane, isobutene, propane, pentane, heptane, or any isomer or combination thereof.

**I. Definitions beginning with "I": "Independent professional engineer"** means an engineer licensed pursuant to the Engineering and Surveying Practice Act, Section 61-23-1 *et seq.*, NMSA 1978, that is not an employee, owner, officer, controlling person, board member, or manager of the cannabis establishment licensee.

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L":**

(1) **"Licensee"** means any person who holds a license issued by the division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

(2) **"Limited-access area"** means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device.

(3) **"Limit of detection"** means an estimate of the minimum amount of an analyte in a given matrix that an analytical process can reliably detect.

(4) **"Limit of quantitation"** means the minimum level, concentration, or quantity of a target analyte in a given matrix that an analytical process can reliably quantify.

(5) **"Liquor Control Act"** mean the Liquor Control Act, Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A, NMSA 1978.

(6) **"Lot"** means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

(7) **"Lynn and Erin Compassionate Use Act"** means the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

**M. Definitions beginning with "M": "Minor"** means an individual who is less than 18 years of age.

**N. Definitions beginning with "N": [RESERVED]**

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

- (1) **"Pesticide"** means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978.
- (2) **"Plant"** means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.
- (3) **"Plant material"** means leaves, stalks, stems, roots, and any other part of the cannabis plant.
- (4) **"Pressure vessel"** means a component of a closed loop system containing cannabis plant material and solvents used during solvent-based extraction and designed to withstand pressure greater than 15 psi.
- (5) **"Policy"** means a written statement of principles that guides and determines present and future decisions and actions of the licensed person.
- (6) **"POS"** means point of sale system.
- (7) **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.
- (8) **"Produce"** means to engage in any activity related to the planting or cultivation of cannabis.
- (9) **"Proficiency testing"** means a standardized test administered by an ISO 17043 accredited laboratory to evaluate the ability of a laboratory to measure, within acceptable limits, the presence, quantity, or other factors pertaining to a given analyte.

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R":**

- (1) **"Recall"** means to request the return of a product after the discovery of a safety issue or product defect.
- (2) **"RLD"** means the regulation and licensing department.

**S. Definitions beginning with "S":**

- (1) **"Safe moisture level"** means a level of moisture low enough to prevent the growth of undesirable microorganisms in the finished produce.

(2) **"Security alarm system"** means any device or series of devices capable of alerting law enforcement , including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

(3) **"Segregate"** means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis products in order to first determine its suitability for use through testing by an approved laboratory.

(4) **"Solvent"** means a hydrocarbon solvent, carbon dioxide solvent, or organic solvent, which is used to dissolve or disperse chemical compounds from cannabis plant material in a closed loop system.

(5) **"Solvent-based extraction"** means the process of dissolving or dispersing specific chemical compounds from the cannabis plant material using a solvent in a closed loop system.

#### **T. Definitions beginning with "T":**

(1) **"THC"** means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

(2) **"THCA"** means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.

(3) **"Testing"** means testing of cannabis and cannabis products consistent with division rules.

(4) **"Track and trace system"** means the electronic system designated by the division to track and trace the production, transportation, sale, and wastage of cannabis and cannabis products.

#### **U. Definitions beginning with "U": [RESERVED]**

#### **V. Definitions beginning with "V":**

(1) **"Vault"** means a limited access storage room that is within a licensed cannabis establishment and is outfitted with adequate security features for the purposes of storing cannabis, cannabis products, or cash.

(2) **"Volatile solvent"** means a hydrocarbon solvent, alcohol, or acetone.

#### **W. Definitions beginning with "W":**

(1) **"Waste" or "wastage"** means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

(2) **"Water activity"** means the measure of the free moisture in a manufactured cannabis product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.8.1.7 NMAC - N, 08/24/2021; A, 12/28/2021; A, 01/11/2022]

#### **16.8.1.8 SOCIAL AND ECONOMIC EQUITY:**

**A. Division mandate:** Pursuant to the Cannabis Regulation Act, Paragraphs (7) and (8) of Subsection B of Section 26-2C-3 NMSA 1978, the division must adopt procedures to promote and encourage full participation in the cannabis industry of representatives of communities that have disproportionately been harmed by rates of arrest through the enforcement of cannabis prohibitions and encourage racial, ethnic, gender, geographic diversity, and New Mexico residency among license applicants, licensees and cannabis industry employees. Policies must also encourage representatives from rural communities that are likely to be impacted by cannabis production, including agricultural producers from economically disadvantaged communities.

**B. Division goal:** To accomplish these mandates, the division establishes a goal that at least fifty percent of applicants for licensure, licensees, and cannabis industry employees will represent these groups.

[16.8.1.8 NMAC - N, 08/24/2021; A, 03/22/2022]

#### **16.8.1.9 FEDERAL LAW:**

The activities described in these rules may be considered a violation of federal law. Persons cultivating, manufacturing, collecting samples of, testing, selling, purchasing or otherwise receiving cannabis or cannabis products may be subject to federal sanctions for what may otherwise be considered authorized conduct in the State of New Mexico, and compliance with the rule does not exempt licensees, their employees or customers from possible federal prosecution. The division is not responsible or liable for the actions of licensed cannabis establishments under the rule.

[16.8.1.9 NMAC - N, 08/24/2021]

#### **16.8.1.10 LABOR PEACE AGREEMENT:**

Cannabis establishment licensees, excluding cannabis producer microbusiness and integrated cannabis microbusiness, are encouraged to maintain a labor peace agreement with a bona-fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees. For purposes of this section, a labor peace agreement between a cannabis establishment and a bona fide labor organization includes protecting the state's interests by, at a minimum, prohibiting the labor organization from engaging in picketing, work stoppages, or boycotts against the cannabis establishment. An applicant, whether for an initial license or renewal of a license, must submit an attestation confirming whether or not the applicant has entered into a labor peace agreement with a bona fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees.

[16.8.12.10 NMAC – Rp, 16.8.1.10 NMAC, 07/12/2022]

#### **16.8.1.11 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.12.11 NMAC - N, 08/24/2021; Rn, 16.8.1.10, 07/12/2022]

## **PART 2 LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS**

#### **16.8.2.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.2.1 NMAC - N, 08/24/2021]

#### **16.8.2.2 SCOPE:**

This rule applies to all licensees and applicant for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

[16.8.2.2 NMAC - N, 08/24/2021]

#### **16.8.2.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.2.3 NMAC - N, 08/24/2021]

**16.8.2.4 DURATION:**

Permanent.

[16.8.2.4 NMAC - N, 08/24/2021]

**16.8.2.5 EFFECTIVE DATE:**

August 24, 2021, unless a later date is cited at the end of a section.

[16.8.2.5 NMAC - N, 08/24/2021]

**16.8.2.6 OBJECTIVE:**

The objective of Part 2 is to ensure the safe production, testing, sale, and consumption of commercial and medical cannabis. Part 2 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

[16.8.2.6 NMAC - N, 08/24/2021]

**16.8.2.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set for in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.

[16.8.2.7 NMAC - N, 08/24/2021]

**16.8.2.8 GENERAL OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS:**

**A. State and local laws:** Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.

**B. Licensure on federally recognized Indian Nation, Tribe or Pueblo:** The division shall not approve an application for licensure to operate within the exterior boundaries of a federally recognized Indian Nation, Tribe or Pueblo located wholly or partially in the state, unless the tribal government and the department have entered an

intergovernmental agreement to coordinate the cross-jurisdictional administration of the laws of New Mexico and the laws of a tribal government relating to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

**C. Age requirements:** All applicants for licensure, including controlling persons of applicants, must be at least 21 years of age. All employees of a commercial cannabis establishment must be at least 21 years of age.

**D. Consumption prohibited:** Licensees shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.

**E. Illegal sale or distribution:** Licensees shall not knowingly and intentionally sell, deliver, or transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.

**F. Sales of alcoholic beverages prohibited:** Licensees are allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, Section 76-24-3 et seq., NMSA 1978, except for sales of alcoholic beverages.

**G. No guarantee of licensure:** An applicant may not exercise any of the privileges of licensure until the division approves the license application and issues a license. The submission of an application is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the division for the licensing process shall be accurate and truthful. The division may initiate action to deny licensure, or other administrative action against an applicant or licensee, pursuant to the Uniform Licensing Act.

**H. Computation of time:** The word "days" as used in this rule means calendar days unless otherwise noted.

**I. Display of license:** A division license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

**J. Inventory and sales equipment:** The division shall require licensees to utilize division approved track and trace equipment, software, and services.

**K. Limitation of licensed premises:** Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

**L. Multiple licensee premises:** Multiple licensees may, upon determination by the division, occupy a single licensed premises, provided each is individually licensed by the division.

**M. Reporting of theft or security incident to division:** Licensees shall submit to the division written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensee's premises, no later than 24 hours after the licensee first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide a copy of the police report, video footage and any other supporting evidence requested by the division. The premises must be secured prior to continuing operations, including the replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

**N. Non-transferable or assignable license:** A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license, the license shall be void and returned to the division when any one of the following situations occurs:

- (1) location of the licensed premises changes;
- (2) the discontinuance of operation at a licensed premises; or
- (3) suspension or revocation of the license by the division.

**O. Online application:** Online application: All applications for initial licensure, amended licensure, additional premises, and renewal must be made available on the division website. If applicable, applicants shall first register for a user account.

**P. Complete application and fees required:** Applicants must submit a completed application to the division before it will be accepted by the division as complete and considered for approval or denial. License and additional premises application or renewal fees must be paid at the time of application submission. Annual plant fees must be paid upon the division's approval of the initial application or renewal application and approval of the number of cannabis plants that a licensee may produce.

**Q. Process for incomplete application:** In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. All licensing or renewal fees are non-refundable and must be paid for each new application.

**R. Request for clarifying information:** Upon request of the division, an applicant shall provide additional information required to process and fully review the application.

If the requested information is not received by the division within 90 days from the date the application was deemed to be complete, the division shall initiate action to deny licensure pursuant to the Uniform Licensing Act.

**S. Physical and email address:** Applicants and licensees must provide a physical mailing address and an email address. General correspondence from the division will be sent to the applicant or licensee's email address of record. Legal notice and determinations regarding an application, renewal or an administrative action, including an action taken by the division to deny, suspend, or revoke a license or impose a sanction and civil monetary penalty, shall be sent to the last mailing address and to the last email address furnished to the division. Licensees must inform the division in writing of any change to its physical mailing address or email address within 10 days of the change. If applicable, such changes may be submitted via the online licensing portal. An applicant or licensee's failure to notify the division of a change in physical or email address does not relieve the applicant or licensee from the obligation of responding to a division communication.

**T. Electronic signature:** The division will accept an electronic signature that complies with the Uniform Electronic Transactions Act, Section 14-16-1 et seq., NMSA 1978, or the Revised Uniform Law on Notarial Acts, or rules promulgated pursuant thereto, on any documents required to be submitted to the division and that are submitted electronically.

**U. Withdrawal of application:** An applicant may withdraw an application at any time prior to the division's issuance of a license or denial of a license. Requests to withdraw an application must be submitted to the division in writing, dated, and signed by the applicant. Withdrawal of an application shall not, unless the division has consented in writing to such withdrawal, deprive the division of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground. The division shall not refund application fees for a withdrawn application. An applicant may reapply at any time following the withdrawal of an application and shall be required to submit a new application and fee.

**V. Closure of a licensed cannabis establishment:** A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the

donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

**W. Persons licensed pursuant to the medical cannabis program:** In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the division notifying the licensee that a renewal application is available. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

**X. Application for additional licensed premises:** Licensees must apply for the specific cannabis establishment license type intended for each additional licensed premises as defined in the Cannabis Regulation Act.

**Y. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:**

(1) Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

- (a) production of cannabis;
- (b) manufacturing of cannabis products;
- (c) retail establishment; or
- (d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.

[16.8.2.8 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022; A, 5/7/2024]

### **16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:**

**A. Initial licensure:** Applicants for initial licensure shall submit to a criminal history screening. For purposes of this rule, a criminal history screening shall be required for:

- (1) each partner of a limited partnership;
- (2) each member of a limited liability company;
- (3) each director, officer, or trustee of a corporation or trust; and
- (4) any controlling person of the applicant.

**B. Authorized change:** If there is a change in membership of any of the above listed person(s), an amended application and a criminal history screening shall be submitted, and each new member must be approved by the division prior to a person assuming any duties or responsibilities for a licensee.

### **C. Criminal history screening procedure for applicants and the division:**

(1) an applicant shall submit a background screening request, including an authorization for release of information, to the New Mexico department of public safety for a current New Mexico state criminal history report;

(2) the New Mexico department of public safety will review state records;

(3) the results of the screening will be made available to the division for review;

(4) the applicant shall submit a signed and sworn affidavit, witnessed and notarized by a notary public with a valid commission, affirming that the applicant has or has not been convicted of the following offenses:

(a) a felony conviction involving fraud, deceit, or embezzlement;

(b) a felony conviction for hiring, employing, or otherwise using a person younger than 18 years of age to:

- (i) prepare for sale, transport or carry a controlled substance; or
- (ii) sell, give away or offer to sell a controlled substance to any person;

or

(c) a felony conviction for the possession, use, manufacture, distribution, or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance, which no longer includes cannabis.

**D. Fees:** All applicable fees associated with the New Mexico department of public safety state criminal history background checks shall be paid by the applicant or licensee.

**E. Duty to report potentially disqualifying event:** Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in Subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any offense specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person's conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing Act.

[16.8.2.9 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022]

#### **16.8.2.10 SECURITY AND LIMITED-ACCESS AREA:**

All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars, aircraft, or other optical aids. For purposes of this rule, cannabis or cannabis products are not visible if it cannot be reasonably identified. Licensees shall comply with the security requirements set out in this rule to ensure that licensed premises and limited-access areas, including a vault, are secure.

**A. Security alarm system:** Licensees shall install and maintain at each premises an operational security alarm system. The security alarm system must be continuously monitored, whether electronically, by a monitoring company, or other means determined to be adequate by the division, and provide an alert to designated employees of the licensee and, if necessary, law enforcement within 5 minutes after a notification of an alarm or a security alarm system failure, either by telephone, email, or text message. Monitored sensors are required on all perimeter entry points and perimeter windows, if applicable. The system must include an audible alarm, which must be capable of being

disarmed remotely by the designated employee or the security company. Licensees shall maintain, and make available to the division upon request, a description of the location and operation of the security system, including the location of the central control, a schematic of the security zones, and the name of the security alarm company and monitoring company, if applicable.

**B. Security alarm system maintenance and failure:** Licensees shall conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security alarm system. In the event of a security alarm system failure due to a loss of electrical power or mechanical malfunction that is expected to exceed an eight-hour period, the licensee shall immediately notify the division within 48 hours following the discovery of the failure, and provide alternative security that may include closure of the premises. All security system equipment shall be maintained in a secure location so as to prevent theft, loss, destruction and alterations.

**C. Inspection of security alarm system records:** Licensees shall maintain documentation for a period of at least 12 months of all maintenance inspections, servicing, alterations, and upgrades performed on the security alarm system. All documentation must be available during a division inspection.

**D. Digital video surveillance:** Licensees shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:

- (1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;
- (2) each camera shall be permanently mounted and in a fixed location;
- (3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required under subsection E of this section, and shall provide a clear and certain identification of any person and activities in those areas.

**E. Areas of digital video surveillance:** Areas that shall be recorded on the digital video surveillance system include the following:

- (1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;
- (2) limited-access areas;
- (3) areas storing a digital video surveillance-system storage device;

- (4) entrances and exits to the licensed premises; and
- (5) all point of sale (POS) locations to capture sale transactions.

**F. Digital video surveillance recording:** Licensees shall comply with the following digital video surveillance recording requirements:

- (1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);
- (2) the physical media or storage device on which digital video surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft;
- (3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in Subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;
- (4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;
- (5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;
- (6) recorded images shall clearly and accurately display the time and date of the recording; and
- (7) time shall be measured in accordance with the United States national institute standards and technology standards.

**G. Failure notification:** A digital video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the digital video surveillance system or digital video surveillance-system storage device. A digital video surveillance system failure shall be reported to the division immediately and operations shall cease as soon as safely possible until the system is again operational.

**H. Multiple licensees premises:** If multiple applicants or licensees seek to operate, or operate, within the same premises, a single security system and digital video surveillance system covering the entire premises may be used by all of the licensees under the following conditions:

- (1) each applicant or licensee shall include on their premises diagram where the security alarm system and the digital video surveillance cameras are located and where digital video surveillance recordings are stored;

(2) each applicant or licensee shall include in their application a certification that all licensees shall be individually responsible for the operation, maintenance, and record keeping requirements of the security alarm system, and that all licensees shall have access to live monitoring of the digital video surveillance system;

(3) each applicant or licensee shall include in their application an explanation of how the security alarm system and digital video surveillance system will be shared with the division and authorities, as well as who is responsible for maintenance of the security alarm system and the digital video surveillance system, who is authorized to monitor the video footage and who is responsible for storing any digital video surveillance recordings;

(4) each applicant or licensee shall have immediate access to the digital video surveillance recordings to produce them pursuant to subsection F of this section; and

(5) each applicant or licensee shall be held responsible for any violations of the security system or digital video surveillance requirements.

**I. Locks:** Licensees shall ensure that limited-access areas can be securely locked using commercial-grade locks that meet applicable building and fire codes. Licensees shall also use commercial-grade locks that meet applicable building and fire codes on all points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored.

**J. Limited-access areas:** A limited access area shall only be accessible to a licensee and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited-access area, division staff or authorized designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity, or volunteers specifically permitted by the licensed cannabis establishment. Licensees shall ensure:

(1) only authorized employees of the licensee and other authorized individuals have access to the limited-access areas of the licensed premises;

(2) a daily record log, which may be a sign-in and sign-out sheet at the entrance of a premises, of all authorized employees and authorized individuals that are not employees of the licensee who enter the limited-access areas is maintained;

(3) limited-access record logs are kept for a minimum of 90 days, or 12 months if a theft or security incident occurs, and must be made available to the division within 48 hours upon request;

(4) entrances to all limited-access areas have a solid door, or if appropriate, a gate adequate to block access, and a lock meeting the requirements set forth in

subsection I of this section, and unless prohibited by building or fire codes, the entrance shall remain locked when not in use during regular business hours;

(5) all limited-access areas are identified by the posting of a sign that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height;

(6) authorized employees of the licensee visibly display an employee identification badge at all times while present within a limited-access area;

(7) other authorized individuals obtain a visitor identification badge prior to entering a limited-access area, the visitor identification badge shall be visibly displayed at all times while the visitor is in any limited access area, and all visitor identification badges shall be returned to the cannabis establishment on exit.

**K. Licensee identification badge requirement:** Licensees shall issue a laminated or plastic-coated identification badge to all agents, officers, or other persons acting for or employed by a licensee, which shall, at a minimum, include the licensee's "doing business as" name and license number, the individual's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

**L. Lighting:** Any perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.

**M. Doors and windows:** All external entrances to indoor facilities on the licensed premises must be able to be locked and all perimeter doors and windows of indoor facilities must be in good condition and lockable.

**N. Fencing requirements for outdoor areas or greenhouses:** Any licensed premises that is an outdoor area or greenhouse shall also implement security measures to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:

(1) a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and

(2) a cover that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

**O. Security guards:** Security guards are permitted but not required. Contract security guards must be licensed under the Private Investigations Act, Section 61-27B-1 et seq., NMSA 1978. Security guards must not consume cannabis or cannabis products or be intoxicated while performing any duties for a licensee. Security guards must comply with all laws related to firearms and other weapons.

**P. Vault:** Licensees may store all non-growing cannabis, cannabis products, or cash not being actively handled for purposes of cultivating, packaging, processing, transporting, or selling within an adequately sized vault.

[16.8.2.10 NMAC - N, 08/24/2021; A, 03/22/2022]

#### **16.8.2.11 RECALL OF CANNABIS:**

**A. Written procedures:** Licensees shall establish and implement written procedures for recalling cannabis and cannabis products that have been sold or otherwise distributed to the public or other cannabis establishments. Recall procedures shall be made available for the division's inspection upon request.

**B. Recall procedures:** The recall procedures shall identify:

- (1) the circumstances in which a recall will be conducted, including the circumstances involving the mislabeling or contamination of products;
- (2) personnel responsible for implementing the recall procedures;
- (3) procedures for notification of all customers who have, or reasonably could have, obtained an affected product, including communication and outreach via broadcast media, as appropriate;
- (4) procedures for notification of any other cannabis establishment that supplied or received the recalled product;
- (5) instructions to be provided to customers or other cannabis establishments for the return or destruction of the recalled product; and
- (6) procedures for the collection and wastage (as may be required by the division) of any recalled product.

**C. Destruction of recalled product:** All recalled products that are intended to be destroyed shall be wasted in accordance with the wastage requirements of the division.

**D. Division notification:** The licensee shall notify the division of any recall within 24 hours of initiating the recall.

**E. Division recall order:** The division may order the immediate recall of cannabis or cannabis products if it deems such action necessary to protect public health and safety.

[16.8.2.11 NMAC - N, 08/24/2021]

#### **16.8.2.12 CHAIN OF CUSTODY:**

**A.** Licensees shall adopt, maintain, and enforce chain of custody procedures and documentation requirements to ensure appropriate tracking and tracing of cannabis and cannabis products. Licensees shall use a paper-based or electronic chain of custody form that documents the possession of cannabis or cannabis products, and includes the following:

- (1) the originating location of the cannabis or cannabis products;
- (2) the time and date of transfer of the cannabis or cannabis products;
- (3) the size, number of boxes, and number of pieces of cannabis or cannabis products;
- (4) the internal batch or lot numbers, and if different, the track and trace batch or lot numbers;
- (5) a dated signature of the person receiving the cannabis or cannabis products; and
- (6) for cannabis samples, in addition to the above, the types of containers, mode of collection, the authorized individual who collected the sample, the date and time of collection, preservation, and requested analyses of the sample.

**B.** Licensees shall also adopt, maintain, and enforce security requirements to ensure security and the safety of cannabis and cannabis products and transport personnel.

[16.8.2.12 NMAC - N, 08/24/2021]

#### **16.8.2.13 REQUIREMENTS FOR THE TRANSPORTATION OF CANNABIS:**

**A. General requirements:** The following requirements apply when disposing of wasted cannabis or cannabis plants or transporting cannabis or cannabis products between licensees or licensed premises:

- (1) transportation of cannabis or cannabis products shall only be conducted by persons holding a cannabis establishment license under the Cannabis Regulation Act or designated employees, or contractors, of a licensee;

**(2)** prior to transporting any cannabis or cannabis products to another licensee, the licensee shall have a completed transfer or sales invoice or receipt and a chain of custody form, the licensee shall only transport cannabis or cannabis products listed on the invoice or receipt and chain of custody form, and the invoice or receipt and chain of custody form may not be altered or changed once transport begins;

**(3)** transportation of cannabis or cannabis products by means of a human powered vehicle or unmanned vehicle is prohibited;

**(4)** cannabis or cannabis products shall only be transported inside of a motor vehicle or trailer in reasonable operating condition and shall not be visible or identifiable from outside of the vehicle or trailer;

**(5)** cannabis or cannabis products shall be locked in a box, container, or cage that is secured within the inside of the vehicle or trailer, including when such a box, container, or cage is located inside of the trunk;

**(6)** vehicles and trailers shall be locked and secured while left unattended;

**(7)** licensees shall not leave a vehicle or trailer containing cannabis or cannabis products unattended in a residential area;

**(8)** vehicles shall have a vehicle alarm system ;

**(9)** packages or containers holding cannabis or cannabis products shall not be tampered with, or opened, during transport;

**(10)** when engaged in the transportation of cannabis or cannabis products, a licensee shall only travel between licensees shipping or receiving cannabis or cannabis products and its own licensed premises;

**(11)** licensees may transport multiple shipments of cannabis or cannabis products at one time in accordance with applicable laws;

**(12)** licensees shall not deviate from the travel requirements described in this section, except for necessary rest, fuel, or vehicle repair stops;

**(13)** under no circumstances may alcoholic beverages be transported with cannabis or cannabis products;

**(14)** vehicles and trailers transporting cannabis or cannabis products are subject to inspection by the division at any licensed premises or during transport at any time;

**(15)** notwithstanding subsection A of this section, cannabis or cannabis products may be transported by foot, hand truck, forklift, or other similar means if it is

not operationally feasible to transport cannabis products inside of a vehicle or trailer because the licensed premises that the cannabis products will be transported from and the licensed premises that will be receiving the cannabis products are located within the same building or on the same premises;

(16) storage and transportation of cannabis and cannabis products shall be under conditions that will maintain and protect the cannabis or cannabis products against physical, chemical, and microbial contamination as well as against deterioration of the cannabis or cannabis products and the container;

(17) the vehicle must be properly registered with the New Mexico motor vehicle division; and

(18) the driver of the vehicle must be prepared to show proper identification, including a licensee employee badge, driver's license, vehicle registration and proof of insurance, and the appropriate shipping manifest and chain of custody form to law enforcement and the division when requested.

**B. Shipping manifest:** Prior to transporting cannabis or cannabis products, a licensee shall generate a shipping manifest through the track and trace system for the following activities:

- (1) testing and sampling of cannabis or cannabis products;
- (2) sale of cannabis or cannabis products to a licensee;
- (3) destruction, wastage, or disposal of cannabis or cannabis products; and
- (4) any other activity, as required by the division or any other government authority.

**C. Transmittal of manifest:** Licensees shall transmit the shipping manifest to the division and (if applicable) the licensee that will receive the cannabis or cannabis products via the online track and trace portal prior to transporting the cannabis or cannabis products.

**D. Verification of manifest:** Licensees shall ensure and verify that the cannabis or cannabis products being taken into possession for transport at the originating licensed premises are described and accurately reflected in the shipping manifest. For purposes of this section, the licensee may verify that the cannabis or cannabis products are accurately reflected in the shipping manifest by confirming that the number of boxes of cannabis or cannabis products, type of cannabis or cannabis products, or the units of cannabis or cannabis products matches the label on the boxes containing the cannabis or cannabis products.

**E. Rejection of shipment:** Licensees shall not take into possession or transport:

(1) Any cannabis or cannabis products that are not on the shipping manifest;  
or

(2) Any cannabis or cannabis products that are less than or greater than the amount reflected on the shipping manifest, with the exception of marginal weight difference due to curing during transport.

**F. Responsibility for discrepancy:** The licensee transporting the cannabis or cannabis product is responsible for any discrepancies between the shipping manifest and the cannabis or cannabis products in its possession during transport, and subject to any enforcement or disciplinary action related to such discrepancy.

**G. Void or change prohibited:** Licensees shall not void or change a shipping manifest after departing from the originating licensed premises.

**H. Documentation of all transport:** A shipping manifest and chain of custody form shall accompany every transport of cannabis products.

**I. Alternative notice of shipment:** Notwithstanding any provision of this section to the contrary, if a transporting licensee cannot obtain access to the track and trace system, the licensee shall complete the shipping manifest outside of the track and trace system and promptly transmit it to the division and the licensee receiving the shipment by electronic mail. If the transporting licensee has access to the track and trace system and the licensee receiving the shipment does not have access to the track and trace system, the transporting licensee shall complete the shipping manifest in the track and trace system, transmit it to the division, and send a copy to the licensee receiving the shipment by electronic mail.

[16.8.2.13 NMAC - N, 08/24/2021]

#### **16.8.2.14 LICENSURE PERIOD, EXPIRATION AND RENEWAL:**

**A. License period:** The licensure period of a license shall be from the date of approval of the license application for a period of 12 months.

**B. Automatic expiration of license:** Unless otherwise renewed, suspended, or revoked, a license shall expire at 11:59 p.m. on the day indicated on the license as the expiration date or other written notification by the division.

**C. License renewal:** To timely renew a license, a completed license renewal application and annual license fee set forth in 16.8.11 NMAC shall be received by the division from the licensee no earlier than 60 calendar days before the expiration of the license and no later than 30 days before the expiration of the license through the division's electronic licensing portal. Failure to receive a notice for license renewal from the division does not relieve a licensee of the obligation to renew all licenses as required. In the event a license renewal application is not submitted and approved prior

to the license expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any medical or commercial cannabis or cannabis products until the license is renewed. Upon the nonrenewal of a license, the division may initiate disciplinary action pursuant to the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA 1978.

[16.8.2.14 NMAC - N, 08/24/2021]

#### **16.8.2.15 WASTAGE OF CANNABIS OR CANNABIS PRODUCTS; PERMITTED METHODS:**

Licensees that waste cannabis or cannabis products shall do so by rendering the cannabis or cannabis products unusable and unrecognizable prior to removal from licensed premises. The wastage of cannabis or cannabis products shall be documented, tracked by batch, and recorded in an electronic track and trace system specified by the division. Wastage of cannabis or cannabis products shall occur only within the licensee's ordinary business hours. Licensees shall dispose of wasted cannabis or cannabis products and shall not attempt to incorporate wasted cannabis or cannabis plants into any product intended for human consumption.

**A. Permitted methods of wastage:** Wastage of cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf and yard waste, so that the resulting mixture is at least fifty percent non-cannabis material by volume;

**B. Disposal of wasted cannabis:** Disposal of wasted cannabis or cannabis plants shall be conducted in accordance with all applicable waste disposal laws, including hazardous waste disposal laws.

**C. Holding time:** Cannabis or cannabis products that a licensee intends to waste shall be held in a secured designated holding area for a minimum of 72-hours prior to being wasted. Licensees shall affix to each batch that is held for wasting documents that record information concerning the batch, including batch number or code, plant number, and weight. The batch to be wasted shall not be handled, moved, or wasted during the 72-hour period, unless by specific instruction of the division. Cannabis or cannabis products that are intended to be wasted may be subject to inspection by the division.

**D. Documentation of wastage; retention:** Licensees shall record the wastage of cannabis or cannabis products, including batch number, weight, plant number, the name of the receiving solid waste facility, dates of wastage and disposal, and any test results associated with a wasted batch, using an electronic system specified by the division, and shall deduct any wasted usable cannabis or cannabis plants from the licensee's inventory. The electronic record shall be retained for no less than two years following the disposal. Licensees shall additionally document the wastage of any cannabis using a video recording and shall retain the video recording of the destruction

for no less than 120 days. Licensees shall make the video recording of the destruction available for the division's inspection and copying upon the division's request.

**E. Notice to division:** Licensees shall notify the division of the wastage of cannabis within five business days of the wastage.

[16.8.2.15 NMAC - N, 08/24/2021]

#### **16.8.2.16 QUALITY ASSURANCE TESTING; COMPLAINT PROCEDURE:**

**A. Quality assurance testing by the division:** The division or its representative may conduct quality assurance sampling and testing of cannabis or cannabis products, and may require a licensee to provide samples of cannabis or cannabis products for this purpose. The division may additionally adopt and enforce a randomized testing schedule for the sampling and testing of cannabis or cannabis products. The division may prohibit the sale or transfer of cannabis or cannabis products that are determined by the division to contain prohibited levels of contaminants, or that is found to have been improperly tested, or may require remediation of such cannabis that is consistent with the remediation standards of the division.

**B. Complaints:** If the division receives a verified complaint regarding the presence of mold, bacteria, or another contaminant in cannabis or cannabis products, or if the division has reason to believe that the presence of mold, bacteria, or another contaminant may jeopardize public health and safety, the division or its representative may conduct an inspection and may require a licensee to provide samples of cannabis or cannabis products for testing by the division. Licensees shall allow the division or its representative access to a facility or to collect cannabis or cannabis product samples. To be considered verified, a complaint must be made on a form provided by the division that at a minimum identifies:

- (1) date the complaint is filed;
- (2) location of the cannabis or cannabis product;
- (3) any identifiable features of the cannabis or cannabis product at issue, including the type and amount;
- (4) the nature of the complaint;
- (5) name and contact information of the complainant; and
- (6) complaint must be emailed to the licensee within 5 business days of the division receiving the complaint.

**C. Division sampling and testing requirements:** Division employees may possess cannabis samples for the sole purposes of establishing compliance with the

Cannabis Regulation Act or division rules. The division shall comply with the following testing requirements:

- (1) the division shall maintain chain of custody documentation for any cannabis or cannabis product samples taken;
- (2) a written receipt shall be given to the licensee for all testing samples;
- (3) all testing samples shall be placed into a sealed container and clearly labeled;
- (4) all testing samples shall be tested by the division or a designated testing facility; and
- (5) the quantity of cannabis or cannabis products that is gathered by the division from a licensee for testing purposes shall not exceed the applicable sample sizes required by division rules.

**D. Cost of testing:** The licensee shall bear the cost of any testing required by the division.

[16.8.2.16 NMAC - N, 08/24/2021]

#### **16.8.2.17 FIRE SAFETY LAWS:**

Licensees shall ensure all licensed premises are compliant with Article 52 of the New Mexico Statutes Annotated and any associated rules, including rules governing: posting of address, exit signs, emergency lighting, egress paths, evaluation plan, electrical wiring and lighting, exits and exit access, doors, egress hardware, aisle width, chemical storage, fire extinguishers, fire alarm, sprinkler system and fire suppression system, firewalls, combustible waste and housekeeping, storage, access from the exterior, and weeds, grass, vines or other growth capable of igniting.

[16.8.2.17 NMAC - N, 08/24/2021]

#### **16.8.2.18 CONSTRUCTION OR ALTERATION OF CANNABIS ESTABLISHMENT BUILDINGS:**

If applicable, licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978 and the LPG and CNG Act, Section 70-5-1 *et seq.*, NMSA 1978, including associated rules, as well as applicable codes, standards, zoning laws, licensing laws, and fire codes. If applicable, licensees shall further ensure that each structure, including manufactured homes used pursuant to Section 60-14-4(S), NMSA 1978, obtains a Certificate of Occupancy pursuant to 14.5.3.13 NMAC prior to occupancy and use of the structure.

[16.8.2.18 NMAC - N, 08/24/2021]

### **16.8.2.19 OCCUPATIONAL SAFETY:**

Licensees shall comply with the Occupational Health and Safety Act, Section 50-9-1 *et seq.*, NMSA 1978 and any associated rules.

[16.8.2.19 NMAC - N, 08/24/2021]

### **16.8.2.20 MONITORING OF LICENSEE:**

**A. Monitoring:** The division may perform on-site assessments of an applicant or licensee during normal business hours to determine compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

**B. Record access and review:** The division may review any and all records related to the operations of the licensee and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with division rules or applicable laws. The division shall have access to the financial records of a licensee, including sales records and data from point-of-sale systems, and shall be granted immediate access to inspect or copy those records upon request.

**C. Access to premises:** Licensees shall provide the division timely access to any material and information necessary for determining compliance with division rules or applicable laws. Failure by a licensee to provide the division access to the premises or materials may result in disciplinary action.

**D. Monitoring documents:** Any failure to adhere to division rules or applicable laws documented by the division during monitoring may result in disciplinary action.

**E. Report to law enforcement:** The division shall refer suspected criminal activity or complaints alleging criminal activity that are made against a licensee to appropriate federal, state, or local law enforcement authorities.

**F. Financial records:** Licensees shall maintain detailed sales records in a manner and format approved by the division, inform the division of the location where such records are kept, and promptly update the division if the records are removed.

**G. Audit:** Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensee's audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports.

**H. Producer reports:** A cannabis producer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- (1) actual water and energy use in the preceding 12 months;
- (2) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan;
- (3) progress made toward the licensee's social and economic equity plan; and
- (4) all quality testing reports, to be included as attachments.

**I. Manufacturer reports:** A cannabis manufacturer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- (1) actual water and energy use in the preceding 12 months;
- (2) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan;
- (3) progress made toward the licensee's social and economic equity plan; and
- (4) all quality testing reports, to be included as attachments.

**J. Testing laboratory reports:** A cannabis testing laboratory licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- (1) total number of test failures by product type;
- (2) number of failures by product type;
- (3) total number of calibrations conducted;
- (4) total number of calibrations categorized by test code or analysis type;
- (5) total number of audits conducted by an accredited laboratory auditing service; and
- (6) number of proficiency tests conducted by test code or analysis type.

**K. Retailer reports:** A cannabis retailer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

(1) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; and

(2) progress made toward the licensee's social and economic equity plan.

[16.8.2.20 NMAC - N, 08/24/2021; A, 03/22/2022]

#### **16.8.2.21 CANNABIS PRODUCER LICENSURE; GENERAL PROVISIONS:**

**A. License types:** The division may license two classes of producers:

(1) A cannabis producer; and

(2) A cannabis producer microbusiness.

**B. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division found on the division website.

**C. License required:** Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

**D. Other activities prohibited:** Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

[16.8.2.21 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022]

#### **16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:**

**A.** An initial application or renewal for cannabis producer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's date of birth, if applicable;
- (c) applicant's mailing address;
- (d) applicant's contact telephone number;
- (e) applicant's contact email address;
- (f) applicant's business physical address and mailing address, if different;
- (g) applicant's business legal name, including a DBA name if applicable;
- (h) applicant's business web address, if applicable;
- (i) applicant's business hours of operation;
- (j) name and contact information for each controlling person;
- (k) demographic data pursuant to the Cannabis Regulation Act; and

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

(5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey;  
or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(6) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:

(a) drip irrigation and water collection;

(b) natural lighting and energy efficiency measures;

(c) renewable energy generation; and

(d) estimated water and energy use related to the applicants cultivation plan;

(7) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(8) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(9) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(10) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

(11) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a 12 month period;

(12) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

(13) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

(14) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(15) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

(16) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

(17) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(18) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority,

against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(19) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(20) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(21) certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility used for the cannabis establishment and the method(s) to be used to produce cannabis;

(22) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(23) payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation, including:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

[16.8.2.22 NMAC – N, 08/22/2021; A/E, 12/06/2021; A/E, 1/13/2022; A, 03/22/2022; A, 5/7/2024]

### **16.8.2.23 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS PRODUCER LICENSE:**

**A. Application:** A licensed producer shall submit to the division an application form for an amended license, pay the required fee, and must obtain approval from the division, prior to implementing any of the following:

- (1) change of licensee's legal or business name;
- (2) change in water source, or licensee's water and energy conservation plan, including, the reuse of water and disposal of effluent;
- (3) increase in plant count beyond which licensee is currently licensed to produce;
- (4) decrease in plant count which licensee is currently licensed to produce;
- (5) addition or elimination of a controlling person; or
- (6) material or substantial modification of the premises.

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, or the purchase of additional property for the use of the cannabis establishment;
- (2) an addition or removal of licensed activities taking place on a single licensed premise; or

(3) a change in the licensee's access to the water source submitted with an application for initial, amended, or renewal licensure or a ten percent, or more, increase in the licensee's water usage.

[16.8.2.23 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 5/7/2024]

#### **16.8.2.24 PRODUCER PREMISES DIAGRAM:**

**A.** An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

**D.** The diagram shall be to scale.

**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.24 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

#### **16.8.2.25 PHYSICAL MODIFICATION OF PRODUCER PREMISES**

**A.** Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises.

**B.** Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.

**C.** Material or substantial changes, alterations, or modifications requiring approval include:

(1) when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;

(2) when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;

(3) re-roofing and application of roof coatings that requires a building permit and inspections; or

(4) changing the occupancy activities conducted in or the use of an area that requires a new certificate of occupancy or fire inspection.

**D.** Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:

(1) a copy of the applicable building permit; and

(2) a new certificate of occupancy, if applicable.

**E.** Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;

**F.** Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and

**G.** The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request.

[16.8.2.25 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

#### **16.8.2.26 CANNABIS PRODUCER POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure requirements:** A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices;

(d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory, consistent with 16.8.2.12 NMAC and 16.8.2.13 NMAC;

(e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

(f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion, consistent with Subsection L of 16.8.7.8 NMAC;

(g) protocols for testing sample collection that ensures accurate test results, establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices; and

(h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

- (b) responding to an emergency, including robbery or a serious accident;
  - (c) alcohol and drug-free workplace policies and procedures;
  - (d) safety and security procedures;
  - (e) occupational safety;
  - (f) crime prevention techniques; and
  - (g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and
- (3) documentation prepared for each employee and statements signed by employees indicating the topics discussed, names and titles of presenters, and the date, time, and place the employee received said receipt of policies and procedures.

**B. Training program:**

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

- (a) employee health and safety training materials;
- (b) health and safety hazards;
- (c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;
- (d) training requirements for the proper use of health and safety measures and controls;
- (e) emergency procedures;
- (f) security procedures; and
- (g) record keeping requirements.

(2) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

### **C. Training documentation:**

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record, which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) documentation of training topics and dates of training completion for all personnel;

(c) dates of refresher training completion for all personnel;

(d) the signature of verifying receipt and understanding of each training or refresher training completed.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section.

**D. Retention of training documentation:** Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.26 NMAC – N, 08/22/2021; A/E, 12/06/2021; A/E, 03/10/2022]

### **16.8.2.27 MINIMUM REQUIREMENTS FOR THE PRODUCTION OF CANNABIS:**

**A. General requirements:** Licensees shall ensure the following:

(1) all production activities are done on premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Acts;

(2) the licensee's right to use the quantity of water sufficient to meet the production facility's needs remains in good standing;

(3) plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility, including sufficient quantities of water to properly convey sewage and liquid disposable waste from the facility; and

(4) all weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture.

**B. Cultivation plan:** Licensees shall create and maintain a cultivation plan, which shall include all of the following:

- (1) a detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet;
- (2) square foot measurement of mature cannabis plant cultivation area(s), including aggregate square footage if the mature cannabis plant cultivation areas are noncontiguous;
- (3) area(s) outside of the mature cannabis plant cultivation areas where only immature plants shall be maintained, if applicable;
- (4) designated pesticide and other agricultural chemical storage area(s);
- (5) designated processing area(s) if the licensee will process on site;
- (6) designated packaging area(s) if the licensee will package products on site;
- (7) designated composting area(s) if the licensee will compost plant or cannabis waste on site;
- (8) designated secured area(s) for cannabis waste if different than composting area(s);
- (9) designated area(s) for harvested cannabis storage;
- (10) designated seed production area(s) which may contain mature plants for nursery purposes only.

**C. Lighting:** For indoor and mixed-light cultivation, a licensee shall create and maintain a lighting diagram, which shall include the following:

- (1) location of all lights in the cannabis plant cultivation area(s); and
- (2) maximum wattage, or wattage equivalent, of each light.

**D. Pest management:** Licensees shall create and maintain a pest management plan, which shall include product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth. Licensees are encouraged to create and implement integrated pest management protocols, including chemical, biological, and cultural methods to control or prevent the introduction of pests on the cultivation site.

**E. Cannabis waste:** Licensees shall create and maintain cannabis waste procedures meeting the requirements set forth in 16.8.2.22 NMAC.

**F. Safety and health requirements:** Licensees shall ensure the following:

**(1)** all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis and meet sanitation and safety standards required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and any other state or federal laws;

**(2)** production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

**(3)** any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

**(4)** hand-washing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

**(5)** all persons involved in preparing or handling cannabis conform to hygienic practices while on duty, including:

**(a)** maintaining adequate personal cleanliness;

**(b)** wearing gloves while handling processed cannabis or unpackaged but processed cannabis products;

**(c)** possessing a valid food handler card issued by an ANSI/ASTM e2659-09 accredited Food Handler Training Certificate Program approved by the New Mexico environment department if handling processed cannabis or unpackaged but processed cannabis products; and

**(d)** washing hands thoroughly in an adequate hand-washing facility before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves, if the person is handling processed cannabis or unpackaged but processed cannabis products;

**(6)** operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;

(7) water damage is properly and timely treated to protect health and safety of employees and the public, and that fiberglass and other insulation material is not exposed;

(8) adequate safety-type lighting in all areas where cannabis is produced or stored, if applicable, and where equipment is cleaned;

(9) rubbish is disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;

(10) premises, fixtures, and physical facilities where cannabis or cannabis products are produced are maintained to ensure the health and safety of employee and the public;

(11) contact surfaces, including utensils and equipment used for preparation of cannabis or cannabis products, are cleaned and sanitized as frequently as necessary to protect against contamination;

(12) only environmental protection agency (EPA) registered sanitizing agents are used in production operations and that they are used in accordance with labeled instructions;

(13) toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of cannabis or cannabis products and that otherwise satisfies the requirements of this rule;

(14) storage and transportation of cannabis and cannabis products is accomplished under conditions that will maintain security and protect the cannabis or cannabis products against physical, chemical, and microbial contamination, as well as against deterioration of the cannabis or cannabis products and the container; and

(15) that there is sufficient space for placement of equipment and storage of material as is necessary for the maintenance of sanitary operations for production of cannabis.

[16.8.2.27 NMAC - N, 08/24/2021; A/E, 12/2/2021]

#### **16.8.2.28 USE OF PESTICIDES BY LICENSED PRODUCERS:**

The use of any pesticide by a licensed producer in the growth of cannabis shall be in accordance with the New Mexico Pesticide Control Act, Section 76-4-1 et seq., NMSA 1978, and any associated rules.

[16.8.2.28 NMAC - N, 08/24/2021]

## **16.8.2.29 CANNABIS MANUFACTURER LICENSURE; GENERAL PROVISIONS:**

**A. License Types:** The division may license four classes of manufacture:

- (1) Class I: A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;
- (2) Class II: A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;
- (3) Class III: A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and
- (4) Class IV: A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO<sub>2</sub>.

**B. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division found on the division website.

**C. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA.

**D. Other activities prohibited:** Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis manufacturer establishment licensee may produce cannabis, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

**E. Prohibited additives:** A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.

[16.8.2.29 NMAC – N/E, 09/08/2021; N, 12/28/2021; A, 03/22/2022]

## **16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:**

**A. An initial application or renewal for cannabis manufacturer licensure shall include the following:**

(1) Contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's mailing address;
- (c) applicant's contact telephone number;
- (d) applicant's contact email address;
- (e) applicant's business physical address and mailing address, if different;
- (f) applicant's business legal name, including a DBA name if applicable;
- (g) applicant's business web address, if applicable;
- (h) applicant's business hours of operation;
- (i) name and contact information for each controlling person;
- (j) demographic data pursuant to the Cannabis Regulation Act;
- (k) license type sought (Class I, Class II, Class III, or Class IV); and

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

(5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule;

(6) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(7) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(8) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(9) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

(10) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(11) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

(12) for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;

(13) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(14) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(15) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(16) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(17) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(18) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(19) certification the applicant is not licensed under the Liquor Control Act.

(20) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products

are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(21) an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer;

(22) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(23) certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods;

(24) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(25) payment of any required fees as set forth in 16.8.11 NMAC.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

**C. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to 7, NMSA

1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within 10 days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.30 NMAC – N/E, 09/08/2021; A/E, 12/02/2021; N, 12/28/2021; A/E, 01/13/2022; A, 3/22/2022; A, 5/7/2024]

### **16.8.2.31 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS MANUFACTURER LICENSE:**

**A. Application:** A licensed manufacturer shall submit to the division an application form for an amended license, if applicable, and obtain approval from the division, prior to implementing any of the following:

- (1) change of licensee's legal or business name;
- (2) change or modification in extraction type(s) or equipment;
- (3) material or substantial change in water source;
- (4) addition or elimination of a controlling person; or
- (5) material or substantial modification of the premises.

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, or the purchase of additional property for the use of the cannabis establishment;

(2) an addition or removal of licensed activities taking place on a single licensed premise; or

(3) a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a ten percent, or more, increase in the licensee's water usage.

[16.8.2.31 NMAC – N/E, 09/08/2021; N, 12/28/2021; A, 5/7/2024]

### **16.8.2.32 MANUFACTURER PREMISES DIAGRAM:**

**A.** An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured, and the location of the extraction area. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

**D.** The diagram shall be to scale.

**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.32 NMAC – N/E, 09/08/2021; N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

### **16.8.2.33 CANNABIS MANUFACTURER POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure requirements:** A manufacturer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

**(1)** cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

**(a)** representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

**(b)** recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

**(c)** recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

**(d)** protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

**(e)** protocols for testing sample collection that ensures accurate test results;  
and

**(f)** procedures for destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

**(2)** employee policies and procedures to address the following minimum requirements:

**(a)** adherence to state and federal laws;

**(b)** responding to an emergency, including robbery or a serious accident or incident;

**(c)** alcohol and drug-free workplace policies and procedures;

**(d)** safety and security procedures;

**(e)** occupational health and safety;

**(f)** crime prevention techniques; and

(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

**B. Training program:**

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) employee health and safety training materials;

(b) health and safety hazards;

(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

(d) training requirements for the proper use of health and safety measures and controls;

(e) emergency procedures;

(f) security procedures; and

(g) record keeping requirements.

(2) Prior to independently engaging in any cannabis manufacturing process, including but not limited to extraction:

(a) an overview of the process and standard operating procedure(s);

(b) quality control procedures;

(c) hazard analysis and control procedures as appropriate;

(d) proper and safe usage of equipment or machinery;

(e) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

(f) cleaning and maintenance requirements;

(g) emergency operations, including shutdown; and

(h) any additional information reasonably related to an employee's job duties.

(3) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American national standards institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

**C. Training documentation:**

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record, which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) documentation of training topics and dates of training completion for all personnel;

(c) dates of refresher training completion for all personnel;

(d) the signature of verifying receipt and understanding of each training or refresher training completed.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section.

**D. Retention of training documentation:** Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.33 NMAC – N/E, 09/08/2021; N, 12/28/2021]

**16.8.2.34 MINIMUM STANDARDS FOR THE MANUFACTURE OF CANNABIS PRODUCTS:**

**A. General requirements:** Licensees shall ensure the following:

(1) manufacturing shall be done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;

(2) the licensee's right to use the quantity of water sufficient to meet the manufacturing facility's needs remains in good standing;

(3) weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture; and

(4) licensee shall notify the division of any changes to the days or hours of business operation;

**B. Permissible Extractions:**

(1) Except as provided in Paragraph (2), cannabis extraction shall only be conducted using the following methods:

(a) Mechanical extraction, such as dry screens, sieves, or presses, potable water and ice made from potable water, cryogenic or subzero manufacturing not involving a solvent, or pressure and temperature;

(b) Chemical extraction using a nonvolatile solvent such as a nonhydrocarbon-based or other solvent such as water, vegetable glycerin, vegetable oils, animal fats, or food-grade glycerin, (nonhydrocarbon-based solvents shall be food grade);

(c) Chemical extraction using a division approved closed loop extraction system; or

(d) A method authorized by the division pursuant to Paragraph (2) below.

(2) To request authorization from the division to conduct cannabis extraction using a method other than those specified in Subparagraphs (a) – (c) above, the applicant or licensee shall submit a detailed description of the extraction method, including any documentation that validates the method and any safety procedures to be utilized to mitigate any risk to public or worker health and safety.

(3) Extraction equipment shall be used and operated in accordance with its intended manufacturer use and design.

(4) Current safety data sheets shall be kept on the premises for all chemicals used in the extraction process.

**C. Volatile Solvent Extractions:** Chemical extractions using volatile solvents shall be subject to the following minimum requirements:

(1) hydrocarbon-based solvents shall be at least 99.5 percent purity with a certificate of analysis from the manufacturer to confirm purity;

(2) ethyl alcohol must be food grade, and non-denatured in composition;

(3) solvents shall be free of odorants, bitterants, or other additives and stored, handled, and disposed of in accordance with local, state, and federal regulations,

(4) all extractions shall be performed in a closed loop extraction system, unless approved by the division, as described in Subsection B of 16.8.2.34 NMAC; and

(5) licensees shall not use ignition sources including but not limited to a heat gun or any open flame source next to extraction equipment that utilizes volatile solvents, including in rooms designated solely for extraction or in areas that contain or uses flammable liquids and gasses.

#### **D. Closed-Loop Extraction System Requirements:**

(1) Closed loop systems, other equipment used, the extraction operation, and facilities must be approved for use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) National Fire Protection Association (NFPA) standards;

(b) International Building Code (IBC);

(c) International Fire Code (IFC); or

(d) Other applicable standards including all applicable fire, safety, and building codes related to the processing, handling and storage of the applicable solvent or gas.

(2) All pressure vessels must comply with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978, including associated rules, applicable codes, and standards.

(3) A list of the name(s) of all trained employees must be prominently displayed inside or immediately outside of the extraction area.

(4) A licensee that is currently approved to use CO<sub>2</sub> or a volatile solvent for extraction has 6 months from the effective date of this rule to comply with the applicable requirements. Nothing in this subsection is intended to relieve a licensee of its obligation to comply with any applicable federal, state, or local laws and regulations.

[16.8.2.34 NMAC – N/E, 09/08/2021; N, 12/28/2021]

#### **16.8.2.35 CANNABIS RETAIL LICENSURE; GENERAL PROVISIONS:**

**A. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division found on the division website.

**B. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

[16.8.2.35 NMAC - N, 12/28/2021; A, 03/22/2022]

**16.8.2.36 APPLICATION REQUIREMENTS FOR CANNABIS RETAILER LICENSE:**

**A. An initial application or renewal for cannabis retailer licensure shall include the following:**

(1) Contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's date of birth, if applicable;
- (c) applicant's mailing address;
- (d) applicant's contact telephone number;
- (e) applicant's contact email address;
- (f) applicant's business physical address and mailing address, if different;
- (g) applicant's business legal name, including a DBA name if applicable;
- (h) applicant's business web address, if applicable;
- (i) applicant's business hours of operation;
- (j) name and contact information for each controlling person;
- (k) demographic data pursuant to the Cannabis Regulation Act;
- (l) license type sought; and

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

(5) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(6) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(7) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(8) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

(9) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(10) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(11) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(12) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(14) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(15) certification the applicant is not licensed under the Liquor Control Act;

(16) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(17) certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements;

(18) if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(19) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(20) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(21) payment of any required fees as set forth in 16.8.11 NMAC.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

- (1) contacting the applicant or controlling person by telephone, mail, or electronic mail;
- (2) conducting an on-site visit;
- (3) requiring a face-to-face or virtual meeting and the production of additional documentation; or
- (4) consulting with state or local governments.

[16.8.2.36 NMAC – N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022; A, 5/7/2024]

#### **16.8.2.37 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RETAILER LICENSE:**

**A. Application:** A licensed retailer shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

- (1) change of licensee's legal or business name;
- (2) addition or elimination of a controlling person; or
- (3) material or substantial modification of the premises.

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises; or

(2) an addition or removal of licensed activities taking place on a single licensed premise.

[16.8.2.37 NMAC – N, 12/28/2021; A, 5/7/2024]

#### **16.8.2.38 RETAIL PREMISES DIAGRAM:**

**A.** An applicant shall maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

**D.** The diagram shall be to scale.

**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.38 NMAC – N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

#### **16.8.2.39 CANNABIS RETAILER POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure requirements:** A licensed retailer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

**(1)** cannabis handling criteria and procedures, which shall be consistent with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

- (a)** employee health and safety training materials;
- (b)** training requirements for the proper use of health and safety measures and controls;
- (c)** if applicable, recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;
- (d)** recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;
- (e)** protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;
- (f)** if applicable, protocols for testing sample collection that ensures accurate test results; and
- (g)** if applicable, procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

**(2)** employee policies and procedures to address the following minimum requirements:

- (a)** adherence to state and federal laws;
- (b)** responding to an emergency, including robbery or a serious accident;
- (c)** alcohol and drug-free workplace policies and procedures;
- (d)** safety and security procedures;
- (e)** occupational safety;
- (f)** crime prevention techniques; and
- (g)** confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

**B. Training program:**

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

- (a) health and safety hazards;
- (b) security procedures; and
- (c) record keeping requirements.

(2) Prior to engaging in any cannabis retail process:

- (a) an overview of the process and standard operating procedure(s);
- (b) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;
- (c) cleaning and maintenance requirements;
- (d) emergency operations, including shutdown; and
- (e) any additional information reasonably related to an employee's job duties.

(3) A licensee that retails edible cannabis products shall ensure that all personnel who handle edible products successfully complete a food handler course accredited by the American national standards institute (ANSI). The licensee shall obtain documentation evidencing the fulfillment of this requirement.

**C. Training documentation:**

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record which contains at minimum:

- (a) a list of all personnel at the premises, including at minimum, name and job duties of each;
- (b) documentation of training topics and dates of training completion for all personnel;
- (c) dates of refresher training completion for all personnel; and

(d) the signature of each employee verifying receipt and understanding of each training or refresher training completed.

(2) Licensee may assign responsibility for ensuring compliance by individual personnel with the requirements of this section to supervisory personnel.

**D. Retention of training documentation:** Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.39 NMAC - N 12/28/2021]

#### **16.8.2.40 MINIMUM STANDARDS FOR RETAIL OF CANNABIS PRODUCTS:**

**A. Access to retailer premises prior to authorization of retail sale of commercial cannabis:** Prior to the division authorizing the retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection (B) of Section 26-2C-7 of the Cannabis Regulation Act, NMSA 1978, access to the licensed premises of a retailer shall be limited to individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

**B. Access to retailer premises upon authorization of retail sale of commercial cannabis:** Upon the division authorizing the retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection B of Section 26-2C-7 of the Cannabis Regulation Act NMSA 1978, access to the licensed premises of a retailer shall be limited to the following:

(1) individuals who are at least 21 years of age and possess a valid form of identification; and

(2) individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

#### **C. Customer access to the retail area:**

(1) Individuals shall be granted access to purchase cannabis goods only after the licensed retailer or an employee of the licensed retailer has confirmed the individual's age and identity, and if applicable, the individual's status as a qualified patient, primary caregiver, or reciprocal participant.

(2) The licensed retailer or at least one employee shall be physically present in the retail area at all times when individuals who are not employees of the licensed retailer are in the retail area.

(3) All sales of cannabis goods, with the exception of cannabis goods sold through delivery, must take place within the retail area of the retailer's licensed premises.

(4) A licensed retailer shall sell and deliver cannabis goods only between the hours reported to the division as regular business hours.

#### **D. Requirements While Not Open for Business:**

(1) At any time the licensed premises is not open for retail sales, a licensed retailer shall ensure that:

(a) the licensed premises is securely locked with commercial-grade, nonresidential door locks;

(b) the licensed premises is equipped with an active alarm system pursuant to Section 10 of this rule, which shall be activated when the licensed retailer or its employees are not on the licensed premises; and

(c) only employees of the licensee and other authorized individuals are allowed access to the licensed premises. For the purposes of this section, authorized individuals include individuals employed by the licensee as well as any outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.

#### **E. Commercial and medical retail customers:**

(1) **Commercial sales:** A licensed retailer shall only sell cannabis and cannabis products to individuals who are at least 21 years of age after confirming the customer's age and identity by inspecting a valid form of identification provided by the customer as required by subsection B of this section.

(2) **Medical sales:** A licensed retailer shall only sell cannabis and cannabis products to individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program, after confirming the customer's age, identity, and valid registry identification.

(3) Acceptable forms of identification include the following

(a) a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, and photo of the person;

(b) a valid identification card issued to a member of the Armed Forces that includes the person's name, date of birth, and photo of the person; or

(c) a valid passport issued by the United States or by a foreign government.

**F. Cannabis product display:**

(1) Cannabis and cannabis products for customer inspection and sale shall only be displayed in the retail area.

(2) Cannabis and cannabis products may be removed from their packaging and placed in containers to allow for customer inspection. The containers shall not be readily accessible to customers without assistance of retailer personnel. A container must be provided to the customer by the licensed retailer or its employees, who shall remain with the customer at all times that the container is being inspected by the customer.

(3) Cannabis and cannabis products removed from their packaging for display shall not be sold, shall not be consumed, and shall be destroyed, pursuant to Section 15 of this rule, when the cannabis or cannabis products are no longer used for display.

**G. Cannabis and cannabis products for sale:**

(1) A licensed retailer shall not make any cannabis or cannabis products available for sale or delivery to a customer unless:

(a) the cannabis or cannabis products were received by the retail licensee from a licensed producer, licensed producer microbusiness, licensed manufacturer, licensed vertically integrated cannabis establishment, or licensed integrated cannabis microbusiness;

(b) the licensed retailer has verified that the cannabis or cannabis products have not exceeded their expiration or sell-by date if one is provided;

(c) in the case of manufactured cannabis products, the cannabis product complies with all requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(d) the cannabis or cannabis products have undergone laboratory testing as required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(e) the packaging and labeling of the cannabis or cannabis product complies with Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules; and

(f) the cannabis or cannabis product complies with all applicable requirements found in the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules.

#### **H. Commercial and medical cannabis purchase limits and excise tax:**

(1) A licensed retailer shall not sell more than the following amounts at one time to a single commercial cannabis customer:

- (a) two ounces of cannabis;
- (b) 16 grams of cannabis extract;
- (c) 800 milligrams of edible cannabis; and
- (d) six immature cannabis plants.

(2) A licensed retailer shall adhere to department of health medical cannabis rules related to the sale of cannabis and cannabis products to qualified individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

(3) Pursuant to the Cannabis Tax Act, Section 7-42-2 NMSA 1978, cannabis excise tax shall not apply to retail sale of medical cannabis or cannabis products. Cannabis excise tax shall apply to commercial sales of cannabis and cannabis products.

(4) The limits provided in Paragraph (1) and Paragraph (2) of this subsection shall not be combined to allow a customer to purchase cannabis or cannabis products in excess of the limits provided in this section.

(5) The prohibition set forth in paragraph one above shall not prohibit the sale of different product types to a single customer, as long as the total amount sold does not exceed the limits set forth above.

#### **I. Customer Return of Cannabis Goods:**

(1) For the purposes of this subsection, "customer return" means a customer's return of cannabis or cannabis products that were purchased from a licensed retailer, back to the licensed retailer the cannabis or cannabis products were purchased from.

(2) A licensed retailer may accept customer returns of cannabis or cannabis products that were previously sold to a customer.

**(3)** A licensed retailer shall not resell cannabis or cannabis products that have been returned.

**(4)** A licensed retailer shall treat any cannabis or cannabis products abandoned on the licensed retailer premises as a customer return.

**(5)** A licensed retailer shall destroy all cannabis or cannabis products that have been returned to the licensed retailer by a customer, pursuant to Section 15 of this rule.

**J. Free cannabis or cannabis products:**

**(1)** A licensed retailer shall not provide free cannabis or cannabis product(s) to any person. A licensed retailer shall not allow individuals who are employed or not employed by the licensed retailer to provide free cannabis or cannabis product(s) to any person on the licensed premises.

**(2)** Notwithstanding Paragraph (1) of this section, in order to provide access to medicinal cannabis patients who have difficulty accessing medicinal cannabis or cannabis product(s), a licensee may provide free cannabis or cannabis product(s) if all of the following criteria are met:

**(a)** free cannabis or cannabis products are provided only to a qualified patient, primary caregiver, or a reciprocal participant in possession of a valid registry identification card from the department of health medical cannabis program;

**(b)** the cannabis or cannabis products comply with all applicable requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

**(c)** the cannabis or cannabis products have been properly recorded in the track and trace system as belonging to the licensed retailer;

**(d)** the cannabis or cannabis products shall be applied toward the adequate supply for a medicinal cannabis customer pursuant to department of health rules;

**(e)** the transaction shall be properly recorded in the licensed retailer's inventory records and the track and trace system.

**K. Inventory reconciliation:**

**(1)** A licensed retailer shall perform a reconciliation of its inventory at least once every calendar month.

(2) In conducting an inventory reconciliation, a licensed retailer shall verify that the licensed retailer's physical inventory is consistent with the licensed retailer's records pertaining to inventory.

(3) The result of inventory reconciliation shall be retained in the licensed retailer's records and shall be made available to the division upon request.

(4) If a licensed retailer identifies any evidence of theft, diversion, or loss, the licensed retailer shall notify the division pursuant to Subsection N of 16.8.2.8 NMAC.

#### **L. Record of Sales:**

(1) A licensed retailer shall maintain an accurate record of every sale of cannabis and cannabis product made to a customer.

(2) A record of cannabis or cannabis product sold to a customer shall contain the following minimum information:

(a) the first name and employee number of the employee who processed the sale;

(b) the date and time of the transaction;

(c) a list of all the cannabis or cannabis product purchased, including the quantity purchased; and

(d) the total amount paid for the sale including the individual prices paid for each cannabis or cannabis product purchased and any amounts paid for cannabis excise tax.

(3) For the purposes of this section, an employee number is a distinct number assigned by a licensed retailer to their employees that would allow the licensed retailer to identify the employee on documents or records using the employee number rather than the employee's full name. A licensed retailer shall be able to identify the employee associated with each employee number upon request from the division.

(4) All licensed retailer-specific records shall be maintained for at least 12 months.

#### **M. Retailer premises to retailer premises transfer:**

(1) A licensee who has multiple licensed retail premises may arrange for the transfer or sale of cannabis or cannabis products from one licensed retail premises to another licensed retail premises if both licensed retail premises are held under the same ownership.

(2) A licensee may arrange for the transfer or sale of cannabis or cannabis products to another cannabis retailer if both licensees properly record the transaction in the licensed retailer's inventory records and the track and trace system

(3) Cannabis or cannabis product transferred to a licensed retail premises under this subsection may be sold by the licensed retailer receiving the cannabis or cannabis product only if the cannabis or cannabis products comply with all requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

#### **N. Use of licensed cannabis couriers:**

(1) A retail cannabis licensee may, consistent with this rule, and with the consent of a qualifying patient, primary caregiver, reciprocal participant, or an individual who is at least 21 years of age, utilize a license cannabis courier to deliver cannabis or cannabis products to a qualifying patient, primary caregiver, reciprocal participant, or an individual who is at least 21 years of age;

(2) A retail cannabis licensee shall require a consumer making a purchase for delivery by a cannabis courier licensee to have the valid government-issued identification card, the consumer intends to use to verify their age at the time of delivery, and if applicable, a medical cannabis program registry identification card, examined and authenticated by the retail cannabis licensee prior to the order; and

(3) Pre-verification of the consumer's identity shall be performed through a division approved electronic means, which may include a third-party technology platform, and shall include examination of a consumers valid, unexpired, medical cannabis identification card, if applicable, and photo identification issued by a federal or state government that includes the name, date of birth, and picture of the intended recipient.

[16.8.2.40 NMAC – N, 12/28/2021]

#### **16.8.2.41 CANNABIS COURIER LICENSURE; GENERAL PROVISIONS:**

**A. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division found on the division website.

**B. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not transport cannabis products directly to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

#### **C. Consumer delivery:**

(1) A licensee may deliver cannabis or cannabis products from a licensed retail establishment to a qualified patient who is at least 18 years of age, a primary caregiver or a reciprocal participant, or a consumer who is at least 21 years of age.

(2) Licensees shall only deliver to the person who is identified by the retail cannabis licensee as an intended, authorized recipient.

(3) Licensees shall only deliver cannabis, cannabis products, or products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated.

#### **D. Operational requirements:**

(1) All cannabis and cannabis products delivered by a licensed cannabis courier shall be obtained from a retail cannabis licensee with which the cannabis courier is employed or has a delivery agreement.

(2) All delivery agreements between a retail cannabis licensee and a cannabis courier licensee shall be disclosed to the division. The division shall be notified in writing of a new delivery agreement or modification to a delivery agreement prior to delivery of cannabis or cannabis products under a new or modified delivery agreement.

(3) Licensees shall not transport or deliver cannabis or cannabis products that are not individually packaged, or that are not labeled in accordance with the Cannabis Regulation Act and division rules.

(4) Upon obtaining a package of cannabis or cannabis product from a retail cannabis licensee, the cannabis courier shall hold the package in a secure area or areas that are locked and otherwise resistant to tampering or theft, until the package is delivered to its intended recipient or returned to the retail cannabis licensee.

(5) Licensees shall not relinquish possession of cannabis or cannabis products unless and until the package of cannabis or cannabis products is either successfully delivered to its intended recipient or returned to the retail cannabis licensee. For purposes of this section, a package of cannabis or cannabis product is successfully delivered only upon the licensee's verification that an intended recipient has taken actual, physical possession of the package. Licensees shall not leave a package at any location for any reason, unless the package is successfully delivered to its intended recipient.

(6) At the time of delivery, a licensee shall verify the recipient's identity by requiring presentation of the recipient's photo identification issued by a federal or state government that includes the name, date of birth, and picture of the intended recipient. Identification must match the pre-verified identification of the consumer who placed the order for delivery. Licensees shall not deliver cannabis or cannabis product to any person whose identity is not verified in accordance with this rule. Upon delivery to the

intended recipient, the licensee shall certify having verified the recipient's identification in accordance with this rule for each transaction. Licensee shall view proof of the order generated at the time of the order and receive the signature of the consumer who ordered the cannabis or cannabis product.

(7) Licensees shall not possess a delivery package of cannabis or cannabis product for a time period greater than 24 hours. Licensees shall return any cannabis or cannabis product that is not successfully delivered to its intended recipient to the originating retail cannabis licensee within this time-period.

(8) Licensees shall not, when transporting cannabis or cannabis products utilize a delivery vehicle that advertises or otherwise displays signage, logos, or symbols that would indicate that the vehicle is used for the transport of cannabis.

(9) Only shelf stable cannabis, cannabis products, and products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated may be delivered. Products that are perishable or time and temperature controlled to prevent deterioration may not be delivered.

**E. Confidentiality:** Licensees shall at all times take measures to ensure confidentiality and safety in the transport and delivery of cannabis and cannabis product. A licensee may obtain contact information of a purchasing qualified patient or primary caregiver, and a reciprocal participant, as permitted by agreement between the licensee and a respective retail cannabis licensee, and may utilize such information solely for the purpose of arranging a delivery location and time with the qualified patient or primary caregiver, or reciprocal participant. Licensees shall not otherwise disseminate, disclose, or use identifying information or contact information concerning a qualified patient or primary caregiver, or reciprocal participant.

**F. Maximum retail value:** The maximum retail value allowed in a cannabis courier's vehicle at any one time shall be \$10,000 and each product shall be associated with a specific order for delivery. For purposes of this provision, "maximum retail value" shall mean the aggregate value of cannabis, cannabis products, and products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated as priced on the day of the order for delivery.

**G. Track and trace:** All cannabis and cannabis product deliveries shall be tracked using the track and trace system as designated by the division. Records of sales of cannabis accessories shall be maintained by the cannabis courier, but may not be tracked in the track and trace system designated by the division.

**H. Record retention:** Delivery records, including certification of delivery, the cannabis and cannabis product delivered, the date of delivery, and the time of delivery, shall be maintained by the cannabis courier for a minimum of 12 months.

**I. Delivery time and location:**

- (1) Limitations on the time of delivery shall comply with all local laws.
- (2) Licensees shall only deliver packages of cannabis or cannabis products to the address provided by the retail cannabis licensee.
- (3) Licensees are prohibited from delivery to an individual consumer of more than two ounces of cannabis, 16 grams or cannabis extract and 800 milligrams of edible cannabis.

[16.8.2.41 NMAC – N, 12/28/2021; A, 03/22/2022]

#### **16.8.2.42 APPLICATION REQUIREMENTS FOR CANNABIS COURIER LICENSE:**

**A.** An initial application or renewal for cannabis courier licensure shall include the following:

- (1) Contact information for the applicant, to include:
  - (a) applicant's full legal name;
  - (b) applicant's date of birth, if applicable;
  - (c) applicant's mailing address;
  - (d) applicant's contact telephone number;
  - (e) applicant's contact email address;
  - (f) physical address and mailing address, if different;
  - (g) demographic data pursuant to the Cannabis Regulation Act; and
- (2) proof the applicant is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;
- (3) proof of compliance with local laws by submitting either:
  - (a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;
  - (b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

(5) proof of vehicle registration and vehicle insurance for each vehicle to be used for courier activities;

(6) a copy of the delivery plan including, but not limited to, how cannabis and cannabis products will be picked up and delivered ensuring proper chain of custody throughout, how security will be maintained throughout delivery, and how payment will be accepted;

(7) criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(8) a detailed description of any criminal convictions of the applicant, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(9) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

(10) certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(11) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(12) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(14) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for

unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(15) certification the applicant is not licensed under the Liquor Control Act;

(16) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(17) payment of any required fees as set forth in 16.8.11 NMAC.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant by telephone, mail, or electronic mail;

(2) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(3) consulting with state or local governments.

[16.8.2.42 NMAC – N, 12/28/2021; A, 5/7/2024]

#### **16.8.2.43 CANNABIS TESTING LABORATORY LICENSE: GENERAL PROVISIONS:**

**A. Testing categories:** The division may license cannabis testing laboratories to perform analytical testing of cannabis products in one or more of the following categories:

(1) visual inspection;

(2) microbiological;

(3) residual solvents;

(4) potency and homogeneity;

(5) heavy metals;

(6) pesticides; and

(7) such other testing categories as the department may identify.

**B. License not required for internal testing:** A cannabis establishment may conduct analytical testing using validated methods for internal quality control purposes without obtaining a cannabis testing laboratory license but may not offer testing services to another person or entity.

**C. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division found on the division website.

**D. Other activities prohibited:** No person with a direct or indirect interest in any cannabis establishment other than a cannabis research laboratory may hold an interest in a cannabis testing laboratory.

[16.8.2.43 NMAC – Rp, 16.8.2.43 NMAC, 01/11/2022; A, 03/22/2022]

#### **16.8.2.44 APPLICATION REQUIREMENTS FOR CANNABIS TESTING LABORATORY LICENSE:**

##### **A. Contents of application:**

(1) for any initial or renewal application, contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's mailing address;
- (c) applicant's contact telephone number;
- (d) applicant's contact email address;
- (e) applicant's business physical address and mailing address, if different;
- (f) applicant's business legal name, including a DBA name, if applicable;
- (g) applicant's business web address, if applicable;

(2) for any initial application, information about controlling persons, to include:

- (a) name and contact information;
- (b) documentation of legal name change, if applicable;

(c) criminal history screening documents. as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(d) a detailed description of any criminal convictions, including for each: the date of the conviction; dates of incarceration, probation, or parole; description of the offense; and any evidence of rehabilitation, including court documents, personal or professional references, completion of treatment, employment records, and other relevant information;

(e) demographic data pursuant to the Cannabis Regulation Act; and

(f) A copy of identification issued by a federal or state government, including name, date of birth, and picture and indicating the person is at least 21 years of age;

(3) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico Taxation and Revenue Department (TRD) for payment of gross receipts tax;

(5) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

(6) for any renewal application, certifications that the applicant:

(a) attests to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued;

(b) will adhere to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules, including:

(i) testing requirements;

- (ii) transport requirements;
- (iii) security requirements;
- (iv) quality assurance requirements; and

(v) the prohibition on any person holding an interest in one or more cannabis testing laboratories from holding an interest in any other cannabis license other than a cannabis research laboratory;

(c) will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(d) has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application; and

(e) is not licensed at the same location under the Liquor Control Act;

(f) has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance; and

(g) maintain on its licensed premise at all times, a complete and detailed diagram of the premises containing information required by 16.8.2.46 NMAC, which shall be made immediately available to the division upon request.

(7) for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:

(a) a list of categories of testing for which licensure is sought; and

(b) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees, or premises are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities; and

(8) for any initial or renewal application, payment of any required fees as set forth in 16.8.11 NMAC.

**B. Initial demonstration of capability:** The division requires the submission of an initial demonstration of capability (IDC) for every test a cannabis testing laboratory intends to conduct, except tests for research and development purposes only. The IDC must identify a limit of quantitation that is equal to or lower than the action level for the specified test.

(1) An IDC is required whenever:

(a) an initial application is submitted, except that an applicant may instead submit evidence of prior completion of an IDC as a requirement of licensing under the Lynn and Erin Compassionate Use Act;

(b) the cannabis testing laboratory proposes to use a new analytical instrument to test for an analyte; or

(c) the cannabis testing laboratory proposes material changes to testing methods.

(2) Every IDC shall include the following elements:

(a) Demonstration of method calibration: The calibration range shall use at least five calibration points consisting of five different concentration levels of target compounds. The calibration range shall include a low calibration point equal to, or less than, the action level for each targeted compound. The cannabis testing laboratory shall provide the equation and the type of curve fit used for the calibration range, and the percent relative standard deviation or the goodness of fit. The percent relative standard deviation shall be less than twenty percent, or the goodness of fit (correlation coefficient) shall be 0.995 or better.

(b) Demonstration of method accuracy and precision: A cannabis testing laboratory shall supply the quantitation data for five positive control samples analyzed by its testing method utilizing median or mid-level calibration concentration. The cannabis testing laboratory shall identify and justify acceptance criteria and shall calculate and provide the calculated mean (average) result and the standard deviation. Any standard deviations greater than twenty percent shall be noted and explained.

(c) Demonstration of method detection limit: A cannabis testing laboratory shall calculate its method detection limit using a generally accepted method.

(d) Demonstration of low system background: A cannabis testing laboratory shall supply the analytical data of at least three negative control samples that do not contain any target analytes.

(e) Demonstration of analyte identification: A cannabis testing laboratory that uses, high performance liquid chromatography (HPLC) or gas chromatography with flame ionization detector or photoionization detector (GC-FID or GC-PID/FID) instrumentation shall supply analytical data where each targeted compound is analyzed as a single compound giving it its characteristic retention time. A cannabis testing laboratory that uses gas chromatography–mass spectrometry (GCMS), liquid chromatography–mass spectrometry (LCMS), or liquid chromatography–tandem mass spectrometry (LCMSMS) instrumentation shall supply analytical data with the characteristic mass spectrum of each targeted compound.

**C. Continuing demonstration of capability:** A cannabis testing laboratory shall submit a continuing demonstration of capability (CDC) for each test performed annually as part of the laboratory’s application for renewal of licensure. A CDC may consist of:

(1) Evidence that the cannabis testing laboratory has the test within its current scope of accreditation to the current standards of ISO/IEC 17025, Testing and Calibration Laboratories;

(2) Evidence that each analyst performing the test has successfully completed, within the previous year, relevant proficiency testing administered by a provider accredited to the standards of ISO/IEC 17043, Conformity Assessment—General Requirements for Proficiency Testing; or

(3) The re-performance of the IDC.

**D. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

**E. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret by clearly identifying such information as "confidential trade secrets" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant’s good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the

division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.44 NMAC – N, 01/11/2022; A/E, 01/13/2022; A, 03/22/2022; A, 5/7/2024]

#### **16.8.2.45 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS TESTING LABORATORY LICENSE:**

**A. Application:** A cannabis testing laboratory shall submit to the division an application form for an amended license and obtain approval from the division, prior to implementing any of the following:

- (1) change of licensee's legal or business name;
- (2) material or substantial change in testing methods or equipment;
- (3) addition or elimination of a controlling person; or
- (4) material or substantial modification of the premises.

**B. Requirements and processing of application for amended license:** The application for amended license shall:

- (1) be clearly designated as one for an amended license;
- (2) supply any information representing a material change from the most recent application; and
- (3) include an initial demonstration of capability for any new or materially different method for performing a required test, including testing for an additional analyte or testing for an analyte using a different type of instrument.

**C. Approval or denial:** The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment; or

(2) testing for an analyte required in required testing using a different type of instrument.

**E. Amended license not required:** Other changes to standard operating policies and procedures, unless material or substantial, may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

[16.8.2.45 NMAC – N, 01/11/2022; A, 5/7/2024]

#### **16.8.2.46 TESTING LABORATORY PREMISES DIAGRAM:**

**A. Detailed diagram required:** An applicant shall maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

**B. Contents of diagram:** The diagram shall show:

- (1) the boundaries of the property and the proposed premises to be licensed;
- (2) if applicable, the uses of any portion of the property not included in the premises;
- (3) a brief statement or description of the principal activity to be conducted in each area on the premises;
- (4) the dimensions of each area where testing of cannabis products will take place;
- (5) the location and identity of equipment; and
- (6) entrances and exits;

**C. Format of diagram:** The diagram shall:

- (1) be drawn to scale;
- (2) be rendered in black and white print; and
- (3) contain no highlighting.

[16.8.2.46 NMAC – N, 01/11/2022; A/E, 01/13/2022; A, 03/22/2022]

#### **16.8.2.47 CANNABIS TESTING LABORATORY POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure requirements:** A cannabis testing laboratory shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

- (1) sample collection procedures, including:
  - (a) specifications for sampling tools and containers;
  - (b) use of gloves and other personal protective equipment to prevent contamination of batches;
  - (c) access to complete batches of cannabis products;
  - (d) determination of the number of sample increments required, based on batch size; and
  - (e) random selection of sample increments;
- (2) chain of custody;
- (3) data recording;
- (4) sample storage and integrity, including sealing of sample containers and, if applicable, the use of preservatives, inert gas, or other measures;
- (5) transportation, including protection from light, heat, and humidity;
- (6) sample preparation of each matrix for each test;
- (7) methodology for each test, including:
  - (a) sample preparation;
  - (b) reagent, solution, and reference standard preparation;
  - (c) instrument setup, as applicable;
  - (d) standardization of volumetric reagent solutions, as applicable;
  - (e) data acquisition; and
  - (f) calculation of results
- (8) data quality parameters for each test, including:
  - (a) specificity;



(c) that reports are the property of the business or individual who provided the sample, and reports meet the requirements of this rule; and

(16) creation of chain of custody documentation for each sample.

**B. Training program:**

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

- (a) employee health and safety;
- (b) health and safety hazards;
- (c) hazard communication;
- (d) security procedures; and
- (e) record keeping/track and trace.

(2) A cannabis testing laboratory must provide and document training on the following subjects before permitting any authorized person to independently collect samples of cannabis products:

- (a) an overview of the process and standard operating procedures of the laboratory;
- (b) quality control procedures, including sterile collection of samples and storage;
- (c) chain of custody, recordkeeping, and tracking requirements;
- (d) calibration, use, and maintenance of measuring devices;
- (e) transportation procedures; and
- (f) any additional information reasonably related to sample collection.

(3) A cannabis testing laboratory must provide and document training on the following subjects before an agent or employee independently performs any cannabis testing process:

- (a) an overview of the process and standard operating procedure(s);
- (b) quality control procedures;

- (c) chain of custody and tracking requirements;
- (d) proper and safe usage of equipment or machinery;
- (e) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;
- (f) cleaning and maintenance requirements;
- (g) emergency operations, including shutdown; and
- (h) any additional information reasonably related to an employee's job duties.

**C. Training documentation:**

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) documentation of training topics and dates of training completion for all personnel;

(c) dates of refresher training completion for all personnel; and

(d) the signature of each employee verifying receipt and understanding of each training or refresher training completed.

(2) Licensee may assign responsibility for ensuring compliance by individual personnel with the requirements of this section to supervisory personnel.

(3) Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

**D. Materials to be maintained on premises:** A cannabis testing laboratory shall maintain on its premises, and shall promptly present to the department upon request:

(1) all results of laboratory tests conducted on cannabis or cannabis derived products for a period of at least two years;

(2) operating manuals and other documentation for each piece of equipment;

(3) records of required inspection, calibration, and maintenance for each piece of equipment, including:

- (a) the date of the operation;
- (b) the person who performed it;
- (c) the written procedure used; and
- (d) any deviations from the written procedure;

(4) records of non-routine repairs performed on equipment as a result of failure and malfunction, including:

- (a) the nature of the repair;
- (b) how and when the need for the repair was discovered; and
- (c) any remedial action taken in response to the repair;

(5) the certificate of analysis for all reference standards, whether acquired or internally produced.

- (6) current material safety data sheets for all chemicals used;
- (7) documentation of proficiency training.

[16.8.2.47 NMAC – N, 01/11/2022]

#### **16.8.2.48 MINIMUM STANDARDS FOR THE TESTING OF CANNABIS PRODUCTS:**

**A. General requirements:** Cannabis testing laboratories shall ensure the following:

- (1) testing is done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act; and
- (2) weighting or measuring devices that are used in testing are appropriately documented as having undergone certified registration and calibration that is in accordance with requirements of the New Mexico department of agriculture applicable to commercial transactions.

**B. Sample collection:** For all required testing or testing for the purposes of labeling claims, a person authorized by this rule shall collect the required samples according to the following guidelines:

**(1)** Only the quantity of cannabis product specified in the cannabis testing laboratory's operating procedures as necessary for all tests to be performed and to ensure the proper number of representative samples shall be collected.

**(2)** The number of sample increments per batch, as specified in the cannabis testing laboratory's operating procedures as necessary for all tests to be performed, shall be collected.

**(a)** The number of sample increments shall not be less than the minimum quantity specified in Table 2.

**(b)** Samples shall be taken randomly throughout the length, width, and depth of the batch.

**(c)** The standard sample increment size shall be 0.5 grams, unless specified otherwise in the cannabis testing laboratory's operating procedures.

**(3)** Samples from the same batch shall be secured in a single use, tamper-evident container that meets the specifications of the laboratory's policies and procedures.

**(4)** Samples shall be labeled according to the laboratory's policies and procedures, with, at minimum:

**(a)** the license number of the establishment from which the sample was collected;

**(b)** the batch number assigned by the establishment;

**(c)** the date the sample was taken;

**(d)** the name of the person collecting the sample; and

**(e)** the tests to be performed;

**(5)** If homogeneity testing is required, each sample increment necessary for homogeneity testing shall be collected and transported in individual sealed containers.

Matrix Type	Batch Size	Minimum Sample Increments
Dried cannabis	≤5.0 lbs.	10
	>5.0 lbs.; ≤15.0 lbs.	10 + 5 per pound or fraction thereof above 5 pounds
Other products	≤2.0 lbs.	10
	>2.0 lbs.	5 per pound

**C. Transportation:** All samples shall be transported according to the general requirements of 16.8.2.13 NMAC and the specifications found in the cannabis testing laboratory's policies and procedures.

**D. Receipt of test samples:** A cannabis testing laboratory may receive test samples of cannabis products from any cannabis establishment, adult 21 years of age or older, qualified patient, or primary caregiver as authorized by this rule.

**E. Storage:** A cannabis testing laboratory shall segregate and store cannabis samples in a manner that prevents contamination or degradations and shall safeguard any cannabis products and cannabis waste against diversion.

(1) A cannabis testing laboratory shall provide one or more secure cabinets or vaults for the storage of cannabis samples, reference standards, and cannabis waste, and access shall be limited to persons authorized to conduct tests or dispose of cannabis waste.

(2) Cannabis samples shall be stored in environmental conditions that minimize physical or chemical degradation and microbial contamination, including protection from light, heat, and humidity. Any cannabis product that requires refrigeration shall be kept at a temperature no greater than 40 degrees Fahrenheit (4 degrees Celsius) prior to sample preparation.

**F. Sample retention and disposal:**

(1) Samples testing positive for a prohibited pesticide must be retained for a minimum of 30 days. All other samples must be retained for a minimum of 15 days. Upon notification from the division that samples are needed for an investigation by the division, a law enforcement agency, or another department, the cannabis testing laboratory shall retain the sample until further directed by the division.

(2) Any portion of a cannabis or cannabis-derived test sample that is not destroyed during analysis shall be:

(a) returned to the person who provided the sample;

(b) provided to the division, the state chemist laboratory (department of agriculture), or state laboratory division for additional testing;

(c) upon written notification to the department, used to make for internal quality control purposes; or

(d) destroyed in accordance with the wastage requirements of this rule.

**G. Laboratory premises:** A cannabis testing laboratory shall maintain the premises of the laboratory in a clean and orderly condition; shall equip the premises with such

utensils and equipment as necessary to conduct the operations of the laboratory; and shall ensure adequate space for laboratory operations, sample storage, and document storage.

#### **H. Equipment:**

(1) Equipment used for the analysis of test samples shall be adequately inspected, cleaned, and maintained by laboratory staff, the manufacturer, or other trained persons according to manufacturer recommendations. Equipment used for the generation or measurement of data shall be adequately tested and calibrated on an appropriate schedule, as applicable.

(2) Laboratory operations shall document procedures setting forth in sufficient detail the methods and schedules to be used in the routine inspection, cleaning, maintenance, testing, and calibration of equipment, and shall specify, as appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The procedures shall designate the personnel responsible for the performance of each operation.

(3) Computer systems used for the analysis of samples, retention of data, sample tracking, calibration scheduling, management of reference standards, or other critical laboratory management functions shall ensure that electronic records, electronic signatures, and handwritten signatures executed to electronic records are trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper.

#### **I. Reagents, solutions, and reference standards:**

(1) A cannabis testing laboratory is authorized to possess reagents, solutions, and reference standards. Such items shall be:

(a) secured in accordance with the approved laboratory's storage policies;

(b) labeled to indicate identity, date received or prepared, and expiration or requalification date; and, where applicable, concentration or purity, storage requirements, and date opened;

(c) stored under appropriate conditions to minimize degradation or deterioration of the material; and

(d) used only within the item's expiration or requalification date.

(2) Deteriorated or outdated reagents and solutions shall be properly destroyed.

(3) A cannabis testing laboratory may:

**(a)** acquire commercial reference standards for cannabinoids and other chemicals or contaminants, for the exclusive purpose of conducting testing for which the laboratory is approved;

**(b)** internally produce reference standards, using standard analytical techniques to document the purity and concentration of the internally produced reference standards;

**(c)** obtain cannabis products from a cannabis establishment for the purpose of producing reference standards.

#### **J. Recording of analytical data:**

**(1)** A cannabis testing laboratory shall ensure that all data generated during the testing of a test sample, except data generated by automated data collection systems, is recorded directly, promptly, and legibly in ink.

**(2)** When automated data collection systems are used, the cannabis testing laboratory shall log the name of the individual performing the test.

**(3)** All data shall be annotated with the date of entry and signed or initialed by the person recording the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or initialed at the time of the change.

**(4)** Any change in an entry shall:

**(a)** be made so as not to obscure the original entry;

**(b)** indicate the reason for such change;

**(c)** be dated and signed or initialed at the time of the change; and

**(d)** be accompanied by a corrective action report to be made available to the division or the cannabis establishment that submitted the sample upon request for up to two years after the analysis is completed.

**(5)** For each final result reported, a cannabis testing laboratory shall verify that:

**(a)** any calculations or other data processing steps were performed correctly;

**(b)** the data meet any data quality requirements such as for accuracy, precision, linearity, etc.;

(c) any reference standards used were of the appropriate purity and within their expiration or requalification dates;

(d) any volumetric solutions were properly standardized before use; and

(e) any test or measuring equipment used has been properly tested, verified, and calibrated, and is within its verification or calibration period.

**K. Data storage:**

(1) A cannabis testing laboratory shall ensure that all raw data, documentation, protocols, and certificates of analysis associated with analysis of a test sample are retained for two years from the date of the completion of analysis.

(2) A cannabis testing laboratory shall designate an individual as responsible for records maintenance;

(3) A cannabis testing laboratory shall maintain the records identified in this section. Such records must be maintained:

(a) in a manner that allows retrieval as needed;

(b) under conditions of storage that minimize deterioration throughout the retention period; and

(c) in a manner that prevents unauthorized alteration.

(4) Only authorized personnel may access the records.

**L. Data reporting:**

(1) A certificate of analysis shall contain the following information:

(a) the date of receipt of the test sample;

(b) the description of the type or form of the test sample (leaf, flower, powder, oil, specific edible product, etc.);

(c) the batch number or code that is associated with the product batch and that is recorded in the track and trace system;

(d) the identity of the person who collected the sample;

(e) the date on which analysis occurred;

(f) the analytical method used, including at a minimum identification of the type of analytical equipment used (e.g., GC, HPLC, etc.);

(g) the analytical results, including units of measure where applicable;

(h) the identity of the supervisory or management personnel who reviewed and verified the data and results and ensured that data quality, calibration, and other applicable requirements were met; and

(i) the name, address, and contact information of the cannabis testing laboratory that conducted the test.

(2) The certificate of analysis shall state that reported analytical results apply only to the test sample received.

(3) The certificate of analysis shall contain in minimum 12-point type, all capital letters, the disclaimer, "UNOFFICIAL TEST RESULTS. NOT VALID FOR TRANSFER OR SALE" whenever:

(a) The person submitting the test sample is not a licensed cannabis establishment;

(b) The test sample was not collected by a person authorized to collect samples for required testing under this rule; or

(c) The person submitting the test sample requested that the analysis be performed for research and development purposes.

[16.8.2.48 NMAC – N, 01/11/2022]

#### **16.8.2.49 CANNABIS CONSUMPTION AREA LICENSURE; GENERAL PROVISIONS:**

**A.** License types: The division may license two classes of cannabis consumption areas:

(1) Type I permit: A licensed cannabis consumption area where cannabis products may be consumed on the licensed premises, except for products consumed through the respiratory system.

(2) Type II permit: A licensed cannabis consumption area where cannabis products may be consumed, including products that are consumed through the respiratory system.

**B. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

**C. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

**D. Other activities allowed:** A licensee may conduct any lawful activity or any combination of lawful activities at a licensed premises; provided that the licensee is not a licensee pursuant to the Liquor Control Act.

**E. Cannabis consumption area license:** Applicants for a cannabis consumption area must meet all qualifications for a cannabis retailer to be approved for, and authorized to conduct, a cannabis consumption area.

[16.8.2.49 NMAC – Rp, 16.8.2.49 NMAC, 06/07/2022]

#### **16.8.2.50 APPLICATION REQUIREMENTS FOR CANNABIS CONSUMPTION AREA LICENSE:**

**A.** An initial application or renewal for cannabis consumption area licensure shall include the following:

- (1) Contact information for the applicant and the cannabis establishment, to include:
  - (a) applicant's full legal name;
  - (b) applicant's date of birth, if applicable;
  - (c) applicant's mailing address;
  - (d) applicant's contact telephone number;
  - (e) applicant's contact email address;
  - (f) applicant's business physical address and mailing address, if different;
  - (g) applicant's business legal name, including a DBA name if applicable;
  - (h) applicant's business web address, if applicable;
  - (i) applicant's business hours of operation;
  - (j) name and contact information for each controlling person;

(k) demographic data pursuant to the Cannabis Regulation Act;

(l) license type sought; and

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment, including a description of each consumption or retail area and all security requirements, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(4) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(5) a copy of a current business license, fire inspection report, and zoning approval;

(6) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

(7) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(8) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(9) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(10) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

(11) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis purchased for retail sale;

(12) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(14) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(15) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(16) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(17) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(18) certification the applicant is not licensed under the Liquor Control Act;

(19) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(20) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(21) payment of any required fees as set forth in 16.8.11 NMAC.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

[16.8.2.50 NMAC - N, 06/07/2022; A, 5/7/2024]

#### **16.8.2.51 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS CONSUMPTION AREA LICENSE:**

**A. Application:** A licensed cannabis consumption area shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

(1) change of licensee's legal or business name;

(2) addition or elimination of a controlling person; or

(3) material or substantial modification of the premises.

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval includes increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for

the use of the cannabis establishment, or a change in the location of the cannabis establishment.

[16.8.2.51 NMAC - N, 06/07/2022; A, 5/7/2024]

#### **16.8.2.52 PREMISES DIAGRAM:**

**A.** An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

**B.** The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

**C.** The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

**D.** The diagram shall be to scale.

**E.** The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

**F.** If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

**G.** If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property

**H.** If a proposed premise is a type II cannabis consumption area permit, the diagram shall clearly show the location of the designated smoking area or the area immediately surrounding the building to ensure smoke will not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act.

**I.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.52 NMAC - N, 06/07/2022]

**16.8.2.53 CANNABIS CONSUMPTION AREA POLICIES AND PROCEDURES:**

**A.** Minimum policy and procedure requirements: A licensed cannabis consumption area shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

**(1)** cannabis handling criteria and procedures, which shall be consistent with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

**(a)** employee health and safety training materials;

**(b)** training requirements for the proper use of health and safety measures and controls;

**(c)** if applicable, recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

**(d)** recordkeeping and chain of custody protocols for transportation of cannabis products to another cannabis establishment for any purpose;

**(e)** protocols to ensure that cannabis products, including any samples of cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

**(f)** if applicable, protocols for testing sample collection that ensures accurate test results; and

**(g)** if applicable, procedures for remedial measures to bring cannabis products into compliance with division standards or destruction of a tested batch of cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

**(2)** employee policies and procedures to address the following minimum requirements:

**(a)** adherence to state and federal laws;

**(b)** responding to an emergency, including robbery or a serious accident;

**(c)** alcohol and drug-free workplace policies and procedures;

**(d)** safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

**B. Training program:**

(1) Licensee shall implement a training program to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) health and safety hazards;

(b) security procedures; and

(c) record keeping requirements.

(2) Prior to engaging in any cannabis consumption area process:

(a) an overview of the process and standard operating procedure(s);

(b) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

(c) cleaning and maintenance requirements;

(d) emergency operations, including shutdown; and

(e) any additional information reasonably related to an employee's job duties.

(3) A licensee that retails unpackaged edible cannabis products shall ensure that all personnel who handle edible products successfully complete a food handler course accredited by the American national standards institute (ANSI). Such training shall be maintained while employed by a cannabis consumption area. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

**C. Training documentation:**

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) dates of training completion for all personnel;

(c) dates of refresher training completion for all personnel;

(d) the signature of each employee verifying receipt and understanding of each training or refresher training completed by the personnel;

(e) any official documentation attesting to the successful completion of required training by personnel.

(2) Licensee may assign responsibility for ensuring compliance by individual personnel with the requirements of this section to supervisory personnel.

**D. Retention of training documentation:** Licensees shall maintain documentation of an employee's training for a period of five years for current employees and for at least six months after the termination of an employee's employment.

[16.8.2.53 NMAC - N, 06/07/2022]

#### **16.8.2.54 MINIMUM STANDARDS FOR CANNABIS CONSUMPTION AREAS:**

**A. Access to cannabis consumption area premises prior to authorization of consumption or retail sale of commercial cannabis:** Prior to the division authorizing the consumption or retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection B of Section 26-2C-7 of the Cannabis Regulation Act, NMSA 1978, access to the licensed premises of a retailer shall be limited to:

(1) individuals who are at least 21 years of age and possess a valid form of identification;

(2) individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

**B. Access to cannabis consumption area premises upon authorization of consumption or retail sale of commercial cannabis:** Upon the division authorizing the retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection B of Section 26-2C-7 of the Cannabis Regulation Act, NMSA 1978, access to the licensed premises of a retailer shall be limited to the following:

(1) individuals who are at least 21 years of age and possess a valid form of identification; and

(2) individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

**C. Customer access to the consumption area:**

(1) Individuals shall be granted access to consume or purchase cannabis goods only after the licensed cannabis consumption area or an employee of the licensed cannabis consumption area has confirmed the individual's age and identity, and if applicable, the individual's status as a qualified patient, primary caregiver, or reciprocal participant.

(2) The licensed cannabis consumption area or at least one employee shall be physically present in the consumption area at all times when individuals who are not employees of the licensed retailer are in the retail area.

(3) All sales of cannabis goods, with the exception of cannabis goods sold through delivery, must take place within the retail area of the retailer's licensed premises.

(4) A licensed cannabis consumption area shall only allow cannabis consumption between the hours reported to the division as regular business hours.

(5) A licensed cannabis consumption area may allow qualified patients to bring previously purchased goods from the licensed cannabis consumption area for consumption provided the cannabis product is properly stored in the requisite resealable packaging and the qualified patient provides proof of purchase from the cannabis consumption licensee of the product to be consumed.

**D. Requirements while not open for business:** At any time the licensed premises is not open for cannabis consumption, a licensed cannabis consumption area shall ensure that:

(1) the licensed premises is securely locked with commercial-grade, nonresidential door locks;

(2) the licensed premises is equipped with an active alarm system pursuant to pursuant to Section 10 of this rule, which shall be activated when the licensed retailer or its employees are not on the licensed premises; and

(3) only employees of the licensee and other authorized individuals are allowed access to the licensed premises. For the purposes of this section, authorized individuals include individuals employed by the licensee as well as any outside vendors,

contractors, or other individuals conducting business that requires access to the licensed premises.

**E. Commercial and medical cannabis consumers:**

**(1)** A licensed cannabis consumption area shall only sell and allow for the consumption of commercial cannabis and cannabis products to individuals who are at least 21 years of age after confirming the customer's age and identity by inspecting a valid form of identification provided by the customer as required by Subsection B of this section.

**(2)** A licensed cannabis consumption area shall only sell and allow for the consumption of cannabis and cannabis products to individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program, after confirming the customer's age, identity, and valid registry identification.

**(3)** Acceptable forms of identification include the following

**(a)** a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, and photo of the person;

**(b)** a valid identification card issued to a member of the armed forces that includes the person's name, date of birth, and photo; or

**(c)** a valid passport issued by the United States or by a foreign government.

**F. Cannabis product display:**

**(1)** Cannabis and cannabis products for customer inspection and sale shall only be displayed in the area where retail activities take place.

**(2)** Cannabis and cannabis products may be removed from their packaging and placed in containers to allow for customer inspection. The containers shall not be readily accessible to customers without assistance of cannabis consumption area personnel. A container must be provided to the customer by the licensed cannabis consumption area or its employees, who shall remain with the customer at all times that the container is being inspected by the customer.

**(3)** Cannabis and cannabis products removed from their packaging for display shall not be sold, shall not be consumed, and shall be destroyed, pursuant to pursuant to Section 15 of this rule, when the cannabis or cannabis products are no longer used for display.

**G. Cannabis server permit requirements:** all employees of the licensed cannabis consumption area who directly offer, sell or serve cannabis must hold a current and valid cannabis server permit according to 18.8.10 NMAC.

**H. No visible consumption of cannabis products:** a licensed cannabis consumption area shall ensure that the display and consumption of any cannabis product is not visible from outside of its licensed premises. Licensed cannabis consumption areas may be located outdoors provided that:

(1) all cannabis product is kept out of plain sight and is not visible from a public place without the use of optical aids, such as telescopes or binoculars, or aircraft; and

(2) the licensed cannabis consumption area shall ensure that the outdoor consumption area is surrounded by a sight-obscuring wall, fence, hedge, or other opaque or translucent barrier.

**I. Required signage:** a licensed cannabis consumption area must post, at all times and in a prominent place inside the consumption area, a warning that is at minimum 12 inches high and 12 inches wide that reads as follows:

"Cannabis may only be consumed in designated areas out of public view  
No consumption of alcohol products on site  
We reserve the right to refuse entry or service for reasons including visible intoxication  
It is against the law to drive while impaired by cannabis"

[16.8.2.54 NMAC - N, 06/07/2022]

**16.8.2.55 DEE JOHNSON CLEAN INDOOR AIR ACT:**

Smoking and vaping shall be allowed on the licensed premises of type II cannabis consumption area only if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act.

[16.8.2.55 NMAC - N, 06/07/2022]

**16.8.2.56 CANNABIS RESEARCH LABORATORY LICENSURE; GENERAL PROVISIONS:**

**A. License Types:** The division may license three classes of research:

(1) Tier I: A cannabis research laboratory Tier I may produce cannabis to be ingested by human or animal subjects, or produce cannabis not meant for ingestion, for

division approved clinical, agricultural, or market research studies; produce federally legal cannabis products; and may conduct division approved clinical, agricultural, or market research studies;

(2) Tier II: A cannabis research laboratory Tier II may produce cannabis not meant for ingestion, or purchase cannabis to be ingested by human or animal subjects, for division approved clinical, agricultural, or market research studies; and may conduct division approved clinical, agricultural, or market research studies;

(3) Tier III: A cannabis research laboratory Tier III may not produce cannabis and may only purchase cannabis or cannabis products from licensed cannabis research laboratories Tier I and Tier II, as appropriate for approved clinical, agricultural, or market research studies; and may conduct clinical, agricultural, or market research studies.

**B.** A Tier II or Tier III cannabis research laboratory may purchase cannabis from another licensed cannabis establishment with approval from the cannabis control division only if such research relates to brand specific inquiries (e.g., including studies comparing similar products from different brands or conducting cultivar specific efficacy studies for certain conditions) where use of cannabis or cannabis products produced by a cannabis research laboratory is impossible.

**C.** Except as noted in subsection (B), a cannabis research laboratory license permits a licensee to produce, process, transport, transfer, sell and possess cannabis consistent with its license type for research and related purposes.

**D.** A cannabis research laboratory may also produce and distribute federally legal cannabis products as authorized by state and federal law pertaining to drug products.

**E.** A cannabis research laboratory will provide notice to the cannabis control division prior to commencing the production and distribution of any federally legal cannabis product, including evidence of federal authorizations.

**F.** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division.

[16.8.2.56 NMAC – Rp 16.8.2.56 NMAC, 07/12/2022]

#### **16.8.2.57 APPLICATION REQUIREMENTS FOR CANNABIS RESEARCH LABORATORY LICENSE:**

**A. An initial application or renewal for cannabis research laboratory licensure shall include the following:**

- (1) Business and controlling person(s) contact information, to include:
  - (a) legal business name, including DBA if applicable;

- (b) type of business entity;
  - (c) business mailing address;
  - (d) business telephone number;
  - (e) business email address;
  - (f) business physical address, if different;
  - (g) business web address, if applicable;
  - (h) business hours of operation;
  - (i) name and contact information for each controlling person;
  - (j) demographic data pursuant to the Cannabis Regulation Act;
  - (k) license type sought (Tier I, Tier II, or Tier III); and
- (2) proof each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of controlling person;
- (3) proof of compliance with local laws by submitting either:
- (a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;
  - (b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or
  - (c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.
- (4) proof the applicant is properly registered with the New Mexico Taxation and Revenue Department (TRD) for payment of gross receipts tax;
- (5) if applicable, certification the applicant is in good standing with the New Mexico secretary of state;
- (6) a list of other current or prior licensed cannabis businesses;
  - (7) a list of other names used by controlling person(s);

(8) name and contact information for the primary controlling person for the business or an authorized representative of the business if not a controlling person;

(9) criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(10) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(11) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

(12) if applicable, a detailed research plan, including but not limited to the applicant's plan for recruiting research subjects, producing or acquiring cannabis, dispensing cannabis, plans for continuing research, and the forms of usable cannabis and cannabis-derived products to be examined;

if applicable, a detailed description of any private or public partnerships with higher education institutions, other cannabis research laboratories, or private business;

(13) if applicable, drug enforcement administration license to conduct research;

(14) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(15) if applicable, the applicant's DEA license or any conditional approval from the DEA to bulk manufacture cannabis for research, or the applicant's plan for seeking such licensure in the future;

(16) certification the applicant will not use dimethylsulfoxide (DMSO) in the production of cannabis derived products, and will not possess DMSO on the premises of the licensee;

(17) evidence that the applicant has obtained all necessary permits required for the production of edible and topical cannabis products from the New Mexico environment department and that such permits are valid at the time the license application is submitted;

(18) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(19) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(20) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(21) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(22) certification the applicant will adhere to production and manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis products;

(23) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(24) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grantmerced, federally designated opportunity zone, or other rural historic communities;

(25) an attestation by a person authorized to act on behalf of the business of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(26) payment of any required fees as set forth in 16.8.11 NMAC.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

- (1) contacting the applicant or controlling person by telephone, mail, or electronic mail;
- (2) conducting an on-site visit;
- (3) requiring a face-to-face or virtual meeting and the production of additional documentation; or
- (4) consulting with state or local governments.

**C. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within 10 days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.57 NMAC – N, 07/12/2022; A, 5/7/2024]

#### **16.8.2.58 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RESEARCH LABORATORY LICENSE:**

**A. Application:** A licensed research laboratory shall submit to the division an application form for an amended license, if applicable and obtain approval from the division, prior to implementing any of the following:

- (1) change of licensee's legal or business name;
- (2) change or modification in extraction type(s) or equipment;
- (3) material or substantial change in water source;
- (4) addition or elimination of a controlling person; or
- (5) material or substantial modification of the premise.

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) an addition or removal of licensed activities taking place on a single licensed premise; or

(3) a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a ten percent, or more, increase in the licensee's water usage.

[16.8.2.58 NMAC – N, 07/12/2022; A, 5/7/2024]

#### **16.8.2.59 EXPEDITED APPROVAL PROCESS:**

The division shall create an early approval process for entities that are either registered or conditionally approved by the FDA to manufacture bulk cannabis for research or to research cannabis.

**A.** Any entity conditionally approved for or holding a valid DEA registration as enumerated below may, within 60 days of the effective date, apply to the cannabis control division for expedited approval as follows:

(1) An entity that is registered with or conditionally approved by the DEA to manufacture bulk cannabis for research may seek early approval for a Tier I License; or

(2) An entity that is registered with or conditionally approved by the DEA to research cannabis may seek early approval for a Tier III license.

**B.** If an applicant meets all the relevant requirements of this section, the division shall issue the research laboratory license within 30 days of receiving a completed application.

[16.8.2.59 NMAC – N, 07/12/2022]

#### **16.8.2.60 PREMISES DIAGRAM:**

All licensees shall have a detailed diagram of the premises on hand at all times and made available for in person inspection by the Division or its agents upon request. This premises diagram shall conform to the requirements set forth in 16.8.2 NMAC.

[16.8.2.60 NMAC – N, 07/12/2022]

#### **16.8.2.61 CANNABIS RESEARCH LABORATORY POLICIES AND PROCEDURES:**

**A.** Minimum policy and procedure requirements: Licensees shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis research criteria and procedures, which shall be consistent with the requirements of applicable state laws, including the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and shall include at a minimum, the following topics:

(2) protocols for research;

(3) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product; and procedures for testing and destruction of cannabis or cannabis products;

(4) employee policies and procedures to address the following minimum requirements:

(5) adherence to state and federal laws;

(6) responding to an emergency, including robbery or a serious accident or incident;

(7) alcohol and drug-free workplace policies and procedures;

(8) safety and security procedures;

(9) occupational health and safety;

(10) crime prevention techniques; and

(11) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(12) statements signed by employees indicating receipt and understanding of policies and procedures.

**B.** Training program: Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

- (1) employee health and safety;
- (2) health and safety hazards;
- (3) hazard communication for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;
- (4) requirements for the proper use of health and safety measures and controls;
- (5) emergency procedures;
- (6) security procedures; and
- (7) record keeping requirements.

**C.** A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American national standards institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a cannabis research licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

**D.** Training documentation:

- (1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section.
- (2) The licensee shall maintain a record, which contains at minimum:
  - (a) duties of each personnel;
  - (b) a list of all personnel at the premises, including at minimum, name and job title;
- (3) documentation of training topics and dates of training completion;

(4) the signature of each employee verifying receipt and understanding of each training or refresher training completed.

**E.** Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.61 NMAC – N, 07/12/2022]

**16.8.2.62 HUMAN SUBJECT PROTECTIONS:**

**A.** Before conducting research involving human subjects, the licensee shall:

(1) provide the division with documentation that the study has received institutional review board (IRB) approval, as defined and described in 45 CFR Part 46, federal policy for the protection of human subjects; and

(2) obtain "informed consent," as defined and described in 45 CFR Part 46, federal policy for the protection of human subjects, from the human research subject.

**B.** Nothing in this part relieves the licensee from complying with applicable FDA and state requirements governing cannabis research.

[16.8.2.62 NMAC – N, 07/12/2022]

**16.8.2.63 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.2.63 NMAC – Rn, 16.8.2.43 NMAC, 01/11/2022; Rn, 16.8.2.56 NMAC, 07/12/2022]

**PART 3 PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS**

**16.8.3.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.3.1 NMAC – N, 04/01/2022]

**16.8.3.2 SCOPE:**

This rule applies to all licensees and applicant for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

[16.8.3.2 NMAC - N, 04/01/2022]

**16.8.3.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.3.3 NMAC - N, 04/01/2022]

**16.8.3.4 DURATION:**

Permanent.

[16.8.3.4 NMAC - N, 04/01/2022]

**16.8.3.5 EFFECTIVE DATE:**

April 1, 2022, unless a later date is cited at the end of a section.

[16.8.3.5 NMAC - N, 04/01/2022]

**16.8.3.6 OBJECTIVE:**

The objective of Part 3 is to establish standards for packaging, labeling, advertising, marketing, and commercial display requirements for cannabis products. Part 3 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

[16.8.3.6 NMAC - N, 04/01/2022]

**16.8.3.7 DEFINITIONS:**

Unless otherwise defined in Title 16, Chapter 8, Part 1, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the licensing authority under the Lynn and Erin Compassionate Use Act.

[16.8.3.7 NMAC – N, 03/22/2022]

**16.8.3.8 ADVERTISING AND MARKETING:**

**A. Required Practices.** The following practices are required in all advertising and marketing activities:

(1) Responsible persons. All advertisements and marketing for cannabis products shall accurately and legibly identify all licensees or organizations who are responsible for the proliferation of the advertisement or marketing activity.

(2) Reasonable expectation of audience age. All advertisements in print and digital communications shall only be placed in areas where at least seventy percent of the audience is reasonably expected to be 21 years of age or older as determined by reliable, current audience composition data. For the purposes of this section, "reliable, current audience composition data" means data regarding the age and location demographics of the audience viewing a particular advertising or marketing medium. Immediately upon request, a licensee shall provide to the division audience composition data as required in this section for advertising or marketing placed by the licensee. If the audience composition data for advertising or marketing provided by a licensee does not comply with the requirements of this section, or the licensee fails to provide audience composition data to the division upon request, the licensee shall remove the advertising or marketing placement in question.

(3) Statements and warnings: Any advertising or marketing materials created for viewing by the public shall include the statement "Please Consume Responsibly" in a conspicuous manner on the face of the advertisement and shall include the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) for use only by adults 21 and older;

(b) keep out of reach of children;

(c) this product is not approved by the FDA to treat, cure, or prevent any disease. FDA has not evaluated this product for safety, effectiveness, and quality;

(d) do not drive a motor vehicle or operate machinery while under the influence of cannabis; and

(e) there may be long term adverse health effects from consumption of cannabis, including additional risks for women who are or may become pregnant or are breastfeeding.

**B. Prohibited practices.** Advertising and marketing activities of cannabis products shall not:

(1) occur on radio, television or other broadcast media, internet pop-ups and mass transit vehicles. The division shall not prohibit advertising and marketing activities on these forums where:

(a) subscribers of subscription-based radio, television or other broadcast media are 21 years of age or older; or

(b) persons 21 years of age or older have solicited the advertising or marketing activities.

(2) be done in such a manner that is deemed to be is deceptive, misleading, false or fraudulent, or that tends to deceive or create a misleading impression, whether directly or by omission or ambiguity;

(3) make unproven health benefit claims and any health benefit claims must be supported by substantial evidence or substantial clinical data;

(4) be on billboards, posters, handbills or other visual media that are located or can be viewed within 300 feet of a school, daycare center or church;

(5) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors;

(6) use predatory marketing or advertising practices targeting minors; and

(7) be designed to mimic any other product brand;

(8) promote the over consumption of cannabis or cannabis products; or

(9) depict the actual consumption of cannabis or cannabis products.

**C. Branding.** "Branding" means promotion of a cannabis establishment's brand through publicizing the cannabis establishment's name, logo, or distinct design feature of the brand.

(1) Branding shall not be designed to be appealing to a child and shall not contain:

(a) cartoons;

(b) a design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;

(c) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors.

(2) Branding is not considered a marketing or advertising activity.

(3) Branding is allowed without the required warnings and statements for advertising and marketing of cannabis establishments.

[16.8.3.8 NMAC – N, 04/01/2022; A, 03/22/2022]

### **16.8.3.9 CANNABIS FINISHED PRODUCT LABELING:**

**A.** Unless otherwise provided, cannabis finished products shall meet the minimum labeling requirements of this section.

**B.** The label shall be printed on or affixed to the container and printed on or affixed to any outer package or container that is used to display the edible or topical cannabis finished product for retail sale.

**C.** Font size used on a label shall be no smaller than 1/16 of an inch by measuring the height of a lower-case letter "o".

**D.** Labels shall identify the intended use and directions for use. Products having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed.

**E.** Labels shall be in English, though it can be in other languages.

**F.** Labels shall be unobstructed and conspicuous.

**G.** If the cannabis finished product's target potency or potency value of the Total THC or CBD is less than one milligram per serving, the potency may be expressed as "<1 mg." If "<1 mg" was used to display the Total THC or CBD per serving, then a corresponding statement regarding the Total THC or CBD content for the entire container shall be included on the container. For example, if there are five servings in the container, "<5 mg" should be displayed for the Total THC or CBD statement that was represented as "<1 mg" per serving.

**H.** The potency statement stated on an edible or topical cannabis finished product label shall not deviate by more than fifteen percent of what is stated on the label.

**I.** A label shall not:

(1) contain any untruthful or misleading statements including, but not limited to, health or benefit claims, and

(2) contain advertising or marketing; and

(3) contain words that refer to products that are commonly associated with minors or marketed by minors; including use of the word(s) "candy" or "candies" on the label of any container, unless the words identify the strain of cannabis in the cannabis finished product.

**J.** Cannabis finished product labels shall have a principal display panel.

**K.** The principal display panel shall include:

(1) the product identity or common name in bold type, in a size reasonably related to the most prominent printed matter on the principal display panel and shall be parallel to the base on which the package rests as it is designed and displayed.

(2) Net quantity, net weight, or volume in U.S. customary and metric units of contents displayed in bold type in the bottom thirty percent of the principal display panel in lines generally parallel with the base of the container; and shall be in terms of fluid measure if the item is liquid, or in terms of weight if the item is solid, semi-solid, or viscous.

(3) Potency, as confirmed by a cannabis testing laboratory, in bold font and including:

(a) for edible products, Total THC and CBD in milligrams per serving;

(b) percent of Total THC per container; and

(c) if detected, percent of CBD per container.

(4) A logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch.

(5) A logo designed and provided by the division that demonstrates a cannabis product is produced or manufactured by an integrated cannabis microbusinesses or cannabis producer microbusinesses or owned by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy and underserved communities that include tribal, acequia, land grant-merced and other rural historic communities;

(6) for an edible or topical cannabis finished product that is perishable or meets the definition of a time/temperature control for safety food, the label shall bear a statement that the product must be refrigerated; and

(7) the following warning statement in bold font "For use only by adults 21 and older. Keep out of reach of children. Do not drive a motor vehicle or operate machinery while under the influence of cannabis.

**BE CAUTIOUS. Cannabinoid edibles can take up to two hours or more to take effect."**

**L.** Except as provided in Subsections M and N of this section, cannabis finished product labels shall have an information panel or static quick response (QR) code that links the consumer to the required information that contains the following without intervening material:

- (1) cannabis manufacturer business or trade name;
- (2) unless the business or trade name placed on the package is the actual manufacturer, it must be accompanied by a qualifying phrase which states the firm's relation to the product (e.g., "manufactured for" or "distributed by");
- (3) cannabis manufacturer license number;
- (4) pesticide used in the product by the cannabis producer;
- (5) date product was manufactured;
- (6) ingredient list:
  - (a) using the common or usual name;
  - (b) sub-ingredients, as follows: any ingredient containing two or more sub-ingredients shall parenthetically list the component ingredients in descending order of predominance after the multi-component ingredient;
  - (c) identifying the cannabis extract/concentrate and each isolated cannabinoid as an ingredient; and
  - (d) in descending order of predominance by weight or volume.
- (7) if utilized, pharmacologically active ingredients;
- (8) a "contains" statement identifying allergens at the end of or immediately adjacent to the ingredient list; or listing the allergen in parenthesis within the ingredient list after the common or usual name of the ingredient derived from that major food allergen;
- (9) nutritional information meeting the requirements of 21 CFR 101.9;
- (10) the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease. FDA has not evaluated this product for safety, effectiveness, and quality. There may be long term adverse health effects from consumption of cannabis, including additional risks for women who are or may become pregnant or are breastfeeding."
- (11) the New Mexico poison and drug information center phone number;
- (12) the product expiration date. Persons shall not alter that expiration date or affix a new label with a later expiration date;

(13) the state track and trace system number or identifier associated with the product; and

(14) a list of any solvent(s), processing aids, and chemicals used to manufacture cannabis product, cannabis concentrate or extract, or isolated cannabinoid identified.

**M.** When, because of its container size, an edible cannabis finished product label does not have sufficient space for a label meeting the requirements of Subsections K-L of this section, labels shall, at a minimum, contain:

(1) a principal display panel containing the net weight or volume, product identity, and logos designed and provided by the division;

(2) cannabis manufacturer business or trade name;

(3) cannabis manufacturer license;

(4) potency, as specified in Paragraph (3) of Subsection K of this section;

(5) the warning statements, as specified in Paragraph (7) of Subsection K of this section;

(6) the state track and trace system number or identifier associated with the product; and

(7) all other required labeling as specified in Subsections K-L of this section through the use of a static quick response (QR) code that links the consumer to the required information or a peel-back or accordion label that can be easily identified by a consumer as containing important information.

**N.** When the surface area being labeled is less than two inches squared and does not have sufficient space for a label meeting the requirements of Subsections K-L of this section, labels shall, at a minimum, contain:

(1) a principal display panel containing the product identity and logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch;

(2) cannabis manufacturer business or trade name;

(3) cannabis manufacturer license number;

(4) potency, as specified in Paragraph (3) of Subsection K of this section;

(5) the warning statement "For use only by adults 21 and older. Keep out of reach of children."

(6) the state track and trace system number or identifier associated with the product; and

(7) all other required labeling as specified in Subsections K-L of this through the use of a static quick response (QR) code that links the consumer to the required information or use a peel-back or accordion label that can be easily identified by a consumer as containing important information.

[16.8.3.9 NMAC - N, 04/01/2022]

#### **16.8.3.10 CANNABIS SEED AND IMMATURE CANNABIS PLANT LABELING:**

**A.** Unless otherwise provided, cannabis seeds and immature cannabis plants sold to consumers, qualified patients, or reciprocal patients shall meet the minimum labeling requirements of this section.

**B.** The label shall be printed on or affixed to the container or receptacle and printed on or affixed to any outer package or container that is used to display the cannabis seed or immature cannabis plant for retail sale.

**C.** Font size used on a label shall be no smaller than 1/16 of an inch by measuring the height of a lower-case letter "o".

**D.** The label shall be in English, though it can be in other languages.

**E.** The label shall be unobstructed and conspicuous.

**F.** The label shall not contain any untruthful or misleading statements including, but not limited to, health or benefit claims.

**G.** The principal display panel shall include:

(1) the product identity or common name in bold type, in a size reasonably related to the most prominent printed matter on the principal display panel;

(2) potential potency, as confirmed by a cannabis testing laboratory of the parent cannabis plant; and

(3) a logo designed and provided by the division that is no smaller than 1/2 inch by 1/2 inch.

**H.** For cannabis seeds the display panel shall also include net quantity of seeds.

I. Cannabis seed and immature cannabis plant labels shall have an information panel or static quick response (QR) code that links to or contains the following without intervening material:

- (1) if applicable, the cannabis manufacturer business or trade name;
- (2) if applicable, unless the business or trade name placed on the package is the actual manufacturer, a qualifying phrase which states the firm's relation to the product (e.g., "manufactured for" or "distributed by");
- (3) if applicable, cannabis manufacturer license number;
- (4) pesticide used in the product by the cannabis producer;
- (5) if applicable, date product was manufactured;
- (6) the following warning statement in bold font "For use only by adults 21 and older. Keep out of reach of children."

[16.8.3.10 NMAC - N, 04/01/2022]

#### **16.8.3.11 CANNABIS FINISHED PRODUCT LABELING IN CANNABIS CONSUMPTION AREAS:**

Packaging and labeling exemptions and minimum requirements. A licensed cannabis consumption area may sell cannabis products to a consumer, qualified patient, or reciprocal patient without packaging and labeling under the following conditions:

**A.** the consumer, qualified patient, or reciprocal patient intends to consume cannabis product on the licensed premises of the cannabis consumption area and will store unused product on the premises as required by cannabis consumption area licensing requirements in 16.8.2 NMAC;

**B.** at the time of transfer of the cannabis finished product to a consumer, the licensed cannabis consumption area provides the consumer with a written statement of the potency of the cannabis product's THC or Total THC, and CBD, which shall be expressed as a percentage for inhaled cannabis finished products, and expressed in milligrams for edible cannabis finished products and topical cannabis finished products. If CBD is not detected in the inhaled cannabis finished product, then CBD potency is not required;

**C.** the licensed cannabis consumption area maintains and makes available to the consumer, qualified patient, or reciprocal patient upon request written or electronic documentation reflecting all relevant information required in cannabis consumption area licensing requirements 16.8.2 NMAC; and

**D.** for multiple-serving edible cannabis finished product, the licensed cannabis consumption area at the time of transfer to the consumer, qualified patient, or reciprocal patient shall provide a measurement device necessary for the purchaser to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of Total THC per serving.

[16.8.3.10 NMAC - N, 04/01/2022]

#### **16.8.3.12 CANNABIS FINISHED PRODUCT PACKAGING:**

**A.** Unless otherwise specified, edible or topical cannabis finished products shall meet the following minimum packaging requirements:

(1) containers used for edible cannabis products or edible cannabis finished products shall be food-grade or GRAS and must not impart any toxic or deleterious substance to the packaged product;

(2) containers used for topical cannabis products and topical cannabis finished products must be suitable for the intended purpose and must not impart any toxic or deleterious substance to the packaged product;

(3) unless otherwise provided, containers shall be child-resistant. If the product is multiple use, or contains multiple servings, it shall also be packaged in a container that is resealable and continually child-resistant;

(4) cannabis finished products that contain only cannabis flower must be packaged in resealable containers and are not subject to the child resistant container requirement;

(5) containers shall be compostable and recyclable, or made from recycled materials;

(6) edible cannabis finished products packaged for commercial sale shall not exceed 10 milligrams of Total THC per serving, or 100 milligrams of Total THC per container;

(7) edible cannabis finished products packaged for qualified patients, qualified caregivers and reciprocal participants as defined by the Lynn and Erin Compassionate Use Act shall be identified for medical use only and shall not exceed 50 milligrams of Total THC per serving;

(8) single serving edible cannabis finished products that are placed into a child resistant container may be bundled into an exit package;

(9) edible cannabis finished products containing multiple servings in a single container shall:

(a) when in in solid form, be:

(i) easily separable in order to allow an average person 21 years of age or older to physically separate, with minimal effort, individual servings of the product; and

(ii) easily and permanently scored to identify individual servings;

(b) be packaged in a single serving size; and

(c) be marked, stamped, or otherwise imprinted with a logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch for each single serving contained in a multi-serving package.

(10) Unless as otherwise specified in Paragraph (10) of this subsection, liquid cannabis finished products shall be single-serving only.

(11) Each liquid cannabis finished product that is a multiple-serving edible cannabis finished product shall be:

(a) packaged in a structure that uses a single mechanism to achieve both child-resistant properties and accurate pouring measurement of each liquid serving in increments; and

(b) the measurement component is within the child-resistant cap or closure of the bottle and is not a separate component.

(12) A cannabis manufacturer shall maintain a copy of the certificate showing that each child-resistant container into which edible or topical cannabis finished product is placed is child-resistant and complies with the requirements of 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20;

(13) Packaging containers shall not be designed to be appealing to a child and shall not use words that refer to products that are commonly associated with minors or marketed by minors, including use of the word(s) "candy" or "candies" on the label of any container.

(14) Once any remaining cannabis has been removed and destroyed pursuant to these rules, a cannabis establishment may reuse containers subject to the following requirements and restrictions:

(a) the containers have been sanitized and disinfected either by a cannabis establishment or by a third-party to ensure that they do not contain any harmful residue or contaminants, and

(b) if child resistant, the containers can be reused with new child resistant packaging that complies with 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20; or if new child resistant packaging is not being used, based on a visual inspection, the existing child-resistant packaging appears to be in good working order and does not appear to pose a risk of unintended exposure or ingestion of cannabis. The visual inspection must ensure such containers are not brittle or have chips, cracks, or other imperfections that could compromise the child-resistant properties of the container or otherwise pose a threat of harm to a patient or consumer.

(15) Packaging for edible cannabis finished products packaged pursuant to the Lynn and Erin Compassionate Use Act that was purchased prior to January 11, 2022 may be used by a licensee until October 1, 2022.

[16.8.3.12 NMAC - N, 04/01/2022; A, 03/22/2022]

#### **16.8.3.13 EXIT PACKAGING:**

All finished cannabis products purchased by a customer, qualified patient, or reciprocal patient shall not leave the licensed retailer's premises unless the cannabis products are placed in an opaque exit package.

[16.8.3.13 NMAC - N, 04/01/2022]

#### **16.8.3.14 CANNABIS SEED AND IMMATURE PLANT PACKAGING:**

Unless otherwise specified, cannabis seeds sold shall meet the following minimum packaging requirements:

- A.** cannabis seeds and immature cannabis plants shall be placed into a container;
- B.** containers must be suitable for the intended purpose and must not impart any toxic or deleterious substance to the packaged product; and
- C.** containers shall be compostable and recyclable, or made from recycled materials.

[16.8.3.14 NMAC - N, 04/01/2022]

#### **16.8.3.15 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.3.15 NMAC – N, 04/01/2022]

## **PART 4 – 5 [RESERVED]**

## **PART 6 HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES**

### **16.8.6.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.6.1 NMAC – N, 10/11/2022]

### **16.8.6.2 SCOPE:**

This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.

[16.8.6.2 NMAC - N, 10/11/2022]

### **16.8.6.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.6.3 NMAC - N, 10/11/2022]

### **16.8.6.4 DURATION:**

Permanent.

[16.8.6.4 NMAC - N, 10/11/2022]

### **16.8.6.5 EFFECTIVE DATE:**

October 11, 2022, unless a later date is cited at the end of a section.

[16.8.6.5 NMAC - N, 10/11/2022]

### **16.8.6.6 OBJECTIVE:**

The objective of Part 6 is to set forth standards related to health and safety, food and product safety, environmental impacts, and natural resources to ensure public health, safety, and well-being. Part 6 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

[16.8.6.6 NMAC - N, 10/11/2022]

**16.8.6.7 DEFINITIONS:**

**[RESERVED]**

**16.8.6.8 PREREQUISITE AND RESPONSIBILITY FOR OPERATION:**

**A.** Except as specified in Subsection F of 16.8.6.7 NMAC, prior to the submission of a license application for a class II, III, or IV cannabis manufacture license, each applicant or licensee engaged in the manufacturing of edible or topical cannabis products or edible or topical cannabis finished products shall provide to NMED a certification that:

(1) the facility where the cannabis manufacturer operates, and the manufacturing equipment used will be constructed and maintained in accordance with the requirements of this part; and

(2) edible and topical cannabis products and edible and topical finished products will be stored, manufactured, packaged, repackaged, labeled, relabeled, tested, reworked, or wasted in accordance with the requirements of this part.

**B.** A certification shall include information specified in Subparagraphs (a) through (i) of Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

**C.** Any person signing a certification pursuant to this section shall include the following signed statement: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information."

**D.** NMED shall provide confirmation of receipt to each applicant or licensee that provides a certification.

**E.** Each applicant or licensee shall provide the NMED confirmation to RLD as specified in Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

**F.** Certification to NMED, as specified in Subsections A through E of 16.8.6.7 shall no longer be required after December 31, 2022.

**G.** Class II, III, or IV cannabis manufacturers that were licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing of cannabis edible products or cannabis edible finished products, shall apply for a food permit from NMED or a home rule municipality by January 1, 2023.

**H.** Except as specified in Subsection F of 16.8.6.7 NMAC, class II, III, or IV cannabis manufacturers that were not licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing cannabis edible products or cannabis edible finished products, shall provide a certification to NMED as specified in Subsections A through E and apply for a food permit from NMED or a home rule municipality as specified in G of 16.8.6.7 NMAC.

**I.** Beginning April 1, 2023, Class II, III, or IV cannabis manufacturers that manufacture cannabis edible products or cannabis edible finished products shall not operate without a food permit from NMED or a home rule municipality.

[16.8.6.8 NMAC - N, 10/11/2022]

#### **16.8.6.9 MANAGEMENT AND PERSONNEL:**

**A.** Adoption of food code parts 2-1, 2-3 and 2-4 and section 2-103.11. Except as otherwise provided, parts 2-1, 2-3 and 2-4 and section 2-103.11 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

**B.** A licensee shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the edible cannabis manufacturing facility. The procedures shall be maintained onsite and address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

**C.** Except as otherwise provided, the licensee shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the cannabis manufacturer facility during all hours of operation.

**D.** If edible or topical cannabis products or edible or topical cannabis finished products are manufactured as part of a vertically integrated cannabis establishment or integrated cannabis microbusiness that is the legal responsibility of the same licensee and that are located on the same licensed premises, the licensee may designate a single person in charge who is present on the licensed premises during all hours of operation.

**E.** The person in charge shall have the education, training, or experience necessary to supervise the production of clean and safe edible or topical cannabis products or edible or topical cannabis finished products and ensure the cannabis manufacturer remains in compliance with this part, division rules, and the act at all times.

**F.** Personal care items on the premises shall be stored in a manner to protect edible and topical cannabis products, edible and topical cannabis finished products, other ingredients, equipment, and utensils from contamination at all times.

**G.** A licensee shall:

(1) immediately contact the division to report an illness of an employee or conditional employee as specified under Subsection A of this section;

(2) immediately discontinue operations and notify the division if an imminent health hazard may exist as specified in 16.8.6.13 NMAC;

[16.8.6.9 NMAC - N, 10/11/2022]

**16.8.6.10 EDIBLE AND TOPICAL CANNABIS MANUFACTURER REQUIREMENTS:**

**A.** Adoption of 21 CFR 117. Except as otherwise provided, Subpart F and the sections, specified in paragraphs 1-7 of this subsection, of Subparts A and B of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety:

- (1) 117.3 Definitions;
- (2) 117.20 Plant and grounds;
- (3) 117.35 Sanitary operations;
- (4) 117.37 Sanitary facilities and controls;
- (5) 117.40 Equipment and utensils;
- (6) 117.80 Processes and controls; and
- (7) 117.110 Defect action levels and Subpart F.

**B.** Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

(1) 117.301: All records required by this part are subject to all requirements of this subpart;

(2) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location; and

(3) 117.320: All records required by this part must be made promptly available to the division for official review and copying upon oral or written request.

**C. Omissions.** Except as otherwise provided, the following omissions are made to the incorporated subparts of 21 CFR 117:

- (1) 117.310;
- (2) 117.315(d);
- (3) 117.325;
- (4) 117.335; and
- (5) The following terms are omitted from section 117.3 Definitions:
  - (a) Allergen;
  - (b) Food;
  - (c) Food-contact surfaces;
  - (d) Lot;
  - (e) Manufacturing/processing; and
  - (f) Packing.

**D. Adoption of food code parts 4-5, 4-6 and 4-7.** Except as otherwise provided, parts 4-5, 4-6, and 4-7 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

**E. Modifications.** Except as otherwise provided, the following modifications are made to the incorporated subparts of the 2017 United States food and drug administration model food code, 4-603.12 Precleaning:

- (1) Food or cannabis product debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.
- (2) If necessary, for effective cleaning, utensils and equipment shall be pre-flushed, presoaked, or scrubbed with abrasives. Ethyl alcohol (ethanol) or isopropyl alcohol (isopropanol) are acceptable for pre-flushing or presoaking.

**F. Omissions.** Except as otherwise provided, the following omissions are made to the incorporated subparts of the 2017 United States food and drug administration model food code:

- (1) 4-502.12;

- (2) 4-502.13(B);
- (3) 4-502.14;
- (4) 4-602.11(A)(1);
- (5) 4-602.11(B);
- (6) 4-602.11(D)(3); and
- (7) 4-602.11(E)(2)-(3).

**G. Cannabis Product Ingredient Source.**

(1) Ingredients shall be received from sources as specified in 7.6.2 NMAC.

(2) Cannabis products, ingredients, and edible or topical cannabis finished products intended for human consumption shall be transported under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of the cannabis products, ingredients, and cannabis finished products, as well as against deterioration of the cannabis products, ingredients, and cannabis finished products and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

**H.** The current 21 CFR 111 and United States Federal Food, Drug, and Cosmetic Act, Title 21, Chapter 9 and 7.6.2 NMAC are hereby adopted as a technical reference and interpretation guide.

[16.8.6.10 NMAC – N, 10/11/2022]

**16.8.6.11 WATER SUPPLY AND SEWAGE:**

**A.** Drinking water shall be obtained from an approved source that is:

- (1) a public water system; or
- (2) a non-public water system that is constructed, maintained, and operated according to law.

**B.** A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

**C.** Except as specified under Subsection D of this section:

(1) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and

(2) Water from a non-public water system shall meet:

(a) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and

(b) the drinking water source setback requirements as specified in 20.7.3 NMAC.

**D.** A non-drinking water supply shall be used only if its use is approved and shall be used only for nonculinary purposes such as air conditioning, non-cannabis equipment cooling, and fire protection.

**E.** Except when used as specified in Subsection D of this section, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

**F.** The most recent sample report for the non-public water system shall be retained on file in the cannabis manufacturer facility or the report shall be maintained as specified by state water quality regulations.

**G.** Water shall be received from the source through the use of:

(1) an approved public water main; or

(2) one or more of the following that shall be constructed, maintained, and operated according to law:

(a) Non-public water main, water pumps, pipes, hoses, connections, and other appurtenances;

(b) Water transport vehicles; or

(c) Water containers.

**H.** Sewage shall be disposed of according to LAW. Liquid waste systems shall meet the requirements of 20.7.3 NMAC.

[16.8.6.11 NMAC - N, 10/11/2022]

**16.8.6.12 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING:**

**A.** Edible and topical cannabis finished products shall meet the requirements specified in division rules related to testing prior to being transported or transferred from the licensed premises, distributed, sold or otherwise made available to consumers.

**B.** Edible and topical cannabis finished products that do not meet the requirements of Subsection A of this section shall:

- (1) be segregated;
- (2) reworked, remediated or reconditioned as specified in division rules related to testing; or
- (3) destroyed, wasted, and disposed of in accordance with the wastage requirements of the division.

[16.8.6.12 NMAC – N, 10/11/2022]

**16.8.6.13 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING LABORATORIES:**

Testing required by the division shall be conducted by a division-approved cannabis testing laboratory that has no direct ownership or financial interest in the facility for which the testing is being conducted.

[16.8.6.13 NMAC - N, 10/11/2022]

**16.8.6.14 CEASING OPERATIONS AND REPORTING:**

**A.** Except as specified in Subsections B and C of this section, a licensee shall immediately discontinue operations if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne or cannabis-borne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, employees, or the environment.

**B.** A licensee need not discontinue operations in an area of a cannabis manufacturer facility that is unaffected by the imminent health hazard.

**C.** Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the division may allow the licensee to continue operations in the event of an extended interruption of electrical or water service if:

- (1) a written emergency operating plan has been approved by the division (NMED);

(2) immediate corrective action is taken by the licensee to eliminate, prevent, or control any food safety risk and imminent health hazard associated with the electrical or water service interruption; and

(3) the division (NMED) is informed upon implementation of the written emergency operating plan.

**D.** If operations are discontinued as specified in Subsection A of this section or otherwise according to law, the licensee shall obtain approval from the division (NMED) before resuming operations.

[16.8.6.14 NMAC - N, 10/11/2022]

**16.8.6.15 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.6.15 NMAC – N, 10/11/2022]

**PART 7 QUALITY CONTROL, INSPECTION, AND TESTING OF CANNABIS PRODUCTS**

**16.8.7.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.7.1 NMAC – N, 03/01/2022]

**16.8.7.2 SCOPE:**

This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.

[16.8.7.2 NMAC - N, 03/01/2022]

**16.8.7.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.7.3 NMAC - N, 03/01/2022]

**16.8.7.4 DURATION:**

Permanent.

[16.8.7.4 NMAC - N, 03/01/2022]

**16.8.7.5 EFFECTIVE DATE:**

March 1, 2022, unless a later date is cited at the end of a section.

[16.8.7.5 NMAC - N, 03/01/2022]

**16.8.7.6 OBJECTIVE:**

The objective of Part 7 is to set forth standards related to quality control of inspection, and testing of cannabis and cannabis products to ensure uniformity of cannabis and cannabis products and protect public safety. Part 7 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

[16.8.7.6 NMAC - N, 03/01/2022]

**16.8.7.7 DEFINITIONS:**

[RESERVED]

**16.8.7.8 GENERAL TRACKING REQUIREMENTS:**

In addition to any requirements specific to tracking within each license type, all licensees of cannabis establishments must meet minimum requirements.

**A. Tracking immature cannabis plants:** licensees must track, using the track and trace system specified by the division, cannabis plants as follows:

(1) each immature plant shall be assigned a plant tag with an individual track and trace number and shall be:

(a) placed contiguous to one another to facilitate identification by the division;  
and

(b) be fully separated from mature plants.

(2) Immature plants transferred from one licensee to another shall be labeled with the track and trace number that corresponds to the track and trace number. The receiving licensee shall remove the originating licensee's tag and assign a plant or package tag, as applicable, belonging to the receiving licensee within three calendar days of receiving the immature plants.

**B. Tracking mature cannabis plants:** mature cannabis plants shall be tagged as follows:

(1) Each mature plant shall be tagged with a plant tag. A plant tag shall be attached to the main stem at the base of the plant, placed in a position so it is visible and within clear view of an individual standing next to the mature plant, and kept free from dirt and debris.

(2) Licensees are prohibited from removing the plant tag from the mature plant to which it was attached and assigned until the plant is harvested, destroyed, or disposed of.

**C. Tracking cannabis and cannabis products:** licensees must track, using the track and trace system specified by the division, cannabis and cannabis products according to packaging and labeling requirements set forth in 16.8.3 NMAC.

**D. Additional recorded information:** in addition to any tracking requirements specific to license type or cannabis product type, a licensee must ensure the following data is properly recorded in the tracking system:

(1) a complete inventory of all cannabis and cannabis products in the possession, control or ownership of the licensee;

(2) any changes to the licensee's inventory of any cannabis or cannabis products;

(3) when cannabis material is converted to waste

(4) when cannabis waste is destroyed;

(5) when an authorized transfer of cannabis or cannabis product occurs;

(6) any theft of cannabis or cannabis products;

(7) all sales records of cannabis or cannabis product;

(8) all mandatory cannabis or cannabis product testing results;

(9) the county and municipality, if applicable, where the cannabis or cannabis product was harvested, otherwise cultivated, manufactured, tested, sold to other licensees, sold to consumers and disposed of or destroyed; and

(10) other information required by the tracking system or specified by the division.

(11) cannabis material in segregation while testing occurs.

[16.8.7.8 NMAC – N, 3/1/2022; A/E, 03/10/2022; Rp, 16.8.7.8 NMAC, 07/12/2022]

#### **16.8.7.9 IMPLEMENTATION AND ADMINISTRATION OF TRACKING SYSTEM:**

**A. Operational account:** a licensee must have a track and trace system account activated and functional prior to operating or exercising any privileges of a license. The licensee shall keep and maintain comprehensive records to ensure adequate inventory tracking of any cannabis or cannabis products.

**B. System administrator required:** each licensee must designate at least one individual as a track and trace system administrator.

**C. System training:** in order to obtain a track and trace system administrator account, a licensee or its designee must attend and successfully complete all required track and trace system training. A licensee may apply for an account and training once they receive a license from the division.

**D. Continuing education:** The division may also require additional ongoing, continuing education for the track and trace system administrator to retain their track and trace system administrator account.

**E. Responsible for cost:** each licensee is responsible for all costs associated with its use of the tracking system and any associated vendor fees.

**F. Additional users:** a licensee may designate additional individuals as track and trace system users. The licensee shall ensure that all individuals who are granted track and trace system user account access for the purposes of conducting track and trace functions in the system are trained by an track and trace system administrator in the proper and lawful use of the track and trace system.

[16.8.7.9 NMAC – N, 3/1/2022; Rp, 16.8.7.9 NMAC, 07/12/2022]

#### **16.8.7.10 GENERAL TRACK AND TRACE SYSTEM USE:**

**A. System required:** all track and trace activities of a licensee must be tracked through use of the track and trace system. Licensees must reconcile all on-premises and in-transit cannabis or cannabis products each day in the track and trace system by 11:59 p.m. that same day. Track and trace system software must then be synchronized by the licensee prior to closing the session (as applicable).

**B. Weights and measures:** licensees must utilize a standard of weights and measures that is supported by the track and trace system to track all cannabis or cannabis products. A scale used to weigh product prior to entry into the track and trace system shall be certified to be registered and calibrated in accordance with applicable requirements of the New Mexico department of agriculture

**C. System security:** licensees shall maintain the security of the track and trace system, as follows:

- (1) maintain an accurate and complete list of all track and trace system users for each licensed premise;
- (2) update this list when a new track and trace system user is trained or when an existing user is removed;
- (3) train and authorize any new track and trace system users before they may access track and trace system or input, modify or delete any information in the track and trace system; and
- (4) cancel any track and trace system administrators and track and trace system users from their associated track and trace system accounts once any such individuals are no longer employed by the licensee or at the licensed premises.

**D. Responsible for employee actions:** licensees are accountable for all actions employees take while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities.

**E. Responsible for individual actions:** each individual user is also accountable for all of their actions while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities, and shall maintain compliance with all relevant laws and division rules.

**F. Use of appropriate account:** each individual user shall only log activities in the track and trace system under the user's own unique track and trace system user account.

**G. Additional software allowed:** licensees may use separate software applications to collect information to be used by the business, including additional inventory tracking or point of sale systems.

[16.8.7.10 NMAC – N, 3/1/2022; Rp, 16.8.7.10 NMAC, 07/12/2022]

#### **16.8.7.11 CONDUCT WHILE USING TRACK AND TRACE SYSTEM:**

**A.** Licensees or designated track and trace administrator(s) and track and trace system user(s) shall enter data into the track and trace system that fully and transparently accounts for all inventory tracking activities and authorized transfers. Both the licensee and the individuals using the track and trace system are responsible for the accuracy of all information entered into the track and trace system.

**B.** Individuals entering data into the track and trace system shall only use that individual's track and trace system account.

**C.** If at any point a licensee loses access to the track and trace system for any reason, the licensee or track and trace system administrator shall immediately notify the division and shall keep and maintain comprehensive records detailing all cannabis or cannabis product track and trace activities that occurred during the loss of access. These track and trace activities must be entered into the track and trace system and the division shall be notified that access has been restored. Licensees must document when access to the system was lost, the cause of system loss and when it was restored. Licensee shall not transport or receive any cannabis or cannabis product to or from another cannabis establishment until such time as access is restored and all information is recorded into the track and trace system.

[16.8.7.11 NMAC – Rp,16.8.7.11 NMAC, 07/12/2022]

#### **16.8.7.12 COMPLIANCE NOTIFICATIONS:**

**A. Monitor notifications:** licensees must monitor all compliance notifications from the track and trace system or the division and must resolve any issue(s) detailed in the compliance notification in a timely fashion. Compliance notifications from the track and trace system shall not be dismissed in the track and trace system until the licensee resolves the compliance issues detailed in the notification.

**B. Monitor informational notifications:** licensees must take appropriate action in response to informational notifications received through the track and trace system or the division including but not limited to notifications related to enforcement alerts and other pertinent information.

[16.8.7.12 NMAC - N, 07/12/2022]

#### **16.8.7.13 LAWFUL ACTIVITY REQUIRED:**

Proper use of the track and trace system does not relieve a licensee of its responsibility to maintain compliance with all laws, rules and other requirements at all times.

[16.8.7.13 NMAC - N, 07/12/2022]

#### **16.8.7.14 TRACK AND TRACE SYSTEM PROCEDURES:**

**A. Conformity of use:** licensees must utilize the track and trace system in conformance with division rule and track and trace system procedures.

##### **B. Track and trace procedures include:**

(1) properly indicating the creation of a harvest batch or production batch including the assigned harvest batch or production batch number;

- (2) accurately identifying the cultivation room or outdoor location where each plant is located on the licensed premises;
- (3) accurately identifying when inventory is no longer on the licensed premises;
- (4) properly identifying cannabis or cannabis products identified as test batch;
- (5) properly indicating test results from a cannabis testing laboratory;
- (6) accurately indicating the track and trace system category for all cannabis or cannabis products;
- (7) accurately including a note explaining the reason for any destruction of cannabis or cannabis products, and the reason for any adjustment in weight or count to inventory in the track and trace system software; and
- (8) properly assigning unique identifying tracking numbers to each cannabis plant, cannabis product and any batch, lot, or subplot from such cannabis plant(s) and cannabis product(s).

[16.8.7.14 NMAC - N, 07/12/2022]

#### **16.8.7.15 REQUIRED TESTING OF CANNABIS PRODUCTS:**

A cannabis establishment shall segregate a batch of cannabis product and arrange for samples to be collected and tested by a cannabis testing laboratory if required by this section. The batch must pass all required tests prior to the sale or delivery to a qualified patient, primary caregiver or consumer.

##### **A. Required testing: Unless an exception applies:**

- (1) A cannabis producer, cannabis producer microbusiness, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1, *Required Testing of Cannabis Products*, below, of any cannabis flower and trim that it harvests prior to:
  - (a) packaging for retail sale;
  - (b) transfer to another cannabis establishment for the purposes of retail sale;
  - (c) retail sale; or
  - (d) delivery to a patient or consumer.

(2) A cannabis manufacturer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1 of any cannabis product, including but not limited to a concentrate or extract, that it manufactures prior to:

- (a) packaging for retail sale
- (b) transfer to another cannabis establishment for the purposes or retail sale;
- (c) retail sale; or
- (d) delivery to a qualified patient, primary caregiver or consumer.

(3) A cannabis retailer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall not sell or deliver to a patient or consumer any cannabis product unless the cannabis product has undergone all testing required by this section.

<b>Table 1, Required Testing of Cannabis Products</b>						
<b>Product category</b>	<b>Potency</b>	<b>Homogeneity of Batch</b>	<b>Visual Inspection</b>	<b>Microbiological</b>	<b>Residual Pesticides</b>	<b>Residual Solvents</b>
<b>Flower</b>	X		X	X	X	
<b>Trim</b>	X		X	X	X	
<b>Concentrate (volatile solvent)</b>	X			X	X	X
<b>Kief</b>	X		X	X	X	
<b>Pre-rolls</b>	X			X	X	
<b>Concentrate (non-volatile solvent)</b>	X		X	X	X	
<b>Extract – alcohol</b>	X			X	X	
<b>Extract – other liquid</b>	X			X	X	
<b>Topical</b>	X			X		
<b>Edible</b>	X			X	*	
<b>Other inhalable</b>	X				*	X

Other	X		X	*	X
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\*Pesticide testing required unless exempted by Subsection E, below.

**B. Staggered implementation:**

(1) The division may within its discretion delay implementation of sample collection and testing requirements of this section, in whole or in part.

(2) In determining the start date of an individual testing requirement, the division shall consider whether a cannabis testing laboratory has validated a method for conducting the test.

(3) In determining the date on which a cannabis establishment must have its samples collected by an employee or contractor of a cannabis testing laboratory, the division shall consider the capacity of cannabis testing laboratories to collect and transport samples.

(4) The division may establish different implementation dates for sample collection requirements for:

(a) cannabis producer microbusinesses and integrated cannabis microbusinesses located up to 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(b) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located up to 200 miles by automobile from the nearest licensed cannabis testing laboratory location;

(c) cannabis producer microbusinesses and integrated cannabis microbusinesses located more than 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(d) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located more than 200 miles by automobile from the nearest licensed cannabis testing laboratory location; and

(e) cannabis establishments for which travel to a licensed cannabis testing laboratory location requires passing through a United States border patrol checkpoint.

**C. Collection and transportation of samples:** A cannabis testing laboratory is responsible for the collection of samples for the performance of any required test, re-test after a failing result, re-test after remediation, or test for the purposes of labeling.

(1) A cannabis testing laboratory may perform sample collection using:

(a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or

(b) Contractors who have completed the sampling agent training offered by the U.S. department of agriculture's domestic hemp production program and sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. The contractor shall obtain necessary training to comply with the cannabis testing laboratory's protocols, and the cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(2) A cannabis testing laboratory may transport samples using:

(a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or

(b) Contractors who sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. Transporting cannabis for a cannabis establishment on a contractual basis does not preclude a person or entity from transporting samples in secure containers for cannabis testing laboratories.

(3) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to collect samples from or transport samples on behalf of any cannabis establishment.

(4) If the division has delayed implementation of the requirement that the cannabis testing laboratory collect the sample from a cannabis establishment, based on its distance from the nearest cannabis testing laboratory or location beyond a U.S. border patrol checkpoint, then any person collecting or transporting samples for required testing must receive training in sample collection and transportation protocols.

(a) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to accept samples from a cannabis establishment.

(b) The cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(5) A cannabis establishment may specify reasonable precautions prevent the contamination of batches of cannabis, except that the cannabis establishment must provide access to the entire batch of cannabis product. Precautions may include, but are not limited to:

(a) requiring the use of gloves and other personal protective equipment

(b) inspecting tools and containers prior to their use;

(c) specifying the location within the cannabis establishment at which the samples will be collected;

(d) specifying locations within the cannabis establishment to which laboratory employees or contractors do not have access; and

(e) the right to refuse entry to any laboratory employee or contractor not in compliance with the precautions

(6) Nothing in these rules shall be interpreted to require routine testing of cannabis products before the cannabis establishment segregates cannabis products into batches and places the batches into containers for storage while awaiting test results.

(7) This Subsection C of 16.8.7.8 NMAC is effective March 1, 2023.

**D. Compliance with all rules and applicable laws required:** Passage of testing does not relieve an establishment of its obligation to comply with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, the Pesticide Control Act, division rules, or other local, state, and federal laws not in conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

(1) A cannabis establishment shall waste and dispose of any cannabis product to which a pesticide has been applied in violation of division rules or the Pesticide Control Act or any product manufactured using an unapproved solvent.

(2) Nothing in this rule shall be interpreted as precluding regulatory activities by other state agencies that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

**E. Exceptions to required testing:**

(1) A cannabis establishment shall not be required to have tested for pesticide residue any cannabis product made from cannabis concentrate or cannabis extract with verified pesticide residue test results, so long as the establishment can demonstrate that the resulting product will not exceed action levels for that type of cannabis product.

(2) A cannabis establishment shall not be required to have tested a cannabis product acquired from another cannabis establishment if the batch, in present form, was previously determined to have passed the testing requirements of this rule and is accompanied by a *Certificate of Analysis* issued by a licensed cannabis testing laboratory within the previous 90 days.

(3) If additional testing requirements take effect after a cannabis testing laboratory obtains a sample of a cannabis product for required testing, the laboratory is required to perform only those tests required at the time the sample was obtained.

**F. Visual inspection:** A sample shall pass visual inspection if, under a minimum of 40X magnification, laboratory personnel detect in a one gram sample:

- (1) no living or dead insects, hair, eggs, or feces; and
- (2) no more than two percent sand, soil, mold, or rocks.

**G. Microbiological testing:** A sample shall pass microbiological testing if the sample contains concentrations of target microbes not exceeding the action levels set forth in Table 2, *Microbiological Testing Requirements*, below.

(1) The division may require required testing for additional microbes if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence, in a quantity or amount that poses a threat to public health, in a cannabis product produced, manufactured, or sold by any cannabis establishment. The division shall provide written notice to licensees 30 days before requiring required testing for additional pesticide residues, except that such notice is not required when human illness is linked to contaminated cannabis products.

(2) The cannabis testing laboratory may report a collective total of the four *Aspergillus* strains listed without distinguishing individual totals.

(3) The test results shall be reported as "Present," "Absent," or in colony forming units (CFU) per one gram sample.

(4) Testing for shiga-toxin producing *E. coli*, *Clostridium botulinum*, and *Pseudomonas aeruginosa* is effective July 1, 2022.

<b>Table 2. Microbiological Testing Requirements</b>	
<b>Target Microbe</b>	<b>Action Level</b>
* <i>E. coli</i>	100 CFU/gram
<i>Aspergillus flavus</i> , <i>Aspergillus fumigatus</i> , <i>Aspergillus niger</i> , or <i>Aspergillus terreus</i>	Present in 1 gram
<i>Salmonella</i> spp.	Present in 1 gram
†Shiga-toxin producing <i>E. coli</i>	Present in 1 gram
† <i>Clostridium botulinum</i>	Present in 1 gram
† <i>Pseudomonas aeruginosa</i>	Present in 1 gram

\*Cannabis product may be tested for shiga-toxin producing E. coli, rather than generic E. coli.

†Testing for shiga-toxin producing E. coli, Clostridium botulinum, and Pseudomonas aeruginosa is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.

**H. Residual solvent testing:** A sample shall pass residual solvent testing if the sample contains concentrations of residual solvents lower than the action levels set forth in Table 3, *Residual Solvent Testing Requirements*, below. The test results shall be reported as described in the notes to Table 3.

<b>Table 3. Residual Solvent Testing Requirements</b>				
<b>Target Compounds</b>	<b>Common Chemical Name</b>	<b>IUPAC Name</b>	<b>CAS Number</b>	<b>Action Level*</b>
<b>Propane</b>	Propane	Propane	74-98-6	5000
<b>Butanes</b>	<i>n</i> -butane	Butane	106-97-8	5000
	Isobutane	2-methylpropane	75-28-5	5000
<b>Pentane</b>	<i>n</i> -pentane	Pentane	109-66-0	5000
<b>Hexane</b>	<i>n</i> -hexane	Hexane	110-54-3	290
<b>Benzene</b>	Benzene	Benzene	71-43-2	2.0
<b>Toluene</b>	Toluene	Methylbenzene	108-88-3	890
<b>Heptane</b>	<i>n</i> -heptane	Heptane	142-82-5	5000
	Ethylbenzene	Ethylbenzene	100-41-4	2170
	<i>ortho</i> -xylene	1,2-dimethylbenzene	95-47-6	
	<i>meta</i> -xylene	1,3-dimethylbenzene	108-38-3	
	<i>para</i> -xylene	1,4-dimethylbenzene	106-42-3	Total
<b>Ethanol†</b>	ethyl alcohol	Ethanol	64-17-5	5000
<b>Methanol</b>	methyl alcohol	Methanol	67-56-1	3000
<b>Isopropanol</b>	Isopropyl alcohol	2-propanol	67-63-0	5000
<b>Acetone</b>	Acetone	2-propanone	67-64-1	5000
Use two significant digits when reporting residual solvent results.				
Report levels less than the Limit of Quantitation for each solvent according to the following example:: "Benzene < 2.0 µg/g"				

\*Micrograms solvent per gram ( $\mu\text{g/g}$ ) of sample/parts per million (ppm).

†Unless exempt from testing.

I. Potency testing: Potency testing requires determining the quantity of tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THCA), cannabidiol (CBD), cannabidiolic acid (CBDA) per gram of sample and the calculation of THC potency and CBD potency, according to Table 4, *Potency Testing Requirements*, below.

Table 4. Potency Testing Requirements			
Cannabinoid	Abbreviation	CAS Number	Reporting Units
Tetrahydrocannabinolic Acid	THCA	23978-85-0	For solids: mg of analyte/gram of sample and percentage by weight  For liquids: mg/ml
Tetrahydrocannabinol	THC	1972-08-3	
Cannabidiolic Acid	CBDA	1244-58-2	
Cannabidiol	CBD	13956-29-1	
Total THC Potency (solids)	THC Potency = (Percent THCA $\times$ 0.877) + Percent THC		Percentage by weight
Total CBD Potency (solids)	CBD Potency = (Percent CBDA $\times$ 0.877) + Percent CBD		
Total THC Potency (liquids)	THC Potency = (mg/ml THCA $\times$ 0.877) + mg/ml THC		mg/ml
Total CBD Potency (liquids)	CBD Potency = (mg/ml CBDA $\times$ 0.877) + mg/ml CBD		

J. Pesticide testing: A sample shall pass pesticide testing if concentrations of residues of pesticides are lower than the action levels listed in Table 5, *Pesticide Testing Requirements*, below.

(1) The division may adopt required testing for additional pesticide residues if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence in a cannabis product produced or manufactured by any cannabis establishment. The division shall provide written notice to licensees 30 days before implementing required testing for additional pesticide residues.

(2) Nothing in this section shall be interpreted to waive or diminish any requirement of the Pesticide Control Act, §§76-4-1 et seq. NMSA 1978. The division,

alone or in conjunction with NMDA, may investigate any suspected use of a pesticide not registered with NMDA for use on cannabis.

(3) This Subsection J of 16.8.7.8 NMAC is effective July 1, 2022.

<b>Table 5. Pesticide Testing Requirements</b>			
<b>Targeted Pesticide</b>	<b>CAS Number</b>	<b>Action Level: Inhalable*</b>	<b>Action Level: Non-Inhalable*</b>
†Abamectin	71751-41-2	0.1	0.15
†Acequinocyl	57960-19-7	2.0	2.0
†Bifenazate	149877-41-8	0.2	0.2
†Bifenthrin	82657-04-3	0.1	0.1
†Etoxazole	153233-91-1	0.1	1.0
†Imazalil	35554-44-0	0.1	0.1
†Imidacloprid	138261-41-3	0.1	3.0
†Myclobutanil	88671-89-0	0.1	0.4
†Paclobutrazol	76738-62-0	0.04	0.04
Piperonyl butoxide	51-03-6	3.0	8.0
†Pyrethrins (cumulative total)	121-21-1 25402-06-6 4466-14-2	0.5	1.0
†Spinosyn A, D (cumulative total)	131929-60-7 131929-63-0	0.1	3.0
†Spiromesifen	283594-90-1	0.1	0.2
†Spirotetramat	203313-25-1	0.1	0.2
†Trifloxystrobin	141517-21-7	0.02	0.02
<b>Other pesticide not registered with NMDA for use on cannabis</b>	Varies	0.02	0.02

\*Micrograms of pesticide per gram ( $\mu\text{g/g}$ ) of sample/parts per million (ppm).

Report levels less than the Limit of Quantitation for each pesticide residue according to the following example: "Paclobitrazol < 0.4  $\mu\text{g/g}$ "

†Not registered with NMDA for use on cannabis.

**K. Release of batch after testing:** A cannabis establishment may release an entire batch of cannabis product for immediate manufacture, sale, or other use, provided that the sample taken from the batch passes the tests required in this section.

**L. Procedures for testing:** A cannabis establishment shall adhere to the following procedures:

(1) After collection of samples, a batch of cannabis product shall be segregated in a secure container and stored under controlled environmental conditions (temperature, humidity, light) designed to limit microbial growth or other spoilage until the cannabis establishment receives a certificate of analysis indicating the batch meets the testing requirements of this rule.

(2) The secured container shall be labeled with the identification number used in the track and trace system, the name of the cannabis testing laboratory, the date on which the samples were taken, and, in minimum 12-point font, all capital letters, "AWAITING TEST RESULTS. DO NOT TRANSFER."

(3) The cannabis testing laboratory and the cannabis establishment submitting samples each shall appropriately document in the track and trace system the sampling and testing of cannabis product.

(4) A cannabis establishment shall maintain all results of laboratory tests conducted on cannabis products produced or manufactured by the cannabis establishment for a period of at least two years and shall make those results available to consumers or cannabis retailers upon request.

**M. Re-testing:** If a sample fails any test, the cannabis establishment may request re-testing by the same cannabis testing laboratory or another cannabis testing laboratory. If the repeated test is within acceptable limits, then the batch may be sold, transferred, or further manufactured.

**N. Remediation:** Within 120 days of a failed test, a cannabis establishment may remediate and retest the batch according to the procedures described in this subsection. A cannabis establishment shall adopt and maintain on the premises protocols regarding remediation consistent with this rule.

(1) A cannabis establishment may remediate dried cannabis or cannabis concentrates that fail microbiological testing by means of extraction using an approved volatile solvent. Other products that fail microbiological testing may not be remediated.

(2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting, mixing, infusing, or otherwise combining the batch.

(3) A cannabis establishment may remediate any cannabis product that fails residual solvent testing by evaporating solvent using heat, vacuum pressure, or a combination of methods.

(4) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of mold by means of extraction using an approved volatile solvent.

(5) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of insects, hair, eggs, or feces by removing the contaminants, followed by extraction using an approved volatile solvent.

(6) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of soil or rocks by removing the contaminants.

(7) Cannabis product that has been remediated must undergo any test that was previously failed.

(8) Cannabis product that has been remediated with the use of volatile solvents must additionally undergo residual solvent testing.

**O. Notice and destruction:** Any cannabis product that fails a test and cannot be remediated, including any remediated cannabis product that fails any test after remediation, is subject to destruction in accordance with the wastage requirements of 16.8.2.15 NMAC. The cannabis establishment shall notify the division within 24 hours and shall confirm the wastage and disposal of the usable cannabis in accordance with this rule. The wasted product shall be removed from inventory, and the removal from inventory shall be noted in the track and trace system.

**P. Interpretation of differing results:** Results produced by a cannabis testing laboratory are valid only for the sample tested. A differing result produced by quality control or inspection testing of a different sample pursuant to 16.8.2.16 NMAC is not grounds for action against the cannabis testing laboratory that produced the original testing result.

[16.8.7.15 NMAC – N, 07/12/2022; A/E, 11/18/2022]

#### **16.8.7.16 ADDITIONAL TESTING SERVICES OFFERED BY CANNABIS TESTING LABORATORIES:**

A cannabis testing laboratory may offer cannabis establishments testing for quality improvement, research and development, or labeling purposes. A cannabis testing laboratory may also offer testing to persons other than cannabis establishments as provided in this section.

**A. Research and development testing for cannabis establishments:** A cannabis testing laboratory may offer to cannabis establishments any required test or any additional test for the purpose of research and development or for quality-control measures requested by a cannabis establishment.

(1) The cannabis establishment may collect the sample, or an agent of the cannabis testing laboratory may collect the sample.

(2) If a cannabis establishment requests testing for research and development purposes, the results may not be used to satisfy any required testing requirement, even if the sample passes all tests.

(3) The failure of a test for research and development purposes shall not constitute a failed test.

(4) The results of a test conducted for research and development purposes shall not be included on a product label or advertisement.

**B. Testing for the purposes of labeling by cannabis establishments:** A cannabis testing laboratory may offer to cannabis establishments additional tests not included in required testing for the purposes of product labeling, including quantitation of specific pesticides, microbial contaminants, solvents, mycotoxins, or metals.

(1) An agent of the cannabis testing laboratory shall collect the samples according to the laboratory's protocols.

(2) A label may include a reference to concentrations of compounds not subject to required testing, including terpenes, terpenoids, or additional cannabinoids.

(3) A label may include a reference to the passage of cannabis screenings, including one or more of the following:

(a) naming the contaminants for which screening was performed;

(b) providing a link or QR code to the list of contaminants for which the cannabis product was screened; or

(c) a statement that the product has met third-party screening criteria, such as those established by an industry association, except that no label shall contain claims that a cannabis product is "pesticide free" or "organic" unless such labeling is specifically authorized under U.S. department of agriculture regulations.

**C. Reporting of contamination:** Nothing in this rule shall be interpreted to require a cannabis testing laboratory to offer testing for analytes not included in required testing. However, a cannabis testing facility shall report to the division, without naming the source of the sample, the detection of any of the following analytes in the course of testing for research and development or labeling purposes:

(1) aflatoxin B1, B2, G1, and G2 and ochratoxin A, at a total concentration of 20 µg/kg (parts per billion) or greater;

(2) arsenic, cadmium, lead, or mercury, at a concentration of 0.4 µg/g (parts per million) or greater;

(3) the residue of any pesticide not required to be tested or not registered in New Mexico for use on cannabis, at any level detectable by the cannabis testing laboratory's methodology; or

(4) any microorganism not required to be tested at a level that poses a significant threat to human health.

**D. Research and development testing in connection with personal use or medical use of Cannabis.** A cannabis testing laboratory may perform any test on a sample of cannabis product for any resident of New Mexico who is at least 21 years of age and represents in writing that the cannabis product is for the personal use or medical use of the person submitting the sample or a person for whom the person submitting the sample is acting as a primary caregiver. The cannabis testing laboratory shall provide guidance on sample collection but shall not collect samples onsite.

**E. Testing services to entities operated or licensed by a tribal government.** A cannabis testing laboratory may perform any test on a sample of cannabis product for any entity located within New Mexico and operated or licensed by a tribal government with which the division has an intergovernmental agreement covering cannabis testing. If the intergovernmental agreement permits such entities to collect and submit samples, the cannabis testing laboratory shall provide guidance on sample collection. Otherwise, an agent of the laboratory shall collect samples.

**F. Testing services for the division or other governmental entities:** A cannabis testing laboratory may, but is not required to, perform any test on behalf of the division, NMDA, another state agency, or a state or local law enforcement authority acting within its lawful jurisdiction.

[16.8.7.16 NMAC – N, 07/12/2022]

#### **16.8.7.17 PREVENTION OF HEAVY METAL CONTAMINATION:**

A cannabis establishment shall adhere to the following quality control standards for the production and manufacturing of cannabis:

**A. Growing media:** The cannabis establishment shall maintain, and make available for division inspection, records of all growing media purchased.

**B. Water:** If using for irrigation water from a non-municipal source, a cannabis establishment shall maintain quarterly testing data indicating concentrations at or below the action levels in Table 1, Heavy Metal Testing Requirements for Water and Soil, below.

**C. Soil:** If growing cannabis directly in the ground, the cannabis establishment shall submit at least annually representative soil samples to a laboratory for analysis of arsenic, cadmium, lead, and mercury levels and shall retain a certificate of analysis for inspection by the division. If the concentration of any heavy metal exceeds the action levels in Table 1, Heavy Metal Testing Requirements for Water and Soil, below, the cannabis establishment shall remediate the soil and shall not produce additional plants until soil concentrations are below the applicable action levels.

**D. Choice of laboratories:** The cannabis establishment may submit water or soil samples to any laboratory in the United States offering water or soil analysis for the four required analytes.

**Table 1. Heavy Metal Testing Requirements for Water and Soil**

Analyte	Symbol	CAS Number	Action Level: Soil*	Action Level: Water†
Arsenic	As	7440-38-2	4.25	10.0
Cadmium	Cd	7440-43-9	7.05	5.0
Lead	Pb	7439-92-1	400	15.0
Mercury	Hg	7439-97-6	2.38	2.0

\*Reported in micrograms per gram (µg/g) of sample/parts per million (ppm). Based on New Mexico Environment Department's *Risk Assessment Guidance for Site Investigations and Remediation*.

†Reported in micrograms per liter (µg/L) of sample. Based on U.S. Environmental Protection Agency's maximum contaminant levels.

[16.8.7.17 NMAC – N, 07/12/2022]

**16.8.7.18 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.7.18 NMAC – N, 3/1/2022; Rn, 16.8.7.11 NMAC, 07/12/2022]

**PART 8 CANNABIS PLANT LIMITS AND PROCESS TO ADDRESS SHORTAGE OF CANNABIS SUPPLY IN THE MEDICAL CANNABIS PROGRAM**

**16.8.8.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.8.1 NMAC - N, 08/24/2021]

**16.8.8.2 SCOPE:**

This rule applies to all persons licensed or seeking to be licensed to produce, manufacture, and sell cannabis pursuant to the Cannabis Regulation Act.

[16.8.8.2 NMAC - N, 08/24/2021]

**16.8.8.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.

[16.8.8.3 NMAC - N, 08/24/2021]

**16.8.8.4 DURATION:**

Permanent.

[16.8.8.4 NMAC - N, 08/24/2021]

**16.8.8.5 EFFECTIVE DATE:**

August 24, 2021, unless a different date is cited at the end of a section.

[16.8.8.5 NMAC - N, 08/24/2021]

**16.8.8.6 OBJECTIVE:**

The objective of Part 8 is to establish the limit of mature cannabis plants a licensee is authorized to cultivate pursuant to the Cannabis Regulation Act.

[16.8.8.6 NMAC - N, 08/24/2021]

**16.8.8.7 DEFINITIONS:**

Unless otherwise defined in Title 16, Chapter 8, Part 1, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the licensing authority under the Lynn and Erin Compassionate Use Act.

[16.8.8.7 NMAC - N, 08/24/2021]

**16.8.8.8 GENERAL PROVISIONS FOR PLANT COUNT:**

**A. Cannabis plant growth cycle:** For purposes of this rule, the cannabis plant growth cycle is based on the following four stages:

- (1) germination stage includes a seed sprouting to form a seedling;
- (2) seedling stage includes a shoot emerging from the soil surface, eventually forming the first leaves;
- (3) vegetative stage is the period of growth between germination and the beginning of flowering, including cloned cannabis plants; and
- (4) flowering stage is the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes in the stem.

**B. Mature cannabis plant:** For purposes of this rule, a mature cannabis plant shall be a female cannabis plant in the flowering stage.

[16.8.8.8 NMAC - N, 08/24/2021]

#### **16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:**

**A. Initial license designation:** For the purpose of determining the number of mature cannabis plants a licensee may be allocated to cultivate, all cannabis producer and vertically integrated cannabis establishment licenses issued on or after August 15, 2021, will be designated by the division as a level 1, level 2, level 3, or level 4. Cannabis plant count level placement shall be based on the following factors:

- (1) applicant's requested mature cannabis plant limit level;
- (2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;
- (3) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;
- (4) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and
- (5) applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community,

including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities.

**B. Designated mature cannabis plant levels:**

- (1) Level 1: 201 – 2,000 mature cannabis plants;
- (2) Level 2: 2,001 – 6,000 mature cannabis plants;
- (3) Level 3: 6,001 – 12,000 mature cannabis plants; or
- (4) Level 4: 12,001 – 16,000 mature cannabis plants.

**C. Incremental increase:** A licensee may increase the number of mature cannabis plants, at the time of renewal and one other time per year. An authorized mature cannabis plant count increase shall only be approved in increments of 500 mature cannabis plants.

**D. Limit of incremental increase:** A licensee may be allowed to increase its authorized mature cannabis plant count up to eight increments at a time upon application and approval by the division.

**E. Immature Plants:** For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensee's approved cannabis plant level.

**F. Maximum cannabis plant count:** In no event shall a licensee be permitted to grow more than 20,000 mature cannabis plants at one time.

[16.8.8.9 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

**16.8.8.10 PLANT INCREASE REQUEST:**

**A.** A licensee may request an increase of the number of mature plants licensed at the time of renewal and at one other time per year. To be considered for approval by the division, the licensee shall provide, in addition to required fees set forth in 16.8.11 NMAC, the following information to demonstrate the licensee's capacity for a mature cannabis plant count increase, licensee's compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules:

- (1) a current inventory of mature cannabis plants and harvested cannabis;
- (2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;

(3) applicant's reported number of plants harvested in the preceding three months;

(4) applicant's medical cannabis and commercial cannabis sales in the preceding three months;

(5) applicant's total cannabis sales; and

(6) progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities.

**B.** The division shall make a determination to approve or deny a licensee's request to increase mature cannabis plant count based on the information provided and the following factors:

(1) the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;

(2) the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;

(3) the existence of any pending or final enforcement action taken by the division against the licensee;

(4) whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;

(5) whether the licensee's cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and

(6) the completeness of information and data provided to the division.

**C. Ground for Denial:** The division may deny a request for additional mature cannabis plants based on the information provided or for violating the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the licensee exceeding its authorized mature cannabis plant count during the prior three-month period.

[16.8.8.10 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

#### **16.8.8.11 ADDRESSING A SHORTAGE OF MEDICAL CANNABIS:**

**A.** Upon the division allowing commercial cannabis retail sales, cannabis retail establishments shall make reasonable efforts to sell a minimum of twenty-five percent of their monthly cannabis sales to qualified patients, primary caregivers, and reciprocal participants, or to other licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers, and reciprocal participants until December 31, 2022.

**B.** Upon the division allowing commercial cannabis retail sales, licensed cannabis producers, including cannabis producer microbusinesses, vertically integrated cannabis establishments, and integrated cannabis microbusinesses, and cannabis manufactures shall make reasonable effort to sell wholesale to licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers and reciprocal participants until December 31, 2022.

**C.** After December 31, 2022, the division may take the following measure to address a shortage of cannabis supply in the medical cannabis program:

**(1)** require all licensed cannabis retail establishments to ensure that at least ten percent of their cannabis and cannabis products in stock on a monthly basis is designated for sale to qualified patients, primary caregivers, and reciprocal participants; or

**(2)** reduce the per plant fee for designated medical cannabis plants to incentivize increased production of cannabis plants to remedy a shortage of cannabis supply in the medical cannabis program; and

**(3)** after having first exhausted measures to increase production of cannabis plants, the division may exclude commercial cannabis activity from the scope of new licenses issued to initial applicants for a vertically integrated cannabis establishment, cannabis producer, integrated cannabis microbusiness, cannabis producer microbusiness, or cannabis manufacturer license, which limitation shall be in force for a period of at least six months; and

**(4)** require licensees who are licensed to produce cannabis to produce a specified quota of mature cannabis plants to be designated for use in the medical cannabis program, provided that:

**(a)** the division may require a licensee to devote no more than twenty-five percent of the licensee's cultivated cannabis plants on a monthly basis for use in the medical cannabis program; and

**(b)** the division may require additional specific tracking of cannabis plants.

[16.8.8.11 NMAC - N, 08/24/2021]

**16.8.8.12 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.8.12 NMAC - N, 08/24/2021]

## **PART 9 [RESERVED]**

## **PART 10 CANNABIS SERVERS LICENSING AND TRAINING PROGRAM**

### **16.8.10.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.10.1 NMAC – N, 07/12/2022]

### **16.8.10.2 SCOPE:**

This rule applies to applicants for cannabis server permit education provider and a cannabis server permit pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.

[16.8.10.2 NMAC - N, 07/12/2022]

### **16.8.10.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.10.3 NMAC - N, 07/12/2022]

### **16.8.10.4 DURATION:**

Permanent.

[16.8.10.4 NMAC - N, 07/12/2022]

### **16.8.10.5 EFFECTIVE DATE:**

July 12, 2022, unless an earlier date is cited at the end of a section.

[16.8.10.5 NMAC - N, 07/12/2022]

### **16.8.10.6 OBJECTIVE:**

The objective of Part 10 is to set forth the provisions that apply to cannabis server permit education and server permits.

[16.8.10.6 NMAC - N, 07/12/2022]

#### **16.8.10.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set for in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.

[16.8.10.7 NMAC - N, 07/12/2022]

#### **16.8.10.8 CANNABIS SERVER PERMITS: ISSUANCE, DISTRIBUTION, REPLACEMENT:**

**A. Cannabis server permit required.** A licensee approved to operate a cannabis consumption area and all servers must satisfactorily complete a program every three years to obtain a server permit. No person shall be employed as a server on a licensed cannabis consumption area unless that person obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

**B. Server permit issuance.** Satisfactory completion of a certified program will be determined by the student earning a score of eighty percent or higher on an approved test administered at the end of a classroom program or administered at the end of or after completion of a module for on-line programs. Each student who satisfactorily completes a certified program may be issued a server permit by the division. If the student has a child support hold placed on him or her by the human services department, the division shall not issue a server permit to that student until the child support hold has been lifted.

**C. Providers' duty to inform the division of student's satisfactory completion.** Within 10 business days of satisfactory completion of any certified program, the provider who administered the program shall submit to the division a server permit application for each student who satisfactorily completed the program, including their name, personal identifier, address, date of birth, and any other information required by the division on forms prescribed by the division and in accordance with methods prescribed by the division, including electronic submission. Server permits will be numbered sequentially to provide a unique number for each student who satisfactorily completes a program. Any application received by the division more than 10 business days after the date the course was completed will subject the provider to a late fee of five dollars (\$5) per application. Any incomplete application received by the division shall be returned to the provider for completion.

**D. Division will distribute permits.** The division will prepare and distribute the server permits to the student within 90 days of satisfactory completion of a certified

program. Providers are required to store original server permit applications in a secured manner for six months from the date of satisfactory completion of the certified program. After six months from the date of satisfactory completion, providers may destroy the original server permit applications through shredding or another method that ensures the information cannot be stolen or otherwise re-used.

**E. Temporary Server Permits.** Providers who administer a classroom program may issue temporary server permits by recording the test grade on the server permit application and issuing a designated copy of the application to the student. Providers who administer on-line programs may issue temporary server permits by allowing the student to print out a computer generated document, containing information as required by the division, upon satisfactory completion of the program by student. Temporary server permits are valid for 90 days from the date the exam is successfully completed. Photocopies of the designated copy of the application or computer print-out are not valid temporary server permits. If the server loses the temporary server permit, it is the responsibility of the provider to supply a replacement temporary server permit. Providers are required to inform all students that it will take up to 120 days from the date the exam is successfully completed for the server to receive a permanent permit from the division and that if the server needs a replacement temporary server permit the server may obtain one from the provider.

**F. Replacement server permits.** Requests for replacement server permits must be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee in the form approved by the division. If the request is made in person, the server must present a valid, government issued identification card. If the request is made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.

[16.8.10.8 NMAC - N, 07/12/2022]

#### **16.8.10.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:**

**A. Certification required:** Any person seeking certification as a provider, instructor or program must submit an application to the division for approval in accordance with this section. An on-line program and a classroom program cannot be combined into one application.

#### **B. Applications for providers and programs:**

- (1) Providers and instructors:

(a) the name and qualifications of the provider or the name and qualifications of the instructor(s), including a resume, references and the name of the certified program that applicant intends to administer;

(b) for on-line providers, the name and address of all entities owning, profiting, or both from the administration of the on-line course;

(c) fees that will be charged to take the program; and

(d) any other relevant information as may be required by the director.

(2) Programs:

(a) a description of program content that meets the minimum requirements contained in the Cannabis Regulation Act, specifically Section 26-2C-11, NMSA 1978, including a copy of the classroom program's handbook or a copy of the on-line program's quick reference materials to be distributed to and retained by students after satisfactory completion of the program. All programs should include real life examples and should be administered, at least in part, in an interactive way;

(b) all proposed programs must include a minimum of four and one-half classroom hours or the equivalent for on-line programs;

(c) for on-line programs:

(i) a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program, including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner. The electronic transmission of the student's information should meet the data security standards prescribed by the payment card industry security council or the equivalent as determined by the division, and in a format approved by the division;

(ii) a description of any and all security measures taken to ensure that the person who is taking the course is the same person who will receive credit for taking the course and who will submit to the proctored exam at the end of the course;

(iii) proof to the satisfaction of the division that the average user will take at least four clock hours or the equivalent to complete course;

(iv) proof to the satisfaction of the division that students cannot fast-forward or skip through the course materials.

(d) any other reasonably relevant information as may be required by the division;

**C. Completeness check:** When the division receives an application for certification as a provider, instructor or program, the division will check the application for completeness.

(1) if the application is incomplete, the division will contact the applicant for additional information;

(2) if the application is complete, the division shall review the application.

**D. Standards for licensure:** An application for licensure may be granted if the standards identified in this section are met.

(1) Providers and instructors: In reviewing applications for licensure as a provider or instructor the division shall consider:

(a) whether all the information required by these rules has been submitted and is accurate and valid;

(b) the qualifications and references of the applicant, including whether the applicant has 3 or more years of experience related to the sale or service of cannabis and cannabis products;

(c) whether applicant is 21 years of age or older;

(d) whether applicant has ever been found guilty of or admitted guilt to a violation of the Cannabis Regulation Act;

(e) whether applicant intends to teach a program approved by the division in accordance with these rules;

(f) any other reliable and relevant information, as determined by the division.

(2) Programs: In reviewing applications for licensure as a program the division shall consider:

(a) whether the information required by these rules has been submitted and is accurate and valid;

(b) whether the program includes all content required by law, currently contained in Section 26-2C-11 NMSA 1978;

(c) whether the program includes comprehensive training on how to detect obvious signs of intoxication, focusing both on the sale of cannabis and cannabis products for off-premise and on-premise consumption;

(d) whether the program includes an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue and training on how to detect a fake or fabricated identification card;

(e) whether the program includes management-specific training, including strategies for management to support servers working under their supervision;

(f) whether the program is reviewed and revised annually to ensure current comprehensive training;

(g) whether the program is interactive and includes real life instructional examples;

(h) for on-line programs whether it is easy to navigate and user-friendly; and

(i) any other reliable and relevant information, as determined by the division.

(3) In addition to the other standards listed above, all providers and instructors shall hold current server permits at all times when providing instruction.

**E. Expiration of licensure:** Provider, instructor and program licensure expire on December 31 each year.

**F. Renewal:** Renewal applications for provider, instructor and program licensure must be submitted no later than November 30 of each year.

(1) Renewal applications for providers and instructors must include names and qualifications of the provider or instructors and proof that the provider is covered by a surety bond in the amount of five thousand dollars (\$5,000) of a surety company authorized to transact business in New Mexico;

(2) Renewal applications for programs shall include a summary of all proposed changes to program content from the prior year and any updates that have been made or will be made to the program, including where those changes can be found in the program materials. At a minimum, programs must be updated annually to reflect changes to the law, updated statistical information and an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue if applicable.

**G. Transferability:** Provider, instructor and program licensure are non-transferrable.

**H. Cancellation:** A provider or instructor certification shall automatically be cancelled if the provider or instructor ceases to offer classes for 60 days or more, or upon written notice from the provider.

[16.8.10.9 NMAC - N, 07/12/2022]

**16.8.10.10 ADMINISTRATION OF SERVER PERMIT TRAINING PROGRAM:**

**A.** Providers' responsibility in administering program: It is the responsibility of providers to ensure that they and any instructors employed by them are teaching an approved program.

**B.** Course materials: Providers shall ensure that each student is provided complete course materials at the beginning of each program. Providers who administer an on-line program shall ensure that each student either has electronic access to course materials or is able to print out course materials for quick reference after satisfactory completion of the program. All course materials shall be presented by instructors in a manner that does not indicate which material is selected for the proctored test.

**C.** Prior approval required: Providers must obtain prior approval from the division before changing the required content of an approved program.

**D.** Proctored tests: Proctored tests must be administered in person immediately after completion of a classroom program. Students may not have access to course materials during administration of the proctored test. Exam questions must be rotated on a regular basis to ensure exam validity and security. Providers may allow an applicant who fails the test to re-take it at another time in the presence of an instructor. Proctored tests must be graded by a certified instructor and cannot be graded by a student.

**E.** On-line tests: On-line tests must be available to be administered immediately after students complete the course or complete a particular module of the course. Exam questions must be rotated on a regular basis to ensure exam validity and security. Students may not have access to course materials during administration of the on-line test. Providers administering on-line tests shall provide the necessary security measures to the satisfaction of the division to combat the potential for cheating. Examples of security measures include, but are not limited to, shuffling exam questions each time a new exam begins, prohibit students from stopping and resuming the exam session, implement a reasonable time limit on the exam, present security questions at random throughout the exam. The results of the on-line test must be given to the student after completion of the on-line test, and providers shall provide a score report indicating wrong answers by referencing course content section.

**F.** ADA compliance: Providers and instructors are required to comply with the Americans with Disabilities Act (ADA) and ensure that students with disabilities are

provided with reasonable accommodation for instructional and learning purposes to the extent required by law.

**G.** Administration of on-line programs: Providers who administer an on-line program without the presence of a live instructor must ensure the following:

- (1) a secure login process is in place to confirm the identity of the person taking the course;
- (2) students may not be allowed to fast-forward through the instruction portion of the course;
- (3) students must have adequate access to a help desk or customer service to resolve technical problems without delaying the flow of instruction, as well as access to a person who can answer substantive questions that may arise in the course of the training within 72 hours of the student asking the question;
- (4) no advertisements appear during course instruction; and
- (5) students either have electronic access to course materials or are able to print out course materials for quick reference after satisfactory completion of the on-line program as required by these rules.

[16.8.10.10 NMAC - N, 07/12/2022]

#### **16.8.10.12 VIOLATION OF PROVIDER AND PROGRAM REQUIREMENTS:**

The division may take disciplinary action against any program, or refuse to renew licensure, when the division determines that:

**A.** a provider, instructor or an agent, knowingly provided false information to the division with regard to completion of a program by any person;

**B.** a provider, instructor or an agent, failed to conduct the program as approved by the division;

**C.** any person filing an application with the division for licensure of a provider, instructor or program knowingly submitted false information to the division;

**D.** a provider failed to provide to the division complete, timely reports of applicants who satisfactorily completed the program; or

**E.** a provider or instructor otherwise failed to comply with the alcohol server education article or these rules.

[16.8.10.12 NMAC - N, 07/12/2022]

**16.8.10.13 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.10.13 NMAC - N, 07/12/2022]

**PART 11 FEES**

**16.8.11.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.11.1 NMAC - N, 08/24/2021]

**16.8.11.2 SCOPE:**

This rule applies to all applicants and licensees applying for licensure and renewal of licensure under all license types as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

[16.8.11.2 NMAC - N, 08/24/2021]

**16.8.11.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.11.3 NMAC - N, 08/24/2021]

**16.8.11.4 DURATION:**

Permanent.

[16.8.11.4 NMAC - N, 08/24/2021]

**16.8.11.5 EFFECTIVE DATE:**

August 24, 2021, unless a later date is cited at the end of a section.

[16.8.11.5 NMAC - N, 08/24/2021]

**16.8.11.6 OBJECTIVE:**

The objective of Part 11 is to establish a uniform schedule of fees applicable to licenses issued under the Cannabis Regulation Act.

[16.8.11.6 NMAC - N, 08/24/2021]

**16.8.11.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set forth in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.

[16.8.11.7 NMAC - N, 08/24/2021]

**16.8.11.8 GENERAL PROVISIONS FOR FEES:**

[RESERVED]

[16.8.11.8 NMAC - N, 08/24/2021]

**16.8.11.9 ANNUAL LICENSING FEES:**

Every application for the issuance or renewal of the following licenses shall be accompanied by an annual licensing fee in the following specified amounts:

- |   |                  |
|---|------------------|
| <b>A. Cannabis courier license:</b>                             | \$250 annually   |
| Each additional licensed premises of the licensee:              | \$100 annually   |
| <b>B. Cannabis testing laboratory license:</b>                  | \$2,500 annually |
| Each additional licensed premises of the licensee:              | \$1,000 annually |
| <b>C. Cannabis manufacturer license:</b>                        | \$2,500 annually |
| Each additional licensed premises of the licensee:              | \$1,000 annually |
| <b>D. Cannabis producer license:</b>                            | \$2,500 annually |
| Each additional licensed premises of the licensee:              | \$1,000 annually |
| <b>E. Cannabis retailer license:</b>                            | \$2,500 annually |
| Each additional licensed premises of the licensee:              | \$1,000 annually |
| <b>F. Cannabis research laboratory license:</b>                 | \$2,500 annually |
| Each additional licensed premises of the licensee:              | \$1,000 annually |
| <b>G. Vertically integrated cannabis establishment license:</b> | \$7,500 annually |
| Each additional licensed premises of the licensee:              | \$1,000 annually |
| <b>H. Cannabis producer microbusiness license:</b>              | \$1,000 annually |
| <b>I. Integrated cannabis microbusiness license:</b>            | \$2,500 annually |
| <b>J. Cannabis consumption area:</b>                            | \$2,500 annually |

[16.8.11.9 NMAC - N, 08/24/2021; A, 5/7/2024]

**16.8.11.10 FEES FOR THE ADMINISTRATION OF LICENSING:**

The division shall collect fees for the administration of licensing activities in the following specified amounts:

- A. License amendments as set forth in 16.8.2 NMAC \$75 per amendment.
- B. Designation of a non-controlling person as an agent \$75 per designation.

[16.8.11.10 NMAC – Rp, 16.8.11.10 NMAC; A, 5/7/2024]

#### **16.8.11.11 ANNUAL PER PLANT FEE:**

**A. Commercial cannabis plants:** Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be assessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: \$5.00 per mature cannabis plant;
- (2) Level 2: \$5.00 per mature cannabis plant;
- (3) Level 3: \$5.00 per mature cannabis plant; and
- (4) Level 4 and above: \$5.00 per mature cannabis plant.

**B. Medical cannabis plants:** Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fees shall be assessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: \$2.50 per mature cannabis plant;
- (2) Level 2: \$2.50 per mature cannabis plant;
- (3) Level 3: \$2.50 per mature cannabis plant; and
- (4) Level 4 and above: \$2.50 per mature cannabis plant.

[16.8.11.11 NMAC - N, 08/24/2021; A/E 01/13/2022; A, 03/22/2022]

#### **16.8.11.12 FEE LIMITATIONS:**

Application, license, premises and plant fees, or license renewal, premises renewal and annual plant fees shall not exceed \$125,000 for a vertically integrated cannabis

establishment license for both medical cannabis activity and commercial cannabis activity. License fees or renewal fees for a license that authorizes only medical cannabis activity shall be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity.

[16.8.11.12 NMAC - N, 08/24/2021]

**16.8.11.13 PROHIBITED ACTIVITY AND IMPACTS ON FEES:**

Cannabis producer microbusiness or integrated cannabis microbusinesses entering into a business arrangement with another licensee with the purpose or having the effect of evading the limitations of the licensee's license shall not be eligible for the lower fee prescribed in Subsections H and I of 16.8.11.9 NMAC. Upon entering into such an arrangement, the licensees shall immediately pay the per-plant fee as set forth in 16.8.11.11 NMAC and the applicable fee for a producer license or vertically integrated cannabis establishment license as set forth in 16.8.11.9 NMAC.

[16.8.11.13 NMAC - N, 08/24/2021]

**16.8.11.14 FEE PAYMENT TYPES ACCEPTED:**

The division shall accept payment for annual licensing fees and annual per plant fees from sources including credit cards, debit cards, electronic checks, electronic bank transfers, automated clearing house payments, or cashier's checks. Other forms of payment, including cash, shall not be accepted.

[16.8.11.14 NMAC - N, 08/24/2021]

**16.8.11.15 RENEWAL FEE COLLECTION TIMING:**

The division shall collect all renewal fees, including annual per plant fees, at the time of renewal of a license.

[16.8.11.15 NMAC - N, 08/24/2021]

**16.8.11.16 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.11.16 NMAC - N, 08/24/2021]

**PART 12 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE;  
SANCTION, PLAN OF CORRECTION, AND CIVIL MONETARY PENALTY**

**16.8.12.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.12.1 NMAC - N, 07/12/2022]

**16.8.12.2 SCOPE:**

This rule applies to all licensees and applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

[16.8.12.2 NMAC - N, 07/12/2022]

**16.8.12.3 STATUTORY AUTHORITY:**

The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.12.3 NMAC - N, 07/12/2022]

**16.8.12.4 DURATION:**

Permanent.

[16.8.12.4 NMAC - N, 07/12/2022]

**16.8.12.5 EFFECTIVE DATE:**

July 12, 2022, unless an earlier date is cited at the end of a section.

[16.8.12.5 NMAC – N, 07/12/2022]

**16.8.12.6 OBJECTIVE:**

The objective of Part 12 is to promote, preserve, and protect the public health and safety by regulating the safe production, testing, wholesale, and consumption of commercial and medical cannabis, as well as the authority to take action against a licensee or applicant for licensure, and to set forth the procedures for filing a complaint against cannabis establishment licensees.

[16.8.12.6 NMAC – N, 07/12/2022]

**16.8.12.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

[16.8.12.7 NMAC – N, 07/12/2022]

**16.8.12.8 GENERAL PROVISIONS:**

- A. A complaint may be initiated in writing by any person.
- B. Complaints must be legible, either printed in black ink or typed.
- C. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Cannabis Regulation Act or division rules.

[16.8.12.8 NMAC - N, 07/12/2022]

**16.8.12.9 COMPLAINT PROCEDURES:**

A complaint may be initiated by any person in writing and delivered via the division website, mail, or by visiting the division office. Only complaints written on the official complaint form will be formally addressed by the division. The forms required for an official complaint can be obtained from the division office, located at 2550 Cerrillos Road, Santa Fe, NM, 87505, or the division website.

[16.8.12.9 NMAC - N, 07/12/2022]

**16.8.12.10 PROCEDURES FOR RECEIPT OF A COMPLAINT:**

- A. The division will maintain a written log of all complaints received, which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).
- B. Upon receipt of a complaint, the division will:
  - (1) log in the date the complaint was received;
  - (2) determine whether the respondent is licensed or an applicant for licensure with the division;
  - (3) assign a complaint number and create an individual file;
  - (4) send the complainant a written acknowledgment of receipt of the complaint; and

(5) at the division's discretion, investigate the allegations contained in the complaint to determine their veracity and whether the circumstances warrant any action by the division or referral to law enforcement.

[16.8.12.10 NMAC - N, 07/12/2022]

**16.8.12.11 DIVISION ACTION:**

**A.** The division may:

(1) assess a civil monetary penalty that shall not exceed ten thousand dollars (\$10,000) per violation; or

(2) suspend or revoke the license.

**B.** If the division determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case shall be closed.

**C.** The division shall send a letter of the division's decision to both the complainant and respondent stating the division's actions and the reasons for its decision.

**D.** If the division determines that there is sufficient evidence or cause to proceed with disciplinary action against the licensee, the division shall issue a notice of contemplated action and initiate disciplinary proceedings.

[16.8.12.11 NMAC - N, 07/12/2022]

**16.8.12.12 PROCEEDINGS AGAINST APPLICANT OR LICENSEE:**

**A.** All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

**B.** Licensees who have been found culpable and sanctioned by the division shall be responsible for the payments of all costs of the disciplinary proceedings.

[16.8.12.12 NMAC - N, 07/12/2022]

**16.8.12.13 SCHEDULE OF CIVIL MONETARY PENALTIES:**

**A.** Subject to subsection B of this section, the division shall impose penalties as follows:

(1) For the first offense within a 12-month period, a civil monetary penalty ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.

(2) For the second offense within a 12-month period, a civil monetary penalty ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.

(3) For three or more offenses within a 12-month period, a civil monetary penalty of ten thousand dollars (\$10,000) and revocation of the license.

(4) For any offense involving sale or distribution of cannabis to minors, a fine of ten thousand dollars (\$10,000) and revocation of the license.

**B.** Any portion of the civil monetary penalties described in this rule may be enhanced or suspended, depending on the particular facts and circumstances of the individual case. When determining whether penalties should be enhanced or suspended, the division shall consider:

- (1) the nature of the violation;
- (2) the licensee's level of cooperation with the division in investigating the violation;
- (3) the violation's threat or potential threat to public health, safety, and welfare;
- (4) the licensee's willingness to address and remediate the violation; and
- (5) any other fact or circumstance that the division finds relevant.

[16.8.12.13 NMAC - N, 07/12/2022]

#### **16.8.12.14 SETTLEMENT AGREEMENT:**

**A.** Whenever probable cause exists that a licensee has violated a provision of the Cannabis Regulation Act, division rules, or any applicable state or federal law, and a monetary penalty or other disciplinary action may be issued to the licensee for such violation, an informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interests of the state or public health and safety.

**B.** Final disciplinary action decisions will be mailed to the licensee.

**C.** A copy of the final decision shall be filed in the division and posted on the division website.

**D.** The civil monetary penalty imposed shall not exceed those which could be imposed after hearing.

[16.8.12.14 NMAC - N, 07/12/2022]

**16.8.12.15 SEVERABILITY:**

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.12.15 NMAC - N, 07/12/2022]

## **CHAPTER 9: MEDICAL RADIATION HEALTH AND SAFETY PRACTITIONERS [RESERVED]**

## **CHAPTER 10: MEDICINE AND SURGERY PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

**16.10.1.1 ISSUING AGENCY:**

New Mexico Medical Board hereafter called the board.

[16.10.1.1 NMAC - Rp 16 NMAC 10.1.1, 7/15/01; A, 4/3/05]

**16.10.1.2 SCOPE:**

This part applies to licensees, board members and members of the public.

[16.10.1.2 NMAC - Rp 16 NMAC 10.1.2, 7/15/01]

**16.10.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.1.3 NMAC - Rp 16 NMAC 10.1.3, 7/15/01]

**16.10.1.4 DURATION:**

Permanent

[16.10.1.4 NMAC - Rp 16 NMAC 10.1.4, 7/15/01]

**16.10.1.5 EFFECTIVE DATE:**

July 15, 2001 unless a later date is cited at the end of a section.

[16.10.1.5 NMAC - Rp 16 NMAC 10.1.5, 7/15/01]

**16.10.1.6 OBJECTIVE:**

This part establishes procedures for change of name, public records policies, board meetings by telephone conference call, election of officers, and information sharing with other agencies.

[16.10.1.6 NMAC - Rp 16 NMAC 10.1.6, 7/15/01]

**16.10.1.7 DEFINITIONS:**

[RESERVED]

[16.10.1.7 NMAC - Rp 16 NMAC 10.1.7, 7/15/01]

**16.10.1.8 NAME CHANGE:**

Any licensee desiring to change his or her name in the board record or on the license shall so notify the board and shall provide a copy of a court order, marriage certificate, or other document legally effecting the name change. A new wall license may be issued under the original number with the changed name appearing on the license.

[16.10.1.8 NMAC - Rp 16 NMAC 10.1.8, 7/15/01]

**16.10.1.9 PUBLIC RECORDS:**

**A. Inspection.** Any citizen of the state may examine public records in the board's custody. Persons requesting inspection of public records shall give reasonable notice to the board's administrator. When the records requested are in active use or are in storage, the requestor must notify the administrator five (5) days in advance. The board shall provide copies of public records upon request and may charge a reasonable copying and administrative fee as set forth in 16.10.9 NMAC. No person shall remove board documents from the board office.

**B. Non-public records.** Pursuant to Section 61-6-34 NMSA 1978, all complaints against physicians and physician assistants, all investigation files and matters of opinion are confidential and are not subject to inspection.

**C. Public records** will also be available on the internet. The following public information will be made available on the board website:

(1) demographic information to include name, date of birth, business address, business telephone, and gender;

(2) education information to include medical school, date of graduation, self-reported specialties, board certification(s);

(3) licensing information to include number, status, initial license date, last renewal date, expiration date, and disciplinary actions taken by the board.

**D. Files.** The board shall maintain a separate legal file for complaints, investigative reports and legal opinions. This information is confidential and shall not be disclosed.

[16.10.1.9 NMAC - Rp 16 NMAC 10.1.9, 7/15/01]

#### **16.10.1.10 MEETINGS BY TELEPHONE:**

Pursuant to Section 10-15-1 (C) NMSA 1978 and Section 61-6-3 NMSA, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment under the following conditions:

**A.** This part shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person.

**B.** Each member participating by conference telephone must be identified when speaking.

**C.** All participants must be able to hear each other at the same time.

**D.** Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

**E.** The member of the board participating by telephone can only vote on a matter if he/she has copies of the documents that are available to the members who are physically present.

**F.** The member participating by telephone cannot vote on any matter where the credibility of a witness who physically appears at the meeting is an issue that the board members must consider when voting on a pending matter.

[16.10.1.10 NMAC - Rp 16 NMAC 10.1.10, 7/15/01]

#### **16.10.1.11 INFORMATION SHARING:**

Any and all information in the board files regarding actual or potential disciplinary actions may be disclosed to state and federal law enforcement agencies and to this

state's and other states' health care provider and pharmacy boards upon receipt of an authorized request for the copies of the information from these agencies and boards.

[16.10.1.11 NMAC - Rp 16 NMAC 10.1.11, 7/15/01]

#### **16.10.1.12 BOARD ELECTION OF OFFICERS:**

**A.** The board chair, vice chair, and secretary-treasurer are elected annually at the second quarterly meeting.

**B.** The terms of office of the board officers shall run from July 1st of the year of the election through June 30th of the subsequent year.

[16.10.1.12 NMAC - Rp 16 NMAC 10.1.12, 7/15/01, A, 4/3/05]

#### **16.10.1.13 BUSINESS ENTITIES – AUTHORIZATION TO PROVIDE HEALTHCARE SERVICES:**

**A. Purpose.** The purpose of this regulation is to clarify and confirm that certain business entities are and have been authorized to provide healthcare services in New Mexico.

**B. Healthcare services-certain business entities.** A business entity formed pursuant to the laws of the state of New Mexico is authorized to provide healthcare services in the state of New Mexico if the healthcare services are provided by or under the direction of persons who are duly licensed to engage in the practice of medicine pursuant to the provisions of the Medical Practice Act.

**C. Retroactivity.** This section is intended to be a clarification and therefore, it necessarily operates retroactively, as well as prospectively, and is expressly so provided.

[16.10.1.13 NMAC - N, 7/1/10]

### **PART 2: PHYSICIANS: LICENSURE REQUIREMENTS**

#### **16.10.2.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.2.1 NMAC - Rp/E, 16 10.2.1 NMAC 7/7/2023]

#### **16.10.2.2 SCOPE:**

This part applies to all physicians applying for licensure in New Mexico.

[16.10.2.2 NMAC - Rp/E, 16 10.2.2 NMAC 7/7/2023]

**16.10.2.3 STATUTORY AUTHORITY:**

This part governs the licensing of physicians in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-11, 61-6-11.1, 61-6-12, 61-6-13, 61-6-14, 61-6-15, 61-6-18, 61-6-18.1, and 61-6-19 NMSA 1978.

[16.10.2.3 NMAC - Rp/E, 16 10.2.3 NMAC 7/7/2023]

**16.10.2.4 DURATION:**

Permanent.

[16.10.2.4 NMAC - Rp/E, 16 10.2.4 NMAC 7/7/2023]

**16.10.2.5 EFFECTIVE DATE:**

July 7, 2023, unless a later date is cited at the end of a section.

[16.10.2.5 NMAC - Rp/E, 16 10.2.5 NMAC 7/7/2023]

**16.10.2.6 OBJECTIVE:**

This part establishes requirements and procedures for licensure as a physician in New Mexico.

[16.10.2.6 NMAC - Rp/E, 16 10.2.6 NMAC 7/7/2023]

**16.10.2.7 DEFINITIONS:**

**A. "Absence of good moral character"** means any conduct that calls into question an applicant's fitness or suitability to engage in licensed practice, or that is antithetical to the promotion of the public health, safety, and welfare, as determined by the board, constitutes a lack of good moral character. The conduct subject to the board's evaluation for good moral character may or may not arise in the context of professional practice.

**B. "ABMS"** means the American board of medical specialties.

**C. "AOA"** means the American osteopathic association.

**D. "AOA-BOS"** means the American osteopathic association bureau of osteopathic specialists.

**E. "Board approved school"** means a medical school that has been approved by the liaison committee on medical education, composed of the American medical association and the association of American medical colleges, has a liaison council on medical education (LCME)-approved curriculum or equivalent for graduates of Canadian schools, is accredited by the American osteopathic association or commission on osteopathic accreditation, or has been approved by the board. Foreign medical graduates that are vetted and approved for a board approved training program and hold an ECFMG certification are considered to have graduated from an acceptable medical education, as if they have graduated from a board approved school.

**F. "Board approved training program"** means a program approved by the accrediting council on graduate medical education of the American medical association (ACGME), is approved by American osteopathic association (AOA), the royal college of physicians and surgeons of Canada (RCPSC), or a residency program located within an ACGME approved institution that has been approved by the board.

**G. "Board approved credential verification service"** means a credential verification service certified by the national commission on quality assurance (NCQA) and approved by the board.

**H. "Complete application"** means an application for licensure that includes all required documentation in 16.10.2 NMAC and subject to the provisions of Section 61-6-11 NMSA 1978 and Section 61-1-3.5 NMSA 1978.

**I. "Disqualifying criminal conviction"** means a conviction pursuant to the Uniform Licensing Act, Section 61-1-36 NMSA 1978, for a crime that is job-related for the position in question and consistent with business necessity.

**J. "ECFMG"** means educational commission for foreign medical students.

**K. "FCVS"** means the federation credential verification service of the federation of state medical boards.

**L. "Good moral character"** means qualities evidencing an applicant's present good moral character for purposes of licensure including candor, honesty, integrity, a respect for the law, regard for the welfare, safety, and rights of another, and fidelity and trustworthiness in the practice of the professions for which they may be licensed. Conversely, an applicant whose conduct reflects the absence of one or more of these qualities may be said to lack the good moral character required for licensure. It is a continuing duty to exhibit good moral character as a licensee. Absence of good moral character means any conduct that calls into question an applicant's fitness or suitability to engage in licensed practice, or that is antithetical to the promotion of the public health, safety, and welfare, as determined by the board, constitutes a lack of good moral character. The conduct subject to the board's evaluation for good moral character may or may not arise in the context of professional practice.

**M. "HSC"** means the hospital services corporation, a New Mexico corporation, and a credential verification organization certified by the national commission on quality assurance (NCQA).

**N. "License renewal"** means the renewal of an active license with the required documentation and the submission by the licensee to a state and national background check, as determined by the board.

**O. "Major disaster"** means a declaration of a major disaster by the federal emergency management agency (FEMA).

**P. "Military service member"** means a person who is:

(1) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard;

(2) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(3) the child of a military service member if the child is also a dependent of that person for federal income tax purposes.

**Q. "Nationwide criminal history record"** information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

**R. "Nationwide criminal history screening"** a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

**S. "Out of state sports team"** means an entity or organization:

(1) for which athletes engage in sporting events;

(2) headquartered or organized under laws other than the laws of New Mexico; and

(3) a majority of whose staff and athletes are residents of another state.

**T. "Physician"** means allopathic doctor (MD) or doctor of osteopathy (DO).

**U. "Qualified applicant"** means an applicant for licensure who satisfies the requirements and standards for licensure established by the board.

**V. "Sporting event"** means a scheduled sporting event involving an out of state sports team for which an admission fee is charged to the public, including any preparation or practice related to the activity.

**W. "Telemedicine"** means the practice of medicine across state lines as defined in the Medical Practice Act, Subsection K of Section 61-6-6 NMSA 1978.

**X. "Veteran"** means a person who received an honorable discharge or separation from military service.

[16.10.2.7 NMAC - Rp/E, 16 10.2.7 NMAC 7/7/2023; A, 3/12/2024]

#### **16.10.2.8 CATEGORIES OF ACTIVE LICENSES:**

Individuals holding one of the following categories of medical license are eligible to practice medicine and surgery in New Mexico.

**A. Expedited license:** A one-year provisional license that confers the same rights, privileges and responsibilities as a medical license issued by the board as defined in Section 61-6-13 NMSA.

**B. Medical:** An unrestricted license to practice medicine and surgery.

**C. Telemedicine:** A limited medical license that allows a physician located outside New Mexico to practice medicine on patients located in New Mexico.

**D. Post-graduate:** A limited training license issued by the board to physicians who are enrolled in a board approved training program.

**E. Public service:** A limited license issued by the board to physicians in training who have successfully completed one year of post-graduate training.

**F. Temporary:** A limited license that allows a physician to practice medicine for a limited time after meeting certain specific conditions.

**G. Federal emergency:** An unrestricted license to practice medicine and surgery issued without receipt of all documentation required for a medical license because of a major disaster.

[16.10.2.8 NMAC - Rp/E, 16 10.2.8 NMAC 7/7/2023 A, 3/12/2024]

### **16.10.2.9 MEDICAL LICENSE BY EXAMINATION:**

**A. Prerequisites for licensure:** Each applicant for a license to practice as a physician in New Mexico must be of good moral character and must possess the following qualifications:

(1) graduated and received a diploma from a board approved school, completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on board review of a full ECFMG certification, or the board shall, in its sole discretion, determine if the applicant's total educational and professional clinical experience is substantially equivalent to that which is required for licensure in New Mexico; and

(2) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Subsection B of Section 61-6-11 NMSA 1978;

(4) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) a qualified applicant who has not been actively and continuously in practice for more than two years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (special purpose examination), the PLAS (post-licensure assessment system of the federation of state medical boards), or specialty re-certification.

**B. Required documentation for all applicants:** Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous six months; applications are valid for one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must attest to the status, issue date, license number, and other information requested and contained on the form; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to

the New Mexico medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physicians, chiefs of staff, department chairs, or equivalent. This information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(4) verification of all work experience and hospital affiliations in the last two years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all American board of medical specialties (ABMS) specialty board certifications, or American osteopathic association bureau of osteopathic specialists (AOA-BOS) if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association (AMA), the drug enforcement administration (DEA), the federation of state medical boards (FSMB), the national practitioner data bank, and other sources as may be deemed appropriate by the board;

**C. Additional documentation for applicants using the FCVS:** Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in Subsection B of 16.10.2.9 NMAC are required in addition to the FCVS report.

**D. Additional documentation for applicants using HSC or another board-approved credentials verification service:**

(1) status report of educational commission for foreign medical graduates (ECFMG) certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(4) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas.

**E. Additional documentation for applicants applying directly to New Mexico and not using FCVS or HSC or another board-approved credentials verification service:**

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the board from the medical school;

(3) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(4) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(5) postgraduate training form sent to the board directly from the training program;

(6) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(7) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas; and

(8) certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

**F. Licensure process:** Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

**G. Initial license expiration:** Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. If New Mexico is the first state of licensure, initial licenses are valid for a period of not less than 24 months or more than 35 months and shall be renewed on July 1.

[16.10.2.9 NMAC - Rp/E, 16 10.2.9 NMAC 7/7/2023 A, 3/12/2024]

#### **16.10.2.10 EXPEDITED LICENSURE:**

**A. Prerequisites for expedited licensure:** Each applicant for a license to practice as a physician in New Mexico must be of good moral character, hold a full and unrestricted license to practice medicine in another state, and possess the following qualifications:

(1) have practiced medicine in the United States or Canada immediately preceding the application for at least three years;

(2) be free of disciplinary history, license restrictions, or pending investigations in all jurisdictions where a medical license is or has been held;

(3) graduated from a board approved school or hold current ECFMG certification; and

(4) current certification from a medical specialty board recognized by the ABMS or the AOA-BOS.

**B. Required documentation for all applicants:** Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application that has been verified as including all required documentation with a passport-quality photo taken within the previous six months; applications are valid for one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must attest to the status, issue date, license number, and other information requested and contained on the form;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physician(s) must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician(s), chief(s) of staff,

department chair(s) or equivalent(s). This information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(4) verification of all work experience and hospital affiliations in the last three years; if more than one work experience and hospital affiliation, provide at least three verifications of all work and hospital affiliations during the past three years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board;

(5) a copy of all ABMS or AOA-BOS specialty board certifications, if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board; and

(6) the board may request that applicants be investigated by the biographical section of the AMA, the DEA, the FSMB, the NPDB, and other sources as may be deemed appropriate by the board. The board shall require fingerprints and, in its discretion, a state and national background check.

**C. Expedited licensure process:** Upon receipt of a completed application, required fees, and verification of licensure in all states or territories where the applicant actively holds a license to practice medicine, the board shall issue an expedited license to a qualified applicant within thirty (30) days from the date the completed application was received unless the board may have other cause to deny the application pursuant to Section 61-6-15 NMSA 1978.

**D. Expedited license expiration:** Expedited licenses shall be valid for no more than 12 months from the date of issuance.

**E. Procedure for incomplete application:** If an incomplete application for an expedited license is received, the board shall notify the applicant in writing within 30 days from the date the incomplete application was received by the board. The written notification shall include how the application is incomplete and what is needed to complete the application; this written notification shall be titled "notice to cure." After receipt of the notice to cure, the applicant must submit a completed application within 30 days of the receipt of the notice to cure. An extension may be granted, at the board's discretion and based on good cause, for submission beyond 30 days after receipt of the notice to cure.

[16.10.2.10 NMAC - Rp/E, 16 10.2.10 NMAC 7/7/2023 A, 3/12/2024]

#### **16.10.2.11 TELEMEDICINE LICENSE:**

**A. Prerequisites for licensure:** Each applicant for a telemedicine license must be of good moral character and hold a full and unrestricted license to practice medicine in another state or territory of the United States.

**B. Required documentation:** Each applicant for a telemedicine license must submit the required fees as specified in 16.10.9.8 NMAC and the documentation required by 16.10.2.10 NMAC for an expedited license. An applicant for a telemedicine license shall be subject to the same provisions as an applicant seeking an expedited license.

(1) A completed signed application, with a passport quality photo taken within six months. Applications are valid for one year from the date of receipt.

(2) Verification of licensure in all states where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be received directly from the other state(s) board, and must attest to the status, issue date, license number, and other information requested and contained on the form.

(3) Applicants who have had previous disciplinary or other action against them may be required to meet with the entire board. The board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.

**C. Licensure process:** Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved.

**D. Initial license expiration:** Telemedicine licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month.

**E. Exemption from licensure requirements** are defined in Section 61-6-17 NMSA of the Medical Practice Act and include a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico licensed physician on an irregular or infrequent basis not to exceed ten patients per year.

[16.10.2.11 NMAC - Rp/E, 16 10.2.11 NMAC 7/7/2023]

#### **16.10.2.12 POSTGRADUATE TRAINING LICENSE:**

A postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state. Individuals enrolled in board

approved training programs outside of New Mexico may apply for a postgraduate training license as a pre-requisite to obtaining a New Mexico public service license.

**A. Prerequisites for licensure:** Each applicant for a postgraduate training license must possess the following qualifications:

- (1) graduated from a board approved school or completed a program determined by the board to be substantially equivalent to a U.S. medical school or college of osteopathic medicine;
- (2) passed part I of the United States medical licensing examination (USMLE) or the comprehensive osteopathic medical licensing examination (COMLEX); and
- (3) be of good moral character.

**B. Required documentation:** Each applicant shall submit the required fee as specified in 16.10.9.8 NMAC and complete the board-approved application.

- (1) Applicants enrolled at the university of New Mexico health science center must submit an application through the office of graduate medical education for review before it is forwarded to the board for review and approval.
- (2) Applicants enrolled at a board-approved training program outside New Mexico must submit the postgraduate training license application directly to the board.
- (3) A copy of the official examination results must be attached to each application.

**C. Licensure process:** Upon receipt of a completed signed application and fee, a member or agent of the board will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

**D. License expiration:** Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration.

[16.10.2.12 NMAC - Rp/E, 16 10.2.12 NMAC 7/7/2023]

### **16.10.2.13 PUBLIC SERVICE LICENSE:**

A resident physician may apply for a public service license, which enables him to practice medicine outside the training program. The resident physician must be continuing in the board approved training program.

**A. Prerequisites for licensure:** Each applicant for a public service license shall have graduated from a board approved school, passed all required examinations as defined in 16.10.3 NMAC, and completed one year of postgraduate training. In addition, the applicant shall have completed an application for licensure including all required documentation required in Subsection B through Subsection E of 16.10.2.9 NMAC, as applicable. Other requirements include:

- (1) written approval from his training program director;
- (2) a postgraduate training license issued by the New Mexico medical board;
- (3) a resident physician with one year postdoctoral training may only apply for a public service license when he is under the direct supervision of a New Mexico physician or when employed in a medically underserved area; and
- (4) if a physician is not being supervised directly, there must be procedures in place for a licensed New Mexico physician to review, on at least a quarterly basis, prescriptions written and dispensed for controlled substances and operative procedures performed.

**B. Required documentation:** Each applicant for a public service license shall submit the required fee as specified in 16.10.9.8 NMAC and the following documentation:

- (1) a completed signed application, with a passport quality photo taken within the previous six months; applications are valid for one year from the date of receipt;
- (2) letter of approval from the training program director.

**C. Licensure process:** Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

**D. License expiration:** Public service licenses shall be renewed annually on September 1 as long as the applicant remains eligible.

[16.10.2.13 NMAC - Rp/E, 16 10.2.13 NMAC 7/7/2023]

#### **16.10.2.14 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES:**

The board may issue a temporary license to physicians licensed in other states or jurisdictions for the purpose of teaching, conducting research, performing specialized

diagnostic and treatment procedures, implementing new technology, or for physician educational purposes in New Mexico on a temporary basis under the supervision of a New Mexico licensed physician.

**A. Prerequisites for licensure:** The applicant must:

- (1) be otherwise qualified to practice medicine in New Mexico;
- (2) hold an unrestricted license in another state or country;
- (3) submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico.

**B. Required documentation:**

- (1) specific program or protocol of work planned;
- (2) address of sponsoring institution or organization where the work will be performed;
- (3) an affidavit from the sponsoring physician attesting to the qualifications of the applicant and the purpose of the functions or medical procedures the applicant will perform;
- (4) verification of licensure in state or jurisdiction where physician is practicing; and
- (5) a license fee as set forth in 16.10.9 NMAC.

**C. Licensure process:** Upon receipt of a completed signed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

**D.** The applicant may perform only those functions listed in the application. The supervising physician must notify the board and obtain approval prior to any change in the activities of the temporary license holder.

**E.** The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. After the third renewal of a temporary license, the physician shall re-apply under the provisions of this rule.

[16.10.2.14 NMAC - Rp/E, 16 10.2.14 NMAC 7/7/2023]

#### **16.10.2.15 YOUTH CAMP OR SCHOOL LICENSES:**

The board may approve a temporary license for physicians to provide temporary medical services to organized youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Practice under the temporary license shall be limited to enrollees, leaders and employees of the camp or school. Applicants must be qualified for licensure in New Mexico and shall submit the following documentation:

**A.** a completed signed application with a passport-quality photograph, taken within the previous six months, attached;

**B.** a verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

**C.** a verification of DEA permit; and,

**D.** a temporary license fee as set forth in 16.10.9.8 NMAC.

**E. Licensure process:** Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

[16.10.2.15 NMAC - Rp/E, 16 10.2.15 NMAC 7/7/2023]

#### **16.10.2.16 PROVISIONS FOR PHYSICIAN LICENSURE DURING A DECLARED DISASTER:**

The board will make accommodations for physicians who have been impacted by a major disaster. Based on the nature of the disaster, the extent of the damage, and the number of individuals and institutions that have been affected, the board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board may also waive any required fees for applications submitted after the major disaster. The board will determine the length of time the emergency provisions will be in effect for each major disaster that results in applications for a federal emergency license.

**A. Federal emergency license by examination:** Physicians currently licensed in a state in which a major disaster has been declared may be issued a federal emergency license in New Mexico. The board may waive specific documentation required in

Subsection B through E of 16.10.2.9 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.9 NMAC.

**B. Federal emergency license by endorsement:** Physicians currently licensed in a state in which a major disaster has been issued a federal emergency license in New Mexico. The board may waive specific requirements of Subsection B of 16.10.2.10 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.10.2.10 NMAC. The following requirements will apply to applicants under this provision:

(1) a completed signed application, is required, accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) the board will consider the required three years of practice experience to be met through any combination of postgraduate medical education and actual work experience;

(3) the board may waive any requirements for recommendation forms or verification of work experience forms;

(4) other required verification will be obtained online by board staff to include: current licensure status, national practitioners data bank (NPDB), federation of state medical board (FSMB) disciplinary database, American medical association or AOA records of education and postgraduate training, and the records of the American board of medical specialties or AOA-BOS to confirm board certification status.

**C. License expiration:** Initial federal emergency licenses shall be valid for not less than three months or more than fifteen months. Licenses shall be renewed on July 1 following the date of issue, pursuant to 16.10.7 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. At the time a federal emergency license is approved for renewal, it will be transferred to a full medical license.

[16.10.2.16 NMAC - Rp/E, 16 10.2.16 NMAC 7/7/2023]

#### **16.10.2.17 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION:**

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and

issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.2.17 NMAC - Rp/E, 16 10.2.17 NMAC 7/7/2023]

**16.10.2.18 TEMPORARY LICENSURE EXEMPTION FOR OUT OF STATE SPORTS TEAM PHYSICIAN:**

**A.** Physician who is licensed in good standing to practice medicine in another state, and who has never been disciplined by the New Mexico medical board, may practice medicine without a license provided that:

(1) the physician has a written agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team athlete or staff member at a scheduled sporting event;

(2) the physician's practice is limited to medical care to assist injured and ill players and staff and coordinate appropriate referral to in-state health care providers as needed;

(3) the healthcare services to be provided by the physician are within the scope of practice authorized pursuant to the medical practice act and rules of the board; and

(4) the physician has professional liability coverage for the duration of the sporting event.

**B. Licensure exemption registration.** Physician registrants shall submit the following documentation to the board:

(1) copy of the agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team athlete or staff member at a scheduled sporting event;

(2) proof of professional liability coverage for the duration of the sporting event;

(3) a signed affidavit that the physician will limit their medical practice in New Mexico to care and assist injured or ill out-of-state team athletes or staff, and

(4) coordinate appropriate referral to in-state health care providers.

**C.** The physician will further attest that they will not provide care or consultation to a resident of New Mexico and will not practice medicine in New Mexico, outside of the sporting event.

[16.10.2.18 NMAC - Rp/E, 16 10.2.18 NMAC 7/7/2023]

#### **16.10.2.19   NATIONWIDE CRIMINAL HISTORY SCREENING:**

All applicants for initial licensure in any category in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

**A.** Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

**B.** Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

**C.** If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.2.19 NMAC - Rp/E, 16 10.2.19 NMAC 7/7/2023]

#### **16.10.2.20   CRIMINAL CONVICTIONS:**

**A. Arrests:** The Board shall not exclude from licensure a person who is otherwise qualified on the sole basis that the person has been previously arrested for or convicted of a crime unless the person has a disqualifying criminal conviction.

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

- (1)   homicide;
- (2)   aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, stalking, or other crimes of violence against persons;
- (3)   robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;
- (4)   rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;

- (5) crimes against children; crimes involving child abuse or neglect; child sexual exploitation, child pornography;
- (6) driving under the influence of intoxicating liquor or drugs;
- (7) trafficking controlled substances;
- (8) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;
- (9) making a false statement under oath or in any official document;
- (10) evasion of a lawful debt or obligation, including but not limited to tax obligations; or
- (11) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

[16.10.2.20 NMAC - Rp/E, 16 10.2.20 NMAC 7/7/2023]

### **PART 3: EXAMINATIONS**

#### **16.10.3.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.3.1 NMAC - N, 4/18/02; A, 10/5/03]

#### **16.10.3.2 SCOPE:**

This part applies to all physicians applying for licensure in New Mexico.

[16.10.3.2 NMAC - N 4/18/2002; A, 2/8/2022]

#### **16.10.3.3 STATUTORY AUTHORITY:**

This part governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 and 61-6-13 NMSA 1978.

[16.10.3.3 NMAC - N, 4/18/02]

#### **16.10.3.4 DURATION:**

Permanent

[16.10.3.4 NMAC - N, 4/18/02]

**16.10.3.5 EFFECTIVE DATE:**

April 18, 2002, unless a later date is cited at the end of a section.

[16.10.3.5 NMAC - N, 4/18/02]

**16.10.3.6 OBJECTIVE:**

This part establishes examination requirements for physicians seeking licensure as a physician in New Mexico.

[16.10.3.6 NMAC - N, 4/18/2002; A, 2/8/2022]

**16.10.3.7 DEFINITIONS:**

- A. **"COMLEX"** means comprehensive osteopathic medical licensing examination.
- B. **"COMVEX"** means comprehensive osteopathic medical variable-purpose examination.
- C. **"ECFMG"** means educational commission for foreign medical graduates.
- D. **"FLEX"** means federal licensing exam.
- E. **"LMCC"** means licentiate of the medical council of Canada.
- F. **"NBME"** means national board of medical examiners.
- G. **"NBOE"** means national board of osteopathic examination.
- H. **"PLAS"** means post-licensure assessment system.
- I. **"SPEX"** means special purpose examination.
- J. **"USMLE"** means the United States medical licensing examination, an examination of three separate "steps".

[16.10.3.7 NMAC - N, 4/18/2002; A, 1/2/2008; A, 2/8/2022]

**16.10.3.8 BOARD-APPROVED EXAMINATIONS FOR APPLICANTS WHO WERE EXAMINED PRIOR TO JANUARY 1, 2000:**

**A.** Graduates of U.S. and Canadian medical schools must have passed either the **FLEX** (Components 1 & 2), the **NBME** (Parts I, II, & III), the **USMLE** (Steps 1, 2, & 3), the Canadian medical licensing examination (**LMCC** Parts 1 & 2), or a combination examination as defined in Subsection C.

**B.** International medical graduates must have passed the **ECFMG** examination with addition of either **NBME-III**, or **USMLE-3**, or **FLEX-2**, or must have passed the **LMCC**.

**C.** Acceptable combination examinations include the following, as long as the entire combination was successfully completed as required in Section 10 of 16.10.3 NMAC prior to January 1, 2000;

(1) Any combination of sequential parts I, II, and III or Steps 1, 2, and 3 respectively of the **NBME** and **USMLE**;

(2) A New Mexico state board examination or a state board examination given in another state if that examination were equivalent to the last New Mexico state board examination. That state examination would be considered equivalent if it were to have contained both basic science and clinical components and had been taken and passed prior to the end of 1973 with a score of 75 or higher.

[16.10.3.8 NMAC - Rp 16 NMAC 10.2.9, 4/18/02; A, 1/2/08]

#### **16.10.3.9 BOARD-APPROVED EXAMINATIONS FOR APPLICANTS COMPLETING EXAMINATIONS AFTER JANUARY 1, 2000:**

**A.** Graduates of U.S. medical schools are required to pass the United States Medical Licensing Examination (USMLE, Steps 1, 2, & 3).

**B.** International Medical Graduates are required to pass the Educational Commission for Foreign Medical Graduates (ECFMG) examination for English proficiency and the USMLE, Steps 1, 2 & 3 or LMCC.

**C.** Graduates of Canadian medical schools may pass the Canadian Medical Licensing Examination (LMCC), Parts 1 & 2 or the USMLE Steps 1, 2 & 3.

[16.10.3.9 NMAC - Rp 16 NMAC 10.2.9, 4/18/02]

#### **16.10.3.10 SUCCESSFUL COMPLETION OF EXAMINATIONS:**

**A.** An applicant must score a minimum of 75 on each component part of a board-approved examination as described in Subsection C of 16.10.3.8 NMAC. The minimum score of 75 may not be achieved for any component part of an examination by averaging that component's scores with scores of other component part(s).

**B.** A FLEX weighted average score of 75 or higher will be considered passing if obtained by testing prior to June 1984.

**C.** An applicant who has taken the Canadian medical licensing examination (LMCC) must achieve the minimum passing score established for the exam as documented by LMCC certification.

**D.** Except as set forth in below, an applicant may attempt six times to successfully complete any part of a board-approved examination, as long as the entire examination is successfully completed within seven years from the date the first step of the examination is passed.

**E.** An applicant taking a combination examination set forth above in 16.10.3.8 must successfully complete the combination examination by January 1 of the year 2000. If not, the applicant must successfully complete the USMLE (steps 1, 2, and 3). Either the combination examination or the USMLE must be successfully completed in a total of six attempts maximum for each part. The applicant must successfully complete a combination examination or the USMLE within seven years from the date any part of the combination examination was first passed.

**F.** The board may grant exceptions to the seven-year requirement for qualified applicants who have successfully completed the combination examination within ten years from the date the first step of the examination is passed. Qualified applicants must have had no adverse action taken against them by any other licensing jurisdiction, peer review body, health care entity, governmental agency, law enforcement agency or court, and no license restrictions or pending investigations in all jurisdictions where a medical license or resident or training license is or has been held. On a case by case basis the board may consider requests for exceptions if the applicant can demonstrate by substantial evidence that the applicant has:

- (1) been continuously enrolled in postgraduate medical training;
- (2) been continuously practicing medicine in another country;
- (3) passed each part of the required examination within 2 attempts;
- (4) current board certification in a specialty recognized by the American board of medical specialties;
- (5) experienced a documented significant health condition which by its severity would necessarily cause a delay to the applicant's examination sequence;
- (6) provided care for an immediate family member who has experienced a documented significant health condition which by its severity would necessarily cause a delay to the applicant's examination sequence; immediate family member means a spouse, domestic partner, child or parent of the applicant;

(7) been a victim of a federal or state declared major disaster or its equivalent;

(8) been serving in a branch of the US armed forces during a war or other armed conflict or unrest; or

(9) experienced other documented circumstances of extreme hardship or extraordinary situations that were not willful and were beyond the control of the applicant, when such circumstances would by their severity necessarily cause a delay to the applicant's examination sequence.

**G.** Applicants who are MD/PhD candidates must successfully complete the entire examination within ten years from the date the first step of the examination is passed.

**H.** Applicants may repeat a previously passed step if they need to retake the exam in order to bring an entire sequence within the mandated time frame.

**I.** The board may allow exceptions to the time limits established by this rule for qualified applicants with bona fides disabilities, as defined in the Americans with Disabilities Act, in a case by case basis.

[16.10.3.10 NMAC - Rp 16 NMAC 10.9.2, 4/18/02; A, 10/5/03; A, 10/7/05; A, 9/27/07]

#### **16.10.3.11 SPECIAL EXAMINATIONS:**

The board may require a qualified applicant who has not been actively and continuously in practice for more than 2 years prior to applying for licensure, license renewal, or reinstatement, and who has previously passed a board-approved examination, also to successfully complete a special examination, such as the SPEX (Special Purpose Examination), the PLAS (Post-Licensure Assessment System) of the Federation of State Medical Boards (FSMB), or specialty re-certification examination (American Board of Medical Specialties) as a requirement for such licensure. To successfully complete the SPEX, the applicant must obtain a minimum score of 75.

[16.10.3.11 NMAC - Rp 16 NMAC 10.2.9.3, 4/18/02]

#### **16.10.3.12 OSTEOPATHIC LICENSING EXAMINATIONS:**

##### **A. FLEX:**

(1) Each applicant must earn a passing score of seventy-five percent or higher on each of the two components of the examination. The board will not accept overall or average scores.

(2) If an applicant fails either component of the FLEX examination, the applicant must repeat only the component failed. Upon failing one or both components,

the applicant may repeat the component failed at the next administration of the examination. If the applicant fails a second examination, the applicant must wait one year before taking the examination for a third time. If the applicant fails a third time, the applicant must acquire one additional year of AOA approved postgraduate training before being examined a fourth time.

(3) Both components of the FLEX examination must be passed within seven years of taking the initial examination.

**B. NBOE:**

(1) Each applicant must earn a passing score of seventy-five percent or higher on each of the three components of the examination.

(2) All three components of the NBOE examination must be passed within seven years of taking the initial examination.

**C. COMLEX:**

(1) Each applicant must earn a minimum total passing score or higher on each level of the examination.

(2) All levels of the COMLEX examination must be passed within seven years of taking the initial examination.

**D. USMLE:**

(1) Each applicant must earn a minimum total passing score or higher on each step of the examination.

(2) All steps of the USMLE examination must be passed within seven years of taking the initial examination.

[16.10.3.1 NMAC - N, 2/8/2022]

**PART 4: CONTINUING MEDICAL EDUCATION**

**16.10.4.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.4.1 NMAC - Rp 16 NMAC 10.4.1, 4/18/02; A, 9/27/07]

**16.10.4.2 SCOPE:**

This part applies to physicians licensed by the board.

[16.10.4.2 NMAC - Rp 16 NMAC 10.4.2, 4/18/02]

**16.10.4.3 STATUTORY AUTHORITY:**

This part governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Section 61-6-21 NMSA 1978.

[16.10.4.3 NMAC - Rp 16 NMAC 10.4.3, 4/18/02]

**16.10.4.4 DURATION:**

Permanent

[16.10.4.4 NMAC - Rp 16 NMAC 10.4.4, 4/18/02]

**16.10.4.5 EFFECTIVE DATE:**

April 18, 2002, unless a later date is cited at the end of a section.

[16.10.4.5 NMAC - Rp 16 NMAC 10.4.5, 4/18/02]

**16.10.4.6 OBJECTIVE:**

This part establishes continuing education requirements for license renewal.

[16.10.4.6 NMAC - Rp 16 NMAC 10.4.6, 4/18/02]

**16.10.4.7 DEFINITIONS:**

- A. **"AACOM"** means American association of colleges of osteopathic medicine.
- B. **"AAFP"** means American academy of family physicians.
- C. **"AAPS"** means American association of physician specialists.
- D. **"ACCME"** means accreditation council for continuing medical education.
- E. **"AMA"** means the American medical association.
- F. **"AOA"** means American osteopathic association.
- G. **"CCME"** means council on continuing medical education of the AOA.
- H. **"CME"** means continuing medical education.
- I. **"ABMS"** means American board of medical specialties.

[16.10.4.7 NMAC - N, 4/18/2002; A, 9/27/07; A, 2/8/2022]

**16.10.4.8 HOURS REQUIRED:**

**A.** Seventy-five hours of continuing medical education are required for all medical licenses during each triennial renewal cycle. CME may be earned at any time during the licensing period, July 1 through June 30 immediately preceding the triennial renewal date.

**B.** One hour of required CME must be earned by reviewing the New Mexico Medical Practice Act and these board rules. Physicians must certify that they have completed this review at the time they submit their triennial renewal application.

**C.** Continuing medical education is not required for federal emergency, telemedicine, postgraduate training, public service, temporary teaching or youth camp or school licenses.

**D.** The five hours of CME in pain management continuing education set forth in Subsections A and B of 16.10.14.11 NMAC may apply toward the 75 hours required in Subsection A of this section and may be included as part of the required CME hours in pain management in either the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter. Each subsequent triennial renewal cycle shall include five hours of CME hours in pain management.

[16.10.4.8 NMAC - Rp 16 NMAC 10.4.8, 4/18/02; A, 4/3/05; A, 9/27/07; A, 2/14/13]

**16.10.4.9 CREDIT HOURS:**

The board accepts one credit hour for every clock hour of participation in a CME activity.

[16.10.4.9 NMAC - N, 4/18/02]

**16.10.4.10 ACCEPTABLE AS CME:**

The board will accept any of the following as fulfillment of CME requirements:

- A.** the physician's recognition award of the AMA PRA Category 1 Credit™;
- B.** certificate of CME issued by any board or sub-board of the ABMS, or
- C.** certification or re-certification by an ABMS approved specialty board during the renewal period;
- D.** active membership in the AOA;

E. certification or recertification by an osteopathic specialty board during the triennial cycle;

F. passage of the COMVEX or SPEX during the triennial cycle.

[16.10.4.10 NMAC - N, 4/18/2002; A, 9/27/2007; A, 2/8/2022]

#### **16.10.4.11 ALLOWED COURSES AND PROVIDERS:**

The following courses and activities are acceptable for CME credit:

**A. AMA PRA Category 1 Credit™** Clinical courses, lectures or grand rounds certified by an accredited sponsor of the AMA physician's recognition award, AMA PRA Category 1 Credit™ are acceptable for credit whether taken in an on-site format or taken using the internet.

**B. AOA.** Clinical courses approved for CCME, AOA, AMA, ACCME, AAFP, AACOM, or AAPS category 1-A, 1-B are approved.

**C. NEW MEXICO SPECIFIC CME.** Activities certified by the New Mexico medical society (NMMS) continuing medical education committee are acceptable for credit. Up to 40 credits in any three-year reporting period are allowed for participation in activities certified as New Mexico specific CME by the NMMS continuing education committee. New Mexico specific CME are issued by the NMMS for service on the New Mexico medical review commission and on the impaired physician committee.

**D. POST GRADUATE EDUCATION.** A maximum of 75 credit hours in any three-year reporting period are allowed for participation in a postgraduate education program, which has been approved by the board or by the AMA liaison committee on graduate medical education, CCME, ACGME and AACOM. This category includes internships, residencies and fellowships.

**E. ADVANCED DEGREES.** 40 credit hours are allowed for each full academic year of study toward an advanced degree in a medical field or a medically related field as approved by the board.

**F. TEACHING.** One credit hour is allowed for each hour of teaching medical students or physicians in a United States medical school, an approved internship or residency or for teaching in other programs approved by the board for a maximum of 40 credit hours in any three-year reporting period.

**G. PHYSICIAN PRECEPTORS.** A maximum of 30 hours of credit during a three year reporting period is acceptable for licensed physicians who are acting as preceptors for students enrolled in an accredited medical or physician assistant school or as preceptors for students enrolled in a combined bachelor of arts and medical degree program.

**H. PAPERS AND PUBLICATIONS.** 10 hours of credit are allowed for each original scientific medical paper or publication written by a licensee. For acceptance, papers must have been presented to a recognized national, international, regional or state society or organization whose membership is primarily physicians; or must have been published in a recognized medical or medically related scientific journal. Material used in a paper or publication may be given credit one time. A maximum of 30 hours credit may be claimed during each three-year reporting period.

**I. ADVANCED LIFE SUPPORT.** Credit may be claimed during each three-year reporting period for successful completion of ACLS (advanced cardiac life support), PALS (pediatric advanced life support), ATLS (advanced trauma life support), NALS (neonatal advanced life support), and ALSO (advanced life support in obstetrics) courses.

**J. EXPERT REVIEW.** Credit may be claimed by physicians who provide expert services by reviewing investigation cases for the board. A maximum of ten (10) credit hours in any three-year reporting period are allowed for providing expert review.

[16.10.4.11 NMAC - Rp 16 NMAC 10.4.8, 4/18/2002; A, 4/3/2005; A, 9/27/2007; A, 1/2/2008; A, 7/1/2010; A, 9/22/2011; A, 2/8/2022]

**16.10.4.12 [RESERVED]**

[16.10.4.12 NMAC - N, 4/18/02; Repealed, 9/27/07]

**16.10.4.13 VERIFICATION OF CME:**

**A.** Each physician renewing a license shall attest that they have obtained the required hours of CME. The board shall select renewal applications for audit to verify completion of acceptable CME. The board may audit CME records at any time. CME records must be maintained by the licensee for one year following the renewal cycle in which they are earned.

**B.** The board, or a designee of the board, may offer any physician who is unable to provide required documentation upon request a settlement in lieu of initiating disciplinary action. Settlements may include a letter of reprimand and a \$500 fine, reportable to the healthcare integrity and protection data bank.

**C.** Any physician who fails to respond to a CME audit shall be considered in violation of Section 61-6-15.D(23) of the Medical Practice Act, failure to provide the board with information requested by the board. Potential sanctions include fines, letters of reprimand, or license suspension or revocation.

[16.10.4.13 NMAC - N, 4/18/02; A, 9/27/07]

**16.10.4.14 ACCEPTABLE DOCUMENTATION OF CME INCLUDES:**

**A.** Photocopies of original certificates or official letters from course sponsors or online providers.

**B.** Postgraduate CME hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**C.** Advanced degree studies must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**D.** Teaching hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**E.** Preceptor hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**F.** Papers or publications must be documented with a copy.

[16.10.4.14 NMAC - N, 4/18/02]

#### **16.10.4.15 EMERGENCY DEFERRAL:**

A physician unable to fulfill the CME requirements prior to the date of license expiration may apply to the board for an emergency deferral of the requirements by submitting a request in writing no later than July 1 of the renewal year. A designee of the board may grant a deferral of up to 90 days.

**A.** In case of illness or other documented circumstances, the board may grant an additional extension of time in which the necessary credits may be earned. The request must be made in writing prior to the end of the emergency deferral, and must be approved by the board.

**B.** A licensee practicing or residing outside the United States shall not be required to fulfill the CME requirements for the period of the absence. The board must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence. Upon return to the US, the licensee shall complete the CME required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[16.10.4.15 NMAC - N, 4/18/02; A, 9/27/07]

### **PART 5: DISCIPLINARY POWER OF THE BOARD**

#### **16.10.5.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.5.1 NMAC - Rp, 16.10.5.1 NMAC, 12/5/2023]

**16.10.5.2 SCOPE:**

This part applies to licensees and applicants for licensure.

[16.10.5.2 NMAC - Rp, 16.10.5.2 NMAC, 12/5/2023]

**16.10.5.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, Section 61-1-1 through 61-1-33 NMSA 1978, the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978, the Genetic Counseling Act, Section 61-6A-1 through 61-6A-10 NMSA 1978, the Polysomnography Practice Act, Section 61-6B-1 through 61-6B-10 NMSA 1978, the Naprapathic Act, Sections 61-12F-1 through 61-12F-13 NMSA 1978, and the Naturopathic Doctors' Act, Section 61-12G-1 through 61-12G-11 NMSA 1978.

[16.10.5.3 NMAC - Rp, 16.10.5.3 NMAC, 12/5/2023]

**16.10.5.4 DURATION:**

Permanent.

[16.10.5.4 NMAC - Rp, 16.10.5.4 NMAC, 12/5/2023]

**16.10.5.5 EFFECTIVE DATE:**

December 5, 2023, unless a later date at the end of a section.

[16.10.5.5 NMAC - Rp, 16.10.5.5 NMAC, 12/5/2023]

**16.10.5.6 OBJECTIVE:**

This part establishes procedures for license denial, revocation of license, suspension of license, probation, censure and reprimand, fines, costs and stipulations.

[16.10.5.6 NMAC - Rp, 16.10.5.6 NMAC, 12/5/2023]

**16.10.5.7 DEFINITIONS:**

**A. "License"** means a document granting legal permission to any practitioner licensed pursuant to the medical practice act, to practice in the state of New Mexico.

**B. "Licensee"** means any practitioner governed by the medical practice act, who has been granted permission to practice in the state of New Mexico.

[16.10.5.7 NMAC - Rp, 16.10.5.7 NMAC, 12/5/2023]

#### **16.10.5.8 DISCIPLINARY POWER OF THE BOARD:**

Pursuant to Sections 61-6-5, 61-6-8, 61-6-15 and 61-7-8 NMSA, 1978, the board has the power to suspend or revoke a license, place a licensee on probation under such terms and conditions as the board deems necessary after a hearing or pursuant to a stipulation with a licensee. Further, under the Medical Practice Act the board has the power to deny a license application, to deny a license renewal, to censure, to reprimand or to fine a licensee.

[16.10.5.8 NMAC - Rp, 16.10.5.8 NMAC, 12/5/2023]

#### **16.10.5.9 REVOCATION OF LICENSE:**

**A. Action prior to revocation:** Prior to revoking any license for any violation of the Medical Practice Act, or the Impaired Health Care Provider Act, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

**B. Terms of revocation:** A licensee whose license is revoked may not practice in any manner under that license.

**C. Revocation under the Medical Practice Act:** All revocations pursuant to the Medical Practice Act are permanent and no such license revoked shall be reinstated. Persons seeking licensure after revocation under the Medical Practice Act shall file a new application for licensure with the board, under the rules for new applicants.

**D. Relicensing after revocation under the Impaired Health Care Provider Act:** A licensee whose license has been revoked pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to Section 61-7-9 NMSA 1978.

[16.10.5.9 NMAC - Rp, 16.10.5.9 NMAC, 12/5/2023]

#### **16.10.5.10 SUSPENSION OF LICENSE:**

**A. Action prior to suspension:** Except as provided in the Impaired Health Care Provider Act, or in a disciplinary order entered after a hearing, or pursuant to Subsection C of 16.10.5.15 NMAC below, prior to suspending any license, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

**B. Terms of suspension:** The board may suspend a license for a specified period of time. A licensee whose license is suspended may not practice in any manner under that license during the period of suspension.

**C. Reinstatement:** Unless otherwise established by the board:

(1) If the board sets a date after which a license may be reinstated, the board will consider an application for reinstatement only after that date. The licensee may apply for reinstatement on a yearly basis thereafter.

(2) A licensee whose license has been suspended pursuant to the Impaired Health Care Provider Act may apply for reinstatement pursuant to Section 61-7-9 NMSA1978, if the licensee can meet the statutory requirements. If the reinstatement is denied, the licensee may apply for reinstatement on a yearly basis thereafter.

[16.10.5.10 NMAC - Rp, 16.10.5.10 NMAC, 12/5/2023]

#### **16.10.5.11 PROBATION:**

**A. General:** Probation means to allow, for a stated period of time, the conduct authorized by a license, subject to a licensee's license conditions or other restrictions that are reasonably related to the grounds for such restrictions. The board may stay any disciplinary action taken and place a licensee on probation with a requirement that the licensee comply with certain terms and conditions. The board may also place a licensee on probation without taking other disciplinary action.

**B. Terms of probation:** The terms of the probation shall be set forth in writing. The licensee on probation may continue to practice under the license so long as the licensee complies with all terms of probation.

**C. Violation of probation:** If the terms of the probation are violated, the board shall give the applicant written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act prior to taking further disciplinary action, unless the order of probation contains a provision for the immediate suspension of the license. The initial order of probation may also contain a provision for a new stated period or term of probation if any term of probation is violated.

**D. Conditions of probation:** Conditions of probation may include monitoring or other directed management or supervision during the stated period of probation.

[16.10.5.11 NMAC - Rp, 16.10.5.11 NMAC, 12/5/2023]

#### **16.10.5.12 CENSURE AND REPRIMAND:**

The board may issue a letter of censure or reprimand to a licensee for any *minor* violation of the Medical Practice Act pursuant to Section 61-1-3 of the Uniform Licensing Act.

[16.10.5.12 NMAC - Rp, 16.10.5.12 NMAC, 12/5/2023]

#### **16.10.5.13 FINES:**

**A.** The board may impose a fine on a licensee for each violation of the Medical Practice Act after giving the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act. If the licensee's action constitutes more than one violation of the Medical Practice Act, the board may impose a fine for each violation.

**B.** The board may impose a fine in an amount not to exceed ten thousand dollars (\$10,000) for each violation against a person who, without an active license, engages in a violation of the Medical Practice Act.

**C.** All fines collected by the board pursuant to Subsection B of 16.10.5.13 NMAC shall be deposited to the credit of the current school fund as provided in Section 4 of Article 12 of the constitution of New Mexico.

[16.10.5.13 NMAC - Rp, 16.10.5.13 NMAC, 12/5/2023]

#### **16.10.5.14 STIPULATION:**

**A. Power to enter into stipulations:** The board may come to an agreement and enter into a stipulation with a licensee at any time. In a stipulation, the parties may agree to any disciplinary or other action that the board is authorized to take by law.

**B. Contents:** The stipulation shall be in writing, shall contain the agreed upon conditions or restrictions on the licensee and shall be signed by the board and the licensee. The stipulation shall contain statements that the licensee:

(1) knows and understands the applicable statutory and regulatory provisions setting forth the authority and power of the board; and

(2) understands that entering into a stipulation regarding the case results in a waiver of the licensee's rights under the Uniform Licensing Act, the Medical Practice Act, or the Impaired Health Care Provider Act, as applicable, including the right to appeal.

**C. Violation of a stipulation:** The licensee, by accepting a stipulation, agrees the board may immediately suspend a license if the board has reasonable cause to believe that any term of the stipulation has been violated, without the licensee being given an opportunity to request a hearing. The immediate suspension remains in effect until a

further order of the board is entered. The board shall issue a notice of contemplated action within 10 days of the issuance of an immediate suspension. In this case, the stipulation shall provide that the board shall give notice of the disciplinary action to the licensee at the address of record maintained by the board of the licensee pursuant to the provisions of the Uniform Licensing Act. An immediate suspension is separate and distinct from a summary suspension described in 16.10.5.15 NMAC below.

[16.10.5.14 NMAC - Rp, 16.10.5.14 NMAC, 12/5/2023]

#### **16.10.5.15 SUMMARY SUSPENSION:**

This is a formal preliminary disciplinary action that summarily suspends a licensee's right to practice. The summary suspension remains in effect until a further order of the board is entered. The licensee has an opportunity for a full hearing before the board on the summary suspension.

**A.** The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with, or at any time after, the issuance of a notice of contemplated action (NCA) and the initiation of proceedings for a hearing provided for under the Uniform Licensing Act on the NCA, if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice; or

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(3) has pled guilty to or been found guilty of any offense related to their practice or for any violent criminal offense in this state or a substantially equivalent criminal offense in another U.S. jurisdiction.

**B.** A licensee is not required to comply with a summary action until service of the action has been made personally or by certified mail, return receipt requested, at the licensee's address of record maintained by the board, or the licensee has actual knowledge of the order, whichever occurs first. The board's executive director may sign a summary suspension order that the board has authorized.

**C.** A licensee whose license is summarily suspended is entitled to a hearing before the board on the summary suspension order, pursuant to the Uniform Licensing Act, within 15 days from the date the licensee requests a hearing. This hearing request shall be in writing, addressed to the board, delivered by certified mail, return receipt requested.

[16.10.5.15 NMAC - Rp, 16.10.5.15 NMAC, 12/5/2023]

#### **16.10.5.16 LIMITATIONS:**

**A.** Limitations on actions are governed by Section 61-6-24 NMSA 1978.

**B.** For purposes of Subsection 1 of Section 61-1-3 NMSA 1978, discovery of the conduct by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the licensee was received by the board or board staff.

**C.** Receipt of a complaint by the board or board staff is established by the complaint and investigation process published in 16.10.6.8 NMAC.

[16.10.5.16 NMAC - Rp, 16.10.5.16 NMAC, 12/5/2023]

### **PART 6: COMPLAINT PROCEDURE AND INSTITUTION OF DISCIPLINARY ACTION**

#### **16.10.6.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.6.1 NMAC - Rp, 16.10.6.1 NMAC, 12/5/2023]

#### **16.10.6.2 SCOPE:**

This part applies to applicants, licensees and members of the board.

[16.10.6.2 NMAC - Rp, 16.10.6.2 NMAC, 12/5/2023]

#### **16.10.6.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, Section 61-1-1 through 61-1-33 NMSA 1978, Impaired Physician Act, Section 61-7-1 through 61-7-12 NMSA 1978 and the Parental Responsibility Act Section 40-5A-1 through 13 NMSA 1978.

[16.10.6.3 NMAC - Rp, 16.10.6.3 NMAC, 12/5/2023]

#### **16.10.6.4 DURATION:**

Permanent.

[16.10.6.4 NMAC - Rp, 16.10.6.4 NMAC, 12/5/2023]

#### **16.10.6.5 EFFECTIVE DATE:**

December 5, 2023, unless a later date at the end of a section.

[16.10.6.5 NMAC - Rp, 16.10.6.5 NMAC, 12/5/2023]

**16.10.6.6 OBJECTIVE:**

This part establishes a procedure for investigating complaints, issuing notices of contemplated action, holding hearings and making decisions in disciplinary proceedings.

[16.10.6.6 NMAC - Rp, 16.10.6.6 NMAC, 12/5/2023]

**16.10.6.7 DEFINITIONS:**

"**Licensee**" as used in this part means a physician, a physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist who holds a current license to practice in New Mexico or who is applying for licensure, license renewal or license reinstatement.

[16.10.6.7 NMAC - Rp, 16.10.6.7 NMAC, 12/5/2023]

**16.10.6.8 COMPLAINTS:**

A complaint may be filed against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist. All complaints must be in writing. The date of receipt of the complaint shall begin the running of the statute of limitation.

[16.10.6.8 NMAC - Rp, 16.10.6.8 NMAC, 12/5/2023]

**16.10.6.9 COMPLAINT RECORD:**

The board shall maintain a record of all complaints filed. The complaint record is confidential.

[16.10.6.9 NMAC - Rp, 16.10.6.9 NMAC, 12/5/2023]

**16.10.6.10 COMPLAINT COMMITTEE:**

The chair of the board shall appoint at least one member of the board to serve on each complaint committee. A complaint committee shall review each complaint charging a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist with unprofessional conduct or other violations under the Medical Practice Act.

**A.** The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

**B.** Upon completion of an investigation, the complaint committee shall submit its recommendations to the board. After submitting their recommendations to the board, the members of the complaint committee shall recuse themselves from all further proceedings in that case.

**C.** The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in 61-1-10 NMSA 1978 or in the service of a notice of contemplated action (NCA) pursuant Subsection D of Section 61-6-15 NMSA 1978.

[16.10.6.10 NMAC - Rp, 16.10.6.10 NMAC, 12/5/2023]

**16.10.6.11 NOTICE TO ANY PRACTITIONER LICENSED BY THE BOARD:**

If the complaint committee determines that it will not impede an investigation and will not interfere with the procurement of testimony or development of the case, the complaint committee may inform the practitioner licensed by the board about whom the complaint is made, of the nature of the complaint and may request a response to the allegations.

[16.10.6.11 NMAC - Rp, 16.10.6.11 NMAC, 12/5/2023]

**16.10.6.12 INVESTIGATIVE SUBPOENA:**

Pursuant to Sections 61-6-23 and 61-1-9 NMSA 1978 the board may issue investigative subpoenas. Investigative subpoenas may be signed by the executive director of the board at the request of the chair or complaint committee. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in Section 61-1-10, NMSA 1978 of the service of a notice of contemplated action pursuant to Subsection D of Section 61-6-15 NMSA 1978.

[16.10.6.12 NMAC - Rp, 16.10.6.12 NMAC, 12/5/2023]

**16.10.6.13 NOTICE OF CONTEMPLATED ACTION:**

Pursuant to a complaint or on its own motion, the board may serve upon an applicant or licensee a notice of contemplated action for any alleged violation of the Medical Practice Act or the Impaired Health Care Provider Act. All notices of contemplated action shall comply with the Uniform Licensing Act, Section 61-1-4 NMSA 1978, and shall be served on the applicant or licensee personally or by certified mail, return receipt requested, at the applicant's or licensee's last known address as shown in the board's records. The executive director may sign a notice of contemplated action that is the result of a formal board action.

[16.10.6.13 NMAC - Rp, 16.10.6.13 NMAC, 12/5/2023]

**16.10.6.14 PROCEDURE:**

**A.** If an applicant or licensee requests a hearing after receiving a notice of contemplated action, all proceedings, including the hearing before the board, shall be governed by the Uniform Licensing Act.

**B.** The parties may agree to conduct any hearing by virtual remote means and the hearing shall be recorded.

**C.** Correspondence sent by a licensee, applicant, or unlicensed person through other methods, including electronic or physical mail, should be reasonably accepted, and processed by the board.

**D.** Correspondence to the board during an administrative prosecution, beginning with the filing of a notice of summary suspension and notice of contemplated action, shall not be accepted and processed by the board or board staff.

**E.** Correspondence during an administrative prosecution shall be sent to the hearing officer for receipt and inclusion in the record. Any action shall be taken by the hearing officer and not a member of the board or board staff.

[16.10.6.14 NMAC - Rp, 16.10.6.14 NMAC, 12/5/2023]

#### **16.10.6.15 CASE MANAGEMENT:**

Once the board serves a notice of contemplated action, an administrative prosecutor shall prepare the case for prosecution before the board. The board as a whole shall not participate in the development of the case after it serves a notice of contemplated action.

[16.10.6.15 NMAC - Rp, 16.10.6.15 NMAC, 12/5/2023]

#### **16.10.6.16 DISQUALIFICATION OF BOARD MEMBERS:**

**A. Excusal of a board member or hearing officer initiated by a party:** Excusal of a board member or hearing officer shall be in accordance with Section 61-1-7 NMSA 1978. Untimely excusals or request for excusals will not be allowed.

**B. Disqualification of a board member:** A board member may disqualify him or herself from hearing and rendering a decision in the case if the board member believes it is in the best interest of the board or the parties to do so. Any member of the board who is unable to make an unbiased decision in a hearing because of pre-hearing review of documents or interview of witnesses must disqualify him or herself from participation in formal disciplinary action.

**C. Peremptory challenge of hearing officer in the case of more than one hearing under one case number:** When the board initiates a case proceeding under one case number and the proceeding includes both a notice of summary suspension

and a notice of contemplated action and the appointment of a hearing officer only one peremptory challenge shall be allowed. Once a peremptory challenge is made for a summary suspension hearing, no additional peremptory challenge is allowed before the hearing on the notice of contemplated action. If no peremptory challenge is made before a summary suspension hearing, a peremptory challenge may be timely made before the hearing on the notice of contemplated action.

[16.10.6.16 NMAC - Rp, 16.10.6.16 NMAC, 12/5/2023]

#### **16.10.6.17 PRE-HEARING CONFERENCE:**

Pursuant to Section 61-1-9 NMSA 1978, or upon the motion of a party, the board or hearing officer may conduct a pre-hearing conference. At the conference the parties shall determine the feasibility of settlement, formulate or simplify the issues in the proceeding, consider the necessity or desirability of amending the pleadings, obtain admissions and stipulations of fact, place limitations upon or determine the number of witnesses, distribute written testimony and exhibits, and dispose of such other matters as may aid in the disposition of the case. The board shall give all parties at least 10 days notice of the pre-hearing conference, provided however that parties may waive the 10 day notice requirement. Any settlement or simplification of issues resulting from the pre-hearing conference must be consented to by the licensee or applicant.

[16.10.6.17 NMAC - Rp, 16.10.6.17 NMAC, 12/5/2023]

#### **16.10.6.18 MOTIONS MADE PRIOR TO THE HEARING:**

Motions may be made prior to or during a hearing. Motions made during the hearing are governed by Subsection B of 16.10.6.21 NMAC. Pre-hearing motions may be accompanied by a memorandum of law in support of the motion and must be in writing. The moving party shall serve one copy of the motion on all other parties, including the prosecutor. Unless otherwise agreed upon by the parties, parties opposing the motion must respond within 10 days of service of the motion. If the motion is served within 10 days of the hearing, a response may be given at the hearing, either orally or in writing. The board may consider motions made without response as unopposed motions.

[16.10.6.18 NMAC - Rp, 16.10.6.18 NMAC, 12/5/2023]

#### **16.10.6.19 EX PARTE COMMUNICATION:**

No party in a contested case shall communicate with any member of the board or any board staff, including the executive director, during the administrative proceedings. All communications, including correspondence, shall be directed to the hearing officer for receipt and inclusion in the record in an administrative prosecution.

[16.10.6.19 NMAC - Rp, 16.10.6.19 NMAC, 12/5/2023]

#### **16.10.6.20 ENTRY OF APPEARANCE:**

All attorneys representing physicians, physician assistants, anesthesiologist assistants, genetic counselors, or polysomnographic technologists in matters before the board shall file an entry of appearance.

[16.10.6.20 NMAC - Rp, 16.10.6.20 NMAC, 12/5/2023]

#### **16.10.6.21 HEARING PROCEDURE:**

**A.** The board chair, or his designated representative, on behalf of the board, shall decide whether the hearing shall be before the board or a hearing officer. If the chair of the board, or his designated representative, decides that the matter shall be heard before the board or a hearing officer and the board disagrees with that decision, the board may reverse the decision and designate whether the hearing shall be before it or a hearing officer.

**B.** If the board or the chair of the board, or the board chair's designated representative, decides that the matter shall be before a hearing officer, the board, the chair of the board, or his designated representative shall appoint a person to act as the hearing officer.

**C.** Motions may be submitted in writing or made orally during the hearings. The board may request parties to submit a memorandum of law following the hearing in support of a motion made orally. The board may defer judgment on a motion made during the hearing until it has had an opportunity to hear the presentation of evidence. All motions not specifically acted upon during the hearing shall be acted upon in the board's final decision.

**D.** A hearing is completed and closed after the conclusion of the evidentiary hearing and the date of the final submission of all proposed findings of fact and proposed conclusions of law and arguments, if any, submitted to the hearing officer by the parties. The hearing officer and parties may also agree to a date for the completion and closure of a hearing. Once a hearing is completed and closed, the hearing officer shall prepare and submit to the board a report within 30 days of the completion and closure of the hearing. The hearing officer's report may include recommendations.

**E.** No other submissions, including evidence, shall be filed by the parties after the completion and closure of the hearing.

[16.10.6.21 NMAC - Rp, 16.10.6.21 NMAC, 12/5/2023]

#### **16.10.6.22 TRANSCRIPTS:**

**A. Record of hearing.** The board or hearing officer shall cause a record to be made of all formal hearings. The record shall be as recorded by a court reporter appointed by the board or taped (audio or video) at the discretion of the board in the manner authorized by the rules of civil procedure for the district court. The record shall

include all evidence proffered but not admitted and admitted evidence. The record shall also designate and seal those portions of the record that are privileged, confidential or redacted either at the direction of the hearing officer, the request of a party or the request of a witness. Evidence proffered but not admitted shall be separated in the record, marked as proffered but not admitted and not presented to the board.

**B. Correction:** Parties wishing to correct the transcript or record may request correction within 10 calendar days after the transcript is filed in the proceeding. All suggested corrections shall be in writing and shall be served upon each party or his attorney, the official reporter and the board or hearing officer. If no objection is made to the proposed corrections, the board or hearing officer, may direct that the corrections be made.

**C. Objections to record:** Objections shall be made in writing within 10 calendar days from the filing of the suggested correction. The board or hearing officer shall, with or without hearing, determine what changes, if any, shall be made in the record.

**D. Copies of transcripts and tapes:** Any party may request copies of transcripts and tapes of formal proceedings. Any party who requests and receives transcripts and tapes shall pay the specified costs to the reporter.

[16.10.6.22 NMAC - Rp, 16.10.6.22 NMAC, 12/5/2023]

#### **16.10.6.23 RULES OF EVIDENCE:**

**A. General:** The board shall follow the rules of evidence set forth in Section 61-1-11 NMSA 1978 in proceedings held under the Uniform Licensing Act. Rules regarding evidence, not otherwise addressed by these rules or the Uniform Licensing Act, shall be governed by the rules of evidence for the district courts.

**B. Testimony under oath:** Witnesses testifying by deposition or before the board in formal hearings shall be placed under oath.

**C. Stipulation as to facts:** The parties to any investigation or proceeding before the board may stipulate to any facts in a document filed with the board or entered orally in the record. The stipulation shall be binding upon the parties and may be regarded and used by either party as evidence at the hearing.

[16.10.6.23 NMAC - Rp, 16.10.6.23 NMAC, 12/5/2023]

#### **16.10.6.24 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, BRIEFS AND ORAL ARGUMENTS:**

**A. Proposed findings of fact and conclusions of law:** The board or hearing officer may require all parties to submit proposed findings of fact and conclusions of law.

The board or hearing officer shall determine the time for submission of the proposed findings and conclusions. Each proposed finding and conclusion shall be clearly stated.

**B. Briefs:** The board or the hearing officer may require all parties to submit briefs.

(1) Unless otherwise ordered by the board or hearing officer, including directing the submission of briefs on a date certain, the prosecution shall file its brief-in-chief within 15 days after receipt of the transcript. The respondent shall file its answer brief within 15 days thereafter. Reply briefs must be filed within seven days after filing of the answer brief.

(2) Each party must serve one copy of its brief on all other parties.

(3) Briefs shall be concise and shall include transcript citations for each statement of fact. Briefs shall contain a table of contents with page references.

**C. Oral argument:** The board or the hearing officer may require all parties to present oral arguments after parties have filed briefs. Even though a hearing officer conducts the hearing the board may require oral arguments to be presented to it. Any party may request oral arguments before the hearing officer or the board. The hearing officer or the board will determine whether oral argument is necessary.

[16.10.6.24 NMAC - Rp, 16.10.6.24 NMAC, 12/5/2023]

#### **16.10.6.25 WRITTEN DECISION:**

Within 90 days after the completion and closure of the hearing the board shall issue written findings of fact, conclusions of law, and the order of the board regarding any disciplinary action based on the findings of fact and conclusions of law. The board shall also issue a statement informing the applicant or licensee of his right to judicial review and the time within which review must be sought. The board may issue an oral decision prior to issuance of a written order. The board shall serve the written findings, conclusions, order and statements concerning judicial review upon the licensee personally or by certified mail, return receipt requested within 15 days after the decision is rendered and signed.

[16.10.6.25 NMAC - Rp, 16.10.6.25 NMAC, 12/5/2023]

#### **16.10.6.26 HEARING OFFICER'S REPORT AND RECOMMENDATION:**

If a hearing officer conducts the hearing, the hearing officer shall prepare a report of findings of fact and may make recommendations. All board members participating in the decision making process, but not present at the hearing, shall familiarize themselves with the record and hearing officer's report prior to rendering a decision. The board may adopt, modify or reject the hearing officer's report.

[16.10.6.26NMAC - Rp, 16.10.6.26 NMAC, 12/5/2023]

#### **16.10.6.27 SIMULTANEOUS ACTIONS UNDER THE MEDICAL PRACTICE ACT AND THE IMPAIRED HEALTH CARE PROVIDERS ACT:**

Formal proceedings against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist may be taken by the board in accordance with the provisions of the Uniform Licensing Act. No action or investigation or proceedings under the Impaired Health Care Provider Act (Section 61-7-1 through Section 61-7-12 NMSA 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Medical Practice Act. (61-6-1 through 61-6-34 NMSA 1978).

[16.10.6.27 NMAC - Rp, 16.10.6.27 NMAC, 12/5/2023]

#### **16.10.6.28 EVALUATION OF COMPETENCE:**

When the board has reason to believe that an applicant for licensure or a licensee is not competent to practice, it may require the applicant or licensee to take a competency examination or to be evaluated for competence by any means that has been endorsed or approved the board.

[16.10.6.28 NMAC - Rp, 16.10.6.28 NMAC, 12/5/2023]

#### **16.10.6.29 PARENTAL RESPONSIBILITY ACT COMPLIANCE:**

This section is adopted pursuant to the Parental Responsibility Act Sections 40-5A-1 through 40-5A-13 NMSA 1978. If an applicant for licensure or a licensee is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support relating to child support proceedings, the board shall have grounds to deny an application for a license, deny the renewal of a license or to suspend or revoke a license and shall initiate a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-3 NMSA 1978, subject to the following procedures.

**A.** Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the obligors' names against the board's list of licensees and applicants.

**B.** By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

**C.** Upon determination that an applicant or licensee appears on the certified list, the board shall issue a formal letter giving the licensee until the next certified list is received from HSD to provide the board with a statement of compliance from HSD. If the applicant or licensee fails to provide this statement in the specified time, the board shall, upon its own motion, issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act.

**D.** If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee shall contact the HSD child support enforcement division.

**E.** In any hearing under this section, relevant evidence is limited to the following: A statement of non-compliance from HSD is conclusive evidence that requires the board to take the appropriate action under the Parental Responsibility Act, unless the applicant or licensee provides the board with a statement of compliance from HSD, which shall preclude the board from taking action under this section.

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

[16.10.6.29 NMAC - Rp, 16.10.6.29 NMAC, 12/5/2023]

#### **16.10.6.30 VENUE OF HEARING:**

Venue shall be determined by Section 61-1-6 NMSA 1978. In a proceeding involving a licensee without a residence in New Mexico, venue shall be in the county where the board maintains its office.

[16.10.6.30 NMAC - - Rp, 16.10.6.29 NMAC, 12/5/2023]

### **PART 7: LICENSE EXPIRATION, RENEWAL AND REINSTATEMENT**

#### **16.10.7.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.7.1 NMAC - N, 4/18/02]

#### **16.10.7.2 SCOPE:**

This part applies to licensed physicians as well as physicians who have previously held a license to practice in New Mexico and wish to reinstate the expired, inactive, suspended, lapsed, or retired license.

[16.10.7.2 NMAC - N, 4/18/02]

#### **16.10.7.3 STATUTORY AUTHORITY:**

This rule governs the practice of medicine in New Mexico and is promulgated pursuant to and in accordance with the Medical Practice Act, Section 61-6-19, 61-6-26, 61-6-27, 61-6-28 and 61-6-30 NMSA 1978.

[16.10.7.3 NMAC - N, 4/18/02; A, 9/21/09]

**16.10.7.4 DURATION:**

Permanent.

[16.10.7.4 NMAC - N, 4/18/02]

**16.10.7.5 EFFECTIVE DATE:**

April 18, 2002 unless a later date is cited at the end of a section.

[16.10.7.5 NMAC - N, 4/18/02]

**16.10.7.6 OBJECTIVE:**

This part establishes procedures for license expiration, renewal and reinstatement.

[16.10.7.6 NMAC - N, 4/18/02]

**16.10.7.7 DEFINITIONS:**

**A. "Inactive"** means a license placed in a non-working status at the request of a physician not currently practicing in New Mexico.

**B. "Lapsed"** means a license that has not been renewed by September 30 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

**C. "Retired"** means a license that has been withdrawn from active or inactive status at the physician's request. A retired license cannot be used to practice medicine in New Mexico and a retired license may not subsequently be reinstated.

**D. "Nationwide criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

**E. "Nationwide criminal history screening"** means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

**F. "Statewide criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized database of the department of public safety or the repositories of criminal history information in municipal jurisdictions.

**G. "Statewide criminal history screening"** means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints submitted to the department of public safety and resulting in the generation of a statewide criminal history record for that licensee.

**H. "Suspended for non-renewal"** means a license that has not been renewed by September 30 of the expiration year, and has at the discretion of the board, been lapsed.

**I. "Voluntarily lapsed"** means a license that is not renewed at the request of the physician.

[16.10.7.7 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 1/10/07; A, 9/27/07; A, 9/21/09]

#### **16.10.7.8 [RESERVED]**

[16.10.7.8 NMAC - N, 4/18/02; Repealed, 4/3/05]

#### **16.10.7.9 RENEWAL PROCESS:**

To avoid additional penalty fees, a completed renewal application, accompanied by the required fees and documentation must be submitted through the online renewal system, post-marked or hand-delivered on or before July 1 of the renewal year. A New Mexico medical license that has not been renewed by July 1 of the renewal year will remain temporarily active with respect to medical practice until September 30 of the renewal year at which time, at the discretion of the board, the license may be suspended for non-renewal and the status changed to lapsed. New Mexico hospitals and health insurance plans will be notified.

**A.** All renewal applications will be subject to a one time nationwide and statewide criminal history screening. Renewal applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

**B.** If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.7.9 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 9/27/07; A, 9/21/09]

#### **16.10.7.10 LICENSEE RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal form if one has not been received prior to license expiration. If the notice of renewal is returned to the board office and the licensee has not sent a change of address, the suspension for non-renewal and lapsed status notice will be considered undeliverable and will not be mailed.

[16.10.7.10 NMAC - N, 4/18/02; A, 9/21/09]

#### **16.10.7.11 RENEWAL AFTER JULY 1 AND BEFORE AUGUST 16:**

Renewal applications post-marked, electronically or hand delivered after July 1 and prior to August 16 of the renewal year must be accompanied by the completed renewal application, the triennial renewal fee and late fee indicated in 16.10.9.8 NMAC, and documentation of 75 hours of continuing medical education as required in 16.10.4 NMAC.

[16.10.7.11 NMAC - N, 4/18/02; A, 4/3/05]

#### **16.10.7.12 RENEWAL AFTER AUGUST 15 AND BEFORE OCTOBER 1:**

Renewal applications post-marked on or after August 16 but before October 1, of the renewal year must be accompanied by the completed renewal application, the triennial renewal fee and late fee indicated in 16.10.9.8 NMAC, and documentation of 75 hours of continuing medical education as required in 16.10.4 NMAC.

[16.10.7.12 NMAC - N, 4/18/02]

#### **16.10.7.13 CHANGE IN STATUS:**

Physicians who do not want to maintain an active license to practice medicine in New Mexico may choose to place their license on inactive, retired or voluntary lapsed status at the time of renewal.

**A. Inactive status.** A license may be placed on inactive status by the payment of the processing fee indicated in 16.10.9.8 NMAC before October 1 of the renewal year. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.7.16 NMAC and 16.10.7.17 NMAC.

**B. Retired status.** Upon request, a license may be placed on retired status. A retired licensee cannot practice medicine with a retired license, and such license may not subsequently be reinstated. A physician with a retired license who chooses to reinstate the license must re-apply as a new applicant.

**C. Voluntarily lapsed status.** A physician may inform the board that he does not wish to renew an active license to practice medicine in New Mexico and will voluntarily allow the license to lapse. There is no charge for this change in status. A voluntarily lapsed license is not valid for practice in New Mexico. A physician with a voluntarily lapsed license may only be reinstated in accordance with the provisions of 16.10.7.16 NMAC and 16.10.7.17 NMAC.

[16.10.7.13 NMAC - N, 4/18/02; A, 9/21/09]

#### **16.10.7.14 LICENSE SUSPENSION FOR NON-RENEWAL:**

The board may in its discretion suspend for non-renewal and change the status to lapsed on October 1 of the renewal year the license of any physician who has failed within ninety days after the license renewal date to renew their license, or to change the license status as indicated in section 13, above, to pay all required fees, or to comply with continuing medical education requirements, or to provide required documentation. Suspension for non-renewal and lapsed status is a non-reportable administrative action.

[16.10.7.14 NMAC - N, 4/18/02; A, 4/3/05; A, 1/10/07; A, 9/21/09]

#### **16.10.7.15 [RESERVED]**

[16.10.7.15 NMAC - N, 4/18/02; A, 1/10/07; A, 9/21/09]

#### **16.10.7.16 LICENSE REINSTATEMENT WITHIN TWO YEARS OF RENEWAL DATE:**

A license that has been suspended for non-renewal and placed on lapsed status, placed in inactive, or voluntarily lapsed status may be reinstated within two years of the renewal date by submitting the following documentation:

- A.** written request for re-instatement;
- B.** completion of a renewal application;
- C.** payment of fees as indicated in Subsections B, H, and I of 16.10.9.8 NMAC;

D. proof of completion of required continuing medical education as defined in 16.10.4 NMAC for the current year and the previous renewal cycle;

E. list of licenses held in any other state(s) and license status.

[16.10.7.16 NMAC - N, 4/18/02; A, 4/3/05; A, 1/10/07; A, 9/21/09]

**16.10.7.17 LICENSE REINSTATEMENT AFTER TWO YEARS FROM RENEWAL DATE:**

Restoration of a medical license to active status after two years from the renewal date requires the physician demonstrate continued competence to practice medicine through the following documentation:

A. completion of a reinstatement application;

B. proof of completion of 75 hours of continuing medical education during the past three licensing years as defined in 16.10.4 NMAC;

C. payment of fees as defined in Subsections B, H and I of 16.10.9.8 NMAC; and

D. applicants who have not been in active practice for the previous two years may be required to pass an examination for current competency as defined in 16.10.3.11 NMAC;

E. applicants may be required to personally appear before the board or the board's designee for an interview;

F. consistent with the provisions of the Medical Practice Act, Section 61-6-30 NMSA 1978, the board may impose terms and conditions on the reinstated license.

[16.10.7.17 NMAC - N, 4/18/02; A, 4/3/05; A, 9/21/09]

**16.10.7.18 REINSTATEMENT PROCESS:**

All applicants approved for reinstatement must pay the renewal fee indicated in Subsection B of 16.10.9.8 NMAC. Applicants with a license that has been placed on inactive status must pay the reinstatement fee indicated in Subsection I of 16.10.9.8 NMAC in addition to the triennial renewal fee. Applicants for reinstatement whose license has been suspended for non-renewal and placed on lapsed status or voluntarily lapsed must pay the reinstatement fee indicated in Subsection H of 16.10.9.8 NMAC in addition to the triennial renewal fee. Reinstatement licenses are issued for a period not less than 24 months or more than 36 months from the date of approval.

A. All reinstatement applications will be subject to a nationwide and statewide criminal history screening. Reinstatement applications shall be processed pending the

completion of the statewide criminal history screening and may be granted while the screening still pending.

**B.** If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.7.18 NMAC - N, 4/18/02; A, 4/3/05; A, 7/1/06; A, 1/10/2007; A, 9/27/07; A, 9/21/09]

## **PART 8: MEDICAL ETHICS**

### **16.10.8.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.8.1 NMAC - Rp 16 NMAC 10.8.1, 7/15/01; A, 1/10/07]

### **16.10.8.2 SCOPE:**

This part applies to all applicants and licensees.

[16.10.8.2 NMAC - Rp 16 NMAC 10.8.2, 7/15/01]

### **16.10.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.8.3 NMAC - Rp 16 NMAC 10.8.3, 7/15/01]

### **16.10.8.4 DURATION:**

Permanent.

[16.10.8.4 NMAC - Rp 16 NMAC 10.8.4, 7/15/01]

### **16.10.8.5 EFFECTIVE DATE:**

July 15, 2001 unless a later date is cited at the end of a section.

[16.10.8.5 NMAC - Rp 16 NMAC 10.8.5, 7/15/01]

### **16.10.8.6 OBJECTIVE:**

This part is concerned with aspects of medical ethics that includes a non-exclusive listing of acts that constitute unprofessional conduct and establishes rules for ethical conduct which govern certain special categories of medical practice by physicians and physician assistants, as defined herein.

[16.10.8.6 NMAC - Rp 16 NMAC 10.8.6, 7/15/01]

#### **16.10.8.7 DEFINITIONS:**

Established physician-patient relationship means a relationship between a physician and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician involving an appropriate history and physical and/or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

[16.10.8.7 NMAC - Rp 16 NMAC 10.8.7, 7/15/01; A, 9/27/07]

#### **16.10.8.8 UNPROFESSIONAL OR DISHONORABLE CONDUCT:**

As defined in the Medical Practice Act, Section 61-6-15,D,(29), "unprofessional or dishonorable conduct" includes, but is not limited to, the following:

- A.** practicing medicine without an active license;
- B.** sexual misconduct, including sexual contact with patient surrogates, such as parents and legal guardians, that occurs concurrently with the physician-patient relationship;
- C.** violating a narcotic or drug law;
- D.** excessive prescribing or administering of drugs;
- E.** excessive treatment of patients;
- F.** impersonating an applicant in an examination or at a board interview;
- G.** making or signing false documents;
- H.** dishonesty;
- I.** deceptive or anonymous advertising;
- J.** improper use of a fictitious name;

**K.** violation of a term of a stipulation; or

**L.** prescribing, dispensing or administering drugs or medical supplies to a patient when there is no established physician-patient relationship, including prescribing over the internet or via other electronic means that is based solely on an on-line questionnaire; except for:

(1) physicians and physician assistants on call for another practitioner, or responsible for another practitioner's patients in an established clinic or office, or acting as locum tenens where a physician-patient relationship has previously been established and documented in the practitioner's or clinic's record;

(2) physicians and physician assistants in emergency room or urgent care settings;

(3) prescriptions written to prepare a patient for special examination(s) or laboratory testing;

(4) prescribing or dispensing for immunization programs;

(5) the provision of treatment for partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health; and

(6) the provision of consultation, recommendation, or treatment during a face-to-face telehealth encounter online, using standard videoconferencing technology, where a medical history and informed consent are obtained and a medical record generated by the practitioner, and a physical examination is:

(a) recorded as appropriate by the practitioner, or a practitioner such as a physician, a physician or anesthesiologist assistant, or an advanced practice nurse, with the results communicated to the telehealth practitioner; or

(b) waived when a physical examination would not normally be part of a typical physical face-to-face encounter with the patient for the specific services being provided.

[16.10.8.8 NMAC - Rp 16 NMAC 10.8.8, 7/15/01; A, 1/10/07; A, 9/27/07; A, 9/21/09]

#### **16.10.8.9 DETERMINATION OF MEDICAL ETHICS:**

**A.** The board adopts the ethical standards set forth in the latest published version of the "code of medical ethics current opinions with annotations of the council on ethical and judicial affairs of the American medical association" or its successor publication ("code of medical ethics").

**B.** The board reserves the right to impose discipline for breaches of medical ethics which may not be addressed in the "code of medical ethics", but which are nevertheless sufficiently serious to bring the offending conduct within the meaning of Section 61-6-15,D,(29) NMSA 1978.

[16.10.8.9 NMAC - Rp 16 NMAC 10.8.8.1 & 10.8.8.2, 7/15/01; A, 4/18/02]

## **PART 9: FEES**

### **16.10.9.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.9.1 NMAC - Rp 16.10.9.1 NMAC, 3/24/2020]

### **16.10.9.2 SCOPE:**

This part applies to applicants and licensees.

[16.10.9.2 NMAC - Rp 16.10.9.2 NMAC, 3/24/2020]

### **16.10.9.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.9.3 NMAC - Rp 16.10.9.3 NMAC, 3/24/2020]

### **16.10.9.4 DURATION:**

Permanent.

[16.10.9.4 NMAC - Rp 16.10.9.4 NMAC, 3/24/2020]

### **16.10.9.5 EFFECTIVE DATE:**

March 24, 2020 unless a later date is cited at the end of a section.

[16.10.9.5 NMAC - Rp 16.10.9.5 NMAC, 3/24/2020]

### **16.10.9.6 OBJECTIVE:**

This part sets fees for physicians, physician assistants, anesthesiologists assistants, genetic counselors, polysomnography technologists, naturopathic doctors and individuals requesting selected public information.

[16.10.9.6 NMAC - Rp 16.10.9.6 NMAC, 3/24/2020; A, 2/8/2022]

**16.10.9.7 DEFINITIONS:**

**A. "FCVS"** means the federation credential verification service of the federation of state medical boards.

**B. "HSC"** means the hospital services corporation, a New Mexico corporation, and a certified credential verification organization serving hospitals and health plans located in New Mexico.

[16.10.9.7 NMAC - Rp 16.10.9.7 NMAC, 3/24/2020]

**16.10.9.8 PHYSICIAN FEES:**

**A.** Application fee of \$400.

**B.** Triennial license renewal fee of \$450 plus a triennial fee to support the impaired physicians program of \$150.

**C.** Temporary license fee for a temporary camp or school license of \$50.

**D.** Temporary license fee for a temporary teaching/research license of \$100.

**E.** Processing fee of \$25 for placing a license on inactive status.

**F.** Late fee of \$100 for all physicians who renew their license to active status, or provide required documentation after June 30 but no later than August 15 of the year of expiration.

**G.** Late fee of \$200 for physicians who renew their licenses to active status, or provide required documentation between August 16 and October 1 of the year of expiration.

**H.** Reinstatement fee of \$400, for reinstatement of a suspended license, which shall be in addition to the triennial license renewal, impaired physicians program fee; and if required, nationwide criminal history screening fee.

**I.** Reinstatement fee of \$200 to reactivate from inactive status, which shall be in addition to the triennial license renewal, impaired physicians program fee; and if required, nationwide criminal history screening fee.

**J.** Postgraduate training license fee of \$10.

**K.** Public service license fee of \$50 annually.

L. Telemedicine initial licensing and triennial renewal fee of \$400.

M. Nationwide criminal history screening fee equal to the current federal bureau of investigation and department of public safety fee.

N. Statewide criminal history fee equal to the current department of public safety fee.

[16.10.9.8 NMAC - Rp 16.10.9.8 NMAC, 3/24/2020]

**16.10.9.9 PHYSICIAN ASSISTANT FEES:**

A. Application fee of \$150.

B. Biennial renewal of licensure fee of \$150.

C. Change of primary supervising physician fee of \$25.

D. Late fee of \$50 for physician assistants who renew their license, or provide required documentation, after March 1 but by April 15 of the renewal year.

E. Late fee of \$75 for physician assistants who renew their license, or provide required documentation, between April 15 and May 30 of the renewal year.

F. Fee of \$25 for placing a physician assistants license on inactive status.

G. Reinstatement fee of \$100, for reinstatement of a physician assistant license, which shall be in addition to the biennial license renewal; and if required, nationwide criminal history screening fee.

H. Nationwide criminal history screening fee equal to the current federal bureau of investigation and department of public safety fee.

I. Statewide criminal history fee equal to the current department of public safety fee.

[16.10.9.9 NMAC - Rp 16.10.9.9 NMAC, 3/24/2020; A, 2/8/2022]

**16.10.9.10 ANESTHESIOLOGIST ASSISTANT FEES:**

A. Application fee of \$100.

B. Biennial renewal fee of \$100.

C. Change in supervision fee of \$25.

**D.** Late fee of \$25 for failure to renew license or provide required documentation by July 1 of the renewal year.

**E.** Reinstatement fee of \$50, for reinstatement of an anesthesiologist assistant license, which shall be in addition to the biennial license renewal; and if required, nationwide criminal history screening fee.

[16.10.9.10 NMAC - Rp 16.10.9.10 NMAC, 3/24/2020; A, 2/8/2022]

**16.10.9.11 GENETIC COUNSELOR FEES:**

**A.** Application fee of \$150; includes temporary license while certification is pending.

**B.** Biennial renewal fee of \$150.

**C.** Reinstatement fee of \$100, for reinstatement of a genetic counselor license, which shall be in addition to the biennial license renewal; and if required, nationwide criminal history screening fee.

**D.** Temporary teaching or assisting license fee of \$150.

**E.** Temporary license renewal fee of \$50; for applicants renewing a temporary license while certification is pending.

**F.** Late fee of \$50 for failure to renew license or provide required documentation by March 1 of the renewal year.

[16.10.9.11 NMAC - Rp 16.10.9.11 NMAC, 3/24/2020; A, 2/8/2022]

**16.10.9.12 POLYSOMNOGRAPHY TECHNOLOGIST FEES:**

**A.** Application fee of \$150; includes temporary permit while certification is pending.

**B.** Biennial renewal fee of \$150.

**C.** Reinstatement fee of \$100, for reinstatement of a polysomnography technologist license, which shall be in addition to the biennial license renewal; and if required, nationwide criminal history screening fee.

**D.** Temporary permit renewal fee of \$50.

**E.** Late fee of \$50 for failure to renew license or provide required documentation by March 1 of the renewal year.

[16.10.9.12 NMAC - Rp 16.10.9.12 NMAC, 3/24/2020; A, 2/8/2022]

**16.10.9.13 PHYSICIANS SUPERVISING PHARMACIST CLINICIANS:**

- A. Registration application fee of \$100.
- B. Biennial renewal fee of \$100.
- C. Change of supervising physician fee of \$25, with no change in scope of practice or protocol.
- D. Late fee of \$25 for failure to renew registration or provide required documentation by July 1 of the renewal year.

[16.10.9.13 NMAC - Rp 16.10.9.13 NMAC, 3/24/2020]

**16.10.9.14 MISCELLANEOUS FEES:**

- A. Copying fee of up to \$1.00 per page for public records.
- B. License verification fee of \$30 per license for a letter of good standing to confirm the verification.
- C. Fee of \$20 per copy for annual directory of physicians.
- D. Returned check fee of \$25.
- E. List of licensees on CD - \$100.
- F. Physician mailing labels - \$250, physician assistant mailing labels - \$50.
- G. Administrative reprocessing fee - no greater than current initial licensing fee.
- H. Waiver. The board may waive or reduce miscellaneous fees but only for good cause shown and documented. The NMMS, NMAPA, and UNMHSC will each be given one free list or CD annually.

[16.10.9.14 NMAC - Rp 16.10.9.14 NMAC, 3/24/2020; A, 2/8/2022]

**16.10.9.15 NATUROPATHIC DOCTORS:**

- A. Application fee of \$320.
- B. Triennial license renewal fee of \$360.
- C. Processing fee of \$20 for placing a license on inactive status.

**D.** Late fee of \$80 for all naturopathic doctors who renew their license to active status, or provide required documentation after March 1 but by April 15 of the renewal year.

**E.** Late fee of \$160 for naturopathic doctors who renew their license to active status, or provide required documentation after April 15 but by May 30 of the renewal year.

**F.** Reinstatement fee of \$200, for reinstatement of a naturopathic doctors' license, which shall be in addition to the biennial license renewal; and if required, nationwide criminal history screening fee.

**G.** Nationwide criminal history screening fee equal to the current federal bureau of investigation and department of public safety fee.

**H.** Statewide criminal history fee equal to the current department of public safety fee.

[16.10.9.15NMAC - N, 2/8/2022]

## **PART 10: REPORTING REQUIREMENTS FOR LICENSEES, APPLICANTS AND OTHER PERSONS AND ENTITIES**

### **16.10.10.1 ISSUING AGENCY:**

New Mexico Medical Board (the "board").

[16.10.10.1 NMAC - Rp 16.10.10.1 NMAC, 9/17/2018]

### **16.10.10.2 SCOPE:**

This part applies to all applicants and licensees under the jurisdiction of the Medical Practice Act, Sections 61-6-1 to -35 NMSA 1978, and entities falling within the scope of Section 61-6-16 NMSA 1978.

[16.10.10.2 NMAC - Rp 16.10.10.2 NMAC, 9/17/2018]

### **16.10.10.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Paragraph (21) of Subsection D of Sections 61-6-15 and 61-6-16 NMSA 1978, and in accordance with the Impaired Health Care Provider Act Sections 61-7-1 to 61-7-12 NMSA 1978.

[16.10.10.3 NMAC - Rp 16.10.10.3 NMAC, 9/17/2018]

### **16.10.10.4 DURATION:**

This part is permanent.

[16.10.10.4 NMAC - Rp 16.10.10.4 NMAC, 9/17/2018]

**16.10.10.5 EFFECTIVE DATE:**

The effective date of this part is September 17, 2018, unless a later date appears at the end of a section.

[16.10.10.5 NMAC - Rp 16.10.10.5 NMAC, 9/17/2018]

**16.10.10.6 OBJECTIVE:**

This part has three objectives.

**A.** In accordance with Paragraph (21) of Subsection D of Section 61-6-15 NMSA 1978, this part defines the requirements for licensees and applicants to report to the board actions taken against them by other licensing jurisdictions, peer review bodies, health care entities, professional or medical societies and associations, governmental agencies, law enforcement agencies, and courts for acts or conduct similar to acts or conduct constituting grounds for action under the Medical Practice Act.

**B.** In accordance with Section 61-6-16 NMSA 1978, this part defines the requirements for affected entities to report to the board:

(1) payments relating to malpractice actions or claims arising in New Mexico involving licensees and applicants;

(2) professional review actions; and

(3) actions taken against licensees' and applicants' clinical privileges while the licensee or applicant is under investigation or in lieu of investigation by the affected entity.

**C.** In accordance with the board's statutory duty to protect the public health, safety and welfare, and the ethical standards adopted by the board in 16.10.8 NMAC, this part establishes mandatory reporting requirements for licensees and applicants to ensure the board is informed of impaired, incompetent, disruptive and unethical practitioners.

[16.10.10.6 NMAC - Rp 16.10.10.6 NMAC, 9/17/2018]

**16.10.10.7 DEFINITIONS:**

The following definitions apply to this section. All terms not defined have their general dictionary meaning.

**A. "Adverse action"** means any discipline, sanction or other action, whether equitable, administrative, civil or criminal, affecting a licensee, applicant or other person falling under the jurisdiction of the Medical Practice Act. The term embraces any action affecting the licensee's or applicant's practice, including, but not limited to revocations, suspensions, probation, monitoring, restrictions, and stipulations or other limitations, as well as fines, penalties and financial settlements. The term also includes any action taken to avoid disciplinary action, a sanction, or another action. An action does not need to involve clinical competence or patient care or affect clinical privileges in order to be "adverse".

**B. "Adversely affecting"** means reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges, or membership in a health care entity to include: terminating employment for cause, or without cause when based on incompetency or behavior affecting patient care and safety, or allowing the licensee or applicant to resign rather than being terminated for such reasons. These actions do not include those instances in which a peer review entity requires supervision of a licensee or applicant for purposes of evaluating that licensee's or applicant's professional knowledge or ability.

**C. "Clinical privileges"** include privileges, membership on the medical staff, employment, and other circumstances under which a licensee or applicant is permitted by a health care entity to furnish medical care.

**D. "Termination of employment"** includes the termination of employment by a health care entity for cause, or without cause if related to clinical competence or behavior affecting patient safety/care, or allowing resignation in lieu of termination for such reason.

**E. "Health care entity"** means:

(1) a hospital, HMO, a physician group, locum tenens or staffing agency, or other health care institution that is licensed to provide health care services in New Mexico;

(2) an entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care;

(3) a professional society or a committee, or agent thereof, of licensed health care practitioners at the national, state or local level, that follows a formal peer review process for the purpose of furthering quality health care, including without limitation a health maintenance organization or other prepaid medical practice which is licensed or determined to be qualified by any state; and

(4) a health plan or network that partners payers, employers and health care providers and professionals, including preferred provider groups, specialty groups, physician-hospital organizations and workers' compensation networks.

**F. "Medical malpractice action or claim"** means a written claim or demand for compensation based on the furnishing, or failure to furnish, health care services, and includes, without limitation, the filing of a cause of action, based on the law of tort, brought in any court of any state or the United States seeking monetary damages whether resulting in a settlement or in a judgment.

**G. "Professional review action"** means an action of a health care entity:

- (1) taken in the course of professional review activity;
- (2) based on the competence, conduct, or impairment of a licensed health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and,
- (3) which adversely affects or may adversely affect the clinical privileges or membership in a professional society of a licensed health care professional.

**H. "Professional review activity"** means an activity of a health care entity with respect to an individual licensee or applicant:

- (1) to determine whether the licensee or applicant may have clinical privileges with respect to, or membership in, the entity;
- (2) to determine the scope or conditions of such privileges or membership; or
- (3) to change or modify such privileges or membership.

**I. "Credentialing discrepancy"** means, for the purposes of this part, an error or omission in an application.

[16.10.10.7 NMAC - Rp 16.10.10.7 NMAC, 9/17/2018; A, 2/8/2022]

#### **16.10.10.8 REPORTING OF MEDICAL MALPRACTICE PAYMENTS BY ENTITIES AND PERSONS:**

**A.** Each person or entity, including an insurance company, which makes a payment under a policy of insurance, self-insurance or otherwise, in settlement of, or in whole or partial satisfaction of, a judgment in a malpractice action or claim must file a report with the board within 30 days after any initial or complete payment is made.

**B.** Applicants and licensees must file a report with the board within 30 days after any initial or complete payment is made by them, or directly or indirectly on their behalf.

**C.** Reports filed under this section shall include, at a minimum:

- (1) the name, license number, and social security number of the named licensee or applicant;
- (2) the name and address of the person or entity making the payment;
- (3) the name, title and telephone number of the person submitting the report;
- (4) the date or dates on which the act(s) or omission(s) giving rise to the claim occurred;
- (5) the date of judgment or settlement;
- (6) the amount paid, the date of payment and whether payment is made in satisfaction of a judgment or constitutes a settlement;
- (7) a description of terms of the judgment or settlement and any conditions attached thereto, including terms of payment;
- (8) a description of the alleged acts or omissions and injuries or illnesses upon which the action or claim is based; and,
- (9) the official addendum to the licensee's or applicant's data bank report.

[16.10.10.8 NMAC - Rp 16.10.10.8 NMAC, 9/17/2018]

#### **16.10.10.9 REPORTING OF ACTIONS ADVERSELY AFFECTING CLINICAL PRIVILEGES:**

**A.** All health care entities, licensees and applicants shall report any action adversely affecting the clinical privileges of the licensee or applicant within thirty days after the action is taken.

**B.** Actions the health care entity must report include, but are not limited to:

- (1) any professional review action adversely affecting the clinical privileges of a licensee or applicant, except as provided in Subsection C of this section;
- (2) the health care entity's acceptance of the surrender of clinical privileges or any restriction on such privileges as a result of or relating to possible incompetency or improper professional conduct while the licensee or applicant is under investigation, or in return for the health care entity's decision not to conduct an investigation or proceeding;
- (3) any professional review action taken by a professional society adversely affecting the membership of a licensee or applicant in the society;

**(4)** the failure to complete medical records where the failure relates to the licensee's or applicant's professional competence or conduct, or the failure could or did adversely affect a patient's health or welfare; and

**(5)** a positive drug test for illegal substances, alcohol or prescribed or un-prescribed medications not supported by appropriate diagnosis (the board will not require name of the licensee or applicant if the licensee or applicant has voluntarily self-reported to the New Mexico health professional wellness program (HPWP), or any successor organization).

**C.** Reports of actions adversely affecting clinical privileges must include, at a minimum:

**(1)** the name, license number, and social security number of the licensee or applicant;

**(2)** a description of the act(s) or omission(s) or other reasons for the action or for the surrender of privileges;

**(3)** the action taken, the date the action was taken, and the effective date of the action; and,

**(4)** any official addendum to the licensee's or applicant's data bank report.

**D.** A health care entity is not required to report to the board:

**(1)** actions based on the licensee's or applicant's association, or lack of association, with a professional society or association;

**(2)** actions based on fees, advertising, or other competitive acts intended to solicit or retain business;

**(3)** actions based on the licensee's or applicant's participation in prepaid group health plans;

**(4)** actions based on the licensee's or applicant's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or

**(5)** any other matter that does not relate to the competence or professional conduct of a licensee or applicant; and

**(6)** suspensions of clinical privileges resulting from a failure to complete medical records, except to the extent such failures are reportable under Paragraph (4) of Subsection A of this section, maintain insurance or perform other administrative obligations.

E. Subsequent disposition of an action adversely affecting the licensee or applicant, even if favorable, does not alter a health care entity's duty to report the action.

[16.10.10.9 NMAC - Rp 16.10.10.9 NMAC, 9/17/2018]

**16.10.10.10 REPORTING OF CREDENTIALING DISCREPANCIES:**

Any health care entity having information about a licensee or applicant that conflicts with information the licensee or applicant included on an application or re-application submitted with a signed attestation of accuracy, shall report the discrepancy to the board within 90 days.

[16.10.10.10 NMAC - Rp 16.10.10.10 NMAC, 9/17/2018]

**16.10.10.11 SANCTIONS FOR FAILURE TO REPORT:**

A. Medical malpractice payments. Any health care entity or person failing to report malpractice payments required by this part shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

B. Actions adversely affecting clinical privileges. Any health care entity or professional review body failing to comply with the reporting requirements set forth in this part shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000). The board will report the failure to comply to the data bank as required by 42 U.S.C. Section 11133.

[16.10.10.11 NMAC - Rp 16.10.10.11 NMAC, 9/17/2018]

**16.10.10.12 CONFIDENTIAL COMMUNICATIONS:**

Any information or report submitted to the board under this part, or pursuant to 42 U.S.C. 11131-11152, as amended, shall be confidential and shall be disclosed only to the licensee or applicant, unless otherwise authorized or required by law.

[16.10.10.12 NMAC - Rp 16.10.10.12 NMAC, 9/17/2018]

**16.10.10.13 REPORTING OF ADVERSE ACTIONS BY LICENSEES AND APPLICANTS:**

A. In addition to the reporting requirements contained in Section 16.10.10.8 and 16.10.10.9 NMAC, a licensee or applicant shall report to the board any adverse action affecting the licensee or applicant taken by another licensing jurisdiction; a peer review body; a health care entity; a professional or medical society or association; a governmental agency; a law enforcement agency, including arrests; and any court for acts or conduct similar to acts or conduct that would constitute grounds for action under the Medical Practice Act.

**B.** Licensees and applicants must report to the board any adverse action taken against them or their license within 30 days after the date the action occurs or is taken. For the purpose of this section, an "action occurs or is taken" on the date an entity described in this section takes action, regardless of whether the action is subject to appeal or an appeal is taken. Any subsequent disposition of the adverse action, regardless of whether such disposition negates or affects the adverse action, does not alter this reporting requirement. In the case of an arrest, the licensee or applicant shall report the arrest within 30 days.

**C.** The failure to report any adverse action shall constitute unprofessional or dishonorable conduct under Subsection D of Section 61-6-15 NMSA 1978 of the Medical Practice Act.

[16.10.10.13 NMAC - Rp 16.10.10.13 NMAC, 9/17/2018]

**16.10.10.14 REPORTING IMPAIRED, INCOMPETENT, DISRUPTIVE OR UNETHICAL COLLEAGUES:**

**A.** Consistent with 16.10.8.9 NMAC (adopting the ethical standards of the American medical association), licensees and applicants having a good faith basis for believing that the public health and safety may be at risk must report impaired, incompetent, disruptive and unethical colleagues, including specifically other licensees and applicants. "Impaired" means any condition affecting the ability to engage safely and effectively in professional activities. "Incompetent" includes practices or conduct creating the potential for harm, whether or not harm has resulted. "Unethical" includes, but is not limited to corrupt, dishonest or illegal actions.

**B.** The duty to report imposed by this section does not limit or replace the duty to report to other organizations or entities, including law enforcement.

**C.** Reports under this section may be made anonymously, but must include sufficient information to allow investigation by the board.

**D.** Reports made under this section will be held in confidence in the same manner as all investigations by the board.

**E.** Specifically exempt from the reporting requirements contained in this section are "peer review" communications protected by law.

**F.** The submission of a false or malicious report under this section constitutes unethical conduct subject to disciplinary action.

[16.10.10.14 NMAC – N, 9/17/2018]

**16.10.10.15 SELF-REPORTING:**

**A.** All applicants and licensees have a duty to self-report to the board any mental illness, physical illness (including but not limited to deterioration through the aging process or loss of motor skill), or habitual use or abuse of drugs, as defined in the Controlled Substances Act, Section 31-31-1 to 31-31-41 NMSA 1978, or alcohol that affects their ability to practice with reasonable skill or safety to patients.

**B.** Reports made under this section may subject the licensee or applicant to action by the board where necessary to ensure public health, safety and welfare.

[16.10.10.15 NMAC - N, 9/17/2018]

## **PART 11: PHYSICIANS SUPERVISING PHARMACIST CLINICIANS**

### **16.10.11.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[4/5/97, 4/27/2000; 16.10.11.1 NMAC - Rn & A, 16 NMAC 10.11.1, 1/10/07]

### **16.10.11.2 SCOPE:**

This applies to physicians who supervise pharmacist clinicians.

[4/5/97, 4/27/2000; 16.10.11.2 NMAC - Rn, 16 NMAC 10.11.2, 1/10/07]

### **16.10.11.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of medicine in New Mexico and are promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, section 61-1-1 through 61-1-33 NMSA 1978, and the Impaired Physician Act, section 61-7-1 through 61-7-12 NMSA 1978.

[4/5/97; 16.10.11.3 NMAC - Rn, 16 NMAC 10.11.3, 1/10/07]

### **16.10.11.4 DURATION:**

Permanent

[4/5/97; 16.10.11.4 NMAC - Rn, 16 NMAC 10.11.4, 1/10/07]

### **16.10.11.5 EFFECTIVE DATE:**

June 15, 1995, unless a later date is cited at the end of a section.

[4/5/97; 16.10.11.5 NMAC - Rn & A, 16 NMAC 10.11.5, 1/10/07]

#### **16.10.11.6 OBJECTIVE:**

These rules and regulations are adopted to carry out the boards' responsibilities set forth in Sections 61-11B to 61-11B-3, NMSA 1978, the "Pharmacist Prescriptive Authority Act."

[4/5/97; 16.10.11.6 NMAC - Rn & A, 16 NMAC 10.11.6, 1/10/07]

#### **16.10.11.7 DEFINITIONS:**

**A. "Alternate supervising physician"** means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, and agrees to act as the supervising physician in the supervising physician's absence with no change to the scope of practice or protocol of the pharmacist clinician. The alternate supervising physician must be approved by the board or designee.

**B. "Consultation"** means in person, telephonically, by two-way radio, by e-mail or by other electronic means.

**C. "Dangerous drug"** means a drug, that because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a physician licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription".

**D. "Pharmacist clinician"** means a pharmacist with additional training required by regulation adopted by the New Mexico board of pharmacy in consultation with the New Mexico medical board and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol.

**E. "Scope of practice"** means duties and limitations of duties placed upon a pharmacist clinician by their supervising physician and/or the alternate supervising physician(s) and the board; includes the limitations implied by the specialty of the supervising physician and/or the alternate supervising physician(s), the training and experience of the pharmacist clinician and the board.

**F. "Supervising physician"** means a physician, or group of physicians who hold a current unrestricted license and are approved by the board to supervise a pharmacist clinician and includes a physician approved by the board as an alternate supervising physician.

**G. "Written Protocol"** means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a physician or group of physicians that delegates prescriptive authority.

[4/5/1997, 4/27/2000; 16.10.11.7 NMAC - Rn & A, 16 NMAC 10.11.7, 1/10/2007; A, 2/8/2022]

#### **16.10.11.8 INTRODUCTION:**

These rules and regulations are adopted to carry out the boards' responsibilities set forth in Sections 61-11B to 61-11B-3, NMSA 1978, the "Pharmacist Prescriptive Authority Act."

[4/5/97; 16.10.11.8 NMAC - Rn & A, 16 NMAC 10.11.8, 1/10/07]

#### **16.10.11.9 APPROVAL OF SUPERVISING PHYSICIANS:**

A physician shall only be approved as a pharmacist clinician supervisor after the pharmacist clinician registers with the board by submitting an application for authority to practice under the supervision of a licensed physician. The application shall include:

**A.** the name, address, phone number of the applicant and his/her proof of current certification as a pharmacist clinician by the board of pharmacy;

**B.** the name, address, and phone number of the supervising physician;

**C.** a written protocol agreed to and signed by the pharmacist clinician and the supervising physician that shall include:

**(1)** a statement identifying the physician authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

**(2)** a statement of the types of prescriptive authority that the pharmacist clinician is authorized to make within his scope of practice which may include:

**(a)** a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

**(b)** a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

**(c)** a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication to and consultation with the supervising physician concerning specific decisions made; documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

**(d)** a statement that describes appropriate mechanisms for reporting to the physician the pharmacist clinician's activities in monitoring the patients; and

(e) a statement that describes provisions for immediate communication or consultation between the pharmacist clinician and the supervising physician or alternate supervising physician.

D. The pharmacist clinician may be authorized in the protocol to monitor dangerous drug therapy as follows:

- (1) collecting and reviewing patient dangerous drug histories;
- (2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration; and
- (3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting.

E. A pharmacist clinician may only prescribe controlled substances if he/she:

- (1) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and
- (2) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3, A. of the Pharmacist Prescriptive Authority Act.

F. A pharmacist clinician shall perform only those services that are set forth in the protocol.

G. Pharmacist clinicians may prescribe only those drugs described in a board approved protocol.

H. A physician may supervise as many pharmacist clinicians as the physician can effectively supervise and communicate with in the circumstances of their particular practice setting.

[4/5/1997, 4/27/2000; 16.10.11.9 NMAC - Rn & A, 16 NMAC 10.11.9, 1/10/2007; A, 1/2/2008; A, 2/8/2022]

#### **16.10.11.10 THE PHYSICIAN'S REQUIREMENTS OF SUPERVISION:**

A. Supervising physicians must provide direction to pharmacist clinicians to specify the pharmacotherapeutic services to be provided under the circumstances in each case. This may be done by written protocol or by oral consultation. It is the responsibility of

the supervising physician to assure that the appropriate directions are given and understood.

**B.** Supervising physicians must establish a quality assurance program for review of medical services provided by the pharmacist clinician.

**C.** If the supervising physician is of the opinion that circumstances warrant exceptions to the requirements set forth in Subsections A or B above, the supervising physician must specify the circumstances in writing and deliver the same to the board. The board will review, grant or deny requests for exceptions or waivers, at the board's discretion.

**D.** Documentation of the supervising physician reviews must be retained by the pharmacist clinician and be available for board inspection for a period of not less than three years from the date of such reviews.

**E.** The pharmacist clinician must have prompt access to the physician by telephone or other electronic means for advice and direction.

**F.** If the supervising physician plans to be or is absent from his or her practice for any reason, the supervising physician cannot designate a pharmacist clinician to take over those duties or cover the practice during such absence. The supervising physician may designate an alternate supervising physician, approved by the board, to cover the practice and perform the duties of supervising physician. The alternate supervising physician will then supervise the pharmacist clinician and will be responsible for the pharmacist clinician's actions or omissions in exercising prescriptive authority or other duties as a pharmacist clinician.

**G.** Supervising physician is required to report any supervised pharmacist clinician who is practicing below accepted standards of care to the board.

[4/5/1997, 4/27/2000; 16.10.11.10 NMAC - Rn & A, 16 NMAC 10.11.10, 1/10/2007; A, 2/8/2022]

#### **16.10.11.11 REPORT AND COMMITTEE:**

The chair of the board shall appoint two (2) members of the board, or a member and an agent of the board to an oversight committee that shall also include two members appointed by the board of pharmacy. The oversight committee will make a report that may include non-binding recommendations to both the board of pharmacy and the medical board regarding disciplinary action. Each board can accept or reject the recommendations.

[4/5/97; 16.10.11.11 NMAC - Rn & A, 16 NMAC 10.11.11, 1/10/07]

#### **16.10.11.12 PHARMACIST CLINICIAN SUPERVISOR APPLICATION, RENEWAL AND TERMINATION:**

**A. Required documentation.** Each applicant for a pharmacist clinician supervisor and alternate pharmacist clinician supervisor must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

- (1) A completed signed application.
- (2) Copy of proof of current certification of the pharmacist clinician by the New Mexico board of pharmacy.
- (3) A written protocol signed by the pharmacist clinician and the supervising physician, which includes the requirements in 16.10.11.9 C NMAC.
- (4) Physicians who have had previous disciplinary action against them will be subject to further review by the board and may be approved, or approved with limitations, or denied. Physicians who had previous disciplinary action may apply to become a pharmacist clinician supervisor or alternate supervisor, the application will be sent to the board for consideration and decision.

**B. License expiration.** Pharmacist clinician supervisor licenses shall be renewed on July 1. Initial licenses are issued for two years.

**C. Process for written protocol.** The protocol for each pharmacist clinician shall be reviewed by the board or designee upon new application, if change of supervising physician occurs, or if a written protocol has been changed or modified.

**D. Change of supervising physician.** In order to change a supervising physician between biennial renewal of approval, without a change to the pharmacist clinician's scope of practice or protocol, an applicant shall submit to the board a change of supervising physician form and the required fee, as specified in 16.10.9.11 NMAC. The new supervising physician may only act after the application is approved by the board.

**E. License issuance.** Pharmacist clinician supervisor licenses are issued with the name of the pharmacist clinician who the supervisor is authorized to supervise. A copy of the license will be mailed to both the pharmacist clinician and the pharmacist clinician supervisor.

**F. Employment Termination/Change.** Within 30 days after an employer terminates the employment of a pharmacist clinician, the supervising physician shall submit a written notice to the board providing the date of termination and reason for termination. The pharmacist clinician shall not work as a pharmacist clinician except under a current approved protocol and supervising physician.

## **PART 12: SUPERVISION OF NON-LICENSED PHYSICIANS**

### **16.10.12.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[3/17/98, 4/27/2000; 16.10.12.1 NMAC - Rn & A, 16 NMAC 10.12.1, 1/10/07]

### **16.10.12.2 SCOPE:**

This part applies to physicians supervising physicians under Section 61-6-17 (I) NMSA 1978.

[3/17/98; 16.10.12.2 NMAC - Rn, 16 NMAC 10.12.2, 1/10/07]

### **16.10.12.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of medicine in New Mexico and are promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978, and the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978.

[3/17/98; 16.10.12.3 NMAC - Rn, 16 NMAC 10.12.3, 1/10/07]

### **16.10.12.4 DURATION:**

Permanent.

[3/17/98; 16.10.12.4 NMAC - Rn, 16 NMAC 10.12.4, 1/10/07]

### **16.10.12.5 EFFECTIVE DATE:**

March 17, 1998, unless a later date is cited at the end of a section.

[3/17/98; 16.10.12.5 NMAC - Rn & A, 16 NMAC 10.12.5, 1/10/07]

### **16.10.12.6 OBJECTIVE:**

This part establishes procedures for New Mexico licensed physicians to delegate responsibilities to physicians not licensed in New Mexico, pursuant to Section 61-6-17 (I) NMSA 1978, as amended in 1997.

[3/17/98, 4/27/2000; 16.10.12.6 NMAC - Rn, 16 NMAC 10.12.6, 1/10/07]

### **16.10.12.7 DEFINITIONS:**

**A.** "Non-licensed physician" means a medical doctor licensed to practice medicine in a jurisdiction other than New Mexico.

**B.** "Board" means the New Mexico medical board.

**C.** "Supervising physician" means a physician licensed in the state of New Mexico by the board who will function as the supervising physician to a non-licensed physician.

[3/17/98; 16.10.12.7 NMAC - Rn & A, 16 NMAC 10.12.7, 1/10/07]

**16.10.12.8 DELEGATIONS UNDER SECTION 61-6-17 (I) NMSA 1978 (AS AMENDED IN 1997):**

**A.** In order for a non-licensed physician who is practicing medicine in New Mexico under a New Mexico licensed physician's supervision, the non-licensed physician, pursuant to Section 61-6-17 (I) NMSA 1978, as amended in 1997, shall have an unrestricted license to practice in some other licensing jurisdiction, which does not necessarily need to be in the United States.

**B.** The supervising physician shall report, in writing, to the board. The report shall include:

- (1) name and local addresses of any physician that will be supervised;
- (2) the jurisdiction where the supervised physician is licensed, and proof of licensure, and current status of licensure;
- (3) the scope of practice and the manner by which the New Mexico licensed physician will directly supervise the non-licensed physician; and
- (4) the name and address of the hospital, if any, to be utilized by the supervising physician.

**C.** The report shall be submitted to the board at least twenty-one (21) days before the supervising physician begins to practice medicine in New Mexico, except in the case of an emergency, in which circumstance the report shall be submitted to the board within 10 days maximum of the date upon which the qualified physician begins practice under the supervising physician.

**D.** Prior to allowing a qualified physician to perform delegated medical acts, the supervising physician shall notify the hospital that such qualified physician shall be performing medical acts under the supervision of the physician at that institution.

**E.** The non-licensed physician must be granted approval by the board or the board's delegate to practice before he/she begins to practice in New Mexico under the provisions of this rule.

(1) Approval by the board for a non-licensed physician to practice under the direct supervision of a New Mexico licensed physician shall be for a period of not more than 15 days and cannot be renewed.

(2) Approval by the board for a non-licensed physician to practice under the direct supervision of a New Mexico licensed physician at a JCAHO accredited hospital shall be for a period of not more than three months; provided, however, that the approval can be renewed by the board up to three times.

**F.** The supervising physician shall inform all patients who shall be treated by the non-licensed physician, that the supervised physician is not licensed to practice medicine in New Mexico and have the patients sign a statement acknowledging that the patient knows the supervised physician is not licensed to practice medicine in New Mexico.

[3/17/98, 4/27/2000; 16.10.12.8 NMAC - Rn & A, 16 NMAC 10.12.8, 1/10/07]

## **PART 13: DELEGATED USE OF DEVICES AND PROCEDURES BY MEDICAL ASSISTANTS; COSMETIC INJECTIONS**

### **16.10.13.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.13.1 NMAC - Rp 16 NMAC 10.13.1, 4/18/02; A, 12/30/05]

### **16.10.13.2 SCOPE:**

This part governs the delegated use of procedures and use of certain medical devices by medical assistants under the supervision of the physician.

[16.10.13.2 NMAC - Rp 16 NMAC 10.13.2, 4/18/02; A, 12/30/05]

### **16.10.13.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the use of medical devices and procedures by unlicensed medical assistants under the supervision of a physician in New Mexico. These rules are promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.13.3 NMAC - Rp 16 NMAC 10.13.3, 4/18/02; A, 12/30/05]

### **16.10.13.4 DURATION:**

Permanent.

[16.10.13.4 NMAC - Rp 16 NMAC 10.13.4, 4/18/02]

**16.10.13.5 EFFECTIVE DATE:**

April 18, 2002, unless a different date is cited at the end of a section.

[16.10.13.5 NMAC - Rp 16 NMAC 10.13.5, 4/18/02]

**16.10.13.6 OBJECTIVE:**

This part establishes the procedures whereby physicians licensed in New Mexico may delegate responsibility for certain medical procedures generally considered to be the practice of medicine to medical assistants with appropriate training and supervision, pursuant to Section 61-6-17 (I) NMSA 1978.

[16.10.13.6 NMAC - Rp 16 NMAC 10.13.6, 4/18/02; A, 12/30/05]

**16.10.13.7 DEFINITIONS:**

**A. "Supervising physician"** means a physician licensed to practice in New Mexico who is responsible for the patient's care and will provide oversight and guidance of the medical assistant.

**B. "Medical assistant"** means any individual who is not licensed as a healthcare practitioner in New Mexico and is working under the direction and supervision of a licensed physician. Licensed practitioners, including registered nurses and physician assistants, are not considered to be medical assistants pursuant to this rule.

**C. "Medical therapeutic or cosmetic medical procedure, device, or treatment"** means a treatment or procedure that uses any of the following, if the procedure or treatment alters or damages or is capable of altering or damaging living tissue, to improve the patient's appearance or to achieve an enhanced aesthetic result:

(1) injection or insertion of a biologic or synthetic substance for soft tissue augmentation;

(2) application of a chemical substance;

(3) application of microwave energy; or

(4) application of a federal food and drug administration approved prescription device that uses waveform energy of any kind, including, but not limited to lasers or intense pulsed light.

**D. "Certified"** means the medical assistant has been awarded a certificate of completion of training by a physician trained to use the equipment, by a certified

representative of the medical equipment company, or by another entity qualified to offer the required training.

[16.10.13.7 NMAC - Rp 16 NMAC 10.13.7, 4/18/02; A, 12/30/05; A, 7/22/08]

#### **16.10.13.8 USE OF MEDICAL THERAPEUTIC AND COSMETIC DEVICES:**

Medical therapeutic or cosmetic devices penetrate and alter human tissue and can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypo-pigmentation and hyper-pigmentation. The use of medical therapeutic and cosmetic devices is the practice of medicine as defined in Section 61-6-1 NMSA 1978.

##### **A. Limitations.**

(1) Medical assistants are limited to using medical therapeutic and cosmetic devices that are non-incisive and non-ablative.

(2) Medical therapeutic and cosmetic devices may only be used by a medical assistant who is certified pursuant to Subsection D of 16.10.13.7 NMAC and when the supervising physician is immediately available on the premises.

**B. Responsibility of the supervising physician.** A physician who is trained in the safety and use of medical therapeutic or cosmetic devices may supervise medical assistants who perform hair removal and other therapeutic or cosmetic procedures using devices that use waveform energy consistent with the following requirements.

(1) The supervising physician must provide the following services before treatment by a medical assistant is initiated: patient history, physical examination, diagnosis, treatment protocol, and preparation of medical record.

(2) The supervising physician shall review any adverse outcomes or changes in the treatment protocol.

(3) The supervising physician shall assure the patient is informed and aware that the individual performing the procedure is a medical assistant and is under the physician's supervision.

(4) The supervising physician shall provide the patient instructions for emergency and follow-up care.

(5) The supervising physician shall prepare a written protocol for the medical assistant to follow when using the medical therapeutic or cosmetic device. The protocol may include pre and post care treatment related to the procedure as long as the treatment is topical and non-injectable. The physician is responsible for ensuring that the medical assistant uses the medical therapeutic or cosmetic device only in

accordance with the written protocol and does not exercise independent medical judgment when using the device.

(6) The supervising physician shall assure compliance with the training and reporting requirements of this rule.

(7) The supervising physician is ultimately responsible for the safety of the patient, regardless of who performs the treatment using the medical therapeutic or cosmetic device or procedure.

**C. Training requirements.** Medical assistants who use medical therapeutic or cosmetic devices must have training and be certified on each device they will use. The training on each device must include the following:

- (1) physics and safety of the medical therapeutic or cosmetic device;
- (2) basic principle of the planned procedure;
- (3) clinical application of the medical therapeutic or cosmetic device, including wavelengths to be used;
- (4) indications and contraindications for the use of the medical therapeutic or cosmetic device;
- (5) pre-operative and post-operative care;
- (6) recognition and acute management of complications that may result from the procedure; and
- (7) infectious disease control procedures required for each procedure.

**D. Reporting requirements.** The supervising physician shall complete a "certificate of training" form and submit it to the board prior to the use of a medical therapeutic or cosmetic device by the medical assistant. The form will be device-specific and document training for each medical therapeutic or cosmetic device used by the medical assistant.

**E. Public communication.** Any public communication offering the performance or administration of a cosmetic medical procedure or treatment shall identify the physician or surgeon responsible for the provision of, or the direct supervision of the procedure or treatment.

[16.10.13.8 NMAC - Rp 16 NMAC 10.13.8, 4/18/02; A, 12/30/05; A, 7/22/08]

#### **16.10.13.9 INJECTION OF COSMETIC OR AESTHETIC SUBSTANCES:**

The injection of cosmetic or aesthetic substances is considered to be the practice of medicine and shall not be delegated to medical assistants.

[16.10.13.9 NMAC - N, 12/30/05]

## **PART 14: MANAGEMENT OF PAIN AND OTHER CONDITIONS WITH CONTROLLED SUBSTANCES**

### **16.10.14.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.14.1 NMAC - N, 1/20/2003; A, 4/3/2005]

### **16.10.14.2 SCOPE:**

This part applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration.

[16.10.14.2 NMAC - N, 1/20/2003; A, 9/28/2012]

### **16.10.14.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978 and the Pain Relief Act, Sections 24-2D-1 through 24-2D-6 NMSA 1978.

[16.10.14.3 NMAC - N, 1/20/2003; A, 9/28/2012]

### **16.10.14.4 DURATION:**

Permanent.

[16.10.14.4 NMAC - N, 1/20/2003]

### **16.10.14.5 EFFECTIVE DATE:**

January 20, 2003, unless a later date is cited at the end of a section.

[16.10.14.5 NMAC - N, 1/20/2003]

### **16.10.14.6 OBJECTIVE:**

This part governs the prescribing of controlled substances in the treatment of pain and other conditions to ensure that they are prescribed for appropriate doses and durations and after a thorough medical evaluation.

[16.10.14.6 NMAC - N, 1/20/2003; A, 4/3/2005; A, 11/30/2016]

#### **16.10.14.7 DEFINITIONS:**

**A. "Acute pain"** means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

**B. "Addiction"** is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

**C. "Benzodiazepine"** means any controlled substance referenced at Subsection A of 16.19.20.68 NMAC, as may be amended from time to time.

**D. "Chronic pain"** means pain that persists after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

**E. "Clinical expert"** means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**F. "Controlled Substance"** means a drug or substance listed in schedules I through V of the Controlled Substances Act or regulations adopted thereto.

**G. "Delegate"** means a person designated by a practitioner pursuant to 16.19.29.9 NMAC for the purpose of requesting and receiving prescription monitoring program (PMP) reports for that practitioner.

**H. "Opioid"** means the class of drugs that includes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors.

**I. "Opioid antagonist"** means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body, including naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

**J. "Pain"** means acute or chronic pain or both.

**K. "Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**L. "Practitioner"** means a New Mexico medical board licensee maintaining licensure pursuant to state law that allows that individual to prescribe, order, administer or dispense controlled substances to patients (see 16.19.29.7 NMAC).

**M. "Prescription monitoring program"** means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

**N. "Schedule II-V"** refers to any controlled substance listed in schedule II, III, IV, or V of the Controlled Substances Act found at Chapter 30, Article 31 NMSA 1978, regulations promulgated by the New Mexico board of pharmacy found at 16.19.20 NMAC, or federal controlled substances regulations promulgated pursuant to 21 U.S.C. 812.

**O. "Stimulant"** means any controlled substance referenced in Subsection C of 16.19.20.66 NMAC, Subsection A of 16.19.20.67 NMAC, Subsection D of 16.19.20.68 NMAC, or Subsection B of 16.19.20.69 NMAC, as may be amended from time to time.

**P. "Therapeutic purpose"** means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management and other conditions.

**Q. "Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.10.14.7 NMAC - N, 1/20/2003; A, 9/28/2012; A, 11/30/2016; A, 3/24/2020]

#### **16.10.14.8 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

The intent of the New Mexico medical board in requiring participation in the PMP is to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

**A.** Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

**C.** Before a practitioner prescribes or dispenses for the first time, a controlled substance in schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in schedule II, III, IV or V:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care; or
- (4) when prescribing , dispensing or administering of:
  - (a) testosterone; or
  - (b) pregabalin; or
  - (c) lacosamide; or
  - (d) ezogabine; or
  - (e) stimulant therapy for pediatric patients less than age 14.

**F.** Upon review of a prescription monitoring report for a patient, the practitioner shall identify, document and be aware of a patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than 12 consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Subsection F of 16.10.14.8 NMAC, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

**H.** Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II, III, IV or V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record.

[16.10.14.8 NMAC - N, 1/20/2003; A, 4/3/2005; A, 9/28/2012; A, 2/14/13; 16.10.14.8 NMAC - Rp, 16.10.14.10 NMAC, 11/30/2016]

#### **16.10.14.9 REGULATIONS FOR THE APPROPRIATE TREATMENT OF PAIN WITH CONTROLLED SUBSTANCES:**

The following regulations shall be used by the board to determine whether a health care practitioner's prescriptive practices are consistent with the appropriate treatment of pain.

**A.** The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence

or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

**B.** The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

**(1)** A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

**(2)** A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

**(3)** A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

**(4)** The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

**(5)** Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

**(6)** The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient's condition, with health care professionals who are experienced by the length and type of

their practice in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(7) When prescribing opioids for chronic pain, practitioners shall require urine drug testing when starting opioid therapy and shall use urine drug testing at least every six months to assess for prescribed medications as well as other controlled prescription drugs and illicit drugs.

(8) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

- (1) a contractual agreement;
- (2) appropriate consultation;
- (3) drug screening when other factors suggest an elevated risk of misuse or diversion; and
- (4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Medical Practice Act or board rules.

[16.10.14.9 NMAC - N, 4/3/2005; A, 9/28/2012; 16.10.14.9 NMAC - Rp, 16.10.14.8 NMAC, 11/30/2016]

#### **16.10.14.10 PHYSICIAN, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANTS TREATED WITH OPIATES:**

Physicians, physician assistants or anesthesiologist assistants who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a physician pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing to practice.

[16.10.14.10 NMAC - N, 9/28/2012; A, 2/14/13; 16.10.14.10 NMAC - Rp, 16.10.14.9 NMAC, 11/30/2016; A, 2/8/2022]

#### **16.10.14.11 CONTINUING EDUCATION FOR THE PRESCRIBING OF CONTROLLED SUBSTANCES:**

This section applies to all New Mexico medical board licensees who hold a federal drug enforcement administration registration and a New Mexico controlled substances registration. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

**A. Immediate requirements effective November 1, 2012.** Between November 1, 2012 and no later than June 30, 2014, all New Mexico medical board licensees who hold a federal drug enforcement administration registration and a New Mexico controlled substances registration, shall complete no less than five continuing medical education hours in appropriate courses that shall include:

- (1) an understanding of the pharmacology and risks of controlled substances;
- (2) a basic awareness of the problems of abuse, addiction and diversion;
- (3) awareness of state and federal regulations for the prescription of controlled substances;
- (4) management of the treatment of pain; and

(5) courses may also include a review of this rule 16.10.14 NMAC the applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval. Practitioners who have taken continuing medical education hours in these educational elements between July 1, 2011 and November 1, 2012, may apply those hours toward the required five continuing medical education hours described in Subsection A of 16.10.14.11 NMAC.

**B. Triennial requirements for physicians.** Beginning with the July 1, 2014 triennial renewal date, pursuant to 16.10.4.8 NMAC, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico medical board physician licensees who hold a federal drug enforcement administration registration and a New Mexico controlled substances registration, shall be required to

complete and submit five continuing medical education hours. Appropriate courses shall include all of the educational elements described in Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC. A licensee may request prior board approval of the applicability of any courses may be requested. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A of 16.10.14.11 above, may be included as part of the required continuing medical education hours in pain management in either the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter.

**C. Biennial requirements for physician assistants.** Beginning with the July 1, 2014 biennial renewal date, 16.10.15.16 NMAC, in addition to the national commission on certification of physician assistants (NCCPA) certification required during each biennial renewal cycle pursuant to 16.10.15.16 NMAC, all New Mexico medical board physician assistant licensees who hold a federal drug enforcement administration registration and a New Mexico controlled substances registration, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC, or other courses in pain management with controlled substances. A licensee may request prior board approval of the applicability of any courses may be requested. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A of 16.10.14.11 NMAC above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter. Any or all three of these hours may also be applied to satisfy NCCPA requirements for certification.

**D. Biennial requirements for anesthesiologist assistants.** Beginning with the July 1, 2014 biennial renewal date, 16.10.19.15 NMAC, all New Mexico medical board anesthesiologist assistant licensees who hold a federal drug enforcement administration registration and a New Mexico controlled substances registration, shall be required to complete and submit three continuing medical education hours. Appropriate courses shall include all of the educational elements described in Paragraph (1) through (5) of Subsection A of 16.10.14.11 NMAC, or other courses in pain management with controlled substances. A licensee may request prior board approval of the applicability of any courses may be requested. These hours may be earned at any time during the two-year period immediately preceding the renewal date. Three of the five continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A of 16.10.14.11 NMAC above, may be included as part of these required three continuing medical education hours in pain management in either the biennial cycle in which these hours are completed, or the biennial cycle immediately thereafter.

**E. Requirements for new licensees.** All New Mexico medical board licensees, whether or not the New Mexico license is their first license, who hold a federal drug enforcement administration registration and a New Mexico controlled substances

registration, shall complete five continuing medical education hours in pain management during the first year of licensure. These continuing medical education hours completed prior to the first renewal may be included as part of the hours required in Subsections B, C or D of 16.10.11.14.11 NMAC.

[16.10.14.11 NMAC - N, 9/28/2012; A, 2/14/13; A, 11/30/2016]

#### **16.10.14.12 NOTIFICATION:**

In addition to the notice of procedures set forth in the State Rules Act, Section 14-4-1 et seq NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 14 of the New Mexico medical board rule, 16.10.14 NMAC;

- A.** health care practitioners under its jurisdiction; and
- B.** a health care practitioner being investigated by the board in relation to the practitioner's pain management services.

[16.10.14.12 NMAC - N, 9/28/2012]

#### **16.10.14.13 REQUIREMENTS FOR LICENSEES OF THE NEW MEXICO MEDICAL BOARD WHO PRESCRIBE, DISTRIBUTE OR DISPENSE OPIOID ANALGESICS:**

**A.** A health care provider who prescribes, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist. With respect to a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the health care provider, the health care provider shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the health care provider prescribes, distributes or dispenses an opioid analgesic each calendar year.

**B.** A health care provider who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist.

[16.10.14.13 NMAC - N, 3/24/2020]

## **PART 15: PHYSICIAN ASSISTANTS: LICENSURE AND PRACTICE REQUIREMENTS**

### **16.10.15.1 ISSUING AGENCY:**

New Mexico Medical Board hereafter called the board.

[16.10.15.1 NMAC - Rp, 16.10.15.1 NMAC, 1/16/2018]

**16.10.15.2 SCOPE:**

This part applies to physician assistants and their supervising physicians.

[16.10.15.2 NMAC - Rp, 16.10.15.2 NMAC, 1/16/2018]

**16.10.15.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.15.3 NMAC - Rp, 16.10.15.3 NMAC, 1/16/2018]

**16.10.15.4 DURATION:**

Permanent.

[16.10.15.4 NMAC - Rp, 16.10.15.4, 1/16/2018]

**16.10.15.5 EFFECTIVE DATE:**

January 16, 2018, unless a later date is cited at the end of a section.

[16.10.15.5 NMAC - Rp, 16.10.15.5 NMAC, 1/16/2018]

**16.10.15.6 OBJECTIVE:**

This part regulates the licensing and practice of physician assistants and their supervision by or collaboration with licensed physicians.

[16.10.15.6 NMAC - Rp, 16.10.15.6 NMAC, 1/16/2018]

**16.10.15.7 DEFINITIONS:**

**A. "AAPA"** means American academy of physician assistants.

**B. "Interim license"** means permission issued by the board that allows a physician assistant to practice for one year pending completion of all licensing requirements.

**C. "Effective supervision"** means the exercise of physician oversight, control, and direction of services rendered by a physician assistant. Elements of effective supervision include:

(1) on-going availability of direct communication, either face-to-face or by electronic means;

(2) active, ongoing review of the physician assistants services, as appropriate, for quality assurance and professional support;

(3) a predetermined plan for emergency situations; and

(4) identification of other supervising physicians, as appropriate to the practice setting.

**D. "Lapsed"** means a license that has not been renewed by March 1 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

**E. "Collaboration"** means the process by which a licensed physician and physician assistant jointly contribute to the health care and treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered by the collaborating physician assistant.

**F. "Collaborating Physician"** means a physician who holds a current unrestricted license and does not assume legal responsibility for the health care performed by the collaborating physician assistant. A physician under an active monitoring contract with the New Mexico monitored treatment program who meets the other qualifications of this subsection may also act as a collaborating physician.

**G. "Criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by state or federal criminal justice agencies or their political subdivisions and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states or their political subdivisions.

**H. "Criminal history screening"** means a criminal history background investigation of an applicant for licensure by examination or endorsement, or a licensee applying for licensure renewal, through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

I. **"Major disaster"** means a declaration of a major disaster by the federal emergency management agency (FEMA).

J. **"NCCPA"** means national commission on certification of physician assistants.

K. **"Primary Care"** means health care provided by a healthcare provider who typically acts as the first contact and principal point of continuing care for patients and coordinates other specialist care or services that the patient may require. Primary care specialties are combined internal medicine and pediatrics, family medicine, general internal medicine, geriatrics (gerontology), general obstetrics and gynecology and general pediatrics.

L. **"Direct communication"** means communication between the supervising physician and physician assistant, in person, telephonically, by email or other electronic means.

M. **"Scope of practice"** means:

(1) For a supervised physician assistant, means duties and limitations of duties placed upon them by their supervising physician and the board and includes the limitations implied by the field of practice of the supervising physician; and

(2) For a collaborating physician assistant, means those duties which are within their education, training, and experience pursuant to Section 61-6-6 NMSA 1978.

N. **"Supervising physician"** means a physician who holds a current unrestricted license, provides a notification of supervision, assumes legal responsibility for health care tasks performed by the physician assistant and is approved by the board. A physician under an active monitoring contract with the New Mexico monitored treatment program who meets the other qualifications of this subsection may also act as a supervising physician.

O. **"Suspended for non-renewal"** means a license that has not been renewed by May 31 of the expiration year, and is lapsed, which is a non-disciplinary action.

P. **"Military service member"** means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard, or the spouse of such an individual.

Q. **"Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a physician assistant license pursuant to section 16.10.15.17 NMAC. The veteran shall submit a copy of form DD214, or its equivalent, as part of the application process.

[16.10.15.7 NMAC - Rp, 16.10.15.7 NMAC, 1/16/2018; A/E, 4/17/2020]

**16.10.15.8 QUALIFICATIONS FOR LICENSURE AS A PHYSICIAN ASSISTANT UNDER SUPERVISION:**

**A.** graduation from a program for physician assistants accredited by the committee on allied health education and accreditation (CAHEA) of the American medical association, the accreditation review committee on education for the physician assistant (ARC-PA) or its successor agency, or passed the physician assistant national certifying examination administered by NCCPA prior to 1986 and has proof of continuous practice with an unrestricted license as a physician assistant in another state for four years prior to application;

**B.** current NCCPA certification or certification by another certifying agency approved by the board;

**C.** supervising physician per 16.10.15.11;

**D.** good moral and professional character; and

**E.** any other proof of competency as may be requested by the board.

[16.10.15.8 NMAC - Rp, 16.10.15.8 NMAC, 1/16/2018]

**16.10.15.9 LICENSURE PROCESS FOR A PHYSICIAN ASSISTANT UNDER SUPERVISION:**

Each applicant for a license as a physician assistant under supervision shall submit the required fees and following documentation.

**A.** A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one year from the date of receipt.

**B.** Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice.

**C.** Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s).

**D.** Verification of all work experience in the last two years, if applicable, provided directly to the board.

**E.** Upon receipt of a completed signed application and fee, a member or agent of the board will review the application and may approve the license. The applicant may

be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

**F.** The initial license is valid until March 1 of the year following expiration of certification by NCCPA or other certifying agency approved by the board.

**G.** All applicants for initial licensure as a physician assistant are subject to a state and national criminal history screening at their expense.

**(1)** Applications for licensure will not be processed until receipt of the background check requirements verification.

**(2)** Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

**(3)** If the criminal background screening reveals a criminal arrest or charge, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board. Failure to report a criminal arrest or charge is a violation of the Medical Practice Act.

[16.10.15.9 NMAC - Rp, 16.10.15.9 NMAC, 1/16/2018; A, 2/8/2022]

#### **16.10.15.10 APPROVAL OF SUPERVISING PHYSICIANS:**

**A.** Pursuant to Section 61-6-10 NMSA 1978, a physician may supervise as many physician assistants as the physician can effectively supervise and communicate within the circumstances of their particular practice setting.

**B.** All supervising physicians shall submit written notice of intent to supervise a physician assistant on forms prescribed by the board.

**C.** Within 30 days after an employer terminates the employment of a physician assistant, the supervising physician or the physician assistant shall submit a written notice to the board providing the date of termination and reason for termination.

**D.** A physician assistant who is employed by the United States government and who works on land or in facilities owned or operated by the United States government or a physician assistant who is a member of the reserve components of the United States and on official orders or performing official duties as outlined in the appropriate regulation of that branch may be licensed in New Mexico with proof that their supervising physician holds an active medical license in another state.

[16.10.15.10 NMAC - Rp, 16.10.15.11 NMAC, 1/16/2018]

#### **16.10.15.11 SUPERVISION OF A PHYSICIAN ASSISTANT:**

Supervision of a physician assistant must be rendered by a licensed supervising physician.

**A. Responsibility of supervising physician.**

(1) Provide direction to the physician assistant to specify what medical services should be provided. This may be done through a written utilization plan or by other direct communications.

(2) Provide a means for immediate communication between the physician assistant and the supervising physician.

(3) Comply with the quality assurance requirements specified in Subsection B of 16.10.15.11 NMAC.

**B. Quality assurance requirements.** A quality assurance program for review of medical services provided by the physician assistant must be in place.

[16.10.15.11 NMAC - Rp, 16.10.15.12 NMAC, 1/16/2018]

**16.10.15.12 QUALIFICATIONS FOR COLLABORATIVE PHYSICIAN ASSISTANT LICENSURE:**

**A.** graduation from a program for physician assistants accredited by the committee on allied health education and accreditation (CAHEA) of the American medical association, the accreditation review committee on education for the physician assistant (ARC-PA) or its successor agency, or passed the physician assistant national certifying examination administered by NCCPA prior to 1986 and has proof of continuous practice with an unrestricted license as a physician assistant in another state for four years prior to application;

**B.** current NCCPA certification or certification by another certifying agency approved by the board;

**C.** practice primary care as defined in Subsection J of 16.10.15.7 NMAC;

**D.** completed three years of clinical practice as a physician assistant with supervision by a licensed physician;

**E.** maintain a policy of malpractice liability insurance;

**D.** good moral and professional character; and

**E.** any other proof of competency as may be requested by the board.

[16.10.15.12 NMAC - N, 1/16/2018]

### **16.10.15.13 LICENSURE PROCESS FOR A COLLABORATIVE PHYSICIAN ASSISTANT:**

Each applicant for a collaborative physician assistant license shall submit the required fees and following documentation.

**A.** A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one year from the date of receipt.

**B.** Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice.

**C.** Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession.

**E.** Verification of three years of clinical practice as a physician assistant.

**F.** Verification of current malpractice liability insurance.

**G.** All applicants may be scheduled for a personal interview before the board or the board's designee for an interview and must present original documents, as the board requires.

**H.** The initial license is valid until March 1 of the year following expiration of NCCPA or other certifying agency approved by the board.

**I.** License by endorsement from New Mexico board of osteopathic examiners. Applicants who are currently licensed in good standing by the New Mexico board of osteopathic examiners may be licensed by endorsement upon receipt of a verification of licensure directly from the New Mexico board of osteopathic examiners; verification of three years of clinical practice as a physician assistant, and verification of current malpractice liability insurance as well as meet other listed requirements.

**J.** All applicants for initial licensure as a physician assistant are subject to a state and national criminal history screening at their expense.

**(1)** Applications for initial licensure will not be processed until receipt of the background check requirements verification.

**(2)** Applications for initial licensure will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

**(3)** If the criminal background screening reveals a criminal arrest or charge, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board. Failure to report a criminal arrest or charge is a violation of the Medical Practice Act.

[16.10.15.13 NMAC - N, 1/16/2018]

#### **16.10.15.14 COLLABORATIVE AND SUPERVISED STATUS:**

**A.** A physician assistant may request a change from supervised to collaborative status by submitting verification of at least three years of clinical practice supervised by a licensed physician and provide proof of current malpractice liability insurance. This change will allow the physician assistant to work as a collaborative or supervised physician assistant.

**B.** A physician assistant may request a change from collaborative to supervised status by submitting a supervising physician form to the board.

[16.10.15.14 NMAC - N, 1/16/2018]

#### **16.10.15.15 INTERIM AND TRAINING PERMITS:**

**A.** Interim permits are issued to qualified applicants who have completed the application process and complied with all other licensure requirements except certification by the NCCPA or other certifying agency approved by the board.

**(1)** Physician assistants not currently certified by NCCPA or other certifying agency approved by the board, have a one-time grace period of one year from the date of graduation from a program approved by ARC-PA or its successor agency to become certified.

**(2)** Interim permits expire at the end of the one year grace period. Upon expiration of the interim permit the physician assistant may no longer practice, but may reapply upon certification by NCCPA or other certifying agency approved by the board.

**B.** Training permits may be issued to qualified applicants, regardless of certification status by NCCPA or other certifying agency approved by the board, who have completed the application process and who have not been actively and continuously in clinical practice for the two years prior to application and who are required by the board to undertake appropriate retraining prior to licensure or reinstatement. A training permit shall be valid for one year and may not be renewed.

[16.10.15.15 NMAC - Rp, 16.10.15.10 NMAC, 1/16/2018]

#### **16.10.15.16 SCOPE OF PRACTICE:**

**A.** Unless otherwise provided by law, physician assistants may provide medical services within the scope of the physician assistants' education and experience.

**B.** A physician assistant may assist a designated supervising physician or collaborating physician in an inpatient or surgical health care institution within the institution's bylaws or policies including act as a first surgical assistant in the performance of surgery, when permitted by the institution's bylaws or regulations.

[16.10.15.16 NMAC - Rp, 16.10.15.13 NMAC, 1/16/2018]

**16.10.15.17 PRACTICE LIMITATIONS:**

Practice limitations are determined by the supervising physician's or specialty and practice setting in addition to the physician assistant's education and training.

[16.10.15.17 NMAC - Rp, 16.10.15.14 NMAC, 1/16/2018]

**16.10.15.18 LICENSE EXPIRATION, RENEWAL, CHANGE OF STATUS:**

**A.** Physician assistant licenses expire on March 1 of the year following expiration of certification by NCCPA or other certifying agency approved by the board. To avoid additional penalty fees, a completed renewal application, accompanied by the required fees, proof of current certification of NCCPA or other certifying agency approved by the board, and other documentation must be submitted through the online renewal system, post-marked or hand-delivered on or before March 1 of the expiration year. A New Mexico physician assistant license that has not been renewed by March 1 of the renewal year will remain temporarily active with respect to medical practice until June 1 of the renewal year at which time, the board shall suspend the license for non-renewal and the status shall be changed to lapsed.

**B.** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal application if one has not been received prior to license expiration.

**C.** Renewal applications postmarked or hand-delivered after March 1 but prior to April 15 must be accompanied by the completed renewal application, proof of current certification of NCCPA or other certifying agency approved by the board, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

**D.** Renewal applications postmarked or hand-delivered on or after April 16 but prior to May 30 must be accompanied by the completed renewal application, proof of current certification of NCCPA or other certifying agency approved by the board, the renewal fee and late fee indicated in 16.10.9.9 NMAC.

**E.** A physician assistant who has not passed the NCCPA recertification exam or been recertified by another certifying agency approved by the board, prior to the date of license expiration may apply to the board for an emergency deferral of the requirement. A designee of the board may grant deferrals of up to one year.

**(1)** A physician assistant who is granted an emergency deferral shall pay the renewal fee and additional late fee indicated in 16.10.9.9 NMAC.

**(2)** The license of a physician assistant who is granted an emergency deferral shall expire two years after the original renewal date, regardless of the duration of the emergency deferral.

**F.** The board shall suspend for non-renewal and change the status to lapsed on June 1 of the renewal year, the license of any physician assistant who has failed within 90 days after the license renewal date to renew their license, or to change the license status, or to pay all required fees, or to comply with the boards certification requirements, or to provide required documentation, or to request an emergency deferral.

**G.** At the time of license renewal a physician assistant may request a status change.

**(1)** A license that is placed on inactive status requires payment of a fee as defined in 16.10.9.9 NMAC. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.16 NMAC.

**(2)** On request, a license may be placed on retired status. There is no charge for this change in status. A retired license is not valid for practice in New Mexico and such license may not subsequently be reinstated. A physician assistant with a retired license who chooses to reinstate the license must re-apply as a new applicant.

**(3)** A physician assistant who does not wish to renew the active license in New Mexico and will voluntarily allow the license to lapse may inform the board of the wish not to renew. A voluntarily lapsed license is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of 16.10.15.17 NMAC.

**H.** Reinstatement within two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current certification by NCCPA or other certifying agency approved by the board.

**I.** Reinstatement after two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a reinstatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

**J.** Reinstatement applications will be subject to a one-time nationwide and statewide criminal history screening.

**(1)** Reinstatement applications will be processed pending the completion of the statewide criminal history screening and may be granted while the screening still pending.

**(2)** If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

**K.** Additional continuing medical education requirements. The specific continuing medical education requirements set forth at 16.10.15 NMAC shall be satisfied for license renewal. Proof of satisfaction of these requirements shall be submitted directly to the board.

[16.10.15.18 NMAC - Rp, 16.10.15.16 NMAC, 1/16/2018]

**16.10.15.19 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION:**

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a physician assistant license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 or its equivalent with their application.

[16.10.15.19 NMAC - Rp, 16.10.15.17 NMAC, 1/16/2018]

**16.10.15.20 EXEMPTION FROM LICENSURE:**

**A.** A physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the committee on allied health education and accreditation or by its successor shall be exempt from licensure while functioning as a physician assistant student.

**B.** A physician assistant employed by the United States government and who works on land or in facilities owned or operated by the United States government or a physician assistant who is a member of the reserve components of the United States and on official orders or performing official duties as outlined in the appropriate regulation of that branch.

[16.10.15.20 NMAC - Rp, 16.10.15.15 NMAC, 1/16/2018]

#### **16.10.15.21 PROVISIONS FOR PHYSICIAN ASSISTANT LICENSURE DURING A DECLARED DISASTER:**

The board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board will determine the length of time the emergency provisions will be in effect for each major disaster that results in applications for a federal emergency license.

**A. Federal emergency license.** The board may waive specific requirements in Subsections B and D of 16.10.15.9 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area.

**B. License expiration.** Initial federal emergency licenses shall be valid for not less than three months or more than fifteen months. Licenses shall be renewed on March 1 following the date of issue, pursuant to 16.10.15.18 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. At the time a federal emergency license is approved for renewal it will be transferred to a full medical license.

**C. License renewal.** The temporary federal emergency license may be renewed one time for a period of not more than twelve months with a prorated fee of \$75.00, provided the federal emergency is still in effect.

[16.10.15.22 NMAC – N/E, 4/17/2020]

### **PART 16: ADMINISTERING, PRESCRIBING AND DISTRIBUTION OF MEDICATIONS**

#### **16.10.16.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.16.1 NMAC - Rp 16.10.16.1 NMAC, 9/10/2019]

#### **16.10.16.2 SCOPE:**

This part applies to physician assistants.

[16.10.16.2 NMAC - 16.10.16.2 NMAC, 9/10/2019; A, 3/24/2020]

#### **16.10.16.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.16.3 NMAC - 16.10.16.3 NMAC, 9/10/2019]

**16.10.16.4 DURATION:**

Permanent.

[16.10.16.4 NMAC - 16.10.16.4 NMAC, 9/10/2019]

**16.10.16.5 EFFECTIVE DATE:**

September 10, 2019 unless a later date is cited at the end of a section.

[16.10.16.5 NMAC - 16.10.16.5 NMAC, 9/10/2019]

**16.10.16.6 OBJECTIVE:**

This part sets forth the manner in which a physician assistant may prescribe, administer, dispense and distribute dangerous drugs.

[16.10.16.6 NMAC - 16.10.16.6 NMAC, 9/10/2019]

**16.10.16.7 DEFINITIONS:**

**A. "Administer"** means to apply a drug directly to the body of a patient by any means.

**B. "Dispense"** means to deliver a drug directly to a patient and includes the mixing, labeling and repackaging of a drug from a bulk or original container.

**C. "Distribute"** means to administer or supply to a patient under the direct care of the distributing physician assistant prepared or repackaged drugs or the manufacturer's original container(s), containing a quantity suitable for the prescribed treatment or condition.

**D. "Established physician assistant-patient relationship"** means a relationship between a physician assistant and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician assistant involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

**E. "Physician assistant"** means a health professional who is licensed by the board to practice as a physician assistant.

**F. "Prescribe"** means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written or electronic order signed by the prescriber, bearing the name and address of the prescriber, license classification, the name and date of birth of the patient, the name of the drug prescribed, direction for use and the date of issue.

[16.10.16.7 NMAC - 16.10.16.7 NMAC, 9/10/2019]

#### **16.10.16.8 PRESCRIBING, ADMINISTERING, DISPENSING AND DISTRIBUTING DANGEROUS DRUGS:**

**A.** Physician assistants may prescribe, administer, dispense and distribute dangerous drugs; including Schedule II-V controlled substances, where there is an established physician assistant-patient relationship. Physician assistants must comply with all other state and federal laws regulating prescribing, administering, dispensing and distributing dangerous drugs including Schedule II-V controlled substances.

**B.** A physician assistant may only provide pharmaceuticals within the extent of their scope of practice and training. Physician assistants may not provide dangerous drugs to individuals for other than those that they have a physician assistant-patient relationship.

[16.10.16.8 NMAC - 16.10.16.8 NMAC, 9/10/2019]

### **PART 17: MANAGEMENT OF MEDICAL RECORDS**

#### **16.10.17.1 ISSUING AGENCY:**

New Mexico Medical Board hereafter called the board.

[16.10.17.1 NMAC - N, 7/1/06]

#### **16.10.17.2 SCOPE:**

This part governs the use management of medical records that are created and maintained as part of the practice of a physician who has physical possession or ownership of the records.

[16.10.17.2 NMAC - N, 7/1/06]

#### **16.10.17.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.17.3 NMAC - N, 7/1/06]

**16.10.17.4 DURATION:**

Permanent.

[16.10.17.4 NMAC - N, 7/1/06]

**16.10.17.5 EFFECTIVE DATE:**

July 1, 2006, unless a later date is cited at the end of a section.

[16.10.17.5 NMAC - N, 7/1/06]

**16.10.17.6 OBJECTIVE:**

This part establishes requirements and procedures for management of medical records.

[16.10.17.6 NMAC - N, 7/1/06]

**16.10.17.7 DEFINITIONS:**

**A. "Electronic medical billing"** means all data defined in Subsection D of this section that is kept by computer hard drive or disk, server hard drives or other media which is printer capable upon request.

**B. "Electronic medical records"** means all information contained in Subsection E of this section that is kept by computer hard drive or disk, server hard drives or other media, which is printer capable upon request.

**C. "Group practice"** means an association of providers who practice jointly. Providers need not be of the same specialty; however, they shall practice under a common entity. Group practice does not include any government agency or non-profit organization that employs providers.

**D. "Medical billing"** means all data kept by a physician to procure payment including, but not limited to, claims processing, forms, submissions, correspondence, and accounting ledgers.

**E. "Medical record"** means all information maintained by a physician relating to the past, present or future physical or mental health of a patient, and for the provision of health care to a patient. This information includes, but is not limited to: the physician's notes; reports and summaries; x-rays and laboratory results; other diagnostic test results. A patient's complete medical record includes information generated and maintained by the physician, as well as information provided to the physician by the patient, by any other physician who has consulted with or treated the patient, and other information acquired by the physician about the patient in connection with the provision

of health care to the patient. Medical record does not include medical billing, insurance forms or correspondence related thereto.

**F. "Established physician- or physician assistant-patient relationship"** means a relationship between a physician or physician assistant and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician or physician assistant involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

**G. "Psychotherapy notes"** means notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes exclude information that is found in the medical record, including medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date. To meet the definition of psychotherapy notes, the information must be separated from the rest of the individual's medical record.

[16.10.17.7 NMAC - N, 7/1/06; A, 1/1/09]

#### **16.10.17.8 RELEASE OF MEDICAL RECORDS:**

Physicians must provide complete copies of medical records to a patient or to another physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the physician should act as the patient's advocate and work to facilitate the patient's request for records.

**A.** Medical records may not be withheld because an account is overdue or a bill for treatment, medical records, or other services is owed.

**B.** A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is not more than \$30 for the first 15 pages, and \$0.25 per page thereafter. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Physicians charging for the

cost of reproduction of medical records shall give consideration to the ethical and professional duties owed to other physicians and their patients.

**C.** Psychotherapy notes must be maintained separately from the patient's medical record, and may be withheld from the patient. The patient does not have the right to read, amend or have a copy of psychotherapy notes. Release of psychotherapy notes to other health care providers requires express authorization from the patient.

[16.10.17.8 NMAC - N, 7/1/06; A, 1/1/09]

#### **16.10.17.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:**

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current physician to the new treating physician. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating physician.

**A.** Whenever possible, active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice. The method of notification is established in Subsection C of this section.

**B.** The executor of the physician's estate or his designee shall notify patients within at least thirty (30) days after the death of the physician and indicate how to obtain patient records from the closed practice. The method of notification is established in Subsection C of this section.

**C.** Notification may be satisfied using any of the following methods:

(1) by placing a notice in at least one newspaper in the local practice area; notice should advise patients where their medical records will be stored; notice should include any pertinent information the patient may need for obtaining or transferring the records, including the name, mailing address and telephone number of a contact person with access to the stored records; notification should run a minimum of two times per month for three months to reach a maximum number of patients; or

(2) by written or electronic mail; or

(3) by individual correspondence to the patient's last known physical or electronic mail address.

**D.** A physician or physician group should not withhold patient lists or other information from a departing physician that is necessary for notification of patients.

**E.** Patients of a physician who leaves a group practice must be notified the physician is leaving, notified of the physician's new address and offered the opportunity to have their medical records transferred to the departing physician at his new practice.

**F.** When a practice is sold, all active patients must be notified that the physician is transferring the practice to another physician or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another physician or entity of their choice.

**G.** When a physician closes a practice and the practice retains an inventory of drugs, contact the board of pharmacy for proper disposition, inventory, or inspection in accordance with the Pharmacy Act, the Drug Device and Cosmetic Act, and the Controlled Substances Act.

**H.** A physician or group practice shall develop a procedure for closing a practice and patient notification in the event a physician becomes incompetent or deceased. This procedure shall be available upon request by the board.

**I.** Notification shall also be sent to the board office within at least thirty (30) days before closing by electronic mail, facsimile, or letter.

[16.10.17.9 NMAC - N, 7/1/06; A, 1/1/09]

#### **16.10.17.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS:**

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes a violation of 61-6-15.D(33). Physicians must provide every patient with a written copy of their policy or their employer's policy for medical record retention, maintenance and destruction.

**B.** Written medical record policy shall include:

- (1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;
- (2) how the records can be obtained or transferred;
- (3) how long the records will be maintained before they are destroyed; and
- (4) cost of obtaining copies of records, and of recovering records/transferring records.

**C.** Electronic medical record policy shall include:

- (1) responsible entity/agent to obtain records, requests for transfer of records, telephone number and mailing address;
- (2) how the records can be obtained or transferred;
- (3) how long the records will be maintained before they are destroyed or purged;
- (4) a data backup plan, disaster recovery plan and storage which ensures retrievability into reasonably usable form on a timely basis upon any request; and
- (5) transfer of data via electronic file with appropriate safeguards to ensure patient confidentiality.

**D.** Physicians must retain medical records that they own for at least ten (10) years after the date of last treatment or the time frame set by state or federal insurance laws or by medicare and medicaid regulation. Medical records for patients who are minors must be retained until the date that the patient is twenty-one (21) years old. If a physician converts hard copies of medical records to electronic medical records, the hard copy shall be retained by the physician for a minimum of thirty (30) days after electronic transfer has occurred.

**E.** Physicians shall retain medical billing information for at least two (2) years after the date of last treatment.

**F.** The board adopts the ethical standards for medical record retention and maintenance set forth in the latest published version of the "*code of medical ethics current opinions with annotations*" of the council on ethical and judicial affairs of the American medical association. Physicians have an obligation to retain patient records which may reasonably be of value to a patient. Beyond the time frame established in Subsection D of this section, medical considerations are the primary basis for deciding how long to retain medical records. In deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time. For example, operative notes, chemotherapy records and immunization records must remain part of the patient's chart.

**G.** Destruction of medical records must be such that confidentiality is maintained. Records must be destroyed by shredding, incinerating (where permitted) or by other method of permanent destruction, including purging of medical records from a computer hard drive, server hard drive or other computer media or disk in accordance with existing practices for data deletion then available.

**H.** A log must be kept of all charts destroyed, including the patient's name and date of record destruction in accordance and under the same time frame established in Subsection D of this section.

[16.10.17.10 NMAC - N, 7/1/06; A, 1/1/09]

**PART 18: [RESERVED]**

**PART 19: QUALIFICATIONS AND LICENSURE FOR ANESTHESIOLOGIST ASSISTANTS**

**16.10.19.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.19.1 NMAC - N, 8/11/01; A, 10/5/03]

**16.10.19.2 SCOPE:**

This part applies anesthesiologist assistants and their supervising anesthesiologists.

[16.10.19.2 NMAC - N, 8/11/01]

**16.10.19.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Anesthesiologist Assistants Act, Session Laws of 2001, Ch. 311, Sections 1 through 11.

[16.10.19.3 NMAC - N, 8/11/01]

**16.10.19.4 DURATION:**

Permanent.

[16.10.19.4 NMAC - N, 8/11/01]

**16.10.19.5 EFFECTIVE DATE:**

8/11/01, unless a later date is cited at the end of a section.

[16.10.19.5 NMAC - N, 8/11/01; A, 9/21/09]

**16.10.19.6 OBJECTIVE:**

This part regulates the licensing and practice of anesthesiologist assistants and their supervision by anesthesiologists.

[16.10.19.6 NMAC - N, 8/11/01]

**16.10.19.7 DEFINITIONS:**

**A. "Lapsed"** means a license that has not been renewed by September 30 of the expiration year and has been suspended for non-renewal. A license that has lapsed is not valid for practice in New Mexico.

**B. "Military service member"** means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

**C. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for an anesthesiologist assistant license pursuant to section 16.10.19.10. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

**D. "Supervising anesthesiologist"** means an anesthesiologist currently and actively licensed in the state of New Mexico who meets the requirements of the act, who will function as the supervisor of the anesthesiologist assistant, and whose application to do so is accepted by the board.

**E. "Suspended for non-renewal"** means a license that has not been renewed by September 30 of the expiration year, and has at the discretion of the board, been lapsed.

[16.10.19.7 NMAC - N, 8/11/01; A, 9/21/09; A, 10/16/13]

#### **16.10.19.8 QUALIFICATIONS FOR LICENSURE:**

**A.** Completion of a graduate level training program for anesthesiologist assistants accredited by the committee on allied health education and accreditation (CAHEA) of the American medical association or its successor agency.

**B.** Successful completion of the certification examination of the national commission on certification of anesthesiologist assistants (NCCAA).

**C.** Current ACLS certification.

**D.** Be of good moral and professional character.

**E.** Not have had a anesthesiologist assistant registration or license refused, suspended, or revoked by any other state for reasons that relate to the ability to perform skillfully and safely.

[16.10.19.8 NMAC - N, 8/11/01]

#### **16.10.19.9 LICENSURE PROCESS:**

Each applicant for licensure as an anesthesiologist assistant shall submit the required fees as defined in Subsection A of 16.10.9.10 NMAC and following documentation.

**A.** A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one year from the date of receipt.

**B.** Two letters of recommendation from board certified anesthesiologists licensed to practice medicine in the United States who have served as a supervisor of the applicant or anesthesiologist assistant program directors who have personal knowledge of the applicant's moral character and competence to practice. Letters of recommendation must be sent directly to the board from the individual recommending the applicant.

**C.** Verification of licensure in all states where the applicant holds or has held a license to practice as an anesthesiologist assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s). Verification must include an original seal; attest to current status, issue date, license number, and all other related information.

**D.** Applicants may be required to personally appear before the board or the board's designee for an interview and may present original documents, as the board requires.

**E.** The initial license is valid until July 1 of the next odd-numbered year.

[16.10.19.9 NMAC - N, 8/11/01; A, 10/16/13]

#### **16.10.19.10 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION:**

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.19.10 NMAC - N, 8/11/01; A, 1/20/03; A, 10/5/03; A, 9/21/09; 16.10.19.10 NMAC - N, 10/16/13]

#### **16.10.19.11 SUPERVISION REQUIREMENTS:**

**A.** Pursuant to Session Laws of 2001, Ch. 311, Section 9, an anesthesiologist may not supervise more than three anesthesiologist assistants, except in emergency cases. An anesthesiologist shall not supervise, except in emergency cases, more than four anesthesia providers if at least one is an anesthesiologist assistant.

**B.** The supervising anesthesiologist shall submit written notice of intent to supervise an anesthesiologist assistant on forms prescribed by the board. These forms must be submitted and approved before the anesthesiologist assistant begins work. Supervising anesthesiologists who are notifying the board of their intent to supervise an anesthesiologist assistant with less than one year of experience will include a plan for providing enhanced supervision during the first year of practice.

**C.** An anesthesiologist assistant shall only work under the supervision of an anesthesiologist approved by the board.

**D.** Failure of the supervising anesthesiologist to comply with the Medical Practice Act and the rules may result in denial of approval for current or future anesthesiologist assistant supervision.

**E.** Except in cases of emergency, the supervising anesthesiologist must be present in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, and the presence of the supervising anesthesiologist must be documented in the patient record.

**F.** The supervising anesthesiologist must be present within the operating suite and immediately available to the operating room when an anesthesiologist assistant is performing anesthesia procedures.

**G.** The supervising anesthesiologist shall ensure that all activities, functions, services and treatment measures are properly documented in writing and that all anesthesia records are reviewed, countersigned and dated.

[16.10.19.11 NMAC - Rn, & A, 16.10.19.10 NMAC, 10/16/13]

#### **16.10.19.12 TEMPORARY DELEGATION OF SUPERVISION:**

For periods of time not to exceed fourteen days a supervising anesthesiologist may delegate supervisory responsibilities to another anesthesiologist who meets the same requirements specified under "definitions" in the act and who is familiar with the rules governing the supervision of an anesthesiologist assistant.

[16.10.19.12 NMAC - Rn, 16.10.19.11 NMAC, 10/16/13]

#### **16.10.19.13 RESPONSIBILITY OF ANESTHESIOLOGIST ASSISTANT:**

**A.** To identify themselves to patients and others as an anesthesiologist assistant, and to wear a nametag or other identification when on duty clearly stating that they are an anesthesiologist assistant.

**B.** Register annually with the board on or before July 1.

**C.** Work only when under the supervision of a board approved anesthesiologist, or as delegated under the provisions of 16.10.19.11 NMAC.

**D.** Immediately report to the supervising anesthesiologist any unexpected or adverse peri-operative events, or incidents when the prescribed anesthetic deviates from its expected course.

**E.** Assure that except in cases of emergency, the supervising anesthesiologist is present in the operating room during induction of a general or regional anesthetic and during emergence from a general anesthetic, and the presence of the supervising anesthesiologist is documented in the patient record.

**F.** Practice within the defined scope of authority and all provisions of Session Laws of 2001, Ch. 311, Sections 1 through 11.

[16.10.19.13 NMAC - Rn, 16.10.19.12 NMAC, 10/16/13]

#### **16.10.19.14 LICENSE EXPIRATION AND RENEWAL:**

**A.** Anesthesiologist assistant licenses expire on July 1 of each odd-numbered year. A New Mexico anesthesiologist assistant license that has not been renewed by July 1 of the renewal year will remain temporarily active with respect to medical practice until September 30 of the renewal year at which time, at the discretion of the board, the license may be suspended for non-renewal and the status changed to lapsed. Primary supervising anesthesiologist will be notified.

**B.** A completed renewal application, post-marked on or before July 1 of the renewal year, shall include the required fees as defined in Subsection B of 16.10.9.10 NMAC and certification of required continuing education.

**C.** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal application if one has not been received.

**D.** Renewal applications postmarked or hand-delivered after July 1 will be subject to late penalties as defined in Subsection D of 16.10.9.10 NMAC.

**E.** The board may suspend for non-renewal and change the status to lapsed, on October 1 of the renewal year, the license of any anesthesiologist assistant who has failed within ninety days after the license renewal date either to renew their license, or to change the license status, or to pay all required fees, or to comply with NCCAA certification requirements, or to provide required documentation.

[16.10.19.14 NMAC - Rn, 16.10.19.13 NMAC, 10/16/13]

#### **16.10.19.15 INACTIVE STATUS AND REINSTATEMENT:**

**A.** Upon request an anesthesiologist assistant may place the license on inactive status. Licensing or renewal fees already paid to the board will not be refunded, regardless of the date of the status change. A license placed in inactive status does not require payment of renewal fees.

**B.** An anesthesiologist assistant with a license in inactive status may not practice as an anesthesiologist assistant.

**C.** Re-instatement within two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of current competence.

**D.** Re-instatement after two years. An inactive, lapsed, voluntarily lapsed or suspended license may be placed on active status upon completion of a re-instatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board. Applicants may be required to personally appear before the board or the board's designee for an interview.

[16.10.19.15 NMAC - Rn, 16.10.19.14 NMAC, 10/16/13]

#### **16.10.19.16 CONTINUING EDUCATION:**

**A.** Proof of forty hours of continuing education is required for each bi-annual renewal.

**B.** Current certification in advanced cardiac life support is also required for license renewal and the hours spent in refresher courses count as part of the required education hours.

**C.** Required continuing education will be prorated during the initial licensing period. Individuals licensed less than one year will require no continuing education for the initial renewal. Individuals licensed more than one year, but less than two years must submit proof of twenty hours of continuing education, including ACLS certification.

[16.10.19.16 NMAC - Rn, 16.10.19.15 NMAC, 10/16/13]

#### **16.10.19.17 SEVERABILITY:**

If any provision of this rule is determined to be void or illegal by a court of law or other authority, the remainder of the rule shall remain in full force and effect notwithstanding.

[16.10.19.17 NMAC - Rn, 16.10.19.16 NMAC, 10/16/13]

## **PART 20: POLYSOMNOGRAPHIC TECHNOLOGISTS: LICENSURE AND PRACTICE REQUIREMENTS**

### **16.10.20.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.20.1 NMAC - N, 1/1/10]

### **16.10.20.2 SCOPE:**

This part applies to polysomnographic technologists, polysomnographic technicians, polysomnographic trainees, polysomnographic students and other persons who may provide sleep-related services.

[16.10.20.2 NMAC - N, 1/1/10]

### **16.10.20.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to and in accordance with the Polysomnography Practice Act, Sections 61-6B-1 through 61-6B-10 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.20.3 NMAC - N, 1/1/10]

### **16.10.20.4 DURATION:**

Permanent.

[16.10.20.4 NMAC - N, 1/1/10]

### **16.10.20.5 EFFECTIVE DATE:**

January 1, 2010, unless a different date is cited at the end of a section.

[16.10.20.5 NMAC - N, 1/1/10]

### **16.10.20.6 OBJECTIVE:**

This part regulates the licensing and practice of polysomnographic technologists.

[16.10.20.6 NMAC - N, 1/1/10]

### **16.10.20.7 DEFINITIONS:**

**A. "AASM"** means the American academy of sleep medicine, a national organization that establishes accreditation standards for sleep centers and sleep labs.

**B. "AAST"** means the American association of sleep technologists, a national organization that provides continued development of educational, technical and clinical assistance related to the sleep technology profession.

**C. "ABSM"** means the American board of sleep medicine, a national organization developed for the purpose of establishing and maintaining standards of board certification for physicians practicing sleep disorders medicine.

**D. "Act"** means the Polysomnography Practice Act.

**E. "Board"** means the New Mexico medical board.

**F. "BRPT"** means the board of registered polysomnographic technologists, a national agency for credentialing polysomnographic technologists.

**G. "CAAHEP"** means the commission on accreditation of allied health education programs, a national agency for accrediting polysomnographic educational programs.

**H. "Committee"** means the polysomnography practice advisory committee.

**I. "Contact hour"** means sixty (60) minutes of actual instructional time. Breaks, meals, evaluations, wrap-up or registration are not included when calculating hours.

**J. "Direct supervision"** means that the polysomnographic technologist providing supervision shall be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

**K. "Expired"** means a license was not renewed by the biennial renewal date of March 1 or at the end of the grace period of May 1, and the licensee is **not** eligible to practice within the state of New Mexico.

**L. "General supervision"** means that the polysomnographic procedure is provided under a physician's direction and control, but the physician's presence is not required during the performance of the procedure.

**M. "Grace period"** means the sixty (60) day period following the renewal date when a polysomnographic technologist may renew a license that was not renewed by the renewal date, by paying the required renewal fee, the late fee and meeting the renewal requirements. A licensee may continue to practice during the grace period.

**N. "Grace period status"** means the license has not been renewed by the renewal date and has not expired.

**O. "License"** means an authorization issued by the board that permits a person to engage in the practice of polysomnography in the state.

**P. "Licensed provider"** means a licensed physician, licensed physician assistant, licensed certified nurse practitioner or licensed psychologist.

**Q. "Licensee"** means a person licensed by the board to engage in the practice of polysomnography.

**R. "Military service member"** means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

**S. "NBRC"** means the national board for respiratory care, a national organization that credentials respiratory therapists, and provides an examination to further certify respiratory therapists as sleep disorders specialists.

**T. "Physician"** means an individual licensed by the New Mexico medical board and an individual licensed by the New Mexico board of osteopathic medical examiners.

**U. "Polysomnographic student"** means a person who is enrolled in an educational program that is accredited by the commission on accreditation of allied health education programs, as provided in Section 5 [61-6B-5 NMSA 1978] of the Polysomnography Practice Act and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program.

**V. "Polysomnographic technician"** means a person who has graduated from an accredited educational program described in Section 5 of the Polysomnography Practice Act but has not yet passed the national certifying examination given by the board of registered polysomnographic technologists, who has obtained a temporary permit from the board and who may provide sleep-related services under the general supervision of a licensed physician.

**W. "Polysomnographic technologist"** means a person who is credentialed by the board of registered polysomnographic technologists and is licensed by the board to engage in the practice of polysomnography under the general supervision of a licensed physician.

**X. "Polysomnographic trainee"** means a person who is enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine and who may provide sleep-related services under the direct supervision of a polysomnographic technologist or licensed physician as a part of the person's educational program.

**Y. "Practice of polysomnography"** means the performance of diagnostic and therapeutic tasks, under the general supervision of a licensed physician, including:

**(1)** monitoring and recording physiologic activity and data during the evaluation or treatment of sleep-related disorders, including sleep-related respiratory disturbances, by applying appropriate techniques, equipment and procedures, including:

**(a)** continuous or bi-level positive airway pressure titration on patients using a nasal or oral or a nasal and oral mask or appliance that does not extend into the trachea or attach to an artificial airway, including the fitting and selection of a mask or appliance and the selection and implementation of treatment settings;

**(b)** supplemental low-flow oxygen therapy that is less than ten liters per minute using nasal cannula or continuous or bi-level positive airway pressure during a polysomnogram;

**(c)** capnography during a polysomnogram;

**(d)** cardiopulmonary resuscitation;

**(e)** pulse oximetry;

**(f)** gastroesophageal pH monitoring;

**(g)** esophageal pressure monitoring;

**(h)** sleep staging, including surface electroencephalography, surface electrooculography and surface submental electromyography;

**(i)** surface electromyography;

**(j)** electrocardiography;

**(k)** respiratory effort monitoring, including thoracic and abdominal movement;

**(l)** respiratory plethysmography;

**(m)** arterial tonometry and additional measures of autonomic nervous system tone;

**(n)** snore monitoring;

**(o)** audio or video monitoring;

**(p)** body movement monitoring;

- (q) nocturnal penile tumescence monitoring;
- (r) nasal and oral airflow monitoring;
- (s) body temperature monitoring; and
- (t) use of additional sleep-related diagnostic technologies;

(2) observing and monitoring physical signs and symptoms, general behavior and general physical response to polysomnographic evaluation or treatment and determining whether initiation, modification or discontinuation of a treatment regimen is warranted;

(3) analyzing and scoring data collected during the monitoring described in Paragraphs (1) and (2) of this subsection for the purpose of assisting a licensed provider in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease or actual or anticipated somatic dysfunction;

(4) implementing a written or verbal order from a licensed provider that requires the practice of polysomnography;

(5) educating a patient regarding the treatment regimen that assists that patient in improving the patient's sleep; and

(6) initiating and monitoring treatment, under the orders of a licensed provider, for sleep-related breathing disorders by providing continuous positive airway pressure and bi-level positive airway pressure devices and accessories, including masks that do not extend into the trachea or attach to an artificial airway, to a patient for home use, together with educating the patient about the treatment and managing the treatment.

**Z. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a polysomnography license pursuant to section 16.10.20.12. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

**AA. "Renew"** means to begin again after an interval of time; to make valid again for a further period.

**BB. "Renewal date"** means the deadline date upon which the license shall be made valid again for another period of time without a penalty fee.

**CC. "SDS"** means sleep disorders specialist.

**DD. "Sleep-related services"** means acts performed by polysomnographic technicians, polysomnographic trainees, polysomnographic students and other persons permitted to perform these services under the Polysomnography Practice Act, in a setting described in 16.10.20.17 NMAC, that would be considered the practice of polysomnography if performed by a polysomnographic technologist.

[16.10.20.7 NMAC - N, 1/1/10; A, 10/11/13]

#### **16.10.20.8 LICENSURE REQUIREMENTS:**

The board may issue a license to an applicant who fulfills the following requirements.

**A.** Completes an application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one (1) year from the date of receipt. While an application is pending, the applicant is responsible for providing the board with any changes to the submitted information or to the applicant's oath. Applications shall require the following documentation:

- (1) demographic information of the applicant;
- (2) educational history;
- (3) employment history;
- (4) professional references;
- (5) examination information;
- (6) certification information;
- (7) other state licensure information;
- (8) professional practice questions;
- (9) applicant's oath;
- (10) passport-quality color photograph taken within six (6) months prior to filing the application; approximate size 2 x 2 inches, head and shoulders only, full face, front view, plain white or off-white background, standard photo stock paper; and, scanned or computer-generated photographs should have no visible pixels or dots; and
- (11) applicant's signature.

**B.** Each applicant for licensure as a polysomnographic technologist shall submit the required fees as established in 16.10.9 NMAC.

**C.** Verification of licensure in all states or territories where the applicant holds or has held a license to engage in the practice of polysomnography, or other health care profession, shall be sent directly to the board by the other state board(s) by United States postal service, facsimile, or in an electronic format acceptable by the board, and shall attest to the current status, issue date, license number, and other information requested and contained on the form.

**D.** Passage of the national certifying examination given by the BRPT or an examination equivalent to the BRPT examination, or the NBRC-SDS examination, as approved by the board. Proof of passage shall be sent directly to the board by the certifying entity or in an electronic format acceptable by the board. The board may accept hard copy by United States postal service, facsimile or electronic mail.

**E.** Proof that the applicant has been credentialed by the BRPT or by another national entity equivalent to the BRPT, as approved by the board.

**F.** Proof of high school graduation, evidenced by a copy of diploma or general educational development (GED) certificate, or other format acceptable by the board. Proof of a degree from a level of higher education is also acceptable.

**G.** Proof that the applicant holds current certification of successful completion of formal training in basic cardio pulmonary resuscitation and in the application and management of an automated external defibrillator.

**H.** Verification of all work experience in the last five (5) years since graduation, if applicable, provided directly to the board from the employer, by letter, or in an electronic format acceptable by the board, or on forms provided by the board.

**I.** Proof of graduation means official transcripts from an educational program or a certificate acceptable to the board. The applicant shall make arrangements for official transcripts to be sent directly to the board by the educational institution. If official transcripts are not available due to school closure, destroyed records, etc., the applicant shall provide satisfactory evidence to the board that the required polysomnographic educational program has been met for consideration on a case-by-case basis. Proof of completion of a polysomnographic education program, evidenced by:

**(1)** graduation from a polysomnographic educational program that is accredited by the CAAHEP; or

**(2)** graduation from a respiratory care educational program that is accredited by the CAAHEP and completion of the curriculum for a polysomnography or sleep diagnostic specialist certificate established and accredited by the committee on accreditation for respiratory care of the CAAHEP; or

(3) graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the CAAHEP; or

(4) successful completion of a sleep technologist educational program that is accredited by the AASM. This option shall expire two (2) years after the date upon which at least three (3) polysomnographic technologist educational programs in New Mexico have been accredited by the CAAHEP.

**J. Waiver of the educational requirement.** The board may waive the educational requirements set forth in Subsections F and I of this section for an individual continuously engaged in the practice of polysomnography on or before July 1, 2008, pursuant to Subsection B of Section 61-6B-5 of the Polysomnography Practice Act. To be eligible for this waiver, applicants shall meet all other requirements set forth in this section.

**K. Personal interview.** Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or a member of the polysomnographic practice advisory committee designated by the board to evaluate that person's qualifications for a license.

**L. Initial license period.** The applicant who has met all the requirements for licensure shall be issued an initial license for a period of not more than twenty-four (24) months or less than thirteen (13) months, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1.

**M. Initial license expiration.** Polysomnographic technologist licenses shall be renewed biennially on March 1 as established in 16.10.20.12 NMAC.

**N. State and national criminal history screening.** All applicants for initial licensure as a polysomnographic technologist are subject to a state and national criminal history screening at their expense. All applicants shall submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and background screening fee at the time of application.

(1) Applications for licensure shall not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications shall be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act or the Polysomnography Practice Act, the applicant/licensee shall be notified to submit copies of legal documents and other related information to the

board, which shall make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. Questions of felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession need to be resolved satisfactorily. If the prior conviction does not relate to employment in the profession, the board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole, payment of fees, community service or any other court ordered sanction.

[16.10.20.8 NMAC - N, 1/1/10; A, 10/11/13]

#### **16.10.20.9 POLYSOMNOGRAPHIC TECHNICIAN TEMPORARY PERMIT:**

**A.** The board may issue a temporary permit to a polysomnographic technician who has met all licensure requirements established in 16.10.20.8 NMAC, except passage of the national certifying examination.

**B.** The temporary permit is valid for no more than two (2) years from the date of the technician's graduation from an accredited program as described in 16.10.20.8 NMAC.

**C.** A temporary permit may be renewed for a period of one (1) year beyond the original two (2) year expiration date and upon payment of the temporary permit renewal fee as established in 16.10.9 NMAC. This permit may only be renewed one (1) time.

**D.** The holder of a temporary permit may not provide sleep-related services until the temporary permit is received and is on file at the principal place of practice.

**E.** The holder of a temporary permit shall work under the general supervision of a New Mexico licensed physician. The polysomnographic technician is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) name of the supervising physician;
- (2) specific program or protocol of work planned;
- (3) address of the sponsoring institution or organization where the work will be performed; and
- (4) an affidavit from the supervising physician attesting to the qualifications of the polysomnographic technician and the purpose of the functions the technician will perform while on a temporary permit.

[16.10.20.9 NMAC - N, 1/1/10; A, 10/11/13]

#### **16.10.20.10 NON-LICENSED PERSONS PROVIDING SLEEP-RELATED SERVICES:**

Non-licensed persons shall meet the following requirements before providing any sleep-related services.

**A.** A polysomnographic technician shall obtain a temporary permit as established in 16.10.20.9 NMAC.

**B.** A polysomnographic trainee shall provide proof to the board that the trainee is enrolled in an accredited sleep technologist educational program accredited by the AASM. Acceptable proof consists of a letter or other acceptable affirmation, as approved by the board, that the trainee is enrolled in the program.

**C.** A polysomnographic student may provide uncompensated sleep-related services under the direct supervision of a polysomnographic technologist, or a licensed physician, as a part of the student's educational program while actively enrolled in a polysomnographic educational program that is accredited by the CAAHEP.

**D.** A person credentialed in one (1) of the health-related fields accepted by the BRPT, who may provide sleep-related services while obtaining the clinical experience necessary to be eligible to take the national certification examination, shall work under the direct supervision of a licensed polysomnographic technologist, or a licensed physician, for a period of up to one (1) year.

**E.** Polysomnographic trainees, polysomnographic students, and persons credentialed in one of the health-related fields accepted by BRPT shall give notice to the board that the person is working under the direct supervision of a licensed polysomnographic technologist or licensed physician and are responsible to provide the board the following documentation on forms provided by the board:

- (1) name of the supervising polysomnographic technologist or physician;
- (2) specific program or protocol of work planned;
- (3) address of the sponsoring institution or organization where the work will be performed; and
- (4) an affidavit from the supervising polysomnographic technologist or physician attesting to the qualifications of the trainee and the purpose of the functions the trainee will perform.

**F.** Respiratory care practitioners licensed under the Respiratory Care Act are exempt from this requirement.

[16.10.20.10 NMAC - N, 1/1/10; A, 10/11/13]

#### **16.10.20.11 ENDORSEMENT:**

An applicant for licensure as a polysomnographic technologist who is licensed under the laws of another U.S. jurisdiction where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction, shall file an application as established in 16.10.20.8 NMAC.

[16.10.20.11 NMAC - N, 1/1/10]

**16.10.20.12 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION:**

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.20.12 NMAC - N, 1/1/10; 16.10.20.12 NMAC - N, 10/11/13]

**16.10.20.13 LICENSE EXPIRATION AND RENEWAL:**

**A.** Polysomnographic technologist licenses shall be renewed biennially on March 1st. An initial license may be issued for a period of up to two (2) years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1st.

**B.** Failure to receive the renewal notice shall not relieve the licensee from the responsibility of renewing the license by the renewal date. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to inform the board of accurate address information and to make a timely request for the renewal application if one has not been received prior to March 1st.

**C.** Renewal applications postmarked, hand-delivered or completed on-line, on or prior to March 1 shall require the following documentation:

**(1)** completion of a renewal application either electronically on-line or on the form provided by the board; the renewal form shall include the following data:

**(a)** demographic information of the licensee;

**(b)** license number;

**(c)** questions regarding practice information since the last renewal; and

(d) signature of the licensee if renewing on a hard-copy form; if renewing electronically on-line, no signature is required;

(2) receipt of the renewal fee as established in 16.10.9 NMAC; and

(3) proof of twenty (20) BRPT or AAST approved continuing education contact hours during each biennial renewal cycle; continuing education contact hours acceptable to BRPT for recertification are acceptable for license renewal.

**D.** Renewal applications postmarked or hand-delivered after March 1 and prior to May 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in subparagraphs (a)-(d) of paragraph (1) of Subsection C of Section 12 above;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the late fee as established in 16.10.9 NMAC; and

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours during each biennial renewal cycle; continuing education contact hours acceptable to BRPT for recertification are acceptable for license renewal.

**E.** March 1 through April 30 is considered the grace period following the renewal date during which a licensee may continue to provide services and renew with a late fee.

**F.** When renewal applications are received on or after May 1, the license shall have expired, and the licensee shall not be eligible to provide polysomnography services in New Mexico.

**G.** When a retiree reenters the practice of polysomnography, the retiree shall submit the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in subparagraphs (a)-(d) of paragraph (1) of Subsection C of Section 12 above;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) proof of ten (10) BRPT or AAST approved continuing education contact hours for each year since the license was placed in retired status, with a maximum of fifty (50) hours required regardless of the number of years retired;

(4) any other proof of competency as may be requested by the board or the board's designee; and

(5) proof of current BRPT certification.

**H. Verification of continuing education.** Each polysomnographic technologist renewing a license shall attest that the required hours of continuing education have been obtained. The board shall randomly select renewal applications for audit to verify compliance. The board may audit continuing education records at any time. The licensee shall maintain continuing education records for one (1) year following the renewal cycle in which they were earned. Any polysomnographic technologist who fails to respond to a continuing education audit shall be considered in violation of Paragraph (23) of Subsection D of Section 61-6-15 of the Medical Practice Act, failure to provide the board with information requested by the board. Potential sanctions include fines, letters of reprimand, license suspension or revocation.

[16.10.20.13 NMAC - Rn & A, 16.10.20.12 NMAC, 10/11/13]

#### **16.10.20.14 REINSTATEMENT:**

A licensee with an expired license may apply for reinstatement.

**A.** Requirements for reinstatement of an expired license *within* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC; and

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours completed within the previous two (2) years; continuing education contact hours acceptable to BRPT for recertification are acceptable for license reinstatement.

**B.** Requirements for reinstatement of an expired license *after* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC;

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours as required for license renewal;

(5) proof of ten (10) BRPT or AAST approved continuing education contact hours for each year the license has been expired, with a maximum of fifty (50) hours required regardless of the number of years expired;

(6) proof of current BRPT certification; and

(7) any other proof of competency as may be requested by the board or the board's designee; additionally, the board may require the former licensee to reapply as a new applicant.

[16.10.20.14 NMAC - Rn & A, 16.10.20.13 NMAC, 10/11/13]

#### **16.10.20.15 RETIRED STATUS:**

A licensee who wishes to retire from the practice of polysomnography shall notify the board, in writing, of the retirement effective date. To reenter the practice of polysomnography, the retiree shall meet the requirements as established in Subsection G of 16.10.20.12 NMAC of this part and any other proof of competency as may be requested by the board or the board's designee.

[16.10.20.15 NMAC - Rn, 16.10.20.14 NMAC, 10/11/13]

#### **16.10.20.16 DISCIPLINARY AND COMPLAINT PROCESS:**

Disciplinary actions and complaints shall be processed as established in 16.10.5 and 16.10.6 NMAC.

[16.10.20.16 NMAC - Rn, 16.10.20.15 NMAC, 10/11/13]

#### **16.10.20.17 USE OF ORAL APPLIANCES:**

A licensed dentist shall make or direct the making and use of any oral appliance used in the practice of polysomnography. A licensed dentist shall evaluate the structures of a patient's oral and maxillofacial region for purposes of fitting the appliance.

[16.10.20.17 NMAC - Rn, 16.10.20.16 NMAC, 10/11/13]

#### **16.10.20.18 LOCATIONS FOR THE PRACTICE OF POLYSOMNOGRAPHY:**

A. The practice of polysomnography shall only take place in the following locations:

- (1) a hospital;
- (2) a stand-alone sleep laboratory;
- (3) a sleep center; or

(4) a patient's home.

**B. Scoring of data and the education of patients** may take place in settings other than in a hospital, sleep laboratory, sleep center or patient's home.

[16.10.20.18 NMAC - Rn, 16.10.20.17 NMAC, 10/11/13]

#### **16.10.20.19 GENERAL PROVISIONS:**

**A. Address changes.** Any licensee whose address changes shall notify the board of the address change within thirty (30) calendar days of the change. Address changes shall be provided in writing, by facsimile, letter, or electronic mail. Telephone notification shall be followed with written notification.

**B. Display of license.** Licensees shall display the license in the office or place in which the licensee practices. The license shall be displayed in a location clearly visible to patients. At secondary places of employment, documentation of the license shall be verified by photocopy with a note attached indicating where the original license is posted.

#### **C. Identification badge required.**

(1) Polysomnographic technicians shall wear a badge that appropriately identifies the person as a polysomnographic technician.

(2) Polysomnographic trainees shall wear a badge that appropriately identifies the person as a polysomnographic trainee.

(3) Polysomnographic students shall wear a badge that appropriately identifies the person as a polysomnographic student.

(4) Other clinicians shall wear a badge that appropriately identifies the person and their clinical capacity.

**D. Inspection of a business premise.** Random inspection of a business premise may be conducted in order to verify compliance with the Polysomnography Practice Act.

[16.10.20.19 NMAC - Rn, 16.10.20.18 NMAC, 10/11/13]

## **PART 21: GENETIC COUNSELORS: LICENSURE AND PRACTICE REQUIREMENTS**

### **16.10.21.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.21.1 NMAC - N, 1/1/09]

**16.10.21.2 SCOPE:**

This part applies to genetic counselors.

[16.10.21.2 NMAC - N, 1/1/09]

**16.10.21.3 STATUTORY AUTHORITY:**

This part governs the licensing and practice of genetic counselors in New Mexico and is promulgated pursuant to and in accordance with the Genetic Counseling Act, Sections 61-6A-1 through 61-6A-10 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.21.3 NMAC - N, 1/1/09]

**16.10.21.4 DURATION:**

Permanent.

[16.10.21.4 NMAC - N, 1/1/09]

**16.10.21.5 EFFECTIVE DATE:**

January 1, 2009, unless a different date is cited at the end of a section.

[16.10.21.5 NMAC - N, 1/1/09]

**16.10.21.6 OBJECTIVE:**

This part regulates the licensing and practice of genetic counselors.

[16.10.21.6 NMAC - N, 1/1/09]

**16.10.21.7 DEFINITIONS:**

**A. "ABGC"** means the American board of genetic counseling, a national agency for certification and recertification of genetic counselors, or its successor agency.

**B. "ABMG"** means the American board of medical genetics, a national agency for certification and recertification of genetic counselors and geneticists with medical or other doctoral degrees, or its successor agency.

**C. "Accreditation"** means any of the following definitions.

**(1) Full accreditation** indicates that the program meets the minimum standards established by ABGC to provide a well-rounded and adequate educational and clinical program for students. ABGC full accreditation is typically conferred for a period of six (6) years and reaccreditation is typically conferred for a period of up to eight (8) years, although ABGC reserves the right to provide probationary or shorter-term accreditation.

**(2) Probationary accreditation** indicates that, while the program continues to have accredited status, it does not meet the minimum standards for providing educational and clinical training for students and has generalized problems that appear to interfere with optimal education of the candidates. This program must make public its probationary status.

**(3) Provisional accreditation** applies to a new program that has completed and submitted an application for becoming an accredited program. Such a program must meet the minimum criteria for providing the master's degree in genetic counseling, as established by ABGC. Provisionally accredited programs must apply for full accreditation within three (3) years of matriculating their first class. If the program does not attain full accreditation (or accreditation with restrictions), provisional accreditation will be revoked. Probationary accreditation is not an option for a provisionally accredited program.

**D. "Active candidate status"** means a graduate who has applied to sit for the ABGC certification examination according to published eligibility requirements in effect for that examination cycle, and who has been approved as a candidate for that examination cycle based on review and approval of his/her credentials by the ABGC credentials committee.

**E. "Active status"** means a license that is current and authorizes the licensee to engage in the practice of genetic counseling.

**F. "Alternate supervising genetic counselor or physician"** means a genetic counselor or physician who holds a current unrestricted New Mexico license, is a cosignatory on the notification of supervision, and agrees to act as the supervising genetic counselor or physician in the absence of the designated genetic counselor or physician.

**G. "Board"** means the New Mexico medical board.

**H. "Certification"** means successful completion of a comprehensive general genetics examination and genetic counseling specialty examination administered by ABGC or ABMG, or after 2009, successful completion of the ABGC certification examination.

**I. "Contact hour"** means sixty (60) minutes of actual instructional time. Breaks, meals, evaluations, wrap-up or registration are not included when calculating hours.

**J. "Effective supervision"** means the oversight, control, and direction of services rendered by a genetic counselor practicing on a temporary license. Supervision shall be provided by a licensed genetic counselor or physician. Elements of effective supervision include:

- (1) on-going availability of direct communication, either face-to-face or by electronic means;
- (2) active, ongoing review of the genetic counselor's services, as appropriate, for quality assurance and professional support;
- (3) delineation of a predetermined plan for emergency situations, including unplanned absence of the primary supervising genetic counselor or physician; and
- (4) identification and registration of an alternate supervising genetic counselor or physician, as appropriate to the practice setting.

**K. "Expired"** means a license was not renewed by the biennial renewal date of March 1 or at the end of the grace period of May 1, and the licensee is not eligible to practice within the state of New Mexico.

**L. "Genetic counseling"** means a communication process that may include:

(1) estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition or congenital abnormality. Genetic counseling may involve:

(a) obtaining and analyzing the complete health history of an individual and family members;

(b) reviewing pertinent medical records;

(c) evaluating the risks from exposure to possible mutagens or teratogens;  
and

(d) determining appropriate genetic testing or other evaluations to diagnose a condition or determine the carrier status of one (1) or more family members;

(2) helping an individual, family or health care provider to:

(a) appreciate the medical, psychological and social implications of a disorder, including its features, variability, usual course and management options;

(b) learn how genetic factors contribute to a disorder and affect the chance for occurrence of the disorder in other family members;

(c) understand available options for coping with, preventing or reducing the chance of occurrence or recurrence of a disorder;

(d) select the most appropriate, accurate and cost-effective methods of diagnosis; and

(e) understand genetic or prenatal tests, coordinate testing for inherited disorders and interpret complex genetic test results; and

(3) facilitating an individual's or family's:

(a) exploration of the perception of risk and burden associated with a genetic disorder; and

(b) adjustment and adaptation to a disorder or the individual's or family's genetic risk by addressing needs for psychological, social and medical support.

**M. "Genetic counselor"** means a person licensed pursuant to the Genetic Counseling Act to engage in the practice of genetic counseling.

**N. "Grace period"** means the sixty (60) day period following the renewal date when a genetic counselor may renew a license that was not renewed by the renewal date, by paying the required renewal fee, the late fee and meeting the renewal requirements. A licensee may continue to practice during the grace period.

**O. "Grace period status"** means the license has not been renewed by the renewal date and has not expired.

**P. "Military service member"** means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

**Q. "NSGC"** means the national society of genetic counselors, a professional membership society promoting the genetic counseling profession as an integral part of health care delivery and offering educational programs.

**R. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applies for a genetic counselor license pursuant to section 16.10.21.12. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

**S. "Renew"** means to begin again after an interval of time; to make valid again for a further period.

**T. "Renewal date"** means the deadline date upon which the license shall be made valid again for another period of time without a penalty fee.

[16.10.21.7 NMAC - N, 1/1/09; A, 10/16/13]

**16.10.21.8 LICENSURE REQUIREMENTS:**

The board may issue a license to an applicant who fulfills the following requirements.

**A.** Completes an application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one (1) year from the date of receipt. While an application is pending, the applicant is responsible for providing the board with any changes to the submitted information or to the applicant's oath. Applications shall require the following documentation:

- (1) demographic information of the applicant;
- (2) educational history;
- (3) employment history;
- (4) professional references;
- (5) examination information;
- (6) certification information;
- (7) other state licensure information;
- (8) professional practice questions;
- (9) applicant's oath;
- (10) passport-quality color photograph taken within six (6) months prior to filing the application; approximate size 2 x 2 inches, head and shoulders only, full face, front view, plain white or off-white background, standard photo stock paper; and, scanned or computer-generated photographs should have no visible pixels or dots; and
- (11) applicant's signature.

**B.** Each applicant for licensure as a genetic counselor shall submit the required fees as established in 16.10.9 NMAC.

**C.** Verification of licensure in all states or territories where the applicant holds or has held a license to engage in the practice of genetic counseling, or other health care

profession, shall be sent directly to the board by the other state board(s), and shall include a raised seal, attest to the current status, issue date, license number, and other information requested and contained on the form.

**D.** Proof of certification from the ABGC, ABMG or as approved by the board, shall be sent directly to the board by the certifying entity. The board may accept hard copy by United States postal service, facsimile or electronic mail.

**E.** Verification of all work experience in the last five (5) years since graduation, if applicable, provided directly to the board from the employer, by letter or on forms provided by the board.

**F.** Proof of graduation from a genetic counseling educational program, evidenced by:

**(1)** a master's degree from a genetic counseling training program prior to 1997; or

**(2)** a master's degree from a genetic counseling training program that is accredited by the ABGC, or an equivalent program as approved by the board; or

**(3)** a doctoral degree from a medical genetics training program that is accredited by the ABMG, or an equivalent program as determined by the board.

**(4)** Proof of graduation means official transcripts from a college or university. The applicant shall make arrangements for official transcripts to be sent directly to the board by the educational institution. If official transcripts are not available due to school closure, destroyed records, etc., the applicant shall provide satisfactory evidence to the board that the required genetic counseling educational program has been met for consideration on a case-by-case basis.

**G. Initial license period.** The applicant who has met all the requirements for licensure shall be issued an initial license for a period of not more than twenty-four (24) months or less than thirteen (13) months, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1.

**H. Initial license expiration.** Genetic counselor licenses shall be renewed biennially on March 1 as established in Section 12 of this part.

**I.** All applicants for initial licensure as a genetic counselor are subject to a state and national criminal history screening at their expense. All applicants shall submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and background screening fee at the time of application.

(1) Applications for licensure shall not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications shall be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee shall be notified to submit copies of legal documents and other related information to the board, which shall make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. Questions of felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession need to be resolved satisfactorily. If the prior conviction does not relate to employment in the profession, the board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole, payment of fees, community service or any other court ordered sanction.

[16.10.21.8 NMAC - N, 1/1/09; A, 10/16/13]

#### **16.10.21.9 TEMPORARY INTERIM LICENSE:**

**A.** The board may issue a temporary license to an applicant who has met all licensure requirements except the certification requirement and has active candidate status conferred by ABGC.

**B.** The temporary license is valid until the results of the next scheduled ABGC certification examination are available and a license is issued or denied.

**C.** The temporary license automatically expires three (3) months after the month the ABGC certification examination is offered.

**D.** A temporary license may be renewed as long as the applicant maintains active candidate status. Individuals with active candidate status must sit for the examination within the first two consecutive exam cycles for which they are eligible following graduation. Individuals who fail to do this will need to apply again as new applicants.

**E.** The temporary license may be renewed upon a first failure of the certification examination. The temporary license may be renewed a maximum of two (2) consecutive times within a five (5) year period following the first temporary licensure and upon payment of the temporary license renewal fee as established in 16.10.9 NMAC.

**F.** The temporary licensee may not practice genetic counseling until the temporary license is received and is on file at the principal place of practice.

**G.** The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician. The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) name of the supervising genetic counselor or physician;
- (2) specific program or protocol of work planned;
- (3) address of the sponsoring institution or organization where the work will be performed; and
- (4) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the temporary licensee will perform.

[16.10.21.9 NMAC - N, 1/1/09; A, 10/16/13]

#### **16.10.21.10 TEMPORARY TEACHING OR ASSISTING LICENSE:**

A one (1) year temporary license may be issued to a person providing the following services.

**A.** The genetic counselor is in New Mexico temporarily to assist a New Mexico resident licensed to practice genetic counseling or to teach. The genetic counselor has met the requirements for New Mexico licensure, or is licensed in another U.S. jurisdiction or country where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction or country; if the genetic counselor is from a U.S. jurisdiction or country that does not have licensure for genetic counselors, the genetic counselor would need to meet the requirements for a New Mexico license as established in Section 8 of this part.

**B.** The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician.

**C.** The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) completed temporary license application;
- (2) temporary teaching or assisting license fee as established in 16.10.9 NMAC;
- (3) written justification for a temporary license;

(4) verification of licensure, if licensed, in another U.S. jurisdiction, as established in Subsection 8 of this part;

(5) name of the supervising genetic counselor or physician;

(6) specific program or protocol of work planned;

(7) address of the sponsoring institution or organization where the work will be performed; and

(8) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the temporary licensee will perform.

[16.10.21.10 NMAC - N, 1/1/09; A, 10/16/13]

#### **16.10.21.11 ENDORSEMENT:**

An applicant for licensure as a genetic counselor who is licensed under the laws of another U.S. jurisdiction where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction, shall file an application as established in Section 8 of this part. An endorsement applicant may also apply for a temporary license as established in Section 10 of this part and not be restricted to teaching or assisting.

[16.10.21.11 NMAC - N, 1/1/09]

#### **16.10.21.12 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION:**

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a medical license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 with their application.

[16.10.21.12 NMAC - N, 1/1/09; 16.10.21.12 NMAC - N, 10/16/13]

#### **16.10.21.13 LICENSE EXPIRATION AND RENEWAL:**

**A.** Genetic counselor licenses shall be renewed biennially on March 1st. An initial license may be issued for a period of up to two (2) years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1st.

**B.** Failure to receive the renewal notice shall not relieve the licensee from the responsibility of renewing the license by the renewal date. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to inform the board of accurate address information and to make a timely request for the renewal application if one has not been received prior to March 1st.

**C.** Renewal applications postmarked or hand-delivered on or prior to March 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board; the renewal form shall include the following data:

(a) demographic information of the licensee;

(b) license number;

(c) questions regarding practice information since the last renewal; and

(d) signature of the licensee;

(2) receipt of the renewal fee as established in 16.10.9 NMAC; and

(3) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

**D.** Renewal applications postmarked or hand-delivered after March 1 and prior to May 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in Subparagraphs (a)-(d) of Paragraph (1) of Subsection C of 16.10.21.12 NMAC;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the late fee as established in 16.10.9 NMAC; and

(4) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

**E.** March 1 through April 30 is considered the grace period following the renewal date during which a licensee may continue to provide services and renew with a late fee.

**F.** When renewal applications are received on or after May 1, the license shall have expired, and the licensee shall not be eligible to provide genetic counseling services in New Mexico.

[16.10.21.13 NMAC - Rn & A, 16.10.21.12 NMAC, 10/16/13]

#### **16.10.21.14 REINSTATEMENT:**

A licensee with an expired license may apply for reinstatement.

**A.** Requirements for reinstatement of an expired license *within* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC; and
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours within the previous two (2) years.

**B.** Requirements for reinstatement of an expired license *after* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC;
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours as required for license renewal;
- (5) proof of twenty (20) NSGC or ABGC approved continuing education contact hours for each year the license has been expired; and
- (6) any other proof of competency as may be requested by the board or the board's designee. Additionally, the board may require the former licensee to reapply as a new applicant.

[16.10.21.14 NMAC - Rn & A, 16.10.21.13 NMAC, 10/16/13]

#### **16.10.21.15 DISCIPLINARY AND COMPLAINT PROCESS:**

Disciplinary actions and complaints shall be processed as established in 16.10.5 and 16.10.6 NMAC.

[16.10.21.15 NMAC - Rn, 16.10.21.14 NMAC, 10/16/13]

## **PART 22: NATUROPATHIC DOCTORS: LICENSURE AND PRACTICE REQUIREMENTS**

### **16.10.22.1 ISSUING AGENCY:**

New Mexico Medical Board hereafter called the board, with the recommendations of the naturopathic doctor's advisory council, hereafter called the council.

[16.10.22.1 NMAC - N, 3/24/2020]

### **16.10.22.2 SCOPE:**

This part applies to naturopathic doctors and their licensure and practice requirements.

[16.10.22.2 NMAC - N, 3/24/2020]

### **16.10.22.3 STATUTORY AUTHORITY:**

This part establishes the rules of practice and procedure governing the practice of naturopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Naturopathic Doctor's Practice Act, Chapter 61, Article 12G-4 NMSA 1978 and the Medical Practice Act Chapter 61, Article 6 NMSA 1978.

[16.10.22.3 NMAC - N, 3/24/2020]

### **16.10.22.4 DURATION:**

Permanent.

[16.10.22.4 NMAC - N, 3/24/2020]

### **16.10.22.5 EFFECTIVE DATE:**

March 24, 2020, unless a later date is cited at the end of a section.

[16.10.22.5 NMAC - N, 3/24/2020]

### **16.10.22.6 OBJECTIVE:**

This part regulates the licensing and practice of naturopathic doctors.

[16.10.22.6 NMAC - N, 3/24/2020]

## 16.10.22.7 DEFINITIONS:

### A. Definitions beginning with "A":

(1) **Approved naturopathic medical educational program** means a naturopathic educational program accredited by the council of naturopathic medical education and approved by the board with recommendation of the council, pursuant to Chapter 61, Article 12G-4 NMSA 1978 of the Naturopathic Doctors' Practice Act.

(2) **"Association"** means an entity that is approved by the American association of naturopathic physicians, which entity represents the interests of naturopathic doctors in the state.

**B. Definitions beginning with "B": Board** means the New Mexico medical board established pursuant to the Medical Practice Act Chapter 61, Article 6 NMSA 1978.

### C. Definitions beginning with "C":

(1) **"Clinical laboratory procedure"** means the use of commonly used diagnostic modalities consistent with naturopathic practice including venipuncture, ordering of radiographic diagnostics and following guidance of radiologist interpretation of diagnostic imaging techniques including but not limited to ultrasounds, MRI's and CT scans and examination of body orifices, excluding endoscopy and colonoscopy.

(2) **"Collaboration"** means the process by which a licensed physician and a naturopathic doctor jointly contribute to the health care and treatment of patients; provided that:

(a) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(b) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered by the collaborating naturopathic doctor.

(3) **"Controlled substance"** means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act Chapter 30, Article 31 NMSA 1978.

(4) **"Council"** means the naturopathic doctors' advisory council;

(5) **"Criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional

supervision, collected by state or federal criminal justice agencies or their political subdivisions and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states or their political subdivisions.

**(6) "Criminal history screening"** means a criminal history background investigation of an applicant for a naturopathic doctor license, or a licensee applying for licensure renewal, through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

**D. Definitions beginning with "D":**

**(1) "Dangerous drug"** has the same meaning as set forth in Section 26-1-2 NMSA 1978.

**(2) "Drug"** has the same meaning as set forth in Section 26-1-2 NMSA 1978.

**E. Definitions beginning with "E": "Expired"** means a license was not renewed by the triennial renewal date of March 1 or at the end of the grace period of May 1, and licensee is not eligible to practice within the state of New Mexico after the grace period ends.

**F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G": "Grace period"** means the 60 day period granted after the triennial licensing term has expired on March 1, during which time the status of the licensee shall remain in effect as long as the renewal payment and late fee is made during the grace period, and all other renewal requirements are met on or before May 1. A licensee may continue to practice as long as the payment of the required renewal fee and the late fee are received, and all other renewal requirements are met on or before May 1 of the triennial period.

**H. Definitions beginning with "H":**

**(1) "Homeopathic medicine"** means a system of medicine based on the use of infinitesimal doses of substances capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopoeia of the United States.

**(2) "Hygiene"** means the use of preventive techniques, including personal hygiene, asepsis, public health and safety.

**I. Definitions beginning with "I": [RESERVED]**

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L": [RESERVED]**

**(1) "Laboratory examination" means:**

- (a)** phlebotomy;
- (b)** a clinical laboratory procedure;
- (c)** an orifical examination;
- (d)** a physiological function test; or
- (e)** a screening or test that the board has authorized naturopathic doctors to perform, when indicated, which results are interpreted by the naturopathic doctor;

**(2) "Legend drug" means an FDA approved prescription drug including an unscheduled dangerous drug.**

**(3) "License" means a license issued by the board to an individual pursuant to the Naturopathic Doctors' Practice Act and board rules authorizing that individual to practice naturopathic medicine in the state;**

**(4) "Licensee" means a naturopathic doctor licensed by the board to practice naturopathic medicine in the state;**

**M. Definitions beginning with "M":**

**(1) "Major disaster" means a declaration of a major disaster by the federal emergency management agency (FEMA).**

**(2) "Military service member" means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the National Guard.**

**(3) "Minor office procedure" means minor surgical care and procedures, including:**

**(a)** surgical care incidental to superficial laceration, lesion or abrasion, excluding surgical care to treat a lesion suspected of malignancy;

**(b)** the removal of foreign bodies located in superficial structures, excluding the globe of the eye;

(c) trigger point therapy on myofascial trigger points including manual techniques, insertion of filiform needles or trigger point injections directly in the trigger point; excluding deep muscle bodies, visceral, and distal acupuncture meridian therapy;

(d) dermal stimulation;

(e) allergy testing and treatment;

(f) the use of antiseptics and topical or local anesthetics;

(g) wound care;

(h) diabetic foot care; and

(i) injections as referenced in Subparagraph (h) of Paragraph (2) of Subsection A of 16.10.22.11 NMAC.

#### **N. Definitions beginning with "N":**

(1) **"Naturopathic doctor"** means an individual licensed pursuant to the Naturopathic Doctors' Practice Act as a naturopathic doctor to practice naturopathic medicine in the state;

(2) **"Naturopathic medicine"** means:

(a) a system of health care for the prevention, diagnosis and treatment of human health conditions, injury and disease;

(b) the promotion or restoration of health; and

(c) the support and stimulation of a patient's inherent self-healing processes through patient education and the use of naturopathic therapies and therapeutic substances;

(3) **"Naturopathic physical medicine"** means the use of one or more of the following physical agents in a manner consistent with naturopathic medical practice on a part or the whole of the body, by hand or by mechanical means, in the resolution of a human ailment or conditions:

(a) air;

(b) water;

(c) heat;

(d) cold;

- (e) sound;
- (f) light;
- (g) electromagnetism;
- (g) colon hydrotherapy;
- (i) soft tissue therapy;
- (j) joint mobilization;
- (k) therapeutic exercise; or
- (l) naturopathic manipulation within the scope of the naturopathic doctor's education;

**(4) "Naturopathic therapy" means the use of:**

- (a) naturopathic physical medicine;
- (b) suggestion;
- (c) hygiene;
- (d) a therapeutic substance;
- (e) a legend drug;
- (f) nutrition and food science;
- (g) homeopathic medicine;
- (h) a clinical laboratory procedure;
- (i) a minor office procedure; or
- (j) mental health and substance use screening and referral.

**(5) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of food, water, herbs, roots, bark or natural food elements;**

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

(1) **"Prescription"** has the same meaning as set forth in Section 26-1-2 NMSA 1978;

(2) **"Primary care"** means health care provided by a healthcare provider who typically acts as the first contact and principal point of continuing care for patients and coordinates other specialist care or services that the patient may require. Primary care providers are trained in non-specialty internal medicine and pediatrics, family medicine, general internal medicine, geriatrics (gerontology), general obstetrics and gynecology and general pediatrics, and refer to specialists when those services are warranted.

(3) **"Professional examination"** means a competency- based national naturopathic doctor licensing examination administered by the North American board of naturopathic examiners (NABNE), whose board has been nationally recognized to administer a naturopathic examination that represents federal standards of education and training;

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R":**

(1) **"Renewal date"** means the deadline date upon which the license shall be made valid again for another period of time without a penalty fee.

(2) **"Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a naturopathic doctor license pursuant to 16.10.22.20 NMAC. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

**S. Definitions beginning with "S": "Suggestions"** means counseling techniques using: (1) biofeedback, (2) hypnosis, (3) health education, (4) health counseling; or (5) therapeutic lifestyle changes.

**T. Definitions beginning with "T": "Therapeutic substance"** means any of the following exemplified in a standard naturopathic medical text, journal or pharmacopeia: (1) a vitamin, (2) a mineral, (3) a nutraceutical, (4) a botanical medicine, (5) oxygen, (6) a homeopathic medicine, (7) a hormone, (8) a hormonal or pharmaceutical contraceptive device; or, (9) other physiologic substance.

[16.10.22.7 NMAC- N, 3/24/2020; A/E, 4/17/2020]

**16.10.22.8 COUNCIL DUTIES:**

The council shall develop guidelines for the board to consider for rulemaking with regard to:

- A. regulating the licensure of naturopathic doctors and determining the hours of continuing education units required for maintaining licensure as a naturopathic doctor;
- B. prescribing the manner in which records of examinations and treatments shall be kept and maintained;
- C. establishing standards for professional responsibility and conduct;
- D. identifying disciplinary actions and circumstances that require disciplinary action;
- E. developing a means to provide information to all licensees in the state;
- F. providing for the investigation of complaints against licensees or persons holding themselves out as naturopathic doctors in the state;
- G. providing for the publication of information for the public about licensees and the practice of naturopathic medicine in the state;
- H. providing for an orderly process for reinstatement of a license;
- I. establishing criteria for advertising or promotional materials;
- J. establishing by rule, in accordance with the Naturopathic Doctors' Practice Act:
  - (1) continuing education hours and content;
  - (2) standards for the state jurisprudence examination;
  - (3) schedules for providing licensing examinations and for the issuance of examination results;
  - (4) procedures and standards for reviewing licensing examination scores; and
  - (5) procedures for reviewing transcripts demonstrating completion of the approved naturopathic medical educational program;
- K. the requirements for issuance and renewal of licenses; and
- L. any other matter necessary to implement the Naturopathic Doctors' Practice Act.

[16.10.22.8 NMAC - N, 3/24/2020]

#### **16.10.22.9 QUALIFICATIONS FOR LICENSURE AS A NATUROPATHIC DOCTOR:**

- A. Graduation from an approved naturopathic medical educational program; an approved program shall offer graduate-level, full time didactic and supervised clinical

training; be accredited , or shall have achieved candidacy status for accreditation, by the council on naturopathic medical education or an equivalent federally recognized accrediting body for naturopathic medical programs that is also recognized by the board; and be conducted by an institution, or division of an institution of higher education, that is accredited or is a candidate for accreditation by a regional or national institutional accrediting agency recognized by the United States secretary of education or meets equivalent standards for recognition of accreditation established in rules of the board for medical education programs offered in Canada.

**B.** passed NPLEX Part I (biomedical science examination), NPLEX Part II (core clinical science examination) and NPLEX clinical elective examination in minor surgery and pharmacology;

**C.** passed a state jurisprudence examination;

**D.** demonstrate 20 moral and professional character;

**E.** possess professional liability insurance, 1 million per single claim and 3 million per policy period;

**F.** be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation;

**G.** has not had a license to practice naturopathic medicine or other healthcare license registration or certificate refused, revoked or suspended by any other jurisdiction for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine unless that license, registration or certification has been restored to good standing by that jurisdiction; and

**H.** any other proof of competency as may be requested by the board.

[16.10.22.9 NMAC - N, 3/24/2020]

#### **16.10.22.10 LICENSURE PROCESS:**

Each applicant for a license as a naturopathic doctor shall submit the required fees and following documentation:

**A.** A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one year from the date of receipt.

**B.** Two letters of recommendation from a naturopathic doctor or physician licensed to practice medicine in the United States, who have personal knowledge of the applicant's moral character and competence to practice.

**C.** Verification of licensure in all states where the applicant holds or has held a license to practice as a naturopathic doctor, or other health care profession. Verification must be sent directly to the board from the other state board(s).

**D.** Verification of all work experience in the last two years, if applicable, provided directly to the board.

**E.** Naturopathic medical education verification from an approved program must be provided directly to the board from the degree granting institution.

**F.** Verification of passage of board approved professional examinations must be provided directly to the board from NABNE.

**G.** Verification of passage of a board approved state jurisprudence examination.

**H.** Verification of professional liability insurance.

**I.** All applicants for initial licensure as a naturopathic doctor are subject to a state and national criminal history screening at the applicant's expense.

**(1)** Applications for licensure will not be processed until receipt of the criminal history screening.

**(2)** If the criminal background screening reveals a criminal arrest or charge, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board. Failure to report a criminal arrest or charge is a violation of the Medical Practice Act.

[16.10.22.10 NMAC - N, 3/24/2020]

#### **16.10.22.11 SCOPE OF PRACTICE:**

**A.** A licensee may practice naturopathic medicine to provide primary care, as "primary care" is defined in rules of the board, as follows:

**(1)** in collaboration with a physician licensed pursuant to the Medical Practice Act Chapter 61, Article 6 NMSA 1978 or the Osteopathic Medicine Act Chapter 61, Article 10 NMSA 1978; and

**(2)** in alignment with naturopathic medical education to:

**(a)** perform physical examinations;

**(b)** order laboratory examinations;

**(c)** order diagnostic imaging studies;

(d) interpret the results of laboratory examinations for diagnostic purposes;

(e) order and, based on a radiologist's report, take action on diagnostic imaging studies in a manner consistent with naturopathic training;

(f) prescribe, administer, dispense and order the class of drugs that excludes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors;

(g) after passing a pharmacy examination authorized by rules of the board, prescribe, administer, dispense and order:

(h) administer intramuscular, intravenous, subcutaneous, intra-articular and intradermal injections of substances appropriate to naturopathic medicine;

(i) use routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, intra-articular and intramuscular consistent with the education and training of the naturopathic doctor;

(j) perform naturopathic physical medicine;

(k) employ the use of naturopathic therapy; and

(l) use and prescribe therapeutic devices, barrier contraception, intrauterine devices, hormonal and pharmaceutical contraception and durable medical equipment.

**B.** This does not imply that supervision by a physician is required, rather that professional communication and collaboration is required between all healthcare providers for continuity of care in accordance with HIPAA regulations.

[16.10.22.11 NMAC - N, 3/24/2020]

#### **16.10.22.12 PRACTICE LIMITATIONS:**

A licensee shall not:

**A.** provide care outside of the scope of primary care, as that term is defined in rules of the board;

**B.** perform surgery outside of the scope of minor office procedures permitted in the employment of naturopathic therapy;

**C.** use general or spinal anesthetics;

**D.** administer ionizing radioactive substances for therapeutic purposes;

E. perform a surgical procedure using a laser device;

F. perform a surgical procedure involving any of the following areas of the body that extend beyond superficial tissue:

(1) eye;

(2) ear;

(3) tendon;

(4) nerves;

(5) veins; or

(6) artery;

G. perform a surgical abortion;

H. treat any lesion suspected of malignancy or requiring surgical removal; or

I. perform acupuncture, unless licensed, certified or registered under other laws of this state.

[16.10.22.12 NMAC - N, 3/24/2020]

#### **16.10.22.13 DISCIPLINARY ACTION:**

A. Any violation of these rules may subject the licensee to disciplinary action by the board utilizing the guidelines recommended by the naturopathic advisory council.

B. Any violation of 61-6-15 NMSA 1978 of the Medical Practice Act may subject the licensee to disciplinary action by the board.

[16.10.22.13 NMAC - N, 3/24/2020]

#### **16.10.22.14 LICENSE EXPIRATION, RENEWAL, CHANGE OF STATUS:**

A. Naturopathic doctor's licenses expire on March 1 three years following initial licensure or last renewal. To avoid additional penalty fees, a completed renewal application, accompanied by the required fees, proof of continuing medical education, and other documentation must be submitted via electronic means, post-marked or hand-delivered on or before March 1 of the expiration year. A New Mexico naturopathic doctor's license that has not been renewed by March 1 of the renewal year will remain temporarily active with respect to medical practice until May 1 of the renewal year at

which time, the license is automatically administratively suspended for non-renewal and the status shall be changed to lapsed.

**B.** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to assure the board has accurate address information and to make a timely request for the renewal application if one has not been received prior to license expiration.

**C.** Renewal applications postmarked or hand-delivered after March 1 but prior to April 15 must be accompanied by the completed renewal application, proof of continuing medical education, the renewal fee and late fee indicated in 16.10.9 NMAC.

**D.** Renewal applications postmarked or hand-delivered on or after April 16 but prior to May 1 must be accompanied by the completed renewal application, proof of continuing medical education, the renewal fee and late fee indicated in 16.10.9 NMAC.

**E.** A naturopathic doctor who has not completed the required continuing medical education, prior to the date of license expiration may apply to the board for an emergency deferral of the requirement. A designee of the board may grant deferrals of up to 60 days.

**(1)** A naturopathic doctor who is granted an emergency deferral shall pay the renewal fee and additional late fee indicated in 16.10.9 NMAC.

**(2)** The license of a naturopathic doctor who is granted an emergency deferral shall expire three years after the original renewal date, regardless of the duration of the emergency deferral.

**F.** The board shall suspend for non-renewal and change the status to lapsed on May 2 of the renewal year, the license of any naturopathic doctor who has failed within 60 days after the license renewal date to renew their license, or to change the license status, or to pay all required fees, or to comply with the boards continuing medical education requirements, or to provide required documentation, or to request an emergency deferral.

**G.** At the time of license renewal a naturopathic doctor may request a status change.

**(1)** A license that is placed on inactive status requires payment of a fee as defined in 16.10.9 NMAC. A license in inactive status is not valid for practice in New Mexico but may be reinstated in accordance with the provisions in Subsection H of 16.10.22.14 NMAC and Subsection I of 16.10.22.14 NMAC.

**(2)** On request, a license may be placed on retired status. There is no charge for this change in status. A retired license is not valid for practice in New Mexico and

such license may not subsequently be reinstated. A naturopathic doctor with a retired license who chooses to return to medical practice must re-apply as a new applicant.

**(3)** A naturopathic doctor who does not wish to renew the active license in New Mexico and will voluntarily allow the license to lapse may inform the board of the wish not to renew. A voluntarily lapsed license is not valid for practice in New Mexico but may be reinstated in accordance with the provisions of Subsection H of 16.10.22.14 NMAC and Subsection I of 16.10.22.14 NMAC.

**H.** Reinstatement within two years. An inactive, lapsed, voluntarily lapsed or administratively suspended license may be placed on active status upon completion of a renewal application in which the applicant has supplied all required fees and proof of continuing medical education.

**I.** Reinstatement after two years. An inactive, lapsed, voluntarily lapsed or administratively suspended license may be placed on active status upon completion of a reinstatement application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

**J.** Reinstatement applications will be subject to a one-time nationwide and statewide criminal history screening, at the applicant's expense.

**(1)** Reinstatement applications will not be processed until receipt of the criminal background check.

**(2)** If the nationwide or statewide criminal background screening reveals a felony or a violation of the Medical Practice Act, the licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

[16.10.22.14 NMAC - N, 3/24/2020]

#### **16.10.22.15 CONTINUING MEDICAL EDUCATION HOURS REQUIRED:**

**A.** 75 hours of continuing medical education (CME) are required for all naturopathic doctor licensees during each triennial renewal cycle. CME may be earned at any time during the licensing period, immediately preceding the triennial renewal date. The 75 hours of CME must include:

**(1)** One hour of required CME must be earned by reviewing the naturopathic doctor practice act and these board rules. Naturopathic doctors must certify that they have completed this review at the time they submit their triennial renewal application.

**(2)** Five hours of CME in pain management are required as set forth in Subsections A and B of 16.10.14.11 NMAC and may apply toward the 75 hours required in Subsection A of this section and may be included as part of the required CME hours in either the triennial cycle in which these hours are completed, or the triennial cycle immediately thereafter. Each subsequent triennial renewal cycle shall include five hours of CME in pain management.

**(3)** 10 hours of CME in pharmacology are required and may be applied toward the 75 hours required in Subsection A of this section.

**B.** 10 hours of CME are required annually to maintain an inactive license.

**C.** The board accepts one credit hour for every clock hour of participation in a CME activity. CME credit will be rounded to the nearest quarter hour.

[16.10.22.15 NMAC - N, 3/24/2020]

#### **16.10.22.16 ALLOWED COURSES AND PROVIDERS:**

**A.** The board recognizes any CME course that has been certified by the AMA, AOA, NMOMA, ACCME, ACPE, FNMRA, AANP and NMANP.

**B. POST GRADUATE EDUCATION:** A maximum of 75 credit hours in any three-year reporting period are allowed for participation in a council on naturopathic medical education (CNME) approved postgraduate education program. This category includes CNME approved residencies and fellowships.

**C. ADVANCED DEGREES:** 40 credit hours are allowed for each full academic year of study toward an advanced degree in a medical field or a medically related field as approved by the board.

**D. TEACHING:** One credit hour is allowed for each hour of teaching naturopathic medical students or naturopathic doctors in a CNME approved residency or for teaching in other programs approved by the board for a maximum of 40 credit hours in any three-year reporting period.

**E. PRECEPTORS:** A maximum of 30 hours of credit during a three-year reporting period is acceptable for licensed naturopathic doctors who are acting as preceptors for students enrolled in a naturopathic medical school or as preceptors for students enrolled in a licensed healthcare professional degree program.

**F. PAPERS AND PUBLICATIONS:** 10 hours of credit are allowed for each original medical paper or publication written by a licensee. For acceptance, papers must have been presented to a recognized national, international, regional or state society or organization whose membership is primarily healthcare providers; or must have been published in a recognized medical or medically related journal. Material used in a paper

or publication may be given credit one time. A maximum of 30 hours credit may be claimed during each three-year reporting period.

**G. ADVANCED LIFE SUPPORT:** Credit may be claimed during each three-year reporting period for successful completion of ACLS (advanced cardiac life support), PALS (pediatric advanced life support), ATLS advanced trauma life support, NALS (neonatal advanced life support), and (advanced life support in obstetrics) courses.

**H. EXPERT REVIEW:** Credit may be claimed by naturopathic doctors who provide expert services by reviewing investigation cases for the board. A maximum of 10 credit hours in any three-year reporting period are allowed for providing expert review.

**I. NPLEX:** One credit hour for every clock hour will be given for participating in the naturopathic physicians licensing examination committees for the development and writing of NPLEX examinations.

**J. RESEARCH:** Credit may be given for a maximum of 40 hours of CME in each three year reporting period for research related to the advancement of naturopathic medicine for a recognized educational or medical institution or organization.

**K. PRESENTATIONS:** Credit may be given for a maximum of 20 hours of CME in a three year reporting period for professional level, health related presentations offered to the public with an emphasis on disease self management and preventive behaviors.

[16.10.22.15 NMAC - N, 3/24/2020]

#### **16.10.22.16 VERIFICATION OF CME:**

**A.** Each naturopathic doctor renewing a license shall attest that they have obtained the required hours of CME. The board shall select renewal applications for audit to verify completion of acceptable CME. The board may audit CME records at any time. Licensees must maintain full and accurate CME records, including verification of attendance, for a period of at least six years.

**B.** The board, or a designee of the board, may offer any naturopathic doctor who is unable to provide required documentation upon request a settlement in lieu of initiating disciplinary action. Settlements may include a letter of reprimand and a \$500 fine, reportable to the healthcare integrity and protection data bank.

**C.** Any naturopathic doctor who fails to respond to a CME audit constitutes unprofessional and dishonorable conduct for failure to provide the board with information requested by the board. Potential sanctions include fines, letters of reprimand, or license suspension or revocation.

[16.10.22.16 NMAC - N, 3/24/2020]

#### **16.10.22.17 ACCEPTABLE DOCUMENTATION OF CME INCLUDES:**

- A.** Photocopies of original certificates or official letters from course sponsors or online providers.
- B.** Resident and fellowship CME hours must be documented and attested to either by the dean of the medical school, the course director, or an equivalent authority.
- C.** Advanced degree studies must be documented and attested to either by the dean of the medical school, the course director, or an equivalent authority.
- D.** Teaching hours must be documented and attested to either by the dean of the school, the course director, or an equivalent authority.
- E.** Preceptor hours must be documented and attested to either by the dean of the professional school, the course director, or an equivalent authority.
- F.** Papers or publications must be documented with a copy.
- G.** Research verification documentation must include the type of research conducted, purpose and summary of research, dates of participation and disclosure of any fiduciary relationships.
- H.** Presentation credit is determined by actual presentation hours for an initial course or initial seminar offering, and up to three hours for preparation for each hour of the presentation.

[16.10.22.17 NMAC - N, 3/24/2020]

#### **16.10.22.18 CONTINUING MEDICAL EDUCATION APPROVAL:**

**A.** CME providers are any organization or individual offering CME to naturopathic doctors. CME approval requests must consist of educational activities that serve to maintain, develop or increase the knowledge, skills and professional performance and relationships of naturopathic doctors in services for patients, the public and the profession. CME must offer education and skills recognized and accepted by the profession in areas pertaining to research, basic medical sciences, clinical practice, or public health care.

**B.** CME approval submissions will not be considered for programs that:

- (1)** misrepresent or mislead the end result or skill obtained by the education or training offered;
- (2)** are proprietary in nature, promoting exclusive services, companies or products;

- (3) are community service oriented in nature;
- (4) are nonprofessional health related programs presented by a lay person(s);
- (5) are nonprofessional health related programs directed to the lay public;
- (6) are not relevant to the scope of practice of naturopathic medicine.
- (7) pertain to personal-growth/ personal-help;
- (8) pertain to practice building; or
- (9) pertain to medical or insurance billing;

**C. CME Providers (CMEP) must complete and submit a CME approval request prior to advertising or promoting the event.**

**(1) CMEP approval requests must be received by the board at least 12 weeks before the event offering.**

**(2) CMEP approval requests must be submitted on an application form provided by the Board and contain the following:**

- (a) title of the program;**
- (b) syllabus or course outline for all offerings in the program;**
- (c) pharmacology and pain management hours must be delineated in each request with supporting documentation;**
- (d) date(s);**
- (e) start and end time for individual presentations;**
- (f) total hours for entire program;**
- (g) location(s) of presentation;**
- (h) each presenter must be a naturopathic doctor, other licensed physician, or other professionally recognized health care provider with expertise in the subject matter; and**
- (i) presenter must disclose to the board and at the beginning of each presentation any fiduciary or other conflict of interests.**

(3) CMEP must maintain attendance records for all approved presentations for a period of six years.

(4) Any changes to an already approved program, including but not limited to, presenter, content, and length of program or sponsorship must be submitted for approval by the board within two weeks of the changes. Any submission received after this time may be retroactively denied approval.

(5) The board reserves the right to decline for consideration programs that are not submitted with adequate documentation.

(6) Approved CMEP's are valid for three years, if there are no substantive changes to the program.

(7) It is the CMEP's responsibility to make a new application on a triennial basis from the date of original approval.

(8) A CMEP that has been submitted to the Board with inaccurate or misleading information may retroactively lose CME approval for the program, even if the program has already occurred.

(9) At its discretion, the board may appoint a member of the board or other designee to audit, by attendance, any program in order to verify appropriateness for approval of CME hours.

(10) If a program has been denied approval, the provider may submit a request for review by the Board with additional substantiating documentation.

[16.10.22.18 NMAC - N, 3/24/2020]

#### **16.10.22.19 EMERGENCY DEFERRAL:**

A naturopathic doctor unable to fulfill the CME requirements prior to the date of license expiration may apply to the board for an emergency deferral of the requirements by submitting a request in writing no later than March 1 of the renewal year. A designee of the board may grant a deferral of up to 60 days. In case of illness or other documented circumstances, the board may grant an additional extension of time in which the necessary credits may be earned. The request must be made in writing prior to the end of the emergency deferral and must be approved by the board.

[16.10.22.19 NMAC - N, 3/24/2020]

#### **16.10.22.20 EXPEDITED MEDICAL LICENSURE FOR MILITARY AND SPOUSES LICENSED IN ANOTHER JURISDICTION:**

If a military service member, the spouse of a military service member, or a recent veteran submits an application for a naturopathic doctor license and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the appropriate license as soon as practicable. Any qualified applicant seeking expedited consideration pursuant to this section shall submit a copy of form DD214 or its equivalent or verification of active military status with their application.

[16.10.22.20 NMAC - N, 3/24/2020]

#### **16.10.22.21 EXEMPTION FROM LICENSURE:**

Nothing in the Naturopathic Doctors' Practice Act shall be construed to prohibit or to restrict:

**A.** the practice of a health care profession by an individual who is licensed, certified or registered under other laws of this state and who is performing services within the individual's authorized scope of practice;

**B.** the practice of naturopathic medicine by a student enrolled in an approved naturopathic medical educational program; provided that the practice of naturopathic medicine by a student is performed pursuant to a course of instruction or an assignment from an instructor and under the direct supervision of the instructor who is a licensee or a duly licensed professional in the instructed field;

**C.** any person that sells a vitamin or herb from providing information about the vitamin or herb;

**D.** the practice of naturopathic medicine by persons who are licensed to practice in any other state or district in the United States and who enter this state to consult with a naturopathic doctor of this state; provided that the consultation is limited to examination, recommendation or testimony in litigation; or

**E.** any person or practitioner who is not licensed as a naturopathic doctor from recommending ayurvedic medicine, herbal remedies, nutritional advice, homeopathy or other therapy that is within the scope of practice of the Unlicensed Health Care Practice Act 61-35-1 through 61-35-8 NMSA 1978; provided that the person or practitioner shall not:

**(1)** use a title protected pursuant to 61-12G-10 NMSA 1978 of the Naturopathic Doctors' Practice Act;

**(2)** represent or assume the character or appearance of a licensee; or

**(3)** otherwise use a name, title or other designation that indicates or implies that the person is a licensee.

[16.10.22.21 NMAC - N, 3/24/2020]

**16.10.22.22 OTHER NEW MEXICO MEDICAL BOARD RULES THAT PERTAIN TO THE LICENSURE OF NATUROPATHIC DOCTORS:**

- A. Title 16, Chapter 10, Part 5 - Disciplinary Power of the Board.
- B. Title 16, Chapter 10, Part 6 - Complaint Procedure & Institution of Disciplinary Action.
- C. Title 16, Chapter 10, Part 8 - Medical Ethics.
- D. Title 16, Chapter 10, Part 9 - Fees.
- E. Title 16, Chapter 10, Part 10 - Report of Settlements, Judgements, Adverse Actions & Credentialing Discrepancies.
- F. Title 16, Chapter 10, Part 13 - Delegated Use of Devices and Procedures by Medical Assistants; Cosmetic Injections.
- G. Title 16, Chapter 10, Part 14 - Management of Chronic Pain with Controlled Substances.
- H. Title 16, Chapter 10, Part 17 - Management of Medical Records.

[16.10.22.22 NMAC - N, 3/24/2020]

**16.10.22.23 PROVISIONS FOR NATUROPATHIC DOCTOR LICENSURE DURING A DECLARED DISASTER:**

The board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board will determine the length of time the emergency provisions will be in effect for each major disaster that results in applications for a federal emergency license.

**A. Federal emergency license.** The board may waive specific requirements in Subsections B, D and G of 16.10.22.10 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area.

**B. License expiration.** Initial federal emergency licenses shall be valid for not less than three months or more than fifteen months. Licenses shall be renewed on March 1 following the date of issue, pursuant to 16.10.22.14 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. At the time a federal emergency license is approved for renewal it will be transferred to a full naturopathic doctor license.

**C. License renewal.** The temporary federal emergency license may be renewed one time for a period of not more than twelve months with a prorated fee of \$120.00, provided the federal emergency is still in effect.

[16.10.22.23 NMAC – N/E, 4/17/2020]

# CHAPTER 11: MIDWIVES

## PART 1: GENERAL PROVISIONS [RESERVED]

## PART 2: CERTIFIED NURSE MIDWIVES

### 16.11.2.1 ISSUING AGENCY:

New Mexico Department of Health.

[16.11.2.1 NMAC - Rp, 16.11.2.1 NMAC, 5/7/2024]

### 16.11.2.2 SCOPE:

This rule applies to any person seeking to practice or currently practicing as a certified nurse-midwife in the state of New Mexico.

[16.11.2.2 NMAC - Rp, 16.11.2.2 NMAC, 5/7/2024]

### 16.11.2.3 STATUTORY AUTHORITY:

This rule is authorized by Subsection E of Section 9-7-6 NMSA 1978, Subsection S and Subsection V of Section 24-1-3 NMSA 1978 and Section 24-1-4.1 NMSA 1978.

[16.11.2.3 NMAC - Rp, 16.11.2.3 NMAC, 5/7/2024]

### 16.11.2.4 DURATION:

Permanent.

[16.11.2.4 NMAC - Rp, 16.11.2.4 NMAC, 5/7/2024]

### 16.11.2.5 EFFECTIVE DATE:

May 7, 2024, unless a later date is cited at the end of a section.

[16.11.2.5 NMAC - Rp, 16.11.2.5 NMAC, 5/7/2024]

### 16.11.2.6 OBJECTIVE:

This rule governs the licensure and practice of certified nurse-midwives (CNMs) in New Mexico.

[16.11.2.6 NMAC - Rp, 16.11.2.6 NMAC, 5/7/2024]

### 16.11.2.7 DEFINITIONS:

#### A. Definitions beginning with "A":

- (1) **"ACNM"** means the American college of nurse-midwives.
- (2) **"AMCB"** means American midwifery certification board.
- (3) **"Addiction"** is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opiate or opioid therapy for pain and should not by themselves be considered addiction.
- (4) **"Audit"** means an examination and verification of continuing education and practice documents.

**B. Definitions beginning with "B":** **"Board"** means the certified nurse-midwifery advisory board established under these rules.

#### C. Definitions beginning with "C":

- (1) **"Certified nurse-midwife (CNM)"** means an individual educated in the two disciplines of nursing and midwifery, who is certified by the AMCB or its designee and who is licensed under this rule.
- (2) **"Chronic pain"** means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. For purposes of this rule, chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.
- (3) **"Client"** means any person domiciled, residing, or receiving care, service or treatment from a New Mexico licensed CNM. This includes but is not limited to patients, residents, or consumers.
- (4) **"CNM license"** means the legal privilege to practice within the scope of this rule as authorized by the department.
- (5) **"Contact hour"** means 50-60 minutes of an organized learning experience relevant to CNM practice.

(6) **"Continuance"** means the adjournment or postponement of a trial or other proceeding to a future date.

(7) **"Continuing education"** means planned learning experiences occurring after initial licensure. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of midwifery practice, thus improving health care to the public.

(8) **"Continuing education unit"** means 10 contact hours of participation in an organized continuing education experience.

(9) **"Controlled substance"** means any drug or therapeutic agent listed in Schedules I through V of Sections 30-31-6 to 30-3-10 NMSA 1978, Controlled Substances Act, or rules adopted thereto, which is commonly understood to include narcotics.

#### **D. Definitions beginning with "D":**

(1) **"Dangerous drug"** means a prescription drug other than a controlled substance that has been determined by law to be unsafe for self-administration and is included in Sections 26-1-1 to 26-1-26 NMSA 1978, New Mexico Drug, Device and Cosmetic Act, and in Section 30-31-6 NMSA, Controlled Substances Act.

(2) **"Department"** means the New Mexico department of health.

(3) **"Division"** means the public health division.

**E. Definitions beginning with "E": "Electronic professional licensing management system"** means the system by which licensees apply and submit an application for midwifery license and keep up to date their online profile.

**F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G": [RESERVED]**

**H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": [RESERVED]**

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L": "Lapsed license"** means a license that a person has voluntarily lapsed, has failed to renew as required, or the license of a person who failed to meet stated obligations for renewal within a stated time.

**M. Definitions beginning with "M": [RESERVED]**

**N. Definitions beginning with "N": "National practitioner data bank (NPDB)"** means the web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers.

**O. Definitions beginning with "O": "Opioid antagonist"** means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body; this includes naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

**P. Definitions beginning with "P":**

(1) **"Pain"** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage or described in terms of such inflammation and damage, which could include acute, persistent, or chronic pain.

(2) **"Peer review"** means the assessment and evaluation of CNM practice by other CNMs and other health care providers to measure compliance with established institutional or legal standards. In the peer review process, a CNM's practice undergoes scrutiny for the purpose of professional self-regulation.

(3) **"Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

(4) **"Prescription monitoring program (PMP)"** means a centralized electronic system within the New Mexico board of pharmacy that collects, monitors, and analyzes data submitted by dispensing practitioners and pharmacies related to the prescribing and dispensing of controlled substances. The data are used to support efforts in education, research, enforcement, and misuse prevention.

(5) **"Primary care"** means the provision of integrated, accessible health care services by clinicians who are accountable for addressing the large majority of presenting health care needs, developing sustained partnerships with clients, and practicing within the context of family and community.

**Q. Definitions beginning with "Q":**

(1) **"Quality assurance"** means monitoring structural, procedural, and outcome indicators as they relate to accepted standards.

(2) **"Quality improvement"** means modifying the process for providing care in order to improve outcomes. Modifications are based upon the measurement of parameters such as evidence-based best practices, client satisfaction, clinical outcomes, population specific care, culturally appropriate care, appropriate use of technology and resources, and access to care.

**R. Definitions beginning with "R":**

(1) **"Reactivation"** means the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve disciplinary action at any juncture.

(2) **"Reinstatement"** means the process whereby a license which has been subject to revocation or suspension, is returned to active status; this process always involves disciplinary action.

**S. Definitions beginning with "S": "Substance use disorder"** means a treatable mental disorder that affects a person's brain and behavior, leading to their inability to control their use of substances like legal or illegal drugs, alcohol or medications.

**T. Definitions beginning with "T":**

(1) **"Therapeutic purpose"** means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines.

(2) **"Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": "Valid CNM-client relationship"** means a professional relationship between the CNM and the client for the purpose of maintaining the client's well-being. At minimum, this relationship is an interactive encounter between the CNM and client involving an appropriate history and physical or mental examination; ordering labs or diagnostic tests sufficient to make a diagnosis; and providing, prescribing, or recommending treatment, or referring to other health care providers. A client record must be generated by the encounter.

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.11.2.7 NMAC - Rp, 16.11.2.7 NMAC, 5/7/2024]

**16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:**

- A. ACNM "core competencies for basic midwifery practice".
- B. ACNM "standards for the practice of midwifery".
- C. ACNM handbook: "the home birth practice manual".

[16.11.2.8 NMAC - Rp, 16.11.2.8 NMAC, 5/7/2024]

**16.11.2.9 LICENSURE:**

**A. Licensure requirements:** A CNM practicing in New Mexico shall hold an active license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico and shall hold current certification by AMCB or its designee. The department may deny licensure, including renewal, reinstatement, or reactivation of licensure, to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. If denied due to disciplinary action, re-application will only be considered after a minimum of one year from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions. A CNM license is not transferable.

**B. Initial licensure:**

(1) An applicant for licensure to practice as a CNM in New Mexico shall submit to the department via the electronic professional licensing management system:

- (a) a completed application;
- (b) proof of holding a valid license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico;
- (c) proof of current certification by AMCB or its designee;
- (d) the fee designated in Subsection E of 16.11.2.9 NMAC.

(2) An initial CNM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of this subsection and shall expire on the last day of the month of the CNM's birth month. A CNM license shall be valid for a maximum of two years.

(3) If the licensure process is not completed, the application becomes null and void one year after the date of application being received, and fees paid are not refundable.

(4) If a license is denied due to disciplinary action on initial application, the applicant may reapply after one year and upon meeting all the requirements under Subsection B of 16.11.2.9 NMAC.

(5) Any final action denying a license to an applicant is an event reportable to the NPDB.

### **C. Licensure renewal:**

(1) A CNM's renewed license shall expire on the last day of the month of the CNM's birth month of the second year after it is issued.

(2) An applicant for licensure renewal shall submit to the department via the electronic professional licensing management system:

(a) a completed application electronically submitted by the fifth day of the month of the expiration of the CNM license;

(b) proof of holding a valid license that meets the requirement of the New Mexico board of nursing to practice as a registered nurse in New Mexico for the period the renewed CNM license will cover;

(c) proof of current certification by AMCB or its designee;

(d) proof of having met the continuing education and quality management requirements in Paragraphs (3) and (4) of this subsection; and

(e) the fee designated in Subsection E of this section;

(f) an additional fee designated in Subsection E of this section for applications electronically submitted after the fifth day of the month after the license is expiring.

(3) Continuing education: CNMs must complete a minimum of 30 contact hours during the two years preceding license renewal.

(a) 15 of the contact hours shall be pharmacology-related. As part of the pharmacology-related contact hours, a CNM who holds a CNM license shall submit with the first license renewal application proof of completing a minimum of five contact hours on any of the following topics:

(i) the CNM rule as it applies to management of chronic pain,

- (ii) the pharmacology and risks of controlled substances,
- (iii) the problems of substance use disorder and addiction, or
- (iv) state and federal regulations for the prescription of controlled substances.

(b) With each subsequent license renewal application, a CNM shall submit proof of completing a minimum of two contact hours on the above topics.

(c) A minimum of two of the contact hours shall be focused on health equity. Acceptable content includes but is not limited to:

- (i) Implicit bias training to identify strategies to reduce bias during assessment, diagnosis, and care. This may include, but is not limited to training in bias, racism, and poverty, that manifest as health inequities.

- (ii) Development of individual and system level interventions and self-reflection to assess how the CNM's social position can influence their relationship with clients and their communities.

- (iii) Skills to enable a health care professional to care effectively for clients from diverse cultures, groups, and communities and apply health equity concepts into practices.

(d) The following options, subject to audit and approval by the department, may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

- (i) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection C of 16.11.2.10 NMAC, will count for twice the number of contact hours for which the presentation is approved with a maximum award of 15 contact hours per licensure period; the same presentation cannot be credited more than once;

- (ii) sole or primary authorship of one nurse-midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

- (iii) completion of a formal university or college course directly related to nurse-midwifery practice; each university or college unit shall be credited as 15 hours of continuing education for a semester system and 10 hours of continuing education for a quarter system; and

- (iv) acting as preceptor for a midwifery student; each 10 hours of precepting shall be credited as one continuing education hour, with maximum award of

10 contact hours; verification shall be provided by an accreditation commission for midwifery education (ACME) accredited nurse-midwifery education program or can be verified by a division-approved form. This option shall not be accepted in place of pharmacology-related contact hours.

(4) Quality management: documentation of participation during the preceding two years in a system of quality management meeting the approval of the department is required for license renewal. Quality management includes peer review, quality assurance and quality improvement as defined in Subsection S of 16.11.2.7 NMAC, Subsection W of 16.11.2.7 NMAC, and Subsection X of 16.11.2.7 NMAC.

(5) If license renewal is denied, the applicant may request an administrative hearing under the terms set forth by Paragraph (5) of Subsection C of 16.11.2.12 NMAC.

#### **D. Reactivation of a CNM license:**

(1) A lapsed license occurs on the first day of the following month following the expiration date of the current license if license not renewed on time, and a CNM must apply for reactivation of the license, paying all added fees before being allowed to practice. A CNM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a CNM license that has voluntarily lapsed in status or for an applicant that is returning to New Mexico are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection F of 16.12.2.9 NMAC.

(3) The license will be reactivated with the original license number.

#### **E. Reinstatement of a CNM license:**

(1) The requirements for reinstatement of a revoked or suspended CNM license are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except that the fee is higher than a renewal, as designated in Subsection F of 16.11.2.9 NMAC.

(2) The license will be reinstated with the original license number.

**F. Fees:** the department shall charge applicants the following fees for licensure services:

- (1) two hundred dollars (\$200) for initial licensure;
- (2) one hundred dollars (\$100) for license renewal;

(3) one hundred and fifty dollars (\$150.00) late fee for renewing a license when the complete application is not electronically submitted by the fifth calendar day of the month of the current license's expiration date or for voluntary lapse of a license; this fee is in addition to the renewal fee;

(4) two hundred dollars (\$200.00) for reinstatement of a revoked or suspended license, or reactivation of a lapsed license; this fee is in addition to the renewal fee;

(5) twenty-five dollars (\$25.00) for verifying licenses by FAX or letter;

(6) fifty dollars (\$50.00) for rejected electronic payment for insufficient funds.

**G. Change of address or other contact information:** a CNM shall submit a change of any contact information to the department's electronic professional licensing management system within 30 days of the change; failure to update information within this time frame may result in disciplinary action.

[16.11.2.9 NMAC - Rp, 16.11.2.9 NMAC, 5/7/2024]

#### **16.11.2.10 CONTINUING EDUCATION:**

##### **A. Introduction:**

(1) The division prescribes the following regulations establishing requirements for CE to be met by the licensee to protect the health and well-being of the citizens of New Mexico and to promote current midwifery knowledge and practice.

(2) Philosophy of CE: The division believes that CE is one of the most important responsibilities of the midwife and is a lifelong process. The primary responsibility for CE rests with the individual midwife. A diversity of midwifery-related learning activities is recommended to enhance the scope of professional development.

##### **B. Requirements and rules:**

(1) Records:

(a) All licensees must indicate compliance with the CE required by these rules on the renewal application. All information must be completed as requested.

(b) Licensees are responsible for maintaining their own CE records and for keeping the certificates of verification of attendance of CE activities for at least one year after the license is renewed. Copies of certificates must be submitted to the division if audited and requested.

(2) CE Audit:

(a) Continuing education records are subject to audit by the division.

(b) Licensee may be subject to disciplinary action by the division if non-compliant with a request for additional information within 60 days of the first notice of CE non-compliance.

**C. Approved continuing education:** To be acceptable in New Mexico, the CE activity must have been approved by a recognized approval body and must enhance the licensee's scope of professional development as related to CNM scope of practice. The participant must receive a certificate of attendance which validates the number of approved CE hours awarded, name of the participant, sponsoring agency, approval body and date attended.

(1) Recognized approval bodies for CE for CNMs:

(a) clinician-level continuing education accrediting agencies approved by the division;

(b) national or state recognized nursing organizations or boards of nursing;

(c) other state boards of nursing.

(2) Other CE which may be accepted as approved CE for CNMs:

(a) academic credit, computation: as set forth in Item (iii) of Subparagraph (d) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC;

(b) CE units (CEUs) or contact hours awarded by CE divisions within educational institutions of higher learning;

(c) educational offerings approved through other generally recognized health care or professional organizations as related to CNM's scope of practice.

[16.11.2.10 NMAC - N, 5/7/2024]

### **16.11.2.11 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:**

**A. Scope of practice:** Practice by CNMs encompasses independently providing a full range of primary health care services for clients from adolescence to beyond menopause. These services include primary care; sexual and reproductive health care; gynecologic health; family planning services; pre-conception care; care during pregnancy, childbirth, and the postpartum period; and care of the normal newborn up to six weeks of age. CNMs provide care for all individuals who seek midwifery care, inclusive of all gender identities and sexual orientations. CNMs provide initial and ongoing comprehensive assessment, diagnosis, and treatment. They conduct physical examinations; independently prescribe, distribute, and administer dangerous drugs,

devices, and contraceptive methods, and controlled substances in Schedules II through V of Sections 30-31-1 NMSA 1978, Controlled Substances Act; admit, manage, and discharge clients; order and interpret laboratory and diagnostic tests; and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with clients in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals, and birth centers. A CNM practices within a health care system that provides for consultation, collaborative management, or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery". A CNM who expands beyond the ACNM "core competencies" to incorporate new procedures that improve care for their clients shall comply with the guidelines set out in the ACNM "standards for the practice of midwifery", standard VIII. Practice guidelines for home births should be informed by the most recent edition of the "ACNM home birth practice manual."

**B. Prescriptive authority:**

(1) Dangerous drugs: A CNM who prescribes, distributes, or administers a dangerous drug or device shall do so in accordance with Section 26-1 NMSA 1978, New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances:

(a) A CNM shall not prescribe nor distribute controlled substances in Schedule I of Section 26-1 1978 NMSA, Controlled Substances Act.

(b) A CNM shall not prescribe, distribute, or administer controlled substances in Schedules II-V of the Controlled Substances Act unless the CNM is registered with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA) to prescribe, distribute, and administer controlled substances.

(c) A CNM who prescribes, distributes, or administers a controlled substance in Schedules II-V of Section 26-1 NMSA 1978, Controlled Substances Act, shall do so in accordance with the Controlled Substances Act.

(d) An individual employed as a CNM by the United States military, the United States veterans administration, or the United States public health service, and operating in the official capacity of that employment, who is prescribing, distributing or administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the Subparagraphs (a), (b) and (c) of Paragraph (2) of this subsection.

(e) A CNM may prescribe, provide samples of, and dispense any dangerous drug to a client if, at the time of the prescription, the CNM has a valid CNM-client relationship. The relationship includes:

(i) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;

(ii) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;

(iii) the CNM provides a client with appropriate information on the proper dosage, route, frequency, and duration of a drug treatment;

(iv) the CNM informs the client of possible untoward effects and side effects of a proposed treatment;

(v) the CNM provides care for a client in the event of an untoward effect or a side effect that requires care;

(vi) the CNM provides for client education regarding a condition and the condition's treatment to enhance client compliance with plan of care;

(vii) the CNM provides for appropriate follow-up care, including further testing, treatment and education, as appropriate; and

(viii) the CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual.

(3) Prescriptions: A CNM may prescribe by telephone, by written prescription, by e-mail, or through an electronic health record (EHR) system. Controlled substances may only be prescribed by written or electronic prescription. A CNM prescription shall have the CNM's name, office address, and telephone number printed on it. In the event that a CNM is writing a prescription printed with the names of more than one CNM, the name of the CNM writing the individual prescription shall be indicated. The name and address of the client, the date of the prescription, the name and quantity of the drug prescribed, and directions for use shall be included on a prescription.

(4) Labeling: When distributing a drug, a CNM shall label it with the client's name and date of birth; the date; instructions for use; and the CNM's name, address, and telephone number.

**C. Guidelines for management of chronic pain or other conditions with controlled substances:** The treatment of chronic pain or other conditions with various modalities, including controlled substances such as opioids, is a legitimate practice when done in the usual course of CNM practice. The goal when treating chronic pain is to reduce or eliminate pain and also to avoid development of or contribution to addiction, drug misuse and overdose. Effective dosages should be prescribed, with both under- and over-prescribing to be avoided, using client protection as a guiding principle. The CNM should provide control of the client's pain for its duration, while

effectively addressing other aspects of the client's functioning, including physical, psychological, social, and work-related factors. A CNM may treat clients with substance use disorder, physical dependence, or tolerance who have pain, however such clients require very close monitoring and precise documentation.

(1) If, in a CNM's professional opinion, a client is seeking pain medication for reasons that are not medically justified, the CNM is not required to prescribe controlled substances for the client.

(2) When prescribing, dispensing, or administering controlled substances for management of chronic pain, a CNM shall:

(a) obtain a PMP report for the client covering the preceding 12 months from the New Mexico board of pharmacy and any other state's report that is applicable and available;

(b) complete a history and physical examination and include an evaluation of the client's psychological and pain status, any previous history of significant pain, past history of alternate treatments for pain, potential for substance misuse, coexisting disease or medical conditions, and the presence of medical indications or contraindications related to controlled substances;

(c) be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain, and consider an integrative approach to pain management in collaboration with other care providers, including but not limited to acupuncturists, chiropractors, doctors of oriental medicine, exercise physiologists, massage therapists, pharmacists, physical therapists, psychiatrists, or psychologists;

(d) develop a written individual treatment plan taking age, gender, and culture into consideration, with stated objectives by which treatment can be evaluated, such as degree of pain relief, improved physical and psychological function, or other accepted measures, and include any need for further testing, consultation, referral, or use of other treatment modalities as appropriate;

(e) discuss the risks and benefits of using controlled substances with the client or legal guardian and document this discussion in the medical record;

(f) make a written agreement with the client or legal guardian outlining client responsibilities, including a provision stating that the chronic pain client will receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible;

(g) maintain complete and accurate records of care provided and drugs prescribed, including the indications for use, the name of the drug, quantity, prescribed dosage, and number of refills authorized;

(h) when indicated by the client's condition, consult with health care professionals who are experienced in the area of the chronic pain or other conditions, though not necessarily specialists in pain control, both early in the course of long-term treatment and at least every six months;

(i) when treating a client with addiction, substance use disorder or physical dependence, use drug screening prior to and during the course of treatment to identify the drugs the client is consuming and compare the screening results with clients' self-reports (this should be included in the written agreement, see Subparagraph (f) above);

(j) note possible indications of drug misuse by a client and take appropriate steps to further investigate and to avoid contributing to drug misuse; such steps may include termination of treatment. Information about some of the indications may be available only through PMP reports. The following list of possible indications of drug misuse is non-exhaustive:

- (i) receiving controlled substances from multiple prescribers;
- (ii) receiving controlled substances for more than 12 consecutive weeks;
- (iii) receiving more than one controlled substance analgesic;
- (iv) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone;
- (v) overutilization, including but not limited to early refills;
- (vi) appearing overly sedated or intoxicated upon presentation; or
- (vii) an unfamiliar client requesting a controlled substance by specific name, street name, color, or identifying marks.

(k) comply with the opioid antagonist prescribing practices as set forth in the Pain Relief Act Section 24-2D-1, et.al NMSA1978.

**D. Prescription Monitoring Program (PMP) Requirements:** The department requires participation in the PMP to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals. Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring

program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the client's medical record.

Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a client for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the client for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the client's medical record. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

(1) A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

(a) for a period of four days or less; or

(b) to a client in a nursing facility; or

(c) to a client in hospice care.

(d) or when prescribing, dispensing, or administering of: testosterone, pregabalin, lacosamide, ezogabine or stimulant therapy for pediatric clients less than age 14.

(2) Upon review of a prescription monitoring report for a client, the practitioner shall identify, be aware, and document if a patient is currently:

(a) receiving opioids from multiple prescribers;

(b) receiving opioids and benzodiazepines concurrently;

(c) receiving opioids for more than 12 consecutive weeks;

(d) receiving more than one controlled substance analgesic;

(e) receiving opioids totaling more than 90 morphine milligram equivalents per day;

(f) exhibiting potential for misuse of opioids and other controlled substances, such as any of the following indicators:

- (g) over-utilization;
- (h) requests to fill early;
- (i) requests for a controlled substance or specific opioid by specific name, street name; color, or identifying marks;
- (j) requests to pay cash when insurance is available;
- (k) receiving opioids from multiple pharmacies; or
- (l) appearing overly sedated or intoxicated upon presentation.
- (m) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone.

(3) Upon recognizing any of the above conditions described in Subparagraph (j) of Paragraph (2) of Subsection C of 16.11.2.11 NMAC, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse or overdose. These steps may involve counseling the client on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(4) Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a client's initial enrollment into the Opioid Treatment Program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II-V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the client's medical record.

**E. Immediate reporting:** A CNM must report within 48 hours to the division any neonatal or maternal mortality in clients for whom the provider has cared in the perinatal period in a setting other than a licensed health facility; this includes stillbirths. These will be reviewed by the division on a case-by-case basis for compliance with these CNM regulations.

**F. Other rules:** a CNM shall fulfill the requirements of all relevant department rules including:

- (1) "bureau of vital records and health statistics," 7.2.2 NMAC;
- (2) "control of disease and conditions of public health significance," 7.4.3 NMAC;

- (3) "newborn genetic screening," 7.30.6 NMAC;
- (4) "prevention of infant blindness," 7.30.7 NMAC;
- (5) "requirement for freestanding birth centers," 7.10.2 NMAC; and
- (6) "birthing workforce retention fund," 7.30.9 NMAC.

[16.11.2.11 NMAC - Rp, 16.11.2.10 NMAC, 5/7/2024]

#### **16.11.2.12 LICENSE DENIAL, SUSPENSION, OR REVOCATION; DISCIPLINARY ACTION:**

The department may deny, revoke, or suspend any license held or applied for or reprimand or place a license on probation on the grounds of incompetence, unprofessional conduct, or other grounds listed in this section, pursuant to Subsection V of Section 24-1-3, NMSA 1978.

##### **A. Grounds for action:**

(1) Incompetence: A CNM who fails to possess and apply the knowledge, skill, or care that is ordinarily possessed and exercised by CNMs or as defined by the ACNM "core competencies for basic midwifery practice" is considered incompetent. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. Conduct of such a character that could result in harm to the client or to the public from the act or omission or series of acts or omissions constitutes incompetence, whether or not actual harm resulted.

(2) Unprofessional conduct: For purposes of this rule "unprofessional conduct" includes, but is not limited to, the following:

- (a) verbally or physically abusing a client;
- (b) engaging in sexual contact with or toward a client;
- (c) abandonment of a client;
- (d) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (e) practice that is beyond the scope of CNM licensure;
- (f) dissemination of a client's health information or treatment plan to individuals not entitled to such information and where such information is protected by law from disclosure;

(g) falsifying or altering client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(h) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation, or deceit;

(i) aiding, abetting, assisting, or hiring an individual to violate any rule of the department;

(j) failure to follow established procedure regarding controlled substances;

(k) failure to make or to keep accurate, intelligible entries in records as required by the ACNM "standards for the practice of midwifery";

(l) obtaining or attempting to obtain a license to practice certified nurse-midwifery for one's self or for another through fraud, deceit, misrepresentation, or any other act of dishonesty in any phase of the licensure or relicensure process;

(m) practicing midwifery in New Mexico without a valid New Mexico license or permit or aiding, abetting or assisting another to practice midwifery without a valid New Mexico license;

(n) delegation of midwifery assessment, evaluation, judgment, or medication administration to a non-licensed person; or

(o) failure to provide information requested by the department pursuant to this rule within 20 business days of receiving the request.

(3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.

(4) Dereliction of any duty imposed by law.

(5) Conviction of a felony pursuant to Paragraph (1) of Subsection A of Section 28-2-4 NMSA.

(6) Conviction or entered into an agreed disposition, of a misdemeanor offense related to the practice of midwifery as determined on a case-by-case basis.

(7) Failure to report in writing to the division any complaint or claim made against the CNM's practice as a registered, certified, or licensed health care provider in any jurisdiction, including as a registered nurse. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the CNM becoming aware of the complaint or claim.

(8) Conduct resulting in the suspension or revocation of a registration, license, or certification to perform as a health care provider.

(9) Failure to report a CNM who appears to have violated the rule for the practice of certified nurse-midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability under this rule unless the person acted in bad faith or with malicious purpose.

(10) Failure to report to the department a change in contact information within 30 days of the change as set forth in Subsection G of 16.11.2.9 NMAC.

(11) Non-compliance for requirements of CEs as determined by audit as set forth in Paragraph (2) of Subsection B of 16.11.2.10 NMAC.

(12) Violation of any of the provisions of this rule.

**B. Non-disciplinary proceedings:** For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated action and the right to the hearing procedures set forth in Paragraphs (4) and (5) of Subsection C of 16.11.2.12 NMAC.

**C. Disciplinary proceedings:** Disciplinary proceedings shall be conducted in accordance with Sections 61-1-1 through 61-1-31 NMSA 1978 of the Uniform Licensing Act (ULA). Disciplinary proceedings related to a CNM's treatment of a client, for chronic pain or other conditions, with a controlled substance shall be conducted in accordance with Sections 24-2D-1 through 24-2D-6 NMSA 1978 of the Pain Relief Act, in addition to this rule.

(1) Filing of a complaint:

(a) A written complaint must be filed with the division before a disciplinary proceeding may be initiated.

(i) A complaint is an allegation of a wrongful act(s) or omission(s).

(ii) An allegation of a wrongful act may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(2) Investigation of a complaint:

(a) All complaints alleging a violation of the rules adopted by the department shall be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in a notice of contemplated action (NCA), as defined in the ULA, being issued by the department if a violation occurred or it may result in a dismissal of the complaint if no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(3) Notice of contemplated action:

(a) The NCA shall be drafted by the department.

(b) The director of the division, or her/his designee shall sign all NCAs.

(c) The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

(4) Request for a hearing, notice of hearing and request for continuance:

(a) Every licensee shall be afforded notice and an opportunity to be heard.

(b) Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

(c) The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative attorney of the department at any time prior to the hearing; if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval; the proposed stipulation and agreement does not divest the department of its authority to require a formal hearing or final approval, amendment, or rejection; if a settlement is not reached, a hearing shall be held.

(d) Once a hearing has been scheduled, if a request for a continuance is made it shall be presented to the department's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.

(e) If a person fails to appear after requesting a hearing, the department may proceed to consider the matter and make a decision.

(f) If no request for a hearing is made within the time and manner stated in the NCA, the department may take the action contemplated in the NCA. Such action shall be final and reportable to NPDB.

(g) The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated.

(5) Administrative hearing:

(a) All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all non-dispositive motions.

(b) All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

(i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a CNM license must not be based solely on hearsay evidence.

(c) The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

(d) The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the department.

(e) The hearing officer shall issue a report and recommended finding to the department secretary.

(f) Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA and placed in the CNM's licensure file. The department shall mail a copy of the written decision to the authority(ies) that license(s) the CNM as a registered nurse and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

**D. Reinstatement of a suspended or revoked license:**

(1) Individuals who request reinstatement of their license or who request that their probation be lifted or altered shall provide the department with substantial evidence to support their request. This evidence must be in the form of notarized written reports

or sworn written testimony from individuals who have personal knowledge of the individual's activities and progress during the period of probation, suspension, or revocation.

(2) For reinstatement of licenses for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, requests for reinstatement of a revoked license shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date of the order of revocation is the controlling date, unless otherwise specified in the order. Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of revoked license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(3) Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension. Reinstatement of a suspended license requires proof of meeting the renewal requirements as set forth in this rule, any remedial education, supervised practice or other condition specified in the order for suspension required by the department and payment of the reinstatement of current or suspended license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(4) When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance.

[16.11.2.12 NMAC - Rp, 16.11.2.11 NMAC, 5/7/2024]

#### **16.11.2.13 ADVISORY BOARD:**

The department shall appoint a CNM advisory board to make recommendations to the department regarding the regulation of CNMs:

**A.** The board may be comprised of:

(1) up to four New Mexico licensed CNMs, at least two of whom are actively practicing midwifery;

(2) one New Mexico licensed midwife (LM) who is actively practicing midwifery;

(3) two members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one actively practicing New Mexico licensed board-certified obstetrician-gynecologist physician;

(5) one student nurse-midwife, who may continue to serve out their term following graduation; and

(6) one employee of the division.

**B.** Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms; a student nurse-midwife who has completed their education is not eligible for a second term as the student member. The department representative shall not be subject to term limits.

**C.** The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

**D.** Board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 and the department of finance administration rules, Section 2.42.2 NMAC.

**E.** Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.13 NMAC - Rp, 16.11.2.12 NMAC, 5/7/2024]

**16.11.2.14 SEVERABILITY:**

If any part or application of these rules is determined to be illegal, the remainder of these rules shall not be affected.

[16.11.2.14 NMAC - Rp, 16.11.2.13 NMAC, 5/7/2024]

**PART 3: LICENSED MIDWIVES**

**16.11.3.1 ISSUING AGENCY:**

New Mexico Department of Health, Public Health Division, Maternal Health Program.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

**16.11.3.2 SCOPE:**

These regulations apply to any licensed midwife practicing in the state of New Mexico or licensed by the New Mexico department of health, public health division.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

### **16.11.3.3 STATUTORY AUTHORITY:**

The regulations set forth herein are promulgated by the secretary of the department of health by authority of Subsection E of Section 9-7-6 NMSA 1978, Subsection V of Section 24-1-3 NMSA 1978, and Section 24-1-21 NMSA 1978. The public health division ("division") of the department of health shall administer and enforce these regulations.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

### **16.11.3.4 DURATION:**

Permanent.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

### **16.11.3.5 EFFECTIVE DATE:**

December 28, 2021, unless a later date is cited at the end of a section.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

### **16.11.3.6 OBJECTIVE:**

The regulations establish policy, standards, and criteria relating to: the educational and examination requirements, issuing of permits and licenses, midwifery practice, and continuing education of persons who practice licensed midwifery.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

### **16.11.3.7 DEFINITIONS:**

**A. Definitions beginning with "A": "Apprentice midwife"** means a person age 18 years or older, holding a high school diploma or a GED as minimum educational requirement who:

(1) wishes to make application in the state of New Mexico for basic education in midwifery by apprenticeship;

(2) has a formal preceptor relationship defined in writing with a midwifery instructor who is in good standing with the midwife licensing authority of the public health division and who meets the requirements of Paragraph (2) of Subsection M of 16.11.3.7 NMAC and agrees in writing to fulfill the basic educational and clinical experience requirements described in Subsections A and B of 16.11.3.12 NMAC.

**B. Definitions beginning with "B": "Board"** means the licensed midwifery advisory board established under these regulations.

### **C. Definitions beginning with "C":**

(1) **"Certified nurse-midwife (CNM)"** means a graduate of a midwifery education program accredited by the accreditation commission for midwifery education (ACME) who, has been certified by the American midwifery certification board (AMCB) and licensed pursuant to laws, regulations, and procedures of the CNM's jurisdiction.

(2) **"Certified professional midwife (CPM)"** means an independent practitioner who has met the standards for certification set by the north American registry of midwives (NARM). A CPM may not practice in New Mexico unless the CPM holds a New Mexico license to practice midwifery.

(3) **"Client"** means a person who has entered into a professional relationship for midwifery services from a LM for the purpose of maintaining the client's well-being. At minimum, this relationship is an interactive encounter between the LM and client as set forth in the "department of health practice guidelines for New Mexico licensed midwives".

(4) **"Contact hour"** means a unit of 50 to 60 minutes of a formal organized learning experience that directly relates to maternal, infant, and reproductive health and related professional, ethical, legal, or business topics and is approved by an accredited continuing education (CE) sponsoring organization.

(5) **"Continuing education (CE)"** means participation in a formal learning experience of which the CEs have been granted by an accrediting organization such as the midwifery education accreditation council (MEAC), American college of obstetricians and gynecologists (ACOG), American college of nurse-midwives (ACNM), association of women's health, obstetric and neonatal nurses (AWHONN), American academy of family physicians (AAFP), state health departments, nursing associations, or perinatal associations.

### **D. Definitions beginning with "D":**

(1) **"Department"** means the department of health.

(2) **"Division"** means the public health division of the department of health.

### **E. Definitions beginning with "E": [RESERVED]**

**F. Definitions beginning with "F": "Formulary"** means a list of drugs approved by the department.

### **G. Definitions beginning with "G": [RESERVED]**

### **H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": "Incompetence"** is defined as follows: In performing midwifery functions, a midwife is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other midwives of the same licensure status and required by the generally accepted standards of the profession including those standards set forth in these regulations and their referenced documents. The failure to possess or to apply such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings.

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L":**

(1) **"License"** means a document issued by the department identifying a legal privilege and authorization to practice as a licensed midwife within the scope of this rule.

(2) **"Licensed midwife (LM)"** means a person educated in the discipline of midwifery, who is licensed under this rule.

(3) **"Licensed midwifery"** means the provision of health care and management of people in the antepartum, intrapartum, postpartum, and interconceptual periods, and infants up to 6 weeks of age. This care occurs within a health care system in a community setting which provides for midwifery protocols, medical consultation, co-management or referral and is in accord with the "standards and core competencies of practice for licensed midwives in New Mexico" and the "department of health practice guidelines for New Mexico licensed midwives".

(4) **"Licensing period"** means the period for which licenses are issued. Licenses may be issued at any time but shall expire on the last day of the licensee candidate's birth month two years forward or on the last day of the month 24 months forward, whichever comes earliest.

**M. Definitions beginning with "M":**

(1) **"MEAC"** means midwifery education accreditation council.

(2) **"Midwifery instructor"** means a person who:

(a) is credentialed as a LM, certified professional midwife (CPM), certified nurse-midwife (CNM), or certified midwife (CM) and must be a licensed provider by a state or jurisdiction to provide midwifery care;

(b) has an additional two years of experience after credentialing or proof of 50 primary births beyond entry-level CPM requirements;

(c) has 10 continuity of care births beyond entry-level CPM requirements;

(d) has attended a minimum of 10 out-of-hospital births as primary midwife in the last two years;

(e) has a formal training and supervisory relationship with an apprentice midwife that is documented in writing; and

(f) is approved and listed with the division per division protocol.

#### **N. Definitions beginning with "N":**

(1) **"National practitioner data bank (NPDB)"** means the web-based repository of reports containing information on medical malpractice payments and adverse actions related to health care practitioners, providers, and suppliers.

(2) **"NARM"** means the North American registry of midwives.

(3) **"New Mexico midwifery student workbook (student workbook)"** means an instrument used for the state apprenticeship process and approved by the division, in which the preceptor documents the successful completion of the student's theoretical and clinical education and attainment of safe beginning practice of core competencies.

#### **O. Definitions beginning with "O": [RESERVED]**

#### **P. Definitions beginning with "P":**

(1) **"Peer review"** means the process utilized by licensed midwives to discuss client cases in a professional forum, which includes support, feedback, follow-up, and learning objectives according to NARM, the state professional organization(s), or other division recognized institutional criteria.

(2) **"Permit"** means documentation issued by the department to a person meeting the requirements described in these regulations authorizing the practice of midwifery at the apprentice level described in 16.11.3.9 NMAC.

(3) **"Permitting period"** means a three year period for which permits are issued; permits may be renewed for an additional three years.

(4) **"Physician"** means a person who is currently practicing obstetrics with a specialty in obstetrics/gynecology or family medicine and is licensed and in good standing in their jurisdiction to practice medicine or osteopathy.

(5) **"Portfolio Evaluation Process (PEP)"** means is an educational evaluation process through NARM that includes verification of knowledge and skills by

qualified preceptors. Completion of this process qualifies applicants to sit for the NARM skills and written examinations.

**(6) "Preceptor"** means the same as "midwifery instructor".

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R": [RESERVED]**

**S. Definitions beginning with "S":**

**(1) "Student midwife"** means a person age 18 years or older, holding a high school diploma or a GED as minimum educational requirement who:

**(a)** wishes to make application for basic education in midwifery through the NARM portfolio evaluation process (PEP) or through a U.S. department of education accredited midwifery school enrollment;

**(b)** has a formal preceptor relationship defined in writing with a midwifery instructor who is in good standing with the midwife licensing authority of the public health division and who meets the requirements of Paragraph (2) of Subsection M of 16.11.2.7 NMAC and agrees in writing to fulfill the basic educational and clinical experience requirements described in Subsections A and B of 16.11.3.12 NMAC.

**(2) "Supervision"** means the instruction, guidance, and continued evaluation of an apprentice or student midwife in the practice of midwifery by a midwifery instructor or preceptor with whom the apprentice has a formal relationship defined in writing and who retains ultimate responsibility for clients seen by apprentices.

**T. Definitions beginning with "T": [RESERVED]**

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

**16.11.3.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:**

**A.** "Department of health practice guidelines for New Mexico licensed midwives"

**B.** "Standards and core competencies of practice for licensed midwives in New Mexico"

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

**16.11.3.9 PERMITS:**

**A.** General provisions:

**(1)** If caring for New Mexico residents, an apprentice or student midwife must be on one of three pathways:

**(a)** New Mexico state process;

**(b)** NARM's portfolio evaluation process (PEP); or

**(c)** accredited midwifery school enrollment.

**(2)** A permit or modified permit for an apprentice midwife or student midwife is required for any apprentice midwife or student midwife that will provide care for a New Mexico resident

**(a)** an apprentice midwife permit is required for those who are utilizing the New Mexico state process;

**(b)** a student midwife modified permit is required for those who are enrolled in a U.S. department of education accredited midwifery school or utilizing the NARM's PEP.

**(3)** A permitted apprentice midwife or student midwife may provide any care or services allowed by these regulations as set out in Subsection A of 16.11.3.14 NMAC only under the direct supervision of a midwifery instructor. The midwifery instructor reviews and evaluates all care provided by and attends every labor and delivery managed by the apprentice. The midwifery instructor retains the responsibility for clients seen by apprentice midwives and student midwives.

**(4)** The division requires full disclosure of any past professional licensure, suspensions, and revocations which will be considered before granting any permit.

**B.** Apprentice midwife permits:

**(1)** Application for apprentice midwife permit must include all of the following:

**(a)** proof of high school diploma or GED or higher educational attainment;

**(b)** a completed agreement by the midwifery instructor to the preceptor relationship on the division's form;

**(c)** a completed apprentice application on the electronic division form; and

**(d)** the fee designated in Subsection D of 16.11.3.9 NMAC.

**(2)** Upon submission of a complete permit application, the division will supply to qualifying apprentice midwife applicants an apprentice midwife permit and necessary regulatory information applicable to apprenticeship:

**(a)** an apprentice midwife permit;

**(b)** the student workbook;

**(c)** a copy of the "department of health practice guidelines for New Mexico licensed midwives";

**(d)** a copy of the "standards and core competencies of practice for licensed midwives in New Mexico"; and

**(e)** a copy of Licensed Midwives regulations, 16.11.3 NMAC.

**(3)** A midwife apprentice must have successfully completed basic education requirements in midwifery and the requisite examination process, set forth in 16.11.3.12 NMAC, no sooner than the end of the second year but no later than the end of the sixth year after the initial apprentice permit is issued. Extensions beyond this period may be considered by the division on a case-by-case basis.

**(a)** Before receiving an endorsement from the division to take the division-approved written national examination for certification, an apprentice must successfully complete the following:

**(i)** a minimum of 24 months of theoretical and clinical education described in 16.11.3.12 NMAC; and

**(ii)** a completed student workbook submitted to the division;

**(b)** Upon passing of the division-approved written national examination for certification, the apprentice will be eligible for state licensure set forth in Paragraph (1) of Subsection B of 16.11.3.10 NMAC.

**(4)** Renewal of permits: An apprentice midwifery permit may be renewed once after the initial three years permit period. An apprentice applicant for renewal shall submit to the department:

**(a)** a completed renewal application on the division's electronic form;

**(b)** the renewal fee designated in Subsection D of 16.11.3.9 NMAC

**(5)** Lapse in permitted period: If there is a lapse greater than six months between first and second permitted period as defined in Paragraph (3) of Subsection P of 16.11.3.7 NMAC, an apprentice will need to restart the apprentice process.

**(6)** The division may revoke the permit at any time upon a finding of any act of incompetence or unprofessional conduct as defined in 16.11.3.11 NMAC.

**C.** Student midwife modified permit:

**(1)** Application for student midwife modified permit must include all of the following:

**(a)** proof of registration in a U.S department of education accredited midwifery school or proof of registration in the NARM's PEP;

**(b)** a completed agreement by any New Mexico approved midwifery instructor to the preceptor relationship on the division's form;

**(c)** a completed student midwife registration application on the electronic division form;

**(d)** the fee designated in Subsection D of 16.11.3.9 NMAC

**(2)** Upon proof of successful completion, the division will supply to qualifying student midwife applicants a student midwife modified permit.

**(3)** A student midwife modified permit is valid for three years.

**(4)** Renewal of modified permit: A student midwife modified permit may be renewed after the initial permitting period. A student midwife applicant for renewal shall submit to the department:

**(a)** a completed renewal application on the division's ELECTONIC form; and

**(b)** the fee designated in Subsection D of 16.11.3.9 NMAC.

**D.** Fees: All fees are non-refundable and shall be made by payment method designated by the department.

(1) Applications for initial midwife apprenticeship permit must be accompanied by payment to the division in the amount of sixty dollars (\$60).

(2) Application for renewal of midwife apprentice permit shall be accompanied by a payment of sixty dollars (\$60).

(3) Applications for student midwife modified permit must be accompanied by payment to the division in the amount of thirty dollars (\$30).

(4) Application for renewal of a student midwife modified permit shall be accompanied by a payment of thirty dollars (\$30).

(5) The late fee for renewing an apprentice permit or student midwife modified permit when the complete application is not electronically submitted by the fifth calendar day of the month of the current permit or modified permit's expiration date, or for voluntary lapse of a permit or modified permit, will be an additional fee of \$25; this fee is in addition to the renewal fee.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

#### **16.11.3.10 LICENSURE:**

##### **A. General provisions:**

(1) A licensed midwife may provide any care or services allowed by these regulations.

(2) The division requires full disclosure of past midwifery or other professional licensure, suspensions, and revocations which will be considered before granting any license. The department may deny licensure, including renewal, reactivation, or reinstatement of licensure, to a LM whose midwifery or other license has been subject to disciplinary action in any jurisdiction. If denied, re-application will only be considered after a minimum of six months from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions.

(3) Practicing midwifery in New Mexico for compensation or using the initials LM after one's name without a current New Mexico midwifery license is grounds for disciplinary action.

##### **B. Initial licensure:**

(1) An applicant for midwifery licensure must submit to the division the following:

(a) if a new applicant for midwifery licensure:

**(i)** evidence of a passing score on the division-approved national examination no more than one year before applying for licensure or proof of CPM certification; and

**(ii)** evidence of a passing score on the division-approved jurisprudence examination;

**(b)** if a new applicant for midwifery licensure who is already practicing midwifery in another state:

**(i)** proof of CPM certification; and

**(ii)** evidence of a passing score on the division-approved jurisprudence examination;

**(c)** evidence of:

**(i)** current certification in cardiopulmonary resuscitation of the adult and infant/child by the American Heart Association, the Red Cross, the American Safety and Health Institute (ASHI) Basic Life Support, or pre-approved by the department, that includes a hands-on skills component;

**(ii)** competency in IV therapy via certification course that includes a hands-on skills component; and

**(iii)** current certification in neonatal resuscitation program of the American academy of pediatrics, the Canadian paediatric society, or pre-approved by the department, that includes a hands-on skills component;

**(d)** a complete application on the division's electronic forms which shall include the applicant's licensing and disciplinary history;

**(e)** the fee designated in Subsection G 16.11.3.10 NMAC.

**(2)** An initial LM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of Subsection B 16.11.3.10 NMAC and shall expire on the last day of the month of the LM's birth date. A LM license shall be valid for a maximum of two years.

**(3)** After reviewing and approving the submitted application, the division shall issue to qualifying applicants a license.

**(4)** If a license is denied on initial application, the applicant may reapply after six months and upon meeting all the requirements under Subsection B of 16.11.2.10 NMAC.

**(5)** Any final action denying a license to an applicant is an event reportable to the NPDB.

**C. Renewal of licensure:** A LM license shall expire on the last day of the month of the LM's birth month of the second year after it is issued. A completed renewal application must be received by the division by the fifth day of the month of expiration of the current license. An applicant for renewal shall submit to the division:

**(1)** a completed renewal application on the division's electronic form;

**(2)** evidence of successful completion of 30 contact hours of continuing education that conforms with the definitions of "contact hour" and of "continuing education" in topics focused on midwifery care, reproductive health, or the evaluation and care of the newborn. CEUs taught by midwifery associations or non-accredited educational programs will not count unless accredited as CEUs by a third party.

**(a)** A minimum of two of the 30 contact hours should be pharmacology related with emphasis on the division-approved drug formulary.

**(b)** The following options, subject to audit and approval by the division, may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

**(i)** preparation and presentation of a midwifery topic that has received contact hour approval by an accredited CE sponsoring agency will count for twice the number of contact hours for which the presentation is approved with a maximum award of 15 contact hours per licensure period; the same presentation cannot be credited more than once;

**(ii)** sole or primary authorship of one midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

**(iii)** completion of a formal university or college course directly related to midwifery or clinical practice; each university or college unit shall be credited as 15 hours of continuing education; and

**(iv)** acting as primary preceptor for a midwifery student; each 10 hours of precepting shall be credited as one continuing education hour, and up to five contact hours will be allowed per student, with a maximum award of ten (10) contact hours; verification shall be provided on division-approved form.

**(3)** an annual report of practice data in a format as directed by the division

**(4)** evidence of current certification that includes a hands-on component in cardiopulmonary resuscitation of the adult, infant/child, current recognition by the

neonatal resuscitation program of the American academy of pediatrics, and current competency in IV therapy via certification course as outlined in Item (ii) of Subparagraph (c) of Paragraph (1) of Subsection B of 16.11.3.10 NMAC;

(5) evidence of peer review participation within the two years preceding application;

(6) renewal payment designated in Subsection G 16.11.3.10 NMAC.

**D. Reactivation of a LM license:**

(1) A lapsed license occurs on the first day of the month following the expiration date of the current license, if license not renewed on time, and a LM must reinstate the license, paying all added fees before being allowed to practice. A LM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a LM license that has voluntarily lapsed in status or for an applicant that is returning to New Mexico are the same as those for license renewal, listed in Subsection C of 16.11.2.10 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection G of 16.12.2.10 NMAC.

(3) The license will be reactivated with the original license number.

**E. Reinstatement of a LM license:**

(1) The requirements for reinstatement of a revoked or suspended LM license are the same as those for license renewal, listed in Subsection C of 16.11.2.10 NMAC, except that the fee is higher than a renewal, as designated in Subsection G of 16.11.2.10 NMAC.

(2) The license will be reinstated with the original license number.

**F. Reciprocity:** There is no reciprocity with other jurisdictions.

**G. Fees:** All fees are non-refundable and shall be made by the method designated by the division.

(1) Applications for initial licensure shall be accompanied by payment to the division in the amount of one-hundred dollars (\$100).

(2) Application for renewal of licenses shall be accompanied by a payment of fifty dollars (\$50).

(3) The late fee for renewing a license when the complete application is not electronically submitted by the fifth calendar day of the month of the current license's

expiration date or for voluntary lapse of a license will incur an additional fee of seventy-five dollars (\$75); this fee is in addition to the renewal fee.

(4) Reinstatement of a revoked or suspended license or reactivation of a lapsed license will incur an additional fee of one-hundred dollars (\$100); this fee is in addition to the renewal fee.

(5) Application for examination shall be accompanied by the fee designated by the division. This amount does not include the licensing fee.

(6) Hard copy of a license certificate (8 ½ x 11" size) can be requested for a fee of thirty dollars (\$30).

(7) Verification of license by FAX or letter can be requested for a fee of twenty-five dollars (\$25).

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

#### **16.11.3.11 DISCIPLINARY ACTION:**

##### **A. Grounds for action:**

(1) Incompetence. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the client or to the public from the act or omission or series of acts or omissions.

(2) Unprofessional conduct. For purposes of these regulations "unprofessional conduct" includes, but is not limited to, the following:

(a) dissemination of a client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital/agency policy from disclosure;

(b) falsifying or altering client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(c) misappropriation of money, drugs or property;

(d) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation, or deceit;

**(e)** aiding, abetting, assisting or hiring an individual to violate any duly promulgated regulation of the departments midwife licensing authority;

**(f)** obtaining, possessing, administering or furnishing prescription drugs not on the department formulary listed in the "department of health practice guidelines for New Mexico licensed midwives" to any person, including but not limited to one's self;

**(g)** failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of midwifery;

**(h)** obtaining or attempting to obtain a license to practice midwifery through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;

**(i)** practicing midwifery in New Mexico without a valid, current New Mexico license, permit, or modified permit or aiding, abetting or assisting another to practice midwifery without a valid, current New Mexico license;

**(j)** intentionally engaging in sexual contact with or toward a client in a manner that is commonly recognized as outside the scope of the individual midwife's practice;

**(k)** failure to care for a non-adherent client(s) as required in the "department of health practice guidelines for New Mexico licensed midwives" when the failure to care results or may result in potential or actual harm or danger to the client(s);

**(l)** engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

**(m)** practice which is beyond the scope of LM licensure;

**(n)** delegation of medication administration, assessment, evaluation and judgment to non-licensed persons, or non-permitted apprentices/student midwives;

**(o)** verbally or physically abusing a client;

**(p)** failure to meet the documentation requirements of the bureau of vital records and health statistics regulations;

**(q)** violation of the department's regulations governing the practice of licensed midwifery;

**(r)** failure to provide the division in a timely manner with requested information.

**(3)** Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.

**(4)** Dereliction of any duty imposed by law.

**(5)** Conviction of a felony pursuant to Paragraph (1) of Subsection A of 28-2-4 NMSA 1978.

**(6)** Conviction, or entered into an agreed disposition, of a misdemeanor offense related to the practice of midwifery as determined on a case-by-case basis.

**(7)** Failure to report in writing to the division any complaint or claim made against the LM's practice as a registered, certified, or licensed health care provider in any jurisdiction. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the LM becoming aware of the complaint or claim.

**(8)** Conduct resulting in the suspension or revocation of a registration, license, or certification to perform as a health care provider.

**(9)** Failure to report a LM who appears to have violated the rule for the practice of licensed midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability under this rule unless the person acted in bad faith or with malicious purpose.

**(10)** Violation of any of the provisions of this rule.

**B. Non-disciplinary proceedings:** For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated action and the right to the hearing or request for settlement procedures set forth in Paragraphs (3) and (4) of Subsection C of 16.11.3.11 NMAC.

**C. Disciplinary proceedings:** Disciplinary proceedings are conducted in accordance with the Uniform Licensing Act (ULA), 61-1-1 et seq., NMSA 1978 and Open Meetings Act 10-15-1 et seq., NMSA 1978.

**(1)** Filing of a complaint:

**(a)** A written complaint must be filed with the division before a disciplinary proceeding can be initiated.

**(i)** A complaint is an allegation of a wrongful act(s) or an omission(s).

**(ii)** A complaint may include knowledge of a judgment or settlement against a licensee.

**(b)** A written complaint may be filed by any person, including a member of the division's licensed midwifery advisory board.

**(2) Investigation of a complaint:**

**(a)** All complaints alleging a violation of the regulations adopted by the public health division will be investigated to determine whether a violation of applicable law or rule has occurred.

**(b)** The complainant will receive from the division a notification of receipt of the complaint.

**(c)** The investigation may result in a notice of contemplated action (NCA), per the ULA, being issued by the division if a violation exists; or a dismissal of the complaint because no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

**(d)** The department will notify the complainant of conclusion of the investigation and provide information as to public notification of any disciplinary action that has been taken as set forth in Subsection D of 16.11.3.11 NMAC.

**(3) Notice of contemplated action:**

**(a)** The NCA shall be drafted by the department.

**(b)** The director of the division, or the director's designee, shall sign all NCAs.

**(c)** The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

**(4) Request for a hearing, notice of hearing and request for continuance:**

**(a)** Every licensee shall be afforded notice and an opportunity to be heard, as set forth in ULA at section 61-1-3 NMSA, before the department has authority to take any action that would result in disciplinary action.

**(b)** Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

**(c)** The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative prosecuting attorney at any time prior to the hearing.

**(i)** If a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval.

**(ii)** The proposed stipulation and agreement does not divest the department of the authority to require a formal hearing or final approval, amendment, or rejection.

**(iii)** If a settlement is not reached, a hearing shall be held.

**(d)** Once a hearing has been scheduled, any requests for a continuance must be presented to the division's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.

**(e)** If a person fails to appear after requesting a hearing, the department may proceed to consider the matter as a default and make a decision.

**(f)** If no request for a hearing is made within the time and manner required by the ULA, the division may take the action contemplated in the NCA. Such action shall be final and reportable to NPDB.

**(g)** The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated in accordance with 1.21.2 et al NMAC, Retention and Disposition of Public Records.

**(5)** Administrative hearing:

**(a)** All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all non-dispositive motions.

**(b)** All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

**(i)** Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

**(ii)** Disciplinary action against a LM license must not be based solely on hearsay evidence.

**(c)** The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

**(d)** The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the division's licensing authority.

**(e)** The hearing officer shall issue a report and recommended finding to the department secretary in accordance with the ULA.

**(f)** Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA, Section 61-1-14 NMSA 1978, and placed in the LM's licensure file. The department shall mail a copy of the written decision to any authority(ies) that license(s) the LM as a healthcare provider and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

**D.** Public notification of disciplinary action: The following are means in which disciplinary actions are made available to the public.

**(1)** Information regarding disciplinary actions shall be entered into the license file or applicant's file.

**(2)** Submission of disciplinary action to any appropriate disciplinary data bank or notification to each state in which the licensee holds a license or has been licensed.

**E.** Reinstatement of license:

**(1)** Individuals who request reinstatement of their license or who request that their probation be lifted must be prepared to provide the division with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the licensee's activities and progress during the period of probation, suspension or revocation.

**(2)** Requests for reinstatement of a revoked license for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date at which time the secretary of the department's signature is affixed to the order of revocation or suspension is the controlling date, unless otherwise specified in the order.

**(3)** Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension.

**(4)** Reinstatement of a revoked or suspended license requires proof of meeting the renewal requirements as set forth in these regulations, any remedial education or supervised practice required by division, and payment of the reinstatement of a revoked license fee as set forth in Subsection G of 16.11.3.10 NMAC.

**(5)** When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

### **16.11.3.12 COURSE OF EDUCATION:**

New Mexico retains a state apprentice process to become a midwife; the division will provide a division-approved student workbook as a tool in determining the acceptability of an applicant's educational experience. The main purpose of the education program is to establish entry-level knowledge, skills, and abilities necessary to practice competently; this is established through training, education and supervised clinical experience, followed by successful completion of a division-approved written examination. The midwifery instructor will use the student workbook to conduct the course of education for the apprentice as set out below.

**A.** Theoretical instruction: Theoretical instruction must include, but is not limited to, these areas of study:

**(1)** Human life science: Anatomy and physiology, pathophysiology, fetal development, genetic screening, applied microbiology;

**(2)** Psycho/social issues: Communication and counseling, cultural concerns, human sexuality, perinatal education;

**(3)** Antepartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, nutrition, diagnostic laboratory tests and procedures, and consultation and transfer;

**(4)** Intrapartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, diagnostic laboratory tests and procedures, consultation and transfer, and adult cardiopulmonary resuscitation;

**(5)** Postpartum management: History taking, physical assessment, risk screening, provision of care, normal course, complications, pharmacology, consultation and transfer, diagnostic laboratory tests and procedures, and family planning;

**(6)** Newborn management: History taking, physical assessment, risk screening, provision of care, normal course, complications, diagnostic laboratory tests and procedures, consultation and transfer, and neonatal resuscitation;

**(7)** Reproductive health care: History taking, physical assessment, risk screening, provision of care, diagnostic laboratory tests and procedures, non-pharmacological treatment, consultation or transfer for treatment, and family planning;

**(8)** Professional issues: History of midwifery, division regulations regarding prevention of infant blindness; newborn screening for certain congenital diseases and other inborn metabolic errors; registration of births, neonatal and maternal deaths, including stillbirths, and control of diseases and conditions of public health significance; ethics, laws and regulations, starting a small business.

**(9)** Pharmacological management: Safely procure, carry, and administer medications, per the Drug and Cosmetic Act (Definition K), listed on the department formulary.

**B.** Clinical experience: Permitted apprentice midwives should refer to the division's student workbook for details on clinical experiences and skills required to complete training including but not limited to:

**(1)** Skills and knowledge:

**(a)** professional issues, knowledge, and skills;

**(b)** general healthcare skills;

**(c)** maternal health assessment;

**(d)** prenatal care;

**(e)** labor, birth, and immediate postpartum;

**(f)** postpartum;

**(g)** well-baby care.

**(2)** Clinical experiences:

**(a)** births as an observer;

**(b)** births as an assistant under supervision;

**(c)** prenatal exams as an assistant under supervision;

**(d)** newborn exams as an assistant under supervision;

**(e)** postpartum exams as an assistant under supervision;

**(f)** birth as a primary under supervision;

**(g)** initial prenatal exams as a primary under supervision;

- (h) prenatal exams as a primary under supervision;
- (i) newborn exams as a primary under supervision;
- (j) postpartum exams as a primary under supervision;
- (k) continuity of care.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

#### **16.11.3.13 EXAMINATION:**

The division will administer a state jurisprudence examination for licensure of midwives at least quarterly. This examination must be taken by all applicants applying for licensure in New Mexico. Proof of passing NARM exam within one year or current CPM certification is required to sit for this examination.

**A.** A candidate for examination who receives a failing score shall be eligible to retake the examination by meeting the following requirements:

(1) If an applicant fails the examination, the applicant must wait a period of three months from examination date before retaking the examination, and must take the examination again within six months after the three month waiting period.

(2) Submitting the examination fee for each examination as outlined in Subsection G of 16.11.3.10 NMAC.

**B.** If an applicant fails the examination more than three times, further application for the examination will be at the discretion of the department.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

#### **16.11.3.14 RESPONSIBILITIES AND SCOPE OF PRACTICE:**

**A.** Scope of practice: The licensed midwife may independently manage health care services related to the antepartum, intrapartum, and postpartum period for people without general health or obstetrical complications. The LM may provide normal newborn care for up to six weeks of age. The LM may provide non-pharmacological family planning and routine reproductive health care with training and experience. A LM will consult, collaborate, or refer to other health professionals for client care issues outside of their area of competency. LMs have authority to purchase and use specific drugs and medications as outlined in the department-approved formulary as set forth in "department of health practice guidelines for New Mexico licensed midwives". A LM practices in accordance with the "department of health practice guidelines for New Mexico licensed midwives" and the "standards and core competencies of practice for licensed midwives in New Mexico".

**B. Responsibility to consult:** It shall be the responsibility of the midwife to develop a means for consultation with or referral/transfer to a physician, certified nurse-midwife (CNM), or hospital if there are significant deviations from the normal in the health status of either birthing persons or newborns as set out in the "department of health practice guidelines for New Mexico licensed midwives".

**C. Informed consent:** If the LM is providing birth care, the LM must obtain written, informed consent regarding the care to be provided by the licensed midwife from the client upon accepting the client into care. The signed informed consent form must be filed in the client's record, and a copy must be provided to the client. Informed consent shall be a written statement signed by the licensee and the client, in which the licensee certifies that full disclosure of the following information, at a minimum, has been made and acknowledged by the client:

- (1) the LM's educational background and credentials;
- (2) whether the LM has professional liability insurance coverage;
- (3) a description of the procedures, benefits and risks of community setting births;
- (4) the nature and scope of the care to be given;
- (5) the nature and terms of the financial agreement;
- (6) the plan for consultation and for non-emergent and emergent transfer and transport of client or newborn; and
- (7) information regarding where complaints may be filed.

**D.** The licensed midwife may not accept a client for care who does not meet the minimum criteria set out in the "department of health practice guidelines for New Mexico licensed midwives".

**E. Birth registration:** The licensed midwife must complete a New Mexico certificate of live birth registration and file it with the bureau of vital records and health statistics of the department of health within 10 days of the birth of any child in the state of New Mexico. No licensed midwife shall register nor enable any other party to register as a New Mexico birth any child not born in the state. Failure to meet the vital records regulations shall be grounds for disciplinary action.

**F. Records:** The licensed midwife will document and maintain clients' records according to current "department of health practice guidelines for New Mexico". Inactive records shall be maintained no less than 25 years.

**G. Mortality reporting:** The licensed midwife must report within 48 hours to the division any neonatal or maternal mortality, including stillbirths, in clients for whom the LM has cared for in the perinatal period as set forth in the "department of health practice guidelines for New Mexico licensed midwives".

**H. Reportable diseases:** The licensed midwife must report any reportable contagious disease to the public health officer pursuant to the Public Health Act, 24-1-15 NMSA 1978.

**I.** The licensed midwife shall participate in peer review at least once every two years in accordance with the requirements of the division.

**J. Annual reports:** At time of license renewal, each licensed midwife shall submit a report on a division-approved form of the disposition of each client the LM has given care to for the previous 24 months. Note that this annual reporting does not preclude the immediate reporting of maternal or neonatal mortality or stillborn cases.

**K. Changes of contact information:** A licensed midwife must report a change of name, address, phone number, email, or other contact information within 30 days of the change.

**L. Other rules:** a LM shall fulfill the requirements of all relevant department rules including:

- (1) "bureau of vital records and health statistics," 7.2.2 NMAC;
- (2) "control of disease and conditions of public health significance," 7.4.3 NMAC;
- (3) "newborn genetic screening," 7.30.6 NMAC;
- (4) "prevention of infant blindness," 7.30.7 NMAC; and
- (5) "requirement for freestanding birth centers," 7.10.2 NMAC.

**M. Guidelines:** In the absence of specific direction in these regulations as to standard of practice or ethics, the "standards and core competencies of practice for licensed midwives in New Mexico" and the "department of health practice guidelines for New Mexico licensed midwives" approved by the division, which contains the procedures and policies of the department of health and division which are adopted as standards of practice and are incorporated by reference herein.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

#### **16.11.3.15 ADVISORY BOARD:**

The division shall appoint a licensed midwifery advisory board to make recommendations to the department regarding the regulation of LMs.

**A.** The board's activities will be:

(1) review complaints and mortalities, set forth in Subsection G of 16.11.3.14 NMAC, involving LMs as requested by the division and make recommendations to the division;

(2) remain current in clinical practice and professional issues and advise the division accordingly;

(3) recommend updates in the "department of health practice guidelines for New Mexico licensed midwives" and the "standards and core competencies of practice for licensed midwives in New Mexico";

(4) conduct other relevant business as requested by the division.

**B.** Advisory board membership: The licensed midwifery advisory board shall be composed of nine members; the membership shall be as follows:

(1) three state licensed midwives, at least two of whom shall be actively practicing;

(2) one state licensed certified nurse-midwife actively practicing midwifery;

(3) three members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one state licensed physician actively practicing obstetrics; and

(5) one employee of the division.

**C.** Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms. The department representative shall not be subject to term limits.

**D.** The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

**E.** Board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 department of finance administration rules, Section 2.42.2 NMAC.

F. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be considered for removal from the board.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

**16.11.3.16 SEVERABILITY:**

If any part or application of the regulations governing the practice of licensed midwifery is held invalid, the remainder or its application to other situations or persons shall not be affected.

[16.11.3.1 NMAC - Rp, 16.11.3.1 NMAC, 12/28/2021]

## **CHAPTER 12: NURSING AND HEALTH CARE RELATED PROVIDERS**

### **PART 1: GENERAL PROVISIONS**

**16.12.1.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.1.1 NMAC - Rp, 16.12.1.1 NMAC, 12/13/2022]

**16.12.1.2 SCOPE:**

These rules apply to the board and all those licensed by or subject to the jurisdiction of the board.

[16.12.1.2 NMAC - Rp, 16.12.1.2 NMAC, 12/13/2022]

**16.12.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978 and the Lactation Care Provider Act, Sections 61-36-1 to -6 NMSA 1978.

[16.12.1.3 NMAC - Rp, 16.12.1.3 NMAC, 12/13/2022]

**16.12.1.4 DURATION:**

Permanent.

[16.12.1.4 NMAC - Rp, 16.12.1.4 NMAC, 12/13/2022]

#### **16.12.1.5 EFFECTIVE DATE:**

December 13, 2022 unless a later date is cited at the end of a section.

[16.12.1.5 NMAC - Rp, 16.12.1.5 NMAC, 12/13/2022]

#### **16.12.1.6 OBJECTIVE:**

The objective of Part 1 is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, lactation care providers, certified medication aides, certified hemodialysis technicians, approve schools of nursing and medication aide and hemodialysis technician training programs in the state.

[16.12.1.6 NMAC - Rp, 16.12.1.6 NMAC, 12/13/2022]

#### **16.12.1.7 DEFINITIONS:**

##### **A. Definitions beginning with the letter A:**

(1) **"administration of medications"**, means a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board to administer medications;

(2) **"advanced practice registered nurse", (APRN)**, means the practice of professional registered nursing by a registered nurse who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

(3) **"anesthetics"**, means a substance that causes entire or partial loss of the feeling of pain, temperature, or other sensations with or without the loss of consciousness to induce a state of anesthesia. Anesthetics have no reversal agents and may impair ventilatory and cardiovascular function. This definition does not apply to local or topical anesthetics.

**B. Definitions beginning with the letter B: "board"** means the New Mexico board of nursing.

##### **C. Definitions beginning with the letter C:**

(1) **"certificate"**, means a legal document granting permission to an unlicensed person to perform specific functions considered the practice of nursing;

(2) **"certificate of completion"**, means a piece of paper or diploma awarded after the completion of an educational or vocational training. A certificate of attendance

or completion does not convey mastery and is often followed by clinical demonstration to confirm knowledge transfer; the presence of a certificate alone does not mean certification or certified.

(3) "**certification**", means approving a professional for their eligibility for a role by an authority; it is evidence of mastery of knowledge and skills, such as national standards, by passing an exam or meeting industry standards; it requires ongoing continuing education and demonstration of competence in the specialty field; a licensee with a certification can be said to be certified.

(4) "**CEU**", is the abbreviation for continuing education unit;

(5) "**CHT**", is the abbreviation for certified hemodialysis technician;

(6) "**CMA**", is the abbreviation for certified medication aide;

(7) "**client**", means any person domiciled, residing, or receiving care, service or treatment from a licensed nurse, licensed lactation care provider, or certified unlicensed assistive person. This includes but is not limited to patients, residents, or consumers;

(8) "**competency**", competency in nursing is the ability to perform skillfully and proficiently the role of the licensee; the role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise;

(9) "**contact hour**", means the unit of measurement describing an approved and organized learning experience equivalent to 60 clock minutes;

(10) "**continuing education**", means planned learning experiences beyond a basic nursing education program. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of nursing practice, thus improving health care to the public;

(11) "**continuing education unit**", means 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction;

(12) "**coordinated licensure information system**", means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

**D. Definitions beginning with the letter D: "delegation"**, means the act of transferring to a competent individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability of the delegation.

**E. Definitions beginning with the letter E:**

(1) **"educational institution"**, means an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution);

(2) **"engaged in nursing"**, means being employed, engaged, or holding a position which requires licensure or in which the maintenance of licensure as a nurse is expected;

(3) **"expedited license"**, whether by examination, endorsement, credential or reciprocity, means a license issued to a person in this state based on licensure in another state or territory of the United States, the District of Columbia or a foreign country, as applicable, pursuant to the Uniform Licensing Act and the Nursing Practice Act.

**F. Definitions beginning with the letter F: [RESERVED]**

**G. Definitions beginning with the letter G:**

(1) **"good standing"**, means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license or registration.

(2) **"guardian"**, means someone other than a patient, including an agent, surrogate or guardian, authorized to make health-care decisions for the patient under the uniform health-care decisions act or other applicable law;

**H. Definitions beginning with the letter H: [RESERVED]**

**I. Definitions beginning with the letter I: "initial license"**, means the first regular license received from a board for a person who has not been previously licensed;

**J. Definitions beginning with the letter J: "jurisdiction"**, the licensure or regulatory authoritative body for nursing within a specific geographic area for which there is endorsement in New Mexico.

**K. Definitions beginning with the letter K: [RESERVED]**

**L. Definitions beginning with the letter L:**

(1) **"lapsed status"**, means a license which was not renewed by the expiration date on the license;

(2) **"letter of authorization"**, a document issued by the board which authorizes an individual to practice nursing in New Mexico under the auspices of an approved preceptorship for an advanced nursing expanded scope of practice prescriptive authority or for an advanced practice nurse from a compact state;

(3) **"license"**, means a legal document granting permission to a person to perform specific functions considered the practice of nursing or other activity regulated by the board, which may also include a certificate or other type of authorization.

**M. Definitions beginning with the letter M: "monitoring system"**, a mechanism whereby programs may be approved for CE hours within a geographic area.

**N. Definitions beginning with the letter N:**

(1) **"national licensing examination"**, means the examination for licensure as provided by the national council of state boards of nursing, inc.;

(2) **"National practitioner data bank"**, means the database operated by the U.S. department of health and human services that contains medical malpractice payment and adverse action reports on health care professionals;

**O. Definitions beginning with the letter O: [RESERVED]**

**P. Definitions beginning with the letter P:**

(1) **"permit-to-practice"**, a document conferring the privilege to practice at a specific place of employment, under the direct supervision of a licensed RN, APRN, physician, osteopathic physician, dentist, or podiatrist; such permits will carry set expiration dates, are not renewable and are not transferable;

(2) **"preceptor"**, an individual at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model or supervisor in a clinical setting;

(3) **"prescriptive authority"**, means the authority under state and federal law to prescribe, administer, monitor or modify dangerous drug therapy.

**Q. Definitions beginning with the letter Q: [RESERVED]**

**R. Definitions beginning with the letter R:**

(1) **"reactivation"**, means the process of making active an existing license which has lapsed or is otherwise inactive;

(2) **"refresher course"**, means a formal program that has both didactic and clinical components designed to prepare a nurse who has been out of practice to re-enter the profession;

(3) **"reinstatement"**, means the process whereby a license which has been subject to revocation or suspension, is returned to its former status by board action, which may require filing of a form and payment of a reinstatement fee;

(4) **"relicensure"**, the process of renewal, reactivation or reinstatement of a New Mexico nursing license.

#### **S. Definitions beginning with the letter S:**

(1) **"sedation"**, means the administration of medications to produce various levels of calmness, relaxation, or sleep. The various levels include:

(a) **"Minimum sedation/anoxiolysis"**, means a drug-induced state during which patients respond normally to verbal commands, may have impaired cognitive function or coordination but respiratory and cardiovascular functions remain stable:

(b) **"Moderate sedation/analgesia (also known as conscious sedation)"**, means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained:

(i) **"deep sedation"**, means a drug-induced depression of consciousness, during which a patient cannot be easily aroused but responds purposefully, following repeated or painful stimulation. While cardiovascular function is usually maintained, the ability to independently maintain respiratory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate resulting in intubation and mechanical ventilation. Reflex withdrawal from a painful stimulus is *not* considered a *purposeful* response;

(ii) **"general anesthesia"**, means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. General anesthesia affects the patient's ability to maintain an adequate airway and respiratory function, and may impair cardiovascular function;

(iii) **"palliative sedation"**, means the monitored use of medications at end of life intended to provide relief of intolerable and refractory symptoms but not to intentionally hasten death. A refractory symptom is one that cannot be controlled in a tolerable time frame despite use of therapies and seems unlikely to be controlled by further therapies without excessive or intolerable acute or chronic side effects/complications.

(2) **"successful completion"**, means the completion of all required courses with a passing letter grade of "C" or higher, course with pass or fail must have a "pass" for successful completion;

(3) **"supervision/direction"**, means initial verification of a person's knowledge and skills in the performance of a specific function or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific functions or activity.

**T. Definitions beginning with the letter T: "temporary license"**, a non-renewable, non-transferable document indicating a legal privilege to practice as a RN, LPN, CNP, CNS or CRNA, on a conditional basis for a specific period of time.

**U. Definitions beginning with the letter U:**

(1) **"unencumbered"**, means the absence of a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board;

(2) **"unlicensed assistive personnel"**, (UAP) means unlicensed support staff that registered nurse may appropriately delegate tasks to, such as a nursing assistant, nurse technician, or medical assistant.

**V. Definitions beginning with the letter V: "valid practitioner-patient relationship"**, means a professional relationship between the practitioner and the patient for the purpose of maintaining the patient's well-being. At minimum, this relationship is an interactive encounter between the practitioner and patient involving an appropriate history and physical or mental examination, ordering labs or diagnostic tests sufficient to make a diagnosis and providing, prescribing or recommending treatment, or referring to other health care providers. A patient record must be generated by the encounter.

**W. Definitions beginning with the letter W: [RESERVED]**

**X. Definitions beginning with the letter X: [RESERVED]**

**Y. Definitions beginning with the letter Y: [RESERVED]**

**Z. Definitions beginning with the letter Z: [RESERVED]**

[16.12.1.7 NMAC - Rp, 16.12.1.7 NMAC, 12/13/2022; A, 5/21/2024]

**16.12.1.8 GLOSSARY OF ABBREVIATIONS:**

**A. APRN:** Advanced practice registered nurse (i.e. CNP, CNS, CRNA);

- B.** CE: Continuing education;
- C.** CHT: Certified hemodialysis technician;
- D.** CMA: Certified medication aide;
- E.** CNP: Certified nurse practitioner;
- F.** CNS: Clinical nurse specialist;
- G.** COA: Council on accreditation of nurse anesthesia educational program;
- H.** CRNA: Certified registered nurse anesthetist;
- I.** DNP: Doctor of nursing practice;
- J.** GCNS: Graduate clinical nurse specialist;
- K.** GN: Graduate nurse;
- L.** GNP: Graduate nurse practitioner;
- M.** GPN: Graduate practical nurse;
- N.** GRNA: Graduate registered nurse anesthetist;
- O.** LPN: Licensed practical nurse;
- P.** MN: Master's in nursing;
- Q.** MSN: Master of science in nursing;
- R.** NBCRNA: National board on certification & recertification of nurse anesthetists;
- S.** NCLEX-RN/PN: National council licensing examination - RN/PN;
- T.** NCSBN: National council of state boards of nursing;
- U.** NLNAC: National league for nursing accrediting commission;
- V.** NMSA: New Mexico statutes annotated;
- W.** NPA: Nursing Practice Act;
- X.** RN: Registered nurse;

Y. ULA: Uniform Licensing Act.

[16.12.1.8 NMAC - N, 12/13/2022; A, 5/21/2024]

**16.12.1.9 MISSION OF THE BOARD:**

The mission of the board is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, schools of nursing, hemodialysis technicians, medication aides, and lactation care providers in New Mexico. The board is not an advocacy organization but is instead a regulatory body responsible at all times and in all situations for acting in the interest of the public.

[16.12.1.9 NMAC - Rp, 16.12.1.8 NMAC, 12/13/2022]

**16.12.1.10 BOARD ADMINISTRATION:**

**A. Organization:**

(1) The board shall annually elect a chair, vice-chair, and secretary. The term of office begins immediately after the conclusion of the meeting at which the election occurred unless a later date is indicated in the election.

(2) All members of the board, including public members, are eligible to serve as an officer of the board.

**B. Executive director:**

(1) The board shall hire and employ a qualified registered nurse, who shall not be a member of the board, to serve as executive director.

(2) The executive director shall be accountable to the board for the administration and management of the board office and staff, including but not limited to the board's fiscal operations, records, and management of personnel (including hiring, supervising, and terminating staff).

(3) The executive director, or designee, shall represent the board to the public.

(4) As provided in the Nursing Practice Act, the board shall not delegate to the executive director the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the Nursing Practice Act.

**C. Board meetings:**

(1) The board shall meet at least once every three months.

(2) The board shall annually review and adopt an open meetings resolution, consistent with the Open Meetings Act, Sections 10-15-1 to 10-15-4 NMSA 1978.

(3) The board shall approve a schedule of regular meeting dates at a regular meeting prior to the beginning of the next calendar or fiscal year. The board shall publish this schedule in its newsletter and on its website.

(4) Individual board members may attend meetings through telephonic or similar communications equipment when it is difficult or impossible for the member to be physically present. Whenever attending a meeting in such a manner, board members must fully comply with all requirements set by the Open Meetings Act and the board's annual open meetings resolution.

**D. Signatures:** A record, order, contract, or other document requiring a signature from an authorized person on behalf of the board may be signed by the chair, vice-chair, or executive director.

[16.12.1.10 NMAC - Rp, 16.12.1.9 NMAC, 12/13/2022; A, 5/21/2024]

#### **16.12.1.11 AGENCY:**

##### **A. Verification of license or certificate:**

(1) The board staff shall make informal verification of licensure or certification status available immediately on the board website.

(2) Any employer or other interested person or entity may request informal verification of the status of a license or certificate.

(3) Formal verification of licensure may only be requested through postal mail or fax through the submission of the board's verification request form and remittance of the required fee pursuant to 16.12.2.8 NMAC.

(4) Formal verification of registered nurse or licensed practical nurse licensure for the purposes of another U.S. nursing regulatory body must be requested through the national council of state boards of nursing (NCSBN) web-based system.

**B. Reporting of discipline and other licensure matters:** The board staff shall complete all required reporting of disciplinary matters and other reportable actions to the national practitioner databank and coordinated licensure information system as required by federal and state law.

[16.12.1.11 NMAC - Rp, 16.12.1.10 NMAC, 12/13/2022]

#### **16.12.1.12 COMMITTEES:**

**A. Advisory function:** To assist and advise the board in its functions and mission, the board may appoint and utilize, at its discretion, advisory committees consisting of at least one board member and at least two members that are experts in the pertinent field to assist in the performance of the board's duties pursuant to authority under Section 61-3-10 NMSA 1978 of the Nursing Practice Act. Any committee serving the board shall have a purely advisory role and shall not have any policymaking authority of any kind.

**B. Membership:** Except as otherwise provided in the board's rules, the board has absolute discretion with respect to the number of individuals who may serve on a committee, provided that in no case shall a quorum of the members of the board serve on a committee.

**C. Duties and responsibilities:** The board shall annually, at an open meeting, review the duties and responsibilities of each committee and subsequently provide each committee with written objectives to satisfy within the following year.

**D. Except as otherwise provided in the board's statute or rules membership is conditioned on the following:**

- (1) Committee members serve terms that are no more than two-years each.
- (2) The board may reappoint committee members to serve additional terms.
- (3) Service on a committee is voluntary, and the member may resign from the committee at any time upon written notification to the executive director.
- (4) Advisory committee members may be reimbursed as provided in the per diem and Mileage Act at the approval of the director.
- (5) Termination of membership:
  - (a) Members of committees serve at the pleasure of the board, and the board may remove a member from a committee at any board meeting.
  - (b) The executive director may automatically terminate an individual's membership on a committee if the member fails to attend three consecutive committee meetings.

**E. Any committee shall, if ordered by the executive director or the board, meet virtually rather than in person as a means of achieving greater efficiency and productivity.**

**F. Standing committees:** Committees established by rule shall not require reauthorization. Any committee created outside of the rules requires reauthorization of the board each fiscal year.

[16.12.1.12 NMAC - Rp, 16.12.1.11 NMAC, 12/13/2022; A, 5/21/2024]

#### **16.12.1.13 ETHICAL RESPONSIBILITIES OF BOARD MEMBERS, STAFF, AND COMMITTEE MEMBERS:**

**A.** High ethical standards: Pursuant to the mission of the board, all members of the board, employees of the board, and committee members shall act in their official capacities in the interest of the public and not for personal gain or the benefit of the members of a particular profession.

**B.** All members of the board, employees of the board, and committee members shall abide by the requirements of the Governmental Conduct Act and all other New Mexico laws governing the ethical conduct of public officers and employees.

**C.** Code of conduct: The board shall annually adopt, at a regularly scheduled board meeting, a code of conduct for all members of the board, employees of the board, and committee members.

[16.12.1.13 NMAC - Rp, 16.12.1.12 NMAC, 12/13/2022]

#### **16.12.1.14 INFORMATIONAL OBLIGATIONS OF LICENSE AND CERTIFICATE HOLDERS:**

**A.** Use of legal name: A licensee or certificate holder must use the licensee or certificate holder's legal name on all applications and licenses.

**B.** Name changes:

(1) A licensee or certificate holder may submit a name change to the board at any time.

(2) A licensee or certificate holder must submit, as part of any name change request, a copy of one of the following legal documents verifying the name change: a recorded marriage certificate, a divorce decree, or a court order.

(3) The licensee or certificate holder must continue to use the name on record with the board for work purposes until the board acknowledges the official change of name.

**C.** Contact information:

(1) A licensee or certificate holder is obligated to maintain current and accurate contact information on file with the board.

(2) A licensee or certificate holder shall notify the board within 30 days of a change of the licensee or certificate holder's contact information.

(3) Failure to disclose a change of mailing or residential address shall constitute grounds for disciplinary action.

(4) For the purposes of this rule, "contact information" means the licensee or certificate holder's mailing address, residential address, email address, and telephone number.

**D. Name and mailing address of employer:**

(1) A licensee or certificate holder is obligated to maintain the current and accurate name and mailing address of the licensee or certificate holder's employer on file with the board.

(2) A licensee or certificate holder shall notify the board within 30 days of any change in the name and address of the licensee or certificate holder's employer.

(3) Failure to disclose a change of the name and mailing address of the licensee or certificate holder's employer shall constitute grounds for disciplinary action.

[16.12.1.14 NMAC - Rp, 16.12.1.13 NMAC, 12/13/2022]

## **PART 2: NURSE LICENSURE**

### **16.12.2.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.2.1 NMAC - Rp, 16.12.2.1 NMAC, 12/13/2022]

### **16.12.2.2 SCOPE:**

This rule applies to all nurses licensed in New Mexico and all nurses not licensed in this state whose home state is not New Mexico and who wish to practice in New Mexico pursuant to a multi-state license privilege as provided in the nurse licensure compact.

[16.12.2.2 NMAC - Rp, 16.12.2.2 NMAC, 12/13/2022]

### **16.12.2.3 STATUTORY AUTHORITY:**

Section 61-3-1 NMSA 1978 authorized the board of nursing to regulate the practice of nursing in the state.

[16.12.2.3 NMAC - Rp, 16.12.2.3 NMAC, 12/13/2022]

### **16.12.2.4 DURATION:**

Permanent.

[16.12.2.4 NMAC - Rp, 16.12.2.4 NMAC, 12/13/2022]

**16.12.2.5 EFFECTIVE DATE:**

December 13, 2022, unless a later date is cited at the end of a section.

[16.12.2.5 NMAC - Rp, 16.12.2.5 NMAC, 12/13/2022]

**16.12.2.6 OBJECTIVES:**

To promote, preserve and protect the public health, safety and welfare of the citizens of the state of New Mexico.

[16.12.2.6 NMAC - Rp, 16.12.2.6 NMAC, 12/13/2022]

**16.12.2.7 DEFINITIONS:**

[RESERVED]

[16.12.2.7 NMAC - Repealed 12/13/2022]

**16.12.2.8 FEES:**

Payment of fees will be accepted in the form specified by the board. The initial application fee will be for a period of one year, plus the months to the applicant's birth month. Fees may be collected in whole or prorated to commensurate with the length of the renewal period. Fees are not refundable.

**A. Licensure by examination, expedited, or endorsement:**

(1) Licensed practical nurse (LPN)	\$150
(2) Registered nurse (RN)	\$150
(3) Advanced practice: CNP/CNS/CRNA	\$100
(4) Licensure for military personnel, spouse, dependent, or veteran	\$0

**B. License Renewal:**

(1) Licensed practical nurse (LPN)	\$110
(2) Registered nurse (RN)	\$110
(3) Advanced practice: CNP/CNS/CRNA	\$110
(4) First renewal of license for military personnel, spouse, dependent, or veteran	\$0

**C.** Inactive license renewal (late renewal, lapsed status, reactivation, reinstatement after board action) includes renewal fee:

(1) Licensed practical nurse (LPN)	\$200
(2) Registered nurse (RN)	\$200
(3) Advanced practice: CNP/CNS/CRNA	\$200

**D.** Other Fees:

(1) Re-exam LPN/RN	\$60
(2) Temporary license LPN/RN	\$60
(3) Temporary license CNP/CNS/CRNA	\$60
(4) License verification	\$30

**E.** Nursing Lists:

(1) LPN/CNP/CNS/CRNA	\$100
(2) RN	\$200
(3) Specialty/customized	\$300

[16.12.2.8 NMAC - Rp, 16.12.2.9 NMAC, 12/13/2022]

### **16.12.2.9 LICENSURE REQUIREMENTS FOR REGISTERED AND PRACTICAL NURSES:**

Licensure with the New Mexico board of nursing is mandatory and is the responsibility of the individual nurse, pursuant to the Nursing Practice Act. For states who are a part of the nurse licensure compact, licensure in New Mexico can only be issued to applicants who declare New Mexico as their primary state of residence.

**A.** Prerequisites for licensure of RNs and LPNs by examination in New Mexico.

(1) Completion of and eligible for graduation from a board approved course of study for the preparation of registered nurses or practical nurses, or an acceptable level of education as determined by the board or graduation from a program which is equivalent to an approved program of nursing in the United States:

(a) minimum acceptable level of education for LPN licensure by examination and for candidates enrolled in RN programs with LPN programs embedded include:

(i) minimum of 500 hours, 250 didactic, 250 (clinical and lab) which includes the minimum as follows; OB/Peds - 30 hours didactic/40 hours clinical; medical-surgical - 60 hours didactic/ 90 hours clinical; pharmacology - 45 hours didactic; and psych - 60 contact hours;

(ii) LPN transition course approved by the board.

(b) request to New Mexico board of nursing for LPN licensure examination by acceptable level of education from an approved program of nursing that does not offer a PN program must include:

(i) transcripts with a minimum of 500 hours in nursing education and proof of successful completion of a board approved LPN transition course;

(ii) written communication from the director of the approved nursing program requesting permission for nursing students to test for LPN licensure.

(c) certification of eligibility for LPN licensure examination by students enrolled in a nursing program with a LPN track will need to include:

(i) transcripts with a minimum of 500 hours in nursing education and a board approved LPN transition course passed successfully on completion of board approved LPN transition course;

(ii) written communication from the director of the approved nursing program requesting permission for nursing students to test for LPN licensure.

(2) RN and PN graduates from non-U.S. nursing programs:

(a) shall have an evaluation of their nursing education credentials sent to the board directly from a board recognized educational credentialing agency;

(i) the credentialing agency must be a member of a national credentialing organization and must be monitored by an external committee of credentialing experts and nursing educators;

(ii) the credentialing agency must demonstrate the ability to accurately analyze academic and licensure credentials in terms of U.S. comparability, with course-by-course analysis of nursing academic records;

(iii) the credentialing agency must manage the translation of original documents into English;

(iv) the credentialing agency will inform the board of nursing in the event of fraudulent documents;

(v) the credentials report must state the language of nursing instruction and language of textbooks for nursing education; and

(vi) the credentialing agency must only use original source documents in evaluating nursing education and must compare the foreign education to the U.S. education standards.

(vii) the executive director and the board reserve the right to not recognize an educational credentialing agency that does not meet these requirements.

(b) Puerto Rico applicants who are graduates of a program accredited by a US national nursing accreditation organization registered nurse program are eligible to sit national council licensure examination for registered nurses (NCLEX-RN) exam;

(c) successful completion of a board approved English competency examinations with the following conditions:

(i) a minimum score of 540 (207 on computerized version) on the test of English as a foreign language (TOEFL) or test of English as a foreign language - internet based test (TOEFL IBT) minimal passing standard of 84 overall, with a minimum speaking score of 26, a minimum score of 725 on test of English for international communication test of English for international communication (TOEIC) or a minimum score of 6.5 overall with a 7.0 on the spoken portion on the academic version of international English language testing system international English language testing system (IELTS); OET Grade C+ for reading, writing, and listening, OET Grade B for speaking on the occupational English test (OET); a minimum score of 59 or higher and a CEFR score of B2 or higher on the Michigan English test (MET) score report;

(ii) completion of a nursing program given in English in another country;

(iii) a passing score on a nursing licensure examination which is given in English.

(3) Completion of the required board of nursing application for licensure by examination according to instructions and including the required fee.

(4) Completion of NCLEX application for the testing service according to instructions.

(5) Graduates who have compact state addresses or who declare another compact state as their state of residence on their application will have their application for examination denied.

(6) The board shall not approve an application for a license until the applicant provides the following information:

(a) demographics, including race, ethnicity and primary and other languages spoken;

(b) practice status, including but not limited to: active practices in New Mexico and other locations; practice type, practice settings, such as hospital, clinic or other clinical settings;

(c) education, training and primary and secondary specialties;

(d) average hours worked per week and the average number of weeks worked per year in the licensed profession;

(e) percentage of practice engaged in direct patient care and in other activities, such as teaching, research and administration in the licensed profession;

(f) practice plans for the next five years, including retiring from the health care profession, moving out of state or changing health care work hours.

**B. Nationwide criminal background check.** Applicants for licensure in New Mexico are subject to a state and national criminal background check at their cost.

(1) Applicants will follow the criminal background check process required by the New Mexico department of public safety or its agent.

(2) Applications for exam or endorsement will not be processed without results of a criminal background check.

(3) If the criminal background check reveals a felony or violation of the Nursing Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to be reviewed by the executive director, as delegated by the board, or the board to make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

**C. Complete application for licensure by examination, certification of eligibility for graduation completed by nursing education program or official transcript, and an approved criminal background check must be received by the board office prior to being granted permission to take the national licensing examination (NCLEX). Certification of eligibility for graduation completed by nursing education program or official transcript, indicating date requirements for graduation from the nursing program were met and certificate or degree awarded must be received in the board office directly from the registrar's office.**

**D. Results of the examination shall be reported to the individual applicant within two weeks following the applicant's examination date. Examination results shall be released to the applicant's nursing program and boards of nursing unless otherwise instructed, in writing, by applicant.**

**E. An initial license shall be valid until the last day of the applicants' birth month after the first anniversary of the initial license.**

**F. Applications containing fraudulent or misrepresented information could be the basis for denial or revocation of licensure.**

**G.** If the licensure process is not completed, the application becomes null and void 12 months after date of the application being received at the board.

**H.** Permits-to-practice may be issued for employment at a specific institution(s) in New Mexico. Permits-to-practice can be emailed, faxed or mailed directly to the New Mexico employing institution(s).

(1) To be eligible for a permit-to-practice, the applicant must:

(a) complete the application process to take the NCLEX within 12 weeks of graduation; the permit to practice for RN and PN graduates of U.S. schools may be issued for a period not to exceed six months from the receipt date of application; permits to practice may not be issued by the New Mexico board of nursing for employment at specific institution(s) in compact states; permits-to-practice will not be issued for applicants who declare residency in other compact states;

(b) RN and PN graduates from non-U.S. nursing programs may be issued a permit-to-practice in New Mexico for a period not to exceed six months from the date of application when requirements are met according to Paragraph (2) of Subsection A of 16.12.2.9 NMAC;

(c) assure that prospective New Mexico employer(s) submit a letter of intent to employ to the board office, on agency letterhead, indicating the name of a specific New Mexico employer and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(d) have an approved criminal background check results.

(2) Permits-to-practice cannot be transferred or renewed.

(3) Written notification from employer must be made to the board office in case of lost or stolen permit-to-practice.

(4) Permits-to-practice shall be valid until the examination results are disseminated but shall not exceed the expiration date on the permit.

(a) Applicants who fail the first or any subsequent examination shall not practice nursing until such time as the applicant passes a nursing licensing examination.

(b) Any applicant who is eligible to write the professional examination but elects to write the practical examination on the basis of practical nursing education equivalency and fails the practical examination shall not be granted graduate nurse status when the applicant applies to write the professional registered nurse examination.

(c) Any applicant who fails to appear for the first examination for which applicant is eligible shall not practice nursing until such time as the applicant passes a licensing examination.

(5) Candidates who were not successful on *the national licensure examination* will receive the results as soon as they are available.

(6) Applicants who hold a graduate permit-to-practice and do not become licensed prior to the expiration date of the permit may not continue to practice as a graduate nurse or graduate practical nurse.

**I. Direct supervision for graduate permit holders:**

(1) at a minimum, the RN responsible for direct supervision must be in the facility or on the unit with the graduate;

(2) the RN is responsible for observing, directing and evaluating the performance of the graduate;

(3) the RN supervisor must not be engaged in other activities that would prevent them from providing direct supervision.

**J. NCLEX attempt limits:**

(1) Applicants educated in the United States may take the examination a maximum of five times within three years of graduation from basic nursing education.

(2) Applicants educated outside of the United States may take the examination a maximum of five times within three years of their initial New Mexico application for licensure through examination.

(a) Applicants educated outside of the United States may apply for initial licensure regardless of date of completion of basic nursing education with verification of licensure as a nurse in the within the last four years.

(b) Applicants educated outside of the United States may apply for initial licensure within four years of completion of basic nursing education if there is no verification of licensure within the last four years.

(3) The applicant must wait 45 days to retest after failing the exam.

(4) Applicants for re-examination must meet all NCLEX requirements for retaking the examination.

(5) Education requirements must be met as specified and do not provide or allow for any test out options.

**K. National council licensing examination:**

(1) Applicants for licensure as registered nurses shall be required to pass the NCLEX-RN.

(2) Applicants for licensure as licensed practical nurses shall be required to pass the NCLEX-PN.

(3) Applicants observed giving or receiving unauthorized assistance during the taking of the national licensing examination shall be referred to the board by a sworn complaint.

**L. Expedited licensure for registered nurses and licensed practical nurses:**

(1) An expedited license is a one-year provisional license that confers the same rights, privileges and responsibilities as regular licenses issued by a board. The board will issue an expedited license to a qualified applicant based on prior licensure in an eligible jurisdiction other than New Mexico upon an applicant's submission of a complete application containing all of the following:

(a) a completed and signed application form;

(b) proof of current licensure in an eligible jurisdiction;

(c) proof of good standing for the license held by the applicant in an eligible jurisdiction;

(d) submission of fingerprints and other information necessary for a state and national background check; and

(e) payment of the required application fee.

(2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Paragraph (1) of Subsection L of 16.12.2.9 NMAC including documentation from third parties.

(3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978.

(4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978:

(a) the license may not be issued within 30 days of submission of the complete application;

(b) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and

(c) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

(5) An expedited license is a single-state license not subject to the multistate compact: prior to renewal of license, the holder of the expedited license may apply to change the expedited license to a multistate license and must fulfill all the requirements of the nurse licensure compact, including completing another background check;

(6) Renewal of licenses:

(a) a licensee holding an expedited license may apply for license renewal beginning 60 days prior to expiration of the expedited license, as provided by the board's rules;

(b) upon renewal, an expedited license shall become a regular single-state license;

(c) if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the NCLEX for original licensure, the licensee shall be required to take and pass the NCLEX as a prerequisite to the renewal of the license. In such a case, the expedited license shall not be renewed unless the licensee passes the NCLEX.

(7) Eligible and ineligible jurisdictions:

(a) the board will accept expedited license applications on the basis of prior licensure in any jurisdiction within the United States except the following: Puerto Rico, on the grounds that this jurisdiction does not participate in the coordinated licensure system.

(b) the board will accept expedited license applications on the basis of prior licensure in the following jurisdictions outside the United States: Canada.

**M.** Qualifications for licensure as a RN or LPN are pursuant to the Nursing Practice Act:

(1) LPN applicants initially licensed after July 1, 1969 must meet the educational requirements.

(2) Military personnel, licensed as LPNs by successful writing of the national licensing examination prior to July 1, 1977, may be licensed in New Mexico by endorsement providing their DD-214 shows the related civilian occupation to be "LPN".

(3) Continuing education (CE) is not required for initial licensure by endorsement. CE requirements must be met at the time of the first renewal. CE may be prorated to commensurate with the length of the renewal period.

(4) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

**N.** An initial license shall be valid until the last day of the applicants' birth month after the first anniversary of the initial license.

**O.** If the licensure process is not completed within one year after date application received by the board, the application becomes null and void.

**P.** In case of a medical emergency (as defined in these rules), nurses currently licensed to practice as a RN or LPN in a jurisdiction of the United States may practice in New Mexico without making application for a New Mexico license for a period not to exceed 30 days.

**Q.** Requirements for relicensure and reactivation. Applicants for relicensure and reactivation must meet CE requirements as stated in these rules, pursuant to the Nursing Practice Act Section 61-3-24 NMSA 1978. The CE may be prorated to commensurate with the length of the renewal period.

(1) Licensed nurses shall be required to complete the renewal process by the end of their renewal month every two years.

(2) A renewal notice shall be sent electronic notification to the licensee at least six weeks prior to the end of the renewal month.

(a) Renewal of license may be accepted no more than 60 days prior to the expiration date of the license.

(b) The board shall not approve an application for a renewal of license until the applicant provides the following information:

(i) demographics, including race, ethnicity and primary and other languages spoken;

(ii) practice status, including but not limited to: active practices in New Mexico and other locations; practice type, practice settings, such as hospital, clinic or other clinical settings;

- (iii) education, training and primary and secondary specialties;
- (iv) average hours worked per week and the average number of weeks worked per year in the licensed profession;
- (v) percentage of practice engaged in direct patient care and in other activities, such as teaching, research and administration in the licensed profession;
- (vi) practice plans for the next five years, including retiring from the health care profession, moving out of state or changing health care work hours.

(c) Failure to receive notice of pending renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

(d) If the license is not renewed by the end of the renewal month, licensee does not hold a valid license and shall not practice nursing in New Mexico until the lapsed licensed has been reactivated.

(e) A reactivation fee will be charged when license has lapsed.

(f) Exception: if renewing, nurses who are mobilized for active duty are not required to renew their license while on active duty, other than training, during a military action. A copy of the mobilization orders must be submitted to the board office prior to expiration of the license. The license extension shall end one month after deployment is concluded. No reactivation fee will be charged when the license is renewed.

(3) 30 hours of approved CE must be accrued within the 24 months immediately preceding expiration of license. CE may be prorated to commensurate with the length of the renewal period.

(a) Certified nurse practitioners must submit a copy of valid APRN national certification.

(b) Certified registered nurse anesthetists must submit a copy of the recertification card issued by NBCRNA for renewal of the CRNA license.

(c) Clinical nurse specialist must submit a copy of valid APRN national certification.

(d) Exception: if renewing, nurses mobilized for military action are not required to meet the CE requirements while on active duty, other than training, during a military action. A copy of the mobilization order must be submitted along with the renewal application.

(4) Individuals who reside out-of-state who do not hold primary residence in a nurse licensure compact state, but wish to maintain a current, valid New Mexico license,

must meet the same requirements for licensure as licensees residing within the state who have declared New Mexico as their primary residence.

(5) Penalty: failure of licensee to meet the CE requirement for licensure shall result in the license not being renewed, reinstated, or reactivated. When the CE requirement has been met, an application for licensure may be submitted for consideration.

(6) Licenses can be verified on the board website or [www.nursys.com](http://www.nursys.com).

(7) Individuals who are reactivating a license which has been lapsed for four or more years must complete a refresher course that includes both a didactic and clinical component designed to prepare a nurse who has been out of practice to re-enter into practice.

(a) Applicants will follow the criminal background check process required by the New Mexico department of public safety or its agent and have a new criminal background check result approved.

(b) A temporary license will be issued not to exceed six months unless the board of nursing approves an extension to allow the individual to complete the refresher course clinical component. If documentation is not received by the board verifying successful completion of the refresher course prior to the temporary license expiration date, the individual will not be allowed to practice nursing.

(c) Advanced practice nurses who are reactivating an advanced practice license which has been lapsed for four or more years must also complete a refresher course or certification reactivation that is reflective of their specific advanced practice knowledge, skills and expertise. A temporary license will be issued not to exceed one year unless board of nursing approves an extension.

**R.** Reactivation/reinstatement of a lapsed license must meet the requirements for re-licensure, to include a background check if lapsed for over 90 days, pursuant to the Nursing Practice Act and these rules. A reactivated or reinstated license shall be valid up to two years.

**S.** Inactive status. Licensee may request their license be placed on inactive status during the renewal cycle only; however, the licensee may not function in a nursing capacity as a New Mexico licensed nurse until the license is reactivated.

**T.** The board will collect a standardized core essential data set as required in regulation for examinations and renewals which will be entered into the internal licensing database at the board of nursing.

[16.12.2.9 NMAC - Rp, 16.12.2.10 NMAC, 12/13/2022; A, 5/21/2024]

## **16.12.2.10 CONTINUING EDUCATION:**

### **A. Introduction:**

(1) Pursuant to the provision of the Nursing Practice Act, the board of nursing prescribes the following regulations establishing requirements for CE to be met by the licensee to protect the health and well-being of the citizens of New Mexico and to promote current nursing knowledge and practice.

(2) Philosophy of CE: The members of the New Mexico board believe that CE is one of the most important responsibilities of the nurse and is a lifelong process. The primary responsibility for CE rests with the individual nurse. A diversity of nursing-related learning activities is recommended to enhance the scope of professional development.

### **B. Requirements and rules:**

#### (1) Records:

(a) All licensees must indicate compliance with the CE required by these rules on the renewal application. All information must be completed as requested.

(b) Licensees are responsible for maintaining their own CE records and for keeping the certificates of verification of attendance of CE activities for at least one year after the license is renewed. Photocopies of certificates must be submitted to the board office only if audited and requested.

#### (2) CE Audit:

(a) Continuing education records are subject to audit by the board.

(b) Licensee may be subject to disciplinary action by the board if non-compliant within 60 days of the first notification of audit.

(c) When audited, CE may be prorated to commensurate with the length of the renewal period.

**C. Approved continuing education:.** To be acceptable in New Mexico, the CE activity must have been approved by a recognized approval body and must enhance the licensee's scope of professional development as related to his/her activities in nursing. The participant must receive a certificate of attendance which validates the number of approved CE hours awarded, name of the participant, sponsoring agency, approval body and date attended. Correspondence courses and home-study programs are acceptable, if approved.

#### (1) Recognized approval bodies for CE for nurses.

- (a) National or state recognized nursing organizations.
  - (b) Other state boards of nursing.
  - (c) New Mexico board-approved local monitoring systems.
- (2) Other CE which may be accepted as approved CE for nurses:
- (a) academic credit, computation: one academic credit equals 15 contact hours;
  - (b) CE units (CEUs) or contact hours awarded by CE divisions within educational institutions of higher learning;
  - (c) educational offerings approved through other generally recognized health care or professional organizations as related to licensee's nursing practice.

**D. Monitoring system:** CE hours accrued through educational offerings approved by a local monitoring system shall be accepted as meeting the CE requirements for licensure in New Mexico but may not be accepted by other state boards of nursing as approved CE.

(1) Local monitoring systems must be approved initially and annually by the board of nursing. A guideline for the establishment and operation of a local monitoring system is available in the board office.

(2) The approval of educational offerings shall be determined on the approval criteria developed by the board.

**E. Certification or recertification in the registered nursing specialty area:** Certification or recertification granted by a national professional organization which uses criteria designed to recognize competence in a specialized area of nursing practice may be used as approved CE. Verification of certification or recertification within the current renewal period is accepted in lieu of the 30 hours of CE required for licensure.

[16.12.2.10 NMAC - Rp, 16.12.2.11 NMAC, 12/13/2022]

#### **16.12.2.11 STANDARDS OF NURSING PRACTICE:**

**A.** The nurse shall maintain individual competence in nursing practice, recognizing, and accepting responsibility for individual actions and judgments.

(1) Competent nursing practice requires that the nurse have the knowledge and skills to practice nursing safely and properly in accordance with their licensure status and to perform specific functions or procedures required in their particular area of practice. Competent nursing practice also requires that the nurse have the knowledge

to recognize and respond to any complication(s) which may result from the function or procedure the nurse performs.

(2) To maintain the requisite knowledge and skills, the nurse shall engage in CE specific to their particular area of practice.

(3) The nurse shall use individual competence as a criterion in accepting assigned responsibilities.

(4) The nurse contributes to the formulation, interpretation, implementation and evaluation of the objectives and policies to nursing practice within their employing setting.

**B.** The nurse shall assign/delegate to licensed and unlicensed persons only those nursing actions which that person is prepared, qualified or licensed or certified to perform.

(1) The nurse is accountable for assessing the situation and is responsible for the decision to delegate or make the assignment.

(2) The delegating nurse is accountable for each activity delegated, for supervising the delegated function or activity, and for assessing the outcome of the delegated function or activity.

(3) The nurse may not delegate the specific functions of nursing assessment, evaluation and nursing judgment to non-licensed persons.

(4) Registered nurses engaged in school nursing practice may delegate medication administration, including emergency medication, to adults affiliated with school operations.

**C.** The nurse shall have knowledge of the laws and rules governing nursing and function within the legal boundaries of nursing practice.

(1) The nurse must report incompetent and unprofessional conduct to the appropriate authorities.

(2) The nurse must report violations of the Nursing Practice Act and administrative rules of the board of nursing to the board of nursing.

**D.** The nurse acts to safeguard the patient when their care and safety are affected by incompetent, unethical, or illegal conduct of any person by reporting the conduct to the appropriate authorities.

**E.** The nurse shall recognize the dignity and rights of others regardless of social or economic status and personal attributes, shall conduct practice with respect for human

dignity, unrestricted by considerations of age, race, religion, sex, sexual orientation, national origin, disability or nature of the patient/client's health problems.

**F.** The nurse safeguards the patient's right to privacy by judiciously protecting information of a confidential nature, sharing only that information relevant to their care.

**G.** The nurse shall identify herself/himself by name and licensure category and shall permit inspection of their license when requested.

**H.** Standards for professional registered nursing practice. Registered nurses practice in accordance with the definition of professional registered nursing in the NPA. Subsection J of Section 61-3-3 NMSA 1978.

(1) RNs may assume specific functions and perform specific procedures which are beyond basic nursing preparation for professional registered nursing Subsection J of Section 61-3-3 NMSA 1978 provided the knowledge and skills required to perform the function and procedure emanates from a recognized body of knowledge and practice of nursing, and the function or procedure is not prohibited by any law or statute:

(a) emerging functions and procedures that do not emanate from a nursing body of knowledge will require national certification from a recognized body to denote mastery and assess competency as the RN is recognized as being certified;

(b) certificates of course completion are not evidence of mastery nor evidence of competency.

(2) When assuming specific functions and performing specific procedures, which are beyond the nurse's basic educational preparation, the RN is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently:

(a) administration of medication for the purposes of moderate sedation and analgesia requires particular attention;

(b) a nurse shall possess specialized nursing knowledge, judgment, skill and current clinical competence to manage the nursing care of the patient receiving moderate sedation including:

(i) being currently trained with demonstrated proficiency in age-appropriate advanced life support, including but not limited to; Advanced cardiac life support (ACLS), pediatric advanced life support (PALS), Neonatal resuscitation program (NRP);

(ii) knowledge of anatomy, physiology, pharmacology, cardiac arrhythmia recognition, oxygen delivery, respiratory physiology, transport and uptake

and the use of an oxygen mask, bag-valve mask, oral airway, nasal airway adjunct, or the maintenance of a supraglottic airway, or endotracheal tube;

(iii) ability to recognize emergency situations and institute emergency procedures as appropriate to the patient condition and circumstance.

(c) To perform moderate sedation a registered nurse:

(i) shall not have other responsibilities during or after the procedure that would compromise the nurse's ability to adequately monitor the patient during moderate sedation/analgesia;

(ii) shall assess the physical setting for safe administration of medications for sedation and proceed only if the resources needed for reasonable anticipated emergencies are available;

(iii) shall ensure that a qualified airway specialist is immediately available during and after the procedure for respiratory emergencies. Immediately available meaning being present in the facility, in the vicinity of the care being administered, and not otherwise engaged in any other uninterruptible procedure or task.

(iv) a qualified airway specialist is trained in and maintains a current competency in endotracheal intubation, such as but not limited to a CRNA, anesthesiologist, emergency physician, paramedic, respiratory therapist or a registered nurse;

(v) shall decline to administer medications classified as sedatives or other medication if the registered nurse assesses the administration of sedatives or other medication would be unsafe under the circumstances;

(vi) shall maintain adequate oxygenation and ventilation via an appropriate method.

(d) Administration of anesthetics is restricted to an anesthesia provider; pursuant to Section 61-3-6 NMSA 1978. However, RNs may maintain anesthetic medication drips on intubated and mechanically ventilated patients. RNs with education and competency may also administer anesthetic medications under the supervision of a qualified airway specialist, acting as a "provider's third hand," and assist with airway management when the provider is unable to free their hands or otherwise administer anesthetics during airway management. This restriction does not apply to surface or air transport RNs providing emergency airway care while in direct communication with their medical director or while following approved medical protocols.

(e) A RN may administer ketamine at a very-low dose only in the following situations:

- (i) for providing moderate sedation for diagnostic or therapeutic procedures;
- (ii) for analgesia or management of psychiatric disorders, and
- (iii) for palliative (end of life) care. A very-low dose permitted under this rule, means a dose of ketamine that is a fraction of the anesthetic maintenance dose and will not exceed a moderate sedation level of consciousness for non-ventilated patients. Proper protocols, training and education of the RN must be in place to assure patient/client safety, rescue equipment is readily available, and the supervising provider is knowledgeable of the medications and can intervene if assistance is required.

**I. Standards for licensed practical nursing practice.** Licensed practical nurses practice in accordance with the definition of licensed practical nursing in the NPA Subsection G of Section 61-3-3 NMSA 1978.

(1) LPNs may assume specific functions and perform specific procedures which are beyond basic preparation for licensed practical nursing Subsection G of Section 61-3-3 NMSA 1978 provided the knowledge and skills required to perform the function and procedure emanates from the recognized body of knowledge and practice of nursing, and the functions or procedure is not prohibited by any law or statute. LPNs who perform procedures which are beyond basic preparation for practical nursing must only perform these procedures under the supervision/direction of a RN, MD, DO, dentist, or Physician Assistant (PA), so long as a supervising PA is serving as a collaborative or supervised physician extender.

(2) LPNs may perform intravenous therapy, including initiation of IV therapy, administration of intravenous fluids and medications, and may administer medications via the intraperitoneal route provided the LPN has the knowledge and skills to perform IV therapy safely and properly. LPNs may administer medications for minimum sedation/analgesia only. Administration of medications for moderate sedation, deep sedation, or palliative sedation, including the administration of any anesthetics, is not within the LPN scope of practice.

(3) When assuming specific functions and performing specific procedures which are beyond the LPN's basic educational preparation, the LPN is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently.

(4) LPNs may perform selected aesthetic procedures, such as laser treatments, under the direct supervision of a qualified provider. However, LPNs may not provide aesthetic injections.

**J. Educational program criteria.** Educational programs preparing either RNs or LPNs to perform specific functions and procedures that are beyond basic educational preparations should:

- (1) prepare the nurse to safely and properly perform the function and procedures;
- (2) prepare the nurse to recognize and respond to any complication(s) which may result from the procedure, and;
- (3) verify the nurse's knowledge and the ability to perform the specific functions and procedures.

[16.12.2.11 NMAC - Rp, 16.12.2.12 NMAC 12/13/2022; A, 5/21/2024]

### **16.12.2.12 ADVANCED PRACTICE REGISTERED NURSE (APRN) CERTIFIED NURSE PRACTITIONER (CNP):**

#### **A. Requirements for licensure of nurse practitioners:**

- (1) Hold a current, unencumbered RN license from New Mexico or hold a compact multi-state RN license.
- (2) Successfully complete a graduate level nursing program designed for the education and preparation of nurse practitioners as providers of primary, or acute, or chronic, or long-term, or end of life health care.
  - (a) The program must be offered through an accredited institution of higher education or through the armed services.
  - (b) If the applicant is initially licensed by any board of nursing including the New Mexico board of nursing after January 1, 2001 the program must be at the master's in nursing level or higher. Applicants who do not hold a master's level or higher degree from a nurse practitioner program and were initially licensed by any board before January 1, 2001, must provide verification of NP licensure.
  - (c) The educational documentation shall verify the date of graduation, credentials conferred and number of supervised clinical hours as a nurse practitioner in the education program.
  - (d) The educational documents must reflect successful completion of graduate degree courses.
  - (e) Additional population foci can be added with transcripts from an accredited institution and a current national nurse practitioner certification.
  - (f) Multiple national certifications will be maintained under a single APRN license.

(3) Provide evidence of successful accomplishment of national certification as a nurse practitioner. Only national certification based on competency examination will be accepted for the APRN licensure.

(4) It is the responsibility of the applicant to provide documented evidence of their qualifications for licensure.

(5) Applicants who meet the minimum didactic and pharmacology requirements, but lack the required preceptorship, may be considered for licensure in New Mexico if the applicant provides satisfactory evidence of two years nurse practitioner experience in another jurisdiction.

(6) Nurse practitioners who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

**B.** Procedure for licensure as a graduate nurse practitioner. The applicant seeking licensure as a nurse practitioner shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico nurse practitioner licensure application and submit it along with all required documents in accordance with the instructions.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Nurse practitioners are not eligible to practice in New Mexico as a certified nurse practitioner until so licensed in accordance with the licensure procedures.

(5) The board may appoint nurse practitioners to the advanced practice committee. These nurse practitioners will provide advice regarding licensure and practice of nurse practitioners.

**C.** Graduate nurse practitioners (GNP) permit-to-practice may be issued, upon written request, provided all requirements have been met except national nursing certification.

(1) GNPs must practice under the direct supervision of a physician or New Mexico Certified Nurse Practitioner (NCP) or Certified Nurse Specialist (CNS) in the specialty.

(2) GNPs may prescribe medications only under the direct supervision of a licensed CNP, CNS or a physician, in compliance with these rules. GNPs must fulfill the requirements in this section to prescribe controlled substances.

(3) GNP permits will be issued to the employer.

(4) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor, is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be issued directly to the new employing agency.

(5) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GNP permit.

(6) GNP permits cannot be transferred or renewed.

(7) GNP permits expire on the date specified on the permit. Permits shall be valid not to exceed six months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice as a GNP. It is the responsibility of the GNP to request that the national certifying organization notify the board of nursing of the results of the examination.

**D.** An initial license to practice as a CNP shall be issued only after receipt by the board of proof of national certification. Such proof must be submitted to the board directly from the certifying agency prior to the expiration of the permit or temporary license.

**E.** Expedited licensure for CNP's:

(1) The board will issue an expedited license to a qualified applicant based on prior licensure in an eligible jurisdiction other than New Mexico upon an applicant's submission of a complete application containing all of the following:

(a) a completed and signed application form;

(b) proof of current licensure in an eligible jurisdiction;

(c) proof of good standing for the license held by the applicant in an eligible jurisdiction;

(d) submission of fingerprints and other information necessary for a state and national background check; and

(e) payment of the required application fee.

(2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Paragraph (1) of Subsection E of 16.12.2.12 NMAC including documentation from third parties.

(3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978.

(4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978:

(a) the license may not be issued within 30 days of submission of the complete application;

(b) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and

(c) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

(5) Renewal of expedited licenses:

(a) A licensee holding an expedited license may apply for license renewal beginning 60 days prior to expiration of the expedited license, as provided by the board's rules.

(b) Upon renewal, an expedited license shall become a regular single-state license.

(c) If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the NCLEX for original licensure, the licensee shall be required to take and pass the NCLEX as a prerequisite to the renewal of the license. In such a case, the expedited license shall not be renewed unless the licensee passes the NCLEX.

(6) Eligible and ineligible jurisdictions:

(a) The board will accept expedited license applications on the basis of prior licensure in any jurisdiction within the United States except the following:

(i) Michigan, on the grounds that this jurisdiction does not participate in the coordinated licensure system for the purposes of discipline; and

(ii) Puerto Rico, on the grounds that this jurisdiction does not participate in the coordinated licensure system.

(b) The board will accept expedited license applications on the basis of prior licensure in the following jurisdictions outside the United States: Canada.

**F.** Qualifications for licensure as CNP are pursuant to the Nursing Practice Act:

(1) Refer to Subsection A of 16.12.2.12 NMAC for licensure requirements.

(2) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

**G.** An initial nurse practitioner license shall be valid until the last day of the applicant's birth month after the first anniversary of the initial license. For nurses from compact states, an NM advanced practice license will be issued with the same expiration date as the RN compact license. A letter of authorization will be issued to NPs who have RN multi-state licensure privileges from another nurse licensure compact state. Official verification to practice is located on the board website.

**H.** If the licensure process is not completed, the application becomes null and void twelve months after the date of application being received at the board.

**I.** Authorization to expand scope of practice or who need recertification.

(1) A letter of authorization will be issued for the CNPs who through additional formal education have expanded their practice into another area of NP practice or who need practice hours to recertify provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the board of nursing.

(3) Practice must be under the direct supervision of a physician or licensed New Mexico CNP or CNS in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will expire on the date specified.

(a) A letter of authorization shall be valid not to exceed six months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNP to request that the national certifying organization notify the board of the results of the examination. A letter of authorization may be valid for a period not to exceed two years.

(b) A letter of authorization shall be valid for six months for those applicants recertifying.

(c) A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship expansion of scope of practice or recertification required hours of practice.

**J. Maintaining licensure as a nurse practitioner:**

(1) National certification: NPs must maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal. Nurse practitioners licensed by the NM board, after December 2, 1985 are required to be nationally certified in their specialty.

(2) Continuing education:

(a) A CNP with DEA registration at any time during their most recent renewal period shall obtain five contact hours in the management of non-cancer pain, in addition to submitting a valid national certification as an APRN.

(b) A CNP without DEA must submit a valid national certification as an APRN.

**K. Reactivation:** To reactivate or reinstate licensure as a nurse practitioner, the nurse must provide evidence of meeting the CE requirements.

(1) NPs licensed by the board after December 2, 1985 must also provide evidence of current national certification.

(2) CNPs who are reactivating an advanced practice license which has been lapsed for four or more years must also complete a refresher course or certification reactivation that is reflective of their knowledge skills and expertise. A temporary license will be issued not to exceed one year, unless the board of nursing approves an extension.

**L. Nurse practitioner practice:**

(1) The CNP makes independent decisions regarding the health care needs of the client and also makes independent decisions in carrying out health care regimens.

(2) The CNP provides primary or acute, or chronic, or long-term, or end of life health care to meet the health care needs of individuals, families and communities in any health care setting.

(3) The CNP may assume specific functions or perform specific procedures which are beyond the advanced educational preparation and certification for the CNP provided the knowledge and skills required to perform the function or procedure emanates from a recognized body of knowledge or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and performing specific procedures, which are beyond the CNP's advanced educational preparation and certification, the CNP is responsible for obtaining the appropriate knowledge, skills, and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) The CNP collaborates as necessary with other healthcare providers. Collaboration includes discussion of diagnosis and cooperation in managing and delivering healthcare.

(5) CNPs who have fulfilled requirements for prescriptive authority may prescribe and distribute dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act within their clinical specialty and practice setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNP who fulfills the following requirements may prescribe and distribute dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a licensed CNP, CNS or physician. The preceptorship must be completed within six months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CNP must provide the board of nursing with verification of current state-controlled substances registration and current DEA number, unless the CNP has met registration waiver criteria from the New Mexico board of pharmacy as provided under Subsection I of 16.19.20.8 NMAC. CNPs may not possess, prescribe or distribute controlled substances until they have both a current state-controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary: It is the CNP's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed with each renewal; the only drugs to be included in the formulary are those relevant to the CNP's specialty and practice setting. The board of nursing reserves the right to audit the formulary of the CNP. Licensees may be subject to disciplinary action by the board of nursing if non-compliant with the audit.

(c) Prescription records: written, verbal or electronic prescriptions and orders will comply with state board of pharmacy and federal requirements. All prescriptions will include the name, title, address, and phone number of the prescribing advanced practice registered nurse.

(d) Distributing: CNPs, who have fulfilled requirements for prescriptive authority as stated in these rules, and defined by the board of pharmacy may distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act Section 61-11-12 NMSA 1978 and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNPs may label only those drugs which the CNP prescribes and distributes to patients under the CNP's care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, number dispensed and name, address, and telephone number of the CNP. Labeling may be handwritten, or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNPs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(g) CNPs may prescribe, provide samples of, and dispense any dangerous drug to a patient where there is a valid practitioner-patient relationship as defined in 16.12.2.7 NMAC.

(6) Graduate nurse practitioner (GNP) practice:

(a) GNPs may not distribute medications.

(b) GNPs may practice or prescribe medications only under the direct supervision of a licensed CNP, CNS or physician in the specialty.

(7) To ensure competency and safe practice in specific regard to prescription writing practices in the state of NM:

(a) a list of current CNPs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy;

(b) violation of these rules or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy;

(c) the board of nursing shall appoint qualified CNPs in each specialty to serve on the board of pharmacy disciplinary panel as requested by the board of pharmacy.

**M.** Supervision of psychologists in the prescribing of psychotropic medication by a certified nurse practitioner, pursuant to Section 61-3-23.5 NMSA 1978 and the Professional Psychologist Act (Section 61-9-1 et. seq. NMSA 1978).

(1) A CNP may provide supervision to a psychologists in the prescribing of psychotropic medication provided the CNP:

(a) holds a valid, unencumbered NM license as a CNP;

(b) holds a national certification as a psychiatric-mental health nurse practitioner. An individual who holds a certification as a CNP conferred by a national nursing certification organization that is not an approved certification listed above may petition the board and request approval of the certification. The board shall review the petition and determine whether the certification and the petitioner's clinical practice experience sufficiently substantiate adequate education, didactic and clinical preparedness, and other factors that establish competency. The decision of the board is discretionary and shall not be subject to review or binding on any future petition.

(c) has a minimum of two years of experience prescribing as a psychiatric-mental health nurse practitioner

(d) is not currently participating in any board of nursing's alternative to discipline program, diversion program;

(e) is able to meet all requirements to serve as an independently licensed prescribing clinician as laid out in the Professional Psychologist Act (Section 61-9 NMSA 1978) and 16.22 NMAC; and

(f) performing the supervision is within the scope of practice of the CNP.

(2) Reporting obligations to the New Mexico board of nursing by a CNP providing supervision to a psychologist in the prescribing of psychotropic medication:

(a) within 15 days of entering into the supervising relationship with each psychologist being supervised. The notification shall consist of:

- (i) the name and license number of the psychologist;
- (ii) the date of entry into the supervising relationship;
- (iii) the anticipated end of the supervising relationship.

(b) within 15 days of severing the supervisory relationship with a psychologist. The notification shall consist of:

- (i) the name and license number of the psychologist;
- (ii) the date of the end of the supervising relationship.

(3) A CNP who provides supervision to a psychologist in the prescribing of psychotropic medication must follow the Professional Psychologist Act (Section 61-9 NMSA 1978) and rules promulgated by the New Mexico board of psychologist examiners.

[16.12.2.12 NMAC - Rp, 16.12.2.13 NMAC, 12/13/2022; A, 5/21/2024]

### **16.12.2.13 ADVANCED PRACTICE REGISTERED NURSE (APRN) CERTIFIED REGISTERED NURSE ANESTHETIST (CRNA):**

#### **A. Requirements for licensure as a CRNA:**

(1) Hold a current, unencumbered RN license from New Mexico or hold a compact multi-state RN license.

(2) Successfully complete a formal program designed for the education and preparation of certified registered nurse anesthetist. The COA *council on accreditation of nurse anesthesia educational programs* must accredit the program.

(3) If the applicant is initially licensed by any board of nursing including the New Mexico board of nursing after January 1, 2001, the program must be at the master's level or higher. Applicants who do not hold a master's or higher degree from a nurse anesthetist program and were initially licensed by any board before January 2, 2001, must provide verification of CRNA licensure.

(4) Provide evidence of successful completion of a national certification examination as described by the NBCRNA.

(5) It is the responsibility of the applicant to provide documented evidence of their qualification for licensure.

(6) Applicants who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

**B.** Procedure for licensure as a graduate. The applicant seeking licensure as a certified registered nurse anesthetist shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico certified registered nurse anesthetist licensure application and submit it along with all required documents, and fee in accordance with the instructions.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Certified registered nurse anesthetists are not eligible to practice in New Mexico as certified registered nurse anesthetist until so licensed in accordance with the licensure procedures.

(5) The board may appoint certified registered nurse anesthetists to the advanced practice committee. These nurse anesthetists will provide advice regarding licensure and practice of certified registered nurse anesthetists.

**C.** Graduate registered nurse anesthetist permit-to-practice may be issued, upon written request, provided all requirements have been met except NBCRNA certification.

(1) A permit may be issued following graduation from an approved school of nurse anesthesia to afford the applicant the opportunity for employment pending dissemination of the national qualifying examination results by NBCRNA.

(2) GRNAs must function in an interdependent role as a member of a health care team and practice at the direction of and in collaboration with a physician, CRNA, osteopathic physician, dentist or podiatrist.

(3) GRNAs may prescribe and administer medications only in collaboration with a CRNA, physician, osteopathic physician, dentist or podiatrist in compliance with these rules.

(4) GRNAs permits will be issued to the employer(s).

(5) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor(s) and name of prescription supervisor(s), is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice for the new place of employment. The permit will be issued directly to the new employing agency.

(6) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GRNA permit.

(7) GRNA permits cannot be transferred or renewed.

(8) GRNA permits expire on the date specified on the permit.

(a) Permits shall be valid for approximately 12 months subsequent to the date of graduation from the nurse anesthesia program.

(b) Written proof of application to write the national qualifying exam must be received in the board office within 12 weeks of graduation from the nurse anesthesia program.

(c) Verification that applicant wrote the national qualifying examination, must be received in the board office within three weeks subsequent to the date of the examination.

(d) Failure of applicant to write the scheduled qualifying examination or if the exam is failed, will render the applicant ineligible to practice anesthesia in New Mexico and the employer must immediately return the permit-to-permit to the board office. It is the responsibility of the GRNA to request that the national certifying organization notify the board of the results of the examination.

**D.** A license to practice as a CRNA shall be issued only after receipt by the board of proof of NBCRNA certification. Such proof must be submitted to the board by the certifying agency.

**E.** Expedited licensure for CRNA's:

(1) The board will issue an expedited license to a qualified applicant based on prior licensure in an eligible jurisdiction other than New Mexico upon an applicant's submission of a complete application containing all of the following:

(a) a completed and signed application form;

(b) proof of current licensure in an eligible jurisdiction;

(c) proof of good standing for the license held by the applicant in an eligible jurisdiction;

(d) submission of fingerprints and other information necessary for a state and national background check; and

(e) payment of the required application fee.

(2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Paragraph (1) of Subsection E of 16.12.2.13 NMAC, including documentation from third parties.

(3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978.

(4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978:

(a) The license may not be issued within 30 days of submission of the complete application;

(b) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and

(c) The board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

(5) Renewal of expedited licenses:

(a) A licensee holding an expedited license may apply for license renewal beginning 60 days prior to expiration of the expedited license, as provided by the board's rules.

(b) Upon renewal, an expedited license shall become a regular single-state license.

(c) If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the NCLEX for original licensure, the licensee shall be required to take and pass the NCLEX as a prerequisite to the renewal of the license. In such a case, the expedited license shall not be renewed unless the licensee passes the NCLEX.

(6) Eligible and Ineligible Jurisdictions

(a) The board will accept expedited license applications on the basis of prior licensure in any jurisdiction within the United States except the following:

(i) Michigan, on the grounds that this jurisdiction does not participate in the coordinated licensure system for the purposes of discipline; and

(ii) Puerto Rico, on the grounds that this jurisdiction does not participate in the coordinated licensure system.

(b) The board will accept expedited license applications on the basis of prior licensure in the following jurisdictions outside the United States: Canada.

**F. Qualifications for licensure as CRNA are pursuant to the Nursing Practice Act.**

(1) Refer to Subsection A of 16.12.2.13 NMAC for licensure requirements.

(2) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

**G.** An initial certified registered nurse anesthetist license shall be valid until the last day of the applicant's birth month after the first anniversary of the initial license. For nurses from compact states, a New Mexico advanced practice license will be issued with the same expiration date as the compact RN license. A letter of authorization will be issued to CRNAs who have RN multi-state licensure privileges from another nurse licensure compact states. Official verification of authorization to practice is available through the board website.

**H.** If the licensure process is not completed, the application becomes null and void six months after the date received at the board of nursing.

**I. Maintaining licensure as a certified registered nurse anesthetist.**

(1) National certification: CRNAs must maintain NBCRNA. A copy of the recertification card must be presented at the time of each subsequent renewal.

(2) Continuing education: recertification by NBCRNA is accepted for meeting mandatory CE requirement. CRNAs with DEA registration at any time during their most recent renewal period shall obtain five contact hours in the management of non-cancer pain.

**J. Reactivation: to reactivate or reinstate licensure as a certified registered nurse anesthetist.**

(1) The nurse must provide evidence of current recertification by the NBCRNA.

(2) CRNAs who are reactivating an advanced practice license which has been lapsed for four or more years must also complete a refresher course or certification reactivation that is reflective of their knowledge, skills and expertise. A temporary license will be issued not to exceed one year, unless board of nursing approves an extension.

**K. Certified registered nurse anesthetist practice:**

(1) The CRNA provides pre-operative, intra-operative and post-operative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current American Association of nurse anesthesiology (AANA) guidelines for nurse anesthesia practice.

(2) The CRNA functions in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist, APRN or podiatrist licensed in New Mexico. This does not require that the physician "supervise" or be "present" during a procedure/anesthetic administered by the certified registered nurse anesthetist.

(3) The CRNA collaborates as necessary with the health care team members concerning the anesthesia care of the patient. Collaboration means the process in which each health care provider contributes their respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice process.

(4) The CRNA may assume specific functions or perform specific procedures which are beyond the advanced educational preparation and certification for the CRNA provided the knowledge and skills required to perform the function or procedure emanates from a recognized body of knowledge or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions or performing specific procedures, which are beyond the CRNA's advanced educational preparation and certification, the CRNA is responsible for obtaining the appropriate knowledge, skills, and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(5) CRNAs who have fulfilled requirements for prescriptive authority may prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act within the specialty of anesthesia and practice setting.

(a) Requirements for prescriptive authority: in accordance with applicable state and federal laws, the CRNA who fulfills the following requirements may prescribe and administer dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing and administering dangerous drugs has occurred within the two years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a CRNA or physician. The preceptorship must

be completed within six months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CRNA must provide the board of nursing with verification of current state-controlled substances registration and current drug enforcement administration (DEA) number, unless the CRNA has met registration waiver criteria from the New Mexico board of pharmacy (Subsection I of 16.19.20.8 NMAC). CRNAs may not possess or prescribe controlled substances until they have both a current state-controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary: the formulary will include agents related to the administration of anesthesia and Advanced Cardiac Life Support (ACLS) protocol agents.

(i) All CRNAs must adhere to the current formulary approved by the board of nursing.

(ii) The initial formulary or a formulary with changes will be submitted to the board of medical examiners for a review.

(c) Prescription records: written, verbal or electronic prescriptions and order will comply with state board of pharmacy and federal requirements. All prescriptions will include the name, title, address and phone number of the prescribing advanced practice registered nurse.

(d) Prescribing and administering: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules as defined by the board of pharmacy may prescribe and administer to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged or fabricated by a registered pharmacist or doses or drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act Section 61-11-22 NMSA 1978 and the New Mexico Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Distributing: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may *not* distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act.

(f) CRNAs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate registered nurse anesthetist practice.

(a) GRNAs may NOT distribute medications.

(b) GRNAs may practice or prescribe/administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM.

(a) A list of current CRNAs and their status with regard to prescription writing shall be distributed upon request to the board of pharmacy.

(b) Violation of these rules or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy.

(c) The board of nursing shall appoint as requested, qualified CRNAs to serve on the board of pharmacy disciplinary panel as requested by the board of pharmacy.

**L.** A CRNA business entity formed pursuant to the laws of the state of New Mexico is authorized to provide health care services in the state of New Mexico if the health care services are provided by persons who are duly licensed to engage in the practice of nursing pursuant to the provisions of the Nursing Practice Act.

[16.12.2.13 NMAC - Rp, 16.12.2.14 NMAC, 12/13/2022; A, 5/21/2024]

**16.12.2.14 ADVANCED PRACTICE REGISTERED NURSE (APRN) CLINICAL NURSE SPECIALIST (CNS):**

**A.** Requirements for licensure as a CNS:

(1) hold a current, unencumbered RN license from New Mexico or hold a compact multi-state RN license;

(2) successfully complete a clinical nurse specialist program at the master's or doctoral level in a defined clinical nursing specialty through an accredited institution of higher education; and

(a) the educational documents must reflect successful completion of graduate degree courses;

(b) additional population foci can be added with transcripts from an accredited institution and a current national certification.

(3) provide evidence of successful accomplishment of certification by a national nursing organization, consistent with the defined clinical nursing specialty, which meets criteria as listed below:

(a) successfully complete a national certifying examination in the applicant's area of specialty;

(b) is certified by a national nursing organization;

(4) it is the responsibility of the applicant to provide documented evidence of their qualifications for licensure;

(5) any CNS requesting prescriptive authority must also comply with the regulations for prescriptive authority as outlined in these rules.

**B.** Procedure for licensure as a graduate CNS: applicant seeking licensure as a CNS shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico CNS application and submit it along with all requested documents in accordance with the instructions.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or their designee.

(4) CNSs are not eligible to practice in New Mexico as a CNS until so licensed by the New Mexico board in accordance with licensure procedures.

(5) The board may appoint CNSs to the advanced practice committee. These CNSs will provide advice regarding the licensure and practice of the CNS.

**C.** Graduate clinical nurse specialist (GCNS) permit to practice.

(1) GCNS permits may be issued upon written request, provided all requirements have been met except certification by a national nursing organization.

(a) GCNSs practice under the direct supervision of another CNS, CNP or physician in the specialty.

(b) GCNSs may prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in compliance with these rules.

(c) GCNS permits will be issued to the employer.

(d) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be issued directly to the new employing agency.

(e) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GCNS permit.

(f) GCNS permits cannot be transferred or renewed.

(g) GCNS permits expire on the date specified on the permit. Permits shall be valid not to exceed six months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice as a GCNS. It is the responsibility of the GCNS to request that the national certifying organization notify the board of the results of the examination.

(2) An initial license to practice as a CNS shall be issued only after receipt by the board of proof of certification by a national nursing organization. Such proof must be submitted to the board directly from the certifying agency prior to the expiration of the permit or temporary license.

#### **D. Expedited licensure for CNS's:**

(1) The board will issue an expedited license to a qualified applicant based on prior licensure in an eligible jurisdiction other than New Mexico upon an applicant's submission of a complete application containing all of the following:

(a) a completed and signed application form;

(b) proof of current licensure in an eligible jurisdiction;

(c) proof of good standing for the license held by the applicant in an eligible jurisdiction;

(d) submission of fingerprints and other information necessary for a state and national background check; and

(e) payment of the required application fee.

(2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Paragraph (1) of Subsection D of 16.12.2.14 NMAC, including documentation from third parties.

(3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978.

(4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978:

(a) the license may not be issued within 30 days of submission of the complete application;

(b) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and

(c) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

(5) Renewal of expedited licenses:

(a) A licensee holding an expedited license may apply for license renewal beginning 60 days prior to expiration of the expedited license, as provided by the board's rules.

(b) Upon renewal, an expedited license shall become a regular single-state license.

(c) If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the NCLEX for original licensure, the licensee shall be required to take and pass the NCLEX as a prerequisite to the renewal of the license. In such a case, the expedited license shall not be renewed unless the licensee passes the NCLEX.

(6) Eligible and Ineligible Jurisdictions

(a) The board will accept expedited license applications on the basis of prior licensure in any jurisdiction within the United States except the following:

(i) Michigan, on the grounds that this jurisdiction does not participate in the coordinated licensure system for the purposes of discipline; and

(ii) Puerto Rico, on the grounds that this jurisdiction does not participate in the coordinated licensure system.

(b) The board will accept expedited license applications on the basis of prior licensure in the following jurisdictions outside the United States: Canada.

**E.** Qualifications for licensure as a CNS are pursuant to the Nursing Practice Act.

(1) Refer to Subsection A of 16.12.2.14 NMAC for licensure requirements.

(2) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

**F.** An initial clinical nurse specialist license shall be valid until the last day of the applicant's birth month after the first anniversary of the initial license. For nurses from compact states, a New Mexico advanced practice license will be issued with the same expiration date as the compact license. A letter of authorization will be issued to CNSs who have RN multi-state licensure privilege from another nurse licensure compact state. Official verification to practice is located on the board website.

**G.** If the licensure process is not completed, the application becomes null and void one year after the date of application being received at the board.

**H.** Authorization to expand scope of practice or who need recertification.

(1) A letter of authorization will be issued for the CNSs who through additional formal education have expanded their practice into another area of CNS practice or who need practice hours to recertify provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the board of nursing.

(3) Practice must be under the direct supervision of a New Mexico CNS or CNP or physician in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will expire on the date specified.

(a) A letter of authorization shall be valid not to exceed six months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNS to request that the national certifying organization notify the board of the results of

the examination. A letter of authorization may be valid for a period not to exceed two years.

(b) A letter of authorization will be valid for six months for those applicants recertifying.

(c) A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship for expansion of scope of practice or recertification required hours of practice.

**I. Maintaining licensure as a clinical nurse specialist.**

(1) The CNS shall be nationally certified in the specialty by a nursing organization and maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal.

(2) Continuing education:

(a) A CNS with DEA registration at any time during their most recent renewal period shall obtain five contact hours in the management of non-cancer pain, in addition to submitting a valid national certification as an APRN.

(b) A CNS without DEA must submit a valid national certification as an APRN.

(3) Reactivation:

(a) To reactivate or reinstate licensure as a CNS, the nurse must provide evidence of meeting the CE requirements: evidence of current national certification must also be provided.

(b) CNSs who are reactivating an advanced practice license which has been lapsed for four or more years must also complete a refresher course or certification reactivation that is reflective of their knowledge, skills and expertise. A temporary license will be issued not to exceed one year, unless the board of nursing approves an extension.

**J. Clinical nurse specialist practice.**

(1) The CNS is a nurse who through graduate level preparation has become an expert in a defined area of knowledge and practice in a selected clinical area of nursing.

(2) The CNS makes independent decisions in a specialized area of nursing practice, using knowledge about the health care needs of the individual, family and

community. The CNS collaborates as necessary with other members of the health care team, when the needs are beyond the scope of practice of the CNS.

(3) The CNS may assume specific functions or perform specific procedures which are beyond the advanced educational preparation and certification for the CNS provided the knowledge and skills required to perform the function or procedure emanates from a recognized body of knowledge or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions or performing specific procedures, which are beyond the CNS's advanced educational preparation and certification, the CNS is responsible for obtaining the appropriate knowledge, skills and supervision to assure the CNS can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) Carries out therapeutic regimens in the area of the specialty.

(5) The CNS who has fulfilled the requirements for prescriptive authority in the specialty area may prescribe and distribute therapeutic measures including dangerous drugs and controlled substances contained in Schedules II through V of the Controlled Substance Act within the scope of the specialty practice and setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNS who fulfills the following requirements may prescribe and distribute dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act:

(i) verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two years immediately preceding the date of application and provide a copy of a transcript documenting successful completion of the a three credit hour pharmacology course, a three credit hour assessment course and a three credit hour pathophysiology course included as part of a graduate level advanced practice nursing education program; 45 contact hours of advanced level pharmacology continuing education course may be substituted for the academic pharmacology; a certificate of completion must be provided that verifies continuing education; or

(ii) if 400 hours of work experience in which prescribing dangerous drugs cannot be verified, provide a copy of a transcript documenting successful completion of a three credit hour pharmacology course that is included as part of a graduate level advanced practice nursing education program within five years immediately prior to the date of application to the board; 45 contact hours of advanced level pharmacology continuing education course may be substituted for the academic pharmacology; a certificate of completion must be provided that verifies continuing education; the course must be related to the specialty and contain content in pharmacokinetics, pharmacodynamics, pharmacology of current/commonly used medications and application of drug therapy to the treatment of disease or the promotion of health; and

(iii) provide a copy of a transcript documenting successful completion of a three credit hour assessment course that is included as part of a graduate level advanced practice nursing education program; the course must be related to the specialty and include content supported by related clinical experience such that students gain knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans; and

(iv) provide a copy of a transcript documenting successful completion of a three credit hour pathophysiology course that is included as part of a graduate level advanced practice nursing education program; the course must be related to the specialty and include content in physiology and pathophysiology;

(v) provide a copy of a transcript documenting successful completion of a 400 hour university/college associated preceptor experience in the prescription of dangerous drugs within the two years immediately prior to the date of application to the board; or

(vi) after fulfilling ii, iii, and iv above, upon application to the board, a letter of authorization for a prescriptive authority preceptorship will be issued to complete a preceptorship, which must be completed within six months;

(vii) in order to prescribe controlled substances, the CNS must provide the board of nursing with verification of current state controlled substances registration and current DEA number, unless the CNS with prescriptive authority has met registration waiver criteria from the New Mexico board of pharmacy; CNSs may not possess, prescribe or distribute controlled substances until they have both a current state controlled substances registration and a current DEA registration;

(viii) once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary. It is the CNS's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed. The only drugs to be included in the formulary are those relevant to the CNS's area of specialty practice, scope of practice and clinical setting. The board of nursing reserves the right to audit the formulary. Licensees may be subject to disciplinary action by the board of nursing if non-compliant with the audit.

(c) Prescription records: written, verbal or electronic prescriptions and orders will comply with state board of pharmacy and federal requirements. All prescriptions will include the name, title, address and phone number of the prescribing advanced practice registered nurse.

(d) Distributing: CNSs who have fulfilled requirements for prescriptive authority as stated in these rules, may distribute to their patients dangerous drugs

including controlled substances contained in Schedules II through V of the Controlled Substance Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNSs may label only those drugs which the CNS prescribes and distributes to patients under the CNS's care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, telephone number of the CNS. Labeling may be handwritten or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNSs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate clinical nurse specialist (GCNS) practice.

(a) GCNSs may not distribute medications.

(b) GCNSs may practice or prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in the specialty.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM:

(a) a list of current CNSs and their status with regard to prescription writing shall be distributed upon request to the board of pharmacy;

(b) violation of these rules or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy;

(c) the board of nursing shall appoint qualified CNSs in each specialty to serve on the board of pharmacy disciplinary panel as requested by the board of pharmacy.

**K.** Supervision of psychologists in the prescribing of psychotropic medication by a clinical nurse specialist, pursuant to Section 61-3-23.5 NMSA 1978 and the Professional Psychologist Act (Section 61-9-1 et. seq. NMSA 1978).

(1) A CNS may provide supervision to a psychologists in the prescribing of psychotropic medication provided the CNS:

(a) holds a valid, unencumbered NM license as a CNS;

(b) holds a national certification as a psychiatric-mental health clinical nurse specialist. An individual who holds a certification as a CNS conferred by a national nursing certification organization that is not an approved certification listed above may petition the board and request approval of the certification. The board shall review the petition and determine whether the certification and the petitioner's clinical practice experience sufficiently substantiate adequate education, didactic and clinical preparedness, and other factors that establish competency. The decision of the board is discretionary and shall not be subject to review or binding on any future petition.

(c) has a minimum of two years of experience prescribing as a psychiatric-mental health clinical nurse specialist;

(d) is not currently participating in any board of nursing's alternative to discipline program, diversion program;

(e) is able to meet all requirements to serve as an independently licensed prescribing clinician as laid out in the Professional Psychologist Act (Section 61-9 NMSA 1978) and 16.22 NMAC; and

(f) performing the supervision is within the scope of practice of the CNS.

(2) Reporting obligations to the New Mexico board of nursing by a CNS providing supervision to a psychologist in the prescribing of psychotropic medication:

(a) within 15 days of entering into the supervising relationship with each psychologist being supervised. The notification shall consist of:

- (i) the name and license number of the psychologist;
- (ii) the date of entry into the supervising relationship;
- (iii) the anticipated end of the supervising relationship.

(b) within 15 days of severing the supervisory relationship with a psychologist. The notification shall consist of:

- (i) the name and license number of the psychologist
- (ii) the date of the end of the supervising relationship.

(3) A CNS who provides supervision to a psychologist in the prescribing of psychotropic medication must follow the Professional Psychologist Act (Section 61-9 NMSA 1978) and rules promulgated by the New Mexico board of psychologist examiners.

**L.** Advanced practice committee.

(1) The board may appoint a minimum of a six member advisory committee to assist the board in regulating the advanced practice of nursing.

(2) The committee shall assist and advise the board in the review of issues related to the advanced practice of nursing.

(3) The committee shall be composed of representatives from each advanced practice area regulated by the board.

[16.12.2.14 NMAC - Rp, 16.12.2.15 NMAC, 12/13/2022; A, 5/21/2024]

#### **16.12.2.15 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** The board will issue an expedited license to an applicant who is a military service member or veteran based on prior licensure in a jurisdiction other than New Mexico upon the applicant's submission of a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of current licensure in another jurisdiction;
- (3) proof of good standing for the applicant's out of state license;
- (4) submission of fingerprints and other information necessary for a state and national background check; and
- (5) Submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
  - (e) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon submission of a complete application, the board's staff shall process the application according to licensing protocol and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978:

(1) the license may not be issued within 30 days of submission of the complete application;

(2) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

**E.** Duration of expedited licenses:

(1) The first licensure period will be for up to one year from the issuance of the license, with the expiration being correlated to the last day of the applicant's birth month, according to licensing processes. Continuing education will be prorated.

(2) The first renewal period will be for two years from the date of the first expiration date of the first licensure period.

(3) A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules. If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the NCLEX, the licensee shall be required to take and pass the NCLEX as a prerequisite to the renewal of the expedited license.

(4) Upon renewal, an expedited license shall become a regular single state license.

(5) If the military expedited licensure holder requests a multistate RN or LPN license, all requirements of the nurse licensure compact must be met, including completion of another background check. The fee for a multistate license will not be waived.

F. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

[16.12.2.15 NMAC - N, 12/13/2022; A, 5/21/2024]

### **PART 3: NURSING EDUCATIONAL PROGRAMS**

#### **16.12.3.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.3.1 NMAC - Rp, 16.12.3.1 NMAC, 10/1/2016]

#### **16.12.3.2 SCOPE:**

Programs of nursing education preparing individuals for licensure in the state of New Mexico.

[16.12.3.2 NMAC - Rp, 16.12.3.2 NMAC, 10/1/2016]

#### **16.12.3.3 STATUTORY AUTHORITY:**

Nursing Practice Act, Section 61-3-26 NMSA 1978 Comp.

[16.12.3.3 NMAC - Rp, 16.12.3.3 NMAC, 10/1/2016]

#### **16.12.3.4 DURATION:**

Permanent.

[16.12.3.4 NMAC - Rp, 16.12.3.4 NMAC, 10/1/2016]

#### **16.12.3.5 EFFECTIVE DATE:**

October 1, 2016, unless a later date is cited at the end of a section.

[16.12.3.5 NMAC - Rp, 16.12.3.5 NMAC, 10/1/2016]

#### **16.12.3.6 OBJECTIVE:**

To safeguard life and health and promote the public welfare by regulating programs of nursing in the state of New Mexico as promulgated by the board. To promote the safe and effective practice of nursing by graduates of nursing education programs. To provide guidance for developing new nursing education programs. To facilitate continued improvement of established nursing education programs. To provide criteria for the evaluation of new and established nursing education programs. To grant

recognition and approval that a program of nursing is meeting the required minimal standards and rules as determined by the board. To establish eligibility of graduates of programs of nursing to apply for licensure by examination.

[16.12.3.6 NMAC - Rp, 16.12.3.6 NMAC, 10/1/2016]

### **16.12.3.7 DEFINITIONS:**

#### **A. Definitions beginning with "A":**

(1) **"application"**, form provided by the board of nursing (BON) to any potential nursing program to be used as the first process in opening a new program;

(2) **"approval"**, official or formal consent, confirmation or sanction:

(3) **"associate degree program"**, a formalized program of study, usually organized for completion within a two-year academic period, which prepares graduates for an associate degree in nursing and eligibility to take the national examination for registered nurses. The program is conducted as an integral department or division within a college or university.

#### **B. Definitions beginning with "B":**

(1) **"baccalaureate degree program"**, a formalized program of study, usually organized for completion within a four-year academic period, which prepares graduates for a degree in nursing and eligibility to take the national licensing examination for registered nursing. The program is conducted as an integral department or division within a university or college;

(2) **"board"**, New Mexico board of nursing.

#### **C. Definitions beginning with "C":**

(1) **"clinical facilities"**, institutions which are established for the delivery of nursing care services (hospital, extended care facilities, nursing homes, medical clinics, public health facilities, physician's offices, out-patient clinics, etc.);

(2) **"clinical preceptors"**, nurses who have been a nurse for at least two years and have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student. The clinical preceptor shall not receive financial incentives from the nursing program for an assigned student.

(3) **"clock/contact hour"**, unit of measurement used by educational institutions to determine work load;

(4) **"curriculum"**, a course of study which is offered within a particular program.

**D. Definitions beginning with "D": "director"**, the nurse educator (regardless of the official title assigned by any specific institution who is delegated the administrative responsibility and authority for the direction of the basic educational program in nursing. An "administrator" shall be considered synonymous with "director" unless the institution has divided up authority between a program "director" and an administrator.

**E. Definitions beginning with "E": "educational institution"**, an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution).

**F. Definitions beginning with "F": [RESERVED]**

**G. Definitions beginning with "G": [RESERVED]**

**H. Definitions beginning with "H": High-fidelity"**, provides the highest levels of realism. Scenarios may incorporate the above low- and medium-fidelity plus the use of computer-based equipment with automatic cues and responses.

**I. Definitions beginning with "I": "Involuntary closure"**, mandatory closure by the board for failure of a program to meet the minimum requirements as established by the board.

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L": "Low-fidelity"**, the least realistic of available options. Scenarios may include but not limited to the use of static manikins, written case studies, simulated medication administration and other nursing tasks.

**M. Definitions beginning with "M":**

(1) **"medium-fidelity"**, scenarios may include use of low-fidelity resources noted above plus standardized (live) patients incorporation with increased realism. Automatic cues and responses (aside from simulation faculty & staff) remain absent;

(2) **"must"**, a requirement.

**N. Definitions beginning with "N":**

(1) **"national licensing examination"**, examination for licensure as provided by the national council of state boards of nursing;

(2) **"national nursing accreditation"**, recognition of an institution of learning by a board recognized national nursing organization as maintaining prescribed standards requisite for its graduates to gain admission to other reputable institutions of higher learning or achieve credentials for professional practice.

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

(1) **"parent institution"**, an institution within the educational system which is organized and accredited for teaching and study (university, college, high school);

(2) **"practical nurse program"**, a formalized program, which prepares a graduate for a diploma or certificate and eligibility to take the national licensing examination for practical nursing. The program is conducted as an integral part of an educational institution;

(3) **"pre-licensure program"**, nursing education program that prepares an individual for the national licensing examination for registered nursing or practical nursing;

(4) **"program"**, the curriculum and all of the activities/functions that take place which are necessary to fulfill the purpose of nursing education;

(5) **"public health emergency"**, an executive order pursuant to the Public Health Emergency Response Act or an executive order invoked by gubernatorial powers under the All Hazards Emergency Management Act.

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R": [RESERVED]**

(1) **"recommendations"**, statements which should guide programs of nursing in the development and direction of the program but which are not mandatory;

(2) **"regulation and policies"**, statements governing practice of the board of nursing in the approval of a program of nursing;

(3) **"requirements"**, conditions which any program of nursing shall meet to obtain approval.

**S. Definitions beginning with "S":**

(1) **"shall"**, mandatory; a requirement;

(2) **"should"**, a suggestion or recommendation; not a requirement;

**(3) "simulation"**, an experience that imitates the real environment, requiring individuals to demonstrate the procedural techniques, decision-making, and critical thinking needed to provide safe and competent patient care;

**(4) "supervision of part-time faculty without a graduate degree in nursing"**, initial verification of instructor's knowledge and skills in supervision of students in clinical settings, followed by periodic observation, direction and evaluation of instructor's knowledge and skills related to supervision of students in clinical settings.

**T. Definitions beginning with "T": [RESERVED]**

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.12.3.7 NMAC - Rp, 16.12.3.7 NMAC, 10/1/2016; A, 4/8/2021; A, 12/13/2022; A, 5/21/2024]

#### **16.12.3.8 TYPES OF APPROVAL:**

##### **A. Initial approval:**

(1) Initial approval shall be granted as outlined in numbers 16.12.3.11 NMAC "requirements for the establishment of new programs and 16.12.3.12 NMAC "minimum standards for nursing programs" of these rules. Initial approval is valid from the time granted through the graduation of the first nursing class.

(2) The program shall have initial approval prior to recruiting and enrolling students into the nursing program.

(3) Immediately preceding graduation of the first nursing class, an approval site visit shall be made by representatives of the board to determine compliance with "minimum standards for nursing programs" and for consideration of continued approval.

##### **B. Initial approval with warning:**

(1) When a program fails to meet the minimum standard requirements with the initial graduating class then initial approval with warning will be granted.

(2) The program must correct all the identified deficiencies of the minimum standards not met.

(3) Initial approval with warning shall not exceed two years.

(4) When a program fails to meet the minimum standards for nursing programs within two years, the program will be placed in conditional approval.

**C. Full approval:**

(1) Full approval status shall be granted after the board verifies that the "minimum standards for nursing programs" have been met.

(2) Full approval for a continuing period not to exceed ten years, shall be granted to nursing education programs if, in the opinion of the board, the program continues to demonstrate compliance with minimum standards for nursing programs.

(3) National nursing accreditation.

(a) All currently board approved nursing programs shall achieve national nursing accreditation by January 1, 2018.

(b) New programs shall be required to achieve national nursing accreditation by two years after the graduation of the first cohort.

(c) Programs which have received accreditation from a board-recognized national nursing accreditation agency shall file evidence of initial accreditation with the board, and thereafter shall file notice of any change in program accreditation status and report from accrediting agency's board of review; the board shall grant approval based upon evidence of such accreditation.

(d) Programs holding approval based upon national accreditation are also responsible for complying with "minimum standards for nursing programs".

(e) Full approval for a continuing period not to exceed 10 years, shall be granted to nursing programs with full national nursing accreditation.

(f) Programs that do not meet or maintain this requirement will be placed on full approval with warning.

(4) Ongoing approval status is assessed annually by the board and is based on information reported or provided in the program's annual report, NCLEX exam pass rates, and information related to the minimum standards.

(a) An annual report which includes information regarding compliance with 16.12.3.12 NMAC minimum standards for nursing programs shall be submitted to the board by the nursing education program.

(b) The annual NCLEX pass rate for each nursing education program is determined by the percentage of first-time test takers who have graduated within three years and who pass the examination during the exam year, from January 1st through December 31st of the calendar year.

(i) Eighty percent of the first-time NCLEX candidates are required to achieve a passing score on the NCLEX examination during the exam year.

(ii) A program must submit corrections to any errors on the candidates reports within 90 days of the receipt of a report from the agency.

(iii) When a program fails to maintain a passing rate of eighty percent of first-time candidates for one year, the program will receive notification from the board of nursing.

(iv) The program is required to submit a self-study report with corrective action to the board of nursing by June 1st of the calendar year.

(v) When a program fails to maintain a passing rate of eighty percent of first-time candidates for two consecutive calendar years the nursing education program will be granted full approval with warning.

(c) A nursing program affiliated with a public higher education institution whose high risk student population to number of students enrolled by headcount is greater than fifty percent may request full approval with a seventy-five percent first-time NCLEX pass rate. The high risk student percentage will be calculated based on the definitions and numbers of the most recent fiscal year reported to the department of finance and administration.

**D. Full approval with warning:**

(1) the program must correct all the identified deficiencies of the minimum standards not met;

(2) nursing programs shall provide a corrective action plan (CAP);

(3) full approval with warning shall not exceed two years;

(4) any other discretion or conditions deemed necessary by the board may be imposed;

(5) a nursing program with full approval with warning status shall not expand their respective programs or increase student admissions.

**E. Conditional approval:**

(1) The nursing education program shall be placed on conditional approval not to exceed two years when there is evidence of substantial non-compliance with the "minimum standards for nursing programs" as specified in these rules.

(2) When on conditional approval status, the nursing program shall cease admissions.

(3) The following situations are cause for review or a site visit by the board to determine if the minimum standards for nursing programs are being met:

(a) complaints relating to violations of the "minimum standards for nursing programs";

(b) denial, withdrawal or change of program accreditation status by a board-recognized national nursing accreditation agency or general academic accreditation agency;

(c) failure to obtain board approval of changes that require approval of the board under "program changes";

(d) providing false or misleading information to students or the public concerning the nursing program;

(e) violation of the rules 16.12.3 NMAC;

(f) continuous disruptions in retaining a qualified director or faculty, resulting in disorganization and breakdown of supervision and teaching of students;

(g) non-compliance with the program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory faculty/student achievement;

(h) failure to provide clinical experiences necessary to meet the objectives of the nursing program;

(i) less than a passing rate of eighty percent of first time writers of the national licensing examination for more than three consecutive calendar years or is on full approval with warning for two years and has not met the "minimum standards of a nursing programs" including maintaining an adequate pass rate;

(4) Conditional approval is not renewable. Failure to correct deficiencies within the designated time period will result in withdrawal of approval and involuntary

closure of the program by the board. Full approval status shall be granted after the board verifies through a site visit that correction of deficiencies have occurred within the designated time period.

(5) The board may deny approval or withdraw approval of a nursing education program that does not meet the "minimum standards for nursing programs."

[16.12.3.8 NMAC - Rp, 16.12.3.8 NMAC, 10/1/2016; A, 4/8/2021; A, 12/13/2022; A, 5/21/2024]

### **16.12.3.9 TYPES OF BOARD VISITS TO NURSING PROGRAMS:**

**A.** Approval visit - visits made to programs of nursing by board representative(s) for the sole purpose of granting board approval. A pre-licensure nursing program must have an approval visit by the board of nursing at least once in a 10 year period.

**B.** Evaluation visit - visits made to programs of nursing by board representative(s), at the request of the board, for the purpose of evaluating a program's progress and approval status.

**C.** Consultation visit - visits made to programs of nursing by the board representative(s), at the request of the program of nursing or educational institution. Requests to the board for consultation must be made, in writing, to the executive director of the board of nursing. Consultation visits are made at the expense of the program of nursing or educational institution.

**D.** Survey visit - may be done at the discretion of the board during any national accreditation visit.

[16.12.3.9 NMAC - Rp, 16.12.3.9 NMAC, 10/1/2016; A, 4/8/2021]

### **16.12.3.10 GENERAL REQUIREMENTS:**

**A.** Prior to the end of the approval period, a site visit shall be made by board representatives to all nursing education programs not nationally accredited or an evaluative visit may be conducted at the discretion of the board with any nursing program, as needed.

**B.** Representatives of the parent institution and nursing program shall be notified, in writing, regarding the approval status of the program.

**C.** A report of any official visit, made by board representative(s), shall be provided to the program of nursing and officials of the institution.

**D.** In the event that deficiencies are found, the board shall designate a reasonable time period to correct the deficiencies.

E. An annual report which includes information regarding compliance with 16.12.3.12 NMAC, *minimum standards for nursing programs* shall be submitted to the board by the nursing education program.

[16.12.3.10 NMAC - Rp, 16.12.3.10 NMAC, 10/1/2016]

**16.12.3.11 REQUIREMENTS FOR THE ESTABLISHMENT OF NEW NURSING PROGRAMS:**

A. All programs not previously approved by the board are required to be approved by the board under the procedures prescribed in this section. Feasibility studies, proposals, and initial approvals shall be considered during a regularly scheduled board meeting.

(1) Programs which were previously approved and have been closed for more than six months shall follow the requirements for establishing a new program.

(2) Programs offering clinical experience or field experiences in the state of more than one semester shall apply for program approval by the board for clinical placement. Programs approved by another state board of nursing must meet the minimum standards set forth in 16.12.3.12 NMAC.

B. Any institution considering the establishment of a pre-licensure nursing education program shall submit, a letter of intent, the resume and transcripts of the nursing program administrator, complete application form and feasibility study, at least 12 months in advance of the proposed opening date. The application, feasibility study and program proposal shall be prepared by a qualified nurse educator.

(1) The letter of intent shall state the parent institution's intention of opening a nursing program and verify approval of the proposed program by the highest governing body of the institution.

(2) The completed application shall include attached evidence of national or regional accreditation of the parent institution.

(3) The feasibility study shall contain the following:

(a) rationale for the establishment of the nursing program;

(b) documentation of the need/demand for a new nursing program;

(c) nursing manpower needs in the state and region;

(d) impact on other nursing education programs in the state;

(e) definition of the target region from which the student population will be drawn;

(f) availability of the proposed number of faculty and director; and

(g) proposed clinical facilities detailing accessibility and documenting the plan for clinical facility use to provide educationally sound experiences. The effect on other nursing programs utilizing the facility must also be documented.

(h) any correspondence with a state board of nursing related to program approval status.

**C.** The feasibility study must be approved by the board before the proposal is submitted.

**D.** The proposal shall be submitted at least six months prior to the proposed opening date. The board of nursing shall approve the proposal upon submission of evidence that verifies the following:

(1) compliance with "minimum standards for nursing programs;"

(2) documentation of the parent institution to support the program in relation to:

(a) plans for providing adequate support services including library audio/visual resources; classrooms, laboratory, offices, secretaries, and counseling; and

(b) evidence of financial resources for planning, implementing and continuing the program.

(3) tentative timetable for planning and implementing the entire program;

(4) appointment of a qualified nurse director, as specified in the "minimum standards for nursing programs," to be active full-time in the position six months prior to the starting date;

(5) evidence of a sufficient number of qualified faculty, as specified in "*minimum standards for nursing programs*"; faculty shall be active in their positions no later than two months before the start of the first class.

**E.** Requirements for approval:

(1) Following approval of the proposal, arrangements will be made for the initial approval visit for the purpose of verifying compliance with the minimum standards for nursing programs. A written report of the visit will be submitted to the board and to the institution.

(2) The board shall advise the institution, in writing, regarding the approval/disapproval of the feasibility study, proposal, initial approval status, and may include specific requirements that must be met during the approval period.

(3) The board of nursing may deny approval to a program that does not meet the "minimum standards for nursing programs."

[16.12.3.11 NMAC - Rp, 16.12.3.11 NMAC, 10/1/2016; A, 5/21/2024]

### **16.12.3.12 MINIMUM STANDARDS FOR NURSING PROGRAMS:**

#### **A. Administration and organization:**

(1) The nursing education program shall be an integral part of an institution of higher education that is authorized by this state to confer credentials in nursing and that is also accredited by an accreditation agency recognized by the US department of education.

(2) The nursing program shall obtain national nursing accreditation within two years of the first graduating class.

(3) The nursing programs shall have status comparable with other academic units. There shall be an organizational chart which identifies the relationships, within and between the program and other administrative areas of the parent institution.

(4) The administration of the parent institution shall provide adequate financial support for the nursing program.

(5) The parent institution shall designate a qualified, nursing director who is licensed to practice as a registered nurse in New Mexico or in a compact state. The nursing program director shall have responsibility and authority comparable with the administrative position including but not limited to development, implementation, evaluation, administration and organization of the nursing program.

(6) The nursing program shall have specific written policies available to students and the public regarding, but not limited to, admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, dismissal, student rights and responsibilities, grievances, health and safety.

(7) The nursing program shall provide accurate, complete and appropriate information to all students and prospective students about the program including, but not limited to:

(a) nature of the program, including course sequence, prerequisites, co-requisites and academic standards;

- (b) length of the program;
  - (c) current cost of the program;
  - (d) transferability of credits to other public and private educational institutions in New Mexico;
  - (e) program teaching methods and supporting technology;
  - (f) current standing and any change in regional or national institutional accreditation status and national nursing accreditation status and board approval status.
- (8) The nursing program shall require primary source verification for education credit given for any pre-licensure program in their respective institution.
- (9) Faculty and students shall participate in program planning, implementation, evaluation and continuous improvement.

**B. Curriculum:**

- (1) The mission of the nursing unit shall be consistent with that of the parent institution.
- (2) A nursing program shall develop and implement a curriculum that includes level objectives, course objectives; measurable learning outcomes for each course that:
- (a) reflect its mission and goals;
  - (b) are logically consistent between and within courses;
  - (c) are designed so that the students who complete the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in New Mexico Nurse Practice Act.
- (3) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop nursing competence and shall evidence an organized pattern of instruction consistent with principles of learning and educational practice.
- (4) Clinical experience shall provide opportunities for application of theory and for achievement of the stated objectives in a client care setting or simulation learning settings, and shall include clinical learning experience to develop nursing skills required for safe practice. In the client care clinical setting, the student/faculty ratio shall be based upon the level of students, the acuity level of the clients, the characteristics of the practice setting and shall not exceed 8:1. In the simulation setting there shall be nursing faculty who has received focused training in simulation pedagogy and

techniques. Clinical evaluation tools for evaluation of students' progress, performance and learning experiences shall be stated in measurable terms directly related to course objectives. Simulation learning experiences may concurrently include the use of low, medium, and high fidelity experiences. Nursing programs shall:

(a) establish clearly-defined simulation learning outcomes incorporating objective measures for success;

(b) incorporate written, planned design of individual training experiences and shall include consideration of the educational and experiential levels of the learners;

(c) make use of checklists for pre- and post-experience analysis and review;

(d) may substitute up to a maximum of fifty percent of a clinical education experiences using simulation programs and practices;

(i) in the event of a public health emergency that negatively impacts access to clinical placement, nursing programs submit a major change notification increasing the simulation substitution to a maximum of seventy percent

(ii) the major change would be in effect for the period of the public health event ending when the health order is terminated;

(e) have written simulation policies and procedures specific to the nursing education available to all faculty and pertinent staff. Simulation learning policies and procedures shall include evaluative feedback mechanisms for ongoing program improvement;

(f) incorporate facilitated student-centered debriefing sessions upon the conclusion of simulation-based activities.

(5) The curriculum shall provide instruction in the discipline of nursing across the lifespan and include content relevant to national and local health care needs. Support courses shall be an integral part of the nursing curriculum.

(6) The nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement.

**C. Program director requirements:**

(1) Prior to appointment, the program director shall:

(a) hold a graduate degree in nursing;

(b) hold a current registered nurse license to practice in New Mexico;

(c) have work experience in clinical nursing practice;

(d) have work experience as a nurse educator.

(2) The program director shall:

(a) maintain a current registered nurse license to practice in New Mexico;

(b) be afforded appropriate resources to accomplish the program mission, goals and expected program outcomes;

(c) have the authority and responsibility for administration of the program to include but not limited to budget management, workload assignments, management and supervision of faculty and staff, development and enforcement of policies, meeting regulatory and accreditation requirements, and development and implementation of curriculum;

(d) have at least eighty percent of obligated work time to administer the program.

**D. Faculty requirements:**

(1) The faculty of the nursing program shall hold a current license to practice as a registered nurse in New Mexico.

(a) A formal plan will be in place which will include an orientation to nursing program.

(b) Nursing faculty who teach full-time shall hold a graduate degree in nursing; faculty without a graduate degree with a baccalaureate degree in nursing may be employed for one year and then are required to complete a graduate degree within the next five years; an educational contract with evidence of progression will be submitted with program annual report.

(c) Nursing faculty who teach part time shall hold a minimum of a bachelor's degree in nursing; faculty without a Bachelor of Science in Nursing BSN may be employed for one year and then are required to complete a BSN completion program or Master of Science in Nursing (MSN) program within five years, an educational contract with evidence of progression will be submitted with program annual report.

(i) Part time faculty without a graduate degree in nursing shall report to a master's prepared faculty and evidence of routine supervision shall be documented.

(ii) Part-time faculty shall be oriented to the curriculum, and provided with instruction in didactic and clinical teaching strategies.

(2) Clinical preceptors are licensed as a nurse at or above the educational level for which the student is preparing.

(3) Personnel policies for nursing faculty shall be the same as those in effect for other faculty with the exception of:

(a) nursing faculty workload shall be calculated by teaching clock/contact hour;

(b) evidence of full time and part time faculty evaluation shall be in place;

(4) A nursing program shall maintain current and accurate faculty and student records.

(5) The nursing program will retain a qualified director and a sufficient number of qualified faculty to meet the outcomes and purposes of the nursing education program.

**E. Resources:** The parent institution shall provide sufficient resources, services and facilities to operate the nursing program.

**F.** The nursing education program will maintain a passing rate of eighty percent or above of first time writers of the national licensing exam. Certain nursing programs in public higher education institutions may have a pass rate of seventy-five percent if criteria in Subparagraph (c) of Paragraph (4) of Subsection C of 16.12.3.8 NMAC.

[16.12.3.12 NMAC - Rp, 16.12.3.12 NMAC, 10/1/2016; A, 9/12/2017; A, 4/8/2021; A, 5/21/2024]

### **16.12.3.13 PROGRAM CHANGES REQUIRING BOARD OF NURSING APPROVAL:**

Major changes that affect the program's compliance with the "minimum standards for nursing programs" require board approval.

[16.12.3.13 NMAC - Rp, 16.12.3.13 NMAC, 10/1/2016]

### **16.12.3.14 REQUIREMENTS FOR CLOSURE OF APPROVED NURSING PROGRAMS:**

Upon voluntary or involuntary closure, the school shall:

**A.** notify the board of the closure date of the program;

**B.** make provision for students to complete their nursing education;

**C.** notify the board of the location of the permanently stored program records;

**D.** discontinue admissions; and

**E.** a contingency closure plan which includes date of closure, provisions that will be made for students to complete their nursing education and the location of the permanently stored program records will be submitted to the board six months after the program is placed on a conditional approval.

**F.** the nursing program shall wait 12 months before the program can re-apply for initial nursing program approval.

[16.12.3.14 NMAC - Rp, 16.12.3.14 NMAC, 10/1/2016]

#### **16.12.3.15 NURSING EDUCATION ADVISORY COMMITTEE:**

The board of nursing may appoint a minimum of a seven-member advisory committee to make recommendations to the board regarding nursing education.

**A.** The advisory committee shall review applications for initial approval, survey/evaluation reports, annual reports, major curriculum changes, and shall submit reports and recommendations to the board.

**B.** The advisory committee shall provide consultation to nursing programs as requested or as directed by the board.

[16.12.3.15 NMAC - Rp, 16.12.3.15 NMAC, 10/1/2016]

### **PART 4: HEMODIALYSIS TECHNICIANS**

#### **16.12.4.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.4.1 NMAC - Rp, 16.12.4.1 NMAC, 12/13/2022]

#### **16.12.4.2 SCOPE:**

All New Mexico board of nursing approved hemodialysis programs and hemodialysis technicians certified by the New Mexico board of nursing.

[16.12.4.2 NMAC - Rp, 16.12.4.2 NMAC, 12/13/2022]

#### **16.12.4.3 STATUTORY AUTHORITY:**

Nursing Practice Act, 61-3-10.1 NMSA 1978 Comp.

[16.12.4.3 NMAC - Rp, 16.12.4.3 NMAC, 12/13/2022]

**16.12.4.4 DURATION:**

Permanent.

[16.12.4.4 NMAC - Rp, 16.12.4.4 NMAC, 12/13/2022]

**16.12.4.5 EFFECTIVE DATE:**

December 13, 2022 unless a later date is cited at the end of a section.

[16.12.4.5 NMAC - Rp, 16.12.4.5 NMAC, 12/13/2022]

**16.12.4.6 OBJECTIVE:**

Pursuant to the Nursing Practice Act, this part establishes the requirements for fees, examinations, endorsement, recertification standards and functions, supervision, direction and disciplinary action for hemodialysis technicians. It also establishes requirements for approval of hemodialysis technician programs, minimum standards for hemodialysis training programs, and the hemodialysis technician advisory committee.

[16.12.4.6 NMAC - Rp, 16.12.4.6 NMAC, 12/13/2022; A, 5/21/2024]

**16.12.4.7 DEFINITIONS:**

**A. Definitions beginning with the letter A:**

(1) **"administrator"**, means an operating officer of an agency with the authority to make notification of change to the New Mexico board of nursing;

(2) **"agency"**, means a business, organization or facility at specified location that is approved by the New Mexico board of nursing to train hemodialysis technician students;

(3) **"approval"**, means action taken by the board to accept and grant specific recognition.

(4) **"audit"**, means a verification of continuing education documents and work hour requirements.

**B. Definitions beginning with the letter B: "board"**, means New Mexico board of nursing (NMBON).

**C. Definitions beginning with the letter C:**

- (1) "**central venous catheter**", means a synthetic tube placed into a high flowing central vein used to provide hemodialysis;
- (2) "**certificate**", means a document issued by the board identifying legal privilege and authorization to perform specific certified hemodialysis technician functions and procedures in the state of New Mexico;
- (3) "**certification examination**", means a board-approved tool designed to evaluate an applicant's knowledge of a specific subject;
- (4) "**certified hemodialysis technician (CHT)**", refers to a person who has received national certification and is certified by the board to assist in the direct care of patients undergoing hemodialysis, under the supervision and at the direction of a registered nurse according to the rules adopted by the board;
- (5) "**certified hemodialysis technician I (CHT I)**", refers to a person who is certified by the board to assist in the direct care of patient undergoing hemodialysis under the supervision and direction of a registered nursing according to the rules adopted by the board;
- (6) "**certified hemodialysis technician II (CHT II)**": refers to a person who has met the requirements of a certified hemodialysis technician (CHT) and has successfully completed the training for the expanded scope of practice as defined in the rules from an approved hemodialysis technician training program and receives certification from the board for the expanded scope of practice;
- (7) "**clinical experience**", refers to the supervised skills component of the hemodialysis training program;
- (8) "**clinical preceptor**", means a registered nurse who supervises and observes hemodialysis technician students providing hemodialysis patient care;
- (9) "**competency**", means the demonstration of knowledge in a specific area and the ability to perform specific skills and tasks in a safe, efficient manner;
- (10) "**continuing education (CE)**", means a planned learning experience for certified hemodialysis technicians which includes experiences designed to promote the development, knowledge, skills, and attitudes for the enhancement of care to the patient and may be offered by the nurse educator of the agency;
- (11) "**contact hour**", means a unit of measurement to describe an approved organized learning experience. One contact hour is equivalent to a continuous 60 minute clock hour:

(12) **"curriculum"**, means a detailed course outline, description or syllabus, which, includes objectives, content, teaching-learning activities and evaluation strategies, and includes the minimum required program hours.

**D. Definitions beginning with the letter D:**

(1) **"delegation"**, means transferring to a competent individual the authority to perform a delegated nursing task in a selected situation. The licensed nurse retains accountability for the delegation;

(2) **"direct supervision"**, refers to the supervision by a licensed nurse who is physically present, and readily accessible to the certified hemodialysis technician and hemodialysis technician student when providing patient care. Direct supervision includes observing, evaluating and directing the care being provided.

**E. Definitions beginning with the letter E: [RESERVED]**

**F. Definitions beginning with the letter F: "faculty"**, means any professional or paraprofessional person(s) who teaches for the hemodialysis technician program including clinical preceptors.

**G. Definitions beginning with the letter G: [RESERVED]**

**H. Definitions beginning with the letter H: "hemodialysis technician training program"**, means an educational program approved by the board for persons seeking certification as hemodialysis technicians.

**I. Definitions beginning with the letter I: [RESERVED]**

**J. Definitions beginning with the letter J: [RESERVED]**

**K. Definitions beginning with the letter K: [RESERVED]**

**L. Definitions beginning with the letter L: "license"**, means a document identifying the legal privilege and authorization to practice within a professional category.

**M. Definitions beginning with the letter M: [RESERVED]**

**N. Definitions beginning with the letter N:**

(1) **"national certification"**, means a certification obtained by completing an examination through a nationally recognized certifying organization which indicates a certified hemodialysis technician has knowledge and competence in providing care to patients undergoing hemodialysis as evidenced by passing an examination and

maintaining a minimum number of work hours and continuing education during the renewal period;

(2) **"nurse educator"**, means the registered nurse who is responsible for the development, implementation and evaluation of a hemodialysis technician training program and retains ultimate responsibility for determining hemodialysis technician student's competency.

**O. Definitions beginning with the letter O: [RESERVED]**

**P. Definitions beginning with the letter P:**

(1) **"program evaluation"**, means the process whereby the program at the agency is evaluated at the request of the board for approval status;

(2) **"program review"**, means the routine process whereby the program at the agency is reviewed prior to the approval expiration date to assure compliance with the rules and regulations governing hemodialysis technician programs. This may include a site visit with or without official notification to the agency.

**Q. Definitions beginning with the letter Q: [RESERVED]**

**R. Definitions beginning with the letter R:**

(1) **"reactivation"**, the process of making a certificate current which has been in a lapsed status as result of the certificate holder failing to comply with renewal requirements. This does not involve board action;

(2) **"reinstatement"**, means the process whereby a certificate which has been subject to revocation or suspension is returned to its former status by individual board action; this process always involves board action.

**S. Definitions beginning with the letter S:**

(1) **"site visit"**, means visit made directly to the hemodialysis technician training program by board staff;

(2) **"standards of function"**, means a range of tasks or activities performed by certified hemodialysis technicians for patients who are stable and predictable, supervised by a licensed registered nurse who may need to limit the range of tasks based on the patient's needs.

**T. Definitions beginning with the letter T: [RESERVED]**

**U. Definitions beginning with the letter U: [RESERVED]**

**V. Definitions beginning with the letter V: [RESERVED]**

**W. Definitions beginning with the letter W: [RESERVED]**

**X. Definitions beginning with the letter X: [RESERVED]**

**Y. Definitions beginning with the letter Y: [RESERVED]**

**Z. Definitions beginning with the letter Z: [RESERVED]**

[16.12.4.7 NMAC - Rp, 16.12.4.7 NMAC, 12/13/2022; A, 5/21/2024]

#### **16.12.4.8 FEES:**

Payment of fees will be accepted in the form as specified by the board. The initial application fee will be for a period of one year, plus the months to the applicant's birth month. Fee may be collected in whole or prorated to commensurate with the length of the renewal period. Fees are not refundable.

<b>A.</b> Application for certification examination or national certification	\$45.00
<b>B.</b> Re-examination	\$30.00
<b>C.</b> Renewal of certificates	\$45.00
<b>D.</b> Reactivation from lapsed or inactive status	\$60.00
<b>E.</b> Reinstatement of certificate following board action	\$60.00
<b>F.</b> Initial certificate military personnel, spouse, dependent, or veteran	\$0
<b>G.</b> First renewal of certificate military personnel, spouse, dependent, or veteran	\$0
<b>H.</b> Initial program review for approval	\$250.00
<b>I.</b> Program review per agency	\$200.00
<b>J.</b> Subsequent review due to a change in board policy or rules	\$50.00
<b>K.</b> Periodic program evaluation or program review per agency	\$200.00

[16.12.4.8 NMAC - Rp, 16.12.4.8 NMAC, 12/13/2022]

#### **16.12.4.9 CERTIFICATION REQUIREMENTS FOR HEMODIALYSIS TECHNICIANS:**

New Mexico certification of hemodialysis technicians is mandatory.

##### **A. Prerequisites:**

(1) Hold a high school diploma or have proof of successfully passing a general education development test.

(2) The applicant for certified hemodialysis technician will demonstrate completion of adequate training by:

(a) submitting proof of successful completion of a board approved hemodialysis technician training program; or

(b) submitting proof of a valid national hemodialysis technician certificate from a recognized organization.

(3) Submit the required application to the agency with required fees.

**B. Applications and fees:**

(1) Board staff will verify eligibility. Applications received by the board staff are valid for one year.

(2) Applications containing fraudulent or misrepresented information could be the basis for denial of certification.

(3) Incomplete applications for certification will not be processed. The applicant will be notified within 30 days of submission of application about incomplete information.

(4) Written verification of successful completion according to the minimum standards for approval of hemodialysis technician programs indicating the date of completion must be received, directly from the hemodialysis technician program, and signed by the nurse educator within 30 days of completion.

(5) The applicant will request that the national certifying body for hemodialysis technicians send verification directly to the board.

(6) A re-examination fee will be charged for all re-examinations of the state-based examination.

(7) An initial certificate shall be valid until the last day of the applicant's birth month after the first anniversary of the initial certificate.

**C. Initial certification for CHT:**

(1) Hold a high school diploma or have proof of successfully passing a general education development test.

(2) The applicant must submit proof of a valid national hemodialysis technician certificate from a recognized organization. If the applicant passes the national hemodialysis technician examination, the applicant cannot work as a CHT until the certificate has been issued by the board.

(3) Attestation from the agency nurse educator that the applicant has been oriented to the scope of function of the certified hemodialysis technician.

(4) An initial certificate shall be valid until the last day of the applicant's birth month after the first anniversary of the initial certificate.

**D. Endorsement:**

(1) If an applicant holds hemodialysis certification from another jurisdiction in the United States, the application must:

(a) meet all the prerequisites;

(b) submit verification from another jurisdiction directly to the board that certificate is in good standing. If the applicant is unable to provide verification, then the applicant must follow the process for initial certification;

(c) submit the required application and fee.

(2) An initial certificate shall be valid until the last day of the applicant's birth month after the first anniversary of the initial certificate.

**E. Requirements for hemodialysis technicians' renewal:**

(1) Certified hemodialysis technicians (CHT Is) renewing their certificate shall be required to complete the process by the end of their renewal month. CE and work hour requirements may be prorated to commensurate with the length of the renewal period.

(a) Failure to receive a notification for renewal shall not relieve the CHT I of the responsibility of renewing the certificate by the expiration date.

(b) If the certificate is not renewed by the end of the renewal month, the CHT I does not hold a valid certificate and shall not function as a CHT I in New Mexico until the lapsed certificate has been reactivated.

(c) If a CHT I certificate holder has a national certification as a hemodialysis technician, for the first renewal after 12/31/2023, the certificate will be transitioned to a CHT certificate. The CHT I must fulfill continuing education and work requirements to complete the transition.

(d) If the CHT I certificate holder does not have national certification as a hemodialysis technician, the certificate will remain a CHT I. If the CHT I certificate is allowed to lapse and remain inactive for more than one year past the expiration date, the CHT I certificate holder must complete the hemodialysis technician training program and meet the requirements for the CHT certificate, including obtaining a valid national hemodialysis technician certificate from a recognized organization.

(2) Certified hemodialysis technicians II (CHT IIs) renewing their certificate shall be required to complete the process by the end of their renewal month. CE and work hour requirements may be prorated to commensurate with the length of the renewal period. CHT II certificate holder for the first renewal period after 12/31/2023, will transition to a CHT certificate.

(a) The CHT II must fulfill continuing education and work requirements to complete the transition to CHT.

(b) If the CHT II certificate is allowed to lapse and remain inactive for more than one year past the expiration date, the CHT II certificate holder must complete the hemodialysis technician training program and meet the requirements for the CHT certificate, including obtaining a valid national hemodialysis technician certificate from a recognized organization.

(3) Certified hemodialysis technicians (CHTs) renewing their certificate shall be required to complete the process by the end of their renewal month. CE and work hour requirements may be prorated to commensurate with the length of the renewal period.

(a) The CHT must supply a current valid national hemodialysis technician certificate from a recognized organization. For the CHT II who transitioned to CHT without a national certification, passing the state based CHT II examination will substitute for the national certification.

(b) If the CHT certificate is allowed to lapse and remain inactive for more than one year past the expiration date, the CHT certificate holder must complete the hemodialysis training program and meet the requirements for the CHT certificate, including obtaining a valid national hemodialysis technician certificate from a recognized organization.

(4) Continuing education requirements:

(a) 16 contact hours of continuing education must be accrued within the 24 months immediately preceding renewal. CE may be prorated to commensurate with the length of the renewal period.

(b) Recertification by a national CHT certifying body will meet the mandatory CE requirements for New Mexico certification renewal. Continuing education obtained for national certification is applicable if completed during the renewal period.

(c) Continuing education records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non-compliant within 60 days of the first notification of the audit.

(d) CHT and CHT II shall accrue four additional contact hours of continuing education within the 24 months that preceded the expiration of the certificate. These additional contact hours must be specific to their expanded scope of function and may be prorated to commensurate with the length of the renewal period if less than 24 months.

(5) Work requirement: Applicant must provide evidence of a minimum of 1,000 hours work as a CHT, CHT I, or CHT II during the 24 month period immediately preceding certification renewal.

(a) Work requirement records are subject to audit by the board. Work hours may be prorated to commensurate with the length of the renewal period if less than 24 months.

(b) Certificate holders may be subject to disciplinary action by the board if noncompliant within 60 days of the first notification of the audit.

(6) Remit the required fee.

(7) Failure to meet the continuing education or employment requirements for recertification shall result in denial of recertification until reactivation requirements are met.

**F. Reactivation of certificate for CHT, CHT I, CHT II:**

(1) If the certificate has been inactive for less than one year, the applicant may reactivate the license by submitting an application for reactivation, paying the required fee, and submitting proof of required continuing education contact hours for a 24 month certificate period and required work hours.

(a) In substitution of continuing education and work hours, the applicant for reactivation of a CHT I certificate may take a refresher course.

(b) In addition, a CHTs lapsed certificate holder must submit a valid national hemodialysis technician certificate from a recognized organization.

(2) If the CHT, CHT 1, and CHT II certificate is allowed to lapse and remain inactive for more than one year past the expiration date, the CHT certificate holder must complete the hemodialysis training program and meet the requirements for the CHT certificate, including obtaining a valid national hemodialysis technician certificate from a recognized organization.

**G. Refresher course requirements:**

(1) Completion of a minimum of 80 hours of supervised clinical practice in a board approved hemodialysis technician training program under the supervision of an approved clinical preceptor.

(2) Successful completion of the hemodialysis technician training program's skills list identified in the core curriculum 16.12.4.16 NMAC.

(3) Successful completion of the hemodialysis technician training program final examination.

(4) Written verification, on agency letterhead, of successful completion of supervised clinical practice, skills list, and the final examination results shall be provided to the board by the program's board-approved nurse educator.

(5) Completion of a refresher course shall meet both the employment and continuing education requirements for the reactivation of the CHT I certificate.

(6) Remit the required application and fee.

[16.12.4.9 NMAC - Rp, 16.12.4.9 NMAC, 12/13/2022; A, 5/21/2024]

#### **16.12.4.10 STANDARDS OF FUNCTION FOR THE CERTIFIED HEMODIALYSIS TECHNICIAN:**

##### **A. Purpose:**

(1) To establish standards for supervision and direction of the CHT, CHT I and CHT II.

(2) To identify basic functions for the CHT, CHT I and CHT II.

(3) To identify the authorized and prohibited functions for the CHT, CHT I and CHT II.

(4) To identify the expanded role of the CHT II and CHT.

##### **B. Authorized functions of the CHT I with supervision of a registered nurse:**

(1) perform arteriovenous punctures for dialysis access;

(2) inject intradermal lidocaine in preparation for dialysis access;

(3) administer a heparin bolus;

(4) administer a fluid bolus of isotonic saline;

- (5) connect a dialysis access to isotonic saline or heparinized isotonic saline;
- (6) administer oxygen via nasal cannula or mask;
- (7) collect data for the nursing assessment;
- (8) initiate and discontinue treatment via arterio-venous access;
- (9) re-infusion of blood upon termination of treatment of central venous catheters.

**C.** Authorized functions of the CHT and CHT II with the supervision of a registered nurse:

- (1) perform arteriovenous punctures for dialysis access;
- (2) initiate, monitor, and discontinue dialysis via central venous catheter;
- (3) inject intradermal lidocaine in preparation for dialysis access;
- (4) administer a heparin bolus via intravenous route;
- (5) administer a fluid bolus of isotonic saline;
- (6) connect a dialysis access to isotonic saline or heparinized isotonic saline;
- (7) administer oxygen via nasal cannula or mask;
- (8) collect data for the nursing assessment;
- (9) initiate and discontinue treatment via arterio-venous access;
- (10) re-infusion of blood upon termination of treatment of central venous catheters;

**D.** Prohibited functions of the CHT, CHT I, and CHT II:

- (1) shall not administer medications by oral, intramuscular, intravenous or subcutaneous routes except those agents addressed in authorized functions of these rules;
- (2) shall not take orders for dialysis treatments;
- (3) shall not alter dialysis orders as prescribed by a health care provide
- (4) CHT I shall not initiate or discontinue via central venous catheters.

(5) shall not perform hemodialysis treatments without direct supervision of a registered nurse.

[16.12.4.10 NMAC - Rp, 16.12.4.10 NMAC, 12/13/2022; A, 5/21/2024]

#### **16.12.4.11 DISCIPLINARY ACTION:**

The board shall conduct hearings upon charges relating to discipline of a CHT, CHT I and CHT II, and may deny, place on probation, suspend or revoke a hemodialysis technician certificate in accordance with the Uniform Licensing Act Section 61-1-1 NMSA 1978 and 16.12.12 NMAC.

##### **A. Grounds for disciplinary action:**

(1) "Incompetence" which is defined to include, but not limited to, the following:

(a) inability to function with reasonable skill and safety as a CHT, CHT I and CHT II for any reason including, but not limited to, the use of drugs, alcohol or controlled substances which could impair judgment;

(b) performance of unsafe or unacceptable care of patients receiving dialysis treatments or failure to conform to the essential and prevailing standards of CHTs, CHT Is and CHT IIs;

(c) omitting to record information regarding procedures performed and care provided which could be relevant to the patient's care;

(d) failure to report information regarding the consumer's treatment or health status to appropriate person which could be relevant to the patient's care and status;

(e) demonstrating a lack of competence in providing care to patient's receiving a dialysis treatment.

(2) "Unprofessional conduct", which is defined to include, but not limited to, the following:

(a) falsifying or altering patient records or personnel record for the purpose of reflecting incorrect or incomplete information;

(b) misappropriation of money, drugs, or property;

(c) obtaining or attempting to obtain any fee for patient services for one's self or for another through fraud, misrepresentation or deceit;

(d) obtaining, possessing, administering or furnishing prescription drugs to any person, including, but not limited to one's self, except as directed by a person authorized by law to prescribe;

(e) obtaining or attempting to obtain a certificate to function as a CHT, CHT I or CHT II for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the certification or recertification process;

(f) functioning as a CHT, CHT I and CHT II in NM without a valid, current New Mexico certificate, or aiding, abetting or assisting another to function as a CHT, CHT I and CHT II without a valid, current New Mexico certificate;

(g) failure to report a CHT, CHT I and CHT II who is suspected of violating the NPA or rules for certification of hemodialysis technicians;

(h) exceeding the scope of function of a CHT, CHT I and CHT II;

(i) intentionally abusing, neglecting or exploiting a patient;

(j) intentionally engaging in sexual contact toward or with a patient;

(k) felony conviction;

(l) dissemination of a patient's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital/agency policy from disclosure;

(m) failure to maintain appropriate professional boundaries which may cause harm to the patient.

**B.** Disciplinary proceedings are conducted in accordance with 16.12.2 NMAC Nurse Licensure.

[16.12.4.11 NMAC - Rp, 16.12.4.11 NMAC, 12/13/2022]

#### **16.12.4.12 APPROVAL FOR HEMODIALYSIS PROGRAMS:**

**A.** Initial program approval. A proposed hemodialysis technician training program shall submit an application for approval to the board's hemodialysis technician advisory committee (HTAC). The hemodialysis technician advisory committee (HTAC) shall evaluate the application, evaluate any program review if completed and make a recommendation to the board regarding the approval of the program. The board shall consider the recommendation of the hemodialysis technician advisory committee at a regularly scheduled board meeting.

(1) The initial application shall be consistent with the minimum standards for approval of hemodialysis technician programs 16.12.4.14 NMAC, and shall contain the following:

- (a) hemodialysis training program objectives;
- (b) agency organizational chart;
- (c) names and contact information of the medical director, administrator, and nursing director;
- (d) names, license verification and resumes of the nurse educator(s) and other faculty to include clinical preceptor(s);
- (e) verification of New Mexico department of health state licensure; and
- (f) hemodialysis training program curriculum; and
- (g) completion of initial training program application and remit the required fee.

(2) Representatives of the program may be scheduled to meet with the HTAC to present the proposed program.

(a) following the HTAC review of the application, a recommendation for approval shall be made to the board of nursing;

(b) programs not recommended for approval must provide evidence that the identified deficiencies have been corrected.

(3) After receipt of the HTAC recommendation(s), the board may:

- (a) grant approval of the program;
- (b) defer a decision regarding approval;
- (c) deny approval; or
- (d) direct staff to make a pre-approval visit.

**B. Program renewal of approval:**

(1) To ensure continued compliance with the minimum standards for approval, the program shall be reviewed prior to the approval expiration date and at least every two years with a program review. The review may include a site visit.

(2) A report of the program evaluation shall be made to the HTAC.

(a) the HTAC will review the program evaluation and make a recommendation to the board;

(b) the board is the final authority regarding continued approval or probation;

(c) the board may authorize unannounced site visits for the approved hemodialysis technician programs.

**C. Criteria for full approval, probationary approval, and denial or withdrawal of approval.**

(1) Criteria for full approval. Full approval shall be granted for no more than two years to a program when, in the opinion of the board, the program demonstrates compliance with the minimum standards for approval of hemodialysis technician programs.

(2) Criteria for full approval with warning:

(a) a program may be given full approval with warning when there is evidence of deficiencies;

(b) the program must correct all the deficiencies of the minimum standards not met;

(c) the program must submit a corrective action plan (CAP) to the board;

(d) the program shall maintain the minimum standards for certified hemodialysis technician program as previously approved by the board;

(e) full approval with warning shall not exceed two years;

(f) any other discretion or conditions deemed necessary by the board may be imposed.

(3) Criteria for probationary approval:

(a) a program may be given probationary approval when there is evidence of:

(i) substantial non-compliance with the minimum standards for approval of hemodialysis technician programs;

(ii) continuous disruptions in retaining qualified faculty resulting in disorganization of the program and a breakdown of supervision and teaching of the program;

(iii) non-compliance with the program's stated philosophy, objectives, policies and curriculum resulting in unsatisfactory student achievement;

(iv) failure to provide clinical experiences or supervision necessary to meet the objectives of the program;

(v) failure of seventy five percent of first time writers of the examination to correctly answer at least eighty percent of the items over a one year period.

(b) the program shall be advised, in writing, of the reason(s) for the probationary approval.

(c) the board shall designate a reasonable time period, not to exceed one year, in which the program must correct deficiencies and meet the minimum standards for approval.

(d) at least 60 days prior to the end of the probationary approval a site visit shall be made by representatives of the board.

(e) the HTAC shall review the program review and make a recommendation to the board.

(f) the board may grant approval to the program or it may withdraw approval of the program. All decisions of the board and recommendations of the HTAC shall be advised in writing of the reasons for probationary approval.

(g) probationary approval is not renewable. Failure to correct deficiencies will result in withdrawal of approval.

(4) Criteria for denial or withdrawal of approval:

(a) the board may deny approval of a program when a program fails to provide evidence of compliance or fails to correct deficiencies resulting in non-compliance with the minimum standards for approval of hemodialysis technician programs;

(b) a written notice detailing the reasons for denial or withdrawal of approval shall be provided to the agency;

(c) the program shall be removed from the list of board approved hemodialysis technician programs. The certified hemodialysis technician program shall wait 12 months before the program can re-apply for initial approval.

[16.12.4.12 NMAC - Rp, 16.12.4.12 NMAC, 12/13/2022]

**16.12.4.13 CHANGES REQUIRING NOTIFICATION:**

**A. Changes requiring notification of the board or the advisory committee:**

- (1) curriculum changes;
- (2) changes in the program's objectives or goals;
- (3) changes in required didactic or clinical practice hours;
- (4) changes in the nurse educator;
- (5) changes in the hemodialysis technician job description.

**B. Procedure for requesting board approval for program changes.**

(1) The advisory committee shall be notified in writing of changes in the program requiring board approval. The notification shall include:

- (a) the proposed change(s);
- (b) rationale for the proposed change(s);
- (c) anticipated effect on the current program; and
- (d) timetable for implementation of the proposed change(s);
- (e) presentation of the differences between the current system and proposed change(s);
- (f) method of evaluation which will be used to determine the effect of the change;
- (g) a description of the study or method used to determine need for a change;
- (h) plans for continuing to meet the minimum standards for approval of the hemodialysis technician program.

(2) Major changes and recommendations will be presented to the board of nursing at a regularly scheduled board meeting.

**C. Changes requiring notification to the advisory committee or board of nursing.**

(1) Changes in the internal administration or organizational plan of the hemodialysis clinic or unit which affects the program.

- (2) Changes of New Mexico, department of health licensure status.

[16.12.4.13 NMAC - Rp, 16.12.4.13 NMAC, 12/13/2022]

**16.12.4.14 MINIMUM STANDARDS FOR APPROVAL OF HEMODIALYSIS TECHNICIAN PROGRAMS:**

**A. Objectives:** There shall be written objectives for the program which serve as the basis for planning, implementing and evaluating the program.

(1) The objectives shall be developed by the nurse educator.

(2) The program objectives shall describe the knowledge and skills expected of the CHT, CHT I and CHT II, and shall be consistent with the authorized functions of the CHT, CHT I and CHT II and the board approved core curriculum. After 12/31/2023, all programs must include curriculum consistent with CHT and CHT II scope of function.

(3) The program objectives shall be reviewed annually and revised as necessary by the nurse educator.

**B. Curriculum:**

(1) The curriculum shall be developed, implemented and evaluated by the nurse educator within the framework of the rules and the core knowledge statements.

(2) The curriculum shall extend over a period of time sufficient to provide essential, learning experiences which enable a hemodialysis technician student to develop competence in hemodialysis practice.

(3) There shall be a minimum of 80 hours of theory, and a minimum of 160 hours of supervised clinical experience for CHT I.

(4) Supervised clinical experience shall provide opportunities for the application of theory and for the achievement of stated objectives in a health care setting and shall include clinical learning experiences to develop the skills required by technicians to provide safe care. The nurse educator or clinical preceptor must be physically present and accessible to the hemodialysis technician student when the hemodialysis technician student is caring for the patient undergoing hemodialysis.

(5) The nurse educator shall develop a written plan for curriculum and program evaluation.

(6) The CHT and CHT II curriculum shall include a minimum of 16 additional hours of theory related to the expanded scope of practice and a minimum of 80 additional hours of supervised clinical experience. The clinical experience will include the initiation, monitoring and disconnection of a central venous catheter for a minimum of 20 times. The nurse educator must verify the successful completion of training with a written letter to the board with the application to test.

**C. Administration and organization:**

(1) The hemodialysis technician training program shall provide hemodialysis technician students opportunities to acquire clinical experiences caring for patients receiving hemodialysis at a licensed and accredited facility. These experiences should enhance the hemodialysis technician students' clinical skills and knowledge base and be under the direct supervision of a registered nurse.

(2) Each program shall have a board approved nurse educator to administer the program who shall be responsible for the development, implementation, teaching and evaluation of the program, arrangements for and supervision of student's clinical experiences and communication with the board and the hemodialysis technician advisory committee.

**D. Qualifications and competencies of faculty:**

(1) The nurse educator shall be a registered nurse and shall hold a current New Mexico or multistate license to practice nursing in New Mexico or hold a current compact state license.

(2) The nurse educator shall have at least two years of recent nursing practice experience including at least one year of nursing experience in hemodialysis. Previous nursing experience in nursing education is desirable.

(3) The nurse educator shall have a minimum of nine contact hours of continuing education annually in nephrology, or have current national certification in nephrology or dialysis.

(4) All new approved nurse educators shall participate in an orientation that is presented by the board staff.

(5) Clinical preceptor(s) shall be a registered nurse and shall hold a current New Mexico nursing license or hold a current compact state license.

(a) Clinical preceptors shall have a least one year of nursing practice experience including at least six months of nursing experience in dialysis.

(b) Clinical preceptors shall demonstrate knowledge and skills in dialysis nursing.

(6) A certified hemodialysis technician under supervision of the nurse educator or approved clinical preceptor may be assigned to assist with the clinical experience/orientation of hemodialysis technician trainees.

(7) The nurse educator or the clinical preceptor must be physically present in the agency while students are engaged in the clinical experience.

(8) A nurse educator may delegate classroom instruction to other agency affiliated approved program nurse educators.

[16.12.4.14 NMAC - Rp, 16.12.4.14 NMAC, 12/13/2022]

#### **16.12.4.15 HEMODIALYSIS TECHNICIAN ADVISORY COMMITTEE:**

**A.** Composition and appointment of committee members: The board of nursing shall appoint a minimum of a five member, three of which should be registered nurses, voluntary advisory committee which shall be composed of licensed nurses with expertise in dialysis nursing and certified hemodialysis technicians in New Mexico.

(1) There shall be no more than one licensed nurse and one certified hemodialysis technician representative employed by one hemodialysis agency serving on the advisory committee at any one time.

(2) Members of the committee shall serve for staggered terms of two years; and may be reappointed to the advisory committee.

#### **B.** Responsibility of advisory committee:

(1) The advisory committee shall review applications for initial approval, program review, program evaluations, and changes in approved hemodialysis technician training programs, and shall provide recommendations to the board.

(2) The advisory committee shall provide consultation to programs as requested or as directed by the board.

(3) Members of the advisory committee shall serve as site visitors to hemodialysis technician training programs for approval, consultation and evaluation visits.

[16.12.4.15 NMAC - Rp, 16.12.4.15 NMAC, 12/13/2022]

#### **16.12.4.16 HEMODIALYSIS TECHNICIAN CURRICULUM SUBJECT AREAS:**

**A.** Required subject areas After 12/31/2023, all hemodialysis technician curriculum must include subject areas for CHT, CHT I and CHT II.

(1) Objectives of the hemodialysis technician programs to include:

(a) federal, state and local regulations;

(b) nurse's role and hemodialysis technician role including the meaning of delegation;

- (c) standards of function for hemodialysis technician;
- (d) certification expectations and requirements; and
- (e) hemodialysis technician students must have a current basic life support credential prior to and while the student has contact with patients.

(2) Orientation to the hemodialysis technician position including:

- (a) review of job specifications;
- (b) expectation and responsibilities;
- (c) role of the health care team and the hemodialysis technician:
  - (i) roles and contributions of other health team members;
  - (ii) observation and reporting;
  - (iii) occupational safety and health administration (OSHA).

**B.** Legal roles and responsibilities of hemodialysis technicians including:

- (1) patient's rights;
- (2) negligence and malpractice;
- (3) ethical issues relating to patients including but not limited to confidentiality;
- (4) documentation;
- (5) identification of errors and required reporting of errors to the nurse.

**C.** Orientation to the patient population:

- (1) Identifies major anatomical components of the renal system and the role of the normal kidney in maintaining homeostasis;
- (2) Recognizes the physiological changes that occur in the body as a result of end stage renal disease;
- (3) Verbalizes the principles of hemodialysis;
- (4) Recognizes the psychosocial considerations that affect the hemodialysis patient/family and lifestyle;

- (5) Identifies changes in the patient's diet.

**D. Introduction to dialysis therapy:**

- (1) Demonstrates efficient, accurate and safe preparation of the dialysis machine including but not limited to the discontinuation of dialysis;
- (2) Demonstrates accurate and safe technique when performing arteriovenous punctures for dialysis access;
- (3) Identifies patient complications and communicates with a registered nurse;
- (4) Identifies and responds appropriately to machine alarms and other potential emergency situations to include but are not limited to:
  - (a) air leaks;
  - (b) power failures;
  - (c) temperature changes;
  - (d) unconscious patient;
  - (e) needle dislodgement; or
  - (f) air embolism;
- (5) Identifies infection control principles and practices. Including but not limited to the use of personal protective equipment;
- (6) Demonstrates the method of medication administration and identifies potential adverse reactions for medications used in hemodialysis therapy.

**E. Hemodialysis technician procedures/skills check list for certification in New Mexico.**

- (1) identification of machine parts and functions;
- (2) preparation of machine and extracorporeal circuit equipment monitoring and testing prior to initiation of treatment and disinfection of machine post dialysis;
- (3) data collection for registered nurse assessment;
- (4) vascular access and specimen collection;
- (5) initiation, monitoring and termination of treatment;

(6) appropriate response to real and potential emergency care situations that can impact the patient, staff and the physical building;

(7) administration of medications required for dialysis therapy within the scope of practice as stated in Subsection B and C of 16.12.4.10 NMAC;

(8) correct practice of infection control principles;

(9) identification and comprehension of principles of water treatment system.

**F. Certification for hemodialysis technician (CHT and CHT II) including their role and responsibilities.**

(1) Philosophy and objectives of the advanced hemodialysis technician programs to include:

(a) federal, state and local regulations;

(b) nurse's role and advanced hemodialysis technician role;

(c) standards of function for advanced hemodialysis technician;

(d) certification expectations and requirements.

(2) Orientation to the (CHT and CHT II) position including:

(a) review of job specifications;

(b) expectation and responsibilities;

(c) role of the health care team and the hemodialysis technician;

(i) roles and contributions of other health team members;

(ii) observation and reporting;

(3) Expanded roles and responsibilities of the advanced hemodialysis technicians (CHT and CHT II) including:

(a) patient's rights;

(b) negligence and malpractice;

(c) ethical issues relating to patient including but not limited to confidentiality and OSHA;

- (d) documentation;
  - (e) identification of errors and required reporting or errors to the nurse.
- (4) Review the concepts and practices of infection control.
- (5) Understand the principles and rationale for the clamping and care of central venous line catheters:
- (a) positive thoracic pressure;
  - (b) risk of complications with clamping/unclamping catheters;
  - (c) antiseptic solutions and catheter material.
- (6) Understanding and administering heparin to central venous catheters:
- (a) pre-dialysis blood work;
  - (b) identification of arterial and venous catheter ports;
  - (c) connection to dialysis blood lines.
- (7) Preparation, initiation, monitoring and termination of dialysis with the central venous catheters:
- (a) arterial pressure monitoring;
  - (b) documentation;
  - (c) verification with registered nurse of correct placement of a new central venous catheter.
- (8) Maintaining central venous catheter patency including injection of heparin or saline into catheter ports.
- (9) Identification of complications including, but not limited to:
- (a) emergency life threatening care;
  - (b) access recirculation;
  - (c) inadequate flow;
  - (d) clotting; or

(e) catheter dislodgement.

**G.** CHT and CHT II candidate procedures/skills check list for certification in New Mexico shall also include the following:

- (1) Identify difference between permanent and temporary central venous catheters;
- (2) Demonstrate ability to maintain an aseptic field;
- (3) Demonstrate correct infection control practices throughout all procedures including the proper selection of approved antiseptic solutions;
- (4) Demonstrate aspiration of heparin or saline with the correct sized syringe;
- (5) Demonstrate ability to maintain positive pressure in the catheter lumen;
- (6) Identify and respond appropriately to complications with the central venous catheter;
- (7) Determine correct lumen volume and instill heparin or saline aseptically post treatment;
- (8) Correctly demonstrates catheter ports are capped, clamped and secured after termination of hemodialysis treatment.

[16.12.4.16 NMAC - Rp, 16.12.4.16 NMAC, 12/13/2022]

## **PART 5: MEDICATION AIDES**

### **16.12.5.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.5.1 NMAC - Rp, 16.12.5.1 NMAC, 12/13/2022]

### **16.12.5.2 SCOPE:**

The rule applies to medication aides and medication aide training programs which serve consumers in various health care and community settings except acute care facilities.

[16.12.5.2 NMAC - Rp, 16.12.5.2 NMAC, 12/13/2022]

### **16.12.5.3 STATUTORY AUTHORITY:**

Section 61-3-10-2 NMSA, permits the operation of a program for certification of medication aides and training programs. Section 61-3-10-2 NMSA directs the board of nursing to provide for the operation of a statewide program for certification of medication aides and training programs. Section 61-2-6 NMSA (1995) Pamphlet and the Uniform Licensing Act Section 61-1-1 NMSA, *et seq.*, sets forth conditions for hearing and discipline.

[16.12.5.3 NMAC - Rp, 16.12.5.3 NMAC, 12/13/2022]

#### **16.12.5.4 DURATION:**

Permanent.

[16.12.5.4 NMAC - Rp, 16.12.5.4 NMAC, 12/13/2022]

#### **16.12.5.5 EFFECTIVE DATE:**

December 13, 2022 unless a later date is cited at the end of a section.

[16.12.5.5 NMAC - Rp, 16.12.5.5 NMAC, 12/13/2022]

#### **16.12.5.6 OBJECTIVE:**

Pursuant to the Nursing Practice Act this part establishes the requirements for fees, examination, recertification, standards and functions, supervision/direction, and disciplinary action for medication aides who serve in multiple health care settings except acute care facilities. It also establishes requirements for approval of medication aide programs, minimum standards for medication aide programs, and the medication aide advisory committee for medication aides.

[16.12.5.6 NMAC - Rp, 16.12.5.6 NMAC, 12/13/2022]

#### **16.12.5.7 DEFINITIONS:**

##### **A. Definitions beginning with the letter A:**

(1) **"administrator"** means the operating officer of an agency. This includes but is not limited to a licensed nursing facility.

(2) **"agency"** means a board approved educational or facility-based entity that conducts medication aide student training. Facility-based programs may utilize certified medication aides that serve consumers in various healthcare and community settings.

(3) **"approval"** means the review and acceptance of specific activity.

(4) **"audit"** means a verification of continuing education documents and work requirements.

**B. Definitions beginning with the letter B: "board"** means the board of nursing.

**C. Definitions beginning with the letter C:**

(1) **"certificate"** means a document issued by the board identifying the legal privilege and authorization to perform specific certified medication aide functions and procedures in the state of New Mexico.

(2) **"certification examination"** means a board-approved tool designed to evaluate an applicant's knowledge of a specific subject.

(3) **"certified medication aide I (CMA I)"** means a person who has received specialized training preparing for a role of medication administration under the supervision/direction of a registered nurse, is permitted to administer medications as outlined in these rules upon successful completion of a board approved examination.

(4) **"certified medication aide II (CMA II)"** means a person who meets the requirements of a CMA as defined in these rules. The CMA II candidate is selected by the nurse educator and receives additional training with the expanded scope of function of subcutaneous insulin delivery and is permitted to administer insulin via insulin pen upon successful completion of a board approved examination; additional certification is mandatory.

(5) **"clinical experience"** means the supervised clinical proficiency and quality assurance skills component of the certified medication aide program that provides for the application of theory and for the achievement of the stated objective which takes place in a board approved agency.

(6) **"clinical preceptor"** means a licensed nurse at each participating nursing agency that is physically present and providing one clinical preceptor to a maximum of two students with direct supervision.

(7) **"collaborative program"** means an education only based agency that collaborates with another approved agency to train medication aide students for certification and does not employ medication aides. The collaborative program retains all the responsibility of maintaining a medication aide program as it pertains to the medication aide student. A board approved nurse educator is required for the supervision of the collaborative program.

(8) **"competency"** means the demonstration of knowledge in a specific area and the ability to perform specific skills and tasks in a safe, efficient manner.

(9) **"consumer"** means any person domiciled, residing or receiving care or treatment from a certified medication aide in an agency. This includes but is not limited to residents, clients or students.

(10) **"contact hour"** means a 60 minute clock hour.

(11) **"continuing education (CE)"** means a planned learning experience for medication aides which include medication information and medication administration. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of care to the consumer.

(12) **"corrective action plan"** means a step- by- step plan submitted by an approved medication aide program that results in outcomes to achieve resolution of areas of noncompliance identified during a program evaluation.

(13) **"curriculum"** means a detailed course outline, description, or syllabus, which includes objectives, content, teaching-learning activities and evaluation strategies.

**D. Definitions beginning with the letter D: "delegation"** means transferring to a competent individual the authority to perform a delegated nursing task in a selected situation. The licensed nurse retains accountability for the delegation.

**E. Definitions beginning with the letter E: [RESERVED]**

**F. Definitions beginning with the letter F: [RESERVED]**

**G. Definitions beginning with the letter G: [RESERVED]**

**H. Definitions beginning with the letter H: [RESERVED]**

**I. Definitions beginning with the letter I: [RESERVED]**

**J. Definitions beginning with the letter J: [RESERVED]**

**K. Definitions beginning with the letter K: [RESERVED]**

**L. Definitions beginning with the letter L: [RESERVED]**

**M. Definitions beginning with the letter M:**

(1) **"medication aide advisory committee (MAAC)"** means a board appointed advisory committee.

(2) **"medications"** means substances intended for use in diagnosis, care, mitigation, treatment or prevention of a disease.

(3) **"medication aide program"** means the formal program of study, certification, continuing education, standards of functions, disciplinary action, and minimum standards. A board approved nurse is required for the supervision and observation of the medication aide.

**N. Definitions beginning with the letter N:**

(1) **"NPA"** means the Nursing Practice Act.

(2) **"nurse educator"** means a board approved registered nurse who is the program administrator for a specific agency that develops, coordinates and teaches a medication aide program and retains the ultimate responsibility for the supervision, direction, and competency of the medication aide student. Facility-based program nurse educators are also responsible for supervision, direction, and continuing competency assessment of CMA Is and CMA IIs.

**O. Definitions beginning with the letter O: "OTC medications"** means medications can be purchased over-the-counter without a prescription. OTC medications must be stored in original manufacturer's packaging and affixed with the original manufacturer's labeling. Provider's orders with adequate instructions must be obtained prior to the administration of OTC medications by the certified medication aide.

**P. Definitions beginning with the letter P:**

(1) **"population specific care"** means the standards of care regarding medication administration requirements for specific consumer care groups.

(2) **"Prn"** means administering medication on an as needed basis. Instruction to administer by a certified medication aide requires licensed nurse judgment and prior approval.

(3) **"program evaluation"**: means the process whereby the program at the agency is evaluated at the request of the board for approval status.

(4) **"program review"** means the process whereby the program at the agency is reviewed to assure compliance with the rules and regulations governing the CMA program. This may include a site visit with or without official notification to an agency.

(5) **"properly labeled container"** means a medication container which includes the name, address and telephone number of the pharmacy, the name of the prescriber, the full name of the consumer, the date the order was filled, the brand and generic name of the drug, the dosage of the drug, strength of the drug, lot number, expiration date, adequate instructions for use and cautionary label as necessary.

**Q. Definitions beginning with the letter Q:**

(1) **"quarterly reports"** means a report submitted by an agency that provides an update on areas of noncompliance that were identified during a program evaluation or corrective action plan outcomes.

(2) **"quality assurance progress report"** means a report submitted by a facility-based approved medication aide program that provides a summary of medication aide medication administration findings, observations, problems, irregularities, safety violations, and medication errors.

#### **R. Definitions beginning with the letter R:**

(1) **"reactivation"** means the process of making a certificate current which has been in lapsed status as a result of failure to comply with the necessary renewal requirements; this action does not involve board action.

(2) **"reinstatement"** means the process whereby a certificate, which has been subject to revocation or suspension, is returned to its former status by individual board action; this process always involves board action.

(3) **"routine medication"** means a medication for which the frequency of administration, amount, strength, and method of administration are specifically fixed as determined by the health care provider authorized by the state to prescribe medications. Routine does not include medications for which the time of administration, the amount, the strength of dosage, the method of administration or the reason for administration is left to judgment or discretion.

#### **S. Definitions beginning with the letter S:**

(1) **"standards of function"** means a range of tasks/activities performed by certified medication aides Is and certified medication aide IIs for consumers who are stable and predictable, supervised by a licensed nurse who may need to adjust the range of tasks based on the consumer's need.

(2) **"supervision/direction"** means initial and ongoing verification of a person's knowledge and skills in the performance of a specific function or activity as demonstrated by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific function or activity.

#### **T. Definitions beginning with the letter T: [RESERVED]**

**U. Definitions beginning with the letter U:** "ULA" means the Uniform Licensing Act.

#### **V. Definitions beginning with the letter V: [RESERVED]**

#### **W. Definitions beginning with the letter W: [RESERVED]**

**X. Definitions beginning with the letter X: [RESERVED]**

**Y. Definitions beginning with the letter Y: [RESERVED]**

**Z. Definitions beginning with the letter Z: [RESERVED]**

[16.12.5.7 NMAC - Rp, 16.12.5.7 NMAC, 12/13/2022]

**16.12.5.8 FEES:**

Payment of fees will be accepted in the form specified by the board. The initial application fee will be for a period of one year, plus the months to the applicant's birth month. Fees may be collected in whole or prorated to commensurate with the length of the renewal period. Fees are not refundable.

<b>A.</b> Initial certification by examination	\$45.00
<b>B.</b> Certification by exam for CMA II	\$60.00
<b>C.</b> Re-examination	\$30.00
<b>D.</b> Renewal of medication aide certificate	\$45.00
<b>E.</b> Reactivation of a lapsed certificate	\$50.00
<b>F.</b> Reactivation of a lapsed certificate following board action	\$60.00
<b>G.</b> Initial certificate Military personnel, spouse, dependent, or veteran	\$0
<b>H.</b> First renewal of certificate Military personnel, spouse, dependent or veteran	\$0
<b>I.</b> Initial program review and approval	\$250.00
<b>J.</b> Program renewal	\$200.00
<b>K.</b> Board ordered program review or program evaluation for approval	\$200.00

[16.12.5.8 NMAC - Rp, 16.12.5.8 NMAC, 12/13/2022]

**16.12.5.9 CERTIFICATION BY EXAMINATION REQUIREMENTS FOR MEDICATION AIDES:**

**A.** Prerequisites:

(1) Be a minimum of 18 years of age.

(2) Be a high school graduate or complete the general education development (GED) course. Applicants who graduated from non-U.S. education programs shall have an evaluation of their education credentials sent to the board directly from a board recognized educational credentialing agency to verify that the education is comparable to a US high school diploma.

(3) Provide documentation of a minimum of three months health care experience working at a board approved agency within the last year or hold a current New Mexico nurse aide certificate in good standing.

(4) Successfully complete a board-approved program for the preparation of medication aides within the last 12 months.

(5) Complete the required application form within the specified deadline and according to all policies.

(6) Provide proof of current CPR certification.

(7) Remit the required fee.

**B. Application and fee for the medication aide examination:**

(1) Any application containing fraudulent or misrepresented information could be the basis for denial of certification.

(2) Incomplete applications for certification will not be processed. The applicant will be notified of the incomplete application within 30 days of submission.

(3) Verification of successful completion of the medication aide program including date of completion must be received in the board office directly from the agency nurse educator which provided the clinical experience of the program on agency letterhead.

(4) Upon board approval of the application, the board will issue a notification to the applicant. Thereafter the applicant must follow testing service instructions for scheduling the examination.

(5) Applicants who fail the examination must submit a re-examination application and pay a re-examination fee.

(6) Results of the examination shall be reported by the online portal to the applicant. Successful candidates are not certified until they receive notification from the board. Successful candidates shall be issued an initial certificate.

(7) Certification can be verified through the board's website.

(8) An initial certificate shall be valid until the last day of the applicant's birth month after the first anniversary of the initial certificate.

**C. Medication aide certification examination:**

(1) The board shall develop and maintain the board-approved examination for medication aides.

(2) Board-approved examination centers shall comply with the security procedures developed by the board for distribution and administration of the examination.

(3) Applicants for certification as a medication aide shall be required to pass the medication aide examination with a minimum of eighty percent of the items answered correctly.

(4) Failed examinations must be repeated in their entirety on all subsequent attempts.

(5) Unsuccessful candidates may repeat the examination one time.

(6) The examination may be taken a maximum of two times. After the second failure, the applicant must provide verification of repeating and successfully completing the theory and clinical portion of a board-approved medication aide program to be eligible to sit for the exam.

(7) Applicants observed giving or receiving unauthorized assistance during the writing of the examination shall be physically removed from the examination center and the individual(s) shall be referred to the board by a sworn complaint(s) filed by the examiner.

**D. Certification by examination for CMA II:**

(1) CMA II applicants shall be required to pass a certification examination with a minimum score of eighty percent that is specific to their expanded scope of function as defined in the core curriculum (16.12.5.16 NMAC).

(2) CMA II applicants who fail the exam may repeat the examination one time without repeating an approved training program. If the CMA II applicant does not pass the second examination they must provide verification of repeating and successfully completing the theory and clinical portion of a board approved CMA II program to be eligible to retake the examination.

(3) Results of the examination shall be reported by the online portal to the applicant. Successful candidates are not certified until they receive notification from the board. Successful candidates shall be issued an initial certificate.

(4) The initial certificate for CMA II will align with the expiration date of CMA I.

**E. Requirements for medication aide recertification:**

(1) Applicants for recertification as a medication aide must meet the continuing education and work requirements as stated in these rules.

(2) In order to meet the CE requirement for recertification as a medication aide, the applicant must provide evidence of having accrued 16 clock hours of CE within the two years renewal period immediately preceding recertification. CE may be prorated to commensurate with the length of the renewal period.

(a) The agency shall grant opportunities for CE.

(b) Acceptable courses shall be those with topics related to medications and medication administration.

(c) CE requirement records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non-compliant within 60 days of the first notification of the audit.

(d) Failure to meet the CE requirements for recertification shall result in denial of recertification. Individuals who do not meet the continuing education requirement may not function as a medication aide until such time as the CE requirement has been met.

(e) CMA II shall accrue four additional contact hours of continuing education within the 24 months preceding recertification. These additional contact hours must be specific to their expanded scope of function. CE may be prorated to commensurate with the length of the renewal period.

(3) In order to meet the work requirement for recertification as a medication aide, the applicant must administer medications a minimum of 100 hours during the two year period immediately preceding certification renewal in a board approved facility.

(a) Work requirement records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non-compliant within 60 days of the first notification of the audit. Work hours may be prorated to commensurate with the length of the renewal period if less than 24 months.

(b) Failure to meet the employment requirement shall result in denial of recertification.

(c) Individuals who have not met the employment requirement may not function as a medication aide, until a 24 hour refresher course has been completed and a recertification application and fee have been submitted, processed, and accepted by the board.

(4) Reactivation or reinstatement of certificate:

(a) If the certificate has lapsed or been inactive for less than six months, the applicant may submit an application for reactivation, submit the required fee, and submit the required continuing education and work hours.

(b) If the certificate has lapsed or has been inactive six months to one year, the applicant must complete a refresher course. Completion of a refresher course shall meet both the employment and CE requirements for the renewal period.

(c) If the certificate has lapsed or has been inactive for more than one year, the applicant must repeat the training program and pass the medication aide examination.

(5) Refresher course:

(a) CMA I - completion of a minimum of 12 hours of classroom studies and 12 hours of supervised clinical practice in a board-approved medication aide program under the direction of the nurse educator to include authorized and prohibited functions of a medication aide. CMA II - completion the CMA I refresher course and completion of eight hours of theory to include the expanded scope of function and 20 hours of supervised insulin injections.

(b) A passing score of eighty percent on the agency's final examination.

(c) Refresher course requirements are found in 16.12.5.20 NMAC.

(d) The nurse educator shall provide verification on agency letterhead directly to the board of nursing about the medication aide's completion of the refresher course before a new certificate is issued.

(e) Failure to meet any of the requirements for the refresher course shall require the individual to complete a board-approved training program curriculum in its entirety.

(6) Renewal notifications may be sent electronically to the certified medication aide at least six weeks prior to the end of the renewal month. Renewal applications are available on the board's website.

(a) Failure to receive the notification for renewal shall not relieve the medication aide of the responsibility of renewing the certificate by the expiration date.

(b) If the certificate is not renewed by the end of the renewal month, the medication aide does not hold a valid certificate and shall not function as a medication aide in NM until the lapsed certificate has been reactivated.

(c) Renewal application and fee must be submitted, processed, and accepted by the board.

(7) Medication aides shall be required to complete the renewal process by the end of the certificate expiration.

(8) Initial certificates are issued by mail only. Certificates can be verified on the board website.

(9) Remit the required fee.

**F.** Individuals who have practiced as medication aides in other states or who have been certified in another state may apply for certification in the state of New Mexico if they meet the following criteria:

(1) are a minimum of 18 years of age;

(2) are a high school graduate or have completed the general education development course;

(3) Current CPR certification;

(4) provide a current CMA certificate or equivalent from another state;

(5) submit written verification of 100 hours as a medication aide during the 24 month period immediately preceding request to become certified in New Mexico submitted directly to the board by their employer;

(6) provide written verification by the board approved agency, on agency letterhead, of successful completion of the appropriate refresher course, 20 hours of supervised clinical practice, skills list, and the final examination results;

(7) successfully complete the board's medication aide certification examination with a score of eighty percent or better;

(a) the medication aide candidate must apply within six months to take the approved medication aide certification examination; an initial certification by examination application with fee must be submitted, processed and accepted by the board according to examination required deadline;

(b) upon successful completion of the examination with a score of eighty percent or higher a certificate will be mailed to the medication aide;

(c) failure to successfully pass the medication aide certification examination shall require the medication aide to complete a board approved training program curriculum in its entirety.

**G.** Graduate nurses or nursing students currently enrolled in a school of nursing may be certified as medication aides if they meet the following criteria.

(1) Graduate nurses or student nurses who have successfully completed a nursing pharmacology course and two of the following may apply for medication aide certification:

(a) nursing courses to include: pathophysiology (I), anatomy (II) and physiology (III);

(b) completed a nursing fundamentals course; or

(c) certified nursing assistant course.

(2) Complete the required application form and remit the required fee.

(3) Written verification of successful completion of courses with a "C" or higher must be submitted by the nursing school on letterhead. In lieu of verification, official transcripts will be accepted.

(4) Complete the refresher course requirement CMA I or CMA I and CMA II. The attestation of completion of the refresher course must be submitted directly to the board of nursing by the nurse educator.

(5) If completed certified nursing assistant course, must provide verification of a current certificate in good standing with the state department of health.

(6) Provide proof of a current CPR card.

(7) Successfully complete the board's medication aide certification examination with a score of eighty percent or better.

(8) Upon successful completion of the examination with a score of eighty percent or higher a certificate will be mailed to the medication aide.

(9) Failure to successfully pass the medication aide certification examination shall require the candidate to complete a board approved training program curriculum in its entirety.

[16.12.5.9 NMAC - Rp, 16.12.5.9 NMAC, 12/13/2022]

#### **16.12.5.10 STANDARDS OF FUNCTIONS FOR THE MEDICATION AIDE:**

**A.** The purpose of this section is to establish standards for the supervision/direction of medication aides; to identify basic authorized functions for the medication aide and; to identify prohibited functions for the medication aide.

**B.** Authorized functions of the medication aide - medication aides who have been certified by the New Mexico board of nursing may under the supervision/direction of a registered nurse administer routine medications.

(1) The medications must have been ordered by a person authorized in the state to prescribe medications.

(2) The medication must be prepared by the person who will administer it.

(3) Medication administration errors must immediately be reported to the licensed nurse by the medication aide.

(4) Adverse reactions must immediately be reported to the licensed nurse by the medication aide.

(5) Administer PRN medications only after contacting and receiving authorization from licensed nurse to administer the PRN medication. Authorization is required for each individual instance of PRN administration of a medication.

**C.** Prohibited functions of the medication aide:

(1) shall not administer medication by intramuscular, intravenous, subcutaneous or nasogastric routes; exception: certified medication aides may administer insulin with a prefilled insulin pen if they have successfully completed a current CMA II board approved certification program;

(2) shall not take medication orders;

(3) shall not alter medication dosage as ordered by the prescriber;

(4) shall not perform any function or service for consumers for which a nursing license is required under the Nurse Practice Act;

(5) shall not administer medication without the supervision/direction of a licensed nurse;

(6) shall not administer medications in any agency other than a board approved agency.

(7) shall not administer medications when medication administration requires an assessment of the patient's need for medication, a calculation of the dosage of the medication;

(8) shall not administer medication when the patient requires continued nursing assessment;

(9) shall not administer medication dispensed from an automated medication dispensing system without a properly labeled container and without the direct supervision of a licensed nurse.

**D. Supervision/direction:**

(1) A nurse educator shall periodically provide supervision/direction to the certified medication aide administering medication(s):

(a) a licensed nurse shall be available 24 hours a day (on call) to supervise medication aides as determined by the agency work hours;

(b) develop and institute an annual performance evaluation of each CMA; the performance evaluation shall be based upon the standards listed in these rules; the performance evaluation shall also include a review of the number of medication errors committed by the CMA.

(2) A nurse educator shall monitor an agency's medication aides as directed by the board to include the following:

(a) review all medication administration errors and incident reports filed since the nurse educator's last review;

(b) meet with each medication aide to review and discuss problems, difficulties, or irregularities in administering medications and to provide appropriate instruction;

(c) ensure biannual medication pass observation are conducted which may be delegated to a licensed nurse;

(d) prepare and submit to the board a written, signed report medication administration of findings, observations, problems, irregularities, medication errors, safety violations and recommendations in medication administration.

(3) The registered nurse may delegate to the licensed practical nurse the supervision/direction of the medication aide.

**E. Certified medication aide II - expanded scope of function:**

(1) The expanded role is a privilege and not a requirement for all CMA's to meet.

(2) The nurse educator shall approve the CMA assuring the CMA meets specific criteria.

(3) CMA must be employed full-time for one year in a board approved facility.

(4) Must have been a CMA for one year and have fulfilled all CMA requirements and have a current NM certificate.

(5) Authorized functions shall include subcutaneous injection of insulin by prefilled insulin pens only.

(6) Must complete board approved curriculum and pass the board examination with eighty percent or better.

[16.12.5.10 NMAC - Rp, 16.12.5.10 NMAC, 12/13/2022]

#### **16.12.5.11 DISCIPLINARY ACTION:**

**A.** The board shall conduct hearings upon charges relating to discipline of a CMA/CMA II or the denial, suspension or revocation of a medication aide certificate in accordance with the ULA (Section 61-3-10 NMSA 1978) and 16.12.12 NMAC for the purpose of protecting the public.

**B.** Grounds for action:

(1) Incapable of functioning as a medication aide which is defined to include, but not limited to, the following:

(a) inability to function with reasonable skill and safety as a medication aide for any reason including, but not limited to, the use of drugs, alcohol or controlled substances which could impair judgment;

(b) performance of unsafe or unacceptable care of consumers in the administration of medications or failure to conform to the essential standards and prevailing standards of medication aides, in which actual injury need not be established;

(c) omitting deliberately and failing to record information regarding medications and medication administration which could be relevant to the consumer's care;

(d) demonstrating a lack of competence through repeated medication errors.

(2) Incapable of functioning as a responsible member of the health care team which is defined to include, but not limited to, the following:

(a) falsifying or altering consumer records or personnel records for the purpose that reflect incorrect or incomplete information;

(b) misappropriation of money, medications or property;

(c) obtaining or attempting to obtain any fee for consumer services for one's self or for another through fraud, misrepresentation or deceit;

(d) obtaining, possessing, administering or furnishing prescription medications to any person, including, but not limited to one's self, except as directed by a person authorized by law to prescribe;

(e) failure to follow established procedures and documentation regarding controlled substances;

(f) obtaining or attempting to obtain a certificate to function as a medication aide for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the certification by examination or recertification process;

(g) failure to report a medication aide, who is suspected of violating the NPA, administrative rules or 16.12.5 NMAC;

(h) exceeding the scope of functions of a medication aide;

(i) intentionally abusing, neglecting or exploiting a consumer;

(j) intentionally engaging in sexual contact toward or with a consumer;

(k) administering medications without the supervision/direction of a licensed nurse;

(l) conviction of a felony;

(m) dissemination of a patient/client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital/agency policy from disclosure.

**C.** Disciplinary proceedings - disciplinary proceedings are conducted in accordance with the administrative rules of the New Mexico board of nursing and pursuant to the Uniform Licensing Act.

[16.12.5.11 NMAC - Rp, 16.12.5.11 NMAC, 12/13/2022]

#### **16.12.5.12 APPROVAL OF MEDICATION AIDE PROGRAMS:**

**A.** The purpose of the rules is to set reasonable requirements that protect the health and well-being of the consumers that receive services from medication aides in board approved programs. NPA (Section 61-3-10.2 NMSA 1978). The objectives include promoting safe and effective care of consumers receiving medications from CMAs;

establishing minimum standards for the evaluation and approval of medication aide programs; facilitating continued approval and improvement of the medication aide programs; granting recognition and approval that a medication aide program is meeting the required minimum standards; and establishing eligibility of graduates of the training portion of a medication aide program to apply for certification by examination.

**B.** Board approved nurse educators of all new medication aide participant program's shall participate in an orientation that is presented by board staff.

[16.12.5.12 NMAC - Rp, 16.12.5.12 NMAC, 12/13/2022]

### **16.12.5.13 TYPES OF APPROVAL:**

**A.** Initial program approval - any agency wishing to obtain approval of a medication aide program shall submit, in writing, a medication aide I, medication aide I and II, or a medication aide II application for approval to the board. Applications must be complete for consideration of approval. Incomplete applications will not be reviewed and will expire in six months. The MAAC shall evaluate the application and make a recommendation to the board regarding the approval of the medication aide program. The program must have initial board approval prior to recruiting and enrolling students or employing certified medication aides. The board shall approve medication aide programs at regularly scheduled board meetings.

(1) The initial application for approval shall be consistent with the minimum standards for medication aide programs and shall contain the following:

- (a) program description and implementation plan, including timelines;
- (b) objectives of the medication aide program, Paragraph (1) to (3) of Subsection A of 16.12.5.17 NMAC;
- (c) organizational chart showing the position of medication aide program within the overall structure of the agency, indicating the lines of authority and responsibility;
- (d) name of the administrator;
- (e) name, license verification and resume of the nurse educator(s), faculty, and clinical preceptors;
- (f) program curriculum, consistent with 16.12.5.19 NMAC;
- (g) training material and textbooks to be utilized;
- (h) number of hours to be spent on each topic;

- (i) program teaching methods and supporting technology;
- (j) program policies and procedures that outline the standard of function of the medication aide in the board approved agency;
- (k) medication aide student eligibility requirements and policies related to the instruction and evaluation of the student progression, grading, and achievement;
- (l) evaluation tools that demonstrate written and clinical proficiency to include a quality assurance program;
- (m) policies and procedures that outline the scope of function of medication aide in the board approved agency;
- (n) job description of medication aide; and
- (o) required fee.

(2) Training programs which also employ employee certified medication aides must also include the following information:

- (a) name of the director of nursing;
- (b) evaluation tools that demonstrate the competency of the certified medication aide including the biannual medication pass and the annual performance evaluation;
- (c) policies for reporting medication errors of the certified medication aide;
- (d) plan for the agency to provide continuing education opportunities for the certified medication aide.

(3) Representatives of the medication aide program may be scheduled to meet with the MAAC to present the proposed program:

- (a) upon the MAAC's approval of the application, a recommendation for approval shall be made to the board;
- (b) applications not approved may be resubmitted to the MAAC for approval when complete and deficiencies have been corrected.

(4) After receipt of the MAAC's report and recommendation(s), the board may:

- (a) grant initial approval of a program for a period not to exceed two years;
- (b) defer a decision regarding approval;

(c) deny approval;

(d) direct staff to make a pre-approval evaluation visit.

**B.** Full approval, for a renewal period not to exceed two years, shall be granted to medication aide programs if, in the opinion of the board, the program demonstrates compliance with 16.12.5.17 NMAC minimum standards for medication aide programs.

(1) To ensure continued compliance with 16.12.5.17 NMAC minimum standards for medication aide programs, medication aide programs shall be evaluated through a written report or as determined by the board or the advisory committee.

(a) during the period of full approval, the board may determine if annual medication aide program site visits are necessary to evaluate compliance with these rules;

(b) a representative of the medication aide program may request or be requested to meet with the MAAC to clarify and respond to questions regarding the evaluation;

(c) after the MAAC's review of the evaluation, a report shall be made to the board regarding continuation of the medication aide program's approval;

(d) the board is the final authority regarding continued approval or probation.

(2) Prior to the expiration of full approval, a program review shall be conducted by a representative from the board of nursing to evaluate programmatic compliance. The report of the review shall be submitted to the MAAC for review and recommendation to the board regarding approval.

**C.** Full approval with warning:

(1) the program must correct all deficiencies of the minimum standards not met;

(2) any condition deemed necessary by the board may be imposed including but not limited to corrective action plans and quarterly reports;

(3) approval shall not exceed two years;

(4) the board may determine if annual medication aide program evaluations or program reviews are necessary to evaluate compliance with these rules.

**D.** Probationary approval:

(1) a medication aide program may be given probationary approval when there is evidence of:

- (a) non-compliance with the minimum standards for medication aide programs;
- (b) continuous disruptions in retaining qualified nurse educators;
- (c) noncompliance with the medication aide program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory student achievement;
- (d) failure to provide clinical experience or supervision;
- (e) non-compliance with any portion of these rules.

(2) the board may order any condition related to the minimum standards including but not limited to a corrective action plan, quarter reports, and program evaluation.

(3) the medication aide program shall be advised, in writing, of the reason(s) for probationary approval.

(4) the board shall designate a reasonable time period, not to exceed one year, in which the medication aide program must correct deficiencies and meet the minimum standards for approval.

(a) prior to the end of the period of probationary approval, a program evaluation shall be conducted;

(b) the committee shall review the program evaluation and make a recommendation to the board.

(5) probationary approval is not renewable. Failure to correct deficiencies or adhere to conditions of approval will result in withdrawal of approval.

[16.12.5.13 NMAC - Rp, 16.12.5.13 NMAC, 12/13/2022]

#### **16.12.5.14 DENIAL OR WITHDRAWAL OF PROGRAM APPROVAL:**

**A.** The board may deny approval of a medication aide program when a program fails to provide evidence of compliance with the minimum standards for medication aide programs or any other portion of these rules.

**B.** The board may withdraw approval of a medication aide program if the program fails to correct deficiencies resulting in non-compliance with the minimum standards for medication aide programs or any other portion of these rules.

**C.** When the board denies or withdraws approval, a written notice detailing the reasons shall be provided to the officials of the medication aide program.

**D.** The medication aide program shall be removed from the list of board approved medication aide programs.

**E.** Medication aide programs which do not submit the program renewal application and fee in sufficient time to be receive a recommendation from the MAAC and approval by the board will be removed from the list of board approved medication aide programs at the expiration date. Program approvals and renewals will be considered at regularly schedule committee and board meetings. A special meeting will not be held for program approvals or renewals;

**F.** The agency may re-apply for a medication aid program by submitting an initial program application and required fee one year from the date of denial or expiration date of the program approval.

[16.12.5.14 NMAC - Rp, 16.12.5.14 NMAC, 12/13/2022]

#### **16.12.5.15 PROGRAM REVIEWS:**

**A.** Types:

(1) approval assessment: made to a medication aide program by representatives of the board for the purpose of determining board approval;

(2) program evaluation: made to medication aide program by board representatives at the request of the board for the purpose of evaluating a program's progress and approval status;

(3) consultation assessment: made to the medication aide program by the board representatives at the request of the program officials;

(4) course visit: visit which may be done at any time to a participating medication aide program;

(5) program review: routine review conducted prior to the program expiration date to assess compliance with programmatic requirements and to assess the status of the program at the agency.

**B.** The board reserves the right to make unannounced visits.

**C.** A report of the program review or program evaluation made by representative(s) of the board shall be provided to the medication aide program, MAAC for recommendation to the board, and the board for final disposition regarding approval status.

**D.** Program reviews or program evaluations shall be conducted by a minimum of one professional board staff member.

**E.** The board makes the final decision regarding approval status of a medication aide program.

[16.12.5.15 NMAC - Rp, 16.12.5.15 NMAC, 12/13/2022]

**16.12.5.16 CHANGES REQUIRING NOTIFICATION:**

**A.** Program changes requiring notification to the board:

- (1) changes in agency ownership;
- (2) changes in agency administrator.

**B.** Program changes requiring notification to the board for approval:

- (1) major curriculum changes or reorganization of the curriculum;
- (2) major changes in the program's objectives or goals;
- (3) changes in the required didactic or clinical hours;
- (4) changes in the internal, administrative or organizational plan of the agency that impact the medication aide program;
- (5) changes in the licensure status of the agency;
- (6) changes in the medication aide program nurse educator.

**C.** Procedure for requesting board approval for program changes:

(1) the MAAC shall be notified, in writing, of changes in the program requiring board approval. The MAAC shall present the changes and recommendations to the board of nursing at a regularly scheduled meeting;

(2) the notification shall include:

- (a) a proposed change(s);
- (b) rationale for the proposed change(s);
- (c) anticipated effect to the current program;
- (d) timetable for implementation of the proposed change(s);

(e) presentation of the differences between the current system and proposed change(s);

(f) method of evaluation which will be used to determine the effect of the changes; and

(g) any required fee.

[16.12.5.16 NMAC - Rp, 16.12.5.16 NMAC, 12/13/2022]

#### **16.12.5.17 MINIMUM STANDARDS FOR MEDICATION AIDE PROGRAMS:**

**A.** Objectives - there shall be written objectives for the medication aide program which serve as the basis for the planning, implementation, and evaluation of the program.

(1) The objectives shall be developed by the medication aide program nurse educator and shall describe the competencies of the medication aide and shall include:

- (a) principles of safety in the administration of medication;
- (b) rights in preparing and administering medications;
- (c) methods commonly used to safeguard medications;
- (d) process of infection control;
- (e) terms related to administration of medications;
- (f) abbreviations commonly used when prescribing and administering medications;
- (g) uses, dosages, and necessary precautions in administering medications;
- (h) ability to correctly calculate dosages;
- (i) appropriately reporting changes in a consumer's condition;
- (j) importance of remaining with consumer while administering medication;
- (k) accurate documentation of medication administration;
- (l) legal parameters of the medication aide role;
- (m) authorized and prohibited functions;

- (n) responsibility for own actions;
- (o) maintenance of confidential information;
- (p) appropriate skills in medication administration;
- (q) understanding of the consumer population; and
- (r) confidentiality issues.

(2) The objectives shall be written clearly and shall identify expected competencies of the beginning medication aide.

(3) The objectives shall be reviewed annually and revised as necessary by the nurse educator.

**B. Curriculum:**

(1) The curriculum shall be developed, implemented, evaluated by the medication aide program nurse educator within the framework of the objectives.

(2) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop competence consistent with principles of learning and sound educational practice.

(a) There shall be a minimum of 60 hours of classroom study of which 40 hours is the medication administration curriculum and 20 hours of population specific care curriculum.

(b) There shall be a minimum of 20 hours of supervised clinical experience. The nurse educator retains accountability and determines the need for additional clinical experience hours.

(c) Supervised clinical experience shall provide opportunities for the application of theory and for the achievement of stated objectives in a population specific care setting and shall include clinical learning experiences to develop the proficiency/quality assurance required by the individual to function safely as a medication aide. A nurse educator or clinical preceptor must be physically present and accessible to the student in the population specific care area.

(d) The CMA II curriculum shall include a minimum of 16 additional hours of classroom study and a minimum of 20 supervised insulin injections. The CMA II student shall successfully administer insulin to one or more consumers a minimum of 20 times. The nurse educator must verify the successful completion of training by submitting a written letter to the board with the application to test as a CMA II.

(3) The curriculum shall provide, at a minimum, instruction in the subject areas listed in 16.12.5.19 NMAC.

(4) The nurse educator shall develop a written plan for curriculum and program evaluation.

**C. Administration and organization:**

(1) There shall be a current organizational chart showing the position of the medication aide program within the overall structure of the agency, clearly indicating the lines of authority and responsibility and channels of communication.

(2) The agency administration shall provide support for the medication aide program to obtain the resources needed for the program to achieve its purpose.

(3) There shall be a nurse educator to administer the program that shall be responsible for:

(a) the development, implementation and evaluation of the medication aide program;

(b) creation and maintenance of an environment conducive to teaching and learning;

(c) liaison with other personnel;

(d) arrangement for direct supervision of the student's clinical experience by a licensed nurse;

(e) provision for a system of permanent records and reports essential to the operation of the medication aide program; and

(f) communication with the board of nursing.

(4) Should the nurse educator leave their position, the administrator shall notify the board. Failure to notify the board may result in a monetary penalty imposed by the board.

**D. Faculty:**

(1) Each program shall have a nurse educator that is a registered nurse and holds a current license to practice nursing in NM or a current compact state license.

(2) The nurse educator shall have at least two years of recent, within the last five years, nursing practice experience.

- (3) The nurse educator shall select the clinical experience for students.
- (4) The nurse educator or clinical preceptor must be physically present in the agency while students are engaged in clinical experience.
- (5) The ratio of faculty to students, during supervised clinical experience shall not be more than one faculty to two students.
- (6) The nurse educator shall be responsible for instruction and evaluation of student performance, termination, grading and progression.
- (7) Other health care providers, in addition to the nurse educator, may be appropriate faculty for classroom instruction such as physicians, nurse practitioners and pharmacists.
- (8) The nurse educator will have accountability/responsibility in the final selection/determination of any CMA candidate chosen for advancement to CMA II.

**E. Records:**

- (1) The nurse educator's record shall include:
  - (a) verification of current licensure as a registered nurse in New Mexico or compact state;
  - (b) resume;
  - (c) verification of board of nursing orientation for nurse educators;
  - (d) board of nursing appointment letter to position of nurse educator.
- (2) The student's record shall include:
  - (a) admission date;
  - (b) testing and evaluation records;
  - (c) documentation of classroom and supervised clinical attendance;
  - (d) final course grade;
  - (e) certificate that documents proof of attendance and successful program completion;
  - (f) current CPR certification.

(3) The clinical preceptor's record shall include:

(a) verification of current licensure as a registered or licensed practical nurse in New Mexico or compact state;

(b) resume;

(c) verification of orientation for clinical preceptors conducted by nurse educator.

(4) The CMA's records shall include but not be limited to:

(a) current NM CMA certifications;

(b) biannual med pass observations;

(c) annual performance evaluation;

(d) continuing education records;

(e) current CPR certification.

[16.12.5.17 NMAC - Rp, 16.12.5.17 NMAC, 12/13/2022]

**16.12.5.18 MEDICATION AIDE PROGRAM ADVISORY COMMITTEE:**

**A.** Composition and appointment of committee members. The board shall appoint a minimum of a five member voluntary advisory committee which shall be composed of at least three registered nurses and other representatives. The committee shall include one member not employed by a participating agency.

(1) There shall be no more than one representative from any one agency serving on the advisory committee at any one time.

(2) Members of the committee shall serve for staggered terms of two years and may be reappointed to the advisory committee.

**B.** Responsibility of advisory committee.

(1) The advisory committee shall review applications for initial approval, program evaluations, and changes in medication aide programs, and shall make recommendations to the board.

(2) The advisory committee shall provide consultation to medication aide programs as requested or directed by the board.

(3) Members of the advisory committee may serve as survey visitors to medication aide programs for approval, consultation and evaluation visits.

[16.12.5.18 NMAC - Rp, 16.12.5.18 NMAC, 12/13/2022]

**16.12.5.19 MEDICATION ADMINISTRATION CURRICULUM SUBJECT AREAS:**

**A.** Overview of the medication aide role and responsibilities:

- (1) Objectives of the medication aide training programs to include:
  - (a) federal, state and local regulations;
  - (b) nurse's role and medication aide role including the meaning of delegation;
  - (c) standards of function for medication aides;
  - (d) certification expectations and requirements.
- (2) Orientation to the medication aide position including:
  - (a) review of job specifications;
  - (b) expectation and responsibilities;
  - (c) role of the health care team and the CMA:
    - (i) roles and contributions of other health team members;
    - (ii) observation and reporting;
    - (iii) health team meetings.

**B.** Legal roles and responsibilities of medication administration including:

- (1) consumer's rights;
- (2) negligence and malpractice;
- (3) ethical issues relating to consumers including, but not limited to:
  - (a) confidentiality;
  - (b) OSHA;
- (4) documentation;

(5) identification of medication errors and required reporting of errors to the nurse.

**C. Fundamentals of medication administration.**

(1) terminology;

(2) definitions/abbreviations;

(3) rights of medication administration;

(4) observations while administering medications;

(5) follow-up after administering medications;

(6) consumer refusal of medication;

(7) OTC and prn medications;

(8) controlled substances;

(9) medication classifications/identification;

(10) medication effects;

(11) medication side effects and contraindications including, but not limited to allergic reaction/adverse reactions.

(12) medication interactions shall include but not limited to:

(a) food and herb;

(b) synergistic;

(c) antagonistic;

(d) additive.

(13) Utilization of available resources of medication information shall include but not limited to:

(a) supervising nurse;

(b) written materials;

(c) internet;

(d) pharmacist;

(e) poison control.

(14) Medication nomenclature including:

(a) trade;

(b) generic;

(c) over-the-counter.

(15) Methods of distribution and storage shall include but not limited to:

(a) unit dose;

(b) medication carts;

(c) bubble packs;

(d) prescription bottles;

(e) others.

**D.** Basic introduction to anatomy and physiology including:

(1) structure;

(2) function;

(3) common health care problems/concerns;

(4) disease processes.

**E.** First aid and emergency procedures including review of:

(1) cardiac and respiratory emergencies;

(2) choking victims;

(3) first aid.

**F.** Medication administration procedures/skills check list:

(1) Review the rights for each skill.

- (2) Hand washing and proper uses of personal protective equipment.
- (3) Administering:
  - (a) oral tablets/capsules;
  - (b) liquids;
  - (c) powdered medications;
  - (d) ophthalmic ointments;
  - (e) ear medications;
  - (f) instilling liquid eye medications;
  - (g) nasal medications/dropper and atomizer;
  - (h) vaginal and rectal creams and suppositories;
  - (i) topical agents;
  - (j) metered dose inhalers;
  - (k) gastrostomy and jejunostomy medications;
  - (l) nebulizer medications.
- (4) Crushing tablets:
- (5) Applying:
  - (a) lotion;
  - (b) liniment;
  - (c) ointment/cream;
  - (d) transdermal patches.
- (6) Taking and recording vital signs as needed.
- (7) Documentation.
- (8) Medication administration situations requiring notification of the nurse:

- (a) consumer medical/mental health condition change;
- (b) discontinued medication;
- (c) medications appear to be contaminated;
- (d) PRN medication is requested.

**G.** Orientation to population specific care including, but not limited to:

- (1) specific health care concerns for the population being served;
- (2) life developmental stages;
- (3) types of consumers specific to the agency.

**H.** Population specific medication classifications and relationship to body systems:

- (1) Content shall include, but is not limited to:
  - (a) basic review of anatomy and physiology;
  - (b) common medical disorders as related to the specific population;
  - (c) common medications given to the specific population including:
    - (i) generic and trade names;
    - (ii) dosage range;
    - (iii) action;
    - (iv) side effects;
    - (v) contraindications.
- (2) Body systems.
- (3) Nutrition/hydration/herbal supplements.

**I.** Certification for certified medication aide (CMA II) including their role and responsibilities:

- (1) Objectives of the certified medication aide training program to include:
  - (a) federal, state, and local regulations;

- (b) nurse's role and certified medication aide II role;
  - (c) standards of function for certified medication aide II;
  - (d) certification expectations and requirements.
- (2) Orientation to the certified medication aide (CMA-II) position including:
- (a) review of job specifications;
  - (b) expectations and responsibilities;
  - (c) role of the health care team and the certified medication aide II;
    - (i) roles and contributions of other health team member;
    - (ii) observation and reporting.
- (3) Expanded roles and responsibilities of the certified medication aide (CMA II) including:
- (a) consumer's rights;
  - (b) negligence and malpractice;
  - (c) ethical issues relating to consumers including but not limited to confidentiality and OSHA;
  - (d) documentation;
  - (e) identification and required reporting of errors to the nurse.
- (4) Review the concepts and practices of infection control.
- (5) Understand the principles and rationale for administration of insulin.
- (6) Identification of complications.

**J. Certified medication aide II procedures/skills check list for certification in New Mexico.**

- (1) Administration of insulin by pen.
- (2) Demonstrate ability to maintain a clean/sterile field of care.

(3) Demonstrate correct infection control practices throughout all procedures including the selection of correct antiseptic solutions.

(4) Demonstrate appropriate site selection for administration of insulin.

(5) Demonstrate correct administration of insulin.

(6) Identify and respond appropriately to complications of insulin administration.

[16.12.5.19 NMAC - Rp, 16.12.5.19 NMAC, 12/13/2022]

#### **16.12.5.20 REFRESHER COURSE REQUIREMENTS:**

**A.** Authorized functions of the certified medication aide (see Subsection B of 16.12.5.10 NMAC).

**B.** Prohibited functions of the certified medication aide (see Subsection C of 16.12.5.10 NMAC).

**C.** Medication administration procedures (see Subsection F of 16.12.5.19 NMAC) including location of agency resource materials and documentation. Any additional training and procedures to safely administer medications as determined by the agency nurse educator.

**D.** Medication review as determined by agency nurse educator.

[16.12.5.20 NMAC - Rp, 16.12.5.20 NMAC, 12/13/2022]

#### **16.12.5.21 [RESERVED]**

[16.12.5.21 NMAC - Rp, 16.12.5.21 NMAC, 12/13/2022]

### **PART 6: NURSE LICENSURE COMPACT [REPEALED]**

[This part was repealed on July 30, 2018.]

### **PART 7: TRIAL PROGRAM FOR MEDICATION AIDES TO SERVE PERSONS IN LICENSED NURSING FACILITIES [REPEALED]**

[The duration of this part expired on December 31, 2004 and repealed August 16, 2005.]

### **PART 8: TRIAL PROGRAM FOR MEDICATION AIDES TO SERVE STUDENTS IN PUBLIC SCHOOLS [REPEALED]**

[The duration of this part expired on December 15, 2004 and repealed August 16, 2005.]

## **PART 9: MANAGEMENT OF CHRONIC PAIN WITH CONTROLLED SUBSTANCES**

### **16.12.9.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.9.1 NMAC - Rp, 16.12.9.1 NMAC 5/21/2024]

### **16.12.9.2 SCOPE:**

This rule applies to all advanced practice nurses, including certified nurse practitioners, certified registered nurse anesthetists, and clinical nurse specialists with prescriptive authority.

[16.12.9.2 NMAC - Rp, 16.12.9.2 NMAC 5/21/2024]

### **16.12.9.3 STATUTORY AUTHORITY:**

Section 61-3-1 NMSA 1978 *et seq.*, authorized the board of nursing to regulate the practice of nursing in the state and the Pain Relief Act, Sections 24-2D-1 through 24-2D-7 NMSA 1978.

[16.12.9.3 NMAC - Rp, 16.12.9.3 NMAC 5/21/2024]

### **16.12.9.4 DURATION:**

Permanent.

[16.12.9.4 NMAC - Rp, 16.12.9.4 NMAC 5/21/2024]

### **16.12.9.5 EFFECTIVE DATE:**

May 21, 2024, unless a later date is cited at the end of a section.

[16.12.9.5 NMAC - Rp, 16.12.9.5 NMAC 5/21/2024]

### **16.12.9.6 OBJECTIVE:**

It is the position of the board that certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists with prescriptive authority have an obligation to treat chronic pain and that a wide variety of medicines including controlled

substances and other drugs may be prescribed after a thorough evaluation has been completed.

[16.12.9.6 NMAC - Rp, 16.12.9.6 NMAC 5/21/2024]

#### **16.12.9.7 DEFINITIONS:**

##### **A. Definitions beginning with "A":**

(1) **"acute pain"**, means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and generally time limited;

(2) **"addiction"**, is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

##### **B. Definitions beginning with "B": [RESERVED]**

##### **C. Definitions beginning with "C":**

(1) **"chronic pain"** means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for the purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition;

(2) **"clinical expert"** means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**D. Definitions beginning with "D": "drug abuser"** means a person who takes a drug or drugs for other than legitimate medical purposes.

##### **E. Definitions beginning with "E": [RESERVED]**

##### **F. Definitions beginning with "F": [RESERVED]**

##### **G. Definitions beginning with "G": [RESERVED]**

##### **H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": [RESERVED]**

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L": [RESERVED]**

**M. Definitions beginning with "M": [RESERVED]**

**N. Definitions beginning with "N":** "nursing facility" means a long term care facility in which the patient is a current fulltime resident and whose medications are solely administered and managed by the facility.

**O. Definitions beginning with "O":**

(1) **"opioid analgesic"** means buprenorphine, butorphanol, codeine, hydrocodone, hydromorphone, levorphanol, meperidine, methadone, morphine, nalbuphine, oxycodone, oxymorphone, pentazocine and propoxyphene as well as their brand names, isomers and combinations;

(2) **"opioid antagonist"** means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body, including naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

**P. Definitions beginning with "P":**

(1) **"pain"** means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation and damage, which could include acute, persistent or chronic pain;

(2) **"physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these;

(3) **"prescription monitoring program (PMP)"** means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R": [RESERVED]**

**S. Definitions beginning with "S": [RESERVED]**

**T. Definitions beginning with "T":**

(1) **"therapeutic purpose"** means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines for pain management.

(2) **"tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.12.9.7 NMAC - Rp, 16.12.9.7 NMAC 5/21/2024]

#### **16.12.9.8 RULES:**

The following rules shall be used by the board to determine whether an advanced practice nurse's prescriptive practices are consistent with the appropriate treatment of pain.

**A.** The treatment of pain with various medicines or controlled substances is a legitimate nursing practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

**B.** Pain management for patients should include a contractual agreement, the use of drug screens prior to treatment with opiates and during the course of treatment to identify actual drugs being consumed and to compare with patients self-reports. If concerns about misuse are identified, the patient will be referred for appropriate consultation, and scheduled for re-evaluation at appropriate time intervals.

**C.** The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) An advanced practice nurse shall complete a history and physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substances abuse, coexisting disease or medical conditions, and the presence of a medical indication and supporting diagnostic documentation or contra-indication against the use of controlled substances.

(2) An advanced practice nurse shall be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain. They shall consider an integrative approach to pain management specialists including but not limited to an acupuncturist, chiropractor, doctor of oriental medicine, exercise physiologist, massage therapist, pharmacist, physical therapist, psychiatrist, psychologist or other advanced practice registered nurse.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan should include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) If the patient's pain relief plateaus on controlled substance analgesic(s), then the treatment plan should include an evaluation of continuing or tapering the controlled substance therapy.

(5) The practitioner shall provide education and discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this in the record.

(6) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, and prescribed dosage should be recorded. Prescriptions for opioids shall include indications for use. For chronic non-cancer pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic non-cancer pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(7) The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall

periodically review the course of treatment for chronic non-cancer pain, the patient's state of health, and any new information about the etiology of the chronic non-cancer pain at least every three months. In addition, a practitioner should consult, when indicated by the patient's condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control. Consultation should occur early in the course of long-term treatment, and at reasonable intervals during continued long-term treatment for assessment of benefit and need. Drug screening is expected and should be conducted when other factors suggest an elevated risk of misuse or diversion.

(8) If, in a practitioner's opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

**D.** The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the advanced practice nurse's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

**E.** The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection as a guiding principle.

**F.** The advanced practice nurse who prescribes, within their scope of practice, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist. With respect to a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the advanced practice nurse, the advanced practice nurse shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the advanced practice nurse prescribes, distributes or dispenses an opioid analgesic each calendar year.

**G.** An advanced practice nurse who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist, unless that person is a health care provider as provided in the Pain Relief Act.

**H.** An advanced practice nurse who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Nursing Practice Act, board rules and Pain Relief Act Sections 24-2D-1 through 24-2D-7 NMSA 1978.

[16.12.9.8 NMAC - Rp, 16.12.9.8 NMAC 5/21/2024]

### **16.12.9.9 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

The intent of the New Mexico board of nursing in requiring participation in the PMP is to assist advanced practice nurses in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

**A.** Any advanced practice nurse who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** An advanced practice nurse may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While an advanced practice nurse's delegate may obtain a report from the state's prescription monitoring program, the advanced practice nurse is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

**C.** Before an advanced practice nurse prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing an advanced practice nurse from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** An advanced practice nurse does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in schedule II, III, IV or V:

- (1) for a period of four days or less; or

- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

**F.** Upon review of a prescription monitoring report for a patient, the advanced practice nurse shall identify and be aware of a patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than 12 consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in paragraph F, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

**H.** Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II, III, IV or V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record.

[16.12.9.9 NMAC - Rp, 16.12.9.9 NMAC 5/21/2024]

#### **16.12.9.10 NON-CANCER PAIN MANAGEMENT CONTINUING EDUCATION:**

Any advanced practice registered nurse (APRN) with a drug enforcement agency (DEA) registration and licensure that permits prescribing opioids, shall obtain continuing

education on the management of non-cancer pain. These practitioners shall be required to obtain five contact hours every renewal period to include a review of these rules 16.12.9 NMAC for management of non-cancer pain, an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction and diversion, and awareness of state and federal regulations for the prescription of controlled substances.

[16.12.9.10 NMAC - Rp, 16.12.9.10 NMAC 5/21/2024]

#### **16.12.9.11 NOTIFICATION:**

The board shall notify the following persons of the Pain Relief Act and Part 9 of the New Mexico nursing board rule: 16.12.9 NMAC. The board shall notify the following persons of the Pain Relief Act and rules:

**A.** health care providers under its jurisdiction; and

**B.** a health care provider being investigated by the board in relation to the provider's pain management services.

[16.12.9.11 NMAC - Rp, 16.12.9.11 NMAC 5/21/2024]

#### **16.12.9.12 ADVANCED PRACTICE NURSES, REGISTERED NURSES, AND LICENSED PRACTICAL NURSES TREATED WITH OPIATES:**

Advanced practice nurses, registered nurses, licensed practical nurses, certified hemodialysis technicians, and certified medication aides who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a physician, CRNA, CNP, CNS pain specialist and must have clearance from their practitioner, before returning to or continuing in practice and must remain under the care of a physician, CRNA, CNP or CNS for as long as they remain on opiates and continue to practice. The treating physician, CRNA, CNP or CNS may, at her or his discretion, order a neuropsychological evaluation to help determine clearance for practice.

[16.12.9.12 NMAC - Rp, 16.12.9.12 NMAC 5/21/2024]

### **PART 10: MANAGEMENT OF MEDICAL RECORDS**

#### **16.12.10.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.10.1 NMAC - N, 02-17-06]

#### **16.12.10.2 SCOPE:**

This rule governs the use management of medical records that are created and maintained as part of the practice of a certified nurse practitioner and clinical nurse specialist.

[16.12.10.2 NMAC - N, 02-17-06]

**16.12.10.3 STATUTORY AUTHORITY:**

Section 61-3-1 *et seq.*, authorized the board of nursing to regulate the practice of nursing in the state.

[16.12.10.3 NMAC - N, 02-17-06]

**16.12.10.4 DURATION:**

Permanent.

[16.12.10.4 NMAC - N, 02-17-06]

**16.12.10.5 EFFECTIVE DATE:**

February 17, 2006, unless a later date is cited at the end of a section.

[16.12.10.5 NMAC - N, 02-17-06]

**16.12.10.6 OBJECTIVE:**

To ensure that certified nurse practitioners/clinical nurse specialist provide copies of medical records to patients; notify their patients of closing, selling, relocating or leaving a practice and have a system in place for retention, maintenance and destruction of medical records.

[16.12.10.6 NMAC - N, 02-17-06]

**16.12.10.7 DEFINITIONS:**

**[RESERVED]**

[16.12.10.7 NMAC - N, 02-17-06]

**16.12.10.8 RELEASE OF MEDICAL RECORDS:**

Certified nurse practitioners/clinical nurse specialists must provide complete copies of medical records to a patient or to another practitioner in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient.

**A.** Medical records may not be withheld because an account is overdue or a bill is owed.

**B.** A reasonable charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is \$1.00 per page for the first 25 pages, and \$0.10 per page thereafter. Patients may be charged the cost of reproduction for records formats other than paper, such as x-rays. Practitioners charging for the cost of reproduction of medical records should give consideration to the ethical and professional duties owed to other practitioners and their patients.

[16.12.10.8 NMAC - N, 02-17-06]

#### **16.12.10.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:**

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current practitioner to the new treating practitioner. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient.

**A.** Active patients and patients seen within the previous three years should be notified 90 days before closing, selling, relocating or leaving a practice.

**B.** Patients should be notified within 90 days after the death of their practitioner.

**C.** Notification should be through an individual letter at the patient's last known address, and a notice in newspaper in local practice area (may be several times over a period of time). Notification should also be sent to the Board.

**D.** Notification should include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records,

Telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed;

(4) cost of recovering records/transferring records; and

(5) whenever possible notification is the responsibility of the transferring or retiring practitioner.

**E.** A practitioner should not withhold patient lists or other information from a departing practitioner that is necessary for notification of patients.

**F.** Patients of a practitioner who leaves a group practice should be notified the practitioner is leaving, notified of the practitioner new address and offered the opportunity to have their medical records transferred to the departing practitioner at his/her new practice.

**G.** When a practice is sold, all active patients should be notified that the practitioner is transferring the practice to another practitioner of entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another practitioner or entity of their choice.

**H.** Failure to notify patients of closing, selling, relocating or leaving a practice may be a violation of the nursing practice act and disciplinary action can occur (16.12.1.9 NMAC).

[16.12.10.9 NMAC - N, 02-17-06]

#### **16.12.10.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS:**

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes a violation of 61.3.28 A (6).

**B.** Destruction of medical records must be such that confidentiality is maintained. Records should be shredded or incinerated (where permitted).

**C.** A log should be kept of all charts destroyed, including the patient's name and date of record destruction.

[16.12.10.10 NMAC - N, 02-17-06]

### **PART 11: LACTATION CARE PROVIDERS**

#### **16.12.11.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.11.1 NMAC - Rp, 16.12.11.1 NMAC, 12/13/2022]

#### **16.12.11.2 SCOPE:**

All lactation care providers licensed by the New Mexico board of nursing as licensed lactation care providers.

[16.12.11.2 NMAC - Rp, 16.12.11.2 NMAC, 12/13/2022]

#### **16.12.11.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Lactation Care Provider Act, Sections 61-3B-1 to -7 NMSA 1978.

[16.12.11.3 NMAC - Rp, 16.12.11.3 NMAC, 12/13/2022]

**16.12.11.4 DURATION:**

Permanent.

[16.12.11.4 NMAC - Rp, 16.12.11.4 NMAC, 12/13/2022]

**16.12.11.5 EFFECTIVE DATE:**

December 13, 2022 unless a later date is cited at the end of a section.

[16.12.11.5 NMAC - Rp, 16.12.11.5 NMAC, 12/13/2022]

**16.12.11.6 OBJECTIVE:**

To promote, preserve and protect the public health, safety and welfare of the citizens of the state by establishing standards for licensure and regulation of licensed lactation care providers in New Mexico.

[16.12.11.6 NMAC - Rp, 16.12.11.6 NMAC, 12/13/2022]

**16.12.11.7 DEFINITIONS:**

This rule incorporates the definitions provided in the Lactation Care Provider Act, Section 61-3B-2 NMSA 1978.

**A. Definitions beginning with the letter A:** "act" means the Lactation Care Provider Act, Sections 61-3B-1 to 7 NMSA 1978.

**B. Definitions beginning with the letter B:** [RESERVED]

**C. Definitions beginning with the letter C:**

(1) "CE" means continuing education.

(2) "CLC" means certified lactation counselor.

(3) "Committee" means the lactation care provider committee appointed by the New Mexico board of nursing pursuant to the act.

**D. Definitions beginning with the letter D:** [RESERVED]

**E. Definitions beginning with the letter E:**

**(1) "Eligible jurisdiction" means:**

(a) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.16.4.8 NMAC; and

(b) any foreign country included in 16.16.4.9 NMAC.

**(2) "Expedited license" is a one-year provisional license that confers the same rights, privileges and responsibilities as regular licenses issued by a board.**

**F. Definitions beginning with the letter F: [RESERVED]**

**G. Definitions beginning with the letter G: "good standing" means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license or registration.**

**H. Definitions beginning with the letter H: [RESERVED]**

**I. Definitions beginning with the letter I:**

**(1) "IACET" means international association for continuing education and training.**

**(2) "IBCLC" means International board certified lactation consultant.**

**J. Definitions beginning with the letter J: "jurisdiction" has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.**

**K. Definitions beginning with the letter K: [RESERVED]**

**L. Definitions beginning with the letter L: [RESERVED]**

**(1) "LEARRC" means lactation education accreditation and approval review committee.**

**(2) "Licensing fee" has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.**

**(3) "LLCP" means licensed lactation care provider.**

**M. Definitions beginning with the letter M: "military service member" has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.**

**N. Definitions beginning with the letter N:** "NCCA" means national commission for certifying agencies.

**O. Definitions beginning with the letter O:** [RESERVED]

**P. Definitions beginning with the letter P:** [RESERVED]

**Q. Definitions beginning with the letter Q:** [RESERVED]

**R. Definitions beginning with the letter R:** [RESERVED]

**S. Definitions beginning with the letter S:** [RESERVED]

**T. Definitions beginning with the letter T:** [RESERVED]

**U. Definitions beginning with the letter U:** [RESERVED]

**V. Definitions beginning with the letter V:** "veteran" has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

**W. Definitions beginning with the letter W:** [RESERVED]

**X. Definitions beginning with the letter X:** [RESERVED]

**Y. Definitions beginning with the letter Y:** [RESERVED]

**Z. Definitions beginning with the letter Z:** [RESERVED]

[16.12.11.7 NMAC - Rp, 16.12.11.7 NMAC, 12/13/2022]

**16.12.11.8 NON-LICENSED PRACTICE; EXCEPTIONS:**

**A.** Licensure with the board is not required to provide lactation care and services in the state of New Mexico; provided, however, that any individual not licensed by the board as a licensed lactation care provider may not use the title "licensed lactation care provider" (LLCP) or otherwise imply to the public that they are licensed in New Mexico by the board as a licensed lactation care provider under the act.

**B.** Nothing in the act or these rules shall be construed to prevent the practice of lactation care and services by health care professionals, volunteers, students, interns, or other persons.

[16.12.11.8 NMAC - Rp, 16.12.11.8 NMAC, 12/13/2022]

**16.12.11.9 APPROVED CERTIFICATIONS; PETITION TO APPROVE:**

**A.** The following certifications conferred by a program accredited by a nationally or internationally recognized accrediting agency are recognized by the board and approved for licensure requirements:

(1) Certified lactation counselor (CLC) accredited by the academy of lactation policy and practice.

(2) International board certified lactation consultant (IBCLC) accredited by the international board of lactation consultant examiners.

**B.** Petition to approve certification.

(1) An individual who holds a certification as a lactation care provider conferred by a certification program accredited by a nationally or internationally recognized accrediting agency that is not an approved certification listed above may petition the board and request approval of the certification.

(2) The board shall review the petition and determine whether the certification sufficiently substantiates adequate education, didactic and clinical preparedness, continuing education requirements, and other factors that establish competency.

(3) The decision of the board is discretionary and shall not be subject to review or binding on any future petition.

[16.12.11.9 NMAC - Rp, 16.12.11.9 NMAC, 12/13/2022]

**16.12.11.10 FEES:**

Payment of fees will be accepted in the form specified by the board. Fees are not refundable.

<b>A.</b> Initial licensure or expedited licensure	\$60.00.
<b>B.</b> Renewal	\$40.00.
<b>C.</b> Reinstatement and renewal of lapsed license	\$60.00.
<b>D.</b> Lactation care provider list	\$100.00
<b>E.</b> Initial certificate military personnel, spouse, dependent, or veteran	\$0
<b>F.</b> First renewal of certificate military personnel, spouse, dependent, or veteran	\$0

[16.12.11.10 NMAC - Rp, 16.12.11.10 NMAC, 12/13/2022]

**16.12.11.11 LICENSURE REQUIREMENTS:**

**A.** Requirements for licensure:

(1) Be at least 18 years of age.

(2) Hold an approved certification as a lactation care provider.

(3) Complete the required board application form in the specified deadline and remit the required fee. The board may require additional information in the application, including demographics, information on practice status, and education; which will be for data collection purposes only and shall not affect approval of the application.

(4) Submission of applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the New Mexico department of public safety to conduct a state criminal history check. If a criminal background check reveals a conviction or other history that may be cause for denial of the license, the board may request additional documents or other information be submitted to determine whether a license should be granted.

(5) Only complete applications should be submitted to the board. An incomplete application may be denied.

**B. Expedited licensure:**

(1) The board will issue an expedited license to a qualified applicant based on prior licensure in an eligible jurisdiction other than New Mexico upon an applicant's submission of a complete application containing all of the following:

(a) a completed and signed application form;

(b) proof of current licensure in an eligible jurisdiction;

(c) proof of good standing for the license held by the applicant in an eligible jurisdiction;

(d) submission of fingerprints and other information necessary for a state and national background check; and

(e) payment of the required application fee.

(2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection B Section 61-3B-4 NMSA 1978, including documentation from third parties.

(3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3B-6 NMSA 1978.

(4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3B-6 NMSA 1978:

(a) the license may not be issued within 30 days of submission of the complete application;

(b) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and

(c) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

(5) Renewal of expedited licenses:

(a) A licensee holding an expedited license may apply for license renewal beginning 60 days prior to expiration of the expedited license, as provided by the board's rules.

(b) Upon renewal, an expedited license shall become a regular license.

(6) Eligible and ineligible jurisdictions:

(a) The board will accept expedited license applications on the basis of prior licensure in any jurisdiction within the United States without exception.

(b) The board will accept expedited license applications on the basis of prior licensure in the following jurisdictions outside the United States: Canada.

**C. Expedited licensure for military service members and veterans:**

(1) The board will issue an expedited license to an applicant who is a military service member or veteran based on prior licensure in a jurisdiction other than New Mexico upon the applicant's submission of a complete application containing all of the following:

(a) a completed and signed application form;

(b) proof of current licensure in another jurisdiction;

(c) proof of good standing for the applicant's out of state license;

(d) submission of fingerprints and other information necessary for a state and national background check; and

(e) Submission of the following documentation:

- (i) for military service member: a copy of military orders;
- (ii) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
- (iii) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
- (iv) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
- (v) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

(2) An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection B Section 61-3B-4 NMSA 1978, including documentation from third parties.

(3) Upon submission of a complete application, the board's staff shall process the application and issue the expedited license to the applicant within 30 days unless the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978.

(4) If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-3-28 NMSA 1978:

(a) the license may not be issued within 30 days of submission of the complete application;

(b) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting; and

(c) the board may vote to grant the application or refer the matter to its administrative prosecutor contemplating the ultimate denial of the application as provided by the board's rules.

(5) Duration of military expedited licenses:

(a) The first licensure period will be for one year from the issuance of the license. Continuing education will be prorated.

(b) The first renewal period will be for two years from the date of the first expiration date of the first licensure period. Military service members and veterans shall submit all required applications and continuing education for renewal.

(6) Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**D. Requirements for renewal of license:**

(1) Complete the required renewal application form in the specified deadline and remit the required fee to the board. The board may require additional information in the application, including demographics, information on practice status, and education; which will be for data collection purposes only and shall not affect the application approval. Renewal applications should be submitted at least 30, but no more than 60 days prior to the expiration of the license.

(2) Maintain a current approved certification recognized by the board.

(3) Complete all required continuing education hours and indicate compliance on the renewal application.

(4) Licensees mobilized for active duty, other than training, are not required to renew their license while deployed on active duty and will not be subject to a reinstatement fee. A copy of the mobilization orders must be submitted to the board office prior to expiration of the license or within 30 days upon return from active duty.

(5) A renewal notice shall be sent to the licensee at least six weeks prior to the end of the renewal month. Failure to receive notice renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

**E. Requirements for reinstatement of license:**

(1) Complete any required reinstatement form and remit the required fee to the board.

(2) Maintain a current approved certification recognized by the board.

(3) A reinstated license shall be valid for two years.

**F. Requirement to maintain current name and address:**

(1) A licensee shall report to the board in writing or other method accepted by the board, of any change of name, or change in mailing address. Failure to update the board of any name or address change within thirty days shall be a violation of the board rules and may result in disciplinary action.

(2) A licensee must use their name as it appears on the current license until a name change is processed by the board. Name change can be submitted with license renewal or at any time by submitting a copy of the legal document required for name change (only recorded marriage certificate, divorce decree or court order accepted).

[16.12.11.11 NMAC - Rp, 16.12.11.11 NMAC, 12/13/2022]

#### **16.12.11.12 CONTINUING EDUCATION:**

**A. Introduction:** Pursuant to the provision of the Lactation Care Provider Act, the board prescribes the following minimum requirements for continuing education (CE) to be met by each licensee to protect the health and well-being of the public and to promote current lactation care and services knowledge and practice. Continuing education is one of the most important responsibilities of the licensed lactation care provider and is a lifelong process. The primary responsibility for continuing education rests with the individual licensee. A diversity of lactation care-related learning activities are recommended to enhance the scope of professional development.

#### **B. Requirements:**

(1) 24 contact hours of approved continuing education must be successfully completed within the 24 months immediately preceding expiration of the license.

(2) Continuing education obtained for a national or international approved certification recognized by the board may be accepted toward the contact hour requirement if completed during the renewal period.

**C. A contact hour means 50 to 60 minutes of an organized learning experience relevant to lactation care and services, approved by one of the following:**

- (1) international board of lactation consultant examiners;
- (2) academy of lactation policy and practice;
- (3) lactation education accreditation and approval review committee (LEARRC);
- (4) international association for continuing education and training (IACET);
- (5) national commission for certifying agencies (NCCA).

**D. Failure to meet the CE requirements may result in the license not being renewed, reactivated and reinstated, or other disciplinary action.**

**E. Licensees who hold another license with the board may apply continuing education credit hours completed for the other license to the lactation care provider**

license CE requirements so long as the continuing education would otherwise be approved by these rules. No more than 12 continuing education hours may count toward both licenses.

**F. Records:** Licensees are responsible for maintaining their continuing education records and for keeping the certificates of verification of attendance of CE activities for at least two years after the license is renewed. Copies of certificates must be submitted to the board office upon request. Failure to maintain or provide such records to the board may be grounds for discipline.

[16.12.11.12 NMAC - Rp, 16.12.11.12 NMAC, 12/13/2022]

### **16.12.11.13 STANDARD OF PRACTICE:**

**A.** Licensees shall identify themselves by name and certification, and shall provide their license number if requested.

**B.** The licensee shall practice in accordance with the Lactation Care Provider Act and respective scope of practice within the approved certification recognized by the board.

**C.** The licensee may assume specific functions and perform specific procedures which are beyond basic lactation care provider preparation with demonstration of appropriate education and level of competence, provided the knowledge and skills required to perform the function and procedure emanates from a recognized body of knowledge and practice, which may result in a certification, and so long as the function or procedure is not prohibited by law.

**D.** The licensee shall maintain individual competency in lactation care practice, recognizing and accepting responsibility for individual actions and judgments.

**E.** The licensee shall have knowledge of, and function within, the laws and rules governing the practice.

**F.** The licensee acts to safeguard the patient or client when her care and safety are affected by incompetent, unethical, or illegal conduct of any person, and shall timely report the conduct to the board and, where appropriate, the recognized national and international certifying organizations and law enforcement.

**G.** The licensee shall recognize the dignity and rights of others regardless of social or economic status and personal attributes; and shall conduct practice with respect for human dignity, unrestricted by considerations of age, race, religion, sex, sexual orientation, gender identity, national origin, disability or nature of the patient or client health.

**H.** The licensee safeguards the individual right to privacy by judiciously protecting information of a confidential nature.

**I.** The licensee shall not advertise their professional services in a manner that misrepresents facts or creates unjustified or unreasonable expectations about lactation care and services or the results of the licensed lactation care provider.

[16.12.11.13 NMAC - Rp, 16.12.11.13 NMAC, 12/13/2022]

#### **16.12.11.14 DISCIPLINARY PROCEEDINGS:**

**A.** Authority: The board may deny, revoke, or suspend a license held or applied for under the Lactation Care Provider Act; or reprimand or place a license on probation with conditions on the grounds stated in Section 61-3B-6 NMSA 1978.

**B.** For the purpose of Section 61-3B-6 NMSA 1978, "incompetence" is defined as follows: In performing lactation care and service functions, whether direct patient care or the administration or management of that care, a licensee is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other licensees of the same certification status and required by the generally accepted standards, of the profession including those standards set forth in these rules. The failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient or client or to the public from the act or omission or series of acts or omissions.

**C.** For the purpose of Section 61-3B-6 NMSA 1978, "unprofessional conduct" includes, but is not limited to, the following:

(1) dissemination of a patient or client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or organization policy from disclosure;

(2) falsifying or altering patient or client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(3) misappropriation of money, drugs or property;

(4) obtaining or attempting to obtain any fee for patient or client services for one's self or for another through fraud, misrepresentation, or deceit;

- (5) aiding, abetting, assisting or hiring an individual to violate the lactation care provider act or duly promulgated rules of the board;
- (6) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of lactation care and services;
- (7) obtaining or attempting to obtain a license to practice lactation care and services for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure process;
- (8) failure to report a licensee who is suspected of violating the New Mexico Lactation Care Provider Act or rules;
- (9) intentionally engaging in sexual contact with or toward a patient or client in a manner that is commonly recognized as outside the scope of practice of the individual licensee;
- (10) abandonment, which occurs when the licensee has accepted an assignment to provide care, service, or treatment to a patient or client, thus establishing a professional relationship, and then abruptly severed the relationship without reasonable notice provided to the patient or client; and distinguished from contractual disagreements, termination, or other employment issues;
- (11) engaging in the practice of lactation care and services when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (12) committing acts which constitute grounds for disciplinary action pursuant to Paragraph (1) and (2) of Subsection A of Section 61-3B-6 NMSA 1978 where the conviction arises from employment as a lactation care provider, Paragraph (3) and (4) of Subsection A of Section 61-3B-6 NMSA 1978 where the intemperance, addiction, incompetence or unfitness has manifested itself during the course of employment as a lactation care provider in a fashion which is contrary to the provision of good health care, and Paragraph (6) of Subsection A of Section 61-3B-6 NMSA 1978;
- (13) practice which is beyond the scope of licensure;
- (14) verbally or physically abusing a patient, client or colleague;
- (15) failure to maintain appropriate professional boundaries which may cause harm to the patient;
- (16) failure to comply with any other requirement provided by these rules.

[16.12.11.14 NMAC - Rp, 16.12.11.14 NMAC, 12/13/2022]

#### **16.12.11.15 ADVISORY COMMITTEE:**

**A.** Pursuant to Section 61-3B-3 NMSA 1978, the board may appoint a lactation care provider advisory committee to assist the board in regulating the practice of lactation care. The committee shall assist and advise the board in the review of issues related to the practice of lactation care.

**B.** The committee shall include a minimum of five, and no more than ten, members. The committee is intended to represent the diversity of the state and the profession, and shall include, at minimum:

- (1) a member of the board;
- (2) a certified lactation counselor;
- (3) a international board certified lactation consultant; and
- (4) a public member that is not a licensed or certified lactation care provider.

**C.** The committee shall review applications for initial licensure, make recommendations to the board, and perform any other duties as requested or directed by the board.

[16.12.11.15 NMAC - Rp, 16.12.11.15 NMAC, 12/13/2022]

## **PART 12: DISCIPLINE AND APPLICATION DENIALS**

### **16.12.12.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.12.1 NMAC - N, 12/30/2021]

### **16.12.12.2 SCOPE:**

These rules apply to all applicants, nurses licensed in New Mexico, nurses not licensed in New Mexico and who wish to practice in New Mexico pursuant to a multi-state license privilege as provided in the nurse licensure compact, certified medication aides, hemodialysis technicians, and all others licensed by the board.

[16.12.12.2 NMAC - N, 12/30/2021]

### **16.12.12.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, and the Lactation Care Provider Act, Sections 61-36-1 to -6 NMSA 1978.

[16.12.12.3 NMAC - N, 12/30/2021]

#### **16.12.12.4 DURATION:**

Permanent.

[16.12.12.4 NMAC - N, 12/30/2021]

#### **16.12.12.5 EFFECTIVE DATE:**

December 30, 2021, unless a later date is cited at the end of a section.

[16.12.12.5 NMAC - N, 12/30/2021]

#### **16.12.12.6 OBJECTIVE:**

The objective of Part 12 is to establish the procedures for denying applications for licensure, processing complaints against licensees and applicants, reinstatement of suspended or revoked licenses, and taking disciplinary action against licensees.

[16.12.12.6 NMAC - N, 12/30/2021]

#### **16.12.12.7 DEFINITIONS:**

**A.** Refer to Definitions, 16.12.1.7 NMAC.

**B. "Abandonment"** means, in the context of disciplinary action, a nurse's abrupt severance of, or disengagement from, the relationship between the nurse and the patient or client without giving reasonable notice to a qualified person for the purpose of making arrangements for the continuation of care by others. This definition does not include the abandonment of employment, such as contract issues, no call, no show, refusal to work mandatory overtime, refusal to float to unfamiliar areas, or resignation from a position, since the board has no jurisdiction over employment issues. Abandonment, which can only occur after the nurse has accepted an assignment to provide care, service or treatment to the patient or client, typically consists of one or more of the following elements that, as result of the nurse's abandonment of the patient or client, caused or may have caused harm:

(1) failure to provide observation, including but not limited to assessment and intervention;

(2) failure to assure competent intervention at any time, including but not limited to delayed treatment, insufficient treatment, or refusal to treat; or

(3) failure to provide for provision of qualified coverage, including but not limited to adequate time to arrange nursing coverage of assigned care.

**C. "Competency"** means, in the context of the nursing profession, the ability to perform skillfully and proficiently the role of the licensee; the role encompasses

essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise.

**D. "Complaint"** means, in the context of disciplinary action, a written allegation by any person of one or more wrongful acts or omissions by an applicant, licensee, certificate holder, or anyone else subject to the jurisdiction of the board. A complaint may include knowledge of a judgment or settlement against a licensee.

**E. "Disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

**F. "HSD"** means the New Mexico human services department.

**G. "Incompetent"** means the failure to possess or to apply to a substantial degree the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by the generally accepted standards of the profession. In performing nursing functions, whether those be direct patient care or the administration or management of that care, a nurse is under a legal duty to exercise this knowledge, skill and care. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

**H. "Statement of compliance"** means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

**I. "Statement of non-compliance"** means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is not in compliance with a judgment and order for support.

**J. "Unprofessional conduct"** means any departure from or failure to conform to the minimal standards of acceptable and prevailing nursing practice, including but not limited to such conduct which is or may be harmful to the health, safety, or welfare of the public or which reflects negatively on the individual's fitness to practice nursing or on the profession more broadly. Unprofessional conduct includes, but is not limited to, the following:

(1) Misconduct involving misappropriation, such as:

(a) misappropriation of money, drugs, or property;

**(b)** obtaining or attempting to obtain any fee for patient/client services for one's self or for another through fraud, misrepresentation, or deceit;

**(c)** obtaining, attempting to obtain, possessing, administering or furnishing prescription drugs to any person, including but not limited to one's self, except as directed by a person authorized by law to prescribe;

**(2)** Misconduct involving the delivery of nursing services, such as:

**(a)** intentionally engaging in sexual contact with or toward a patient or client in a manner that is commonly recognized as outside the scope of the individual nurse's practice; abandonment;

**(b)** engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

**(c)** intemperance, addiction, incompetence, or unfitness manifesting itself during the course of employment as a nurse in a fashion or manner which is contrary to the provision of good health care;

**(d)** failure to maintain appropriate professional boundaries which may cause harm to the patient;

**(e)** inappropriate delegation of medication administration, evaluation and nursing judgment to non-licensed persons;

**(f)** practicing beyond the scope of a license, certificate, or other similar credential.

**(3)** Misconduct involving patient records, such as:

**(a)** falsifying or altering patient or client records or personnel records for the purpose of reflecting incorrect or incomplete information;

**(b)** making statements or disclosures that create a risk of compromising a patient's privacy, confidentiality and dignity; or

**(c)** dissemination of a patient or client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital or agency policy from disclosure.

**(4)** Misconduct involving legal process, such as:

**(a)** refusing to cooperate with the board in the course of an investigation or otherwise refusing to provide information requested by the board;

**(b)** physically intimidating or threatening, or attempting to physically intimidate or threaten, the board or its staff, whether in connection with an investigation or otherwise;

**(c)** obtaining or attempting to obtain a license to practice nursing for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or re-licensure process;

**(d)** practicing nursing in New Mexico without a valid, current New Mexico license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current New Mexico license;

**(e)** failure to report a nurse or certificate holder who is suspected of violating the New Mexico Nursing Practice Act or rules;

**(f)** failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;

**(5)** Misconduct involving other procedures or policies, such as:

**(a)** aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;

**(b)** failure to follow established procedure and documentation regarding controlled substances;

**(c)** failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing; or

**(d)** physical, verbal, written, electronic, or other abuse of a patient, client or colleague.

[16.12.12.7 NMAC - N, 12/30/2021]

#### **16.12.12.8 DISCIPLINARY PHILOSOPHY:**

The board operates its disciplinary program with the ultimate goals of protecting the citizens of New Mexico and ensuring professionalism in the nursing profession. In carrying out this mandate, the board considers all alleged violations based on the merits of each case. Unless the licensee or applicant posed or poses a real or potential danger to the public, the board will consider, but may not eventually utilize, remedial measures of corrective action rather than denial, suspension, or revocation of a license or certificate.

[16.12.12.8 NMAC - N, 12/30/2021]

### **16.12.12.9 GROUNDS FOR DISCIPLINARY ACTION OR DENIAL OF AN APPLICATION:**

The Board may take disciplinary action against a licensee or deny an application for licensure upon finding that the licensee or applicant is guilty of:

- A.** committing fraud or deceit in procuring or attempting to procure a license or certificate of registration;
- B.** having been convicted of a disqualifying criminal conviction;
- C.** being unfit or incompetent;
- D.** being intemperate or addicted to the use of habit-forming drugs;
- E.** being mentally incompetent;
- F.** committing unprofessional conduct;
- G.** having willfully or repeatedly violated any provisions of the Nursing Practice Act or any rule or regulation adopted by the board;
- H.** having been, while licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country, the subject of disciplinary action as a licensee for acts similar to acts described in this rule;
- I.** using conversion therapy on a minor;
- J.** unlicensed practice;
- K.** failure to comply with obligations under the Parental Responsibility Act; or
- L.** for hemodialysis technicians or medication aides, any of the offenses identified in 16.12.4.11 NMAC and 16.12.5.11 NMAC.

[16.12.12.9 NMAC - N, 12/30/2021]

### **16.12.12.10 CRIMINAL CONVICTIONS:**

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

- (1)** homicide;

- (2) aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;
- (3) robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;
- (5) driving under the influence of intoxicating liquor or drugs;
- (6) trafficking controlled substances;
- (7) crimes involving child abuse or neglect;
- (8) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;
- (9) making a false statement under oath or in any official document;
- (10) evasion of a lawful debt or obligation, including but not limited to tax obligations; or
- (11) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

**B.** The board shall not consider the fact of a criminal conviction as part of an application for a license or certificate unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license or certificate on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee or certificate holder on the basis of an individual's conduct to the extent that such conduct violated the Nursing Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for a license or certificate, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of 16.12.12.10 NMAC.

[16.12.12.10 NMAC - N, 12/30/2021]

#### **16.12.12.11 PARENTAL RESPONSIBILITY ACT COMPLIANCE:**

The board shall suspend or revoke licensees or certificate holders and deny applications for licenses or certificates in accordance with the Parental Responsibility Act, Sections 40-5A-1 to -13 NMSA 1978.

**A.** All terms defined by the Parental Responsibility Act shall have the same meaning in this section.

**B.** If an applicant, licensee, or certificate holder is not in compliance with a judgment and order for support, the board:

- (1) shall deny an application for a license or certificate;
- (2) shall deny the renewal of a license or certificate; and
- (3) has grounds for suspension or revocation of the license or certificate.

**C.** Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support; the board shall match the applicant against the current certified list of board licensees, certificate holders, and applicants.

(1) Upon the later receipt of an application for licensure, certification or renewal, the board shall match the applicant against the current certified list.

(2) By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants, licensees, and certificate holders who are on the certified list and the action the board has taken in connection with such applicants, licensees, or certificate holders.

**D.** Upon determination that an applicant, licensee, or certificate holder appears on the certified list, board staff shall automatically issue a notice of contemplated action in accordance with the Uniform Licensing Act, Section 61-1-1 NMSA 1978, to take the appropriate action.

**(1)** The notice of contemplated action shall state that the board has grounds to take such action unless the applicant, licensee, or certificate holder:

**(a)** mails a letter, certified mail return receipt requested, within 20 days of receipt of the notice of contemplated action requesting a hearing; and

**(b)** provides the board, prior to the scheduled hearing date, with a statement of compliance from HSD.

**(2)** If the applicant, licensee, or certificate holder disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant, licensee, or certificate holder should contact the HSD child support enforcement division.

**E.** In any hearing under this subsection, a statement of non-compliance is conclusive evidence that requires the board to take the action to deny the application or suspend or revoke the license, unless the applicant, licensee, or certificate holder provides the board with a subsequent statement of compliance which shall preclude the board from taking any action.

**F.** When the board takes disciplinary action solely because the applicant, licensee, or certificate holder is not compliance with a judgment and order for support, the final decision and order shall state that the applicant, licensee, or certificate holder shall be reinstated upon presentation of a subsequent statement of compliance.

**G.** Reinstatement: The executive director shall, upon presentation of a subsequent statement of compliance, reinstate a license or certificate previously revoked solely due to noncompliance with a judgment and order for support, provided that the licensee or certificate holder must meet the requirements for reinstatement and pay the appropriate reinstatement fee.

[16.12.12.11 NMAC - N, 12/30/2021]

#### **16.12.12.12 DISCIPLINARY AND APPLICATION PROCEEDINGS:**

**A.** The board shall conduct all disciplinary and application proceedings in accordance with the Uniform Licensing Act and the Open Meetings Act.

**B.** Filing of a complaint:

**(1)** A person must file a written complaint with the board before the board can initiate disciplinary proceedings.

**(2)** Any person, including a member of the public, a member of the board, or an employee of the board, may file a complaint.

**(3)** A nurse or certificate holder who suspects that another nurse or certificate holder has violated any provision of the Nursing Practice Act or rules of the board must file a written complaint with the board, unless the nurse or certificate holder suspected of violating the Nursing Practice Act or rules of the board is a patient and patient confidentiality therefore applies.

**C. Investigation of a complaint:**

**(1)** The board's staff may investigate complaints to determine whether a violation of law has occurred.

**(2)** The executive director or, in the director's absence, an assistant director or designee may authorize and sign investigative subpoenas in connection with any investigation.

**(3)** Upon receipt of a complaint, board staff may forward the complaint to the applicable licensee or certificate holder and request a response within 10 business days of receipt. A licensee or certificate holder's failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

**D. Notices of contemplated action:**

**(1)** The board's administrative prosecutor shall draft all notices of contemplated action.

**(2)** The executive director or, in the director's absence, an assistant director or designee shall sign all notices of contemplated action on behalf of the board.

**E. Notices of hearings:** Upon receipt of a respondent's timely request for hearing, the hearing officer or board staff shall, without exception, set the matter for a hearing as required by the Uniform Licensing Act. One or both parties may file a motion to continue or stay proceedings only after the issuance of the notice of hearing, subject to other limitations as provided in these rules.

**F. Settlement agreements:** The board encourages settlement agreements throughout the disciplinary process as a means of resolving cases in a mutually satisfactory manner without the time and expense of formal hearings.

**(1)** If the administrative prosecutor and the licensee or certificate holder agree upon a settlement agreement to propose to the board, the parties shall present the agreement in writing to the board for consideration and possible approval at a meeting.

**(2)** The proposed agreement is not binding on the board until approved by the board at a meeting. The board may approve, reject, or propose an amendment to any proposed stipulation and agreement.

**(3)** No board member may be presumed to be biased or excused for cause based solely on the basis that the member considered, approved, or rejected a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case.

**G.** Default orders: If the licensee or applicant does not respond to the notice of contemplated action by timely requesting a hearing on the matter, the board may take the action contemplated in the notice of contemplated action at a meeting and that action shall be final.

**H.** Requests to reopen: An applicant who has been denied a license or certificate in New Mexico or a licensee or certificate holder who has had disciplinary action taken by the board and who wishes to have the case reopened may submit a written request to reopen their case prior to filing a petition for review with the district court. The administrative prosecutor shall be given an opportunity to respond to any written request to reopen a case.

[16.12.12.12 NMAC - N, 12/30/2021]

#### **16.12.12.13 HEARINGS AND THE AUTHORITY OF HEARING OFFICERS:**

**A.** If a licensee or applicant requests an evidentiary hearing in response to a notice of contemplated action, the executive director shall designate a hearing officer to preside over the hearing. Alternatively, upon vote of the board, the entire board may preside over the hearing.

**B.** Subpoenas: The hearing officer or, if the board as a whole presides over the hearing, the board chair shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the board.

**C.** Continuances:

**(1)** Following the issuance of a notice of hearing, no party may file a motion for continuance, motion to vacate, or proposed settlement agreement less than seven calendar days prior to the hearing except under extraordinary, unforeseen circumstances beyond the control of the movant. In the absence of such circumstances, a hearing officer may not continue or vacate a hearing in response to a motion submitted to the board later than seven calendar days prior to the hearing. Lack of knowledge or familiarity with this rule are not extraordinary or unforeseen circumstances.

**(2)** Except as provided in Paragraph (1) of this section, the hearing officer may grant a continuance if the party requesting the continuances submits proof to verify good cause such as illness, availability of new evidence or unavailability of the licensee or licensee's attorney.

**(3)** A licensee or applicant may only request a continuance if the licensee or applicant signs an affirmative statement that the licensee or applicant waives the right to a hearing held not more than 60 days from the date of service of the notice of hearing.

**D. Motions:** Parties to a disciplinary case may file written motions for the consideration of the hearing officer or the full board. Any motion must state its legal grounds, including all necessary citations to legal authority, as well as the specific relief requested. Where a party raises an issue in the form of a dispositive motion, the hearing officer shall take any such dispositive motion under advisement and shall present the motion in writing to the board as part of the final hearing officer report.

[16.12.12.13 NMAC - N, 12/30/2021]

#### **16.12.12.14 SERIOUS LETTERS OF CONCERN:**

**A. Purpose:** As an alternative to disciplinary action, the board may issue non-disciplinary serious letters of concern to licensees, certificate holders, applicants, and those accused of unlicensed practice.

**B. Content:** A serious letter of concern shall state expressly that it does not constitute disciplinary or corrective action, a letter of reprimand, or a determination of guilt of any kind. For the benefit of the recipient, a serious letter of concern shall identify and explain the applicable provision of the Nursing Practice Act or Board rules identified as the allegation in the complaint.

**C. Function:** A serious letter of concern operates as a dismissal of the complaint.

[16.12.12.14 NMAC - N, 12/30/2021]

#### **16.12.12.15 REINSTATEMENT OF LICENSE OR CERTIFICATE:**

**A.** The board shall not consider a petition to reinstate a license or certificate prior to the expiration of one year from the date of signature of the order of revocation, except for the following circumstances:

**(1)** where the board revoked the license or certificate solely due to noncompliance with a judgment and order for child support; or

**(2)** where the board's written order expressly permitted reinstatement sooner than one year.

**B.** An individual seeking to reinstate a license or certificate must file with the board a written petition for reinstatement containing, at a minimum, the following information:

**(1)** the individual's name, former license number, and the date of the individual's prior revocation;

(2) a detailed explanation of why good cause supports reinstatement of the license or certificate, along with any accompanying documentation or evidence;

(3) an affirmative statement as to whether, as a condition of reinstatement, the individual agrees to participate in the board's diversion program if found appropriate by the board; and

(4) an affirmative statement that the individual agrees to abide by all of the rules and regulation of the board and, where applicable, the diversion program.

C. The board's determination of good cause and its accompanying grant or denial of a petition for reinstatement is entirely discretionary, provided that the board shall consider at least the length of time having elapsed since the license was revoked, the gravity of the violations which represented the basis for the prior order of revocation, the risk the individual might pose to public health if licensed or certified, and evidence of the individual's rehabilitation since revoked.

D. In the event that the board grants the petition for reinstatement, the individual seeking reinstatement shall be required to submit the following prior to the issuance of the license or certificate:

(1) a completed reinstatement application;

(2) proof of meeting the renewal requirements as set forth in these rules adopted by the board;

(3) payment of the reinstatement fee;

(4) a completed criminal background check, unless the individual seeking to reinstate a license or certificate applies for reinstatement within less than one year of the date of signature of the order of revocation; and

(5) any additional documents, materials, or evidence required by the board.

E. If the results of a criminal background check indicate that the individual seeking reinstatement has been convicted of a disqualifying criminal conviction, the matter of the individual's reinstatement shall be decided by the board at a subsequent meeting.

[16.12.12.15 NMAC - N, 12/30/2021]

#### **16.12.12.16 COMPLAINTS REGARDING FIRMS, ASSOCIATIONS, INSTITUTIONS, AND CORPORATION VIOLATING THE NURSING PRACTICE ACT:**

A. The board shall accept and determine the disposition of written complaints regarding firms, associations, institutions and corporations violating the nursing practice act, causing the violation of the nursing practice act, or asking employees to violate the

nursing practice act by policy or directive. In determining the disposition of these complaints, the board is not obligated to abide by the Uniform Licensing Act.

**B.** In the event that the board receives a written complaint regarding a firm, association, institution, or corporation, the board shall give the firm, association, institution, or corporation the opportunity to respond in writing to the allegations in the complaint.

**C.** If the board determines that the firm, association, institution, or corporation violated Subsection A through H of Section 61-3-30 NMSA 1978 of the Nursing Practice Act, the board shall inform the firm, association, institution, or corporation of the requirements set out in Section 61-3-30 NMSA 1978 of the Nursing Practice Act.

**D.** The board shall keep a record of the number of complaints received and the disposition of said complaints processed in accordance with this rule.

[16.12.12.16 NMAC - N, 12/30/2021]

## **PART 13 DIVERSION PROGRAM FOR CHEMICALLY DEPENDENT NURSES**

### **16.12.13.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.13.1 NMAC - N, 12/13/2022]

### **16.12.13.2 SCOPE:**

These rules apply to the board and all those licensed by or subject to the jurisdiction of the board.

[16.12.13.2 NMAC - N, 12/13/2022]

### **16.12.13.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978 and the Lactation Care Provider Act, Sections 61-36-1 to 61-36-6 NMSA 1978.

[16.12.13.3 NMAC - N, 12/13/2022]

### **16.12.13.4 DURATION:**

Permanent.

[16.12.13.4 NMAC - N, 12/13/2022]

**16.12.13.5 EFFECTIVE DATE:**

December 13, 2022, unless a later date is cited at the end of a section.

[16.12.13.5 NMAC - N, 12/13/2022]

**16.12.13.6 OBJECTIVE:**

The objective of 16.12.13 NMAC is to promote, preserve and protect the public health, safety, and welfare.

[16.12.13.6 NMAC - N, 12/13/2022]

**16.12.13.7 DEFINITIONS:**

[RESERVED]

[16.12.13.7 NMAC - N, 12/13/2022]

**16.12.13.8 PURPOSE OF DIVERSION PROGRAM:**

The diversion program is a voluntary alternative to traditional disciplinary action for a nurse whose competencies may be impaired because of the habitual use of drugs or alcohol. Individuals may request admission into the program following the filing of a complaint against their nursing license or by self-referral.

[16.12.13.8 NMAC - N, 12/13/2022]

**16.12.13.9 ADMISSION INTO THE DIVERSION PROGRAM:**

**A.** Nurses licensed in New Mexico who have had a complaint filed against their nursing license alleging the use or abuse of drugs or alcohol, or who voluntarily submit a written request, shall be given an opportunity to be admitted into the diversion program.

(1) Following a complaint, individuals who do not accept the opportunity for admission into the program shall be processed as a disciplinary case.

(2) Individuals who voluntarily requested admission and do not complete the admission process within 30 days of request may be subject to disciplinary action by the board.

(3) It may be recommended that individuals obtain a professional evaluation for chemical dependency or mental health diagnosis and submit a copy of the evaluation to the diversion program.

(4) The initial contract is a "no use" contract to include prescription medications unless written notification is given by the physician prescribing the medication.

(5) Signatures on the initial contract and amendments constitute a release of information for the diversion program to contact all supporting individuals.

**B.** Request for admission shall be made, in writing, to the diversion program coordinator or executive director of the board of nursing.

**C.** Each nurse requesting admission shall be scheduled for an admission interview and preparation of an initial contract.

(1) The initial contract shall include conditions which must be met by a participant.

(2) The contract may be individualized but the form may not be substantially changed without the approval of the board.

(3) The initial preparation of the contract will be done by the diversion program coordinator, executive director, or experienced regional advisory committee member.

(4) Participants may be prohibited from access to narcotics, overtime, night shift work and agency/home health care work.

(5) Beginning on December 1, 2022, any diversion program contract shall include the following conditions to which any participant entering into a new diversion program contract shall knowingly and voluntarily consent in writing as a prerequisite to program participation:

(a) the participant in the program agrees that the board may summarily suspend the participant's nursing license (or multiple licenses, if applicable) upon receiving information deemed to be credible by the board suggesting that the participant has violated the terms of the diversion program contract;

(b) any summary suspension may last no longer than ninety days; and

(c) the board may order a summary suspension without a hearing, provided that beforehand the board shall provide the participant notice of the possible suspension and an opportunity to submit any evidence, argument, or other information in writing as to why the board should not summarily suspend the participant's license.

[16.12.13.9 NMAC - N, 12/13/2022]

**16.12.13.10 MONITORING PARTICIPANTS IN THE DIVERSION PROGRAM:**

**A.** Participants must assure that required written reports and drug screens are submitted in accordance with the provisions of the diversion program contract and contract amendments. Written reports and drug screens *must* be received regularly by the program.

(1) Written reports of the same type and several drug screens received together are not acceptable and may result in the participant being noncompliant.

(2) Drug screens shall be scheduled randomly and shall be observed in accordance with the guidelines and protocols approved by the board.

(3) Drug screens must include participant's drugs of choice.

**B.** Participants are required to meet with representatives of the program periodically for an evaluation of their progress in recovery and participation in the program.

(1) After one year of acceptable compliance, amendments may be made in the participant's contract based on the participant's progress in recovery and participation in the program.

(2) Contracts and contract amendments must be submitted with all required signatures within two weeks of the meeting date.

(3) Failure to meet regularly as scheduled may result in being reported to the board for noncompliance.

**C.** Participant shall notify the diversion program coordinator and the executive director of the board, immediately, of a pending relocation out-of-the state of New Mexico. The participant shall complete and submit the out of state relocation form. The executive director shall notify the board of nursing in the state in which participant intends to practice that the licensee is a participant in the New Mexico board of nursing's diversion program for chemically dependent nurses. Participants who relocate out-of-state must comply with the NM diversion program requirements until participants have been discharged from the program.

[16.12.13.10 NMAC - N, 12/13/2022]

#### **16.12.13.11 RELAPSES AND NONCOMPLIANCE WITH THE DIVERSION PROGRAM CONTRACT:**

**A.** Participants who are noncompliant with their contract and who do not cooperate with the program shall be reported to the board of nursing.

(1) Reports shall be made to the board using the participant's confidential file number.

(2) The participant's name shall not be disclosed to the board until formal disciplinary proceedings occur.

**B.** The diversion program coordinator or the executive director shall file a sworn complaint after a verbal or written report of a relapse, positive drug screen or no verbal or written communication with the diversion program for three months.

(1) A relapse is defined as the unauthorized use of any mind-altering drug or alcohol.

(2) The relapse shall be reported to the board of nursing at its next regularly scheduled meeting.

**C.** The board may move for a notice of contemplated action and may summarily suspend the license of the participant for a period not to exceed 90 days pending the completion of a formal disciplinary proceeding as provided by the diversion program contract, on the basis of a participant's relapse or positive drug screen.

**D.** An individual whose license is reinstated following a summary suspension shall remit the required reinstatement fee.

**E.** Participants who appear before the board for a disciplinary hearing may be required to enter into a new diversion program contract.

[16.12.13.11 NMAC - N, 12/13/2022]

#### **16.12.13.12 DISCHARGE FROM THE DIVERSION PROGRAM:**

**A.** Successful discharge:

(1) A participant who remains drug and alcohol free for three full years and complies with all conditions of the participant's diversion program contract for at least 24 months may request a successful discharge from the diversion program.

(2) Prior to the board's grant of any successful discharge, the participant must be evaluated for discharge by a quorum of advisory committee members or the diversion program coordinator. In addition, the participant must submit letters of recommendation from a supervisor, a sponsor, and (if applicable) a counselor, as well as an additional letter written by the participant personally.

(3) Upon the participant submitting all required documentation and the participant's completion of the required evaluation, the diversion program coordinator shall make a recommendation to the board at its next regularly scheduled meeting regarding the approval or disapproval of discharge for the participant.

**B.** Unsuccessful discharge:

(1) The board may unsatisfactorily discharge a participant from the diversion program based on the participant's failure to comply with the terms and conditions of the diversion program contract.

(2) An unsuccessful discharge does not constitute disciplinary action.

[16.12.13.12 NMAC - N, 12/13/2022]

#### **16.12.13.13 DIVERSION PROGRAM PARTICIPANT RECORDS:**

**A.** All diversion program participant records are strictly confidential and shall be maintained by the board in accordance with Section 61-3-29.1 NMSA 1978.

**B.** Subject to any additional confidentiality as otherwise provided by law, the board may disclose the records of a participant in the following circumstances:

(1) disclosure is required pursuant to the Nurse Licensure Compact;

(2) disclosure is for the purposes of reporting to the board concerning a nurse who is not cooperating and complying with the diversion program contract;

(3) the participant leaves the state prior to successful discharge; or

(4) the participant is no longer in the program and the board has taken disciplinary action against the participant based on noncompliance with the diversion program contract.

[16.12.13.13 NMAC - N, 12/13/2022]

#### **16.12.13.14 REGIONAL ADVISORY COMMITTEES:**

**A.** The board shall establish regional advisory committees throughout the state in accordance with Section 61-3-29.1 NMSA 1978 for the purpose of assisting the program coordinator to conduct admission interviews, prepare initial contract and to periodically evaluate participant's progress in recovery and participation in the program.

**B.** Members of advisory committees shall be appointed by the board and shall function under the direction of the board.

**C.** No current member of the board shall be appointed to an advisory committee.

**D.** As permitted and authorized by the executive director, the program coordinator shall be the liaison between each regional advisory committee and the board.

[16.12.13.14 NMAC - N, 12/13/2022]

## **PART 14 NURSING PRACTICE IN AESTHETIC HEALTHCARE FACILITIES**

### **16.12.14.1 ISSUING AGENCY:**

New Mexico Board of Nursing.

[16.12.14.1 NMAC - N, 5/21/2024]

### **16.12.14.2 SCOPE:**

These rules apply to individuals licensed by the board who are providing health care in aesthetic healthcare facilities.

[16.12.14.2 NMAC - N, 5/21/2024]

### **16.12.14.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978.

[16.12.14.3 NMAC - N, 5/21/2024]

### **16.12.14.4 DURATION:**

Permanent.

[16.12.14.4 NMAC - N, 5/21/2024]

### **16.12.14.5 EFFECTIVE DATE:**

May 21, 2024, unless a later date is cited at the end of a section.

[16.12.14.5 NMAC - N, 5/21/2024]

### **16.12.14.6 OBJECTIVE:**

To promote, preserve, and protect the health, safety, and welfare of the public and provide direction to licensees providing health care in aesthetic healthcare facilities.

[16.12.14.6 NMAC - N, 5/21/2024]

### **16.12.14.7 DEFINITIONS:**

#### **A. "Definitions beginning with "A":**

**(1) "Aesthetic healthcare procedure"** means a non-surgical procedure that stimulates, alters, or destroys living tissue, with the intent to enhance appearance of skin and improve the patient's health and sense of wellness. This does not include procedures that affect only the non-living stratum corneum surface of the skin, does not affect living tissue and does not require the direction of a licensed independent practitioner as defined in these rules or in other accepted professional standards; and may include the practice of cosmetology or other licensed or unlicensed services not regulated by the New Mexico board of nursing. Examples of aesthetic healthcare procedures include, but are not limited to, the following forms of procedures or use of related devices:

- (a) laser or energy-based skin and hair removal;
- (b) intense pulsed light;
- (c) ultrasonic devices;
- (d) radio frequency devices;
- (e) heating or cryolipolysis devices;
- (f) electrical stimulation;
- (g) micro-needling of any depth;
- (h) injection of soft tissue fillers, polydioxanone (PDO) threads or neuromodulators;
- (i) intravenous (IV) therapy;
- (j) dermabrasion beneath the stratum corneum;
- (k) medium-depth chemical peels (beneath the stratum corneum);
- (l) hormone replacement therapy - insertion of hormone pellets into subcutaneous tissue.

**(2) "APRN"** means advanced practice registered nurse.

**(3) "Aesthetic healthcare facility"** means a business or other practice that provides aesthetic healthcare procedures to the general public.

**B. "Definitions beginning with "B": [RESERVED]**

**C. "Definitions beginning with "C": "Clinical supervisor"** which may also be referred to as a "clinical director", means a licensed independent practitioner, regardless

of employment title, who has appropriate knowledge, skills, and training to perform all procedures provided at the aesthetic healthcare facility they are practicing at, and who is responsible for supervising or directing all aspects of the facilities clinical practice, including protocols, healthcare procedures, policy, and clinical staff.

**D. "Definitions beginning with "D": "Direct supervision"** means supervision by a licensed independent practitioner who is physically in the aesthetic healthcare facility, and immediately available to provide in-person clinical supervision and direction during the entire time of an aesthetic healthcare procedure.

**E. "Definitions beginning with "E": [RESERVED]**

**F. "Definitions beginning with "F": [RESERVED]**

**G. "Definitions beginning with "G": [RESERVED]**

**H. "Definitions beginning with "H": [RESERVED]**

**I. "Definitions beginning with "I": "Indirect supervision"** means supervision by a licensed independent practitioner who is available outside of the aesthetic healthcare facility, but within a reasonably close distance and on-call, to immediately respond and provide verbal clinical supervision and direction, and travel to the aesthetic healthcare facility as needed.

**J. "Definitions beginning with "J": [RESERVED]**

**K. "Definitions beginning with "K": [RESERVED]**

**L. "Definitions beginning with "L":**

**(1) "Licensed independent practitioner"** means an APRN or other licensed advanced practice health care practitioner who can independently perform aesthetic healthcare procedures and serve as a clinical supervisor.

**(2) "licensee"** means an individual licensed by the New Mexico board of nursing.

**(3) "LPN"** means licensed practical nurse.

**M. "Definitions beginning with "M": [RESERVED]**

**N. "Definitions beginning with "N": [RESERVED]**

**O. "Definitions beginning with "O": [RESERVED]**

**P. "Definitions beginning with "P": [RESERVED]**

**Q. "Definitions beginning with "Q": [RESERVED]**

**R. "Definitions beginning with "R": "RN" means registered nurse.**

**S. "Definitions beginning with "S": [RESERVED]**

**T. "Definitions beginning with "T": "Treatment plan" means a healthcare record that provides the diagnosis and planned treatment of a patient.**

**U. "Definitions beginning with "U": [RESERVED]**

**V. "Definitions beginning with "V": [RESERVED]**

**W. "Definitions beginning with "W": [RESERVED]**

**X. "Definitions beginning with "X": [RESERVED]**

**Y. "Definitions beginning with "Y": [RESERVED]**

**Z. "Definitions beginning with "Z": [RESERVED]**

[16.12.14.7 NMAC - N, 5/21/2024]

#### **16.12.14.8 EDUCATION AND SCOPE OF PRACTICE:**

**A.** Licensees, including APRNs, RNs and LPNs, who directly or collaboratively provide aesthetic healthcare procedures in non-traditional facilities not licensed by any state regulatory body specifically to provide aesthetic healthcare procedures are required to maintain any combination of education, clinical experience, certification, and supervision appropriate to ensure the ongoing safety of patients and other staff. Given the non-traditional nature of these facilities, licensees must be proactive in maintaining the knowledge and skills necessary to perform and assist with aesthetic healthcare procedures and work within their scope of practice.

**B.** Licensees may work in an aesthetic healthcare facility only if the facility employs a clinical supervisor who is an APRN or other licensed independent healthcare practitioner reasonably known to possess the appropriate education, training, and skills to safely perform all aesthetic healthcare procedures offered in the facility.

**C.** Licensees in any practice setting must have appropriate training in the specific treatments they provide, as required by board rule 16.12.2 NMAC. When assuming non-traditional specific functions and procedures which are beyond the licensee's basic educational preparation, licensees are responsible for obtaining reasonably appropriate knowledge, skills, and supervision to ensure safe and competent performance of the function or procedure. Specific education and training components for aesthetic healthcare procedures shall include but are not limited to, a combination of

practical and didactic instruction; national aesthetic certification; techniques and theories; identifying and addressing complications and adverse events; and charting and record keeping.

**D.** Scope of practice for APRNs may include aesthetic healthcare procedures with the appropriate population foci, licensure, national APRN certification and education.

**E.** Scope of practice for RNs may include aesthetic healthcare procedures with the appropriate education and training only if delegated by, and under the indirect supervision of an APRN or other clinical supervisor.

**F.** Scope of practice for LPNs may include aesthetic healthcare procedures with the appropriate education and training, only if delegated by, and under the direct supervision of an APRN or other clinical supervisor. However, LPNs may not perform aesthetic injections. LPNs performing certain non-healthcare aesthetic procedures may be required to obtain additional licensure from the New Mexico board of barbers and cosmetologists. Independent healthcare decisions are not within the scope of practice for LPNs.

[16.12.14.8 NMAC - N, 5/21/2024]

#### **16.12.14.9 CLINICAL SUPERVISOR:**

**A.** An APRN may serve as a clinical supervisor in an aesthetic healthcare facility with the appropriate population foci, licensure, national APRN certification and education. An RN or LPN may not serve as a clinical supervisor in an aesthetic healthcare facility.

**B.** An APRN serving as a clinical supervisor is responsible for supervising all aesthetic healthcare procedures performed at the aesthetic healthcare facility, which may include but are not limited to the following:

(1) possesses the appropriate education, training, experience, competence, and ongoing education, to safely administer, delegate, and supervise each aesthetic healthcare procedure;

(2) accepts responsibility for the safety of the patients treated at the aesthetic healthcare facility;

(3) ensures that staff who perform or assist with aesthetic healthcare procedures are trained and qualified;

(4) ensures that necessary equipment and supplies, including those needed to address healthcare complications and emergencies, are readily available, maintained and safely stored; and

(5) develops or approves and implements written protocols for all aesthetic healthcare procedures performed at the aesthetic healthcare facility. The protocols must provide sufficient and specific details, including guidance on identifying and responding to adverse events, to assure that making independent healthcare decisions does not become the responsibility of individuals without the appropriate scope of practice to make such decisions.

[16.12.14.9 NMAC - N, 5/21/2024]

#### **16.12.14.10 PATIENT CARE:**

**A.** Licensees providing aesthetic healthcare procedures or related health care must establish a valid practitioner-patient relationship and are subject to all ethical, legal, and practical obligations of such relationship.

**B.** Prior to a licensee providing any aesthetic healthcare procedure, an APRN or other licensed independent practitioner must conduct an assessment in a face-to-face examination, determine a diagnosis and prescribe a treatment plan for the patient. The APRN or other licensed independent practitioner may never delegate the examination, diagnosis, or treatment plan.

(1) The initial examination must consist of a review of the patient's health history, and a physical examination that includes treatment sites, and the determination of a diagnosis.

(2) The treatment plan should ensure that the patient is a good candidate for each aesthetic healthcare procedure and must include instruction on doses, device settings, expected duration, and specific treatment sites.

**C.** Face-to-face examination by an APRN or other licensed independent healthcare providers is required for ongoing patients at least once every 12 months but is not required before each visit unless there is a change in the patient's health status or treatment plan.

**D.** Telemedicine may be used by an APRN or other licensed independent healthcare providers for assessment and face-to-face examinations provided that such use complies with any applicable state and federal law and that the quality of the video examination does not adversely affect the face-to-face assessment or diagnosis.

**E.** Delegation of healthcare and non-healthcare duties to licensed or unlicensed individuals must be done with care and only when the licensee has ascertained that the scope of practice, education, training, and experience of the individual is appropriate and sufficient to provide adequate care to the patient. The delegating licensee must take into consideration that individuals with the same license may not have the same qualifications or competencies. Delegation of aesthetic healthcare procedures cannot

be delegated by a licensee to any individual who is not licensed in a healthcare profession.

[16.12.14.10 NMAC - N, 5/21/2024]

#### **16.12.14.11 PATIENT RECORDS, CONFIDENTIALITY, AND ADVERTISING:**

**A.** Every patient encounter in an aesthetic healthcare facility must generate a healthcare record.

**B.** Individuals receiving aesthetic healthcare procedures from licensees in an aesthetic healthcare facility are considered patients and care must be provided to ensure confidentiality of patient information and healthcare records.

**C.** Use of patient information, including images, is subject to HIPAA and other legal protections, and use of such information must be authorized by the patient.

**D.** Advertising and marketing of aesthetic healthcare procedures is regulated and may not be deceptive, false, or misleading. Licensees must only use references to their active license and shall not represent to offer services that they do not hold an active license to provide.

**E.** Licensees working at an aesthetic healthcare facility who are aware of misuse of patient information or advertising have an obligation to protect patient confidentiality and take reasonable steps to address such issues with the clinical supervisor or other management.

[16.12.14.11 NMAC - N, 5/21/2024]

### **PART 15-19: [RESERVED]**

### **PART 20: HEARING REQUIREMENTS FOR CERTIFIED NURSE AIDES [REPEALED]**

[This part was repealed on July 1, 2024, and replaced by 8.370.25 NMAC.]

## **CHAPTER 13: NURSING HOME ADMINISTRATORS**

### **PART 1: GENERAL PROVISIONS**

#### **16.13.1.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators.

[10-31-95; 16.13.1.1 NMAC - Rn, 16 NMAC 13.1.1, 1-25-2001; A, 05-26-2016]

**16.13.1.2 SCOPE:**

The provisions in Part 1 apply to all parts of Chapter 13, and provide relevant information to anyone affected or interested in Chapter 13 of Title 16.

[10-31-95; 16.13.1.2 NMAC - Rn, 16 NMAC 13.1.2, 1-25-2001]

**16.13.1.3 STATUTORY AUTHORITY:**

Chapter 13 of Title 16 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-1 through 61-13-17 (1993 Repl. Pamp.). Section 9 of Part 1 is authorized by Section 61-13-6 NMAC 1978 (1993 Repl. Pamp.). Section 10 of Part 1 is authorized by Section 14-2-1 through 14-2-16 NMAC 1978 (1993 Repl. Pamp.). Section 11 of Part 1 is authorized by Section 10-15-1.C NMAC 1978 (1993 Repl. Pamp.).

[2/24/1988; 2/13/1994; 10/31/1995; 16.13.1.3 NMAC - Rn, 16 NMAC 13.1.3, 1/25/2001; A, 2/26/2022]

**16.13.1.4 DURATION:**

Permanent.

[10-31-95; 16.13.1.4 NMAC - Rn, 16 NMAC 13.1.4, 1-25-2001]

**16.13.1.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.1.5 NMAC - Rn, 16 NMAC 13.1.5, 1-25-2001]

**16.13.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 13 is to set forth the provisions which apply to all of Chapter 13, and to all persons and entities affected by Chapter 13 of Title 16.

[10-31-95; 16.13.1.6 NMAC - Rn, 16 NMAC 13.1.6, 1-25-2001]

**16.13.1.7 DEFINITIONS:**

- A. "AAHSA" means the American association of homes and services for the aging.
- B. "ACHCA" means the American college of health care administrators.
- C. "ACHCE" means the American college of health care executives

**D. "AUPHA"** means the association of university programs in health care administration.

**E. [RESERVED]**

**F. "Administrator"** means the chief executive officer.

**G. "Applicant"** means a person who has applied for a license.

**H. "Approval"** means the review and acceptance of a specific activity.

**I. "Approval body"** means the agency, institution, or organization with the authorization to award continuing education credit.

**J. "Audit"** means an examination and verification of continuing education documents.

**K. [RESERVED]**

**L. "Board"** means the New Mexico nursing home administrators board.

**M. "CE"** means continuing education.

**N. [RESERVED]**

**O. "Continuing Education Unit (CEU)"** means 10 contact hours (60-minute clock hours) of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

**P. "Contact hours"** means a unit of measurement to describe an approved, organized learning experience. One contact hour equals one 60-minute clock hour.

**Q. "Continuing Education"** means a learning experience which enhances professional development.

**R. [RESERVED]**

**S. "Expired license"** means a license which has not been renewed or placed on inactive status on or before the expiration deadline, as provided in 16.13.10 NMAC.

**T. "Hospital Administrator"** means the chief executive officer of an acute care facility.

**U. "Inactive Status"** means a license which is in good standing but not current, as provided in 16.13.9 NMAC.

**V. "Initial license"** means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other requirements and receiving a passing score on the national licensing examination.

**W. "Institution of higher learning"** means a college or university.

**X. [RESERVED]**

**Y. "Lapsed license"** means an expired or inactive status license which has not been reactivated within the time limitations set forth in these rules, as provided in 16.13.9 NMAC.

**Z. "License"** means a document identifying the legal privilege and authorization to practice within a professional category.

**AA. "Manager"** means the individual who is responsible for the planning, organizing, directing, and controlling of the operations within a department or unit of a nursing home.

**BB. "Must"** means required.

**CC. "NAB"** means the national association of long-term care administrator boards.

**DD. "NCERS"** means the national continuing education review service.

**EE. "NHA"** means nursing home administrator.

**FF. "NMAC"** means the New Mexico administrative code.

**GG. "New Mexico Administrative Code"** means the organizing structure for rules filed by New Mexico State agencies. The NMAC is also the body of filed rules and the published versions thereof. The NMAC is structured by title, chapter, and part.

**HH. "NMHCA"** means the New Mexico health care association.

**II. "NMHSA"** means the New Mexico hospitals and health systems association.

**JJ. "NMSA"** means New Mexico statutes annotated.

**KK. "National licensing examination"** means any examination for licensure as provided by the national association of long-term care administrator boards (NAB).

**LL. "Nursing home administrator"** means any individual responsible for planning, organizing, directing, and controlling the operation of a nursing home.

**MM. [RESERVED]**

**NN. "PES"** means the professional examination service.

**OO. "Reactivation"** means the process of making current a license which has been expired as a result of failure to comply with the necessary renewal requirements. This process does not usually require board action at any juncture.

**PP. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**QQ. "Reinstatement"** means the process whereby a license, which has been subject to revocation or suspension, is returned to its former status. The reinstatement process always requires board action.

**RR. "Relicensure"** means the process of renewal, reactivation, or reinstatement of a New Mexico nursing home administrator's license.

**SS. "Shall"** means mandatory; a requirement.

**TT. "Should"** means a suggestion or recommendation; not a requirement.

**UU. [RESERVED]**

**VV. "Verification of continuing education"** means an official certificate issued at a continuing education activity which provides proof of attendance.

**WW. "Violation of practice"** means a violation of the New Mexico Nursing Home Administrators Act and the rules and regulations duly adopted by the board.

[2/24/1988; 9/18/1992; 10/31/1995; 16.13.1.7 NMAC - Rn, 16 NMAC 13.1.7, 1/25/2001; A, 2/26/2022, A, 01/14/2023]

#### **16.13.1.8 SEVERABILITY:**

If any part or application of Chapter 13 of Title 16 is held invalid, the remainder, or its application to their situations or persons, shall not be affected.

[2-24-88; 2-13-94; 10-31-95; 16.13.1.8 NMAC - Rn, 16 NMAC 13.1.8, 1-25-2001]

#### **16.13.1.9 EXCEPTIONS:**

Chapter 13 does not apply to boarding homes or to sheltered-care facilities. Intermediate care facilities for the mentally retarded that are properly licensed by the health department, as intermediate care facilities are not nursing homes as defined by

the Nursing Home Administrators Act. Therefore, their administrators are not required to be licensed as a nursing home administrator.

[2-24-88; 2-13-94; 10-31-95; 16.13.1.9 NMAC - Rn, 16 NMAC 13.1.9, 1-25-2001]

#### **16.13.1.10 INSPECTION OF PUBLIC RECORDS:**

The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16 NMSA 1978. The board administrator is the custodian of the board's records.

[10-31-95; 16.13.1.10 NMAC - Rn, 16 NMAC 13.1.10, 1-25-2001]

#### **16.13.1.11 TELEPHONE CONFERENCES:**

As authorized by (1993 Repl. Pamp.) Section 10-15-1.C NMSA 1978 of the Open Meetings Act, when it is difficult or impossible for a board member to attend a board meeting in person, the member may participate by means of a conference telephone or similar communications equipment. Participation by such means shall constitute presence in person at the meeting. Each member participating by conference telephone must be identified when speaking. All participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[2-13-94, 10-31-95; 16.13.1.11 NMAC - Rn, 16 NMAC 13.1.11, 1-25-2001]

#### **16.13.1.12 WAIVER:**

An applicant or licensee may request a waiver of any requirements contained in Title 16, Chapter 13 NMAC. The written request for the waiver shall contain an explanation of the underlying extenuating circumstance and shall include documentation in support of the request. At its discretion, the board may grant the request for waiver.

[16.13.1.12 NMAC – N, 2/26/2022]

### **PART 2: FEES**

#### **16.13.2.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board.

[10-31-95; 01-10-2000; A, 7-10-2000; 16.13.2.1 NMAC - Rn, 16 NMAC 13.2.1, 1-25-2001]

#### **16.13.2.2 SCOPE:**

The provisions in Part 2 of Chapter 13 apply to all license applicants; to active, inactive, expired and lapsed licensees; and to anyone who requests written verification of licensure from the Board.

[10-31-95; 16.13.2.2 NMAC - Rn, 16 NMAC 13.2.2, 1-25-2001]

### **16.13.2.3 STATUTORY AUTHORITY:**

Part 2 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, Sections 61-13-8, 61-13-12 and Subsection A of Section 61-13-6 NMSA 1978 (1993 Repl. Pamp.).

[2/24/1988; 2/13/1994; 10/31/1995; 16.13.2.3 NMAC - Rn, 16 NMAC 13.2.3, 1/25/2001; A, 2/26/2022]

### **16.13.2.4 DURATION:**

Permanent.

[10-31-95; 16.13.2.4 NMAC - Rn, 16 NMAC 13.2.4, 1-25-2001]

### **16.13.2.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.2.5 NMAC - Rn, 16 NMAC 13.2.5, 1-25-2001]

### **16.13.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 13 is to establish the fees for licenses, and for renewal of licenses, and other related administrative processes.

[10/31/1995; 16.13.2.6 NMAC - Rn, 16 NMAC 13.2.6, 1/25/2001; A, 01/14/2023]

### **16.13.2.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.2.7 NMAC - Rn, 16 NMAC 13.2.7, 1-25-2001]

### **16.13.2.8 FEES:**

**A.** All fees are non-refundable.

**B.** Application and licensure fees for exam candidate:

- (1) application fee: \$200.00;
- (2) licensure fee: \$200.00.

**C.** Examination and computer based testing fees: are payable directly to NAB by electronic means.

**D.** Reexamination fee: are payable directly to NAB by electronic means.

**E.** Renewal fee: \$200.00.

**F.** Application and licensure fees for expedited licensure applicant:

- (1) application fee: \$200.00;
- (2) licensure fee: \$200.00.

**G.** Late penalty fee: \$100.00.

**H.** Inactive status fee: \$75.00.

**I.** Reactivation from inactive status fee: \$200.00.

**J.** Reactivation from expired status fee: \$300.00 (\$200.00 plus \$100.00 late penalty fee).

**K.** Duplicate renewal license fee: \$25.00.

**L.** Duplicate of initial wall license fee: \$60.00.

**M.** Written verification of licensure fee: \$10.00.

[2/24/1988; 9/18/1992; 10/31/1995; 1/10/2000; A, 7/10/2000; A, 8/3/2000; 16.13.2.8 NMAC - Rn & A, 16 NMAC 13.2.8, 1/25/2001; A, 4/15/2002; A, 2/15/2004; A, 2/26/2022, A, 01/14/2023]

### **PART 3: APPLICATION FOR LICENSURE BY EXAMINATION**

#### **16.13.3.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board.

[10-31-95; 01-10-2000; 16.13.3.1 NMAC - Rn, 16 NMAC 13.3.1, 1-25-2001; A, 02-15-2004]

#### **16.13.3.2 SCOPE:**

The provisions in Part 3 of Chapter 13 apply to all license applicants who have never been licensed to practice nursing home administration in any other state and are seeking approval to sit for the national standards licensing exam in order to qualify for licensure in New Mexico. Part 3 of Chapter 13 also applies to previously licensed New Mexico NHA licensees who have allowed their licenses to lapse (See 16.13.11 NMAC) and are seeking relicensure.

[10-31-95; 16.13.3.2 NMAC - Rn, 16 NMAC 13.3.2, 1-25-2001]

#### **16.13.3.3 STATUTORY AUTHORITY:**

Part 3 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, Sections 61-13-6, 61-13-8, 61-13-10, 61-13-13, and 61-13-14 NMSA 1978 (1997 Repl. Pamp.).

[10-31-95; 11-29-97; 16.13.3.3 NMAC - Rn, 16 NMAC 13.3.3, 1-25-2001]

#### **16.13.3.4 DURATION:**

Permanent.

[10-31-95; 16.13.3.4 NMAC - Rn, 16 NMAC 13.3.4, 1-25-2001]

#### **16.13.3.5 EFFECTIVE DATE:**

October 31, 1995, unless a later date is cited at the end of a section.

[2-24-88...10-31-95; 11-29-97; 16.13.3.5 NMAC - Rn, 16 NMAC 13.3.5, 1-25-2001; A, 02-15-2004]

#### **16.13.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 13 is to establish the requirements for application for licensure by examination.

[10-31-95; 16.13.3.6 NMAC - Rn, 16 NMAC 13.3.6, 1-25-2001]

#### **16.13.3.7 DEFINITIONS:**

**A. "Application for licensure form"** means the application form approved by the board for the candidate to apply for licensure by the board.

**B. "Authorization letter"** means the letter from the examination service authorizing the eligible candidate to sit for the national examination.

**C. "Board approved administrator-in-training program"** means an administrator-in-training program approved by the board, NAB or New Mexico health care association (NMHCA).

**D. "CBT"** refers to computer based test or testing.

**E. "CBT fee"** refers to the computer based testing fee assessed by the CBT vendor.

**F. "CBT vendor"** means the contractor who provides scheduling services, testing center facility, and use of computer equipment to candidates eligible to take the national standard licensing exam in computer based format.

**G. "Computer based test"** means a type of test in computer-based format designed to be administered through the use of a computer as opposed to a written test.

**H. "Computer based testing fee"** means the fee charged to the candidate by the CBT vendor for scheduling services and for use of the vendor's facility and computer equipment while taking the examination.

**I. "Eligibility list"** means the candidates listed by the service as eligible to take the examination.

**J. "Eligibility period"** means the sixty-day period from the date specified on the authorization letter to the eligible candidate.

**K. "Examination"** means the national licensing examination for licensure as provided by the national association of boards of examiners for long term care administrators (NAB), or its successor.

**L. "Examination application form"** means NAB's application form for computerized testing, which must be completed on-line through NAB's website.

**M. "Examination fee"** means the fee for the examination payable to NAB.

**N. "NAB"** is the acronym for the national association of long term care administrator boards.

**O. "National examination agency"** means the national association of long term care administrator boards or its successor.

**P. "Preceptor"** means a licensed nursing home administrator in good standing who gives practical experience to an administrator in training.

**Q. "Professional examination service"** means national association of long-term care administrator boards contractor for facilitating the development and offering of the examination in computer-based format.

**R. "Testing center"** means the CBT vendor location(s) where the examination is administered.

[1/10/2000; 16.13.3.7 NMAC - Rn, 16 NMAC 13.3.7, 1/25/2001; A, 2/15/2004; A, 5/26/2016; A, 2/26/2022]

### **16.13.3.8 PREREQUISITE REQUIREMENTS:**

All applicants for licensure by examination must:

**A.** be of good moral character;

**B.** have completed a degreed baccalaureate program at an accredited institution of higher learning in a course of study approved by the board as adequate preparation for nursing home administration; and

**C.** complete the application process as set forth by board regulation and policy.

**D.** have completed a board approved administrator in training program or board approved internship program. The requirements include the following:

**(1)** a minimum of 1000 hours or more of on-site, supervised training and monthly written evaluations by the preceptor;

**(2)** the preceptor shall be a NAB certified preceptor and a licensed nursing home administrator with at least three years of experience as a nursing home administrator in good standing.

[2/24/1988; 9/18/1992; 2/13/1994; 10/31/1995; 1/10/2000; 16.13.3.8 NMAC - Rn, 16 NMAC 13.3.8, 1/25/2001; A, 2/15/2004; A, 5/26/2016; A, 2/26/2022]

### **16.13.3.9 DOCUMENTATION AND OTHER REQUIREMENTS:**

Each applicant for licensure by examination must provide the following documents and fees to the board. Applications for licensure are valid for one year from date of receipt, and will be purged from the board's records after that date.

**A.** A completed board-approved application for licensure form, signed in the presence of a notary public.

**B.** A recent (within the last year) passport-type photograph of the applicant that the applicant has signed on the back.

**C.** Complete official transcript(s) leading up to and showing that the applicant has been awarded a baccalaureate degree, and sent directly to the board by the institution(s).

**D.** A statement of any other professional licenses held by the applicant either in New Mexico or in other states, and copies of the license(s).

**E.** Completed verification of licensure form(s) sent directly to the board by the applicant's other state(s) of professional licensure.

**F.** Three letters of reference from persons unrelated to the applicant sent directly to the board by the references.

**G.** A completed, approved release form authorizing the board to conduct a criminal records check.

**H.** The application and licensure fee, payable to the board (See Subsection B of 16.13.2.8 NMAC, "Fees").

**I.** Proof of completion of at least 1000 hours in a board approved administrator in training program or internship program in the form of:

**(1)** certification of a completion of a board approved administrator in training program from a NAB accredited institution providing the program; or

**(2)** proof of completion of 1000 hours in a board approved internship verified through a notarized letter between the preceptor and the applicant, and submission of an AIT monthly reports completed by the preceptor and the applicant.

[2/24/1988; 9/18/1992; 2/13/1994; 1/31/1995; 10/31/1995; 11/29/1997; 1/10/2000; 16.13.3.9 NMAC - Rn, 16 NMAC 13.3.9, 1/25/2001; A, 2/15/2004; A, 5/26/2016; A, 2/26/2022]

### **16.13.3.10 EXAM ELIGIBILITY DETERMINED:**

Upon receipt of the completed licensure application form, all other required documentation, and application fee, the board or its designee will review the application materials, determine the applicant's eligibility to sit for the national licensing examination and notify the applicant in writing of eligibility or ineligibility.

**A.** Upon finding that the applicant is eligible to take the examination, the board shall notify the eligible candidate, in writing, that his or her application has been approved, and provide the candidate with NAB's website address to apply on-line to take the NAB exam.

**B.** The service shall notify the board electronically that the candidate has applied to take the examination and the board shall electronically indicate to the service the candidate's eligibility to take the exam.

**C.** Candidates are encouraged to wait until they receive official written notice from the board that their licensure application has been approved before they apply on-line to take the NAB exam. If the candidate pre-pays the NAB fee(s) and subsequently does not meet the board's licensure requirements and the board does not approve the candidate to take the exam, the fee(s) pre-paid to NAB are non-refundable.

[10-31-95; 01-10-2000; 16.13.3.10 NMAC - Rn, 16 NMAC 13.3.10, 1-25-2001; A, 02-15-2004]

**16.13.3.11 [RESERVED]**

[2/24/1988; 10/31/1995; 1/10/2000; 16.13.3.11 NMAC - Rn, 16 NMAC 13.3.11, 1/25/2001, A, 2/15/2004; Repeal, 2/26/2022]

**16.13.3.12 [RESERVED]**

[10/31/1995; 1/10/2000; 16.13.3.12 NMAC - Rn, 16 NMAC 13.3.12, 1/25/2001; Repeal, 2/26/2022]

**16.13.3.13 [RESERVED]**

[2/24/1988; 9/18/1992; 10/31/1995; 1/10/2000; 16.13.3.13 NMAC - Rn, 16 NMAC 13.3.13, 1/25/2001; A, 2/15/2004; Repeal, 2/26/2022]

**16.13.3.14 AMERICANS WITH DISABILITIES ACT OF 1990:**

As the national examination agency, NAB reserves sole responsibility for approving candidate requests for special accommodations under the Americans With Disabilities Act of 1990 (Public Law 101-336) (the "ADA"), provided the candidate provides timely notice and request of specific reasonable accommodations.

**A.** Requests for special accommodations should be indicated at the time of candidate application to NAB.

**B.** The board will make eligibility determination for NAB approved accommodations as specified in the NAB exam application under "special accommodations".

**C.** NAB must approve all other requests.

**D.** Professional documentation to support the specific request for reasonable accommodations falling under item Subsection B. of 16.13.3.10 NMAC is required and must be submitted to the board by the candidate no less than seven weeks prior to the

candidate's anticipated test date. The completed "candidate request for special examination accommodations" form, downloadable from the NAB exam application site, must accompany this documentation. The professional documentation in support of the specific request for reasonable accommodations specified in Subsection B. of 16.13.3.10 NMAC must be approved and submitted by the board to NAB no less than four weeks prior to the candidate's anticipated test date.

[16.13.3.14 NMAC - N, 2/15/2004; A, 2/26/2022]

#### **PART 4: EXAMINATION OF APPROVED APPLICANTS [REPEALED]**

[16.13.4 NMAC - N, 10/31/1995; Rp, 2/26/2022]

#### **PART 5: APPLICATION FOR LICENSURE BY RECIPROCITY**

##### **16.13.5.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board.

[16.13.5.1 NMAC – Rp, 16.13.5.1 NMAC, 1/14/2023]

##### **16.13.5.2 SCOPE:**

The provisions in Part 5 of Chapter 13 apply to all persons applying to the board for nursing home administrator licensure by reciprocity.

[16.13.5.2 NMAC – Rp, 16.13.5.2 NMAC, 1/14/2023]

##### **16.13.5.3 STATUTORY AUTHORITY:**

Part 5 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, Sections 61-13-6, 61-13-8, 61-13-11, 61-13-12 and 61-13-13 NMSA1978. (1997 Repl. Pamp.)

[16.13.5.3 NMAC – Rp, 16.13.5.3 NMAC, 1/14/2023]

##### **16.13.5.4 DURATION:**

Permanent.

[16.13.5.4 NMAC – Rp, 16.13.5.4 NMAC, 1/14/2023]

##### **16.13.5.5 EFFECTIVE DATE:**

January 14, 2023, unless a later date is cited at the end of a section.

[16.13.5.5 NMAC – Rp, 16.13.5.5 NMAC, 1/14/2023]

**16.13.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 13 is to establish the requirements applicants for licensure by reciprocity must meet in order to be qualified and licensed by the board to practice nursing home administration in New Mexico.

[16.13.5.6 NMAC – Rp, 16.13.5.6 NMAC, 1/14/2023]

**16.13.5.7 DEFINITIONS:**

**A. "Eligible jurisdiction"** means any state or territory of the United States except those included in the list of disapproval licensing jurisdictions in 16.16.4.8 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good Standing"** means a license is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. "Qualified application"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, as defined by subsection D of this rule;

(2) does not have a disqualifying criminal conviction, as defined in subsection A or 16.13.18.8 NMAC of the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.13.5.7 NMAC – Rp, 16.13.5.7 NMAC, 1/14/2023]

#### **16.13.5.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS:**

**A.** The following jurisdiction on the grounds that the profession does not appear to be licensed or otherwise regulated, and education and examination requirements, if any, cannot be determined:

- (1) American Samoa
- (2) Northern Mariana Islands;
- (3) Puerto Rico;
- (4) U.S Virgin Islands.

**B.** Unless the applicant holds a baccalaureate degree from an accredited institution approved by the board as preparation for nursing home administration, the following jurisdictions on that grounds that the education requirements cannot be determined to be consistent with New Mexico's requirements:

- (1) Alabama;
- (2) Arkansas;
- (3) Colorado;
- (4) Delaware;
- (5) Distract of Columbia;
- (6) Georgia;
- (7) Idaho;
- (8) Illinois;
- (9) Indiana;
- (10) Maryland;
- (11) Michigan;
- (12) Mississippi;
- (13) Missouri;
- (14) Montana;

- (15) Nebraska;
- (16) Nevada;
- (17) New Jersey;
- (18) North Carolina;
- (19) North Dakota;
- (20) Ohio;
- (21) Oklahoma;
- (22) Oregon;
- (23) Pennsylvania;
- (24) South Carolina;
- (25) South Dakota;
- (26) Tennessee;
- (27) Utah;
- (28) Vermont;
- (29) Virginia;
- (30) Washington;
- (31) West Virginia;
- (32) Wisconsin;
- (33) Wyoming;
- (34) Guam.

[16.13.5.8 NMAC – Rp, 16.13.5.8 NMAC, 1/14/2023]

**16.13.5.9 [RESERVED]**

[16.13.5.9 NMAC – Rp, 16.13.5.9 NMAC, 01/14/2023]

#### **16.13.5.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application
- (2) Proof of current unrestricted licensure in good standing held by the applicant in an eligible jurisdiction(s).
- (3) Certificate of good standing for the licensure held by the applicant in an eligible jurisdiction;
- (4) Payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, the board is in receipt of all of the materials required in subsection A, including documents from third parties.

**C.** Upon receipt of complete application the board's staff shall process the application and issue the expedited license to qualified application within 30 days.

**D.** If the applicant has disqualifying criminal conviction or the board may have other cause to deny the applicant pursuant to Section 61-13-13 NMSA 1978.

- (1) The matter of the applicant's application shall be submitted to the board office for consideration and action at its next available regular meeting;
- (2) The license may not be issued within 30 days submission of the complete application; and
- (3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.13.5.10 NMAC – Rp, 16.13.5.10 NMAC, 01/14/2023]

#### **16.13.5.11 EXPEDITED LICENSURE FOR MILITARY SERVICE AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of current license in good standing in another jurisdiction, including a branch of the United States armed forces; and

(3) Submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses deceased military service members: copy of decedent's DD214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e) for veterans (retired or separated), proof of honorable discharge, such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-13-13 NMSA 1978;

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the completed application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fee or renewal fees for the first three years of licensure with the board.

[16.13.5.11 NMAC – Rp, 16.13.5.11 NMAC, 01/14/2023]

**16.13.5.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular license issued by the board and must be renewed on or before March 31 of each year, as provided by 16.13.8 NMAC.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.13.5.12 NMAC – Rp, 16.13.5.12 NMAC, 01/14/2023]

**16.13.5.13 TERMINATION OF EMERGENCY LICENSE:**

**A.** The emergency license shall terminate upon the following circumstances:

**(1)** the issuance of a permanent license under section 16.13.7.8 NMAC, 16.13.7.9 NMAC or

**(2)** proof that the emergency license holder has engaged in *fraud, deceit, or misrepresentation* in procuring or attempting to procure a license under this section.

**B.** Termination of an emergency license shall not preclude application for permanent licensure.

[16.13.5.13 NMAC - N/E, 11/29/2005]

**PART 6: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENT CHILDREN AND VETERANS [REPEALED]**

**16.13.6.1 ISSUING AGENCY [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.2 SCOPE [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.3 STATUTORY AUTHORITY [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.4 DURATION [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.5 EFFECTIVE DATE [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.6 OBJECTIVE [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.7 DEFINITIONS [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.8 APPLICATION REQUIREMENTS [REPEALED]:**

[This part was repealed January 14, 2023.]

**16.13.6.9 RENEWAL REQUIREMENTS [REPEALED]:**

[This part was repealed January 14, 2023.]

**PART 7: LICENSE ISSUANCE**

**16.13.7.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board.

[10-31-95; 16.13.7.1 NMAC - Rn, 16 NMAC 13.7.1, 1-25-2001; A, 04-15-2002]

**16.13.7.2 SCOPE:**

The provisions in Part 7 of Chapter 13 apply to all persons to the Board of Nursing Home Administrators for licensure in New Mexico.

[10/31/1995; 16.13.7.2 NMAC - Rn, 16 NMAC 13.7.2, 1/25/2001, A, 01/14/2023]

**16.13.7.3 STATUTORY AUTHORITY:**

Part 7 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-8, 61-13-10, 61-13-11, and 61-13-12 (1993 Repl. Pamp.).

[10-31-95; 16.13.7.3 NMAC - Rn, 16 NMAC 13.7.3, 1-25-2001]

**16.13.7.4 DURATION:**

Permanent.

[10-31-95; 16.13.7.4 NMAC - Rn, 16 NMAC 13.7.4, 1-25-2001]

**16.13.7.5 EFFECTIVE DATE:**

October 31, 1995.

[10-31-95; 16.13.7.5 NMAC - Rn, 16 NMAC 13.7.5, 1-25-2001]

**16.13.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 13 is to establish the policies and procedures for issuance of a nursing home administrators license to qualified applicants.

[10-31-95; 16.13.7.6 NMAC - Rn, 16 NMAC 13.7.6, 1-25-2001]

**16.13.7.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.7.7 NMAC - Rn, 16 NMAC 13.7.7, 1-25-2001]

**16.13.7.8 APPROVED EXAMINATION APPLICANT:**

After the applicant has met all the requirements for licensure by examination, has successfully passed the national licensing examination, and has been approved by the Board, the Board may issue the applicant an initial license to practice nursing home administration in New Mexico.

[10-31-95; 16.13.7.8 NMAC - Rn, 16 NMAC 13.7.8, 1-25-2001]

**16.13.7.9 [RESERVED]**

[10/31/1995; 16.13.7.9 NMAC - Rn, 16 NMAC 13.7.9, 1/25/2001, Repealed, 01/14/2023]

**16.13.7.10 [RESERVED]**

[10/31/1995; 16.13.7.10 NMAC - Rn, 16 NMAC 13.7.10, 1/25/2001; A, 04/15/2002; Repealed, 01/14/2023]

**16.13.7.11 LICENSE DISPLAY:**

The initial wall license must be displayed at the nursing home where the administrator is employed.

[10-31-95; 16.13.7.11 NMAC - Rn, 16 NMAC 13.7.11, 1-25-2001]

**16.13.7.12 ADDRESS/EMPLOYMENT CHANGES:**

It is the licensee's responsibility to keep the Board immediately informed of any changes in address, phone numbers, and place of employment so that renewal notices and correspondence from the Board will be received by the licensee on a timely basis.

**A.** Notification of address or employment changes will only be accepted in writing.

**B.** Notification of facility administrator or changes of facility administrator to the Health Department's Bureau of Licensing and Certification does **not** constitute notification of changes of employment to the Board.

[10-31-95; 16.13.7.12 NMAC - Rn, 16 NMAC 13.7.12, 1-25-2001]

### **16.13.7.13 NOTICE TO OTHER STATE AGENCIES:**

The board has a "licensee search" link available on its website at [www.rld.state.nm.us/b&c/nhab](http://www.rld.state.nm.us/b&c/nhab) for interested parties to verify whether or not a person is currently licensed by the board. The website licensee information is updated daily as new licenses are issued and license status changes occur. Hard-copy lists are available to other state agencies upon request and at no cost; and to other parties for a minimal administrative fee, however, the information on hardcopy lists can rapidly become outdated

[10-31-95; 16.13.7.13 NMAC - Rn, 16 NMAC 13.7.13, 1-25-2001; A, 02-15-2004]

## **PART 8: LICENSE RENEWAL**

### **16.13.8.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board

[10-31-95; 16.13.8.1 NMAC - Rn, 16 NMAC 13.8.1, 1-25-2001; A. 04-15-2002]

### **16.13.8.2 SCOPE:**

The provisions in Part 8 of Chapter 13 apply to currently licensed nursing home administrators.

[10-31-95; 16.13.8.2 NMAC - Rn, 16 NMAC 13.8.2, 1-25-2001]

### **16.13.8.3 STATUTORY AUTHORITY:**

Part 8 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, Sections 61-13-6, 61-13-9.B and 61-13-12 NMSA 1978 (1993 Repl. Pamp.).

[10-31-95; 16.13.8.3 NMAC - Rn, 16 NMAC 13.8.3, 1-25-2001]

**16.13.8.4 DURATION:**

Permanent.

[10-31-95; 16.13.8.4 NMAC - Rn, 16 NMAC 13.8.4, 1-25-2001]

**16.13.8.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.8.5 NMAC - Rn, 16 NMAC 13.8.5, 1-25-2001]

**16.13.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 13 is to establish the policies, procedures, and regulations for license renewal.

[10-31-95; 16.13.8.6 NMAC - Rn, 16 NMAC 13.8.6, 1-25-2001]

**16.13.8.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.8.7 NMAC - Rn, 16 NMAC 13.8.7, 1-25-2001]

**16.13.8.8 LICENSE RENEWAL REQUIREMENT:**

Nursing home administrator licenses expire annually on the last day of March. All applicants for license renewal must complete and sign a board-approved renewal application, meet the continuing education requirements (See Part 13 and 14 of 16.13 NMAC), and pay the required renewal fee (See Subsection E. of 16.13.2.8 NMAC) before qualifying for license renewal.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.8.8 NMAC - Rn, 16 NMAC 13.8.8, 1-25-2001; A, 04-15-2002]

**16.13.8.9 REQUIREMENTS FOR OUT OF STATE LICENSEES:**

Individuals who reside out of state, but wish to maintain a current and valid New Mexico license, must meet the same requirements for license renewal as residents of New Mexico.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.8.9 NMAC - Rn, 16 NMAC 13.8.9, 1-25-2001]

**16.13.8.10 [RESERVED]**

[2/24/1988; 3/20/1991; 2/13/1994; 10/31/1995; 16.13.8.10 NMAC - Rn, 16 NMAC 13.8.10, 1/25/2001; Repeal, 2/26/2022]

#### **16.13.8.11 LICENSEE RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration date.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.8.11 NMAC - Rn, 16 NMAC 13.8.11, 1-25-2001]

#### **16.13.8.12 RENEWAL DEADLINE:**

**A.** The completed license renewal application, verifications of continuing education, and applicable renewal fee must be received by the board on or before March 31.

**B.** The licensee does not hold a valid license and shall not hold a nursing home administrator position in New Mexico until the expired license has been reactivated.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.8.12 NMAC - Rn, 16 NMAC 13.8.12, 1-25-2001; A, 05-26-2016]

#### **16.13.8.13 INCOMPLETE APPLICATIONS:**

**A.** Unsigned, incorrect, or otherwise incomplete renewal applications will be rejected and returned to the licensee for correction or completion.

**B.** Any renewal application corrected or otherwise, returned to the board after March 31, must be accompanied by an additional late penalty fee (See Subsection G. of 16.13.2.8 NMAC).

[10-31-95; 16.13.8.13 NMAC - Rn, 16 NMAC 13.8.13, 1-25-2001; A, 05-26-2016]

#### **16.13.8.14 RENEWAL APPLICATION APPROVED:**

If a license renewal application receives approval, a renewal license will be mailed to the licensee.

[10-31-95; 16.13.8.14 NMAC - Rn, 16 NMAC 13.8.14, 1-25-2001]

#### **16.13.8.15 RENEWAL LICENSE DISPLAY:**

The renewal license must be displayed with the initial wall certificate at the nursing home where the licensee is employed.

[10-31-95; 16.13.8.15 NMAC - Rn, 16 NMAC 13.8.15, 1-25-2001]

## **PART 9: INACTIVE STATUS**

### **16.13.9.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board 725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.

[10-31-95; 16.13.9.1 NMAC – Rn, 16 NMAC 13.9.1, 1-25-2001]

### **16.13.9.2 SCOPE:**

The provisions in Part 9 of Chapter 13 apply to New Mexico licensees whose licenses are current and in good standing, and who wish to place their licenses on inactive status.

[10-31-95; 16.13.9.2 NMAC – Rn, 16 NMAC 13.9.2, 1-25-2001]

### **16.13.9.3 STATUTORY AUTHORITY:**

Part 9 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-6.B and 61-13-9 (1993 Repl. Pamp.).

[10-31-95; 16.13.9.3 NMAC – Rn, 16 NMAC 13.9.3, 1-25-2001]

### **16.13.9.4 DURATION:**

Permanent.

[10-31-95; 16.13.9.4 NMAC – Rn, 16 NMAC 13.9.4, 1-25-2001]

### **16.13.9.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.9.5 NMAC – Rn, 16 NMAC 13.9.5, 1-25-2001]

### **16.13.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 13 is to set forth the policies, procedures, and regulations for placing a current license in good standing with the Board on inactive status.

[10-31-95; 16.13.9.6 NMAC – Rn, 16 NMAC 13.9.6, 1-25-2001]

**16.13.9.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.9.7 NMAC – Rn, 16 NMAC 13.9.7, 1-25-2001]

**16.13.9.8 REQUIREMENTS FOR INACTIVE STATUS:**

A licensee whose license is in good standing with the Board may request his/her license be placed on inactive status by meeting the following requirements:

**A.** Complete, sign, and return the renewal application form with a written request to be placed on inactive status.

**B.** Submit verifications for the required number of continuing education hours;

**C.** Remit the required inactive status fee (See Subsection H of 16.13.2.8 NMAC);  
and

**D.** Return the application postmarked on or before the license expiration date.

[2-24-88; 10-31-95; 16.13.9.8 NMAC – Rn, 16 NMAC 13.9.8, 1-25-2001]

**16.13.9.9 INACTIVE STATUS NOTIFICATION:**

Upon receipt of a duly and properly made application for inactive status, the Board or its designee will review and approve the application and send the licensee written verification that the license has been placed on inactive status.

[10-31-95; 16.13.9.9 NMAC – Rn, 16 NMAC 13.9.9, 1-25-2001]

**16.13.9.10 INACTIVE STATUS REPEATED:**

The inactive status fee will be charged each time inactive status is requested following reactivation of the license.

[2-24-88; 10-31-95; 16.13.9.10 NMAC – Rn, 16 NMAC 13.9.10, 1-25-2001]

**16.13.9.11 PRACTICE PROHIBITED:**

The licensee shall not practice nursing home administration or hold a nursing home administrator position until the inactive status license has been reactivated.

[2-24-88; 10-31-95; 16.13.9.11 NMAC – Rn, 16 NMAC 13.9.11, 1-25-2001]

**16.13.9.12 TIME LIMITATION ON INACTIVE STATUS LICENSE:**

Licenses on inactive status which are not reactivated within five (5) years from the date the inactive status was initiated, shall lapse.

[10-31-95; 16.13.9.12 NMAC – Rn, 16 NMAC 13.9.12, 1-25-2001]

## **PART 10: EXPIRED LICENSE**

### **16.13.10.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board.

[10-31-95; 16.13.10.1 NMAC - Rn, 16 NMAC 13.10.1, 1-25-2001; A, 04-15-2002]

### **16.13.10.2 SCOPE:**

The provisions in Part 10 of Chapter 13 apply to nursing home administrator licensees.

[10-31-95; 16.13.10.2 NMAC - Rn, 16 NMAC 13.10.2, 1-25-2001]

### **16.13.10.3 STATUTORY AUTHORITY:**

Part 10 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, Sections 16-13-6.B (5), 61-13-9.B, and 61-13-12 NMSA 1978 (1993 Repl. Pam.).

[10-31-95; 16.13.10.3 NMAC - Rn, 16 NMAC 13.10.3, 1-25-2001]

### **16.13.10.4 DURATION:**

Permanent.

[10-31-95; 16.13.10.4 NMAC - Rn, 16 NMAC 13.10.4, 1-25-2001]

### **16.13.10.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.10.5 NMAC - Rn, 16 NMAC 13.10.5, 1-25-2001]

### **16.13.10.6 OBJECTIVE:**

The objective of Part 10 of Chapter 13 is to establish the policies, rules, and regulations regarding the expiration of a nursing home administrator's license.

[10-31-95; 16.13.10.6 NMAC - Rn, 16 NMAC 13.10.6, 1-25-2001]

### **16.13.10.7 DEFINITIONS:**

## **[RESERVED]**

[10-31-95; 16.13.10.7 NMAC - Rn, 16 NMAC 13.10.7, 1-25-2001]

### **16.13.10.8 EXPIRED STATUS:**

Licenses not renewed on or before the expiration date of the license are expired and invalid.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.10.8 NMAC - Rn, 16 NMAC 13.10.8, 1-25-2001]

### **16.13.10.9 LATE PENALTY:**

License renewal applications received after the last day of the renewal month must be accompanied by a late penalty fee in addition to the renewal fee as set forth in Subsections G. and J. of 16.13.2.8 NMAC.

[10-31-95; 16.13.10.9 NMAC - Rn, 16 NMAC 13.10.9, 1-25-2001; A, 04-15-2002; A, 05-26-2016]

### **16.13.10.10 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENT:**

A license shall expire and become invalid if the licensee fails to meet the continuing education requirement for renewal before the license expiration deadline.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.10.10 NMAC - Rn, 16 NMAC 13.10.10, 1-25-2001]

### **16.13.10.11 EXPIRED STATUS NOTIFICATION:**

The board will mail a notification of expired status to the licensee's last known address.

[10-31-95; 16.13.10.11 NMAC - Rn, 16 NMAC 13.10.11, 1-25-2001]

### **16.13.10.12 PRACTICE PROHIBITED:**

The expired status licensee is prohibited from practicing nursing home administration or holding a nursing home administrator position until the expired license has been reactivated.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.10.12 NMAC - Rn, 16 NMAC 13.10.12, 1-25-2001]

### **16.13.10.13 TIME LIMITATION ON EXPIRED STATUS LICENSE:**

Expired licenses that are not reactivated within two (2) years from the expiration date shall lapse.

[10-31-95; 16.13.10.13 NMAC - Rn, 16 NMAC 13.10.13, 1-25-2001; A, 04-15-2002]

## **PART 11: LAPSED LICENSE**

### **16.13.11.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board.

[10-31-95; A, 7-10-2000; 16.13.11.1 NMAC – Rn, 16 NMAC 13.11.1, 1-25-2001]

### **16.13.11.2 SCOPE:**

The provisions in Part 11 of Chapter 13 apply to licenses that have been on inactive or expired status beyond the time limitations for reactivation.

[10-31-95; A, 7-10-2000; 16.13.11.2 NMAC – Rn, 16 NMAC 13.11.2, 1-25-2001]

### **16.13.11.3 STATUTORY AUTHORITY:**

Part 11 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-6, 61-13-8, 61-13-9, 61-13-11, 61-13-12, and 61-13-13 (1993 Repl. Pamp.).

[10-31-95; 16.13.11.3 NMAC – Rn, 16 NMAC 13.11.3, 1-25-2001]

### **16.13.11.4 DURATION:**

Permanent.

[10-31-95; 16.13.11.4 NMAC – Rn, 16 NMAC 13.11.4, 1-25-2001]

### **16.13.11.5 EFFECTIVE DATE:**

October 31, 1995.

[10-31-95; 16.13.11.5 NMAC – Rn, 16 NMAC 13.11.5, 1-25-2001]

### **16.13.11.6 OBJECTIVE:**

The objective of Part 11 of Chapter 13 is to establish regulations that will allow the Board to qualify and reexamine for minimum competency persons previously licensed by the Board whose licenses have not been active for a period of time, and who wish to be licensed to practice nursing home administration in New Mexico again.

[10-31-95; A, 7-10-2000; 16.13.11.6 NMAC – Rn, 16 NMAC 13.11.6, 1-25-2001]

**16.13.11.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.11.7 NMAC – Rn, 16 NMAC 13.11.7, 1-25-2001]

**16.13.11.8 LAPSED STATUS:**

Licenses not reactivated from inactive or expired status within the time limitations set forth in 16.13.9.12 or 16.13.10.13 NMAC shall lapse.

[10-31-95; 16.13.11.8 NMAC – Rn, 16 NMAC 13.11.8, 1-25-2001; A, 04-15-2002]

**16.13.11.9 APPLICATION FOR LICENSURE REQUIRED:**

In order to practice nursing home administration in New Mexico, the individual whose license has lapsed must go through the entire application process and meet **all** the licensure requirements in effect at the time of re-application.

[10-31-95; 16.13.11.9 NMAC – Rn, 16 NMAC 13.11.9, 1-25-2001]

**16.13.11.10 APPROVAL FOR RE-LICENSURE:**

After the applicant has met all the requirements for licensure and has been approved by the Board, the Board shall issue the applicant an initial license to practice nursing home administration in New Mexico in accordance with the provisions in 16.13.7 NMAC.

[10-31-95; 16.13.11.10 NMAC – Rn, 16 NMAC 13.11.10, 1-25-2001]

**16.13.11.11 LICENSE NUMBER:**

Upon approval and completion of the application process, the next available license number shall be issued to the re-licensed individual.

[10-31-95; A, 7-10-2000; 16.13.11.11 NMAC – Rn, 16 NMAC 13.11.11, 1-25-2001]

**PART 12: LICENSE REACTIVATION**

**16.13.12.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board

[10-31-95; 16.13.12.1 NMAC - Rn & A, 16 NMAC 13.12.1, 1-25-2001]

**16.13.12.2 SCOPE:**

The provisions in Part 12 of Chapter 13 apply to persons who have placed their nursing home administrator's license on inactive status or to persons whose licenses have expired due to non-renewal and who wish to reactivate their license. The inactive or expired licenses are still within the time limitation during which the license can be reactivated.

[10-31-95; 16.13.12.2 NMAC - Rn, 16 NMAC 13.12.2, 1-25-2001]

**16.13.12.3 STATUTORY AUTHORITY:**

Part 12 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, Section 61-13-6.B NMSA 1978 (1993 Repl. Pamp.).

[2-24-88; 2-13-94; 10-31-95; 16.13.12.3 NMAC - Rn, 16 NMAC 13.12.3, 1-25-2001]

**16.13.12.4 DURATION:**

Permanent.

[10-31-95; 16.13.12.4 NMAC - Rn, 16 NMAC 13.12.4, 1-25-2001]

**16.13.12.5 EFFECTIVE DATE:**

October 31, 1995.

[10-31-95; 16.13.12.5 NMAC - Rn, 16 NMAC 13.12.5, 1-25-2001]

**16.13.12.6 OBJECTIVE:**

The objective of Part 12 of Chapter 13 is to establish regulations for reactivation of an inactive or expired nursing home administrator's license.

[10-31-95; 16.13.12.6 NMAC - Rn, 16 NMAC 13.12.6, 1-25-2001]

**16.13.12.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.12.7 NMAC - Rn, 16 NMAC 13.12.7, 1-25-2001]

**16.13.12.8 PREREQUISITE REQUIREMENTS FOR REACTIVATION:**

The licensee must meet the following requirements before his/her inactive or expired license will be reactivated:

**A.** Request from the board a reactivation application form or download it from the board's internet website;

**B.** Complete, sign, and return the reactivation application form within the time limitations set forth in 16.13.9.12 and 16.13.10.13 NMAC.

**C.** Submit verification of twenty-four (24) hours of continuing education completed for each year the license was expired; and

**D.** Remit the required fee(s) as set forth in Subsections I and J of 16.13.2.8 NMAC.

[10-31-95; 16.13.12.8 NMAC - Rn & A, 16 NMAC 13.12.8, 1-25-2001; A, 04-02-2002; A, 05-26-2016]

#### **16.13.12.9 REACTIVATION APPROVED:**

Upon review and approval of the reactivation application, the board may issue a reactivated license to the licensee.

[10-31-95; 16.13.12.9 NMAC - Rn, 16 NMAC 13.12.9, 1-25-2001]

#### **16.13.12.10 PRORATED RENEWAL REQUIREMENTS:**

In order to get the licensee back onto the regular renewal cycle with all current nursing home administrators licenses expiring on the last day of March of the year, the next renewal period after reactivation may be shorter than twelve months depending upon the month in which the license is reactivated. This may require proration of the renewal fee and the number of continuing education hours required for the next renewal. Continuing education will be prorated at two (2) hours for each month before the next March. (Same calculation method used in 16.13.13.9 NMAC and 16.13.7.10 NMAC).

[10-31-95; 16.13.12.10 NMAC - Rn, 16 NMAC 13.12.10, 1-25-2001; A, 04-15-2002]

#### **16.13.12.11 RESUMPTION OF PRACTICE ALLOWED:**

Upon receipt of the reactivated license, the licensee may resume the practice of nursing home administration.

[10-31-95; 16.13.12.11 NMAC - Rn, 16 NMAC 13.12.11, 1-25-2001]

#### **16.13.12.12 DISPLAY OF REACTIVATED LICENSE:**

The licensee must display the reactivated license at the facility where he/she is employed in the position of nursing home administrator.

[10-31-95; 16.13.12.12 NMAC - Rn, 16 NMAC 13.12.12, 1-25-2001]

## **PART 13: CONTINUING EDUCATION REQUIREMENT**

### **16.13.13.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board

[10-31-95; 16.13.13.1 NMAC – Rn, 16 NMAC 13.13.1, 1-25-2001; A, 04-15-2002]

### **16.13.13.2 SCOPE:**

The provisions in Part 13 of Chapter 13 apply to licensees.

[10-31-95; 16.13.13.2 NMAC – Rn, 16 NMAC 13.13.2, 1-25-2001]

### **16.13.13.3 STATUTORY AUTHORITY:**

Part 13 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-6B and 61-13-9.B (1993 Repl. Pamp.).

[10-31-95; 16.13.13.3 NMAC – Rn, 16 NMAC 13.13.3, 1-25-2001]

### **16.13.13.4 DURATION:**

Permanent.

[10-31-95; 16.13.13.4 NMAC – Rn, 16 NMAC 13.13.4, 1-25-2001]

### **16.13.13.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.13.5 NMAC – Rn, 16 NMAC 13.13.5, 1-25-2001]

### **16.13.13.6 OBJECTIVE:**

The objective of Part 13 of Chapter 13 is to set forth the continuing education requirements for renewal of a nursing home administrators license.

[10-31-95; 16.13.13.6 NMAC – Rn, 16 NMAC 13.13.6, 1-25-2001]

### **16.13.13.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.13.7 NMAC – Rn, 16 NMAC 13.13.7, 1-25-2001]

### **16.13.13.8 HOURS REQUIRED:**

**A.** Upon renewal, reactivation, or reinstatement, a minimum of twenty-four (24) contact (60-minute) hours of Board-approved continuing education must be accrued within the twelve (12) months immediately preceding the license expiration month.

**B.** Up to six (6) **contact** hours accrued over the required number may be carried over to the next renewal period.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.13.8 NMAC – Rn, 16 NMAC 13.13.8, 1-25-2001; A, 04-15-2002]

#### **16.13.13.9 HOURS PRORATED:**

**A.** The Board may prorate the number of continuing education hours required for a licensee to renew the license (see 16.13.7.10 and 16.13.12.10 NMAC).

**B.** A newly licensed individual or a person who reactivates his or her license and whose next renewal occurs within less than twelve months after the license is issued will be required to earn contact hours equivalent to two (2) hours per month for each month the license is active from the month the license is issued or reactivated to the renewal month.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.13.9 NMAC – Rn, 16 NMAC 13.13.9, 1-25-2001; A, 04-15-2002]

#### **16.13.13.10 COPIES OF CONTINUING EDUCATION VERIFICATIONS:**

Licensees are responsible for maintaining their own continuing education records and for keeping the verifications of attendance at continuing education activities. The Board will accept copies of continuing education attendance verifications at the time of renewal.

[2-24-88; 10-31-95; 16.13.13.10 NMAC – Rn, 16 NMAC 13.13.10, 1-25-2001]

#### **16.13.13.11 INDIVIDUAL COURSES RECORDED ON APPLICATION:**

The licensee must record each course offering on the continuing education record section of the renewal application form in the manner requested by the Board. Due to space limitations at the Board office, the Board will not retain copies of verifications of continuing education activities once they have been reviewed and approved. The continuing education information recorded on the application form by the licensee is the only permanent record placed in the licensee's file.

[10-31-95; 16.13.13.11 NMAC – Rn, 16 NMAC 13.13.11, 1-25-2001; A, 04-15-2002]

#### **16.13.13.12 VERIFICATIONS COPIES REQUIRED:**

The continuing education verifications must be attached to the renewal or reactivation form upon renewal.

[10-31-95; 16.13.13.12 NMAC – Rn, 16 NMAC 13.13.12, 1-25-2001]

#### **16.13.13.13 CONTINUING EDUCATION AUDIT:**

The Board reserves the right to question an individual regarding continuing education submitted.

**A.** If audited, the licensee must provide a statement indicating how a continuing education activity has enhanced the licensee's scope of professional development as related to his/her functions as a nursing home administrator.

**B.** If the continuing education record is audited and the documents of verification of attendance are found to be falsified, incomplete, or if there is a question of accuracy, the licensee must submit other verification of attendance and/or correct the discrepancies before the last day of the renewal month to avoid the license expiring and thereby causing the additional late penalty fee for reactivation to be assessed. If the license is not renewed by the end of the renewal month, the licensee does not hold a valid license and shall not practice or be employed as a nursing home administrator in New Mexico until the expired license has been reactivated.

[2-24-88; 3-20-91; 2-13-94; 10-31-95; 16.13.13.13 NMAC – Rn, 16 NMAC 13.13.13, 1-25-2001]

### **PART 14: APPROVED CONTINUING EDUCATION**

#### **16.13.14.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board

[10-31-95; 16.13.14.1 NMAC – Rn, 16 NMAC 13.14.1, 1-25-2001; A, 04-15-2002]

#### **16.13.14.2 SCOPE:**

The provisions in Part 14 of Chapter 13 apply to licensees.

[10-31-95; 16.13.14.2 NMAC – Rn, 16 NMAC 13.14.2, 1-25-2001]

#### **16.13.14.3 STATUTORY AUTHORITY:**

Part 14 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Section 61-13-9.B (1993 Repl. Pamp.).

[10-31-95 ; 16.13.14.3 NMAC – Rn, 16 NMAC 13.14.3, 1-25-2001]

**16.13.14.4 DURATION:**

Permanent.

[10-31-95 ; 16.13.14.4 NMAC – Rn, 16 NMAC 13.14.4, 1-25-2001]

**16.13.14.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.14.5 NMAC – Rn, 16 NMAC 13.14.5, 1-25-2001]

**16.13.14.6 OBJECTIVE:**

The objective of Part 14 of Chapter 13 is to set forth the philosophy behind the requirement for continuing education for nursing home administrators, and to provide information on the types of continuing education which will be automatically approved by the Board; which types require pre-approval; and the method of calculating hours for continuing education credit.

[10-31-95; 16.13.14.6 NMAC – Rn, 16 NMAC 13.14.6, 1-25-2001]

**16.13.14.7 DEFINITIONS:**

[RESERVED]

[10-31-95; 16.13.14.7 NMAC – Rn, 16 NMAC 13.14.7, 1-25-2001]

**16.13.14.8 CONTINUING EDUCATION PHILOSOPHY:**

Continuing education is one of the most important responsibilities of the nursing home administrator and is a life-long process. A diversity of administrative, management, and health-related learning activities is recommended to enhance the administrator's professional skills and development and for the administrator to stay abreast of changing requirements, laws, and trends in the nursing home field. The responsibility for continuing education rests with the individual.

[2-24-88; 10-31-95; 16.13.14.8 NMAC – Rn, 16 NMAC 13.14.8, 1-25-2001]

**16.13.14.9 APPROVED CONTINUING EDUCATION:**

To be acceptable in New Mexico a continuing education activity must have been approved by a recognized approval body which has been approved by the Board, and must enhance the licensee's scope of professional development as related to his/her activities as a nursing home administrator. The participant must receive a certificate of attendance that validates the number of approved continuing education hours awarded.

[2-24-88; 10-31-95; 16.13.14.9 NMAC – Rn, 16 NMAC 13.14.9, 1-25-2001; A, 04-15-2002]

#### **16.13.14.10 RECOGNIZED APPROVAL BODIES:**

The Board will recognize continuing education which meets the criteria in 16.13.14.8 and 16.13.14.9\_NMAC and which has been sponsored or approved by the following sponsors or approval bodies:

- A. the New Mexico Nursing Home Administrators Board (NMNHAB);
- B. the National Continuing Education Review Service (NCERS);
- C. the New Mexico Health Care Association (NMHCA);
- D. the New Mexico Hospitals and Health Systems Association (NMHSA);
- E. the American College of Health Care Administrators (ACHCA);
- F. the American Association of Homes and Services for the Aging (AAHSA);
- G. the Association of University Programs in Health Care Administration (AUPHA);
- H. the American College of Health Care Executives (ACHCE); and
- I. other State licensing boards for nursing home administrators.

[2-24-88; 9-18-92; 10-31-95; 16.13.14.10 NMAC – Rn, 16 NMAC 13.14.10, 1-25-2001]

#### **16.13.14.11 ACADEMIC CREDIT OR CONTINUING EDUCATION UNITS:**

The Board may approve related education taken in an academic setting. The licensee **must** provide **written** justification directly to the Board showing how the continuing education activity enhanced the licensee's scope of professional development as related to the licensee's activities as a nursing home administrator.

- A. Academic credit from institutions of higher learning;
  - (1) One (1) academic credit is equal to fifteen (15) contact hours.
  - (2) No more than twenty-four (24) **converted academic credit** hours may be carried over to the next renewal period.
- B. Continuing Education Units (CEU's) or contact hours awarded by continuing education divisions within educational institutions of higher learning.

(1) One (1) CEU is equal to ten (10) contact hours.

(2) Six (6) contact hours converted from CEU's may be carried over to the next renewal period.

C. It is recommended that approval be sought prior to renewal in the event the continuing education activity is not approved by the Board.

[2-24-88; 9-18-92; 10-31-95; 16.13.14.11 NMAC – Rn, 16 NMAC 13.14.11, 1-25-2001; A, 04-15-2002]

#### **16.13.14.12 APPROVAL FOR OTHER CONTINUING EDUCATION:**

The Board has an informal arrangement with the New Mexico Health Care Association (NMHCA) through which NMHCA approves other continuing education for individual licensees. Any continuing education activity which is not covered by 16.13.14.10 and 16.13.14.11 NMAC must be submitted to NMHCA for review and approval **before** it can be submitted to the Board toward the licensee's continuing education renewal requirement. NMHCA can be contacted for more information on this approval procedure.

[10-31-95; 16.13.14.12 NMAC – Rn, 16 NMAC 13.14.12, 1-25-2001]

### **PART 15: LOST OR STOLEN LICENSE; NAME CHANGE; DUPLICATE LICENSE**

#### **16.13.15.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board

[10-31-95; 16.13.15.1 NMAC – Rn & A, 16 NMAC 13.15.1, 1-25-2001]

#### **16.13.15.2 SCOPE:**

The provisions in Part 15 of Chapter 13 apply to licensees.

[10-13-95; 16.13.15.2 NMAC – Rn, 16 NMAC 13.15.2, 1-25-2001]

#### **16.13.15.3 STATUTORY AUTHORITY:**

Part 15 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Section 16-13-6 (1993 Repl. Pamp.).

[10-31-95; 16.13.15.3 NMAC – Rn, 16 NMAC 13.15.3, 1-25-2001]

#### **16.13.15.4 DURATION:**

Permanent.

[10-31-95; 16.13.15.4 NMAC – Rn, 16 NMAC 13.15.4, 1-25-2001]

**16.13.15.5 EFFECTIVE DATE:**

October 31, 1995.

[2-24-88...10-31-95; 16.13.15.5 NMAC – Rn, 16 NMAC 13.15.5, 1-25-2001]

**16.13.15.6 OBJECTIVE:**

The objective of Part 15 of Chapter 13 is to set forth the requirements regarding procedures for reporting a lost or stolen license or a legal name change, and for obtaining a duplicate license.

[10-31-95; 16.13.15.6 NMAC – Rn, 16 NMAC 13.15.6, 1-25-2001]

**16.13.15.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.15.7 NMAC – Rn, 16 NMAC 13.15.7, 1-25-2001]

**16.13.15.8 LOST OR STOLEN LICENSE:**

Licensees must give immediate **written** notification to the Board of a lost or stolen license.

[2-24-88; 10-31-95; 16.13.15.8 NMAC – Rn, 16 NMAC 13.15.8, 1-25-2001]

**16.13.15.9 NAME CHANGE:**

Notification to the Board of a name change must be made in writing and must be accompanied by legal proof of the name change (e.g. copy of marriage certificate, divorce decree, etc.).

[2-24-88; 10-31-95; 16.13.15.9 NMAC – Rn, 16 NMAC 13.15.9, 1-25-2001]

**16.13.15.10 DUPLICATE LICENSE:**

A request for a duplicate license must be made in writing and must be accompanied by the required duplicate license fee(s) as specified in Subsections K and L of 16.13.2.8 NMAC.

**A.** A request for a duplicate license with a legal name change must be accompanied by legal proof of the name change.

**B.** Individuals who do not wish to request a duplicate license **must** continue to use the name as it appears in the Board's records in conjunction with his/her NHA professional licensure until the requirements for name change have been met.

[2-24-88; 10-31-95; 16.13.15.10 NMAC – Rn & A, 16 NMAC 13.15.10, 1-25-2001]

## **PART 16: [RESERVED]**

## **PART 17: DISCIPLINARY PROCEEDINGS**

### **16.13.17.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board

[10-31-95; 16.13.17.1 NMAC - Rn, 16 NMAC 13.17.1, 1-25-2001; A, 04-15-2002]

### **16.13.17.2 SCOPE:**

The provisions in Part 17 of Chapter 13 may be of interest to anyone who may wish to file a complaint against a nursing home administrator licensed by the Board. Disciplinary proceedings may be initiated against licensees or applicants.

[10-31-95; 16.13.17.2 NMAC - Rn, 16 NMAC 13.17.2, 1-25-2001]

### **16.13.17.3 STATUTORY AUTHORITY:**

Part 17 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-6, 61-13-13, 61-13-14, and 61-13-15 (1993 Repl. Pamp.) and the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 to 61-1-33 (1993 Repl. Pamp.); and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp).

[10-31-95; 16.13.17.3 NMAC - Rn, 16 NMAC 13.17.3, 1-25-2001; A, 02-15-2004]

### **16.13.17.4 DURATION:**

Permanent.

[10-31-95; 16.13.17.4 NMAC - Rn, 16 NMAC 13.17.4, 1-25-2001]

### **16.13.17.5 EFFECTIVE DATE:**

October 31, 1995, unless a later date is cited at the end of a section.

[2-24-88...10-31-95; 11-29-97; 16.13.17.5 NMAC - Rn, 16 NMAC 13.17.5, 1-25-2001; A, 02-15-2004]

#### **16.13.17.6 OBJECTIVE:**

The objective of Part 17 of Chapter 13 is to set forth the procedures for filing complaints against licensees and the procedures for the Board to follow in processing complaints.

[10-31-95; 16.13.17.6 NMAC - Rn, 16 NMAC 13.17.6, 1-25-2001]

#### **16.13.17.7 DEFINITIONS:**

**A. "Complaint"** means a complaint filed with the board against an applicant for licensure or against a licensee.

**B. "Complainant"** means the party who files a complaint against a licensee or against an applicant for licensure.

**C. "Respondent"** means the licensure applicant or the licensee who is the subject of the complaint filed with the board.

**D. "Hearing"** means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in disciplinary action against the respondent's application for licensure or his or her license to practice nursing home administration.

**E. "Violation"** means a violation of the New Mexico Nursing Home Administrators Act or the rules and regulations duly adopted by the board.

**F. "Notice of contemplated action or NCA"** means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board's intent to take action based upon the violations of practice charged in the subject complaint, and whereby the respondent is afforded the opportunity for a hearing before the board.

**G. "License revocation"** means to prohibit the conduct authorized by the license.

**H. "License suspension"** means to prohibit, for a stated period of time, the conduct authorized by the license.

**I. "License restricted subject to conditions"** means to allow the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.

**J. "Pre-NCA agreement"** means an agreement reached between the board and the respondent as an option to the formal NCA and hearing administrative hearing process.

**K. "Mediation agreement"** means an agreement reached through mediation between the board and the respondent as an option to the formal NCA and formal administrative hearing process.

[11-29-97; 16.13.17.7 NMAC - Rn, 16 NMAC 13.17.7, 1-25-2001; A, 02-15-2004]

#### **16.13.17.8 COMPLAINTS:**

The disciplinary process against a board-licensee may be instituted by sworn complaint on a board-approved form by any person, including board members and board staff. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act.

[10-31-95; 11-29-97; 16.13.17.8 NMAC - Rn, 16 NMAC 13.17.8, 1-25-2001; A, 02-15-2004]

#### **16.13.17.9 INVESTIGATION:**

Upon receipt of the sworn complaint against a board-licensee, the board will cause an investigation to be made into the subject complaint by the board's standards of practice committee.

[10-31-95; 11-29-97; 16.13.17.9 NMAC - Rn, 16 NMAC 13.17.9, 1-25-2001; A, 02-15-2004]

#### **16.13.17.10 STANDARDS OF PRACTICE COMMITTEE:**

The standards of practice committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board as a standards of practice committee.

**A.** The standards of practice committee shall review all documentation provided to it in reference to the subject complaint.

**B.** The standards of practice committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

**C.** The foregoing notwithstanding, the standards of practice committee will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.

**D.** The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

**E.** The standards of practice committee will have independent authority to direct the board administrator to contract for the services of such persons without prior approval of the board after the board administrator has determined budgetary availability for such services.

**F.** Upon completion of its investigation, the standards of practice committee, with the assistance of board counsel may draw up pre-NCA settlement or mediation agreement proposal with the respondent as a means of resolving the complaint. The proposed agreement or any other recommendations by the standards of practice committee concerning proper disposition of the subject complaint shall be reported and presented by the committee to the board for further action.

**G.** Upon review and consideration, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee's recommendations.

**H.** Standards of practice committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or licensees who are the subject of the complaint.

**I.** If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

**J.** If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

**K.** The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

[10-31-95; A, 11-29-97; 16.13.17.10 NMAC - Rn, 16 NMAC 13.17.10, 1-25-2001; A, 02-15-2004]

#### **16.13.17.11 PRIVATE CAUSE OF ACTION:**

Neither the action nor inaction by the Board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[10-31-95; 16.13.17.11 NMAC - Rn, 16 NMAC 13.17.11, 1-25-2001]

### **16.13.17.12 DISCIPLINARY ACTION:**

In accordance with the Uniform Licensing Act, the Board has authority to impose penalties in disciplinary matters. The Uniform Licensing Act allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

**A. Formal Letters of Reprimand:** The Board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be a matter of public record.

**B. [RESERVED]**

**C. [RESERVED]**

**D. RESERVED]**

**E. Prehearing Motions:** The Board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing.

**F. Settlement Agreements:** The Board may enter into a settlement agreement or mediation agreement with the Respondent as a means of resolving a complaint.

**G. [RESERVED]**

**H. Costs of Disciplinary Proceedings:** Licensees or license applicants shall bear all costs of disciplinary proceedings unless they are excused by the Board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 61-1-3 of the Uniform Licensing Act is not taken by the Board.

**I. Uniform Licensing Provision.** In accordance with Section 61-1-7.G of the Uniform Act, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the Board shall be subject to disciplinary action.

**J. License Returned to the Board:** Any wall license, renewal license, or temporary permit issued by the Board must be returned to the Board subsequent to revocation or suspension. The item(s) listed must be returned in person or by certified mail no later than thirty (30) days after the suspension or revocation order by the Board.

**K. Federal Fraud and Abuse Data Bank:** With regard to the Federal Health Care Integrity and Protection Databank (or its successor databank), which was established by

the enactment of the Federal Health Insurance Portability and Accountability Act of 1996:

(1) The Board may report to the databank disciplinary actions taken by the Board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The Board must report to the databank disciplinary actions taken by the Board that do contain an admission or finding of guilt or liability against applicants or licensees.

**L. National Data Bank For Long Term Care Administrators:** With regard to the national databank for long term care administrators established by the National Association of Boards of Examiners for Long Term Care Administrators (or its successor):

(1) The Board may report to the databank disciplinary actions taken by the Board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The Board must report to the databank disciplinary actions taken by the Board that do contain an admission or finding of guilt or liability against applicants or licensees.

[10-31-95; 11-29-97; 16.13.17.12 NMAC - Rn, 16 NMAC 13.17.12, 1-25-2001; A, 04-15-2002]

### **16.13.17.13 COMPLAINTS RELATED TO UNLICENSED PRACTICE:**

In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pam), a person who is not licensed to engage in the practice of nursing home administration by the board is subject to disciplinary action and proceedings by the board if it is determined that he or she has been practicing nursing home administration in New Mexico without a valid New Mexico license.

**A.** The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of nursing home administration.

**B.** In addition, the board may assess the person engaging in the unlicensed practice of nursing home administration and/or the company, firm, or entity that employed the unlicensed person to act in the capacity of nursing home administrator, the administrative costs, including investigative costs and the costs of conducting a hearing.

**C.** Reports of unlicensed practice of nursing home administration may be reported for investigation to the board by phone, fax, mail, or e-mail.

[16.13.17.13 NMAC - N, 02-15-2004]

## **PART 18: GROUNDS FOR DISCIPLINARY ACTION**

### **16.13.18.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board.

[10-31-95; 16.13.18.1 NMAC - Rn, 16 NMAC 13.18.1, 1-25-2001; A, 02-15-2004]

### **16.13.18.2 SCOPE:**

The provisions in Part 18 of Chapter 13 apply to any person found to be in violation of the Nursing Home Administrators Act, NMSA 1978 'Section 61-13-1 through 61-13-17 or the Board's regulations (Chapter 13 of Title 16).

[10-31-95; 16.13.18.2 NMAC - Rn, 16 NMAC 13.18.2, 1-25-2001]

### **16.13.18.3 STATUTORY AUTHORITY:**

Part 18 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-6, 61-13-13, 61-13-14, and 61-13-15 (1993 Repl. Pamp.) and the Uniform Licensing Act, NMSA 1978 Section 61-1-1 through ' 61-1-33 (1993 Repl. Pamp.); and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp).

[10-31-95; 16.13.18.3 NMAC - Rn, 16 NMAC 13.18.3, 1-25-2001; A, 02-15-2004]

### **16.13.18.4 DURATION:**

Permanent.

[10-31-95; 16.13.18.4 NMAC - Rn, 16 NMAC 13.18.4, 1-25-2001]

### **16.13.18.5 EFFECTIVE DATE:**

October 31, 1995.

[10-31-95; 16.13.18.5 NMAC - Rn, 16 NMAC 13.18.5, 1-25-2001]

### **16.13.18.6 OBJECTIVE:**

The objective of Part 18 of Chapter 13 is to set forth the grounds for disciplinary action that subject the licensee and non-licensee to disciplinary action by the board.

[10-31-95; 16.13.18.6 NMAC - Rn, 16 NMAC 13.18.6, 1-25-2001; A, 02-15-2004]

### **16.13.18.7 DEFINITIONS:**

**[RESERVED]**

[10-31-95; 16.13.18.7 NMAC - Rn, 16 NMAC 13.18.7, 1-25-2001]

### **16.13.18.8 DISCIPLINARY GUIDELINES:**

In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines the applicant or licensee has violated the Nursing Home Administrators Act or the board's regulations. The following shall subject the licensee to disciplinary action by the board.

**A.** Fraud or deceit in procuring or attempting to procure a license to practice as a nursing home administrator.

**B.** Knowingly practicing nursing home administration or using any designation with the licensee's name tending to imply, without a valid license, that the licensee is a nursing home administrator; or knowingly aiding, assisting, procuring, advising, or encouraging any unlicensed person to practice nursing home administration or use any designation with the licensee name tending to imply that the licensee is a nursing home administrator without a valid license.

**C.** Conviction by a court of competent jurisdiction of any of the following disqualifying criminal convictions:

- (1)** homicide
- (2)** trafficking, or trafficking in controlled substances;
- (3)** kidnapping, false imprisonment, aggravated assault or aggravated battery
- (4)** rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5)** crimes involving adult abuse, neglect or financial exploitation
- (6)** crimes involving child abuse or neglect; or
- (7)** crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property.
- (8)** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.

**D.** Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

**(1)** Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

**(2)** Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise.

**E.** Having become unable to practice nursing home administration with reasonable skill and safety to residents by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a physical condition.

**(1)** License suspension shall only be in effect during the period of alcohol or drug dependency or physical incapacitation.

**(2)** In enforcing the provisions in Subsections D and E of 16.13.18.8 NMAC, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a licensed professional designated by the board.

**(3)** The cost of such evaluation shall be borne by the licensee or applicant. The results shall be admissible in the hearing before the board, notwithstanding any claim of privilege under a contrary rule or law or statute.

**(4)** If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, a show cause order may be issued from the board directing the licensee or applicant to show cause why he/she should not submit to the examination.

**(5)** The board may enter a final order upon proper notice, hearing, and proof of such refusal.

**(6)** Any licensee or applicant who is prohibited from practicing nursing home administration under Subsections D and E of 16.13.18.8 NMAC will, at reasonable intervals, be afforded an opportunity to demonstrate to the board that he/she can resume the practice of nursing home administration with reasonable skill and safety to residents.

**(7)** Applicants for licensure and renewal who have a history of alcohol or drug dependency shall be required to demonstrate to the satisfaction of the board that they have met all the following requirements:

**(a)** completed a treatment program for alcohol or chemical dependency;

**(b)** remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least two years; and

**(c)** maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and/or alcohol screening of urine or blood.

**F.** Violation of any provision of the Nursing Home Administrators Act or any rules and regulations duly adopted by the board.

**G.** Gross incompetence.

[10/31/1995; 16.13.18.8 NMAC - Rn, 16 NMAC 13.18.8, 1/25/2001; A, 2/15/2004; A, 2/26/2022]

#### **16.13.18.9 GROSS INCOMPETENCE FURTHER DEFINED:**

In performing nursing home administrator functions, a licensee is under the legal duty to possess and to apply the knowledge, skill, and care that is ordinarily possessed and exercised by other licensed nursing home administrators and required by the generally accepted standards of the profession. The failure to possess or to apply to a substantial degree such knowledge, skill, and care constitutes gross incompetence.

**A.** Charges of gross incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the resident or to the public from the act or omission or series of acts or omissions.

**B.** The following shall be deemed prima facie examples of activities which demonstrate that a licensee is unfit or incompetent to serve as a nursing home administrator by reason of negligence, habits, or other causes. The Board shall not be limited to this list in determining whether an act or acts constitute gross incompetence:

**(1)** Willfully acting in a manner inconsistent with the care for the welfare and the health and safety of the residents of the nursing facility in which he is the administrator, administrator/owner, administrator/manager, or administrator/corporate officer;

**(2)** Failure to make good faith attempts using administrative management methods, to assure that the nursing home in which he/she is the administrator, administrator/ owner, administrator/manager, or administrator/corporate officer

conforms with the provisions of pertinent statutes, codes, rules and regulations of the state licensing authority having jurisdiction over the operation and licensing of nursing homes;

(3) Failure to be responsible for planning, organizing, directing, and managing the operation of a nursing home in such a manner to ensure the safety, health, and welfare of the residents in the facility under the licensee administration;

(4) Physical inability to serve as a nursing home administrator as evidenced by the statement of two licensed physicians; or

(5) Willfully permitting unauthorized disclosure of information relating to a resident in a nursing home under the licensee's administration.

[2/24/1988; 10/31/1995; 16.13.18.9 NMAC - Rn, 16 NMAC 13.18.9, 1/25/2001; A, 2/26/2022]

## **PART 19: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

### **16.13.19.1 ISSUING AGENCY:**

New Mexico Nursing Home Administrators Board 725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.

[10-31-95; 16.13.19.1 NMAC – Rn, 16 NMAC 13.19.1, 1-25-2001]

### **16.13.19.2 SCOPE:**

The provisions of Part 19 of Chapter 13 apply to all license applicants and licensees.

[10-31-95; 16.13.19.2 NMAC – Rn, 16 NMAC 13.19.2, 1-25-2001]

### **16.13.19.3 STATUTORY AUTHORITY:**

Part 19 of Chapter 13 is promulgated pursuant to the Parental Responsibility Act (Chapter 25, Laws of 1995).

[10-31-95; 16.13.19.3 NMAC – Rn, 16 NMAC 13.19.3, 1-25-2001]

### **16.13.19.4 DURATION:**

Permanent.

[10-31-95; 16.13.19.4 NMAC – Rn, 16 NMAC 13.19.4, 1-25-2001]

### **16.13.19.5 EFFECTIVE DATE:**

October 31, 1995.

[10-31-95; 16.13.19.5 NMAC – Rn, 16 NMAC 13.19.5, 1-25-2001]

**16.13.19.6 OBJECTIVE:**

The objective of Part 19 of Chapter 13 is to set forth the regulations for enforcing the provisions of the Parental Responsibility Act.

[10-31-95; 16.13.19.6 NMAC – Rn, 16 NMAC 13.19.6, 1-25-2001]

**16.13.19.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in Part 19 of Chapter 13. As used in Part 19:

- A.** "HSD" means the New Mexico Human Services Department;
- B.** "Statement of Compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and
- C.** "Statement of Non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and an order for support.

[10-31-95; 16.13.19.7 NMAC – Rn, 16 NMAC 13.19.7, 1-25-2001]

**16.13.19.8 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the Board:

- A.** shall deny an application for a license;
- B.** shall deny the renewal of license; and
- C.** has grounds for suspension or revocation of the license.

[10-31-95; 16.13.19.8 NMAC – Rn, 16 NMAC 13.19.8, 1-25-2001]

**16.13.19.9 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the Board shall match the certified list against the current list of Board licensees and applicants.

**A.** Upon the later receipt of an application for license or renewal, the Board shall match the applicant against the current certified list.

**B.** By the end of the month in which the certified list is received, the Board shall report to HSD the names of Board applicants and licensees who are on the certified list and the action the Board has taken in connection with such applicants and licensees.

[10-31-95; 16.13.19.9 NMAC – Rn, 16 NMAC 13.19.9, 1-25-2001]

**16.13.19.10 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the Board shall:

**A.** commence a formal proceeding as set forth in 16.13.19.11 NMAC to take the appropriate action under 16.13.19.8 NMAC; (or

**B.** for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the Board with a subsequent Statement of Compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed thirty (30) days. If the licensee fails to provide this statement, the Board shall commence a formal proceeding as set forth in 16.13.19.11 NMAC.

[10-31-95; 16.13.19.10 NMAC – Rn, 16 NMAC 13.19.10, 1-25-2001]

**16.13.19.11 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in 16.13.19.8 NMAC, the Board shall serve upon the applicant or licensee a written notice stating that:

**A.** the Board has grounds to take such action, and that the Board shall take such action unless the licensee or applicant:

**(1)** mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

**(2)** provides the Board, within thirty (30) days of the date of the notice, with a Statement of Compliance from HSD; and

**B.** if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD Child Support Enforcement Division.

[10-31-95; 16.13.19.11 NMAC – Rn, 16 NMAC 13.19.11, 1-25-2001]

**16.13.19.12 EVIDENCE AND PROOF:**

In any hearing under Part 19 of Chapter 13, relevant evidence is limited to the following:

**A.** A Statement of Non-compliance is conclusive evidence that requires the Board to take the appropriate action under 16.13.19.8 NMAC, unless:

**B.** The applicant or licensee provides the Board with a subsequent Statement of Compliance which shall preclude the Board from taking any action under Part 19 of Chapter 13.

[10-18-95; 16.13.19.12 NMAC – Rn, 16 NMAC 13.19.12, 1-25-2001]

#### **16.13.19.13 ORDER:**

When a disciplinary action is taken under Part 19 of Chapter 13 solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent Statement of Compliance. The Board may also include any other conditions necessary to comply with Board requirements for reapplications or reinstatement of lapsed licenses.

[10-31-95; 16.13.19.13 NMAC – Rn, 16 NMAC 13.19.13, 1-25-2001]

#### **16.13.19.14 PROCEDURES:**

Proceedings under Part 19 of Chapter 13 shall be governed by the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 through 61-1-33 (1993 Repl. Pam.).

[10-31-95; 16.13.19.14 NMAC – Rn, 16 NMAC 13.19.14, 1-25-2001]

## **CHAPTER 14: NUTRITION AND DIETETIC PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.14.1.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, NM 87504.

[16.14.1.1 NMAC - Rp, 16 NMAC 14.1.1 NMAC, 8/1/2011]

#### **16.14.1.2 SCOPE:**

The provisions in Part 1 apply to all parts of Chapter 14, and provide relevant information to anyone affected by or interested in the licensing and regulation of dietitians, nutritionists and nutrition associates.

[16.14.1.2 NMAC - Rp, 16 NMAC 14.1.2, 8/1/2011]

**16.14.1.3 STATUTORY AUTHORITY:**

Subsections A of Sections 61-7-1 through 61-7-15 NMSA 1978 (Laws of 1996 and 1993 Repl. Pamp.), Section 11 of Part 1 is authorized by Section 10-15-1,C (1993 Repl. Pamp.). Sections 12 and 13 of Part 1 are authorized by Sections 14-2-1 through 14-2-16 NMSA 1978 (1993 Repl. Pamp.).

[16.14.1.3 NMAC - Rp, 16 NMAC 14.1.3, 8/1/2011]

**16.14.1.4 DURATION:**

Permanent.

[16.14.1.4 NMAC - Rp, 16 NMAC 14.1.4, 8/1/2011]

**16.14.1.5 EFFECTIVE DATE:**

8/01/2011, unless a later date is cited at the end of a section.

[16.14.1.5 NMAC - Rp, 16 NMAC 14.1.5, 8/1/2011]

**16.14.1.6 OBJECTIVE:**

To set forth the provisions which apply to all of Chapter 14, and to all persons and entities affected or regulated by Chapter 14 of Title 16.

[16.14.1.6 NMAC - Rp, 16 NMAC 14.1.6, 8/1/2011]

**16.14.1.7 DEFINITIONS:**

**A. "Act"** means the Nutrition and Dietetics Practice Act.

**B. "CDR"** means the commission on dietetic registration.

**C. "American board of nutrition"** referred to in the act is now known as American clinical board of nutrition.

**D. "American institute of nutrition"** referred to in the act is now known as American society for nutrition.

**E. "Reciprocity"** means the ability of a qualified licensed applicant from another state to obtain a license in the State of New Mexico, if the qualified licensed applicant meets the requirements for licensure in the state.

[16.14.1.7 NMAC - Rp, 16 NMAC 14.1.7, 8/1/2011; A, 6/6/2020]

#### **16.14.1.8 LICENSE DISPLAY:**

A valid license or permit must be displayed and must be visible to the public in each place of employment or business of the licensee. Licensees who do not have a permanent office must have a valid license/permit available for public inspections during business hours.

[16.14.1.8 NMAC - Rp, 16 NMAC 14.1.8, 8/1/2011]

#### **16.14.1.9 LICENSEE RESPONSIBILITY:**

The board assumes no responsibility for renewal applications or other documents not received by the licensee for any reason. It is the licensees responsibility to make timely request for the renewal form or other required documents.

[16.14.1.9 NMAC - Rp, 16 NMAC 14.1.9, 8/1/2011]

#### **16.14.1.10 CHANGE OF ADDRESS:**

Any licensee or applicant who changes their mailing address must notify the board in writing within 30 days of the change.

[16.14.1.10 NMAC - Rp, 16 NMAC 14.1.10, 8/1/2011]

#### **16.14.1.11 TELEPHONE CONFERENCES:**

If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through a conference telephone. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.14.1.11 NMAC - Rp, 16 NMAC 14.1.11, 8/1/2011]

#### **16.14.1.12 PUBLIC RECORDS:**

Except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the board.

[16.14.1.12 NMAC - Rp, 16 NMAC 14.1.12, 8/1/2011]

#### **16.14.1.13 INSPECTION OF PUBLIC RECORDS:**

The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16 NMSA 1978. The board administrator is the custodian of the board's records.

[16.14.1.13 NMAC - Rp, 16 NMAC 14.1.13, 8/1/2011]

**16.14.1.14 CONFIDENTIAL RECORDS:**

The following records are considered confidential and are not subject to public inspection:

- A. letters of reference concerning employment, licensing or permits;
- B. medical reports or records of chemical dependency, physical or mental examinations or treatment;
- C. investigative files; and
- D. letters or memorandum which are matters of opinion in personnel files or students' cumulative files.

[16.14.1.14 NMAC - Rp, 16 NMAC 14.1.14, 8/1/2011; A, 3/31/2015]

**16.14.1.15 SEVERABILITY:**

If any part of these rules are held invalid by a court of competent jurisdiction, the remaining provisions of the rules shall remain in force and effect, unless otherwise determined by a court of competent jurisdiction.

[16.14.1.15 NMAC - Rp, 16 NMAC 14.1.15, 8/1/2011]

**PART 2: FEES**

**16.14.2.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, NM 87504.

[16.14.2.1 NMAC - Rp, 16 NMAC 14.2.1 NMAC, 08/01/2011]

**16.14.2.2 SCOPE:**

The provisions of Part 2 apply to all individuals licensed or applying for licensure to practice as a dietitian, nutritionist, or nutrition associate and to anyone who requests a list or labels of licensees.

[16.14.2.2 NMAC - Rp, 16 NMAC 14.2.2, 08/01/2011]

**16.14.2.3 STATUTORY AUTHORITY:**

Section 61-7A-11 NMSA 1978 (1993 Repl. Pamp.).

[16.14.2.3 NMAC - Rp, 16 NMAC 14.2.3, 08/01/2011]

**16.14.2.4 DURATION:**

Permanent.

[16.14.2.4 NMAC - Rp, 16 NMAC 14.2.4, 08/01/2011]

**16.14.2.5 EFFECTIVE DATE:**

08/01/2011, unless a later date is cited at the end of a section.

[16.14.2.5 NMAC - Rp, 16 NMAC 14.2.5, 08/01/2011]

**16.14.2.6 OBJECTIVE:**

To establish fees to generate revenue adequate to fund the cost of program administration.

[16.14.2.6 NMAC - Rp, 16 NMAC 14.2.6, 08/01/2011]

**16.14.2.7 DEFINITIONS:**

[RESERVED]

**16.14.2.8 FEES:**

- A. All fees are non-refundable.
- B. Initial application fee of fifty dollars (\$50.00).
- C. Initial license fee of one hundred and fifty dollars (\$150.00) for each license must be paid after application approval and before license issuance, pursuant to Paragraph (1) of Subsection A of 16.4.3.11 NMAC.
- D. A license renewal fee of seventy-five dollars (\$75.00).
- E. A reinstatement fee of fifty dollars (\$50.00) must be paid in addition to any other fees due at the time of reinstatement.
- F. A duplicate license fee of twenty dollars (\$20.00).

[16.14.2.8 NMAC - Rp, 16 NMAC 14.2.8, 08/01/2011]

**16.14.2.9 TRANSFER OF LICENSE CATEGORY:**

Within the first year of licensure, the licensee may transfer categories for which he is eligible, by submitting an additional application form and application fee of fifty dollars (\$50.00).

[16.14.2.9 NMAC - Rp, 16 NMAC 14.2.9, 08/01/2011]

### **PART 3: REQUIREMENTS FOR LICENSURE**

#### **16.14.3.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, NM 87504, (505) 827-7169.

[8/31/96; 16.14.3.1 NMAC - Rn, 16 NMAC 14.3.1, 11/22/2005]

#### **16.14.3.2 SCOPE:**

The provisions of Part 3 apply to all individuals applying for licensure to practice as a dietitian, nutritionist, or nutrition associate in New Mexico.

[8/31/96; 16.14.3.2 NMAC - Rn, 16 NMAC 14.3.2, 11/22/2005]

#### **16.14.3.3 STATUTORY AUTHORITY:**

Sections 61-7A-6 through 61-7A-7 NMSA 1978 (Laws of 1996 and 1993 Repl. Pamp.).

[8/31/96; 16.14.3.3 NMAC - Rn, 16 NMAC 14.3.3, 11/22/2005]

#### **16.14.3.4 DURATION:**

Permanent.

[8/31/96; 16.14.3.4 NMAC - Rn, 16 NMAC 14.3.4, 11/22/2005]

#### **16.14.3.5 EFFECTIVE DATE:**

8-31-96

[8/31/96; 16.14.3.5 NMAC - Rn, 16 NMAC 14.3.5, 11/22/2005]

#### **16.14.3.6 OBJECTIVE:**

To establish the requirements for licensure, as well as the required documentation and licensing process for all applicants.

[8/31/96; 16.14.3.6 NMAC - Rn, 16 NMAC 14.3.6, 11/22/2005]

### **16.14.3.7 DEFINITIONS:**

RESERVED

[8/31/96; 16.14.3.7 NMAC - Rn, 16 NMAC 14.3.7, 11/22/2005; A, 08/01/2011]

### **16.14.3.8 REQUIREMENTS FOR DIETITIAN LICENSE:**

#### **A. Prerequisites:**

(1) valid current registration with CDR which includes successful completion of the CDR examination and gives the applicant the right to use the term "registered dietitian" or "RD" or

(2) license in another state which has standards for licensure not less stringent than those in New Mexico.

**B. Documentation:** Each applicant for a license to practice as a dietitian must submit the required fees and following documentation:

(1) a completed and signed application;

(2) a copy of CDR card;

(3) applicants who are currently, or have previously been, licensed in another state(s) must provide a copy of each license and a verification of license status directly to the board from the state(s) where licensed; and

(4) a background check shall be conducted within past 90 days for initial licensure only.

**C. Disqualifying convictions:** Conviction by a court of competent jurisdiction of any of the following potentially disqualifying felony criminal convictions:

(1) homicide, involuntary or voluntary manslaughter;

(2) manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;

(3) kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

**(5)** crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;

**(6)** crimes involving child abuse or neglect, child endangerment;

**(7)** crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property;

**(8)** crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds.

**D. Other convictions:** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

**E. Mental competency:** Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

**(1)** Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

**(2)** Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise

**F. Scope of conduct:** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony convictions listed in Subsection A of this rule.

**G. Prohibited disclosure:** In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

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

**(2)** a conviction that has been sealed, dismissed, expunged or sealed;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

**H. Notice and hearing:** If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/licensee will receive notice and opportunity for a hearing.

[3/30/1990...8/31/1996; 16.14.3.8 NMAC - Rn, 16 NMAC 14.3.8, 11/22/2005; A, 8/1/2011; A, 2/9/2022]

### **16.14.3.9 REQUIREMENTS FOR NUTRITIONIST LICENSE:**

**A. Education requirements:** Each applicant for a license as a nutritionist must have one of the following:

(1) master's degree or doctorate in human nutrition, nutrition education, foods and nutrition, or public health nutrition from a college or university accredited by a member of the council on post-secondary accreditation; or

(2) valid current evidence of membership in one of the following organizations: American clinical board of nutrition or American society for nutrition.

**B. Additional requirements:**

(1) pass an examination related to entry level nutrition practice and nutrition care services which has been approved by the board; or

(2) be licensed in another state which has standards for licensure not less stringent than those in New Mexico.

**C. Documentation:** Each applicant for license to practice as a nutritionist must submit the required fees and following documentation:

(1) completed and signed application;

(2) official transcript verifying degree required in Paragraph (1) of Subsection A of 16.14.3.9 NMAC, mailed directly from the college or university; or

(3) proof of membership in the organizations specified in Paragraph (2) of Subsection A of 16.14.3.9 NMAC;

(4) applicants who are currently, or have previously been, licensed in another state(s) must provide a copy of each license and a verification of license status directly to the board from the state(s) where licensed;

(5) a background check shall be conducted within past 90 days for initial licenses only

**D. Disqualifying convictions:** Conviction by a court of competent jurisdiction of any of the following potentially disqualifying felony criminal convictions:

- (1) homicide, involuntary or voluntary manslaughter;
- (2) manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;
- (3) kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5) crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;
- (6) crimes involving child abuse or neglect, child endangerment;
- (7) crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property;
- (8) crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds.

**E. Other convictions:** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

**F. Mental competency:** Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

**(2)** Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise

**G. Scope of conduct:** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

**H. Prohibited disclosure:** In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

- (1)** an arrest not followed by a valid conviction;
- (2)** a conviction that has been sealed, dismissed, expunged or sealed;
- (3)** a juvenile adjudication; or

**(4)** a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

**I. Notice and hearing:** If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/licensee will receive notice and opportunity for a hearing.

[3/30/1990...8/31/1996; 16.14.3.9 NMAC - Rn, 16 NMAC 14.3.9, 11/22/2005; A, 8/1/2011; A, 2/9/2022]

#### **16.14.3.10 REQUIREMENTS FOR NUTRITION ASSOCIATE LICENSE:**

**A. Education requirements:** Each applicant for a license as a nutrition associate must have:

**(1)** a baccalaureate or higher degree from a college or university accredited by a member of the council on post-secondary accreditation; and

**(2)** completion of the academic requirements that qualify the applicant for an internship or equivalent program as approved by the commission on dietetic registration; and

**B. Additional requirements:**

(1) pass an examination related to entry level nutrition practice and nutrition care services which has been approved by the board; or

(2) be licensed in another state which has standards for licensure not less stringent than those in New Mexico.

**C. Documentation:** Each applicant for a license to practice as a nutrition associate must submit the required fees and following documentation:

(1) completed and signed application;

(2) official transcript verifying degree required in Paragraph (1) of Subsection A of 16.14.3.10 NMAC, mailed directly from the college or university; and

(3) American dietetic association verification statement completed by a program director which verifies eligibility for an internship or equivalent program approved by CDR; and

(4) applicants who are currently, or have previously been, licensed in another state(s) must provide a copy of each license and a verification of license status directly to the board from the state(s) where licensed;

(5) completed employment information form documenting supervision by a New Mexico licensed dietitian or nutritionist; documentation is required for subsequent changes in employment or supervision; and

(6) a background check shall be conducted within past 90 days for initial licenses only.

**D. Disqualifying convictions:** Conviction by a court of competent jurisdiction of any of the following potentially disqualifying felony criminal convictions:

(1) homicide, involuntary or voluntary manslaughter;

(2) manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;

(3) kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;

**(6)** crimes involving child abuse or neglect, child endangerment;

**(7)** crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property.

**(8)** crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds

**E. Other convictions:** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

**F. Mental competency:** Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

**(1)** Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

**(2)** Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise

**G. Scope of conduct:** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

**H. Prohibited disclosure:** In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

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

**(2)** a conviction that has been sealed, dismissed, expunged or sealed;

**(3)** a juvenile adjudication; or

**(4)** a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

**I.** Notice and hearing: If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/licensee will receive notice and opportunity for a hearing.

[3/30/1990...8/31/1996; 16.14.3.10 NMAC - Rn, 16 NMAC 14.3.10, 11/22/2005; A, 8/1/2011; A, 2/9/2022]

#### **16.14.3.11 INITIAL LICENSES AND LICENSE PERIOD:**

**A.** The board shall issue an initial license to an applicant who meets the requirements of the Nutrition and Dietetics Practice Act and has paid the fees required under Part 2. If the applicant fails to pay all required fees within 30 days of notification of board approval, the application shall be deemed withdrawn. The applicant shall then be required to reapply and pay all fees required under Part 2.

**B.** All licenses will be valid for one year.

**(1)** The issue date for all initial licenses will be the date payment is received following board approval of the request for licensure.

**(2)** Each renewal license shall be valid for a period of one year beginning the day after the date of expiration of the license being renewed.

**(3)** Licenses which lapse and are then reinstated will be valid for one year from the first day of the month following board approval of reinstatement.

**(4)** New licenses which are issued as the result of a change of licensing category will be valid for one year from the date of issuance of the new license.

**C.** Applications for registration shall be completed on a form provided by the nutrition and dietetics board.

**D.** The applicant shall provide a complete application that includes the following information:

- (1)** Applicant's full name;
- (2)** current mailing address;
- (3)** current electronic mail address, if any;
- (4)** date of birth;

- (5) background check, if required; and
- (6) proof as described in Subsection C below.

E. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

F. The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

G. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

H. A license issued pursuant to this section shall be valid for the time period that is specified in the Nutrition and Dietetics Act.

[4/7/1993; 16.14.3.11 NMAC - Rn, 16 NMAC 14.3.11, 11/22/2005; A, 2/9/2022]

#### **16.14.3.12 PROVISIONS FOR EMERGENCY LICENSURE:**

A. Nutrition and dietetic practitioners currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the (4) four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the nutrition and dietetic practitioners board of a completed application that has been signed and that is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) other required verification may be obtained from the commission on dietetic registration;

(3) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.14.3.8, 16.14.3.9, 16.14.3.10 NMAC; and

(4) sworn affidavit that the applicant was personally or professionally affected by the disaster.

B. The board will waive fees.

C. The board may waive the specific forms required under 16.14.3.8, 16.14.3.9, 16.14.3.10 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster area.

D. Emergency provisional license shall expire one (1) year from the date of issue of the emergency issued license. Application for a permanent license shall be made before the one-year expiration date of the emergency license, at which time, license fees will be required.

E. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the permanent license.

[16.14.3.12 NMAC - N/E, 11/22/2005; A, 08/01/2011]

### **16.14.3.13 TERMINATION OF EMERGENCY LICENSE:**

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of an initial license under section 16.14.3.11 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit or misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.14.3.13 NMAC - N/E, 11/22/2005]

## **PART 4: PROVISIONAL PERMITS**

### **16.14.4.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico 87504.

[16.14.4.1 NMAC - Rp, 16 NMAC 14.4.1 NMAC, 08/01/2011]

### **16.14.4.2 SCOPE:**

All individuals applying for licensure to practice as a dietitian or nutritionist in New Mexico.

[16.14.4.2 NMAC - Rp, 16 NMAC 14.4.2, 08/01/2011]

### **16.14.4.3 STATUTORY AUTHORITY:**

Section 61-7A-9 NMSA 1978 (1993 Repl. Pamp.).

[16.14.4.3 NMAC - Rp, 16 NMAC 14.4.3, 08/01/2011]

### **16.14.4.4 DURATION:**

Permanent.

[16.14.4.4 NMAC - Rp, 16 NMAC 14.4.4, 08/01/2011]

### **16.14.4.5 EFFECTIVE DATE:**

08/01/2011, unless a later date is cited at the end of a section.

[16.14.4.5 NMAC - Rp, 16 NMAC 14.4.5, 08/01/2011]

### **16.14.4.6 OBJECTIVE:**

To establish procedures to issue provisional permits to applicants who have met all relevant education and experience requirements and who are waiting to take the required examination, or applicants who have met all the requirements but are waiting for board approval of the application.

[16.14.4.6 NMAC - Rp, 16 NMAC 14.4.6, 08/01/2011]

#### **16.14.4.7 DEFINITIONS:**

"Provisional permit" means a permit which allows the applicant to work as a dietitian or nutritionist while waiting for board approval of the application or for the applicant to take the examination required for licensure.

[16.14.4.7 NMAC - Rp, 16 NMAC 14.4.7, 08/01/2011]

#### **16.14.4.8 PROCEDURE FOR ISSUANCE:**

A provisional permit to practice as a dietitian or nutritionist may be issued by the board administrator upon receipt of a completed application. A provisional permit may not be issued until the application is complete, except for required examinations, and the initial application fee has been paid.

[16.14.4.8 NMAC - Rp, 16 NMAC 14.4.8, 08/01/2011]

#### **16.14.4.9 DIETITIANS:**

The application must include proof of completion of the education and experience required for registration as a dietitian with CDR.

[16.14.4.9 NMAC - Rp, 16 NMAC 14.4.9, 08/01/2011]

#### **16.14.4.10 NUTRITIONISTS:**

The application must include proof of completion of the education or membership requirements for licensure in Paragraph (1) of Subsection A of 16.14.3.10 NMAC.

[16.14.4.10 NMAC - Rp, 16 NMAC 14.4.10, 08/01/2011]

#### **16.14.4.11 PERMIT PERIOD:**

The provisional permit may be issued for a period not to exceed six months. This period will allow the applicant to take the exam, be notified of the results and the board to act on the request for licensure.

A. If the permit holder passed the exam and is approved for licensure, payment of the initial license fee must be received before the expiration of the permit.

B. If the permit holder fails the third exam taken, the provisional permit is null and void effective the date results are obtained, unless an exception is recognized by CDR.

C. Applications will be maintained for one year following the date of receipt by the board office.

[16.14.4.11 NMAC - Rp, 16 NMAC 14.4.11, 08/01/2011]

#### **16.14.4.12 RE-ISSUANCE OF PERMITS:**

Individuals who do not pass the CDR examination after three attempts may not be issued an additional provisional permit. Individuals who are unable to take or complete the examination and have been excused by the board in accordance with 16.14.5.12 NMAC will be issued one additional provisional permit.

[16.14.4.12 NMAC - Rp, 16 NMAC 14.4.12, 08/01/2011]

### **PART 5: EXAMINATIONS**

#### **16.14.5.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico 87504.

[16.14.5.1 NMAC - Rp, 16 NMAC 14.5.1 NMAC, 8/1/2011]

#### **16.14.5.2 SCOPE:**

All individuals applying for licensure to practice as a dietitian, nutritionist or nutrition associate in New Mexico.

[16.14.5.2 NMAC - Rp, 16 NMAC 14.5.2, 8/1/2011]

#### **16.14.5.3 STATUTORY AUTHORITY:**

Sections 61-7A-1 through 61-7A-15 NMSA 1978 (Laws of 1996).

[16.14.5.3 NMAC - Rp, 16 NMAC 14.5.3, 8/1/2011]

#### **16.14.5.4 DURATION:**

Permanent.

[16.14.5.4 NMAC - Rp, 16 NMAC 14.5.4, 8/1/2011]

#### **16.14.5.5 EFFECTIVE DATE:**

8/1/2011, unless a later date is cited at the end of a section.

[16.14.5.5 NMAC - Rp, 16 NMAC 14.5.5, 8/1/2011]

#### **16.14.5.6 OBJECTIVE:**

To establish the regulations regarding examination policies and procedures for licensure. The categories of licensed nutritionist and licensed dietitian share a basic scope of practice and therefore will be tested on the same material.

[16.14.5.6 NMAC - Rp, 16 NMAC 14.5.6, 8/1/2011]

**16.14.5.7 DEFINITIONS:**

**[RESERVED]**

[16.14.5.7 NMAC - Rp, 16 NMAC 14.5.7, 8/1/2011]

**16.14.5.8 REQUIRED EXAMINATION:**

**A.** For dietitians, the entry-level examination for registration as a dietitian developed and administered by CDR is required for licensure in New Mexico.

**B.** For nutritionists, the entry-level examination for registration as a dietitian developed and administered by CDR is required for licensure in New Mexico.

**C.** For nutrition associates, the examination for registration as a dietetic technician developed and administered by CDR is required for licensure in New Mexico.

[16.14.5.8 NMAC - Rp, 16 NMAC 14.5.8, 8/1/2011]

**16.14.5.9 TEST ADMINISTRATION:**

Examinations are offered by CDR in a computerized format on dates and locations determined by the applicant. Individuals applying for licensure as a nutritionist or nutrition associate must make application through the board to be eligible to take the CDR exam. Dietitians who require a provisional permit to practice in New Mexico prior to passing the CDR exam must apply for the exam through the board. The names of applicants who are deemed eligible by the board to take the examination will be forwarded to CDR and their testing agency. The application to take the examination will then be sent directly to the applicant. Payment for the examination is sent directly to the testing agency in accordance with the procedures outlined in the candidate handbook.

[16.14.5.9 NMAC - Rp, 16 NMAC 14.5.9, 8/1/2011; A, 6/6/2020]

**16.14.5.10 PASSING SCORE:**

The passing score will be established by CDR based on the cut-score for the examination. A certified copy of the exam results submitted by the applicant will be accepted as proof of a passing score.

[16.14.5.10 NMAC - Rp, 16 NMAC 14.5.10, 8/1/2011]

**16.14.5.11 RE-EXAMINATION POLICY:**

Individuals who do not obtain a passing score on the examination may re-take the exam within the guidelines provided by CDR. However, applicants may not practice in New

Mexico as a dietitian, nutritionist, or nutrition associate if they have failed the exam more than three times.

[16.14.5.11 NMAC - Rp, 16 NMAC 14.5.11, 8/1/2011]

**16.14.5.12 MISSED EXAMINATION:**

The board may excuse candidates who for circumstances beyond their control are unable to take or complete the exam within the provisional permit period.

[16.14.5.12 NMAC - Rp, 16 NMAC 14.5.12, 8/1/2011]

**PART 6: LICENSE RENEWAL**

**16.14.6.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico 87504.

[16.14.6.1 NMAC - Rp, 16 NMAC 14.6.1 NMAC, 08/01/2011]

**16.14.6.2 SCOPE:**

All individuals licensed to practice as a dietitian, nutritionist or nutrition associate in the state of New Mexico.

[16.14.6.2 NMAC - Rp, 16 NMAC 14.6.2, 08/01/2011]

**16.14.6.3 STATUTORY AUTHORITY:**

Section 61-7A-10 NMSA 1978 (1993 Repl. Pamp.).

[16.14.6.3 NMAC - Rp, 16 NMAC 14.6.3, 08/01/2011]

**16.14.6.4 DURATION:**

Permanent.

[16.14.6.4 NMAC - Rp, 16 NMAC 14.6.4, 08/01/2011]

**16.14.6.5 EFFECTIVE DATE:**

08/01/2011, unless a later date is cited at the end of a section.

[16.14.6.5 NMAC - Rp, 16 NMAC 14.6.5, 08/01/2011]

**16.14.6.6 OBJECTIVE:**

To establish the policies, procedures and requirements for license renewal.

[16.14.6.6 NMAC - Rp, 16 NMAC 14.6.6, 08/01/2011]

**16.14.6.7 DEFINITIONS:**

[RESERVED]

**16.14.6.8 ANNUAL RENEWAL REQUIRED:**

Every person licensed under the Nutrition and Dietetics Practice Act shall renew their license annually on or before the expiration date by submitting a renewal application, the renewal fee, proof of compliance with continuing education requirements and any other documentation required by the board.

[16.14.6.8 NMAC - Rp, 16 NMAC 14.6.8, 08/01/2011; A, 6/6/2020]

**16.14.6.9 RENEWAL DEADLINE:**

Failure to submit a renewal application, renewal fee and proof of compliance with continuing education requirements within thirty (30) days of license expiration date shall result in a lapsed license. If the license is allowed to lapse the license holder shall no longer practice as a dietitian, nutritionist or nutrition associate until the license has been reinstated in accordance with 16.14.7 NMAC.

[16.14.6.9 NMAC - Rp, 16 NMAC 14.6.9, 08/01/2011]

**16.14.6.10 CONTINUING EDUCATION REQUIREMENTS:**

**A.** Dietitians must verify current registration with CDR as set in CDR guidelines. These guidelines are available from CDR website.

**B.** Nutritionists and nutrition associates must provide proof of completion of at least fifteen (15) clock hours or verify current registration with CDR. Excess hours, up to a total of fifteen (15) hours, may be carried over to the next licensing period.

[16.14.6.10 NMAC - Rp, 16 NMAC 14.6.10, 8/1/2011]

**PART 7: LICENSE REINSTATEMENT**

**16.14.7.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico 87504.

[16.14.7.1 NMAC - Rp, 16 NMAC 14.7.1 NMAC, 8/1/2011]

**16.14.7.2 SCOPE:**

All individuals licensed to practice as a dietitian, nutritionist or nutrition associate in New Mexico.

[16.14.7.2 NMAC - Rp, 16 NMAC 14.7.2, 8/1/2011]

**16.14.7.3 STATUTORY AUTHORITY:**

Section 61-7A-10 NMSA 1978 (1993 Repl. Pamp.).

[16.14.7.3 NMAC - Rp, 16 NMAC 14.7.3, 8/1/2011]

**16.14.7.4 DURATION:**

Permanent.

[16.14.7.4 NMAC - Rp, 16 NMAC 14.7.4, 8/1/2011]

**16.14.7.5 EFFECTIVE DATE:**

8/1/2011, unless a later date is cited at the end of a section.

[16.14.7.5 NMAC - Rp, 16 NMAC 14.7.5, 8/1/2011]

**16.14.7.6 OBJECTIVE:**

To establish policies and procedures for individuals who allow their license to lapse through non-renewal.

[16.14.7.6 NMAC - Rp, 16 NMAC 14.7.6, 8/1/2011]

**16.14.7.7 DEFINITIONS:**

[RESERVED]

**16.14.7.8 REINSTATEMENT OF A LAPSED LICENSE:**

Any person who allows his license to lapse by failing to renew their license within thirty days of expiration may be reinstated by the board and issued a renewal license upon submission of a renewal application with proof satisfactory to the board of compliance with the continuing education and other requirements of 16.14.3 NMAC and payment of the annual renewal fee and the reinstatement fee. A license which has been allowed to lapse for more than three years must reapply as a new applicant, pay all initial licensing fees and meet all the requirements of 16.14.3 NMAC.

[16.14.7.8 NMAC - Rp, 16 NMAC 14.7.8, 08/01/2011; A, 6/6/2020]

**16.14.7.9 REINSTATEMENT OF A REVOKED LICENSE:**

A person whose license has been revoked by the board may apply for restoration of the license no earlier than one year after revocation. In addition to the required completed application and fees, the applicant may be required to provide additional documentation at the discretion of the board prior to issuing a license. Required documentation may include, but is not limited to, additional continuing education, re-examination, proof of rehabilitation, mandatory participation in a monitored treatment program or other type of alcohol or drug rehabilitation, or supervised practice.

[16.14.7.9 NMAC - Rp, 16 NMAC 14.7.9, .8/1/2011]

## **PART 8-9: [RESERVED]**

## **PART 10: CODE OF ETHICS**

### **16.14.10.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico 87504.

[16.14.10.1 NMAC - Rp, 16 NMAC 14.10.1 NMAC, 8/1/2011]

### **16.14.10.2 SCOPE:**

The provisions in Part 10 of Chapter 14 apply to any individual licensed to practice as a dietitian, nutritionist or nutrition associate in the state of New Mexico.

[16.14.10.2 NMAC - Rp, 16 NMAC 14.10.2, 8/1/2011]

### **16.14.10.3 STATUTORY AUTHORITY:**

Nutrition and Dietetic Practice Act, Section 61-7A-6A(6) NMSA 1978 (1993 Repl. Pamp.).

[16.14.10.3 NMAC - Rp, 16 NMAC 14.10.3, 8/1/2011]

### **16.14.10.4 DURATION:**

Permanent.

[16.14.10.4 NMAC - Rp, 16 NMAC 14.10.4, 8/1/2011]

### **16.14.10.5 EFFECTIVE DATE:**

8/1/2011, unless a later date is cited at the end of a section.

[16.14.10.5 NMAC - Rp, 16 NMAC 14.10.5, 8/1/2011 ]

### **16.14.10.6 OBJECTIVE:**

To establish a standard of ethical and professional practice for licensed dietitians, nutritionists, and nutrition associates.

[16.14.10.6 NMAC - Rp, 16 NMAC 14.10.6, 8/1/2011]

**16.14.10.7 DEFINITIONS:**

[RESERVED]

**16.14.10.8 STANDARDS OF PRACTICE:**

**A. Non-discrimination:** The licensee shall provide nutrition care service with objectivity and with respect for the unique needs and values of an individual.

(1) The licensee shall avoid discrimination on the basis of factors that are irrelevant to the provision of nutrition care services, including, but not limited to race, ethnicity, sexual orientation, religion, gender, age, physical disabilities.

(2) The licensee shall provide sufficient information to enable a client to make an informed decision.

**B. Credentials:**

(1) The licensee shall accurately represent his or her professional qualifications and credentials.

(2) The licensee shall permit use of that licensee's name for the purpose of certifying that nutrition care services have been rendered only if the licensee has provided or supervised those services.

**C. Product promotion:** The licensee shall promote or endorse products only in a manner that is true and not misleading.

**D. Competence:** The licensee shall assume responsibility and accountability for personal competence in practice.

(1) The licensee shall generate, interpret, and use research to enhance nutrition and dietetic practice.

(2) The licensee shall identify, monitor, analyze and justify the use of resources.

(3) The licensee shall maintain knowledge and skills required for continued professional competence. The licensee shall engage in life-long self-development to improve knowledge and skills.

(4) The licensee shall recognize the limits of that licensee's qualifications and seek counsel or make referrals as appropriate. The licensee shall utilize unique knowledge of nutrition, collaborate with other professionals, personnel and consumers, in integrating, interpreting and communicating nutrition care principles.

(5) The licensee shall adhere to acceptable standards for the licensee's area of practice.

(6) When providing supervision of another, a licensee shall assume responsibility for the supervision in a manner which protects the public.

(7) When a licensee approves a general program of weight control, the licensee assumes responsibility for the general program of weight control including the diet and the guidelines for instruction of customers.

**E. Compliance with law:** The licensee shall comply with all laws and regulations concerning the profession.

**F. Professional conduct:**

(1) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that a legitimate difference of opinion may exist.

(2) The licensee shall maintain the confidentiality of information consistent with legal obligations.

(3) The licensee shall conduct all practices with honesty, integrity, and fairness.

(4) The licensee shall inform the public and colleagues of services by use of factual information. The licensee shall not advertise in a misleading manner.

**G.** Licensed dietitians may seek privileging through their hospital/institution's medical staff.

**H.** Licenced dietitians may provide nutrition care that is within their scope of Practice as outlined by the Academy of Nutrition and Dietetics.

[16.14.10.8 NMAC - Rp, 16 NMAC 14.10.8, 08/01/2011; A, 6/6/2020]

## **PART 11: DISCIPLINARY PROCEEDINGS**

### **16.14.11.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico.

[16.14.11.1 NMAC - Rp, 16 NMAC 14.11.1 NMAC, 08/01/2011]

**16.14.11.2 SCOPE:**

All individuals licensed or applying for licensure to practice as a dietitian, nutritionist or nutrition associate in the state of New Mexico, as well as members of the public who wish to submit a complaint to the board.

[16.14.11.2 NMAC - Rp, 16 NMAC 14.11.2, 08/01/2011]

**16.14.11.3 STATUTORY AUTHORITY:**

Section 61-7A-12 NMSA 1978 (Laws of 1996 and 1993 Repl. Pamp.).

[16.14.11.3 NMAC - Rp, 16 NMAC 14.11.3, 08/01/2011]

**16.14.11.4 DURATION:**

Permanent.

[16.14.11.4 NMAC - Rp, 16 NMAC 14.11.4, 08/01/2011]

**16.14.11.5 EFFECTIVE DATE:**

08/01/2011 unless a later date is cited at the end of a section.

[16.14.11.5 NMAC - Rp, 16 NMAC 14.11.5, 08/01/2011]

**16.14.11.6 OBJECTIVE:**

To establish procedures and guidelines for handling complaints consistent with the Uniform Licensing Act.

[16.14.11.6 NMAC - Rp, 16 NMAC 14.11.6, 08/01/2011]

**16.14.11.7 DEFINITIONS:**

**[RESERVED]**

[16.14.11.7 NMAC - Rp, 16 NMAC 14.11.7, 08/01/2011]

**16.14.11.8 COMPLAINT PROCEDURE:**

A. Disciplinary proceedings may be instituted by the board upon the receipt of a sworn complaint of any person, including any member of the board.

B. After determining jurisdiction, the board shall cause an investigation to be made.

C. In accordance with the provisions of the Uniform Licensing Act, the board may refuse to issue, suspend, or revoke any license upon finding, after a hearing, that the licensee or applicant for licensure has violated the provisions set forth in the Nutrition and Dietetics Practice Act or board rules and regulations.

[16.14.11.8 NMAC - Rp, 16 NMAC 14.11.8, 08/01/2011]

#### **16.14.11.9 DELEGATION OF AUTHORITY:**

The authority of the New Mexico nutrition and dietetic practice board to refer any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13, for administrative prosecution is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act and to refer any such case for administrative prosecution.

[16.14.11.9 NMAC - N, 08/01/2011]

#### **16.14.11.10 SAVINGS CLAUSE:**

Neither the action or inaction of the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[16.14.11.10 NMAC - Rp, 16 NMAC 14.11.10, 08/01/2011]

#### **16.14.11.11 DISCIPLINARY GUIDELINES:**

In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines the applicant or licensee has violated the Nutrition & Dietetics Act or the board's regulations. The following shall subject the licensee to disciplinary action by the board:

**A.** Fraud or deceit in procuring or attempting to procure a license to practice as a dietitian or nutritionist

**B.** Knowingly practicing as dietitian or nutritionist or using any designation with his/her name tending to imply, without a valid license, that he/she is a nutritionist/dietitian; or knowingly aiding, assisting, procuring, advising, or encouraging any unlicensed person to practice as a nutritionist/dietitian or use any designation with his/her name tending to imply that he/she is a nutritionist/dietitian without a valid license.

**C.** Conviction by a court of competent jurisdiction of any of the following disqualifying felony criminal convictions:

**(1)** homicide, involuntary or voluntary manslaughter;

**(2)** manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;

**(3)** kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;

**(4)** rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

**(5)** crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;

**(6)** crimes involving child abuse or neglect, child endangerment;

**(7)** crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property.

**(8)** crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds

**D.** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

**E.** Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

**(1)** Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

**(2)** Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise

**F.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was

convicted is listed as one of the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

**G.** In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or sealed;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

**H.** If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/licensee will receive notice and opportunity for a hearing.

[16.14.11 NMAC – N, 2/9/2022]

## **PART 12: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

### **16.14.12.1 ISSUING AGENCY:**

Nutrition and Dietetic Practice Board, P.O. Box 25101, Santa Fe, New Mexico.

[16.14.12.1 NMAC - N, 03/31/2015]

### **16.14.12.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.14.12.2 NMAC - N, 03/31/2015]

### **16.14.12.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Section 61-1-34 of the Uniform Licensing Act, NMSA 1978, Section 61-1-1 to -34 (1957, as amended through 2013) and the Nutrition and Dietetics Practice Act, NMSA 1978, Sections 61-7A-1 to -15.

[16.14.12.3 NMAC - N, 03/31/2015]

**16.14.12.4 DURATION:**

Permanent.

[16.14.12.4 NMAC - N, 03/31/2015]

**16.14.12.5 EFFECTIVE DATE:**

March 31, 2015 unless a later date is cited at the end of a section.

[16.14.12.5 NMAC - N, 03/31/2015]

**16.14.12.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to NMSA 1978, Section 61-1-34.

[16.14.12.6 NMAC - N, 03/31/2015]

**16.14.12.7 DEFINITIONS:**

**A. "Military service member"** means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

**B. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this Section.

**C. "Spouse"** means any partner of a "military service member" or "recent veteran" whose marriage to the "military service member" or "recent veteran" has been legally recognized by any state or country.

**D. "License"** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA

**F. "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**G. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Nutrition and Dietitian Act.

**H. "Veteran"** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.14.12.7 NMAC – N, 03/31/2015; A, 2/9/2022]

**16.14.12.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the department.

**B.** Completed application shall include:

**(1)** application fee; and

**(2)** satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 7A NMSA 1978.

**C.** Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.

[16.14.12.8 NMAC - 03/31/2015]

**16.14.12.9 FEES:**

**A.** An applicant seeking licensure under 16.14.12 NMAC shall refer to part 2 of Chapter 14 for applicable fees.

**B.** Military service members, spouse, dependents, and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license if the military service member, spouse, dependent, or veteran can provide proof of licensure from another state or jurisdiction.

[16.14.12.9 NMAC - N, 03/31/2015; A, 2/9/2022]

**16.14.12.10 RENEWAL REQUIREMENTS:**

**A.** A license or certificate issued pursuant to this section shall not be renewed unless the license or certificate holder satisfies the requirements for the issuance and for the renewal of a license or certificate pursuant to Chapter 61, Articles 7A NMSA 1978.

**B.** The licensee or certificate holder issued under 16.14.12 NMAC shall submit the documentation required under the following part: refer to 16.14.3 NMAC requirements for licensure.

**C.** All licenses and certificates issued under 16.14.12 NMAC shall be valid for a period not to exceed one year.

**D.** Prior to the expiration of the license, all licensees or certificate holders shall apply for registration renewal and shall pay the renewal fee as set forth in 16.14.2 NMAC.

**E.** As a courtesy, the board will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the nutrition & dietetics board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.14.12.10 NMAC - N, 03/31/2015; A, 2/9/2022]

## **CHAPTER 15: OCCUPATIONAL THERAPISTS**

### **PART 1: GENERAL PROVISIONS**

#### **16.15.1.1 ISSUING AGENCY:**

Board of Examiners for Occupational Therapy.

[06-14-97; 16.15.1.1 NMAC - Rn & A, 16 NMAC 15.1.1, 06-29-00]

#### **16.15.1.2 SCOPE:**

All those individuals who wish to practice occupational therapy in the state of New Mexico.

[06-14-97; 16.15.1.2 NMAC - Rn, 16 NMAC 15.1.2, 06-29-00]

#### **16.15.1.3 STATUTORY AUTHORITY:**

Sections 61-12A-6, 61-12A-8, 61-12A-16, NMSA 1978 of the Occupational Therapy Act. Sections 40-5A-1 through 40-5A-13 NMSA 1978 of the Parental Responsibility Act.

[06-14-97; 16.15.1.3 NMAC - Rn, 16 NMAC 15.1.3, 06-29-00]

#### **16.15.1.4 DURATION:**

Permanent.

[06-14-97; 16.15.1.4 NMAC - Rn, 16 NMAC 15.1.4, 06-29-00]

**16.15.1.5 EFFECTIVE DATE:**

June 14, 1997, unless a later date is cited at the end of a section.

[06-14-97; 16.15.1.5 NMAC – Rn & A, 16 NMAC 15.1.5, 06-29-00]

**16.15.1.6 OBJECTIVE:**

The objective of Part 1 is to set forth the provisions which apply to all of Chapter 15, and to all persons and entities affected or regulated by Chapter 15 of Title 16.

[06-14-97; 16.15.1.6 NMAC - Rn, 16 NMAC 15.1.6, 06-29-00]

**16.15.1.7 DEFINITIONS:**

A. "Board" means the board of examiners for occupational therapy.

B. "Occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico.

C. "Occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists an occupational therapist under the supervision of the occupational therapist.

[06-14-97; 16.15.1.7 NMAC - Rn, 16 NMAC 15.1.7, 06-29-00; A, 01-30-15]

**16.15.1.8 TELEPHONE CONFERENCES:**

Board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment and participation by such means shall constitute presence in person at the meeting. However, such participation by telephone may only occur if it is difficult or impossible for a member of the Board to attend a meeting in person. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[06-14-97; 16.15.1.8 NMAC - Rn, 16 NMAC 15.1.8, 06-29-00]

**16.15.1.9 LICENSE DISPLAY:**

A. Each licensee shall display his current license certificate in a conspicuous place in the principal office where he practices occupational therapy.

**B.** At secondary places of employment, documentation of license shall be verified by photocopy with a note attached indicating where the current license certificate is posted.

**C.** A consumer information sign shall be displayed in the principal place of practice. The consumer information sign shall read: "Complaints regarding noncompliance with the Occupational Therapy Act can be directed to the Board of Examiners for Occupational Therapy at P.O. Box 25101, Santa Fe, New Mexico 87504."

[06-14-97; 16.15.1.9 NMAC - Rn & A, 16 NMAC 15.1.9, 06-29-00]

#### **16.15.1.10 IDENTIFICATION:**

A person offering or assisting in the offering of occupational therapy shall be properly identified by a name badge or other identification indicating whether he is a registered occupational therapist, certified occupational therapy assistant, an occupational therapy aide or technician or a person practicing under a provisional permit.

[06-14-97; 16.15.1.10 NMAC - Rn, 16 NMAC 15.1.10, 06-29-00]

#### **16.15.1.11 BOARD MEMBER REQUIREMENTS:**

**A.** Board members are required to attend board meetings as scheduled by the board. Any board member failing to attend three (3) consecutive board meetings shall automatically be recommended for removal from the board in accordance with Section 8 of the Occupational Therapy Act.

**B.** Board members may be excused from attending board meetings for any of the reasons set forth below:

- (1) illness;
- (2) death in the immediate family;
- (3) military service;
- (4) inclement weather;
- (5) any other reason deemed appropriate by the President of the Board.

[06-14-97; 16.15.1.11 NMAC - Rn, 16 NMAC 15.1.11, 06-29-00]

#### **16.15.1.12 PUBLIC RECORDS:**

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the

board. Upon notification of the defendant, the notice of contemplated action and information contained in the complaint file becomes a public record and subject to disclosure.

[06-14-97; 16.15.1.12 NMAC - Rn, 16 NMAC 15.1.12, 06-29-00; A, 04-03-03]

#### **16.15.1.13 INSPECTION OF PUBLIC RECORDS:**

The board operates in compliance with the Inspection of Public Records Act, NMSA 1978 Sections 14-2-1 through 14-2-16. The board administrator is the custodian of the board's records.

[06-14-97; 16.15.1.13 NMAC - Rn, 16 NMAC 15.1.13, 06-29-00]

#### **16.15.1.14 NON-PUBLIC RECORDS:**

The following records are considered confidential and are not subject to public inspection.

- A. Letters of reference, if applicable.
- B. Medical reports and/or records of chemical dependency, physical or mental examinations or treatment in an impaired practitioner program.
- C. Examination scores.
- D. The contents of any examination used to test for an individual's knowledge or competence.
- E. Investigative files.
- F. Written and oral communication relating to actual or potential disciplinary action, including complaints.
- G. Matters of opinion.

[06-14-97; 16.15.1.14 NMAC - Rn, 16 NMAC 15.1.14, 06-29-00]

#### **16.15.1.15 PARENTAL RESPONSIBILITY ACT (PRA):**

By the end of each month in which a certified list is received, the board shall report to the New Mexico human services department the names of board applicants and licensees who are on the certified list as being more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for child support in New Mexico, and the action the board has taken in connection with such applicants and licensees.

[6-14-97; 16.15.1.15 NMAC - Rn, 16 NMAC 15.1.15, 06-29-00]

**16.15.1.16 COERCION PROHIBITED:**

No person(s) shall coerce an occupational therapist or occupational therapy assistant into compromising client safety by requiring them to delegate activities or tasks if the occupational therapist or occupational therapy assistant determines that it is inappropriate to do so. Occupational therapists or occupational therapy assistants shall not be subject to disciplinary action by the board for refusing to delegate or refusing to provide the required training for delegation if the occupational therapist or occupational therapy assistant determines that delegation may compromise client safety.

[16.15.1.16 NMAC - N, 01-30-15]

**PART 2: LICENSING REQUIREMENTS**

**16.15.2.1 ISSUING AGENCY:**

Board of Examiners for Occupational Therapy

[06-14-97; 16.15.2.1 NMAC - Rn & A, 16 NMAC 15.2.1, 06-29-00]

**16.15.2.2 SCOPE:**

All those individuals who wish to practice occupational therapy in the state of New Mexico.

[06-14-97; 16.15.2.2 NMAC - Rn, 16 NMAC 15.2.2, 06-29-00]

**16.15.2.3 STATUTORY AUTHORITY:**

Section 61-12A-6 NMSA 1978.

[06-14-97; 16.15.2.3 NMAC - Rn, 16 NMAC 15.2.3, 06-29-00]

**16.15.2.4 DURATION:**

Permanent.

[06-14-97; 16.15.2.4 NMAC - Rn, 16 NMAC 15.2.4, 06-29-00]

**16.15.2.5 EFFECTIVE DATE:**

June 14, 1997, unless a later date is cited at the end of a section.

[06-14-97; 16.15.2.5 NMAC - Rn & A, 16 NMAC 15.2.5, 06-29-00]

#### **16.15.2.6 OBJECTIVE:**

To outline the application, examination, provisional permit, and renewal requirements.

[06-14-97; 16.15.2.6 NMAC - Rn, 16 NMAC 15.2.6, 06-29-00]

#### **16.15.2.7 DEFINITIONS:**

**[RESERVED]**

[6/14/1997; 16.15.2.7 NMAC - Rn, 16 NMAC 15.2.7, 6/29/2000; A, 1/30/2015; A, 2/24/2022, A 6/27/2023]

#### **16.15.2.8 EXAMINATION:**

**A.** The examination prescribed by the board is the national board for certification in occupational therapy examination for an occupational therapist registered or certified occupational therapy assistant. All applicants for licensure, pursuant to the Occupational Therapy Act, must obtain a passing grade on the examination, as determined by the national board for certification in occupational therapy (NBCOT), in order to be eligible for licensure.

**B.** The board requires each applicant to pass an examination on the state laws, rules and regulations that pertain to the practice of occupational therapy in New Mexico. All applicants for licensure must take the New Mexico jurisprudence exam and have a passing score of 80%, based on a total available score of 100%. Any applicant who fails to pass the jurisprudence examination may retake the exam upon receipt of the required fees.

[06-14-97; 16.15.2.8 NMAC - Rn, 16 NMAC 15.2.8, 06-29-00; A, 04-03-03]

#### **16.15.2.9 INITIAL APPLICATION FOR LICENSURE:**

**A.** An application packet may be obtained from the state licensure board office.

**B.** The application must be submitted on completed forms as supplied by the board.

**C.** A photograph of the applicant taken within six months prior to filing application must be submitted with the application. (Passport size recommended; scanned or computer-generated photographs must be printed on photo quality paper).

**D.** Application fees in the form of a check or money order must be submitted in full with the application. Personal checks may delay processing of your application for up to 10 days.

**E.** Verification of registration or certification may be provided in any of the following ways.

**(1)** Written verification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) certifying that the applicant's certification is active and in good standing.

**(2)** Written verification of initial certification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) and verification of licensure from each state in which the applicant has been licensed. Such proof of licensure must be received by the board directly from the state boards where currently and previously licensed. For applicants who practiced in states that do not require licensure, written verification of employment shall be received by the board office directly from the applicant's previous employers on a verification of employment form to be provided by the board.

**F.** An occupational therapy assistant (OTA), shall file with the board a signed, current statement of supervision by the occupational therapist (OT) who will be responsible for the supervision of the occupational therapy assistant (OTA) within 20 business days of starting employment as an OTA. Both the supervisor and supervisee carry responsibility for notifying the board within 10 work days when there is a change of supervisor.

**G.** On-line applications will require a notarized signature card be filed with the board office.

**H.** All licenses are the property of the board and shall forthwith be returned to the board, if requested.

**I.** No license is valid without the official board seal. Convictions for any of the following offenses, or their equivalents in any other jurisdiction are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

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

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

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

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

**(5)** crimes involving great bodily harm, adult abuse, injury to pregnant woman, child abuse, neglect, abandonment, stalking, aggravated stalking, custodial

interference, unlawful interference with custody, sabotage, financial exploitation, exploitation of a care facility resident's property, or criminal damage to property of a household member;

**(6)** contributing to the delinquency of a minor, unlawful carrying of a deadly weapon on school premises, unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages, or a felon in possession of a firearm;

**(7)** crimes involving the unauthorized distribution of sensitive images;

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

**(9)** crimes involving unlawful taking, embezzlement or fraudulently obtaining a vehicle or motor vehicle;

**(10)** crimes involving making a bomb scare, arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;

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

**(12)** Violation of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act;

**(13)** crimes involving the unlawful disposal of, use or sale of an unclaimed body;

**(14)** intentionally hampering, obstructing, tampering or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act;

**(15)** crimes involving the second or subsequent offense of certain prohibited acts of the owner of a dangerous or potentially dangerous dog in the Dangerous Dog Act;

**(16)** crimes involving cruelty to animals, dog fighting, cockfighting, unlawful tripping of an equine causing the maiming, crippling or death of the equine, injury to police dog, police horse or fire dog;

**(17)** crimes involving the use of telephone to terrify, intimidate, threaten, harass, annoy or offend;

**(18)** crimes involving the use of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder;

**(19)** violations of the Model State Commodity Code, the New Mexico Uniform Securities Act, the Mortgage Loan Company Act, Uniform Money Services Act, or the New Mexico Mortgage Loan Originator Licensing Act;

**(20)** crimes involving procuring or attempting to procure telecommunications service by theft or intentional damage of, communications or public utility equipment, whether customer or utility-owned, which created a public safety hazard or causes a disruption of communications services or public utility services to 10 or more households;

**(21)** crimes involving violations of the Election Code;

**(22)** crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;

**(23)** crimes involving jury tampering, impersonating a peace officer, or disarming a peace officer;

**(24)** crimes involving escape from custody, community custody release program, jail or penitentiary, or fleeing a law enforcement officer;

**(25)** crimes involving unlawful rescue, procuring escape, or conniving at, aiding or assisting escape of a person confined or held in lawful custody or confinement, or harboring or aiding a felon;

**(26)** crimes involving furnishing articles for a prisoner's escape, furnishing drugs or liquor to a prisoner, or bringing contraband into a prison or jail;

**(27)** crimes involving tax evasion or tax fraud;

**(28)** willful failure to collect and pay over taxes;

**(29)** crimes involving attempts to evade or defeat any tax;

**(30)** crimes involving paying or receiving public money for services not rendered;

**(31)** crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;

**(32)** crimes involving violations of the Cigarette Enforcement Act;

**(33)** crimes involving the Savings and Loan or the Credit Union Act;

**(34)** crimes involving perjury, false swearing of oath or affidavit, false voting, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

**(35)** crimes involving an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act,

**(36)** crimes involving altering or changing engine or other number of a vehicle or motor vehicle;

**(37)** crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;

**(38)** crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;

**(39)** crimes involving making or permitting a false public voucher;

**(40)** crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;

**(41)** crimes involving violations of the New Mexico Uniform Securities Act;

**(42)** crimes involving extortionate extensions of credit or racketeering;

**(43)** crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;

**(44)** crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of an official act, or illegal kickbacks;

**(45)** failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

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

**(47)** second or subsequent conviction of Chiropractic Physician Practice Act;

**(48)** crimes involving certain violations of the Optometry Act;

**(49)** crimes involving the Medicaid Fraud Act,

**(50)** fourth or subsequent conviction for driving under the influence of intoxicating liquor or drugs;

**(51)** crimes involving controlled substances, including violations of the Controlled Substances Act;

**(52)** crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;

**(53)** crimes involving violations of the New Mexico Subdivision Act or the Mortgage Foreclosure Consultant Prevention Act;

**(54)** misuse of funds;

**(55)** intent to defraud uses on a public security or instrument of payment;

**(56)** crimes involving a violation of the Governmental Conduct Act; or

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

**J.** the board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection J of this rule.

**K.** the board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying convictions listed in Subsections J of this rule.

**L.** nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Occupational Therapy Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection J of this rule.

**M.** in connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection J of this rule.

[6/14/1997; 2/14/1998; 16.15.2.9 NMAC - Rn, 16 NMAC 15.2.9, 6/29/2000; A, 4/3/2003; A, 8/29/2005; A, 1/30/2015; A, 2/24/2022]

#### **16.15.2.10 PROVISIONAL PERMITS:**

**A.** Any persons who have completed the education and experience requirements of the occupational therapy act and who have applied for the national board for certification in occupational therapy (NBCOT) examination may apply for a provisional permit.

**B.** The provisional permit allows the applicant to practice occupational therapy under the supervision of a licensed occupational therapist as defined in 16.15.3 NMAC.

**C.** The provisional permit is in effect for a maximum of six months after issuance. Failure to sit for the NBCOT examination within six months automatically voids the provisional permit. A license may be issued when results of the examination have been made public.

**D.** The provisional permit will automatically be invalidated upon notice to the board that the applicant has failed the examination.

**E.** Any previous failures of the NBCOT certification exam will prevent a person from obtaining a provisional permit.

**F.** Persons practicing on a provisional permit shall file with the board a signed current statement of supervision by the occupational therapist or occupational therapists (OT or OTs) who will be responsible for the supervision of the person practicing on a provisional permit. Both the supervisor and supervisee carry responsibility for notifying the board within 10 work days when there is a change of supervisor.

**G.** Persons practicing on a provisional permit pending certification as an occupational therapy assistant (OTA) or an occupational therapist (OT) are not eligible to supervise. (Refer 16.15.3 NMAC)

**H.** All provisional permits are the property of the board and shall forthwith be returned to the board, if requested.

**I.** The provisional permit requires the official board seal and is valid for no more than six months.

[6/14/1997; 16.15.2.10 NMAC - Rn, 16 NMAC 15.2.10, 6/29/2000; A, 4/3/2003; A, 2/24/2022]

#### **16.15.2.11 EDUCATIONAL PROGRAMS:**

**A.** The occupational therapy educational program completed by the occupational therapist or occupational therapy assistant must have been accredited by the accreditation council for occupational therapy education (ACOTE) of the american occupational therapy association (AOTA).

**B.** Occupational therapists trained outside the United States must have had their education accepted by the national board for certification in occupational therapy. The board must receive written verification in the form of an eligibility letter received by the board directly from the national board for certification in occupational therapy (NBCOT).

[06-14-97; 16.15.2.11 NMAC - Rn, 16 NMAC 15.2.11, 06-29-00]

#### **16.15.2.12 LICENSURE BY ENDORSEMENT:**

Applicants for licensure by reciprocity from other states, must submit all of the requirements as set forth in 16.15.2.9 NMAC. All application information is subject to verification by the board.

[06-14-97; 16.15.2.12 NMAC - Rn, 16 NMAC 15.2.12, 06-29-00; A, 04-03-03]

#### **16.15.2.13 ANNUAL RENEWAL:**

**A.** Annual renewal fees in the form of a check or money order must be remitted when due or license will expire automatically.

**B.** Licenses may be renewed upon receipt of a renewal application submitted on the form provided by the board, or via on-line renewal application through the board's on-line professional licensing system, the applicable annual renewal fee, and proof of continuing education requirements pursuant to regulations of the board.

**C.** The annual renewal date is October 1st of each year. All licenses issued by the board will expire on September 30th of each year.

**D.** At the time of renewal, an occupational therapy assistant shall confirm no changes to the statement of supervision filed at the time of initial application. If a change

in supervision has occurred, a new statement of supervision must be submitted along with the completed renewal application.

**E.** Expedited license renewals and fees are issued pursuant to 16.15.1.11 NMAC and 16.15.7.13 NMAC.

[6/14/1997; 16.15.2.13 NMAC - Rn & A, 16 NMAC 15.2.13, 6/29/2000; A, 4/3/2003; A 2/24/2022; A, 6/27/2023]

#### **16.15.2.14 EXPIRED LICENSE OR NON-PRACTICE:**

**A.** A license not renewed on the annual renewal date is expired.

**B.** Validation of competency for applicants who have not practiced since his or her graduation from an occupational therapy program, or who have not practiced as an occupational therapist or occupational therapy assistant for a period of more than three years, full licensure requires the following;

(1) a completed application form as required under 16.15.2.9 NMAC;

(2) passage of the jurisprudence exam;

(3) 15 continuing education contact hours for each year the applicant was not practicing as an occupational therapist or occupational therapy assistant, not to exceed 75 hours (course work to be pre-approved by the board);

(4) the board may require the applicant to provide or demonstrate additional evidence of his or her competency to practice (e.g. passage of the national board for certification in occupational therapy exam, AOTA courses, university sponsored courses, supervision or mentorship).

[6/14/1997; 16.15.2.14 NMAC - Rn & A, 16 NMAC 15.2.14, 6/29/2000; A, 4/3/2003; A, 8/29/2005; A, 1/30/2015; A, 2/24/2022]

#### **16.15.2.15 INACTIVE LICENSE:**

**A.** A license in good standing may be transferred to inactive status upon written request to the board. Such request shall be made prior to the expiration of the license.

**B.** An annual inactive fee must be submitted to the board. (Refer to Part 6, Fee Schedule).

**C.** A licensee may reactivate the license upon submission of the following:

(1) A renewal form.

(2) Payment of the annual renewal fee for the year in which the licensee wishes to reactivate.

(3) Proof of continuing education units for each year of inactive status.

(4) Additional proof of competency as requested and prescribed by the Board will be required after five (5) years of an inactive license.

(5) Passage of the jurisprudence exam.

(6) Completion of a verification of employment form for licensees who have practiced outside New Mexico while on inactive status.

[06-14-97; 16.15.2.15 NMAC - Rn, 16 NMAC 15.2.15, 06-29-00; A, 04-03-03; A, 01/30/2015]

#### **16.15.2.16 REINSTATEMENT OF LICENSURE:**

**A.** Reinstatement of a New Mexico occupational therapist or occupational therapy assistant license that has lapsed for less than one year requires the following:

(1) completion of the renewal form;

(2) payment of late fee;

(3) proof of the required continuing education contact hours;

(4) passage of the jurisprudence examination and

(5) submit a notarized statement, by the therapist, that they have not practiced occupational therapy in New Mexico while their license was expired.

**B.** Reinstatement of an occupational therapist or occupational therapy assistant license that has lapsed in New Mexico for more than one year, where there is evidence of continued practice with an unrestricted license/registration/certification in another state requires the following:

(1) completion of the initial application;

(2) payment of the application;

(3) payment of the current year renewal fee;

(4) proof of 15 continuing education hours for each year of the lapsed New Mexico license; not to exceed 75 hours or where there is evidence of continued practice with an unrestricted license, registration or certification from another U.S. jurisdiction as

well as evidence of meeting the continuing education requirement in that same U.S. jurisdiction during the period of lapse;

(5) passage of the jurisprudence examination; and

(6) verification of all current, valid unrestricted licenses/registrations/certifications from other U.S. jurisdictions; verifications may be received by the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and include the following data:

(a) name and address of the applicant;

(b) license/registration/certification number and date of issuance;

(c) expiration date of the license/registration/certification;

(d) a statement of whether the applicant was denied a license/registration/certification by the agency;

(e) a statement of whether any disciplinary action is pending or has been taken against the applicant; and;

(f) receipt of verification of employment for states not requiring licensure, registration, or certification.

[16.15.2.16 NMAC - N, 8/29/2005; A, 1/30/2015; A, 2/24/2022]

#### **16.15.2.17 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Occupational therapists and occupational therapy assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) a completed application signed and notarized and accompanied by proof of identity, which may consist of a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) proof of successful completion of the national board for certification in occupational therapy (NBCOT) and New Mexico jurisprudence exam;

(3) verification of licenses held in other states and verification of employment if applicable. (verification may be obtained by mail, fax or email, through online verification from the state of licensure)

(4) proof or documentation of residency and employment in the area of the federal disaster.

**B.** The board may waive the following requirements for licensure:

(1) application fee's prorated for four (4) months;

(2) the specific forms required under 16.15.2.9 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

**C.** Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

**D.** Licenses issued under (this emergency provision) shall expire four (4) months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before October 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.15.2.17 NMAC - N/E, 11-16-05; A, 01/30/2015]

#### **16.15.2.18 EMERGENCY LICENSURE TERMINATION:**

**A.** The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under 16.15.2.9 NMAC; or

(2) proof that the emergency license holder has engaged in fraud deceit, misrepresentation in procuring or attempting to procure a license under this section.

**B.** Termination of an emergency license shall not preclude application for permanent licensure.

[16.15.2.18 NMAC - N/E, 11-16-05]

#### **16.15.2.19 [RESERVED]**

[16.15.2.19 NMAC - N, 1/30/2015; A, 2/13/2015; A, 2/24/2022; Repealed 6/27/2023]

### **PART 3: SUPERVISION**

#### **16.15.3.1 ISSUING AGENCY:**

Board of Examiners for Occupational Therapy.

[16.15.3.1 NMAC - Rp, 16 15.3.1 NMAC, 1/30/2015]

**16.15.3.2 SCOPE:**

All those individuals who wish to practice occupational therapy in the state of New Mexico.

[16.15.3.2 NMAC - Rp, 16.15.3.2 NMAC, 1/30/2015]

**16.15.3.3 STATUTORY AUTHORITY:**

Section 61-12A-5 NMSA 1978.

[16.15.3.3 NMAC - Rp, 16.15.3.3 NMAC, 1/30/2015]

**16.15.3.4 DURATION:**

Permanent.

[16.15.3.4 NMAC - Rp, 16.15.3.4 NMAC, 1/30/2015]

**16.15.3.5 EFFECTIVE DATE:**

January 30, 2015, unless a later date is cited at the end of a section.

[16.15.3.5 NMAC - Rp, 16.15.3.5 NMAC, 1/30/2015]

**16.15.3.6 OBJECTIVE:**

To outline minimum supervision definitions and requirements.

[16.15.3.6 NMAC - Rp, 16.15.3.6 NMAC, 1/30/2015]

**16.15.3.7 DEFINITIONS:**

In this section, the following terms have the meanings indicated:

**A. "Aide"** means a person who is not licensed by the board and who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function under the guidance and responsibility of the occupational therapist and may be supervised by the occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competency.

**B. "Board"** means the board of examiners for occupational therapy.

**C. "Competence"** refers to an individual's capacity to perform job responsibilities.

**D. "Competency"** refers to an individual's actual performance in a specific situation.

**E. "Limited permit holder"** means an individual who has completed the academic and fieldwork requirements of this Act for occupational therapists or occupational therapy assistants, has not yet taken or received the results of the entry level certification examination, and has applied for and been granted limited permit status.

**F. "Occupational therapist"** means a person who holds an active license to practice occupational therapy in New Mexico.

**G. "Occupational therapy assistant"** means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists an occupational therapist under the supervision of the occupational therapist.

**H. "Supervision"** means a cooperative process in which two or more people participate in a joint effort to establish, maintain, and elevate a level of competence and performance. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development.

**I. "Supportive services"** means tasks that include providing patient transport, routine maintenance of equipment or work areas, setup, preparation, and cleanup of equipment of work areas, and supporting licensed practitioners during treatment or intervention while under the direct supervision of the licensed practitioner.

[16.15.3.7 NMAC - Rp, 16.15.3.7 NMAC, 1/30/2015; A, 2/24/2022]

#### **16.15.3.8 SUPERVISION:**

**A.** Occupational therapy assistants: supervision involves guidance and oversight related to the delivery of occupational therapy services and the facilitation of professional growth and competence. It is the responsibility of the occupational therapist and the occupational therapy assistant to seek the appropriate quality and frequency of supervision to ensure safe and effective occupational therapy service delivery.

**(1)** The specific frequency, methods, and content of supervision may vary by practice setting and is dependent upon the:

**(a)** complexity of client needs;

**(b)** number and diversity of clients;

- (c) skills of the occupational therapist and the occupational therapy assistant;
- (d) type of practice setting;
- (e) requirements of the practice setting; and
- (f) other regulatory requirements.

(2) More frequent supervision may be necessary when:

(a) the needs of the client and the occupational therapy process are complex and changing;

(b) the practice setting provides occupational therapy services to a large number of clients with diverse needs; or

(c) the occupational therapist and occupational therapy assistant determine that additional supervision is necessary to ensure safe and effective delivery of occupational therapy services.

(3) A variety of types and methods of supervision may be used. Methods may include direct face-to-face contact and indirect contact. Examples of methods or types of supervision that involve direct face-to-face contact include but are not limited to observation, modeling, co-treatment, discussions, teaching, instruction, and video conferencing. Examples of methods or types of supervision that involve indirect contact include but are not limited to phone conversations, written correspondence, electronic exchanges, and other methods using secure telecommunication technology. All methods should be compliant with confidentiality requirements of government agencies, facilities, employers, or other appropriate bodies.

(4) Occupational therapists and occupational therapy assistants must document a supervision plan and supervision contacts. Documentation shall include the:

(a) frequency of supervisory contact;

(b) method(s) or type(s) of supervision;

(c) content areas addressed;

(d) names and credentials of the persons participating in the supervisory process.

(5) An occupational therapist is limited to supervising three or fewer occupational therapy assistants during their first year of licensure as an occupational therapist.

**(6)** After the first year of licensure, an occupational therapist must make the decision on the number of appropriate occupational therapy assistants to be supervised depending on the experience of the occupational therapy assistant, complexity of the patient or client needs and the setting of care.

**B.** Non-licensed personnel, including aides, is an individual who provides supportive services to the occupational therapist and the occupational therapy assistant. Non-licensed personnel do not provide skilled occupational therapy services. Non-licensed personnel must be trained by the occupational therapist or occupational therapy assistant to perform specifically designated tasks, and the non-licensed personnel must first demonstrate competency to be able to perform the assigned, delegated client and non-client related tasks.

**(1)** The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the non-licensed personnel, to carry out client and non-client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan.

**(2)** The occupational therapy assistant may supervise the non-licensed personnel.

**(3)** Non-client-related tasks include clerical and maintenance activities and preparation of the work area or equipment.

**(4)** Client-related tasks are routine tasks during which the aide may interact with the client but does not act as a service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

**(a)** The outcome anticipated for the delegated task is predictable.

**(b)** The situation of the client and the environment is stable and will not require that judgement, interpretations, or adaptations be made by the non-licensed personnel.

**(c)** The client has demonstrated some previous performance ability in executing the task.

**(d)** The task routine and process have been clearly established.

**(5)** When performing delegated client-related tasks, the supervisor must ensure that the non-licensed personnel:

**(a)** is trained and able to demonstrate competency in carrying out the selected task and using equipment, if appropriate;

(b) has been instructed on how to specifically carry out the delegated task with the specific client, and;

(c) knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapist assistant.

(6) The supervisor of the aide must be documented and include;

(a) information about frequency and methods of supervision used,

(b) the content of the supervision; and

(c) the names and credentials of all persons participating in the supervisory process.

[16.15.3.8 NMAC - Rp, 16.15.3.8 NMAC, 1/30/2015; A, 2/24/2022]

#### **16.15.3.9 TASK DELEGATION:**

Regardless of the setting in which occupational therapy services are delivered, the occupational therapist and the occupational therapy assistant assume the following generic responsibilities during evaluation, intervention, and outcomes evaluation.

##### **A. Evaluation.**

(1) The occupational therapist directs the evaluation process.

(2) The occupational therapist is responsible for directing all aspects of the initial contact during the occupational therapy evaluation, including:

(a) determining the need for service;

(b) defining the problems within the domain of occupational therapy that need to be

addressed;

(c) determining the client's goals and priorities;

(d) establishing intervention priorities;

(e) determining specific further assessment needs; and

(f) determining specific assessment tasks that can be delegated to the occupational therapy assistant.

**(3)** The occupational therapist initiates and directs the evaluation, interprets the data, and develops the intervention plan.

**(4)** The occupational therapy assistant contributes to the evaluation process by implementing delegated assessments and by providing verbal and written reports of observations and client capacities to the occupational therapist.

**(5)** The occupational therapist interprets the information provided by the occupational therapy assistant and integrates that information into the evaluation and decision making process.

#### **B. Intervention planning.**

**(1)** The occupational therapist has overall responsibility for the development of the occupational therapy intervention plan.

**(2)** The occupational therapist and the occupational therapy assistant collaborate with the client to develop the plan.

**(3)** The occupational therapy assistant is responsible for being knowledgeable about evaluation results and for providing input into the intervention plan, based on client needs and priorities.

#### **C. Intervention Implementation.**

**(1)** The occupational therapist has overall responsibility for implementing the intervention.

**(2)** When delegating aspects of the occupational therapy intervention to the occupational therapy assistant, the occupational therapist is responsible for providing appropriate supervision.

**(3)** The occupational therapy assistant is responsible for being knowledgeable about the client's occupational therapy goals.

**(4)** The occupational therapy assistant selects, implements, and makes modifications to therapeutic activities and interventions that are consistent with demonstrated competency levels, client goals, and the requirements of the practice setting.

#### **D. Intervention Review.**

**(1)** The occupational therapist is responsible for determining the need for continuing, modifying, or discontinuing occupational therapy services.

(2) The occupational therapy assistant contributes to this process by exchanging information with and providing documentation to the occupational therapist about the client's responses to and communications during intervention.

**E. Outcome Evaluation.**

(1) The occupational therapist is responsible for selecting, measuring, and interpreting outcomes that are related to the client's ability to engage in occupations.

(2) The occupational therapy assistant is responsible for being knowledgeable about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement.

(3) The occupational therapy assistant may implement outcome measurements and provide needed client discharge resources.

[16.15.3.9 NMAC - Rp, 16.15.3.9 NMAC, 1/30/2015]

## **PART 4: CONTINUING EDUCATION REQUIREMENTS**

### **16.15.4.1 ISSUING AGENCY:**

Board of Examiners for Occupational Therapy.

[16.15.4.1 NMAC - Rp, 16.15.4.1 NMAC, 1/30/15]

### **16.15.4.2 SCOPE:**

All those individuals who wish to practice occupational therapy in the state of New Mexico.

[16.15.4.2 NMAC - Rp, 16.15.4.2 NMAC, 1/30/15]

### **16.15.4.3 STATUTORY AUTHORITY:**

Section 61-12A-15, NMSA 1978.

[16.15.4.3 NMAC - Rp, 16.15.4.3 NMAC, 1/30/15]

### **16.15.4.4 DURATION:**

Permanent.

[16.15.4.4 NMAC - Rp, 16.15.4.4 NMAC, 1/30/15]

### **16.15.4.5 EFFECTIVE DATE:**

January 30, 2015, unless a later date is cited at the end of a section.

[16.15.4.5 NMAC - Rp, 16.15.4.5 NMAC, 1/30/15]

#### **16.15.4.6 OBJECTIVE:**

To inform licensees of continuing education requirements for license renewal.

[16.15.4.6 NMAC - Rp, 16.15.4.6 NMAC, 1/30/15]

#### **16.15.4.7 DEFINITIONS:**

"Continuing education" means any organized educational program relating to the topic of health, designed to expand a licensee's knowledge beyond the basic education requirements for occupational therapists and occupational therapy assistants as recognized by the board. Topics include, but are not limited to, administration, education, communication and clinical practice skills. One "continuing education contact hour" is equivalent to sixty (60) minutes. One continuing education contact hour is equivalent to one continuing education unit.

[16.15.4.7 NMAC - Rp, 16.15.4.7 NMAC, 1/30/15]

#### **16.15.4.8 ANNUAL CONTINUING EDUCATION REQUIREMENTS:**

**A.** Every licensed occupational therapist and occupational therapy assistant must earn a minimum of 15 continuing education contact hours per year during each year of licensure. Continuing education contact hours must be earned prior to license renewal the following year. The first year during which 15 contact hours must be earned is the year beginning on October 1st following license issuance and ending on the following September 30th. Occupational therapists and occupational therapy assistants licensed **during the first year will be expected to pay the annual renewal fee.**

**B.** No license will be renewed in the absence of satisfactory evidence that the required continuing education contact hours have been earned.

**C.** The board office will send electronic notifications to all licensees prior to the expiration date of the license.

**D.** Each licensee is responsible for submitting the required renewal fee and continuing education by the expiration.

**E.** Each licensee is responsible for filing address changes and maintaining a current address with the board office.

[16.15.4.8 NMAC - Rp, 16.15.4.8 NMAC, 1/30/2015; A, 2/24/2022]

#### **16.15.4.9 APPROVAL OF CONTINUING EDUCATION:**

**A.** No licensee may obtain credit for any continuing education contact hours without approval of those continuing education contact hours by the board.

**B.** Prior approval of continuing education contact hours may be obtained upon request by the licensee or continuing education provider. Final determination of values and approval of continuing education contact hours will remain at the discretion of the board.

**C.** Continuing education contact hours may be earned in the following ways:

**(1) Attendance at a seminar, workshop, webinar, on-line course, or program;** applicants must provide all of the following:

**(a)** program agenda with number of contact hours;

**(b)** evidence that the program attended was sponsored by a component of the American occupational therapy association or some other sponsor approved by the board for continuing education credit;

**(c)** statement of the program's subject matter and stated objectives;

**(d)** statement indicating the instructor's background/expertise; and

**(e)** proof of actual program attendance; such proof shall be a certificate of completion signed by the presenter or program sponsor.

**(2) Preparation and presentation of a workshop/in-service.** Credit may be given only once for preparation or presentation of the same workshop and the board will determine the number of continuing education contact hours approved. Applicant must provide proof of preparation and presentation. Proof of preparation may be an outline, copy of handouts, presentation slides, and a copy of the agenda showing name of licensee as presenter. Contact hours for the presenter will be calculated at three times the number of hours of audience participation (e.g. a two hour workshop equals six hours for the presenter).

**(3) Completion of accredited university college or community courses.** Applicant must provide the name of the course; number of credit hours; inclusive dates of attendance; completed transcript or grade report with a passing grade of "C" or better, name of instructor and institution; and a brief summary indicating the course's relationship to the licensee's present or future position in the field of occupational therapy. Non-credit community college courses may be accepted at the board's discretion. A maximum of 20 contact hours is allowed for a three credit course; a maximum of 15 contact hours is allowed for a two credit course; and a maximum of 10 contact hours is allowed for a one credit course.

**(4) Attendance at workplace in-service programs.** The applicant must provide the name of the program; number of hours spent in the program; inclusive dates of attendance; name of the instructor or supervisor of the program; name of the institution; and a brief course summary indicating the course's relationship to the philosophical tenets of occupational therapy.

**(5) Reading a book.** The applicant must provide the name of the book; number of pages; name of the author; and a typewritten summary explaining how the information obtained from the book applies to physical therapy philosophical tenets of occupational therapy. The board may approve, on an individual basis, up to two contact hours for each book read.

**(6) Writing a book.** The applicant must provide a copy of the book written. The book will be returned to the licensee upon request.

**(a)** The book must have been copyrighted in the year for which the continuing education contact hours are requested.

**(b)** Up to 40 contact hours may be awarded at the board's discretion.

**(7) Audio or Visual Media.** An applicant must provide the title of the audio and visual media; the length of presented material, time; name of the presenter; and a summary of the presentation and how it pertains to the philosophical tenets of occupational therapy.

**(8) Presentation of a paper.** The applicant must provide a copy of the paper along with the duration and location of the presentation. The presentation must have been made in the year for which the continuing education contact hours are requested. Credit may be given only once for any individual presentation and the board will determine the number of continuing education contact hours approved.

**(9) Publication of a paper or article.** The applicant must provide a copy of the published paper, which must have been published prior to license renewal. Publication must be in a recognized journal or publication. The board will determine the number of continuing education contact hours approved.

**(10) Conducting research.** The board will determine the number of continuing education contact hours approved. The applicant must provide the following:

**(a)** title and description of research project, including brief timeline;

**(b)** names of other persons involved in project (i.e., co-investigators or supervisors);

**(c)** a brief statement indicating philosophical tenants of occupational therapy;

(d) provide a copy of the completed annual research report.

**(11) Specialty/certification programs.** Applicants or licensees wishing to receive continuing education for certification programs must submit a certificate of completion signed by the program sponsor. The licensee or applicant must indicate how the specialty/certification maintains the philosophical tenets of occupational therapy. The board will determine the number of continuing education contact hours approved.

**(12) Supervising level II fieldwork.** Applicants should provide a copy of the student evaluation (cover and signature pages only). The student's name should be blacked out for confidentiality. A maximum of 12 contact hours will be approved for each OT fieldwork II rotation of 12 weeks. A maximum of eight contact hours will be approved for each OTA fieldwork II rotation of eight weeks.

**(13) Mentoring.** Applies to an OT or OTA who has been practicing at least one year prior to entering a new area of practice only. Mentoring shall occur for a minimum of six months and no longer than one year. The mentor shall have at least one year of experience in the specialty area of practice and not be the direct supervisor of the mentored therapist. The "mentoring log" should be used as proof of hours mentored.

**(14)** Competency assessment or knowledge and skills assessment related to the practice of occupational therapy. A licensee who completes an online or in person training on competency assessment or on knowledge and skills assessment activities related to occupational therapy that is offered by an employer or an approved provider may claim a maximum of two hours of continuing education during each renewal period. If audited, an applicant must provide the following documentation; a certificate of completion or similar document that includes the name of the course or training, the date and location where the training was offered, the sponsoring organization and the time attended.

**D.** Credit screening procedures are as follows:

**(1)** the board or its designee must approve each request for continuing education credit;

**(2)** the licensee will be informed of the board's action within 30 calendar days of receipt of the request; and

**(3)** the licensee whose request has been denied may appeal to the board within 30 calendar days of the notification of the board's decision.

**E.** Continuing education audit.

(1) The board shall audit a percentage of renewal applications each year to verify the continuing education requirement.

(2) If a notice of audit letter is received with the annual renewal form, evidence of continuing education hours earned during the renewal year must be submitted to the board as requested and as required in the Occupational Therapy Act and by this rule.

(3) If the licensee is not audited, all documentation of attendance and agendas should be retained by the licensee for a minimum of three years immediately preceding the current renewal.

(4) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

(5) Proof of attendance for all continuing education programs is required on all renewal applications submitted after the expiration date.

F. The board will allow a maximum of 15 continuing education contact hours to be carried over into the next licensing year. The 15 continuing education hours must be earned during the renewal period of October 1st through September 30th.

G. Ineligible activities include, but are not limited to:

(1) Orientation and in-service programs dealing with organizational structures, processes, or procedures.

(2) Meeting for purposes of policy making.

(3) Annual association or organization and non-educational meetings.

(4) Entertainment or recreational activities or meetings.

(5) Committee meetings, holding of offices or serving as an organizational delegate.

(6) Visiting exhibitors and;

(7) CPR education.

[16.15.4.9 NMAC - Rp, 16.15.4.9 NMAC, 1/30/2015; A, 2/24/2022]

## **PART 5: DISCIPLINARY PROCEEDINGS**

### **16.15.5.1 ISSUING AGENCY:**

Board of Examiners for Occupational Therapy

[06-14-97; 16.15.5.1 NMAC - Rn & A, 16 NMAC 15.5.1, 06-29-00]

**16.15.5.2 SCOPE:**

All those individuals who wish to practice occupational therapy in the State of New Mexico.

[06-14-97; 16.15.5.2 NMAC - Rn, 16 NMAC 15.5.2, 06-29-00]

**16.15.5.3 STATUTORY AUTHORITY:**

Section 61-12A-21 and 61-12A-22, NMSA 1978.

[06-14-97; 16.15.5.3 NMAC - Rn, 16 NMAC 15.5.3, 06-29-00]

**16.15.5.4 DURATION:**

Permanent.

[06-14-97; 16.15.5.4 NMAC - Rn, 16 NMAC 15.5.4, 06-29-00]

**16.15.5.5 EFFECTIVE DATE:**

June 14, 1997, unless a later date is cited at the end of a section.

[06-14-97; 16.15.5.5 NMAC - Rn & A, 16 NMAC 15.5.5, 06-29-00]

**16.15.5.6 OBJECTIVE:**

To establish the procedures for filing complaints against licensees and to further define actions by a licensee which are considered incompetent or unprofessional practice.

[06-14-97; 16.15.5.6 NMAC - Rn, 16 NMAC 15.5.6, 06-29-00]

**16.15.5.7 DEFINITIONS:**

- A. "Applicant" means the person who has applied for a license.
- B. "Board" means the Board of Examiners for Occupational Therapy.
- C. "Complaint Chairperson" means the professional board member who has been designated to review complaints.

D. "Complaint Manager" means the board administrator or any member of the Board who may be appointed by the Board Chairperson.

E. "License" means certificate, permit, or other authorization to engage in the profession of occupational therapy.

F. "Revoke a license" means to prohibit the conduct authorized by the license.

G. "Suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow, for a stated period of time, the conduct authorized by the license subject to conditions which are reasonably related to the grounds for suspension, including any conditions of probation.

[06-14-97; 16.15.5.7 NMAC - Rn, 16 NMAC 15.5.7, 06-29-00]

#### **16.15.5.8 CONDUCT OF HEARING REGULATIONS:**

A. ***Opportunity for a Licensee or Applicant to have a Hearing:*** Pursuant to the Uniform Licensing Act, 61-1-1 to 61-1-33 NMSA 1978, every licensee or applicant shall be afforded notice and an opportunity to be heard before the Board shall have authority to take any action, the effect of which would be:

(1) to deny a license after examination for any cause other than failure to pass an examination or failure to meet educational or administrative requirements for the issuance of a license;

(2) to deny a license for which application has been duly made on the basis of reciprocity;

(3) to withhold the renewal of a license for any cause other than failure to pay the required renewal fee;

(4) to suspend a license; and

(5) to revoke a license.

B. ***Limitations:*** Any action which would have the effect of denying, revoking, or suspending a license shall be governed by the Uniform Licensing Act, 61-1-1, et seq. NMSA 1978.

#### **C. *Complaint Procedures:***

(1) ***Inquiries Regarding Making a Complaint:*** A complaint may be initiated by any person through a telephone call, a written complaint, or a walk-in complaint presented to the Board office. Only those complaints that are in writing on the official Occupational Therapy Complaint Form will be formally addressed by the Board. The

forms required for an official complaint can be obtained from the Board office, Board of Examiners for Occupational Therapy, P.O. Box 25101, Santa Fe, NM, 87504.

(2) ***Procedures for Receipt of a Complaint at the Board's Office:*** The Board Administrator, or any member of the Board who may be appointed by the Board Chairperson, will act as the Complaint Manager for the procedures outlined below. Upon receipt of a written, signed complaint, or upon the Board's own action as initiated by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, if the Board has reasonable cause to believe that the Occupational Therapy Act or the rules and regulations promulgated pursuant thereto have been or are being violated, the Complaint Manager shall:

(a) log in the date the complaint is received in the Board office;

(b) determine that the subject of the complaint is a licensed occupational therapist (OT), a licensed occupational therapy assistant (OTA), a person practicing on a provisional permit or a person not licensed to practice;

(c) assign a complaint number and set up an individual file. Complaint numbering shall begin in January of each year;

(d) forward the complaint to the professional board member who has been designated to review complaints (Complaint Chairperson); and

(e) send a certified letter to the complainant confirming receipt of the complaint.

(3) ***Review by the Complaint Committee:***

(a) The Complaint Chairperson and Complaint Manager will comprise the Complaint

Committee, and will review all written, signed complaints filed against a licensee. The Complaint Committee shall provide the subject of the complaint ("respondent") with a copy of the complaint within thirty (30) calendar days

of receipt of the complaint in the Board office, unless the Complaint Committee reasonably determines that disclosure of the complaint at that time will substantially and materially impair the integrity or efficacy of the investigation. Nondisclosure at the initial stage of the complaint process shall be the exception, rather than the rule.

(b) Unless it has been determined that disclosure of the complaint will substantially and materially impair the integrity or efficacy of the investigation, so that the investigation is proceeding without notice to the respondent at the initial stage, the respondent shall be provided twenty (20) calendar days from the date of signature on the receipt of certified mail in which to file a written response to the complaint, and shall

be advised that he/she is required to provide all documents and exhibits in support of his/her position.

(c) If the Complaint Committee has determined that it is in the best interest of the investigation to withhold disclosure of the complaint during the initial stage of the investigation, pursuant to Subparagraph (a) of Paragraph (3) of Subsection C of 16.15.5.8 NMAC, above, a copy of the complaint shall be provided to the respondent no later than at the time of the issuance of a Notice of Contemplated Action ("NCA"), if any.

(d) If the Complaint Chairperson and the Complaint Manager determine that further information is needed, the Committee may employ an investigator and/or experts to review complaints as part of its investigation.

(e) The purpose of an investigation is to gather further data regarding the complaint and to verify facts. All complaints, unless dismissed for lack of jurisdiction, will be investigated. Investigations may include: writing letters seeking further information; making phone calls to administrators or supervisors; making phone calls to witnesses; making onsite visits at facilities providing occupational therapy services and requesting official patient records.

(f) Upon completion of the investigation, the investigator will prepare a written report which includes its factual findings and conclusions, all pertinent exhibits, and which makes recommendations to the Board as to a course of action.

(g) If the Complaint Chairperson and the Complaint Manager agree that the Board does not have jurisdiction, both the complainant and respondent will be notified in writing by certified letter. The letter will explain why the case cannot be accepted for investigation and/or action (e.g., due to the statute of limitations, or the nature of the complaint being a fee dispute, or there being no violation of the Occupational Therapy Act or the rules and regulations promulgated thereto), or it may note that the complaint can be referred to another agency. The letter will come from the Board and may be signed by the Board Chairperson or, upon delegation by the Board Chairperson, by the Complaint Manager on behalf of the Chairperson.

#### **D. *Review by the Board:***

(1) Unless the Complaint Committee dismisses the complaint pursuant to Subparagraph (g) of Paragraph (3) of Subsection C of 16.15.5.8 NMAC above, it shall present its report and recommendations(s) to the Board. The matter shall be referred to only by the assigned case number, and the identities of the parties shall not be disclosed to the Board until and unless an NCA is issued.

(2) The Complaint Chairperson shall not vote on the decision regarding the disposition of the complaint and shall not participate in any adjudicatory hearing or vote on any disciplinary action against the applicant or licensee arising out of the Complaint

Committee's investigation. Decisions affecting complaints require a quorum of the Board.

(3) Subject to Paragraph (2) of Subsection D of 16.15.5.8 NMAC, above, after the Complaint Committee's report has been voted upon by the Board, the case will be closed, if the Board determines that there is not sufficient evidence or cause to issue an NCA. A certified letter from the Board will be sent within thirty (30) calendar days of the date of the Board's decision to both the complainant and respondent. The letter will state the Board's action and reasons for its decision.

(4) Subject to Paragraph (2) of Subsection D of 16.15.5.8 NMAC, above, after the Complaint Committee's report has been reviewed by the Board, the Board may vote to issue an NCA if it determines there is sufficient evidence or cause to believe that the Respondent has violated the Occupational Therapy Act, or the rules and regulations promulgated pursuant to the Act.

(5) If the Board votes to issue an NCA, a complete copy of the Complaint Committee's report, including exhibits, shall be forwarded to the Attorney General's Office for assignment of a prosecuting attorney for review and the Attorney General's decision as to whether there is a sufficient basis to prosecute.

(6) Following the issuance of a notice of contemplated action, the Board may (at its option) authorize a board member or the prosecutor to confer with the applicant or licensee for the purpose of seeking settlement of the complaint. Such settlement must be approved by a quorum of the Board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee of his/her rights to hearing under the Uniform Licensing Act.

E. ***Disciplinary Hearings:*** All disciplinary hearings shall be conducted in accordance with the Uniform Licensing Act.

[06-14-97; 16.15.5.8 NMAC - Rn & A, 16 NMAC 15.5.8, 06-29-00; A, 04-03-03]

#### **16.15.5.9 SANCTIONS:**

A. "Unprofessional conduct" as used in the Occupational Therapy Act and in the rules and regulations of the New Mexico Board of Examiners for Occupational Therapy shall include, but shall not be limited to, the following types of acts or omissions:

(1) any violation of the Code of Ethics, as determined by the New Mexico Board of Examiners for Occupational Therapy;

(2) making false statements or providing false information in connection with an application for licensure or for licensure renewal;

(3) engaging in false, misleading, or deceptive advertising;

(4) violation of any provision of the New Mexico Occupational Therapy Act, as may be amended from time-to-time, or violating any rules or regulations of the Board promulgated pursuant thereto;

(5) harassment, or undue to improper intimidation of a patient/client, employee, colleague or other person in the role or context of the licensee's or applicant's status as an occupational therapist or occupational therapy assistant, including, but not limited to, assault or battery on any such person;

(6) sexual harassment or abuse of a patient/client, employee, colleague, or other person in the role or context of the licensee's or applicant's status as an occupational therapist or occupational therapy assistant;

(7) any failure to possess and apply the knowledge, or to use the skill and care ordinarily used by reasonable well-qualified occupational therapists or occupational therapy assistants under similar circumstances, giving due consideration to the locality involved;

(8) obtaining, or attempting to obtain, any compensation or other consideration by fraud or deceit;

(9) misrepresentation or falsification of credentials, including, but not limited to, education, training, experience or competence;

(10) violation of any Federal, State or local law or ordinance which relates to the practice for which the individual has been licensed or for which the person is an applicant for licensure;

(11) conviction of a crime, the circumstances of which substantially relate to the practice of occupational therapy, or which indicate an inability to safely and proficiently engage in the practice of occupational therapy;

(12) impairment of the licensee's or applicant's ability to practice occupational therapy as a result of alcohol or use of other drugs; and

(13) imposition of discipline upon the licensee or applicant for licensure by any other jurisdiction in which the licensee or applicant is licensed;

B. Pursuant to the Occupational Therapy Act, the Board, in its sole and sound discretion, may impose any of the following sanctions against a licensee or applicant for licensure upon a finding of a violation of the New Mexico Occupational Therapy Act or the rules and regulations, or Code of Ethics, adopted by the Board pursuant to the Act, including for those acts of "unprofessional conduct" defined in Section 9 of this rule:

(1) denial of application for licensure;

- (2) refusal to renew licensure;
- (3) written reprimand;
- (4) written censure;
- (5) imposition of probationary conditions on a license for a specified time period;
- (6) restrictions or limitations on the scope of a practice;
- (7) the requirement that the licensee or applicant complete a program of remedial education or treatment;
- (8) monitoring of the practice by a supervisor approved by the Board;
- (9) corrective action as specified by the Board;
- (10) suspension of a license;
- (11) revocation of a license;
- (12) in addition to or in lieu of any of the foregoing, payment of a fine for each violation found, not to exceed \$1000.00, unless a greater amount is provided by law; and
- (13) in addition to, or in lieu of any of the foregoing, a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

C. Any licensee whose license has been revoked may reapply for licensure one year from the effective date of the revocation.

(1) The Board shall have discretion to approve or to reject any application for reinstatement of the license following the one (1) year period of revocation.

(2) If the Board determines that rejection of the application for reinstatement of the license will be considered, it shall do so only in accordance with the notice and hearing provisions of the Uniform Licensing Act.

(3) No application for reinstatement shall be granted unless all fines and costs assessments related to the license revocation proceeding shall have been paid in full.

[06-14-97; 16.15.5.9 NMAC - Rn, 16 NMAC 15.5.9, 06-29-00; A, 04-03-03]

## **PART 6: FEE SCHEDULE**

**16.15.6.1 ISSUING AGENCY:**

Board of Examiners for Occupational Therapy.

[06-14-97; 16.15.6.1 NMAC - Rn & A, 16 NMAC 15.6.1, 06-29-00]

**16.15.6.2 SCOPE:**

All those individuals who wish to practice occupational therapy in the state of New Mexico.

[06-14-97; 16.15.6.2 NMAC - Rn, 16 NMAC 15.6.2, 06-29-00]

**16.15.6.3 STATUTORY AUTHORITY:**

Section 61-12A-18 NMSA 1978.

[06-14-97; 16.15.6.3 NMAC - Rn, 16 NMAC 15.6.3, 06-29-00]

**16.15.6.4 DURATION:**

Permanent.

[06-14-97; 16.15.6.4 NMAC - Rn, 16 NMAC 15.6.4, 06-29-00]

**16.15.6.5 EFFECTIVE DATE:**

June 14, 1997, unless a later date is cited at the end of a section.

[06-14-97; 16.15.6.5 NMAC - Rn & A, 16 NMAC 15.6.5, 06-29-00]

**16.15.6.6 OBJECTIVE:**

To outline fees for license application, license verification, examination, license renewal, inactive status, late renewal, and administrative fees.

[06-14-97; 16.15.6.6 NMAC - Rn, 16 NMAC 15.6.6, 06-29-00]

**16.15.6.7 DEFINITIONS:**

**[RESERVED]**

[06-14-97; 16.15.6.7 NMAC - Rn, 16 NMAC 15.6.7, 06-29-00]

**16.15.6.8 SCHEDULE OF FEES:**

(note, these fees are nonrefundable.)

**A.** Application for full (non-provisional) Licensure received between September 1 and May 31:

- (1) occupational therapist: \$110.00
- (2) occupational therapy assistant: \$100.00

**B.** applications for full (non-provisional) licensure received between June 1 and August 31st: \$50.00

- (1) occupational therapist: \$60.00
- (2) occupational therapy assistant: \$50.00

**C.** Provisional permit: \$25.00

**D.** List of licensees: \$50.00

**E.** Labels of addresses: \$80.00

**F.** Electronic data disk: \$80.00

**G.** Verification of licensure: \$20.00

**H.** Jurisprudence exam: \$10.00

**I.** Annual renewal fees:

- (1) occupational therapist: \$85.00
- (2) occupational therapy assistant: \$60.00

**J.** Renewal fee after receipt of expedited licensure by reciprocity issued pursuant to 16.15.7.11 NMAC

**K.** Duplicate of license (issued only in cases of loss or if licensee wishes name change due to divorce, marriage, etc.): \$15.00

**L.** Penalty fee for renewals not postmarked by October 1st of the renewal year: \$100.00

**M.** Continuing education approval for course provider: \$25.00

**N.** Copy charges for public documents (per page): \$1.00

**O. Inactive status fees:**

- (1) initial inactive status fee: \$15.00
- (2) annual inactive status fee: \$15.00
- (3) reactivation from inactive status fees:
  - (a) occupational therapist: \$70.00
  - (b) occupational therapy assistant: \$50.00

**P. Returned check charge (per check): \$20.00**

[6/14/1997; 16.15.6.8 NMAC - Rn & A, 16 NMAC 15.6.8, 06/29/2000; A, 04/03/2003; A, 08/29/2005; A, 01/30/2015; A, 6/27/2023]

## **PART 7 EXPEDITED LICENSING REQUIREMENTS**

### **16.15.7.1 ISSUING AGENCY:**

Board of Examiners for Occupational Therapy.

[16.15.7.1 NMAC - N, 6/27/2023]

### **16.15.7.2 SCOPE:**

All those individuals who wish to practice occupational therapy in the state of New Mexico.

[16.15.7.2 NMAC - N, 6/27/2023]

### **16.15.7.3 STATUTORY AUTHORITY:**

Section 61-12A-6 NMSA 1978.

[16.15.7.3 NMAC - N, 6/27/2023]

### **16.15.7.4 DURATION:**

Permanent.

[16.15.7.4 NMAC - N, 6/27/2023]

### **16.15.7.5 EFFECTIVE DATE:**

June 27, 2023, unless a later date is cited at the end of a section.

[16.15.751 NMAC - N, 6/27/2023]

**16.15.7.6 OBJECTIVE:**

This purpose of this part is to provide for the issuance of expedited licenses pursuant to Section 61.1.31.1 NMSA and 1978 Section 61-1-34 NMSA 1978.

[16.15.7.6 NMAC - N, 6/27/2023]

**16.15.7.7 DEFINITIONS:**

**A. "Eligible jurisdiction"** means any state or territory of the United States except those included in the list of disapproved licensing jurisdictions under 16.15.7.8 NMAC of this rule;

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-34NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Subsection E of Paragraph (1) of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Subsection E of Paragraph (2) of Section 61-1-34 NMSA 1978.

**G. "Qualified applicant"** means an applicant who:

(1) Holds a current license in good standing in another jurisdiction, as defined by Section D of 16.15.7.7 NMAC.

(2) Does not have a disqualifying criminal conviction, as defined in Section J of 16.15.2.9 NMAC of the Board's rules; and

(3) Is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Section E of Paragraph (3) of Section 61-1-34 NMSA 1978.

[16.15.7.7 NMAC - N, 6/27/2023]

**16.15.7.8 EXPEDITED LICENSURE BY ENDORSEMENT; LIST OF DISAPPROVED LICENSING JURISDICTION; REASONS:**

**A.** Applicants for licensure as an occupational therapist licensed in the following territories of the United States shall not be eligible for expedited licensure under Section 61-1-31-1 NMSA:

(1) American Samoa, on the grounds that education and exam requirements cannot be determined for this jurisdiction.

(2) U.S Virgin Islands, on grounds that this jurisdiction does not regulate this professional.

**B.** Applicants for licensure as an occupational therapy assistant licensed in the following territories of the United States shall not be eligible for expedited licensure Section 61-1-31-1 NMSA:

(1) American Samoa, on the grounds that this jurisdiction does not regulate this profession.

(2) U.S Virgin Islands, on the grounds that this jurisdiction does not regulate this profession.

[16.15.7.8 NMAC - N, 6/27/2023]

**16.15.7.9 [RESERVED]**

[16.15.7.9 NMAC - N, 6/27/2023]

**16.15.7.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure must submit to the board a completed application containing all of the following:

(1) A complete and signed application form;

(2) Proof of current unrestricted licensure in good standing held by the application in an eligible jurisdiction(s).

(3) Payment of the required application fee.

**B.** An expedited license application shall be deemed complete until the applicant has submitted, and the board's staff is in receipt of all of the materials, including documentation from third parties, as required by Subsection A of this section.

**C.** Upon receipt of a complete application, the board's shall process the application and issue the expedited license to a qualified application within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other causes to deny the application pursuant to Section 61-12A-22 of the Occupational Therapy Act:

(1) The matter of the applicant's application shall be submitted to the board for consideration and the action at its next available regular meeting:

(2) The license may not be issued within 30 days of submission of the complete application: and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.15.7.10 NMAC - N, 6/27/2023]

#### **16.15.7.11 EXPEDITED LICENSE BY ENDORSEMENT; DURATION AND RENEWAL:**

**A.** An expedited license issued to an applicant under this rule shall be valid for one year from the date of issuance, provided that the board may extend the duration of the license beyond one year upon the licensee's showing of extenuating circumstances.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules pursuant to 16.15.2.13 NMAC and this section. If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass an examination prescribed by the national board for certification in occupational therapy or the board, the licensee shall be required to take and pass an examination prescribed by the national board for certification in occupational therapy or the board, and an examination on the state laws, rules, and regulations that pertain to the practice of occupational therapy in New Mexico as a prerequisite to license renewal pursuant to 16.15.2.7 NMAC of the board's rules.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license granted under this rule.

[16.15.7.11 NMAC - N, 6/27/2023]

#### **16.15.7.12 EXPEDITED LICENSE FOR MILITARY SERVICE MEMBER, SPOUSES AND VETERANS:**

**A.** A candidate for expedited licensure must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of current unrestricted license in good standing held by the applicant in another jurisdiction, including a branch of the United States armed forces;
- (3) Submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for spouses of deceased military members : a copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
  - (e) for veterans (retired or separated), proof of honorable discharge, such as a copy of DD form 214, DD form 215, DD form 256, DD form 257, NGB form 22, military ID card, driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all of the materials, including documentation from third parties, required by Subsection A.

**C.** Upon receipt of a complete application, the board's staff process the application and issued expedited license to a qualified applicant within 30 days.

**D.** If the applicant is not qualified applicant as defined by this rule and has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Subsection 61-12A-22 of the Occupational Therapy Act.

- (1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next board meeting;
- (2) The license may not be issued within 30 days of submission of the completed application; and
- (3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

E. A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fees or renewal fees for the first three years of licensure with the board

[16.15.7.12 NMAC - N, 6/27/2023]

**16.15.7.13 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS; DURATION AND RENEWAL:**

A. An expedited license issued to an applicant under this rule shall be valid for one year from the date of issuance.

B. A licensee holding an expedited license may apply for the license renewal in the manner provided by the board's rules 16.15.2.13 NMAC and this section. If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass an examination prescribed by the national board for certification in occupational therapy or the board, the licensee shall be required to take and pass an examination prescribed by the national board for certification in occupational therapy or the board, and an examination on the state laws, rules and regulations that pertain to the practice of occupational therapy in New Mexico as a prerequisite to license renewal pursuant to 16.15.2.7 NMAC of the board's ruled.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license granted under this rule.

[16.15.7.13 NMAC - N, 6/27/2023]

## **CHAPTER 16: OPTOMETRIC PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

**16.16.1.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; A, 6-26-00; 16.16.1.1 NMAC - Rn, 16 NMAC 16.1.1, 03-15-2001; A, 07-06-2012]

**16.16.1.2 SCOPE:**

Provisions for Part 1 of Chapter 16 apply to licensees, applicants, other agencies, professional associations, and any member of the general public.

[10-14-95; 16.16.1.2 NMAC - Rn, 16 NMAC 16.1.2, 03-15-2001]

**16.16.1.3 STATUTORY AUTHORITY:**

Authority for Part 1 of Chapter 16 is the Optometry Act NMSA 1978 Section 61-2-6 (1995 Repl. Pamp.); the Inspection of Public Records Act NMSA 1978 Section 14-2-1 et seq. (1993 Repl. Pamp.); the Public Records Act NMSA Section 14-3-1 et seq. (1993 Repl. Pamp.) and the Uniform Licensing Act Section 61-1-1 et seq. (1993 Repl. Pamp.).

[8-21-92; 6-24-94; 10-14-95; 16.16.1.3 NMAC - Rn, 16 NMAC 16.1.3, 03-15-2001]

#### **16.16.1.4 DURATION:**

Permanent.

[10-14-95; 16.16.1.4 NMAC - Rn, 16 NMAC 16.1.4, 03-15-2001]

#### **16.16.1.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[8-21-92...10-14-95; 16.16.1.5 NMAC - Rn, 16 NMAC 16.1.5, 03-15-2001; A, 07-06-2012]

#### **16.16.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 16 is to establish regulations for the general provisions which apply to all of the board of optometry's rules, policies, and procedures.

[10-14-95; 16.16.1.6 NMAC - Rn, 16 NMAC 16.1.6, 03-15-2001; A, 07-06-2012]

#### **16.16.1.7 DEFINITIONS:**

**A. "Advertisement"** means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, a patient to seek the services of an optometrist.

**B. "Advertisement of Health Care Services Act"** means NMSA 1978, Sections 57-21-1 to 57-21-3, and herein referred to as the Advertisement of Health Care Services Act.

**C. [RESERVED]**

**D. "Board"** means the New Mexico board of optometry, herein referred to as the board.

**E. "Controlled substance"** means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act.

**F. "Controlled Substances Act"** means NMSA 1978 Sections 30-31-1 to 30-31-41 and herein referred to as the Controlled Substances Act.

**G. [RESERVED]**

**H. "Inspection of Public Records Act"** refers to NMSA 1978 Sections 14-2-1 through 14-2-10 (1993 Repl. Pamp.), herein referred to as the Inspection of Public Records Act.

**I. "New Mexico Drug, Device and Cosmetic Act"** means Sections 26-1-1 to 26-1-26 NMSA 1978 (1987 Repl. Pamp.), herein referred to as the Drug, Device and Cosmetic Act.

**J. "Optometric physician"** means an optometrist who has been certified by the board to administer pharmaceutical medication in the diagnosis, treatment and management of ocular diseases.

**K. "Open Meetings Act"** means NMSA 1978 Sections 10-15-1 to 10-15-4 (1993 Repl. Pamp.), herein referred to as the Open Meetings Act.

**L. "Optometry Act"** means NMSA 1978 Sections 61-2-1 through 61-2-18 (1995 Repl. Pamp.), herein referred to as the Optometry Act or Section 61-2-1 et seq.

**M. [RESERVED]**

**N. "Parental Responsibility Act"** refers to Chapter 25 Laws of 1995, herein referred to as the Parental Responsibility Act or PRA.

**O. "Prescription"** as defined in Section 26-1-2.I of the Drug, Device and Cosmetic Act means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of an electronic or written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue.

**P. "Public Records Act"** refers to NMSA 1978 Sections 14-3-2 through 14-3-25 (1995 Repl. Pamp.) herein referred to as the Public Records Act.

**Q. [RESERVED]**

**R. "State Rules Act"** means NMSA 1978 Sections 14-4-1 to 14-4-9 (1995 Repl. Pamp.), herein referred to as the State Rules Act.

**S. "Uniform Licensing Act"** means NMSA 1978 Sections 61-1-1 to 61-1-33 (1993 Repl. Pamp.), herein referred to as the Uniform Licensing Act or ULA.

[10-14-95; 16.16.1.7 NMAC - Rn, 16 NMAC 16.1.7, 03-15-2001; A, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

### **16.16.1.8 INSPECTION OF BOARD RECORDS:**

**A.** Except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following formal disciplinary proceedings conducted pursuant to the Uniform Licensing Act are matters of public record as of the time of filing with or by the board.

#### **B. [RESERVED]**

**C.** Any person may examine all public records in the board's custody. The following procedure shall be followed by persons requesting inspection of public records.

**(1)** The request shall identify the records sought with reasonable particularity. The board will produce public records as required under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12.

**(2)** Upon request, the board may provide copies of public records, lists, labels, and verifications and may charge a reasonable fee to defray copying and mailing charges. The board is not obligated to create lists, labels, or materials which are not already in existence.

**(3)** No person shall be permitted to remove documents from the board's office.

[8-21-92; 10-14-95; 16.16.1.8 NMAC - Rn, 16 NMAC 16.1.8, 03-15-2001; A, 07-06-2012]

### **16.16.1.9 TELEPHONE CONFERENCES:**

As authorized by NMSA 1978 (1993 Repl. Pamp.) Section 10-15-1.C of the Open Meetings Act, when it is difficult or impossible for a Board member to attend a Board meeting in person, the member may participate by means of a conference telephone or similar communications equipment. Participation by such means shall constitute presence in person at the meeting. Each member participating by conference telephone must be identified when speaking. All participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the Board who speaks during the meeting.

[N, 6-26-00; 16.16.1.9 NMAC - Rn, 16 NMAC 16.1.9, 03-15-2001]

## **PART 2: FEES**

### **16.16.2.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 2-15-99; A, 6-26-00; 16.16.2.1 NMAC - Rn, 16 NMAC 16.2.1, 03-15-2001; A, 07-06-2012]

**16.16.2.2 SCOPE:**

The provisions in Part 2 of Chapter 16 apply to all licensed optometrists, applicants for optometric licensure in New Mexico, anyone wishing to purchase licensee lists or mailing labels, or anyone who requests a written verification of licensure to be completed by the Board.

[10/14/1995; 16.16.2.2 NMAC - Rn, 16 NMAC 16.2.2, 3/15/2001; A, 12/27/2022]

**16.16.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Optometry Act, Sections 61-2-1 to 61-2-18 NMSA 1978.

[6/24/1994; 10/14/1995; 16.16.2.3 NMAC - Rn, 16 NMAC 16.2.3, 3/15/2001; A, 12/27/2022]

**16.16.2.4 DURATION:**

Permanent.

[10-14-95; 16.16.2.4 NMAC - Rn, 16 NMAC 16.2.4, 03-15-2001]

**16.16.2.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[11-17-73...5-31-96; 16.16.2.5 NMAC - Rn, 16 NMAC 16.2.5, 03-15-2001; A, 03-15-2004]

**16.16.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 16 is to establish the required fees for application, examination, licensure, certification, renewal, retirement, reinstatement and reactivation of a license, duplicate licenses, verifications of licensure, and so forth.

[10-14-95; 16.16.2.6 NMAC - Rn, 16 NMAC 16.2.6, 03-15-2001]

**16.16.2.7 DEFINITIONS:**

[RESERVED]

[10-14-95; 16.16.6.7 NMAC - Rn, 16 NMAC 16.6.7, 03-15-2001]

**16.16.2.8 APPLICATION PROCESSING FEE:**

\$175.00

**A.** The application fee must accompany the letter of intent to sit for a scheduled board examination for the purposes of 16.16.3.9 NMAC.

**B.** The application-processing fee is required each time the candidate applies to sit for the board examination.

[6/24/1994; 10/14/1995; 5/31/1996; 16.16.2.8 NMAC - Rn, 16 NMAC 16.2.8, 3/15/2001; A, 7/6/2012; A, 12/27/2022]

**16.16.2.9 EXAMINATION FEE:**

\$400.00. The examination fee is required each time the candidate is scheduled for the Board examination.

[6/24/1994; 10/14/1995; 5/31/1996; 16.16.2.9 NMAC - Rn, 16 NMAC 16.2.9, 3/15/2001; A, 12/27/2022]

**16.16.2.10 LICENSE FEE FOR EXAMINATION CANDIDATES:**

\$200.00. The license fee is required after passing the board examination in order to receive an initial license.

[6/24/1994; 10/14/1995; 5/31/1996; A, 6-26-00; 16.16.2.10 NMAC - Rn, 16 NMAC 16.2.10, 3/15/2001; A, 07/06/2012; A, 12/27/2022]

**16.16.2.11 EXPEDITED LICENSE FEE:**

\$250.00. The expedited license fee is required with an expedited license application in order to submit an application and receive an initial license.

[6/24/1994; 10/14/1995; 5/31/1996; A, 6-26-00; 16.16.2.11 NMAC - Rn, 16 NMAC 16.2.11, 3/15/2001; A 07-06-2012; A, 12/27/2022]

**16.16.2.12 [RESERVED]**

[10-14-95; 5-31-96; 16.16.2.12 NMAC - Rn, 16 NMAC 16.2.12, 03-15-2001; Repealed, 07-06-2012]

**16.16.2.13 RENEWAL FEE:**

\$300.00

[6-24-94; 10-14-95; 5-31-96; 2-15-99; 16.16.2.13 NMAC - Rn, 16 NMAC 16.2.13, 03-15-2001; A, 07-06-2012]

**16.16.2.14 LATE PENALTY FEE:**

\$325.00

[6-24-94; 10-14-95; 5-31-96; 16.16.2.14 NMAC - Rn, 16 NMAC 16.2.14, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

**16.16.2.15 DUPLICATE WALL LICENSE FEE:**

\$35.00

[6-24-94; 10-14-95; 5-31-96; 16.16.2.15 NMAC - Rn, 16 NMAC 16.2.15, 03-15-2001]

**16.16.2.16 DUPLICATE WALL CERTIFICATE FEE:**

\$50.00

[6-24-94; 10-14-95; 5-31-96; 16.16.2.16 NMAC - Rn, 16 NMAC 16.2.16, 03-15-2001; A, 07-06-2012]

**16.16.2.17 VERIFICATION OF LICENSURE FEE:**

\$25.00

[6-24-94; 10-14-95; 16.16.2.17 NMAC - Rn, 16 NMAC 16.2.17, 03-15-2001; A, 07-06-2012]

**16.16.2.18 INACTIVE STATUS FEE:**

\$300.00

[16.16.2.18 NMAC - N, 03-15-2004; A, 07-06-2012]

**16.16.2.19 INACTIVE RENEWAL FEE:**

\$200.00

[10-14-95; 16.16.2.19 NMAC - Rn, 16 NMAC 16.2.19, 03-15-2001; 16.16.2.19 NMAC - N, 07-06-2012]

**16.16.2.20 REACTIVATION FEE:**

\$300.00

[2-15-99; 16.16.2.20 NMAC - Rn, 16 NMAC 16.2.20, 03-15-2001; 16.16.2.20 NMAC - N, 07-06-2012]

**16.16.2.21 LICENSEE LISTINGS AND MAILING LABELS FEE:**

\$100.00

[N, 6-26-00; 16.16.2.21 NMAC - Rn, 16 NMAC 16.2.21, 03-15-2001; 16.16.2.21 NMAC - Rn & A, 16.16.2.19 NMAC, 07-06-2012]

**16.16.2.22 ALL FEES ARE NON-REFUNDABLE:**

[16.16.2.22 NMAC - Rn, 16.16.2.20 NMAC, 07-06-2012]

**16.16.2.23 OTHER ADMINISTRATIVE FEES:**

Request for CE review for approval for licensees as provided in 16.16.13.10 NMAC:  
\$35.00.

[16.16.2.23 NMAC - Rn, 16.16.2.21 NMAC, 07-06-2012; A, 12/27/2022]

**PART 3: REQUIREMENTS FOR LICENSURE BY EXAMINATION**

**16.16.3.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 2-15-99; A, 6-26-00; 16.16.3.1 NMAC - Rn, 16 NMAC 16.3.1, 03-15-2001; A, 07-06-2012]

**16.16.3.2 SCOPE:**

The provisions in Part 3 of Chapter 16 apply to any applicant for optometric licensure in New Mexico who does not meet the requirements for licensure by endorsement.

[10-14-95; 16.16.3.2 NMAC - Rn, 16 NMAC 16.3.2, 03-15-2001]

**16.16.3.3 STATUTORY AUTHORITY:**

The authority for Part 3 of Chapter 16 is Section 61.2.4 NMSA 1978; Subsections B and D of 61-2-6 NMSA 1978; Section 61-2-8 NMSA 1978; and Section 61-2-9 NMSA 1978 (1995 Repl. Pamp.).

[11/17/1973; 3/31/1991; 8/21/1992; 6/24/1994; 10/14/1995; 16.16.3.3 NMAC - Rn, 16 NMAC 16.3.3, 3/15/2001; A, 2/26/2022]

**16.16.3.4 DURATION:**

Permanent.

[10-14-95; 16.16.3.4 NMAC - Rn, 16 NMAC 16.3.4, 03-15-2001]

**16.16.3.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[11-17-73...10-14-95; 5-31-96; 2-15-99; 16.16.3.5 NMAC - Rn, 16 NMAC 16.3.5, 03-15-2001; A, 03-15-2004]

**16.16.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 16 is to establish clearly the licensure application procedures and requirements for candidates who are seeking licensure by examination to qualify to sit for the Board's licensing examination.

[10-14-95; 16.16.3.6 NMAC - Rn, 16 NMAC 16.3.6, 03-15-2001]

**16.16.3.7 DEFINITIONS:**

**A. "NBEO"** means the National Board of Examiners in Optometry.

**B. "NBEO Part I"** refers to the NBEO Basic Science Exam.

**C. "NBEO Part II"** refers to the NBEO Clinical Science Exam.

**D. "NBEO Part III"** refers to the NBEO Patient Care Exam which consists of PMP's (Patient Management); VRICS (Visual Recognition and Interpretation of Clinical Signs); and Clinical Skills.

**E. "The TMOD"** means the NBEO Treatment and Management of Ocular Disease Exam.

[10-14-95; 16.16.3.7 NMAC - Rn, 16 NMAC 16.3.7, 03-15-2001]

**16.16.3.8 EXAMINATION REQUIREMENTS:**

**A.** As of January 15, 1995, all candidates for licensure are required to take the Board's licensing examination.

**B.** As of January 15, 1995, **all** candidates, except those who have met the qualification requirements set forth in Subsections A and B of 16.16.4.8 NMAC and have been approved as candidates for licensure by endorsement, shall be required to pass Part I, Part II, Part III, and the TMOD of the NBEO national standards examination as a prerequisite to sitting for the Board's licensing examination.

[10-14-95, 5-31-96, 2-15-99; 16.16.3.8 NMAC - Rn, 16 NMAC 16.3.8, 03-15-2001]

### **16.16.3.9 APPLICATION REQUIREMENTS:**

In accordance with Section 61-2-8 NMSA 1978, and those qualifications set forth therein, candidates for examination must submit to the board office, at least 65 days prior to the announced examination date, a letter of intent applying for the next regularly scheduled board examination accompanied by the required application processing fee. In addition to a completed, board-approved application form, the following documents must be received by the board office no later than 40 days prior to the requested examination.

**A.** Letters of reference from two currently licensed optometrists actively engaged in the practice of optometry, and not related to the applicant, written on their letterhead stationery.

**B.** Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

**C.** A complete official optometry transcript showing the applicant's graduation sent directly to the board by a college of optometry as approved by the American optometric association's council of optometric education.

**(1)** An applicant expecting to graduate in the spring or summer prior to the board's examination who does not expect completed transcripts to be available before the documentation deadline, must make arrangements for the school to send a letter directly to the board regarding the applicant's expected graduation.

**(2)** The letter must be postmarked before the forty-day documentation deadline.

**(3)** The completed, official transcript must be received by the board before the scheduled examination date or the application will be considered incomplete, and the applicant will be denied entrance into the examination.

**D.** A statement and copy of other state license(s) held by the applicant.

**E.** A recent, passport-type photograph of the applicant.

**F.** An affidavit from the applicant that the applicant has not engaged in any optometry practice of an illegal or unethical nature as defined in the New Mexico Optometry Act, NMSA 1978, Sections 61-2-1 to 61-21-18 (1995 Repl. Pamp.).

**G.** Copy of current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be self-study.

**H.** A verification from an accredited optometry school of successful completion of 100 or more post-graduate clock hours of ocular therapeutics pharmacology, as provided in Subsection A of 16.16.7.10 NMAC, and a minimum of 20 post-graduate clock hours in clinical pharmacology as provided in Subsection B of 16.16.7.11 NMAC.

**I.** Verification directly from the national board of examiners in optometry (NBEO) that the applicant has successfully passed part I, part II, part III, and the TMOD of the NBEO as provided in Subsection B of 16.16.3.8 NMAC.

**(1)** If NBEO examination results will not be released by the NBEO prior to the documentation deadline, the applicant must submit to the board a copy of the NBEO letter scheduling the applicant for the NBEO exam(s).

**(2)** Upon receipt of verification of successful completion of the required NBEO exam(s), and upon having met all other requirements stipulated in this regulation, the approved candidate will be scheduled for the next regularly scheduled board examination.

**J.** A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination deadline may disqualify the candidate from the exam.

**K.** Each approved exam candidate will be required to bring their copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

**L.** proof of any disqualifying criminal convictions as defined in Paragraph 12 of 16.16.21 NMAC.

[11/17/1973; 3/8/1986; 3/31/1991; 8/21/1992; 6/24/1994; 9/30/1995; 10/14/1995; 5/31/1996; 2/15/1999; 16.16.3.9 NMAC - Rn, 16 NMAC 16.3.9, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012; A, 6/25/2015; A, 2/26/2022]

#### **16.16.3.10 APPLICATION APPROVAL:**

Upon Board review and approval of the above listed documentation, each approved candidate will be scheduled by letter to sit for the board's examination.

**A.** Candidates will not be allowed entrance into the examination without this schedule notification letter.

**B.** At least one form of picture identification will be required for entrance into the examination.

**C.** Each candidate will be assigned an identification number that will be the sole means of candidate identification throughout the administration and scoring of the examination.

[10-14-95; A, 2-15-99; 16 NMAC 16.3.10 - Rn, 16 NMAC 16.3.10, 03-15-2001]

#### **16.16.3.11 INELIGIBILITY FOR LICENSURE:**

Any applicant for licensure who desires to take the Board examination and who has had a license either suspended or revoked in any jurisdiction shall be ineligible to take the examination until that license is reinstated.

[11-17-73; 10-14-95; 16 NMAC 16.3.11 - Rn, 16 NMAC 16.3.11, 03-15-2001]

#### **16.16.3.12 INCOMPLETE APPLICATIONS PURGED:**

Incomplete applications for licensure will be kept on file for two years from the date the first item of documentation was received and board staff created a file.

[N, 6-26-00; 16.16.3.12 NMAC - Rn, 16 NMAC 16.3.12, 03-15-2001, A, 03-15-2004]

### **PART 4: REQUIREMENTS FOR LICENSURE BY ENDORSEMENT**

#### **16.16.4.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[16.16.4.1 NMAC - Rp, 16.16.4.1 NMAC, 12/27/2022]

#### **16.16.4.2 SCOPE:**

The provisions in Part 4 of Chapter 16 apply to all applicants for expedited licensure.

[16.16.4.2 NMAC - Rp, 16.16.4.2 NMAC, 12/27/2022]

#### **16.16.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Optometry Act, Sections 61-2-1 to -18 NMSA 1978.

[16.16.4.3 NMAC - Rp, 16.16.4.3 NMAC, 12/27/2022]

#### **16.16.4.4 DURATION:**

Permanent.

[16.16.4.4 NMAC - Rp, 16.16.4.4 NMAC, 12/27/2022]

#### **16.16.4.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[16.16.4.5 NMAC - Rp, 16.16.4.5 NMAC, 12/27/2022]

#### **16.16.4.6 OBJECTIVE:**

The objective of Part 4 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.16.4.6 NMAC - Rp, 16.16.4.6 NMAC, 12/27/2022]

#### **16.16.4.7 DEFINITIONS:**

##### **A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.16.4.8 NMAC, and

(2) any foreign country included in 16.16.4.9 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34-NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Sections 61-1-34 NMSA 1978.

**G. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.16.4.7 NMAC - Rp, 16.16.4.7 NMAC, 12/27/2022]

#### **16.16.4.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-2-9 of the Optometry Act:

**A.** American Samoa, on the grounds that education and licensure examination requirements cannot be determined to be consistent with those requirements in New Mexico.

**B.** Unless the applicant holds both an optometrist license and therapeutic pharmaceutical agents certification, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Northern Mariana Islands, Virgin Islands, and Guam, on the grounds that New Mexico includes the scope of practice for therapeutic pharmaceutical agents certification as part of its optometrist licensing requirements.

[16.16.4.8 NMAC - Rp, 16.16.4.8 NMAC, 12/27/2022]

#### **16.16.4.9 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of current licensure in an eligible jurisdiction as defined in these rules;
- (3) Certificate of good standing for the license held by the applicant in an eligible jurisdiction;

(4) Payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-2-13 NMSA 1978:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.16.4.9 NMAC - Rp, 16.16.4.9 NMAC, 12/27/2022]

#### **16.16.4.10 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34-NMSA 1978 must submit to the board a complete application containing all of the following:

(1) A completed and signed application form;

(2) Proof of current licensure in another jurisdiction;

(3) Certificate of good standing for the license held by the applicant in another jurisdiction, including a branch of the United States armed forces;

(4) Submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: a copy of decedent's DD214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following; a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): a copy of DD214 showing proof of honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-2-13-NMSA 1978:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and,

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fees or renewal fees for the first three years of licensure with the board.

[16.16.4.10 NMAC - Rp, 16.16.4.10 NMAC, 12/27/2022]

#### **16.16.4.11 EXPEDITED LICENSURE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular license issued by the board and must be renewed on or before July of each year, as provided by 16.16.10.8 and 9 NMAC.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that upon renewal, the licensee must also satisfy the following examination requirements:

(1) Each licensee shall be required to pass the board's licensing examination, including both the jurisprudence examination and the clinical practicum examination.

(a) At least 10 calendar days prior to examination, the licensee must provide the board a list of the names of any New Mexico licensed optometrists with whom the applicant is acquainted, with whom the applicant has a professional or personal affiliation, or with whom the applicant would feel uncomfortable by being examined. Failure to provide this information prior to the examination may disqualify the candidate from the exam.

(b) The licensee must bring a copy of the board's examination policy and procedures document to the clinical examination and sign it in the presence of the board's representative in attestation that the candidate has read the document. A copy of the document will become a part of the candidate's examination records.

(c) Each candidate will be assigned an identification number that will be the sole means of candidate identification throughout the administration and scoring of the examination.

(d) The licensee must pass each section of the board's licensing examination with a seventy-five percent score or better in order to qualify for renewal.

(2) If the licensee holding an expedited license was not required by the licensee's prior jurisdiction outside of New Mexico to pass the Part 1, Part II, Part III, or the TMOD of the NBEO, the licensee shall be required to do so as a prerequisite to license renewal.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.16.4.11 NMAC - Rp, 16.16.4.11 NMAC, 12/27/2022]

#### **16.16.4.12 INELIGIBILITY FOR LICENSURE:**

Any applicant for licensure who desires to take the board examination and who has had a license either suspended or revoked in any jurisdiction shall be ineligible to take the examination until that license is reinstated by the other licensing jurisdiction.

[11/17/1973; 10/14/1995; 5/31/1996; 2/15/1999; 16.16.4.11 NMAC - Rn, 16 NMAC 16.4.11, 3/15/2001; A, 5/29/2019]

#### **16.16.4.13 INCOMPLETE APPLICATIONS PURGED:**

Incomplete applications for licensure will be kept on file for two years from the date the first item of documentation was received and board staff created a file.

[N, 6/26/2000; 16.16.4.12 NMAC - Rn, 16 NMAC 16.4.12, 3/15/2001; A, 3/15/2004; A, 5/29/2019]

## **PART 5: EXAMINATION FOR OPTOMETRIC LICENSURE**

### **16.16.5.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 2-15-99; A, 6-26-00; 16.16.5.1 NMAC - Rn, 16 NMAC 16.5.1, 03-15-2001; A, 07-06-2012]

### **16.16.5.2 SCOPE:**

The provisions in Part 5 of Chapter 16 apply to all applicants for optometric licensure in New Mexico.

[10-14-95; 16.16.5.2 NMAC - Rn, 16 NMAC 16.5.2, 03-15-2001]

### **16.16.5.3 STATUTORY AUTHORITY:**

The authority for Part 5 of Chapter 16 is NMSA 1978, Section 61-2-4.1; Section 61-2-6.B and D. (6) (7); Section 61-2-9; and 61-2-6.D. (1) and (2) (1995 Repl. Pamp.).

[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.5.3 NMAC - Rn, 16 NMAC 16.5.3, 03-15-2001]

### **16.16.5.4 DURATION:**

Permanent.

[10-14-95; 16.16.5.4 NMAC - Rn, 16 NMAC 16.5.4, 03-15-2001]

### **16.16.5.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[11-17-73...5-31-96; 16.16.5.5 NMAC - Rn, 16 NMAC 16.5.5, 03-15-2001; A, 03-15-2004]

### **16.16.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 16 is to establish the requirements, policies, and procedures for examination for licensure to practice optometry in New Mexico.

[10-14-95; 16.16.5.6 NMAC - Rn, 16 NMAC 16.5.6, 03-15-2001]

### **16.16.5.7 DEFINITIONS:**

**A. "NBEO"** means the national board of examiners in optometry.

**B. "NBEO Part I"** refers to the NBEO basic science exam.

**C. "NBEO Part II"** refers to the NBEO clinical science exam.

**D. "NBEO Part III"** refers to the NBEO patient care exam which consists of PMP's (patient management); VRICS (visual recognition and interpretation of clinical signs); and clinical skills.

**E. "The TMOD"** means the NBEO treatment and management of ocular disease exam.

[10-14-95; 16.16.5.7 NMAC - Rn, 16 NMAC 16.5.7, 03-15-2001]

#### **16.16.5.8 NATIONAL STANDARDS EXAMINATION:**

**A.** As of January 15, 1995, all candidates, except those who have met the qualification requirements set forth in Subsections A and B of 16.16.4.8 NMAC and have been approved by the board as candidates for licensure by endorsement, shall be required to pass Part I, Part II, Part III, and the TMOD of the NBEO national standards examination as a prerequisite to sitting for the board's licensing examination.

**B. [RESERVED]**

**C.** Official notice of examination scores for all required parts of the NBEO examination must be received directly from the NBEO.

[10-14-95, 5-31-96; 16.16.5.8 NMAC - Rn, 16 NMAC 16.5.8, 03-15-2001; A, 03-15-2004]

#### **16.16.5.9 NEW MEXICO LICENSING EXAMINATION:**

**A.** As of January 15, 1995, all candidates for licensure shall be required to take the board's licensing examination, consisting of a jurisprudence exam and a clinical practicum exam.

**B.** The board examination shall only be seen by board members, individuals preparing and administering the examination and by examination candidates while sitting for the examination.

**C.** As soon as practical after the board examination is scored, each examination candidate will be notified in writing by certified mail, return receipt requested, of his or her individual scores and pass/fail status.

(1) Successful exam candidates will have ninety (90) days from the date of receipt of the exam results notification to complete the licensure process as provided in 16.16.2.10 NMAC or 16.16.2.11 NMAC and 16.16.2.12 NMAC.

(2) Candidates who do not complete the licensure process within the time provided in Subsection C, Paragraph (1) of 16.16.5.9 NMAC must reapply for licensure and meet all the requirements of application and examination as set forth in 16.16.3 NMAC.

**D.** A grade of seventy-five percent (75%) or better in each of the clinical sections and in the jurisprudence exam is required for passing the licensure examination.

**E.** Candidates failing to pass the board's examination may re-take a regularly scheduled examination upon approved re-application.

(1) Failed candidates must repeat all portions of the board's examination.

(2) The applicant must complete a new exam application form and submit an updated resume', provide updated license verifications directly from other licensing jurisdictions, and pay the required application processing and examination fees (16.16.2.8 NMAC and 16.16.2.9 NMAC).

**F.** Any candidate detected cheating in any manner during the course of any examination shall automatically fail the entire examination. Cheating on an examination shall be deemed unprofessional conduct, and shall demonstrate that the applicant is not of good moral character. Individuals detected cheating shall be afforded notice and the opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

**G.** The deadline for challenging the examination is three (3) months from the date the exam scores are mailed to the candidate by certified mail.

[11-17-73; 12-6-87; 10-14-95; 5-31-96; 2-15-99; A, 6-26-00; 16.16.5.9 NMAC - Rn, 16 NMAC 16.5.9, 03-15-2001; A, 03-10-2005; A, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

## **PART 6: LICENSE ISSUANCE TO PRACTICE OPTOMETRY**

### **16.16.6.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 16.16.6.1 NMAC - Rn, 16 NMAC 16.6.1, 03-15-2001; A, 07-06-2012]

### **16.16.6.2 SCOPE:**

Part 6 of Chapter 16 applies to all applicants qualified for optometric licensure in New Mexico.

[10-14-95; 16.16.6.2 NMAC - Rn, 16 NMAC 16.6.2, 03-15-2001]

**16.16.6.3 STATUTORY AUTHORITY:**

The authority for Part 6 of Chapter 16 is NMSA 1978 Section 61-2-4; Section 61-2-8; Section 61-2-9.B; Section 61-2-9.1; Section 61-2-11 and 61-2-12.A and E (1995 Repl. Pamp.).

[10-14-95; 10-15-97; 16.16.6.3 NMAC - Rn, 16 NMAC 16.6.3, 03-15-2001]

**16.16.6.4 DURATION:**

Permanent.

[10-14-95; 16.16.6.4 NMAC - Rn, 16 NMAC 16.6.4, 03-15-2001]

**16.16.6.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[10-14-95; 10-15-97; 16.16.6.5 NMAC - Rn, 16.16.6.5, 03-15-2001; A, 07-06-2012]

**16.16.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 16 is to establish the rules and procedures for licensure of candidates who have met all the qualifications for licensure to practice optometry in New Mexico.

[10-14-95; 16.16.6.6 NMAC - Rn, 16 NMAC 16.6.6, 03-15-2001]

**16.16.6.7 DEFINITIONS:**

**[RESERVED]**

[10-14-95; 16.16.6.7 NMAC - Rn, 16 NMAC 16.6.7, 03-15-2001]

**16.16.6.8 ISSUANCE OF INITIAL LICENSE:**

After the applicant has met all application, examination, and licensure requirements, and has paid the required license and certificate fees, the applicant will be issued a license to practice optometry in New Mexico.

[10-14-95; 16.16.6.8 NMAC - Rn, 16 NMAC 16.6.8, 03-15-2001]

#### **16.16.6.9 DISPLAY OF LICENSE:**

The licensee must display the license to practice optometry in a conspicuous place in his principal office or place of business.

[10-14-95; 16.16.6.9 NMAC - Rn, 16 NMAC 16.6.9, 03-15-2001]

#### **16.16.6.10 ADDRESS AND EMPLOYMENT PRACTICE CHANGES:**

It is the licensee's responsibility to provide immediate written notification to the Board of any changes in addresses, phone numbers, and practice location(s).

[10-15-97; 16.16.6.10 NMAC - Rn, 16 NMAC 16.6.10, 03-15-2001]

### **PART 7: PHARMACEUTICAL CERTIFICATION**

#### **16.16.7.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; A, 6-26-00; 16.16.7.1 NMAC- Rn, 16 NMAC 16.7.1, 03-15-2001; A, 07-06-2012]

#### **16.16.7.2 SCOPE:**

Part 7 of Chapter 16 applies to all currently licensed New Mexico optometrists and to all applicants for licensure by the Board.

[10-14-95; 16.16.7.2 NMAC - Rn, 16 NMAC 16.7.2, 03-15-2001]

#### **16.16.7.3 STATUTORY AUTHORITY:**

The authority for Part 7 of Chapter 16 is NMSA 1978 Section 61-2-6.D. (10); Section 61-2-10; Section 61-2-10.2; Section 61-2-10.3.A, and Section 61-2-6.D. (1) and (2) (1995 Repl. Pamp.).

[1-15-78, 3-8-86, 3-31-91, 6-24-94, 10-14-95; 16.16.7.3 NMAC - Rn, 16 NMAC 16.7.3, 03-15-2001, A, 03-17-2004]

#### **16.16.7.4 DURATION:**

Permanent.

[10-14-95; 16.16.7.4 NMAC - Rn, 16 NMAC 16.7.4, 03-15-2001]

#### **16.16.7.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[1-15-78...10-14-95, 10-15-97; 16.16.7.5 NMAC - Rn, 16 NMAC 16.7.5, 03-15-2001, A, 03-17-2004]

#### **16.16.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 16 is to set forth the requirements and procedures for certification in the use of diagnostic, therapeutic, and oral pharmaceuticals for use by qualified licensees in the diagnosis, treatment, and management of ocular diseases.

[10-14-95; 16.16.7.6 NMAC - Rn, 16 NMAC 16.7.6, 03-15-2001]

#### **16.16.7.7 DEFINITIONS:**

"**Certificate**" means a document issued by the board certifying that the applicant has met the requirements for which the certificate is issued.

[10-14-95; 16.16.7.7 NMAC - Rn, 16 NMAC 16.7.7, 03-15-2001]

#### **16.16.7.8 CERTIFICATE DISPLAY:**

The licensee must display the pharmaceutical certificate(s) for which he has been qualified and certified by the Board in a conspicuous place at his/her principal office or place of business.

[10-14-95; 16.16.7.8 NMAC - Rn, 16 NMAC 16.7.8, 03-15-2001]

#### **16.16.7.9 OPTOMETRISTS AS PRESCRIBING PRACTITIONERS:**

The New Mexico Drug, Device and Cosmetic Act defines optometrists as prescribing practitioners. Subject to the provisions of the Optometry Act, New Mexico licensed optometrists may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of diseases of the eye or adnexa including controlled substances classified as Schedule II-V, provided that an optometrist:

**A.** may prescribe hydrocodone and hydrocodone combination medications;

**B.** may administer epinephrine auto-injections to counter anaphylaxis;

**C.** shall not prescribe any other controlled substances classified in Schedule I or II pursuant to the Controlled Substances Act, Chapter 30, Article 31 NMSA 1978.

[1-15-78; 3-31-91; 10-14-95; 16.16.7.9 NMAC - Rn, 16 NMAC 16.7.9, 03-15-2001; Repealed, 2-12-2016; 16.16.7.9 NMAC - N, 2-12-2016]

#### **16.16.7.10 [RESERVED]**

[3-8-86; 10-14-95; 16.16.7.10 NMAC - Rn, 16 NMAC 16.7.10, 03-15-2001; A, 03-22-2008; Repealed 03-02-2016]

#### **16.16.7.11 [RESERVED]**

[10-14-95; A, 6-26-00; 16.16.7.11 NMAC - Rn, 16 NMAC 16.7.11, 03-15-2001; A, 03-22-2008; Repealed 03-02-2016]

#### **16.16.7.12 DEA REGISTRATION REQUIRED:**

Before a New Mexico optometric physician may administer, dispense, or prescribe any of the controlled substances which are allowed by the Optometry Act (Section 61-2-10.2) and for which a DEA registration is required, he/she must be registered by the New Mexico board of pharmacy and by the United States drug enforcement administration as provided in 16.16.8 NMAC.

[10-14-95; 16.16.7.12 NMAC - Rn, 16 NMAC 16.7.12, 03-15-2001; A, 07-06-2012]

#### **16.16.7.13 "OPTOMETRIC PHYSICIAN" TITLE USE:**

Only those optometrists who have been certified as provided in 16.16.7.11 NMAC may use the title of "optometric physician".

[10-15-97; 16.16.7.13 NMAC - Rn, 16 NMAC 16.7.13, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

#### **16.16.7.14 PRESCRIPTION FOR PHARMACEUTICAL AGENTS:**

A prescription written for a pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written or electronic order signed by the prescriber, that bears the following items:

- A.** the name and address of the prescriber;
- B.** the prescriber's professional designation;
- C.** the name and address of the patient;
- D.** the name and quantity of the agent being prescribed;
- E.** directions for the use of the agent;
- F.** the prescription issue date; and

**G.** the number of refills allowed.

[16.16.7.14 NMAC - N, 03-17-2004; A, 03-02-2016]

**16.16.7.15 OPTOMETRIC PHYSICIAN CERTIFICATION REQUIREMENT:**

All New Mexico licensed optometrists shall have pharmaceutical certification as determined by the board prior to licensure and may use the title "optometric physician".

[16.16.7.15 NMAC - N, 03-22-2008; A, 03-02-2016]

**PART 8: DEA REGISTRATION REQUIREMENTS**

**16.16.8.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 16.16.8.1 NMAC - Rn, 16 NMAC 16.8.1, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

**16.16.8.2 SCOPE:**

Part 8 of Chapter 16 applies to all New Mexico.

[10-14-95; 16.16.8.2 NMAC - Rn, 16 NMAC 16.8.2, 03-15-2001; A, 03-02-2016]

**16.16.8.3 STATUTORY AUTHORITY:**

The authority for Part 8 of Chapter 16 is NMSA 1978, Section 61-2-10.2, Section 61-2-14.A, Section 61-2-6.D. (2) (1995 Repl. Pamp.).

[10-14-95; 16.16.8.3 NMAC - Rn, 16 NMAC 16.8.3, 03-15-2001]

**16.16.8.4 DURATION:**

Permanent.

[10-14-95; 16.16.8.4 NMAC - Rn, 16 NMAC 16.8.4, 03-15-2001]

**16.16.8.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[10-14-95; 10-15-97; 16.16.8.5 NMAC - Rn, 16 NMAC 16.8.5, 03-15-2001; A, 03-22-2008]

#### **16.16.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 16 is to inform optometrists of the procedures to complete for certification before the optometrist can administer, dispense, and prescribe dangerous controlled substances in the treatment and management of ocular disease and conditions as provided in NMSA 1978 Section 61-2-10.2 (1995 Repl. Pamp.).

[10-14-95; 1616.8.6 NMAC - Rn, 16 NMAC 16.8.6, 03-15-2001; A, 03-02-2016]

#### **16.16.8.7 DEFINITIONS:**

**A. "DEA"** means the United States drug enforcement administration.

**B. "dangerous controlled substances"** means a drug or substance listed in Schedules I through V of the Controlled Substances Act.

**C. "Board of Pharmacy"** means the New Mexico board of pharmacy.

[10-14-95; 16.16.8.7 NMAC - Rn, 16 NMAC 16.8.7, 03-15-2001]

#### **16.16.8.8 PRE-DEA REGISTRATION REQUIREMENTS:**

**A.** All New Mexico optometric physicians must first register with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA).

**B.** Upon receipt of official recognition and authorization from the DEA, the board will send the board of pharmacy an official list, as required by the board of pharmacy, of all board licensees who have met the required qualifications and have received the proper board certification as provided by Section 61-2-10.2 of the Optometry Act.

[10-14-95; 16.16.8.8 NMAC - Rn, 16 NMAC 16.8.8, 03-15-2001; A, 03-02-2016]

#### **16.16.8.9 DEA REGISTRATION REQUIREMENTS FOR CERTIFIED OPTOMETRISTS:**

**A.** Upon completion of the board of pharmacy's requirements, and upon receipt of a New Mexico registration for controlled substances from the board of pharmacy, the optometrist shall apply for a DEA registration number from the DEA.

**B.** Upon receipt of a DEA registration number, the optometrist may administer, dispense, or prescribe dangerous controlled substances as provided in 16.16.7 NMAC for the treatment and management of ocular disease.

[10-14-95; 10-15-97; 16.16.8.9 NMAC - Rn, 16 NMAC 16.8.9, 03-15-2001; A, 07-06-2012; A, 03-02-2016]

## **PART 9: INACTIVE STATUS**

### **16.16.9.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[16.16.9.1 NMAC - N, 03-15-2004; A, 07-06-2012]

### **16.16.9.2 SCOPE:**

Part 9 of Chapter 16 applies to all New Mexico optometry licensees who are not practicing in New Mexico, but are actively practicing in another state and would like to place their New Mexico licenses on inactive status rather than allow those licenses to expire, and possibly lapse.

[16.16.9.2 NMAC - N, 03-15-2004]

### **16.16.9.3 STATUTORY AUTHORITY:**

The authority for Part 9 of Chapter 16 is Section 61-2-12 and 61-2-6.D, NMSA 1978, (2003 Repl. Pamp.).

[16.16.9.3 NMAC - N, 03-15-2004]

### **16.16.9.4 DURATION:**

Permanent.

[16.16.9.4 NMAC - N, 03-15-2004]

### **16.16.9.5 EFFECTIVE DATE:**

March 15, 2004, unless a later date is cited at the end of a section.

[16.16.9.5 NMAC - N, 03-15-2004]

### **16.16.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 16 is to set forth the requirements and procedures for placing a New Mexico license on inactive status. Through the inactive status process, licensees who live and practice outside of New Mexico can keep their New Mexico licenses valid instead of allowing them to expire and perhaps subsequently become null and void and lapse. Furthermore, the board can still ensure that these licensees are continuing the educational process and keeping up with advancements in the profession in the event they ever take up residence in New Mexico and/or choose to practice optometry in New Mexico.

[16.16.9.6 NMAC - N, 03-15-2004]

**16.16.9.7 DEFINITIONS:**

**A. "Valid license"** means a license that is subject to regulation by, and statutory authority of, the board.

**B. "Active status"** means the license is valid and current and that the licensee is authorized by the board to practice optometry in New Mexico.

**C. "Expired status"** means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.

**D. "Inactive status"** means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, provided the licensee is practicing in another state and is currently in good standing with that state.

**E. "Null and void status"** means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

**F. "Lapsed license"** means a license that is null and void.

[16.16.9.7 NMAC - N, 03-15-2004; A, 07-06-2012]

**16.16.9.8 REQUIREMENTS FOR INACTIVE STATUS:**

A licensee whose license is in good standing with the board, and who is practicing in another state, may request his/her license be placed on inactive status by meeting the following requirements:

**A.** Complete, sign, and return the renewal application form, specifying the intent to be placed on inactive status.

**B.** Submit verifications for the required number of continuing education hours.

**C.** Remit the required inactive status fee (see 16.16.2.18 NMAC).

**D.** Return the application postmarked on or before the license expiration date.

[16.16.9.8 NMAC - N, 03-15-2004]

**16.16.9.9 INACTIVE STATUS NOTIFICATION:**

Upon receipt of a duly and properly made application for inactive status, the board or its designee will review and approve the application and send the licensee written verification that the license has been placed on inactive status. A licensee with an inactive license will be required to renew it every year as defined in 16.16.10 NMAC.

[16.16.9.9 NMAC - N, 03-15-2004; A, 07-06-2012]

**16.16.9.10 PRACTICE PROHIBITED:**

During the period of inactive status, the optometrist is prohibited from practicing optometry in the State of New Mexico.

[16.16.9.10 NMAC - N, 03-15-2004]

**16.16.9.11 [RESERVED]**

[16.16.9.11 NMAC - N, 03-15-2004; Repealed, 07-06-2012]

**16.16.9.12 REACTIVATION FROM INACTIVE STATUS:**

Upon receipt of the written request the board shall provide the applicant with a reactivation application.

**A.** The completed application and the required reactivation fee as defined in 16.16.2.19 NMAC shall be delivered to the board's consideration.

**B.** Continuing education shall be at the current requirement of board-approved continuing education taken during the previous 12 months prior to reactivation as set forth in Subsection A of 16.16.13.8 NMAC.

[16.16.9.12 NMAC - N, 03-15-2004; A, 07-06-2012]

**16.16.9.13 [RESERVED]**

[16.16.9.13 NMAC - N, 03-15-2004; Repealed, 07-06-2012]

**16.16.9.14 REACTIVATION APPROVED:**

**A.** If the board finds the request for reactivation and reactivation application in order and is satisfied that the applicant has fulfilled the requirements as specified; the board shall reactivate the applicant's license.

**B.** The optometrist may not practice optometry in New Mexico until the reactivated license has been received from the board.

[16.16.9.14 NMAC - N, 03-15-2004]

#### **16.16.9.15 INELIGIBILITY FOR REACTIVATION:**

**A.** The optometrist whose license was on inactive status in New Mexico will be ineligible for license reactivation if he or she is under investigation, is facing disciplinary proceedings, or has had a disciplinary action taken against his or her license in any jurisdiction while on inactive status in New Mexico.

**B.** An optometrist whose application for reactivation from inactive status has been denied shall be afforded an opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

[16.16.9.15 NMAC - N, 03-15-2004]

#### **16.16.9.16 TIME LIMITATION ON INACTIVE STATUS LICENSE:**

**A.** Licenses on inactive status that are not reactivated within five (5) years from the date the inactive status was approved, shall become null and void (lapsed). Null and void (lapsed) licenses may not be reactivated.

**B.** In order to practice optometry in New Mexico, the optometrist whose New Mexico license has become null and void (lapsed) must complete the entire application process and meet all the licensure requirements in effect at the time of application, including re-examination by the board.

[16.16.9.16 NMAC - N, 03-15-2004]

### **PART 10: RENEWAL OF NEW MEXICO OPTOMETRY LICENSES**

#### **16.16.10.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 16.16.10.1 NMAC - Rn, 16 NMAC 16.10.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

#### **16.16.10.2 SCOPE:**

Part 10 of Chapter 16 applies to all New Mexico optometry licensees.

[10-14-95; 16.16.10.2 NMAC - Rn, 16 NMAC 16.10.2, 03-15-2001]

#### **16.16.10.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Optometry Act, Sections 61-2-1 to-18 NMSA1978.

[10/14/1995; 16.16.10.3 NMAC - Rn, 16 NMAC 16.10.3, 3/15/2001, A, 2/26/2022; A, 12/27/2022]

**16.16.10.4 DURATION:**

Permanent.

[10-14-95; 16.16.10.4 NMAC - Rn, 16 NMAC 16.10.4, 03-15-2001]

**16.16.10.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[10-14-95; 10-15-97; 16.16.10.5 NMAC - Rn, 16 NMAC 16.10.5, 03-15-2001; A, 03-15-2004]

**16.16.10.6 OBJECTIVE:**

The objective of Part 10 of Chapter 16 is to set forth the requirements and procedures for license renewal. Through the renewal process, the board ensures that licensees are continuing the educational process and keeping up with advancements in the profession.

[10-14-95; 10-15-97; 16.16.10.6 NMAC - Rn, 16 NMAC 16.10.6, 03-15-2001]

**16.16.10.7 DEFINITIONS:**

"**Expired license**" means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.

[10-14-95; 16.16.10.7 NMAC - Rn, 16 NMAC 16.10.7, 03-15-2001; A, 03-15-2004; A, 06-25-2015]

**16.16.10.8 LICENSE EXPIRATION DATE:**

All current New Mexico optometry licenses not renewed by July 1 of every year shall be considered expired. Initial licenses may be issued for a period greater than 12 months, but less than 24 months, in order to align the license expiration date with the renewal cycle.

[10/14/1995; 16.16.10.8 NMAC - Rn, 16 NMAC 16.10.8, 3/15/2001; A, 3/22/2008; A, 7/6/2012; A, 12/27/2022]

**16.16.10.9 LICENSE RENEWAL DEADLINE:**

Licenses must be renewed on or before July 1 of each year to be considered current.

[10-14-95; 16.16.10.9 NMAC - Rn, 16 NMAC 16.10.9, 03-15-2001]

#### **16.16.10.10 LICENSE RENEWAL NOTIFICATION:**

License renewal notification will be mailed at least forty-five (45) days prior to the expiration date of the license.

[10-14-95; 16.16.10.10 NMAC - Rn, 16 NMAC 16.10.10, 03-15-2001; A, 07-06-2012]

#### **16.16.10.11 CURRENT ADDRESS NOTIFICATION:**

**A.** License renewal notification will be mailed to the last address on file with the board. It is the responsibility of the licensee to keep the board informed of any changes in home or employment addresses and phone numbers.

**B.** It is a licensee's responsibility to renew a license. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

[10-14-95; 16.16.10.11 NMAC - Rn, 16 NMAC 16.10.11, 03-15-2001; A, 07-06-2012]

#### **16.16.10.12 RENEWAL APPLICATION:**

**A.** A completed license renewal application, verification of continuing education, a current CPR certification and applicable renewal fee must be received in the board office on or before July 1 of every year. The CPR course shall show a current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be a self-study. CPR is not considered continuing education.

**B.** The board may audit any licensee's continuing education documentation for the current licensing year and the two previous years.

**C.** Proof of any disqualifying criminal convictions as defined in 16.16.21.12 NMAC.

[10/14/1995; 16.16.10.12 NMAC - Rn, 16 NMAC 16.10.12, 3/15/2001; A, 3/22/2008; A, 7/6/2012; A, 6/25/2015; A, 2/26/2022]

### **PART 11: LICENSE EXPIRATION DUE TO NON-RENEWAL; REACTIVATION**

#### **16.16.11.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10/14/1995; 2/15/1999; 16.16.11.1 NMAC - Rn, 16 NMAC 16.11.1, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

#### **16.16.11.2 SCOPE:**

Part 11 of Chapter 16 applies to licensees whose licenses have expired due to non-renewal and who wish to reactivate their license.

[10/14/1995; 16.16.11.2 NMAC - Rn, 16 NMAC 16.11.2, 3/15/2001, A. 3/15/2004]

#### **16.16.11.3 STATUTORY AUTHORITY:**

The authority for Part 11 of Chapter 16 is Subsection D of 61-2-6 NMSA 1978; Subsection A of 61-2-11 NMSA 1978; and Section 61-2-12 NMSA 1978.

[10/14/1995; 16.16.11.3 NMAC - Rn, 16 NMAC 16.11.3, 3/15/2001]

#### **16.16.11.4 DURATION:**

Permanent.

[10/14/1995; 16.16.11.4 NMAC - Rn, 16 NMAC 16.11.4, 3/15/2001]

#### **16.16.11.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[10/14/1995; 10/15/1997; 16.16.11.5 NMAC - Rn, 16 NMAC 16.11.5, 3/15/2001; A, 3/15/2004]

#### **16.16.11.6 OBJECTIVE:**

The objective of Part 11 of Chapter 16 is to set forth regulations on expiration of an optometry license due to non-renewal and the requirements for reactivation of the license. When a licensee fails to renew or reactivate an expired license after a certain time period and the license becomes null and void and lapses, the board requires a reapplication process to re-test the applicant for competence to practice the profession in New Mexico, ensuring continued competence and thereby protecting the health, safety, and welfare of the public.

[10/14/1995; 10/15/1997; 16.16.11.6 NMAC - Rn, 16 NMAC 16.11.6, 3/15/2001; A, 3/15/2004]

#### **16.16.11.7 DEFINITIONS:**

**A. "Valid license"** means a license that is subject to regulation by, and statutory authority of, the board.

**B. "Active status"** means the license is valid and current and that the licensee is authorized by the board to practice optometry in New Mexico.

**C. "Expired status"** means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.

**D. "Inactive status"** means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, provided the licensee is practicing in another state and is currently in good standing with that state.

**E. "Null and void status"** means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

**F. "Lapsed status"** means a license that is null and void.

**G. "Retired status"** means a license that has been withdrawn from active status at the request of the licensee because the licensee has retired from business and is no longer practicing optometry in any licensing jurisdiction, but which is still subject to the authority of the board for a period of five years after the license was placed on retired status as specified in 16.16.12.15 NMAC.

[10/14/1995; 16.16.11.7 NMAC - Rn, 16 NMAC 16.6.11.7, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

#### **16.16.11.8 LICENSE EXPIRATION DUE TO NON-RENEWAL:**

Licenses not renewed on or before July 1, as set forth in 16.16.10.8 NMAC, shall be expired.

[10/14/1995; 16.16.11.8 NMAC - Rn, 16 NMAC 16.11.8, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012]

#### **16.16.11.9 LATE PENALTY FEE:**

Licenses not renewed on or before July 1, as set forth in 16.16.10.8 NMAC, shall be subject to the required late penalty fee, as provided in 16.16.2.14 NMAC, in addition to the renewal fee, as provided in 16.16.2.13 NMAC.

[10/14/1995; 16.16.11.9 NMAC - Rn, 16 NMAC 16.11.9, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012]

#### **16.16.11.10 [RESERVED]**

[10/14/1995; 16.6.11.10 NMAC - Rn, 16 NMAC 16.11.10, 3/15/2001; Repealed, 3/15/2004]

#### **16.16.11.11 LICENSE STATUS REPORTED:**

Licenses that expire or that are inactive, retired, revoked or suspended for any other reason, shall be reported by the board to the New Mexico board of pharmacy, as required by the Optometry Act; to other state or federal agencies as required; and to any other inquirer as requested.

[10/14/1995; 10/15/1997; 16.16.11.11 NMAC - Rn, 16 NMAC 16.11.11, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

#### **16.16.11.12 PRACTICE PROHIBITED:**

**A.** An optometrist shall not practice optometry in the state of New Mexico while his or her license is expired; or while it is inactive, retired, revoked, suspended, or is otherwise invalid as provided in Subsection A of 61-2-14 NMSA 1978.

**B.** Any person who practices optometry in New Mexico without an active, current, and valid license is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions in Subsection A of Section 61-31-18 NMSA 1978, which states, "If a person is convicted of a non-capital felony, the basic sentence of imprisonment is as follows: for a fourth degree felony, 18 months' imprisonment."

**C.** The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed five thousand dollars (\$5,000).

[10/14/1995; 10/15/1997; 16.16.11.12 NMAC - 16 NMAC 16.11.12, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012]

#### **16.16.11.13 APPLICATION FOR REACTIVATION OF LICENSE:**

The licensee whose license is expired due to non-renewal, and who wishes to reactivate the license to active and current status, must apply for, and receive, approval by the board for reactivation of the license. The application for reactivation must be made on a reactivation form received from the board office, and must be accompanied by the following items:

**A.** proof of completion of a minimum of 22 hours of board-approved continuing education (see 16.16.13 NMAC) taken for each year the license was expired due to non-renewal, 22 of which must have been taken in the immediate preceding year;

**B.** verification directly from at least one of the applicant's other licensing jurisdiction(s) certifying that the licensee has been in active practice there during the time the license was in expired status due to non-renewal in New Mexico, unless the New Mexico license has only been in expired status for less than a year, in which case verification of licensure from another licensing jurisdiction is not necessary;

**C.** verification directly from the applicant's other licensing jurisdiction(s), as to the status of the license with respect to disciplinary actions if the New Mexico license is in expired status for more than a year, and provided that the licensee is licensed in other jurisdiction(s);

**D.** a reactivation fee in an amount totaling the renewal fees for each year the license was in expired status due to non-renewal; and

**E.** a one-time penalty fee in an amount totaling the penalty fees in 16.16.2.14 NMAC.

[10/14/1995, 10/15/1997; 16.16.11.13 NMAC - Rn, 16 NMAC 16.11.13, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012; A, 5/29/2019]

#### **16.16.11.14 REACTIVATION APPROVED:**

Upon receiving approval for license reactivation by the board, the applicant will receive a reactivated license to practice optometry in the state of New Mexico.

[10/14/1995, A, 10/15/1997; 16.16.11.14 NMAC - Rn, 16 NMAC 16.11.14, 3/15/2001; A, 3/15/2004]

#### **16.16.11.15 REACTIVATION DENIED:**

An applicant whose application for reactivation has been denied shall be afforded an opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

[10/14/1995; 16.16.11.15 NMAC - Rn, 16 NMAC 16.11.15, 3/15/2001; A, 3/15/2004]

#### **16.16.11.16 TIME LIMITATION FOR REACTIVATION:**

The time limitation for reactivating a license that has been expired due to non-renewal is five years.

**A.** Licenses not reactivated within the time limitation specified shall become null and void (lapsed).

**B.** Null and void (lapsed) licenses may not be reactivated.

[10/15/1997; 16.16.11.16 NMAC - Rn, 16 NMAC 16.11.16, 3/15/2001; A, 3/15/2004]

#### **16.16.11.17 APPLICATION FOR LICENSURE REQUIRED:**

In order to practice optometry in New Mexico, the optometrist whose New Mexico license has become null and void (lapsed) must complete the entire application process and meet all the licensure requirements in effect at the time of application, including re-examination by the board.

[10/15/1997; 16.16.11.17 NMAC - Rn, 16 NMAC 16.11.17, 3/15/2001; A, 3/15/2004]

### **PART 12: RETIREMENT AND REINSTATEMENT OF OPTOMETRY LICENSE**

#### **16.16.12.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 16.16.12.1 NMAC - Rn, 16 NMAC 16.12.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

#### **16.16.12.2 SCOPE:**

Part 12 of Chapter 16 applies to all optometrists who wish to place their New Mexico licenses in retirement status.

[10-14-95; 16.16.12.2 NMAC - Rn, 16 NMAC 16.12.2, 03-15-2001]

#### **16.16.12.3 STATUTORY AUTHORITY:**

The authority for Part 12 of Chapter 16 is NMSA 1978 Section 61-2-12 and 61-2-6.D. (2) (1995 Repl. Pamp.).

[11-20-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.12.3 NMAC - Rn, 16 NMAC 16.12.3, 03-15-2001]

#### **16.16.12.4 DURATION:**

Permanent.

[10-14-95; 16.16.12.4 NMAC - Rn, 16 NMAC 16.12.4, 03-15-2001]

#### **16.16.12.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[8-21-92...10-14-95, 10-15-97; 16.16.12.5 NMAC - Rn, 16 NMAC 16.12.5, 03-15-2001; A, 03-15-2004]

#### **16.16.12.6 OBJECTIVE:**

The objective of Part 11 of Chapter 16 is to set forth the requirements and procedures for placing a New Mexico optometry license in retirement status and having it reinstated from retirement status.

[10-14-95; 16.16.12.6 NMAC - Rn, 16 NMAC 16.12.6, 03-15-2001]

#### **16.16.12.7 DEFINITIONS:**

**"Retired status"** means a license that has been withdrawn from active status at the request of the licensee due to retirement provided the licensee is not practicing optometry in another jurisdiction. Such license is still subject to the board authority for five (5) years from the date the license is placed on retired status as specified in 16.16.12.15 NMAC.

[10-14-95; 16.16.12.7 NMAC - Rn, 16 NMAC 16.12.7, 03-15-2001, A, 03-15-2004; A 03-22-2008]

#### **16.16.12.8 RETIREMENT OF LICENSE:**

Any optometrist who wishes to retire from practice shall notify the board, **in writing, prior to** the expiration date of his or her license.

**A.** If the licensee meets the time frame and continuing education requirements set forth in 16.16.12.8 NMAC, the license will be retired. The licensee's date of retirement will be recorded as the expiration date of that year in the minutes of the next regularly scheduled board meeting.

**B.** The optometrist shall be exempt from payment of the yearly renewal fees during the period of retirement.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.8 NMAC - Rn, 16 NMAC 16.12.8, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

#### **16.16.12.9 PRACTICE PROHIBITED:**

During the period of retirement, the optometrist is prohibited from practicing optometry in the state of New Mexico.

[8-21-92; 6-24-94; 10-14-95; 16.16.12.9 NMAC - Rn, 16 NMAC 16.12.9, 03-15-2001]

#### **16.16.12.10 NOTIFICATION OF INTENT TO REINSTATE LICENSE:**

Any optometrist who has retired as provided in 16.16.12.8 NMAC may, within five years from the date his/her license was retired, notify the board in writing of his/her desire to resume active practice. The applicant shall provide the following information.

- A. The license number of the former license;
- B. The applicant's full name;
- C. The applicant's home address and phone number;
- D. The date the applicant's license was originally issued; and
- E. The date of the applicant's retirement.

[8- 21-92; 6-24-94; 10-14-95; 16.16.12.10 NMAC - Rn, 16 NMAC 16.12.10, 03-15-2001]

#### **16.16.12.11 REINSTATEMENT PROCESS:**

Upon receipt of the written request required in 16.16.12.10 NMAC, the board shall mail the applicant a reinstatement form stipulating the fees and the number of board-approved continuing education hours required for reactivation of his or her license.

- A. The reactivation fee shall be the total of the renewal fees for each year the license was in retired status.
- B. Continuing education shall be at the current requirement of board approved continuing education taken for each year during the retirement period, and the provisions set forth in Subsection A of 16.16.13.8 NMAC related to optometrists holding certification in ocular therapeutics will apply for each year in retired status.
- C. Twenty-two (22) of those hours shall be taken during the year immediately preceding reactivation of the license. At least ten (10) of the twenty-two (22) hours must be in a board approved program in ocular therapeutic pharmacology.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.11 NMAC - Rn, 16 NMAC 16.12.11, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

#### **16.16.12.12 REINSTATEMENT APPLICATION REVIEW:**

The optometrist shall return the completed, signed, and notarized reinstatement form, the required fee, and copies of the continuing education proofs of attendance certificates to the board office.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.12 NMAC - Rn, 16 NMAC 16.12.12, 03-15-2001]

#### **16.16.12.13 REINSTATEMENT APPROVED:**

- A. If the board finds the application in order and is satisfied that the applicant has fulfilled the requirements as specified, the board shall reinstate the applicant's license.

**B.** The retiree may not resume the practice of optometry until the reactivated license has been received from the board.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.13 NMAC - Rn, 16 NMAC 16.12.13, 03-15-2001]

#### **16.16.12.14 INELIGIBILITY FOR REINSTATEMENT:**

**A.** The retired optometrist will be ineligible for reinstatement if he or she is under investigation, is facing disciplinary proceedings, or has had a disciplinary action taken against his or her license in any jurisdiction while on retired status in New Mexico.

**B.** A retired optometrist whose application for reinstatement has been denied shall be afforded an opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.14 NMAC - Rn, 16 NMAC 16.12.14, 03-15-2001]

#### **16.16.12.15 TIME LIMITATIONS ON RETIREMENT STATUS:**

If application for reinstatement of the license is not made before the end of the five-year retirement or reinstatement period, the optometrist's New Mexico license shall Lapse. The optometrist must reapply to the board for licensure by examination. All application requirements as stated in Part 3 of 16.16 NMAC must be met.

[6-24-94; 10-14-95; 10-15-97; 16.16.12.15 NMAC - Rn, 16 NMAC 16.12.15, 03-15-2001]

### **PART 13: CONTINUING EDUCATION**

#### **16.16.13.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 2-15-99; 16.16.13.1 NMAC - Rn, 16 NMAC 16.13.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

#### **16.16.13.2 SCOPE:**

Part 13 of Chapter 16 applies to all optometrists intending to renew, reinstate, or reactivate their New Mexico license to practice optometry.

[10-14-95; 16.16.13.2 NMAC - Rn, 16 NMAC 16.13.2, 03-15-2001]

#### **16.16.13.3 STATUTORY AUTHORITY:**

The authority for Part 13 of Chapter 16 is Section 61-2-12.C and Section 61-2-6.D. (2) NMSA 1978 (1995 Repl. Pamp.).

[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.13.3 NMAC - Rn, 16 NMAC 16.13.3, 03-15-2001]

**16.16.13.4 DURATION:**

Permanent.

[10-14-95; 16. 16.13.4 NMAC - Rn, 16 NMAC 16.13.4, 03-15-2001]

**16.16.13.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[11-17-73...10-14-95; 10-15-97; 16.16.13.5 NMAC - Rn, 16 NMAC 16.13.5, 03-15-2001; A, 03-15-2004]

**16.16.13.6 OBJECTIVE:**

The objective of Part13 of Chapter 16 is to set forth the requirements and procedures for the New Mexico licensed optometrist to meet the continuing education requirements for license renewal, reactivation, or reinstatement.

[10-14-95; 16.16.13.6 NMAC - Rn, 16 NMAC 16.13.6, 03-15-2001; A, 04-24-2014]

**16.16.13.7 DEFINITIONS:**

**[RESERVED]**

[10-14-95; 16.16.13.7 NMAC - Rn, 16 NMAC 16.13.7, 03-15-2001]

**16.16.13.8 CONTINUING EDUCATION REQUIREMENTS:**

A minimum of 22 clock-hours of optometry related, board approved continuing education or postgraduate programs, are required for license renewal each year beginning July 1, as detailed below.

**A.** The continuing education shall be submitted as follows:

**(1)** at least 10 of the 22 hours of continuing education must be in a board approved program in clinical or ocular therapeutic pharmacology; and

**(2)** at least one of the 22 hours of continuing education must be in a board approved course in pain management or related topic pursuant to 16.16.15.11 NMAC. This requirement shall begin with the 2015 renewal period beginning July 2, 2014.

**B.** For optometrists on inactive status, a minimum of 10 hours of continuing education in a board approved program in clinical or ocular therapeutic pharmacology is required.

**C.** The continuing education must have been taken within the preceding renewal period (i.e. July 2 of one year through June 30 of the next).

**D.** The board may audit any licensee's continuing education documentation for the current licensing year and the two previous years.

**E.** A licensee who receives a notice of audit shall submit to the board office on or before July 1, unless otherwise specified, evidence of continuing education hours for the requested period.

**F.** A license will be placed on expired status if the licensee fails to meet the continuing education requirements for renewal by the expiration date stated in this rule.

**G.** Reactivation of license expired due to non-renewal for failure to meet the continuing education requirement. The licensee may apply for license reactivation in the same manner as provided in Part 11 of 16.16 NMAC. The continuing education and fees will be calculated based on the number of years the license was expired due to non-renewal for failure to meet the continuing education requirement.

**H.** Newly licensed optometrists who graduated from optometry school within the same year of licensure may submit the completed curriculum of their last year of optometry school to meet their continuing education requirement the first year of renewal.

[11-17-73; 2-6-87; 10-14-95; 10-15-97; 2-15-99; 16.16.13.8 NMAC - Rn, 16 NMAC 16.13.8, 03-15-2001; A, 03-15-2004; A 03-22-2008; A, 07-06-2012; A, 04-24-2014; A, 03-02-2016; A, 05-29-2019]

#### **16.16.13.9 APPROVED CONTINUING EDUCATION:**

All subjects of education must be directly related to optometry. The New Mexico board of optometry approves the following programs for continuing education credit, as well as those listed on the updated list available on the board's web site.

**A.** Any convention of the American optometric association (AOA).

**B.** Any meeting of an American optometric association affiliated state or regional association meeting, or meeting of the armed forces optometric society (AFOS).

**C.** Any session of the optometric extension program congress (OEPC).

D. Any state seminar of the graduate clinic foundation of the optometric extension program.

E. Courses sponsored by or given by accredited optometry schools.

F. Courses sponsored by the following organizations.

(1) Optometric councils: mid-west, mountain west, southern, New England, southwest (SWCO).

(2) Optometric contact lens societies: southwest, southern, heart of America.

(3) Optometric congresses: southern, mountain states.

(4) Courses sponsored by the American academy of optometry.

(5) Courses approved by the council on optometric practice education (COPE) or courses approved by the New Mexico optometric association (NMOA).

G. The certificates of attendance required by Subsection C of 16.16.13.8 NMAC shall be signed by the presiding officer or designee of the organization conducting or sponsoring the program and shall identify the therapeutic pharmaceutical agent (TPA) courses.

H. Certificates of attendance for courses approved by COPE must have the COPE trademark and approval number.

I. A maximum of six hours of internet-type course offerings, approved by COPE or any other board-approved sponsor, will be allowed for each annual renewal.

[11-17-73; 2-6-87; 8-21-92; 10-14-95; 10-15-97; 16.16.13.9 NMAC - Rn, 16 NMAC 16.13.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012; A, 06-25-2015]

#### **16.16.13.10 REQUESTS FOR APPROVAL OF OTHER CONTINUING EDUCATION PROGRAMS:**

All requests for approval of courses not covered by 16.16.13.9 NMAC shall be submitted to the board in writing by the **individual optometrist** before the program is attended.

A. The request shall be addressed to the board office and directed to the continuing education committee.

B. Information such as the following will be required:

(1) The number of education hours to be completed.

- (2) The organization sponsoring the program.
- (3) The location and dates of the continuing education program.
- (4) The names of the courses and the names of the instructors.
- (5) Any other information deemed necessary.

C. Approval will be determined by the continuing education committee chairman.

(1) If the continuing education committee chairman is uncertain of course qualification, approval or disapproval will be determined by the continuing education committee.

(2) The continuing education committee will make this determination in a timely manner, creating no hardships or delay to the requesting optometrist.

D. If time does not permit, the approval or disapproval may be given verbally, but must always be followed by a written approval from the board.

E. The board's written approval must accompany the licensee's renewal documentation at the time of renewal.

[11-17-73; 2-6-87; 8-21-92; 10-14-95; 16.16.13.10 NMAC - Rn, 16 NMAC 16.13.10, 03-15-2001]

#### **16.16.13.11 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER CONTINUING EDUCATION REQUIREMENTS:**

A. A licensee may request a deferral or waiver of continuing education or CPR certification requirements in writing, at least 30 days prior to the license's expiration, should any of the following occur:

- (1) licensee experiences prolonged debilitating illness; or
- (2) one of licensee's immediate family members suffers prolonged debilitating illness; or
- (3) licensee is called to active duty by the national guard, any branch of the United States armed forces, or other recognized public service.

B. The written request for deferral or waiver shall contain an explanation of the underlying circumstance and shall include documentation in support of the request. At its discretion, the board may grant the request or variance.

[16.16.13.11 NMAC - N, 03-10-2005; A, 03-22-2008; A, 07-06-2012]

## **PART 14: DUPLICATE AND REPLACEMENT LICENSES**

### **16.16.14.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 16.16.14.1 NMAC - Rn, 16 NMAC 16.14.1, 03-15-2001; A, 07-06-2012]

### **16.16.14.2 SCOPE:**

Part 14 of Chapter 16 applies to all New Mexico licensed optometrists requiring a duplicate or replacement license and/or certificate.

[10-14-95; 16.16.14.2 NMAC - Rn, 16 NMAC 16.14.2, 03-15-2001]

### **16.16.14.3 STATUTORY AUTHORITY:**

The authority for Part 14 of Chapter 16 is NMSA 1978, Section 61-2-6.D. (2) (1995 Repl. Pamp.).

[8-21-92; 6-24-94; 10-14-95; 16.16.14.3 NMAC - Rn, 16 NMAC 16.14.3, 03-15-2001]

### **16.16.14.4 DURATION:**

Permanent.

[10-14-95; 16.16.14.4 NMAC - Rn, 16 NMAC 16.14.4, 03-15-2001]

### **16.16.14.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[8-21-92...10-14-95; 16.16.14.5 NMAC - Rn, 16 NMAC 16.14.5, 03-15-2001; A, 07-06-2012]

### **16.16.14.6 OBJECTIVE:**

The objective of Part 14 of Chapter 16 is to set forth the requirements and procedures for the licensee to request and receive a duplicate or replacement license and/or certificate.

[10-14-95; 16.16.14.6 NMAC - Rn, 16 NMAC 16.14.6, 03-15-2001]

### **16.16.14.7 DEFINITIONS:**

**[RESERVED]**

[10-14-95; 16.16.14.7 NMAC - Rn, 16 NMAC 16.14.7, 03-15-2001]

**16.16.14.8 LICENSE LOST OR DESTROYED:**

In the event a license is lost or destroyed, the Board shall issue a duplicate license upon receipt of the following:

**A.** Notice of the loss; and

**B.** Fee(s) in an amount provided by law or regulation (See 16.16.2.15 and 16.16.2.16 NMAC).

[8-21-92; 10-14-95; 16.16.14.8 NMAC - Rn, 16 NMAC 16.14.8, 03-15-2001]

**16.16.14.9 LEGAL NAME CHANGE:**

If a licensee requests a new license to be compatible with a legal name change, the Board may issue a new license or certificate upon receipt of the following:

**A.** The old license;

**B.** Proof of name change; and

**C.** Fee(s) in an amount provided by law or regulation 16.16.2.15 and 16.16.2.16 NMAC.

[8-21-92; 10-14-95; 16.16.14.9 NMAC - Rn, 16 NMAC 16.14.9, 03-15-2001]

**PART 15: MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES**

**16.16.15.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[16.16.15.1 NMAC - N, 04-24-2014]

**16.16.15.2 SCOPE:**

The provisions in Part 15 of Chapter 16 apply to all New Mexico licensed optometrists.

[16.16.15.2 NMAC - N, 04-24-2014]

**16.16.15.3 STATUTORY AUTHORITY:**

Part 15 of Chapter 16 is promulgated pursuant to and in accordance with the Optometry Act, Section 61-2-3, NMSA 1978 and the Pain Relief Act, Sections 24-2D-1 through 24-2D-1-6, NMSA 1978.

[16.16.15.3 NMAC - N, 04-24-2014]

**16.16.15.4 DURATION:**

Permanent.

[16.16.15.4 NMAC - N, 04-24-2014]

**16.16.15.5 EFFECTIVE DATE:**

April 24, 2014, unless a later date is cited at the end of a section.

[16.16.15.5 NMAC - N, 04-24-2014]

**16.16.15.6 OBJECTIVE:**

The objective of Part 15 of Chapter 16 is to set forth rules related to the prescribing and dispensing of controlled substances. It is the position of the board that optometrists have an obligation to treat pain, and that a wide variety of drugs including controlled substances may be prescribed for that purpose. When such controlled substances are used, they should be prescribed in adequate doses and for the appropriate length of time after a thorough evaluation has been completed.

[16.16.15.6 NMAC - N, 04-24-2014]

**16.16.15.7 DEFINITIONS:**

**A. "Addiction"** means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

**B. "Acute pain"** means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

**C. "Chronic pain"** means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal

condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

**D. "Clinical expert"** means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**E. "Drug abuser"** means a person who takes drugs or controlled substances for other than legitimate purposes.

**F. "Pain"** means acute or chronic pain or both.

**G. "Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**H. "Prescription monitoring program (PMP)"** means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data is used to support efforts in education, research, enforcement, and abuse prevention.

**I. "Therapeutic purpose"** means the use of pharmaceutical and non-pharmaceutical treatment that conforms substantially to accepted guidelines for pain management.

**J. "Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.16.15.7 NMAC - N, 04-24-2014]

#### **16.16.15.8 GUIDELINES:**

The following regulations shall be used by the board to determine whether an optometrist's prescriptive practices are consistent with the appropriate treatment of pain.

**A.** The treatment of pain with drugs or controlled substances is a legitimate optometric practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance, who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

**B.** The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following:

**(1)** An optometrist shall complete an evaluation. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication for or contra-indication against the use of controlled substance.

**(2)** An optometrist shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The optometrist shall consider an integrative approach to pain management.

**(3)** A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

**(4)** The optometrist shall discuss the risks and benefits of using controlled substances with the patient, his surrogate or guardian, and shall document this discussion in the record.

**(5)** Complete and accurate records of care provided and drugs or controlled substances prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for controlled substances shall include indications for use.

**(6)** The management of patients needing chronic pain control requires monitoring by the optometrist. The optometrist shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. Chronic pain patients shall receive all chronic pain management prescriptions from one optometrist and one pharmacy whenever possible.

**(7)** In addition, an optometrist shall consult, when indicated by the patient's condition, with health care professionals who are experienced in the area of chronic pain control; such professionals need not be those who specialize in pain control.

**(8)** If, in an optometrist's opinion, a patient is seeking pain medication for reasons that are not medically justified, the optometrist is not required to prescribe controlled substances for the patient.

**C.** The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate indication for the treatment prescribed; documented change or persistence of the recognized indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of

prescribing based on the optometrist's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

**D.** The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

**E.** An optometrist who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Optometry Act or board rules.

[16.16.15.8 NMAC - N, 04-24-2014]

#### **16.16.15.9 OPTOMETRISTS TREATED WITH CONTROLLED SUBSTANCES:**

Optometrists who have chronic pain and are being treated with controlled substances shall be evaluated by a pain clinic, an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on controlled substances while continuing to practice.

[16.16.15.9 NMAC - N, 04-24-2014]

#### **16.16.15.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

The intent of the New Mexico (NM) board of optometry in requiring participation in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

**A.** Any licensed NM optometrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A licensed NM optometrist may authorize delegate(s) to access the PMP report consistent with board of pharmacy regulation 16.19.29 NMAC and document the receipt and review of a report in the patient's medical record.

**C.** Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, or IV to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substances for 30 days or more, the practitioner shall review a PMP report for the patient for preceding 12 months and document the review and receipt of the reports in the patient's medical record.

**D.** A PMP report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, or IV for each patient and document these reports in the patient's medical record.

**E.** A practitioner does not have to obtain and review a PMP report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, or IV:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

**F.** Upon review of a PMP report for a patient, the practitioner shall identify and be aware of patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than 12 consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day; or
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, request for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Paragraph F, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems of risks that may result in opioid misuse, abuse or overdose. These steps may involve prescription and training for naloxone.

[16.16.15.10 NMAC - N, 04-24-2014; A, 03-02-2016; A, 03-10-2017]

#### **16.16.15.11 PAIN MANAGEMENT CONTINUING EDUCATION:**

This section applies to all New Mexico optometrists who hold a federal drug enforcement administration registration to prescribe controlled substances. Pursuant to the Pain Relief Act in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

**A.** This requirement is effective for the 2015 renewal period beginning July 2, 2014. No later than July 1, 2015 all board licensees shall have completed at least one continuing education hour in a course that shall cover topics related to pain management, pharmacology and risks of controlled substances, state and federal regulations for the prescription of controlled substances, or awareness of the problems of abuse, addiction and diversion as stated in 16.16.13.9 NMAC.

**B.** The continuing education courses are subject to prior board approval and shall count toward the total continuing education requirements as set forth in 16.16.13.9 NMAC.

[16.16.15.11 NMAC - N, 04-24-2014]

**16.16.15.12 NOTIFICATION:**

In addition to the notice of procedures set forth in the State Rules Act Chapter 14, Article 4, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 15 of the New Mexico optometry board rule;

A. health care practitioners under its jurisdiction; and

B. a health care practitioner being investigated by the board in relation to the practitioner's pain management services.

[16.16.15.12 NMAC - N, 04-24-2014]

**PART 16: PRACTICE LOCATION; OWNERSHIP; PATIENT MEDICAL RECORDS RETENTION**

**16.16.16.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 2-15-99; A, 6-26-00; 16.16.16.1 NMAC - Rn, 16 NMAC 16.16.1, 03-15-2001; A, 07-06-2012]

**16.16.16.2 SCOPE:**

Part 16 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.

[10-14-95; 16.16.16.2 NMAC - Rn, 16 NMAC 16.16.2, 03-15-2001]

**16.16.16.3 STATUTORY AUTHORITY:**

The authority for Part 16 of Chapter 16 is NMSA 1978, Section 61-2-14.B. (7) and Section 61-2-6.D. (2) (1995 Repl. Pamp.).

[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 2-15-99; 16.16.16.3 NMAC - Rn. 16 NMAC 16.16.3, 03-15-2001]

**16.16.16.4 DURATION:**

Permanent.

[10-14-95; 16.16.16.4 NMAC - Rn, 16 NMAC 16.16.4, 03-15-2001]

**16.16.16.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[6-24-94...10-14-95; 10-15-97; 16.16.16.5 NMAC - Rn, 16 NMAC 16.16.5, 03-15-2001, A, 03-15-2004]

**16.16.16.6 OBJECTIVE:**

The objective of Part 16 of Chapter 16 is to set forth the requirements related to practice location, ownership, leasing arrangements, purchase of practice, and so forth.

[10-14-95; 16.16.16.6 NMAC - Rn, 16 NMAC 16.16.6, 03-15-2001]

**16.16.16.7 DEFINITIONS:**

**[RESERVED]**

[10-14-95; 16.16.16.7 NMAC - Rn, 16 NMAC 16.16.7, 03-15-2001]

**16.16.16.8 LOCATION OF PRACTICE:**

**A.** In accordance with the provisions of Section 61-2-14.B of the Optometry Act, an optometrist is prohibited from selling prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor.

**B.** For purposes of this rule, an optometrist may engage in the sale of contact lenses or prescription eyeglasses from a space located adjacent to an establishment as set out in Subsection A provided the space is separated from the commercial establishment by solid, opaque partitions or walls from floor to ceiling.

**C.** The space referred to in this rule shall also have a separate entrance for patient access to the optometrist's practice from a public street, hall, lobby, corridor or shopping mall, or other public thoroughfare.

**D.** Repealed.

**E.** This rule supersedes all previous rules regarding the location of an optometric practice. Existing facilities operating on June 24, 1994, the effective date of this rule shall be exempted from the provisions of Subsection B of 16.16.16.8 NMAC.

[11-17-73; 12-6-87; 8-21-92; 6-24-94; 10-14-95; 10-15-97; A, 6-26-00; 16.16.16.8 NMAC - Rn, 16 NMAC 16.16.8, 03-15-2001; A, 03-15-2004; A 03-22-2008]

### **16.16.16.9 [RESERVED]**

#### **16.16.16.10 PURCHASE OF AN ESTABLISHED PRACTICE:**

**A.** Upon the purchase or assumption of another optometrist's practice, the identification of the other optometrist's name with the practice shall be limited to a maximum period of four years.

**B.** Upon the death or permanent disability of a New Mexico licensed optometrist, the surviving spouse or estate of the optometrist may contract optometric services or employ a New Mexico licensed optometrist for a period not to exceed thirty-six (36) months from the time of death or permanent disability.

**C.** The surviving spouse or estate of the optometrist must file, with the New Mexico Board of Examiners in Optometry, an affidavit stating that the practice will be operated within the provisions of the Optometry Act, the Board's Rules and Regulations, and Board policies. Violations will result in the suspension of the thirty-six month period.

[11-17-73; 6-24-94; 10-14-95; 16.16.16.10 NMAC - Rn, 16 NMAC 16.16.10, 03-15-2001]

#### **16.16.16.11 PATIENT RECORDS MANAGEMENT:**

**A.** Optometrists shall retain medical records they own for a period of at least five (5) years from the date of last treatment.

**B.** Thirty (30) days before the closing, selling, relocation or leaving of a practice an optometrist shall notify the board office and patients seen within the last five (5) years. Notices will be given pursuant to Subsection C of this section.

**C.** Notification shall be satisfied using any of the following methods:

(1) publication of at least one notice in a local newspaper, twice a month for a period of three months; notice should indicate how to obtain patient records and contact information for the individual with access to the patient records;

(2) written or electronic mail; or

(3) individual correspondence to the patient's last known physical or electronic mailing address.

[16.16.16.11 NMAC - N, 07-06-2012]

## **PART 17: ADVERTISING**

### **16.16.17.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; A, 6-26-00; 16.16.17.1 NMAC - Rn, 16 NMAC 16.17.1, 03-15-2001; A, 07-06-2012]

### **16.16.17.2 SCOPE:**

Part 17 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.

[10-14-95; 16.16.17.2 NMAC - Rn, 16 NMAC 16.17.2, 03-15-2001]

### **16.16.17.3 STATUTORY AUTHORITY:**

The authority for Part 17 of Chapter 16 is NMSA 1978 Section 61-2-13; Section 61-2-14; and Section 61-2-6.D and J. (1995 Repl. Pamp.).

[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.17.3 NMAC - Rn, 16 NMAC 16.17.3, 03-15-2001]

### **16.16.17.4 DURATION:**

Permanent.

[10-14-95; 16.16.17.4 NMAC - Rn, 16 NMAC 16.17.4, 03-15-2001]

### **16.16.17.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[11-17-73...10-14-95; 10-15-97; 16.16.17.5 NMAC - Rn, 16 NMAC 16.17.5, 03-15-2001; A, 07-06-2012]

#### **16.16.17.6 OBJECTIVE:**

The objective of Part 17 of Chapter 16 is to set forth the requirements governing the advertising of optometric services, procedures, and ophthalmic materials in the State of New Mexico.

[10-14-95; 16.16.17.6 NMAC - Rn, 16 NMAC 16.17.6, 03-15-2001]

#### **16.16.17.7 DEFINITIONS:**

**[RESERVED]**

[10-14-95; 16.16.17.7 NMAC - Rn, 16 NMAC 16.17.7, 03-15-2001]

#### **16.16.17.8 UNPROFESSIONAL CONDUCT IN ADVERTISING:**

In accordance with NMSA 1978, Section 61-2-13.D and J (1995 Repl. Pamp.), the board may refuse to issue, suspend or revoke any license for advertising by means of knowingly false, misleading or deceptive statements or advertising. Any such action constitutes unprofessional conduct.

**A.** No optometrist shall use, participate in, or permit the use of his/her name in any form of public communication which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim related to the optometrist's examinations or professional services, eye glasses, ophthalmic lenses or frames, contact lenses, specific procedures, or ophthalmic devices.

**B.** Any advertisement which states the price on ophthalmic materials including, but not limited to, eyeglasses, spectacles, lenses, frames or mountings, shall affirmatively disclose whether the price includes eye examination services. All disclosures must be in type no smaller than ten (10) point type.

**C.** A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to, a statement or claim which:

- (1)** contains a misrepresentation of fact; or
- (2)** is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or
- (3)** represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees

for professional services that do not disclose all variables affecting the fees that will, in fact, be charged; or

**(4)** contains other representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.

**D.** Any advertisement of the price of any ophthalmic lens which does not meet the American national standards institute specifications, or which is purchased by the optometrist from a manufacturer or wholesaler who does not warrant that the lens meets the standards of the American national standards institute and has not been tested by the optometrist or has been tested and does not meet such standards, shall contain the statement: "Does not meet the American national standards institute Specification for the first quality prescription ophthalmic lenses." This statement shall not be abbreviated in any way.

[11-7-80; 6-24-94; 10-14-95; 16.16.17.8 NMAC - Rn, 16 NMAC 16.17.8, 03-15-2001]

#### **16.16.17.9 ADVERTISEMENTS:**

**A.** An optometrist may place advertisements in the yellow pages of the telephone directory. The advertisement must state the following information as provided in Section 57-21-3 of the Advertisement of Health Care Services Act:

- (1)** the optometrist's name;
- (2)** address and telephone number of the optometrist's practice location; and
- (3)** the designation of the profession in which the optometrist is licensed to practice: O.D., optometrist, doctor of optometry, or optometric physician, as provided in Subsection C of this rule.

**B.** The advertisement may also describe the nature of the optometrist's practice such as, but not limited to, visual analysis, refraction, and eye examination.

**C.** New Mexico licensed optometrists shall be allowed to use the designation of "optometric physician" in their advertisements. The advertisement may be placed under the "physicians' title in the yellow pages under the following conditions:

- (1)** The optometrist identifies his professional designation in his advertisement, and
- (2)** The title heading does not limit the advertisement specifically. For instance: "physicians M.D." limits the section only to M.D.s; "physicians - M.D., ophthalmologists" limits the section only to M.D.s and/or ophthalmologists.

[11-17-73; 11-7-80; 6-24-94; 10-14-95; 10-15-97; A, 6-26-00; 16.16.17.9 NMAC - Rn, 16 NMAC 16.17.9, 03-15-2001; A, 03-02-2016]

## **PART 18: IN-OFFICE MINOR SURGICAL PROCEDURES**

### **16.16.18.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[16.16.18.1 NMAC - N, 03-22-2008; A, 07-06-2012]

### **16.16.18.2 SCOPE:**

Provisions of Part 18 of Chapter 16 applies to all New Mexico licensed optometric physicians practicing in New Mexico.

[16.16.18.2 NMAC - N, 03-22-2008]

### **16.16.18.3 STATUTORY AUTHORITY:**

The authority for Part 18 of Chapter 16 is the Optometry Act NMSA 1978 Section 61-2-2.A (3).

[16.16.18.3 NMAC - N, 03-22-2008]

### **16.16.18.4 DURATION:**

Permanent.

[16.16.18.4 NMAC - N, 03-22-2008]

### **16.16.18.5 EFFECTIVE DATE:**

March 22, 2008, unless a later date is cited at the end of a section.

[16.16.18.5 NMAC - N, 03-22-2008]

### **16.16.18.6 OBJECTIVE:**

The objective of Part 18 of Chapter 16 is to convey which in-office minor surgical procedures New Mexico optometric physicians are authorized to perform.

[16.16.18.6 NMAC - N, 03-22-2008]

### **16.16.18.7 DEFINITIONS:**

**A. "Board"** means the New Mexico board of optometry herein referred to as the board.

**B. "Optometric physician"** means an optometrist who administers pharmaceutical medications in the diagnosis, treatment and management of ocular diseases as provided in 16.16.7.11 NMAC.

[16.16.18.7 NMAC - N, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

#### **16.16.18.8 MINOR SURGICAL PROCEDURES:**

A New Mexico optometric physician can use surgery or injections to correct and relieve the following types of abnormalities of the human eye and its adnexa. The following types of in-office minor surgical procedures are allowed:

**A.** non-laser removal, destruction or drainage of superficial eyelid lesions and conjunctival cysts;

**B.** probing, dilation, irrigation or closure of the tear drainage structures or the eyelid; scalpel use is to be applied only for the purpose of use on the skin surrounding the eye;

**C.** removal of nonpenetrating foreign bodies from the cornea, conjunctiva and eyelid;

**D.** non-laser corneal debridement, culture, scrape or anterior puncture, not including removal of pterygium, corneal biopsy or removal of corneal neoplasias; and

**E.** removal of eyelashes.

[16.16.18.8 NMAC - N, 03-22-2008]

### **PART 19: CONTACT LENSES**

#### **16.16.19.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; A, 6-26-00; 16.16.19.1 NMAC - Rn, 16 NMAC 16.19.1, 03-15-2001; A, 07-06-2012]

#### **16.16.19.2 SCOPE:**

Part 19 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.

[10-14-95; 16.16.19.2 NMAC - Rn, 16 NMAC 16.19.2, 03-15-2001]

### **16.16.19.3 STATUTORY AUTHORITY:**

The authority for Part 19 of Chapter 16 is NMSA 1978, Section 61-2-2; Section 61-2-4; Section 61-2-14; and 61-2-6.D. (2) (1995 Repl. Pamp.).

[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.19.3 NMAC - Rn, 16 NMAC 16.19.3, 03-15-2001]

### **16.16.19.4 DURATION:**

Permanent.

[10-14-95; 16.16.19.4 NMAC - Rn, 16 NMAC 16.19.4, 03-15-2001]

### **16.16.19.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[6-24-94...10-14-95; 16.16.19.5 NMAC - Rn, 16 NMAC 16.19.5, 03-15-2001; A, 07-06-2012]

### **16.16.19.6 OBJECTIVE:**

The objective of Part 19 of Chapter 16 is to set forth regulations on contact lens prescription release.

[10-14-95; 16.16.19.6 NMAC - Rn, 16 NMAC 16.19.6, 03-15-2001; A, 6-08-01; A, 03-15-2004]

### **16.16.19.7 DEFINITIONS:**

**A. "Replacement contact lens prescription"** means a prescription prepared by a licensed optometrist containing the information specified in Section 11 of this rule and written expressly for the purpose of providing contact lenses that have already been properly fitted.

**B. "Appropriate follow-up care"** is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient.

[10-14-95; 16.16.19.7 NMAC - Rn, 16 NMAC 16.19.7, 03-15-2001; A, 03-15-2004]

### **16.16.19.8 RELEASE OF CONTACT LENS PRESCRIPTION:**

[RESERVED]

[6-24-94; 10-14-95; 16.16.19.8 NMAC - Rn, 16 NMAC 16.19.8, 03-15-2001; A, 6-08-01; Repealed, 03-15-2004]

**16.16.19.9 CONTACT LENS EXAMINATION AND FOLLOW-UP FITTING  
REQUIRED:**

**A.** No optometrist will prescribe contact lenses for a patient unless he/she has personally examined and fitted the contact lenses to the eyes of the patient at the optometrist's place of practice.

**B.** A replacement contact lens prescription is deemed to be determined after a refraction, eye health examination, diagnostic contact lens fitting, instruction on care/maintenance procedures, and appropriate follow-up care (16.16.19.7.B NMAC) have been performed.

**C. [RESERVED]**

**D.** No optometrist may write a replacement contact lens prescription until the procedures in Subsections A and B of this rule have been performed (see 16.16.19.9 NMAC).

**E.** No optometrist may write a contact lens prescription for a patient whose eye health would be compromised through wearing contact lenses.

**F.** If, in the professional opinion of the optometrist, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the optometrist may terminate his/her care of that patient. The optometrist shall notify the patient in writing that the optometrist is terminating care and shall state his/her reason for doing so.

[6-24-94; 10-14-95; 16.16.19.9 NMAC - Rn, 16 NMAC 16.19.9, 03-15-2001; A, 6-08-01; A, 03-15-2004]

**16.16.19.10 CONTACT LENS POLICIES AND PROCEDURES:**

**A.** All contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses, and the use of such lenses by anyone other than a licensed optometrist or physician, or person under the direct supervision of a licensed optometrist or physician, shall constitute the practice of optometry.

**B.** Any New Mexico licensed optometrist who dispenses contact lenses will observe the following provisions:

- (1)** maintain regular office hours and be physically accessible to the patient;

(2) be actively interacting with the patient's professional care designed to detect disease, prevent infection due to patient and/or product variability;

(3) provide eye examinations and/or contact lens related office visits; and

(4) require a valid replacement contact lens prescription signed by the prescribing doctor.

[6-24-94; 10-14-95; 16.16.19.10 NMAC - Rn, 16 NMAC 16.19.10, 03-15-2001; A, 6-08-01; A, 03-15-2004]

#### **16.16.19.11 REPLACEMENT CONTACT LENS PRESCRIPTION:**

**A.** The licensed optometrist shall ensure that each replacement contact lens prescription that he/she prescribes contains all the ordering and fabrication specifications necessary for the proper duplication of the patient's current prescription; and shall include the following:

(1) date of issue;

(2) name and address of the patient;

(3) name, professional designation, address, and signature of the prescribing optometrist;

(4) all parameters including, but not limited to, lens size and type, base curve, power, diameter, brand name, materials type, required to properly duplicate or replace the contact lens supply;

(5) a specific date of expiration, of not more than twenty-four months from the time the patient was first examined, unless, in the professional opinion of the optometrist, a shorter expiration date is in the best interest of the patient;

(6) any limitation on refills and notification of scheduled follow-up visits and recommended lens replacement interval; and

(7) an explicit statement that the prescription is a replacement contact lens prescription.

**B.** The replacement contact lens prescription may contain the following items:

(1) a specific statement noting that any person, firm, or corporation that dispenses or sells contact lenses from the prescription should inform the patient in writing of the following:

(a) that the patient should return to the prescribing optometrist to ascertain the accuracy and suitability of the contact lenses; and

(b) that the prescribing optometrist or physician shall not be responsible for any damage or injury resulting from negligence of third parties to include, but not be limited to, negligence in packaging, manufacturing, substitution, improper care regimen or recommendations (i.e. cleaning, disinfection, and wetting) or instructions provided by the seller that lead to over-wear of the contact lenses or improper care of contact lenses that result in damage to the lenses or the visual system, or change of the parameters of the contact lens, or filling the prescription after the expiration date;

(2) notice that the contact lens dispenser shall not adapt, substitute, or change the contact lens prescription, including brand name or specific material types, without prior authorization from the prescribing optometrist or physician, because to do so would constitute the practice of optometry;

(3) the words "OK for contact lens", "fit with contact lenses", or similar wording, do not constitute a contact lens prescription;

(4) a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented in the patient's records; and

(5) wearing guidelines and/or specific instructions for use of the contact lenses by the patient.

[6-24-94, 10-14-95; A, 6-26-00; 16.16.19.11 NMAC - Rn, 16 NMAC 16.19.11, 03-15-2001; A, 6-08-01; A, 03-15-2004]

#### **16.16.19.12 TERM OF PRESCRIPTION:**

An optometrist may not issue a contact lens prescription that expires before the second anniversary of the date the patient's prescription parameters were determined, unless a shorter prescription period was clinically indicated by the patient's ocular health or by potential harm to the patient's ocular health.

[16.16.19.12 NMAC - N, 6-08-01; A, 03-15-2004]

#### **16.16.19.13 SHORT-TERM PRESCRIPTION:**

If an optometrist writes a contact lens prescription for a period of less than two years, the optometrist shall complete the following:

A. give the patient a verbal explanation, at the time of the action, of the reason for the action; and

B. maintain a written explanation of the reason in the patient's records.

[16.16.19.13 NMAC - N, 6-08-01; A, 03-15-2004]

**16.16.19.14 EXTENSION OF PRESCRIPTION:**

An optometrist may extend a patient's contact lens prescription expiration date without completing another eye examination if the optometrist deems it clinically indicated, and the reason shall be noted in the patient's records.

[16.16.19.14 NMAC - N, 6-08-01; A, 03-15-2004]

**16.16.19.15 RELEASE OF REPLACEMENT CONTACT LENS PRESCRIPTION; TIMING:**

**A.** An optometrist who performs an eye examination and fits a patient for contact lenses shall prepare and provide the patient or anyone who is designated to act on behalf of the patient, with a replacement contact lens prescription when the patient's contact lens fitting has been completed.

**B.** Optometrists shall display, in a prominent location in their office(s), a sign to inform their patients that they have a right to a copy of their replacement contact lens prescription.

**C.** The optometrist shall provide the patient with a copy of the replacement contact lens prescription as long as the prescription is valid. The replacement copy will still show the original expiration date.

**D.** A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

[16.16.19.15 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

**16.16.19.16 LIMITATIONS ON, OR REFUSAL TO GIVE REPLACEMENT CONTACT LENS PRESCRIPTION:**

**A.** An optometrist may exclude categories of contact lenses from a replacement contact lens prescription if the exclusion is clinically indicated.

**B.** An optometrist may refuse to provide a replacement contact lens prescription to a patient if:

- (1) the patient's ocular health presents a contraindication for contact lenses;

(2) the refusal is warranted due to potential harm to the patient's ocular health;

(3) the patient has a medical condition indicating that:

(a) the patient's ocular health would be damaged if the prescription were released to the patient; or

(b) further monitoring of the patient is needed;

(4) the request is made after the second anniversary of the date of the patient's last contact lens/eye examination.

C. If an optometrist refuses to give a patient his or her replacement contact lens prescription for any reason permitted under Subsection B of 16.16.19.16 NMAC, the optometrist must do the following:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) record and maintain, in the patient's records, a written explanation of the reasons given for refusal.

D. Subsection B of 16.16.19.16 NMAC does not prohibit an optometrist from giving a patient the patient's replacement contact lens prescription.

[16.16.19.16 NMAC - N, 6-08-01; A, 03-15-2004]

#### **16.16.19.17 COMPLIANCE REQUIRED; VIOLATION PENALTIES:**

A. A person or entity who is not a licensed optometrist or a licensed physician cannot sell or dispense replacement contact lenses unless registered with the New Mexico board of pharmacy. Pharmacies, hospitals and clinics licensed by the board of pharmacy are exempt from this rule.

B. Failure of an optometrist to comply with the provisions of this rule, 16.16.19 NMAC, shall be considered unprofessional and unethical conduct, and shall be dealt with in accordance with the appropriate provisions of Part 21 and Part 22 of 16.16.19 NMAC.

C. Adapting, substituting, or changing the contact lens prescription, including specified material types, without prior authorization from the prescribing doctor, constitutes the practice of optometry.

D. Practicing optometry without a license is a fourth degree felony violation punishable upon conviction as provided in the Criminal Code.

**E.** The board of optometry may impose a civil fine or no more than one thousand (\$1,000) on a licensed optometrist who fails to provide a requested replacement contact lens prescription; or who knowingly dispenses contact lenses without a valid replacement contact lens prescription; or who otherwise fails to comply with the provisions of this rule, 16.16.19 NMAC.

[16.16.19.17 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

#### **16.16.19.18 SALE OR DISPENSING OF REPLACEMENT CONTACT LENSES:**

The sale of all replacement contact lenses is regulated by the federal trade commission's *Contact Lens Rule* which became effective in July 2004. Please see "a *guide for prescribers and sellers*" of contact lenses at <http://www.ftc.gov/bcp/edu/pubs/business/health/bus62.shtm>.

[16.16.19.18 NMAC - N, 6-08-01; A, 03-15-2004; 16.16.19.18 NMAC - N, 07-06-2012]

#### **16.16.19.19 LIABILITY FOR USE OF PRESCRIPTION:**

When a patient's replacement contact lens prescription is dispensed by a person other than that licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser. Furthermore, an optometrist or therapeutic optometrist is not liable for a patient's subsequent use of a contact lens prescription if the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in the patient no longer being a proper candidate for the contact lenses prescribed.

[16.16.19.19 NMAC - N, 03-15-2004; 16.16.19.19 NMAC - Rn & A, 16.16.19.18 NMAC, 07-06-2012]

#### **16.16.19.20 REGISTRATION REQUIRED FOR NON-LICENSEES TO SELL CONTACT LENSES:**

**A.** A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he/she is registered with the New Mexico board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement.

**B.** The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement.

**C.** The board of pharmacy shall maintain a current list of all registered seller and dispensers of contact lenses.

**D.** A person, company, or entity that is not registered pursuant to this subsection and knowingly sells or dispenses contact lenses to a New Mexico resident is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

[16.16.19.20 NMAC - Rn, 16.16.19.19 NMAC, 07-06-2012]

## **PART 20: OPHTHALMIC LENSES**

### **16.16.20.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[16.16.20.1 NMAC - N, 03-15-2004; A, 07-06-2012]

### **16.16.20.2 SCOPE:**

Part 20 of Chapter is written to provide information about the prescribing of ophthalmic lenses for eyeglasses.

[16.16.20.2 NMAC - N, 03-15-2004]

### **16.16.20.3 STATUTORY AUTHORITY:**

The authority for Part 20 of Chapter 16 is NMSA 1978, Sections 61-2-1 to 61-2-18 (2003 Repl. Pamp.).

[16.16.20.3 NMAC - N, 03-15-2004]

### **16.16.20.4 DURATION:**

Permanent.

[16.16.20.4 NMAC - N, 03-15-2004]

### **16.16.20.5 EFFECTIVE DATE:**

March 15, 2004, unless a later date is cited at the end of a section.

[16.16.20.5 NMAC - N, 03-15-2004]

### **16.16.20.6 OBJECTIVE:**

The objective of Part 20 of Chapter 16 is to set forth rules related to the prescribing and dispensing of ophthalmic lenses and eyeglasses.

[16.16.20.6 NMAC - N, 03-15-2004]

**16.16.20.7 DEFINITIONS:**

**A. "Ophthalmic lens"** means a lens that has a spherical, cylindrical or prismatic value, is ground pursuant to a prescription and is intended to be used as eyeglasses.

**B. "Eyeglasses"** means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in the anomalies of human vision.

[16.16.20.7 NMAC - N, 03-15-2004]

**16.16.20.8 OPHTHALMIC PRESCRIPTION:**

**A.** A prescription written for ophthalmic lenses shall include the following:

- (1) the dioptric power of spheres, cylinders and prisms;
- (2) the axes of cylinders;
- (3) the position of the prism base;
- (4) the designation of the pupillary distance;
- (5) the name of the patient;
- (6) the date of the prescription;
- (7) the expiration date of the prescription; and
- (8) the name and address of the prescriber

**B.** If so desired by the prescriber, the light transmission properties and the lens curve values may be included as well.

[16.16.20.8 NMAC - N, 03-15-2004]

**16.16.20.9 AUTHORITY OF PERSON WHO SELLS AND DISPENSES EYEGLASSES:**

A person who sells and dispenses eyeglasses upon the written prescription of an optometrist, physician, or surgeon may determine the following:

- A. the type, form, size, and shape of the ophthalmic lens;
- B. the placement of optical centers for distance-seeing and near-work;
- C. the designation of type and placement of reading segments in multivision lenses;
- D. the type and quality of frame or mounting;
- E. the type of bridge and distance between lenses;
- F. the type, length and angling of temples; and
- G. the designation of pupillary distance.

[16.16.20.9 NMAC - N, 03-15-2004]

**16.16.20.10 UNPROFESSIONAL CONDUCT RELATED TO OPHTHALMIC LENSES:**

- A. Refusing to provide the patient with his/her eyeglass prescription if the prescription is under a year old; or
- B. Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

[16.16.20.10 NMAC - N, 03-15-2004]

**PART 21: UNPROFESSIONAL CONDUCT**

**16.16.21.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; A, 6-26-00; 16.16.21.1 NMAC - Rn, 16 NMAC 16.21.1, 03-15-2001; A, 07-06-2012]

**16.16.21.2 SCOPE:**

Part 21 of Chapter 16 applies to anyone in violation of the Optometry Act NMSA 1978 Section 61-2-1 to 61-2-18 (1995 Repl. Pamp.) or the Optometry regulations 16.16 NMAC.

[10-14-95; 16.16.21.2 NMAC - Rn, 16 NMAC 16.21.2, 03-15-2001]

**16.16.21.3 STATUTORY AUTHORITY:**

The authority for Part 21 of Chapter 16 is NMSA 1978, Section 61-2-1 to 61-2-18 (1995 Repl. Pam.) and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pam).

[11-17-73...10-14-95; 16.16.21.3 NMAC - Rn, 16 NMAC 16.21.3, 03-15-2001; A, 03-15-2004]

#### **16.16.21.4 DURATION:**

Permanent.

[10-14-95; 16.16.21.4 NMAC - Rn 16 NMAC 16.21.4, 03-15-2001]

#### **16.16.21.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[11-17-73...10-14-95; 16.16.21.5 NMAC - Rn, 16 NMAC 16.21.5, 03-15-2001; A, 07-06-2012]

#### **16.16.21.6 OBJECTIVE:**

The objective of Part 21 of Chapter 16 is to set forth the acts or conduct that constitute violations of the Optometry Act and the Optometry regulations and the Uniform Licensing Act, and which subject the person in violation to disciplinary action by the board.

[11-17-73; 9-20-80; 6-24-94; 10-14-95; 16.16.21.6 NMAC - Rn, 16 NMAC 16.21.6, 03-15-2001; A, 03-15-2004]

#### **16.16.21.7 DEFINITIONS:**

**A. "Disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

**B. "Splitting or dividing of fees"** means offering, delivering, receiving, or accepting any unearned rebate, refund, commission, preference, patronage, dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, customers to any person, irrespective of any membership, proprietary interest, or co-ownership in or with any person to whom the patients, clients, or customers are referred.

**C. "Professional superiority"** means claiming, implying, guaranteeing, or representing that one has superior professional qualities, skills, abilities, credentials, training and professional service outcomes beyond those of similarly licensed optometrists.

[N, 6/26/2000; 16.16.21.7 NMAC - Rn, 16 NMAC 16.21.7, 3/15/2001; A, 7/6/2012; A, 2/26/2022]

#### **16.16.21.8 DISCIPLINARY PROCESS INITIATED:**

In accordance with the provisions contained within the Uniform Licensing Act, the Board may take disciplinary action if the Board determines that the applicant or the licensee has violated any provision of the Optometry Act or the regulations of the Board (16.16 NMAC).

[9-20-80; 6-24-94; 10-14-95; 16.16.21.8 NMAC - Rn, 16 NMAC 16.21.8, 03-15-2001]

#### **16.16.21.9 ACTS OF UNPROFESSIONAL CONDUCT:**

The following exemplify the types of conduct or acts of omission that shall subject the licensee or applicant to disciplinary action by the board.

- A.** Any conduct whether an act or the omission of an act, which deceives or defrauds or tends to deceive or defraud the public.
- B.** Obtaining or attempting to obtain any fee by fraud, misrepresentation, deceit or any other deceptive or dishonest course of conduct.
- C.** Charging or attempting to charge any unusual, unreasonable, or exorbitant fee.
- D.** [RESERVED]
- E.** Splitting or dividing of fees with any person, as defined by this rule.
- F.** Advertising professional superiority, or advertising ophthalmic materials or services in violation of the rules of this board.
- G.** Breach of the confidentiality of information or knowledge about a patient obtained by the optometrist while acting in his or her professional capacity.
- H.** Seeing patients while under the influence of alcohol or controlled substances not prescribed for him or her by an individual authorized by law to prescribe controlled substances. For purposes of this regulation, the term "controlled substances" shall be defined as the term is defined by the New Mexico Controlled Substance Act.
- I.** Sexual misconduct with a patient, including but not limited to the making of unsolicited sexual advances to a patient.
- J.** Violation of any order or judgment of the board.

**K.** Impersonating another who is licensed to practice optometry, or permitting or allowing any person to use such license.

**L.** Employing or inducing an unlicensed person to perform any procedure that is considered the practice of optometry as defined in NMSA Sections 61-2-1 through 61-2-18 (1995 Repl. Pamp.).

**M.** Practicing beyond the scope of his/her optometry license as defined by state law and regulations.

**N.** Advertising in any manner that violates board regulations and state statutes on advertising.

**O.** Making false statements in any application for licensure or renewal of licensure.

**P.** Failing to report to the board the surrender of an optometric license or any formal disciplinary action, in another state or jurisdiction, in which there has been an adverse finding for acts or conduct which would constitute grounds for actions as defined in these rules.

**Q.** Failing to report to the board any criminal conviction of a felony.

**R.** Refusing to provide the patient with their eyeglass prescription if the prescription is under a year old.

**S.** Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

**T.** Failing to disclose and release patient information when requested by a patient or a health care provider upon a patient's authorization, or upon request from a health care provider when relating to the treatment of a patient, in accordance with the 1996 Health Insurance Portability and Accountability Act (HIPAA).

[11-17-73; 9-20-80; 8-21-92; 6-24-94; 10-14-95; 16.16.21.9 NMAC - Rn, 16 NMAC 16.21.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

#### **16.16.21.10 UNPROFESSIONAL CONDUCT RELATED TO PHARMACEUTICALS:**

The following unprofessional conduct related to pharmaceutical and controlled dangerous pharmaceutical agents shall be grounds for disciplinary action by the board. Violations of Subsections of this Section may also constitute fourth degree felony violations and may be subject to conviction, imprisonment, and fines pursuant to the provisions of Section 31-18-15 NMSA 1978 (see Subsections B and C of 16.16.11.12 NMAC).

**A.** Practicing optometry, including the use of pharmaceutical agents without a valid, current license.

**B.** Administering, dispensing and prescribing diagnostic, topical, or oral pharmaceutical agents without the proper certification by the board as set forth in Part 7 of 16.16 NMAC.

**C.** Administering, dispensing, and prescribing controlled dangerous drugs without proper certification by the board and the required controlled substances registration with the State of New Mexico and proper DEA registration with the drug enforcement administration as set forth in Part 8 of 16.16 NMAC.

**D.** Administering, dispensing and prescribing dangerous drugs for purposes other than generally accepted treatment for the relief of ocular abnormalities.

**E.** Indiscriminately or excessively administering, dispensing, or prescribing controlled dangerous substances.

**F.** Administering, dispensing and prescribing controlled dangerous substances to immediate family members for purposes other than as applied in the treatment and management of ocular disease.

**G. [RESERVED]**

**H.** Administering, dispensing, and prescribing controlled dangerous substances in excess of the amount considered good optometric practice.

**I.** Administering, dispensing, and prescribing controlled dangerous substances without medical need in accordance with published standards.

**J.** Disbursing or prescribing any controlled dangerous substance for the optometrist's personal use for any other use than as applied in the treatment and management of ocular disease.

**K.** Delegating prescriptive signing authority for either prescriptive medications or controlled dangerous substances to another person.

[10-14-95; 16.16.21.10 NMAC - Rn, 16 NMAC 16.21.10, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

**16.16.21.11 DISCIPLINARY PROCEEDINGS FOR UNLICENSED ACTIVITY:**

In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamph), a person who is not licensed to engage in the practice of optometry by the board is subject to disciplinary actions and proceedings by the board if it is determined

that he or she has been practicing optometry in New Mexico without a valid New Mexico license.

**A.** The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who engages in the practice of optometry without a valid New Mexico license.

**B.** In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of optometry the administrative costs, including investigative costs and the costs of conducting a hearing.

**C.** Reports of unlicensed practice of optometry may be reported for investigation to the board by phone, fax, mail, or e-mail.

[16.16.21.11 NMAC - N, 03-15-2004]

#### **16.16.21.12 DISQUALIFYING CRIMINAL CONVICTIONS:**

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

- (1) murder;
- (2) manslaughter;
- (3) aggravated assault;
- (4) assault with intent to commit a violent felony;
- (5) aggravated battery inflicting great bodily harm or with deadly weapon;
- (6) second or subsequent conviction of stalking;
- (7) aggravated stalking;
- (8) false imprisonment;
- (9) amendment of child resulting in death or great bodily harm;
- (10) abuse of a child;
- (11) negligent abuse of a child resulting in death;
- (12) intentional abuse of a child 12 to 18 years old resulting in death;

- (13) intentional abuse of a child less than 12 years old resulting in death;
- (14) contributing to the delinquency of a minor;
- (15) sexual exploitation of children;
- (16) sexual exploitation of children by prostitution;
- (17) accepting the earnings of a prostitute;
- (18) promoting prostitution;
- (19) criminal sexual penetration;
- (20) criminal sexual contact;
- (21) criminal sexual contact of a minor;
- (22) aggravated indecent exposure;
- (23) bigamy;
- (24) incest;
- (25) breaking and entering;
- (26) larceny;
- (27) robbery;
- (28) burglary;
- (29) aggravated burglary;
- (30) fraud;
- (31) embezzlement;
- (32) extortion;
- (33) forgery;
- (34) receiving stolen property;
- (35) falsely obtaining services or accommodations;

- (36)** improper sale, disposal, removal or concealing of encumbered property;
- (37)** theft of identity;
- (38)** theft of a credit card by taking or retaining possession of card taken;
- (39)** fraudulent transfer or receipt of a credit card;
- (40)** dealing in credit cards of another;
- (41)** forgery of a credit card;
- (42)** fraudulent signing of credit cards or sales slips or agreements;
- (43)** certain fraudulent acts by merchants or their employees;
- (44)** possession of four or more incomplete credit cards or machinery, plates or other contrivance;
- (45)** unlawful taking of a vehicle or motor vehicle;
- (46)** embezzlement of a vehicle or motor vehicle;
- (47)** fraudulently obtaining a vehicle or motor vehicle;
- (48)** receiving or transferring a stolen vehicle or motor vehicle;
- (49)** arson or negligent arson;
- (50)** aggravated arson;
- (51)** cruelty to animals or extreme cruelty to animals;
- (52)** second conviction for use of telephone to terrify, intimidate, threaten, harass, annoy or offend;
- (53)** aggravated fleeing a law enforcement officer;
- (54)** tampering with evidence;
- (55)** aggravated assault upon a peace officer;
- (56)** assault with intent to commit a violent felony upon a peace officer;
- (57)** battery upon a peace officer;

- (58)** aggravated battery upon a peace officer;
- (59)** assisting in assault upon peace officer;
- (60)** disarming a peace officer;
- (61)** paying or receiving public money for services not rendered;
- (62)** making or permitting false public voucher;
- (63)** unlawful interest in a public contract;
- (64)** bribery of public officer or public employee;
- (65)** demanding or receiving bribe by public officer or public employee;
- (66)** bribery or intimidation of a witness;
- (67)** retaliation against a witness;
- (68)** acceptance of a bribe by a witness;
- (69)** perjury;
- (70)** tampering with public records;
- (71)** attempt to commit a felony;
- (72)** conspiracy;
- (73)** criminal solicitation;
- (74)** intentionally trafficking controlled substances;
- (75)** intentionally distributing a controlled substance to a person under the age of eighteen years;
- (76)** intentionally distributing or possessing with intent to distribute a controlled substance;
- (77)** possession of a controlled substance;
- (78)** violations of the administrative provisions of the Controlled Substances Act;
- (79)** engaging in other acts prohibited by the Controlled Substances Act;

**(80)** delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior;

**(81)** manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;

**(82)** intentionally selling an imitation controlled substance to a person under the age of eighteen years;

**(83)** intentionally possessing an imitation controlled substance with the intent to distribute;

**(84)** certain violations of the Drug Precursor Act;

**(85)** child solicitation by electronic communication device;

**(86)** criminal sexual communication with a child;

**(87)** second or subsequent unauthorized distribution of sensitive images;

**(88)** failing to disclose facts or change of circumstances to obtain public assistance;

**(89)** unlawful use of food stamp identification card or medical identification card;

**(90)** misappropriating public assistance;

**(91)** making or permitting a false claim for reimbursement of public assistance services;

**(92)** failure to reimburse the human services department upon receipt of third party payment;

**(93)** making, conspiring, or attempting to make an extortionate extension of credit;

**(94)** knowingly advancing money or property to any person with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced for the purpose of making extortionate extensions of credit;

**(95)** knowingly participating, conspiring, or attempting to participate in the use of any extortionate means to collect any extensions of credit or to cause harm to the person, reputation or property of any person for the nonpayment thereof;

**(96)** falsification of documents in connection with the Medicaid Fraud Act;

- (97)** failure to retain records in connection with the Medicaid Fraud Act;
- (98)** obstruction of investigation in connection with the Medicaid Fraud Act;
- (99)** medicaid fraud;
- (100)** computer access with intent to defraud or embezzle;
- (101)** computer abuse;
- (102)** unauthorized computer use;
- (103)** human trafficking;
- (104)** willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (105)** willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (106)** homicide by vehicle;
- (107)** fourth or subsequent driving under the influence of intoxicating liquor or drugs;
- (108)** practicing medicine without a license;
- (109)** making a false statement under oath, or submitting a false affidavit, in connection with the Medical Practice Act;
- (110)** making an unauthorized withdrawal from the account of another person with a financial institution, or stealing the card of another, or making an unauthorized use of the card of another;
- (111)** violations of the New Mexico Drug, Device and Cosmetic Act;
- (112)** selling or dispensing a contact lens to a resident of this state unless the person has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription;
- (113)** certain violations of the Optometry Act;
- (114)** misuse of public funds;
- (115)** tax fraud;

- (116) failure to comply with proclamation of the governor;
- (117) violations of certain provisions of the Drug & Cosmetic Act;
- (118) making false statement in claim for payment under Indigent Hospital and County Health Care Act;
- (119) unauthorized obtain or use of DNA samples or DNA records;
- (120) sex offender who fails to comply with SORNA re moving to another state;
- (121) making a false entry in a book, report or statement of an insurer with intent to injure, defraud, or deceive (insurance);
- (122) unlawfully removing or attempting to remove records, assets, or material from a domestic insurer (insurance);
- (123) making a false statement in connection with insurance with the effect of causing a loss to the insurer.

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Optometry Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.16.21.12 NMAC - N, 2/26/2022]

## **PART 22: DISCIPLINARY PROCEEDINGS**

### **16.16.22.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 16.16.22.1 NMAC - Rn, 16 NMAC 16.22.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

### **16.16.22.2 SCOPE:**

Part 22 of Chapter 16 applies to all license applicants or New Mexico licensed optometrists.

[10-14-95; 16.16.22.2 NMAC - Rn, 16 NMAC 16.22.2, 03-15-2001]

### **16.16.22.3 STATUTORY AUTHORITY:**

Authority for Part 22 of Chapter 16 is the Optometry Act NMSA 1978 Section 61-2-6.D, Section 61-2-13, Section 61-2-14, Section 61-2-17 (1995 Repl. Pamp.) and the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33 (1993 Repl. Pamp.).

[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.22.3 NMAC - Rn, 16 NMAC 16.22.3, 03-15-2001]

### **16.16.22.4 DURATION:**

Permanent.

[10-14-95; 16.16.22.4 NMAC - Rn, 16 NMAC 16.22.4, 03-15-2001]

### **16.16.22.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[8-21-92...10-14-95; 10-15-97; 16.16.22.5 NMAC - Rn, 16 NMAC 16.22.5, 03-15-2001; A, 03-15-2004]

### **16.16.22.6 OBJECTIVE:**

The objective of Part 22 of Chapter 16 is to set forth the policies and procedures for processing complaints submitted to the Board against licensees and for instituting disciplinary actions against applicants and licensees.

[10-14-95; 16.16.22.6 NMAC - Rn, 16 NMAC 16.22.6, 03-15-2001]

**16.16.22.7 DEFINITIONS:**

For the purposes of this rule:

**A. "Complaint"** means a complaint filed with the board against an applicant for licensure or against a licensee.

**B. "Complainant"** means the party who files a complaint against a licensee or against an applicant for licensure.

**C. "Respondent"** means the licensure applicant or the licensee who is the subject of the complaint filed with the board.

**D. "Hearing"** means the formal process whereby the respondent is afforded the opportunity to be heard by the board or its designated hearing officer before the board takes action which might result in disciplinary action against the respondent's application for licensure or his or her license to practice optometry.

**E. "Must"** means required.

**F. "Violation of practice"** means a violation of the New Mexico Optometry Act or the rules and regulations duly adopted by the board.

**G. "Notice of contemplated action" or "NCA"** means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board's intent to take action based upon the violations of practice charged in the subject complaint, and whereby the respondent is afforded the opportunity for a hearing before the board.

**H. "Shall"** means mandatory; a requirement.

**I. "Should,"** means a suggestion or recommendation; not a requirement.

**J. "License revocation"** means to prohibit the conduct authorized by the license.

**K. "License suspension"** means to prohibit, for a stated period of time, the conduct authorized by the license.

**L. "License restriction"** means to restrict or condition the license as to the scope of practice, place of practice, supervision of practice, duration of the licensed status, or other condition as deemed appropriate by the board as a disciplinary measure in connection with a formal disciplinary action.

**M. "Redacted"** means the act or process of editing or revising the complaint so that the parties that are the subject of the complaint are unknown to the board.

**N. "Pre-NCA agreement"** means an agreement reached between the board and the respondent as an option to the formal NCA and hearing administrative hearing process.

**O. "Mediation agreement"** means an agreement reached through mediation between the board and the respondent as an option to the formal NCA and formal administrative hearing process.

[10-15-97; 16.16.22.7 NMAC - Rn, 16 NMAC 16.22.7, 03-15-2001; A, 03-15-2004]

#### **16.16.22.8 DISCIPLINARY PROCEEDINGS:**

An investigation may be instituted by the board upon the receipt of a written complaint filed by any person, including any member of the board.

**A. Written Complaint Required.** A complaint filed with the board will be received by the board administrator who will process the complaint and determine how the complaint will be handled.

**(1)** In cases where it is clearly evident that the complaint does not fall within the board's statutory authority or jurisdiction, the board administrator will not process the complaint and will inform the complainant of the reasons.

**(2)** If the complaint appears to contain violations of the board's statute or its rules and regulations, or if the complaint is not a complicated one, the administrator may present the processed complaint to the entire board in a redacted form.

**(3)** If the complaint is lengthy, or if it is unclear or questionable as to whether there may have been violations of the board's statute or its rules and regulations, the administrator shall refer it to the board's standards of practice committee for review and consideration.

**(4)** The board may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to reply to the allegations in the complaint.

**(5)** The foregoing notwithstanding, the board will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action if it is determined that disclosure may impair, impede, or compromise the efficacy or integrity of an investigation into the matter.

**B. Standards of practice committee appointed.** On an annual basis, the board chairperson shall appoint a member or members of the board to a standards of practice committee.

(1) The standards of practice committee shall review all documentation referred to it by the board administrator regarding a subject complaint.

(2) The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

(a) The standards of practice committee may be authorized by the board to employ such persons without prior approval of the full board.

(b) In such cases, the board administrator will contract for any such required services once budgetary availability is determined.

(3) Upon completion of its investigation the standards of practice committee shall present a summary of the subject complaint to the board with proposed recommendations concerning the proper disposition of the subject complaint.

(4) Upon review, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee's recommendations.

(5) The standards of practice committee with the assistance of board counsel may draw up a pre-NCA settlement or mediation agreement proposal with the respondent as a means of resolving the complaint and enter into a proposed settlement agreement with the respondent as a means of resolving a complaint without having to go through the NCA and formal hearing process. However, final approval of the settlement or mediation agreement must be made by the full board prior to execution of the agreement.

**C. Standards of practice committee recused from participation in further action:** Members of the standards of practice committee who participate in the preparation of recommendations on complaints shall not participate further in any actions initiated by the board against the applicant or the licensee(s) who is the subject of the complaint.

**D. Board action:** In accordance with those provisions contained within the Uniform Licensing Act, the board may refuse to issue, suspend, or revoke any license upon finding, after a hearing, that the licensee or applicant for licensure has violated those provisions as set forth in Section 61-2-13 of the Optometry Act or those provisions found to constitute unprofessional conduct under Part 21 of the board rules and regulations (16.16 NMAC).

(1) If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

(2) If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

(3) The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

(4) **[RESERVED]**

(5) **Prehearing motions:** The board may appoint a hearing or presiding officer to decide non-dispositive motions filed prior to a hearing.

(6) **[RESERVED]**

(7) **Settlement agreements:** Following the issuance of a notice of contemplated action, the board may enter into a settlement or mediation agreement with the respondent as a means of resolving a complaint.

(8) **Settlement officer:** To facilitate approval of settlement agreements at times when it is not feasible to convene a full board meeting, the board may designate one of its members as a "settlement officer", and authorize that member to approve settlements in appropriate cases.

**E. Costs of disciplinary proceedings:** Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 61-1-3 of the Uniform Licensing Act is not taken by the board.

**F. Private cause of action:** Neither the action nor inaction of the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

**G. License returned to the board:** The wall license, renewal license, and therapeutic certificates issued by the board must be returned to the board subsequent to disciplinary revocation or suspension. The wall license, renewal license, and therapeutic certificates must be returned to the board in person or by registered mail no later than twenty (20) days after the suspension or revocation order by the board.

**H. ULA protection from liability for complainant:** There shall be no liability on the part of, and no action for damages against, a person who provides information to the

board in good faith and without malice in the reasonable belief that such information is accurate. A licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

**I. Federal fraud and abuse databank:** In accordance with federal requirements imposed by the enactment of the Health Insurance Portability and Accountability Act of 1996, also known as the Kassebaum-Kennedy bill, the board shall report any final adverse actions taken against a licensee to the federal fraud and abuse databank established under that act.

(1) The board may report to the databank disciplinary actions taken by the board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The board must report to the databank disciplinary actions taken by the board that do contain an admission or finding of guilt or liability against applicants or licensees.

**J. National optometric database.** All final adverse actions shall also be reported by the board to the association of regulatory boards of optometry (ARBO) national optometric database (NODB).

(1) The board may report to the databank disciplinary actions taken by the board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The board must report to the databank disciplinary actions taken by the board that do contain an admission or finding of guilt or liability against applicants or licensees.

[8-21-92; 10-14-95; A, 10-15-97; 16.16.22.8 NMAC - Rn, 16 NMAC 16.22.8, 03-15-2001; A, 03-15-2004]

## **PART 23: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

### **16.16.23.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[10-14-95; 16.16.23.1 NMAC - Rn, 16 NMAC 16.23.1, 03-15-2001; A, 07-06-2012]

### **16.16.23.2 SCOPE:**

Part 23 of Chapter 16 applies to all applicants for licensure and all optometrists licensed by the Board.

[10-14-95; 16.16.23.2 NMAC - Rn, 16 NMAC 16.23.2, 03-15-2001]

**16.16.23.3 STATUTORY AUTHORITY:**

The authority for Part 23 of Chapter 16 is the Parental Responsibility Act (Ch. 25, Laws of 1995).

[10-14-95; 16.16.23.3 NMAC - Rn, 16 NMAC 16.23.3, 03-15-2001]

**16.16.23.4 DURATION:**

Permanent.

[10-14-95; 16.16.23.4 NMAC - Rn, 16 NMAC 16.23.4, 03-15-2001]

**16.16.23.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a section.

[10-14-95; 16.16.23.5 NMAC - Rn, 16 NMAC 16.23.5, 03-15-2001; A, 07-06-2012]

**16.16.23.6 OBJECTIVE:**

The objective of Part 23 of Chapter 16 is to set forth the policies, procedures, and disciplinary proceedings for implementation of the Parental Responsibility Act (Ch. 25, Laws of 1995).

[10-14-95; 16.16.23.6 NMAC - Rn, 16 NMAC 16.23.6, 03-15-2001]

**16.16.23.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this Section. As used in this Section:

**A. "HSD"** means the New Mexico Human Services Department;

**B. "Statement of Compliance"** means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and

**C. "Statement of Non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and an order for support.

[10-14-95; 16.16.23.7 NMAC - Rn, 16 NMAC 16.23.7, 03-15-2001]

**16.16.23.8 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the Board:

- A. shall deny an application for a license;
- B. shall deny the renewal of license; and
- C. has grounds for suspension or revocation of the license.

[10-14-95; 16.16.23.8 NMAC - Rn, 16 NMAC 16.23.8, 03-15-2001]

#### **16.16.23.9 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the Board shall match the certified list against the current list of Board licensees and applicants.

A. Upon the later receipt of an application for license or renewal, the Board shall match the applicant against the current certified list.

B. By the end of the month in which the certified list is received, the Board shall report to HSD the names of Board applicants and licensees who are on the certified list and the action the Board has taken in connection with such applicants and licensees.

[10-14-95; 16.16.23.9 NMAC - Rn, 16.NMAC 16.23.9, 03-15-2001]

#### **16.16.23.10 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the Board shall:

A. commence a formal proceeding under 16.16.23.11 NMAC to take the appropriate action under 16.16.23.8 NMAC; (or

B. for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the Board with a subsequent Statement of Compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed thirty (30) days. If the licensee fails to provide this statement, the Board shall commence a formal proceeding under 16.16.23.11 NMAC.

[10-14-95; 16.16.23.10 NMAC - Rn, 16. NMAC 16.23.10, 03-15-2001]

#### **16.16.23.11 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in Part 23.8 of 16 NMAC 16, the Board shall serve upon the applicant or licensee a written notice stating that:

**A.** the Board has grounds to take such action, and that the Board shall take such action unless the licensee or applicant:

**(1)** mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

**(2)** provides the Board, within thirty (30) days of the date of the notice, with a Statement of Compliance from HSD; and

**B.** if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD Child Support Enforcement Division.

[10-14-95; 16.16.23.11 NMAC - Rn, 16. NMAC 16.23.11, 03-15-2001]

#### **16.16.23.12 EVIDENCE AND PROOF:**

In any hearing under this rule, relevant evidence is limited to the following:

**A.** A Statement of Non-compliance is conclusive evidence that requires the Board to take the appropriate action under 16.16.23.8 NMAC, unless:

**B.** The applicant or licensee provides the Board with a subsequent Statement of Compliance which shall preclude the Board from taking any action under this rule.

[10-14-95; 16.16.23.12 NMAC - Rn, 16. NMAC 16.23.12, 03-15-2001]

#### **16.16.23.13 ORDER:**

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

[10-14-95; 16.16.23.13 NMAC - Rn, 16. NMAC 16.23.13, 03-15-2001]

#### **16.16.23.14 PROCEDURES:**

Proceedings under this rule shall be governed by the Uniform Licensing Act.

[10-14-95; 16.16.23.14 NMAC - Rn, 16. NMAC 16.23.14, 03-15-2001]

### **PART 24: DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER**

**16.16.24.1 ISSUING AGENCY:**

New Mexico Board of Optometry.

[2-15-99; 16.16.24.1 NMAC - Rn, 16 NMAC 16.24.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

**16.16.24.2 SCOPE:**

The provisions in PART 24 of Chapter 16 apply to any person governed by the Optometry Act who may be subject to investigation and disciplinary action for excessive use or abuse of intoxicants or drugs.

[2-15-99; 16.16.24.2 NMAC - Rn, 16 NMAC 16.24.2, 03-15-2001]

**16.16.24.3 STATUTORY AUTHORITY:**

PART 24 of Chapter 16 is promulgated pursuant to the Optometry Act, Section 61-2-1 through Section 61-2-18 NMSA 1978 (1997 Repl. Pamp.); the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pamp.); and the Impaired Health Care Provider Act, Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pamp.).

[2-15-99; 16.16.24.3 NMAC - Rn, 16 NMAC 16.24.3, 03-15-2001]

**16.16.24.4 DURATION:**

Permanent.

[2-15-99; 16.16.24.4 NMAC - Rn, 16 NMAC 16.24.4, 03-15-2001]

**16.16.24.5 EFFECTIVE DATE:**

February 15, 1999, unless a later date is cited at the end of a section.

[2-15-99; 16.16.24.5 NMAC - Rn, 16 NMAC 16.24.5, 03-15-2001; A, 03-15-2004]

**16.16.24.6 OBJECTIVE:**

The objective of PART 24 of Chapter 16 is to set forth policies and guidelines for disciplinary action when evidence or allegations of a mental disorder or illness, abuse of intoxicants or drugs by a licensed optometrist have been presented to the board.

[2-15-99; 16.16.24.6 NMAC - Rn, 16 NMAC 16.24.6, 03-15-2001; A, 03-15-2004]

**16.16.24.7 DEFINITIONS:**

For the purposes of this rule:

**A. "Impaired Health Care Provider Act"** refers to Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pamp.).

**B. "Controlled Substances Act"** refers to Section 30-31-1 through Section 30-31-42 NMSA 1978.

**C. "Impaired practitioner"** means any health care provider unable to practice with reasonable skill or safety to patients by reason of one or more of the following: mental disorder or illness; physical illness, including but not limited to deterioration through the aging process or loss of motor skill; or habitual or excessive use of alcohol or abuse of drugs, as defined in the Controlled Substances Act.

[2-15-99; 16.16.24.7 NMAC - Rn, 16 NMAC 16.24.7, 03-15-2001; A, 03-15-2004]

**16.16.24.8 EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS:**

In cases where the Board has reasonable cause to believe that a licensed optometrist has a mental disorder or illness or is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the licensee's ability to practice optometry with reasonable skill and safety to patients, the Board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.

[2-15-99; 16.16.24.8 NMAC - Rn, 16 NMAC 16.24.8, 03-15-2001; A, 03-15-2004]

**16.16.24.9 EXAMINING COMMITTEE DESIGNATED:**

The board shall designate three licensed optometrists as members of an "examining committee" to examine the optometrist believed to be impaired either as a result of a mental disorder or illness or by the excessive or habitual use or abuse of intoxicants or drugs.

[2-15-99; 16.16.24.9 NMAC - Rn, 16 NMAC 16.24.9, 03-15-2001; A, 03-15-2004]

**16.16.24.10 EXAMINATION CONDUCTED BY EXAMINING COMMITTEE:**

In accordance with the provisions in the Impaired Health Care Provider Act, the examining committee shall order and conduct an examination and may require a physical or psychiatric examination or drug test of the licensee to determine his or her fitness to practice optometry with reasonable skill or safety to patients, either on a restricted or unrestricted basis.

[2-15-99; 16.16.24.10 NMAC - Rn, 16 NMAC 16.24.10, 03-15-2001; A, 03-15-2004]

#### **16.16.24.11 PHYSICAL EXAM OR DRUG TEST ORDERED:**

A licensed professional designated by the board shall perform the physical or psychiatric examination and/or drug test ordered by the examination committee. The cost of said examination or test shall be borne by the optometrist who is the subject of the examination.

[2-15-99; 16.16.24.11 NMAC - Rn, 16 NMAC 16.24.11, 03-15-2001; A, 03-15-2004]

#### **16.16.24.12 EXAMINING COMMITTEE REPORT:**

**A.** The examining committee shall report its findings on the examination and make recommendation to the Board.

**B.** Recommendations made to the board by the examining committee shall be advisory only and shall not be binding on the Board.

[2-15-99; 16.16.24.12 NMAC - Rn, 16 NMAC 16.24.12, 03-15-2001]

#### **16.16.24.13 RESULTS ADMISSIBLE:**

The results of the examining committee's findings and the physical or psychiatric exam and/or drug test shall be admissible in any subsequent review or hearing by the board, notwithstanding any claim of privilege under a contrary rule or law or statute.

[2-15-99; 16.16.24.13 NMAC - Rn, 16 NMAC 16.24.13, 03-15-2001; A, 03-15-2004]

#### **16.16.24.14 [RESERVED]**

#### **16.16.24.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION:**

Failure or refusal by the optometrist to comply with an examining committee order to appear before it for examination, or to submit to a physical or psychiatric examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the license by the board until further order by the board.

[2-15-99; 16.16.24.15 NMAC - Rn, 16 NMAC 16.24.15, 03-15-2001; A, 03-15-2004]

#### **16.16.24.16 ACTION ON EXAMINATION COMMITTEE REPORT:**

The board may accept or reject any finding, determination, or recommendation made by the examining committee to the board regarding the licensee's ability to continue to practice with or without restriction on the license, or the board may refer the matter back to the examination committee for further examination and report, or it may decide that formal disciplinary action is immediately warranted.

[2-15-99; 16.16.24.16 NMAC - Rn, 16 NMAC 16.24.16, 03-15-2001]

**16.16.24.17 [RESERVED]**

**16.16.24.18 ENTITLEMENT TO HEARING:**

Before the board can take action to restrict, suspend, or revoke the optometrist's license on the evidence reported by the examining committee, the optometrist shall be entitled to a hearing under, and in accordance with, the procedures contained in the Impaired Health Care Provider Act and the Uniform Licensing Act.

[2-15-99; 16.16.24.18 NMAC - Rn, 16 NMAC 16.24.18, 03-15-2001]

**16.16.24.19 [RESERVED]**

**16.16.24.20 REQUEST FOR VOLUNTARY RESTRICTION OF THE PERMIT OR LICENSE:**

In lieu of a formal hearing, the optometrist may voluntarily request, in writing, a restriction of the license to practice optometry.

**A.** The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the optometrist's license to practice within specified limitations.

**B.** Upon imposition of voluntary restrictions on the optometrist's license, the board shall have the authority, if it deems appropriate, to waive the commencement of any further disciplinary proceedings conducted in accordance with the Uniform Licensing Act.

[2-15-99; 16.16.24.20 NMAC - Rn, 16 NMAC 16.24.20, 03-15-2001]

**16.16.24.21 PETITION FOR REMOVAL OF VOLUNTARY RESTRICTION:**

The optometrist shall have a right, at reasonable intervals after a year, to petition the board, in writing, for the removal of the voluntary restriction and to demonstrate that he or she is capable of resuming the competent practice of optometry with reasonable skill and safety to patients.

**A.** The board shall act on the petition by referring it to the examining committee, who shall conduct the necessary examination of the optometrist, and make written recommendation to the board.

**B.** Upon consideration of the examining committee's recommendation, the board may, in its discretion, remove the voluntary restriction on the optometrist's license.

[2-15-99; 16.16.24.21 NMAC - Rn, 16 NMAC 16.24.21, 03-15-2001]

**16.16.24.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION:**

In the absence of a request by the optometrist for voluntary restriction of his or her license as provided in Section 20 of 16.16.24 NMAC (this rule), the board may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the optometrist's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.

[2-15-99; 16.16.24.22 NMAC - Rn, 16 NMAC 16.24.22, 03-15-2001]

**16.16.24.23 TEMPORARY SUSPENSION:**

**A.** The board may temporarily suspend the optometrist's license without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the optometrist's continuation in practice would constitute an imminent danger to the health and safety of the public.

**B.** The optometrist shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

[2-15-99; 16.16.24.23 NMAC - Rn, 16 NMAC 16.24.23, 03-15-2001]

**16.16.24.24 PETITION FOR REINSTATEMENT, RESTORATION, OR MODIFICATION OF DISCIPLINARY ORDER:**

Subsequent to formal proceedings under the Impaired Health Care Provider Act and the Uniform Licensing Act, any optometrist who is prohibited from practicing optometry may, after a year from the date of suspension or revocation of the license, petition the board for reinstatement or restoration of his or her license to practice or for modification of the final disciplinary orders.

**A.** The optometrist shall make the application for reinstatement or restoration of his or her license or for the modification of the disciplinary orders in writing.

**B.** The optometrist shall be afforded an opportunity to demonstrate that he or she can resume the practice of optometry with reasonable skill, competence, and safety to patients and shall be required to provide verifiable proof of compliance with any stipulations in the disciplinary order.

**(1)** The board may require an examination by the examining committee for such reinstatement, restoration, or modification of the optometrist's license.

(2) The board may require verification that the optometrist has completed a treatment program for alcohol or chemical dependency.

(3) The board may require verifiable proof that the optometrist has remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least one (1) year.

(4) The board may require verifiable proof that optometrist has maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and/or alcohol screening of urine or blood.

(5) The board shall have the discretion to accept or reject the petition for reinstatement or restoration of the optometrist's license, or for modification of the disciplinary orders.

[2-15-99; 16.16.24.24 NMAC - Rn, 16 NMAC 16.24.24, 03-15-2001]

## **PART 25: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS [REPEALED]**

### **16.16.25.1 ISSUING AGENCY [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.16.25.2 SCOPE [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.16.25.3 STATUTORY AUTHORITY [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.16.25.4 DURATION [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.16.25.5 EFFECTIVE DATE [REPEALED]:**

[This part was repealed December 27, 2022.]

### **16.16.25.6 OBJECTIVE [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.16.25.7 DEFINITIONS [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.16.25.8 APPLICATION REQUIREMENTS [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.16.25.9 LICENSE RENEWAL [REPEALED]:**

[This part was repealed December 27, 2022.]

## **CHAPTER 17: OSTEOPATHIC MEDICINE**

### **PART 1: GENERAL PROVISIONS**

**16.17.1.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.1.1 NMAC - Rp, 6-11-2018]

**16.17.1.2 SCOPE:**

All licensed osteopathic physicians.

[16.17.1.2 NMAC - Rp, 6-11-2018]

**16.17.1.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10-5 NMSA 1978.

[16.17.1.3 NMAC - Rp, 6-11-2018]

**16.17.1.4 DURATION:**

Permanent.

[16.17.1.4 NMAC - Rp, 6-11-2018]

**16.17.1.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.1.5 NMAC - Rp, 6-11-2018]

**16.17.1.6 OBJECTIVE:**

To provide definitions and general information.

[16.17.1.6 NMAC - Rp, 6-11-2018]

**16.17.1.7 DEFINITIONS:**

- A. "AACOM" means American association of colleges of osteopathic medicine.
- B. "AAFP" means American academy of family physicians.
- C. "AAPS" means American association of physician specialists.
- D. "ACCME" means accreditation council for continuing medical education.
- E. "ACGME" means accreditation council for graduate medical education.
- F. "AMA" means the American medical association.
- G. "AOA" means the American osteopathic association.
- H. "Board approved school" means a college of osteopathic medicine accredited by the American osteopathic association.
- I. "Board approved training program" means a program accredited by the American osteopathic association bureau of osteopathic specialists (AOA-BOS), or accrediting council on graduate medical education (ACGME).
- J. "Board approved credential verification service" means a credential verification service certified by the national commission on quality assurance (NCQA) and approved by the board.
- K. "CCME" means council on continuing medical education of the AOA.
- L. "COCA" means commission on osteopathic college accreditation.
- M. "COMLEX" means comprehensive osteopathic medical licensing examination.
- N. "COMVEX" means comprehensive osteopathic medical variable-purpose examination.
- O. "HSC" means the hospital services corporation, a credential verification organization certified by the national commission on quality assurance (NCQA).

**P.** "Major disaster declaration" means the declaration of a disaster by the federal emergency management agency (FEMA) that may provide for emergency licensure.

**Q.** "NBOE" means national board osteopathic examination.

**R.** "Osteopathic physician profile report" means the credentialing verification service of the American osteopathic association.

**S.** "SPEX" means special purpose examination.

**T.** "Telemedicine" means the practice of medicine across state lines using electronic communications, information technology or other means between a licensed osteopathic physician out of state and a patient in New Mexico. Telemedicine involves the application of secure videoconferencing or store and forward technology to provide or support healthcare delivery by replicating the traditional interaction of the in-person encounters between a provider and a patient.

**U.** "USMLE" means the United States medical licensing examination sponsored by the federation of state medical boards and the national board of medical examiners.

[16.17.1.7 NMAC - Rp, 6-11-2018]

#### **16.17.1.8 PUBLIC RECORDS:**

**A.** Inspection. Any person may examine public records in the board's custody. The board shall provide copies of public records upon request and may charge a reasonable copying fee. No person shall remove board documents from the board office.

**B.** Non-public records. Pursuant to Section 61-10-5.1 NMSA 1978, any report regarding actual or potential disciplinary action, including a complaint, shall be confidential communication and is not a public record for purposes of the Inspection of Public Records Act.

**C.** Public records are available on the board's website and may include any of the following:

(1) demographic information: name, self-identified gender, business address and business telephone;

(2) professional information: license, name of medical school, date of graduation, self-reported specialties, continuing education courses, board certification(s); and

(3) licensing information: number, current status, date of initial licensure, last renewal date, expiration date, and if applicable, disciplinary actions, including any settlements.

[16.17.1.8 NMAC - Rp, 6-11-2018]

**16.17.1.9 INFORMATION SHARING:**

Any and all information in the board files regarding actual or potential disciplinary actions is confidential but shall be disclosed as necessary to law enforcement agencies, and the national database clearinghouse and other licensing boards, as required to carry out the duties of the board.

[16.17.1.9 NMAC - N, 6-11-2018]

**16.17.1.10 BOARD ELECTION OF OFFICERS:**

**A.** The board chair, vice chair, and secretary-treasurer are elected annually at the second quarterly meeting.

**B.** The terms of office of the board officers shall run from July 1st of the year of the election through June 30th of the subsequent year.

[16.17.1.10 NMAC - N, 6-11-2018]

**16.17.1.11 TELEPHONIC APPEARANCE AT BOARD MEETINGS:**

Pursuant to Subsection C of Section 10-15-1 NMSA 1978 of the Open Meetings Act, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment only when it is otherwise difficult or impossible for the board member to attend the meeting in person, provided:

**A.** each member participating by conference telephone can be identified when speaking;

**B.** all participants are able to hear each other at the same time; and

**C.** members of the public attending the meeting are able to hear any board member who speaks during the meeting.

[16.17.1.11 NMAC - N, 6-11-2018]

**16.17.1.12 CHANGE OF ADDRESS:**

**A.** It is the responsibility of the licensee to provide the board with a current email and mailing address. Any correspondence from the board office will be emailed to the licensee's email address of record. The board assumes no responsibility for failure by the licensee to receive renewal notification or any other correspondence because of a wrong email address.

**B.** Every licensee must notify the board office of all addresses for current practices. Any change of address or email for a practice must be reported within 30 days of the change to the board office in writing; notification by U.S. mail, email or facsimile is acceptable.

[16.17.1.12 NMAC - Rp, 16.17.1.9, 6-11-2018]

## **PART 2: APPLICATION FOR LICENSURE, QUALIFICATIONS AND FEES**

### **16.17.2.1 ISSUING AGENCY:**

Regulation and Licensing Department, New Mexico Board of Osteopathic Medicine.

[16.17.2.1 NMAC - Rp, 6-11-2018]

### **16.17.2.2 SCOPE:**

This part applies to all osteopathic physicians and physician assistants applying for licensure.

[16.17.2.2 NMAC - Rp, 6-11-2018]

### **16.17.2.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10- 5, 61-10-6, 61-10-6.1, 61-10-11.1, 61-10-12, 61-10-15.1 NMSA 1978 and Sections 12-12A-1 through 12-12A-13 NMSA 1978.

[16.17.2.3 NMAC - Rp, 6/11/2018; A, 5/16/2021]

### **16.17.2.4 DURATION:**

Permanent.

[16.17.2.4 NMAC - Rp, 6-11-2018]

### **16.17.2.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.2.5 NMAC - Rp, 6-11-2018]

### **16.17.2.6 OBJECTIVE:**

To establish the qualifications and procedures and outline the documents and information necessary to complete the application process for licensure, and to establish fees to generate revenue adequate to fund the cost for the board's administration and carry out the duties promulgated thereunto.

[16.17.2.6 NMAC - Rp, 6-11-2018]

#### **16.17.2.7 DEFINITIONS:**

Individuals holding one of the following categories of medical license are eligible to practice medicine and surgery in New Mexico.

**A. Osteopathic medical:** An unrestricted license to practice osteopathic medicine and surgery.

**B. Telemedicine:** A limited medical license that allows an osteopathic physician located outside New Mexico to practice osteopathic medicine on patients located in New Mexico.

**C. Post-graduate:** A limited training license issued by the board to osteopathic physicians who are enrolled in an AOA or ACGME approved training program.

**D. Temporary:** A limited license that allows a osteopathic physician to practice osteopathic medicine for a limited time up to three months from the date of issuance that meets certain specific conditions in accordance with Osteopathic Medicine Act, Section 61-10-7 NMSA 1978.

**E. Federal emergency:** An unrestricted license to practice osteopathic medicine and surgery issued without receipt of all documentation required for an osteopathic medical license because of a major disaster.

[16.17.2.7 NMAC - Rp, 6/11/2018; A, 5/16/2021]

#### **16.17.2.8 FEES:**

##### **All fees are non-refundable**

- |  |          |
|--|----------|
| <b>A. Initial application for licensure:</b>                                   |          |
| <b>(1)</b> Osteopathic physician   | \$400.00 |
| <b>(2)</b> Post graduate osteopathic physician                                 | \$ 50.00 |
| <b>(3)</b> Osteopathic physician assistants                                    | \$150.00 |
| <b>(4)</b> Telemedicine  | \$100.00 |
| <b>(5)</b> Temporary, teaching, research, specialized diagnostic and treatment | \$100.00 |
| <b>(6)</b> Federal emergency   | \$ 0.00  |
| <b>B. Renewal application fee for licensure:</b>                               |          |

(1)	Triennial for osteopathic physician	\$600.00
(2)	Biennial for osteopathic physician assistant	\$150.00
(3)	Biennial for osteopathic physicians supervising pharmacist clinicians	\$100.00
(4)	Annual for telemedicine	\$100.00
<b>C. Late Fees:</b>		
(1)	Osteopathic physician renewal between July 2nd & September 29th the year of the renewal	\$200.00
(2)	Osteopathic physician renewal after September 29th the year of the renewal	\$400.00
(3)	Osteopathic physician assistant renewal after July 1st the year of the biennial renewal	\$ 25.00
(4)	Reinstatement of osteopathic physician license	\$500.00
(5)	Reinstatement of osteopathic physician assistant license	\$500.00
(6)	Osteopathic physicians supervising pharmacist clinician renewal after July 1st the year of the renewal	\$ 25.00
<b>D. Miscellaneous Fees:</b>		
(1)	Verification of license	\$ 25.00
(2)	Change of supervising physician fee for physicians supervising pharmacist clinicians	\$ 25.00
(3)	List of licensees	\$ 55.00
(4)	Duplicate license	\$ 25.00
(5)	Copy fee per page	\$ 0.25
(6)	Osteopathic physician on inactive status	\$ 75.00
(7)	Osteopathic physician assistant license on inactive status	\$ 75.00
(8)	Registration of an osteopathic physician assistant with a new supervising osteopathic physician	\$ 25.00

[16.17.2.8 NMAC - N, 6/11/2018; A, 5/16/2021]

#### **16.17.2.9 APPLICATION FOR LICENSURE:**

**A. Application:** An applicant for licensure under the Osteopathic Medicine Act shall submit a completed and signed application on forms provided by the board with the appropriate fee. The applicant must have graduated from a board approved school of osteopathic medicine and must successfully pass all levels of the COMLEX or USMLE licensing examination or its predecessor, passing the final level of the examination within seven years of having passed the first level.

The applicant shall attach or make provisions for the following documents to be provided to the board office:

- (1) official college transcript from a school of osteopathic medicine accredited by COCA and recognized by the AOA sent by the school directly to the board;
- (2) certification of dean of osteopathic school with school seal affixed;

(3) certification of two years of post-graduate training; otherwise, if previously licensed by this or another state before July 1, 2016 one year of post-graduate training;

(4) two letters of reference from physicians who have known the applicant in a professional and personal capacity for at least one year;

(5) a passport-type photograph two inches by two inches, taken within the preceding six months attached to the application;

(6) copies of medical diploma; and residency certificate, or certificate of attendance of residency program.

(7) if licensed in another state, a certificate of good standing from the state board sent directly to the board office;

(8) primary verification from the AOA and the federation of state medical boards of the United States;

(9) NBOE, COMLEX, USMLE or COMVEX scores must be sent directly to the board.

(10) applicants who are not United States citizens must provide proof that they are in compliance with the immigration laws of the United States.

**B. Interview:** After fulfilling all application requirements, any applicant for licensure with prior, current, or pending disciplinary action, must appear before the board, at the next scheduled meeting, for an interview with the board members or provide the board with a criminal background check from the department of public safety.

[16.17.2.9 NMAC - Rp, 16.17.2.8 NMAC, 6-11-2018]

#### **16.17.2.10 QUALIFICATIONS FOR LICENSURE:**

A. Each applicant for a license to practice as an osteopathic physician in New Mexico must possess the following qualifications:

(1) graduated and received a diploma from a college of osteopathic medicine and surgery accredited by the American osteopathic association or commission on osteopathic college accreditation;

(2) successfully passed the examination defined in Paragraph (2) of Subsection A of Section 61-10-6 NMSA 1978.

(3) completed two years of an AOA or ACGME accredited postgraduate training program or be approved by the board, in accordance with the provisions of, Section 61-10-6 NMSA 1978;

- (4) shall be of the age of majority;
- (5) shall be of good moral character;
- (6) shall not have been convicted of a felony;
- (7) shall not have committed or been engaged in any of the activities listed in, Section 61-10-15 NMSA 1978;
- (8) shall submit an application and examination fee as determined by the board pursuant to Section 61-10-6.1 NMSA 1978;
- (9) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and
- (10) a qualified applicant who has not been actively and continuously in practice for more than two years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to COMVEX or specialty re-certification.

[16.17.2.10 NMAC - N, 6-11-2018]

#### **16.17.2.11 EXAMINATION:**

In determining the fitness of an applicant for licensure by examination, the board adopts the following examinations: FLEX (federation of state medical boards of the United States) or the NBOE (national board of examiners of osteopathic physicians and surgeons) or COMLEX (comprehensive osteopathic medical licensing examination) or the USLME (United States medical licensing examination.) Each applicant must register with the national board of osteopathic medical examiners or the national board of medical examiners to take the exam at the most convenient testing site available. The board will not administer any of the aforementioned exams.

##### **A. FLEX**

- (1) Each applicant must earn a passing score of seventy-five percent or higher on each of the two components of the exam. The board will not accept overall or average scores. The board will accept passing component scores obtained at a single administration or at separate administrations of the exam.
- (2) If an applicant fails either component of the FLEX examination he must repeat only the component failed. Upon failing one or both components, the applicant may repeat the component failed at the next administration of the exam. If the applicant fails a second examination, he must wait one year before taking the examination for a

third time. If the applicant fails a third time, the applicant must acquire one additional year of AOA approved postgraduate training before being examined a fourth time.

(3) Both components of the FLEX examination must be passed within seven years of taking the initial examination.

**B. NBOE** - Each applicant must earn a passing score of seventy-five percent or higher on each of the three components of the examination.

**C. COMLEX** - Each applicant must earn a minimum total passing score or higher on each level of this examination.

**D. USMLE** - Each applicant must earn a minimum total passing score or higher on each level of this examination.

[16.17.2.11 NMAC - N, 6-11-2018]

#### **16.17.2.12 LICENSURE BY ENDORSEMENT:**

Applicants for licensure by endorsement shall meet all requirements as set forth in Section 61-10-12 NMSA 1978. Additionally, the state of the applicant's primary license shall have requirements equal to or greater than the requirements of licensure in New Mexico.

**A. Prerequisites for licensure.** Each applicant for a license to practice as an osteopathic physician in New Mexico by endorsement must be of good moral character, hold a full and unrestricted license to practice medicine in another country, state, territory or province and possess the following qualifications:

(1) be free of disciplinary history, license restrictions, or pending investigations in all jurisdictions where a medical license is or has been held; and

(2) current certification from a medical specialty board recognized by the American osteopathic association bureau of osteopathic specialists (AOA-BOS).

**B. Required documentation for all applicants.** Each applicant for a license must submit the required fees as specified in 16.17.2.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous six months; applications are valid for one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification

must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form;

(3) two recommendation letters from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; this information will be provided by a board-approved credentials verification service for applicants using that service, or directly to the New Mexico board of osteopathic medicine for applicants using the osteopathic physician profile report;

(4) verification of all work experience and hospital affiliations in the last five years, if applicable, not to include postgraduate training; this information will be provided by a board-approved credentials verification service for applicants using that service, or directly to the New Mexico board of osteopathic medicine for applicants using the osteopathic physician profile report;

(5) a copy of all AOA-BOS specialty board certifications, if applicable; this information will be provided by a board-approved credentials verification service for applicants using that service, or directly to the New Mexico board of osteopathic medicine for applicants using the osteopathic physician profile report; and

(6) the board may request that applicants be investigated by the biographical section of the American osteopathic association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not U.S. citizens must provide proof that they are in compliance with the immigration laws of the United States.

[16.17.2.12 NMAC - N, 6-11-2018]

#### **16.17.2.13 TEMPORARY LICENSE AND INTIAL LICENSURE:**

The board will approve licenses during regular meetings only. In the interim between regular meetings, the board may issue a temporary license to applicants who have complied with all application requirements. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. Temporary licenses shall only be valid until the next regular board meeting at which time the license will be ratified by the board. Initial licenses shall be valid for no more than 35 months and be renewed, on or before July 1 of the third year after first-time licensure

[16.17.2.13 NMAC - N, 6-11-2018]

#### **16.17.2.14 TELEMEDICINE LICENSE:**

**A.** Prerequisites for licensure. Each applicant for a telemedicine license must be of good moral character and hold a full and unrestricted license to practice medicine in another state or territory of the United States.

**B.** Required documentation. Each applicant for a telemedicine license must submit the required fees as specified in 16.17.2.8 NMAC and the following documentation

(1) A completed signed application, with a passport quality photo taken within six months. Applications are valid for one year from the date of receipt.

(2) Verification of licensure in all states where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be received directly from the other state(s) board, and must attest to the status, issue date, license number, and other information requested and contained on the form.

(3) Applicants who have had previous disciplinary or other action against them may be required to meet with the entire board. The board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public.

**C.** Licensure process. Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AOA physician profile and federation of state medical board's action databank search. When the application is complete a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved.

**D.** Initial license expiration. Telemedicine licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than 13 months or less than one month

[16.17.2.14 NMAC - N, 6-11-2018]

#### **16.17.2.15 POSTGRADUATE TRAINING LICENSE:**

A postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state.

**A.** Prerequisites for licensure. Each applicant for a postgraduate training license must possess the following qualifications:

(1) graduated from a college of osteopathic medicine accredited by the American osteopathic association;

- (2) passed step 1 of USMLE or COMLEX-USA; and
- (3) be of good moral character.

**B. Required documentation.** Each applicant shall submit the required fee as specified in 16.17.2.8 NMAC, a copy of the official examination results, and a completed application.

**C. Licensure process.** Upon receipt of a completed signed application and fee, a member or agent of the board will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

**D. License expiration.** Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration.

[16.17.2.15 NMAC - N, 6/11/2018; A, 5/16/2021]

#### **16.17.2.16 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES:**

The secretary-treasurer or board designee may issue a temporary license to physicians licensed in other states or jurisdictions for the purpose of teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology, or for physician educational purposes in New Mexico on a temporary basis under the supervision of a New Mexico licensed physician. The following provisions apply:

**A. Prerequisites for licensure.** The applicant must:

- (1) be otherwise qualified to practice medicine in New Mexico;
- (2) hold an unrestricted license in another state or country;
- (3) submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico.

**B. Required documentation:**

- (1) specific program or protocol of work planned;
- (2) address of sponsoring institution or organization where the work will be performed;

(3) an affidavit from the sponsoring physician attesting to the qualifications of the applicant and the purpose of the functions or medical procedures the applicant will perform;

(4) verification of licensure in state or jurisdiction where physician is practicing; and

(5) a license fee as set forth in 16.17.2.8 NMAC.

**C.** Licensure process: Upon receipt of a completed signed application, including all required documentation and fees, board staff will request and review an AOA physician profile and federation of state medical boards action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

**D.** The applicant may perform only those functions listed in the application. The supervising physician must notify the board and obtain approval prior to any change in the activities of the temporary license holder.

**E.** The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. After the third renewal of a temporary license the physician shall re-apply under the provisions of this rule.

[16.17.2.16 NMAC - N, 6-11-2018]

#### **16.17.2.17 YOUTH CAMP OR SCHOOL LICENSES:**

The secretary-treasurer or board designee may approve a temporary license for physicians to provide temporary medical services to organized youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Practice under the temporary license shall be limited to enrollees, leaders and employees of the camp or school. Applicants must be qualified for licensure in New Mexico and shall submit the following documentation:

**A.** completed signed application with a passport-quality photograph, taken within the previous six months, attached;

**B.** verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

**C.** verification of D.E.A. permit; and,

D. a temporary license fee as set forth in 16.17.2.8 NMAC.

E. Licensure process. Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AOA physician profile and federation of state medical board's board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

F. a youth camp or school license will not be valid for more than a period of six months.

[16.17.2.17 NMAC - N, 6-11-2018]

### **16.17.2.18 PROVISIONS FOR PHYSICIAN LICENSURE DURING A DECLARED DISASTER:**

The board will make accommodations for physicians who have been impacted by a major disaster. Based on the nature of the disaster, the extent of the damage, and the number of individuals and institutions that have been affected, the board may waive documentation requirements for any new or pending applications when the disaster delays or prohibits the procuring of the required documents. The board may also waive any required fees for applications submitted after the major disaster. The board will determine the length of time the emergency provisions will be in effect for each major disaster that results in applications for a federal emergency license.

**A. Federal emergency license by examination.** Physicians currently licensed in a state in which a major disaster has been declared may be issued a federal emergency license in New Mexico. The board may waive specific documentation required in 16.17.2.9 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.17.2.9 NMAC.

**B. Federal emergency license by endorsement.** Physicians currently licensed in a state in which a major disaster has been issued a federal emergency license in New Mexico. The board may waive specific requirements of 16.17.2.9 NMAC if the applicant is unable to obtain the documentation from individuals or institutions located in the disaster area. Nothing in this provision shall constitute a waiver of the requirements for licensure contained in Subsection A of 16.17.2.9 NMAC. The following requirements will apply to applicants under this provision:

(1) a completed signed application, is required, accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) the board will consider the required three years of practice experience to be met through any combination of postgraduate medical education and actual work experience;

(3) the board may waive any requirements for recommendation forms or verification of work experience forms;

(4) other required verification will be obtained online by board staff to include: current licensure status, national practitioners data bank, federation of state medical board disciplinary database, AOA records of education and postgraduate training, and the records of the bureau of osteopathic specialties to confirm board certification status.

**C. License expiration.** Initial federal emergency licenses shall be valid for not less than three months or more than 15 months. Licenses shall be renewed on July 1 following the date of issue pursuant to 16.17.4.8 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. At the time a federal emergency license is approved for renewal it will be transferred to a full osteopathic medical license subject to all applicable fees.

[16.17.2.18 NMAC - N, 6-11-2018]

### **PART 3: RENEWAL AND CONTINUING EDUCATION REQUIREMENTS**

#### **16.17.3.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.3.1 NMAC - N, 6-11-2018]

#### **16.17.3.2 SCOPE:**

All licensed osteopathic physicians.

[16.17.3.2 NMAC - N, 6-11-2018]

#### **16.17.3.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10-5 NMSA 1978.

[16.17.3.3 NMAC - N, 6-11-2018]

#### **16.17.3.4 DURATION:**

Permanent.

[16.17.3.4 NMAC - N, 6-11-2018]

**16.17.3.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.3.5 NMAC - N, 6-11-2018]

**16.17.3.6 OBJECTIVE:**

To establish renewal procedures and continuing education requirements for licensees to renew their license.

[16.17.3.6 NMAC - N, 6-11-2018]

**16.17.3.7 DEFINITIONS:**

See 16.17.1.7 NMAC

[16.17.3.7 NMAC - N, 6-11-2018]

**16.17.3.8 TRIENNIAL RENEWAL OF LICENSE:**

**A.** On or before July 1 of the triennial year, all physicians must submit an application for renewal form provided by the board. Physicians who fail to renew their certificates as of July 1 will be subject to suspension of their license. Effective July 1, 2019 all license renewals will begin a staggered renewal schedule until the board administrator determines that all licenses are on a triennial renewal cycle. Any fees associated with license renewals during this period will be adjusted.

**B.** The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be required to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time.

**C.** Physicians must submit a triennial renewal fee.

[16.17.3.8 NMAC - N, 6-11-2018]

**16.17.3.9 CME CREDITS REQUIRED:**

**A.** The New Mexico board of osteopathic medicine will require proof of having attended and received 75 credits of continuing medical education over the triennial renewal cycle. At least 30 credits shall be AOA category 1-A or category 1-B or a

combination thereof. 45 credits can be CCME, AMA, ACCME, AAFP, AACOM, or AAPS.

**B.** One credit of required CME must be earned by reviewing the New Mexico Osteopathic Medical Practice Act and these board rules. Physicians must certify that they have completed this review at the time they submit their triennial renewal application. Review the rules and statutes by attestation upon initial licensure and renewal.

**C.** Continuing medical education is not required for federal emergency, telemedicine, postgraduate training, temporary teaching or youth camp or school licenses.

**D.** Six CME credits in pain management must be earned and may apply toward the 75 credits required in Subsection A of this section and may be included as part of the required CME credits in pain management in either the triennial cycle in which these credits are completed.

**E.** Those osteopathic physicians who are licensed in New Mexico, but not practicing in the state, or osteopathic physicians who do not possess a New Mexico controlled substance license are exempt from the requirements found in Subsection D.

[16.17.3.9 NMAC - N, 6/11/2018, A, 11/8/2020]

#### **16.17.3.10 ACCEPTABLE AS CME:**

**A.** The board will also accept active membership in the American osteopathic association as long as all other requirements for CME are met.

**B.** Certification or re-certification by a specialty board during the triennial cycle.

**C.** Passage of the COMVEX or SPEX during the triennial cycle.

[16.17.3.10 NMAC - N, 6-11-2018]

#### **16.17.3.11 CME ALLOWED COURSES AND PROVIDERS:**

**A. AOA or AMA.** Clinical courses approved for CCME, AOA or AMA, ACCME, AAFP, AACOM, or AAPS category 1-A, 1- B are approved.

**B. Post graduate education.** Internship, residency or fellowship: 40 credits per year during service in post graduate educational programs approved by CCME, AMA, ACGME and AACOM.

**C. Advanced degrees.** Education for an advanced degree in a medical field or medically related field: 40 credits are allowed for each full academic year of study.

**D. Self-assessment tests.** Self- assessment tests given by medical associations and other educational institutions approved by the board will be accepted for credit if the test is scored by an institution approved by the board. A total of not more than 35 credits will be granted for self-assessment tests completed during a triennial period.

**E. Teaching.** One credit is allowed for each clock hour of teaching of medical students or physicians in an approved accredited medical school or approved internship or residency program or in institutions or programs approved by the board.

**F. Physician preceptor.** Physicians, approved by an accredited medical school to act as preceptors for students, will be granted a maximum of 30 credits during a triennial period.

**G. Papers or publications.** Ten credits may be claimed for each scientific paper or publication. A paper must be presented to a recognized international, national, regional or state medical society or other organization whose membership is primarily composed of physicians. A publication must appear in a regularly recognized medical or medically related scientific journal. Scientific material used in the paper or publication may be credited only once. No more than 30 credits may be claimed in a triennial period.

**H. Cardio-pulmonary resuscitation.** Credit may be claimed during each triennial reporting period for successful completion of ACLS (advanced cardiac life support), PALS (pediatric advanced life support), ATLS (advanced trauma life support) and NALS (neonatal advanced life support) courses.

**I. Expert review.** Credit may be claimed by physicians who provide expert services by reviewing investigation cases for the board. A maximum of 10 credits in any triennial reporting period are allowed for providing expert view.

[16.17.3.11 NMAC - N, 6-11-2018]

#### **16.17.3.12 VERIFICATION OF CME:**

**A.** Each physician renewing a license shall attest that they have obtained the required credits of CME on the renewal form. The board will select renewal applications for audit to verify completion of acceptable CME. Audit requests will be included with the renewal notice and those selected physicians will be required to submit proof of compliance with the continuing education requirements. The board may audit CME records at any time. CME records must be maintained for one year following the renewal cycle in which they are earned.

**B.** The board, or a designee of the board, may offer any physician who is unable to provide required documentation upon request a settlement in lieu of initiating disciplinary action. Settlements may include a letter of reprimand and a \$500 fine, reportable to the healthcare integrity and protection data bank.

**C.** Any physician who fails to respond to a CME audit shall be considered in violation of Section 61-10-19 NMSA 1978 of the Osteopathic Medicine Act, failure to provide the board with information requested by the board. Potential sanctions include fines, letters of reprimand, or license suspension or revocation.

**D.** The auditor shall include CME credits earned six months prior of the current triennial cycle when assessing whether an osteopathic physician has earned the required 75 CME credits.

[16.17.3.12 NMAC - N, 6-11-2018]

### **16.17.3.13 ACCEPTABLE DOCUMENTATION OF CME INCLUDES:**

**A.** Photocopies of original certificates or official letters from course sponsors or online providers, the chief of service, the course director, or an equivalent authority.

**B.** Postgraduate CME credits must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**C.** Advanced degree studies must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**D.** Teaching credits must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**E.** Preceptor credits must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**F.** Papers or publications must be documented with a copy.

[16.17.3.13 NMAC - N, 6-11-2018]

### **16.17.3.14 EMERGENCY DEFERRAL:**

A physician unable to fulfill the CME requirements prior to the date of license expiration may apply to the board for an emergency deferral of the requirements. The chair or a designee of the board may grant deferrals of up to 90 days.

**A.** In case of illness or other documented circumstances, the board may grant an additional extension of time in which the necessary credits may be earned. The request must be made in writing at the time of renewal and approved by the board.

**B.** A licensee practicing or residing outside the United States (US) shall not be required to fulfill the CME requirements for the period of the absence. The board must

be notified prior to license expiration that the licensee will be outside the US, including the period of the absence. Upon return to the US, the licensee shall complete the CME required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[16.17.3.14 NMAC - N, 6-11-2018]

## **PART 4: PRESCRIBING AND DISTRIBUTION OF CONTROLLED SUBSTANCES**

### **16.17.4.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.4.1 NMAC - N, 6-11-2018]

### **16.17.4.2 SCOPE:**

This part applies to all licensed osteopathic physicians and osteopathic physician assistants.

[16.17.4.2 NMAC - N, 6-11-2018]

### **16.17.4.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10-5 NMSA 1978 and the Pain Relief Act, Subsections D of Sections 24-2-1 thru 24-2-6 NMSA 1978.

[16.17.4.3 NMAC - N, 6-11-2018]

### **16.17.4.4 DURATION:**

Permanent.

[16.17.4.4 NMAC - N, 6-11-2018]

### **16.17.4.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.4.5 NMAC - N, 6-11-2018]

### **16.17.4.6 OBJECTIVE:**

It is the position of the board that osteopathic physicians and osteopathic physician assistants have an obligation to treat pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that purpose. When such medicines and drugs are used they should be prescribed in adequate doses and for appropriate lengths of time after a thorough medical evaluation has been completed.

[16.17.4.6 NMAC - N, 6-11-2018]

#### **16.17.4.7 DEFINITIONS:**

**A. "Acute pain"** means the normal predicted physiological response to a noxious chemical or thermal or mechanical stimulus typically associated with invasive procedures, trauma, or disease and is generally time limited.

**B. "Addiction"** is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

**C. "Administer"** means to apply a prepackaged drug directly to the body of a patient by any means.

**D. "Chronic pain"** means a pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically for longer than three consecutive months. "Chronic pain" does not, for the purpose of the Pain Relief Act requirements, include pain associated with a terminal condition.

**E. "Clinical pain expert"** means a person who by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**F. "Delegate"** means a person designated by a practitioner for the purpose of requesting and receiving prescription monitoring program (PMP) reports for that practitioner.

**G. "Dispense"** means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container.

**H. "Distribute"** means to administer or supply to a patient under the direct care of the distributing physician or physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container.

I. **"Drug abuser"** means a person who takes a drug or drugs for other than legitimate medical purposes.

J. **"Established practitioner-patient relationship"** means a relationship between a physician or a physician assistant and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician or a physician assistant involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

K. **"Formulary"** means any dangerous drugs; including schedule II-V controlled substances, physicians may use in the care of patients where there is an established physician-patient relationship.

L. **"Licensed osteopathic physician"** means an osteopathic physician licensed by the New Mexico board of osteopathic medicine in New Mexico.

M. **"Pain"** means acute or chronic pain or both.

N. **"Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

O. **"Practitioner"** means a New Mexico osteopathic physician or osteopathic physician assistant maintaining licensure pursuant to state law that allows that individual to prescribe, order, administer or dispense controlled substances to patients.

P. **"Prescribe"** means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber bearing the name and address of the prescriber, license classification, the name and address of the patient, the name of the drug prescribed, direction for use and the date of issue.

Q. **"Prescription monitoring program"** means a centralized system to collect, monitor, and analyze electronically for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

R. **"Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.17.4.7 NMAC - N, 6-11-2018]

#### **16.17.4.8 GUIDELINES:**

The following regulations shall be used by the board to determine whether an osteopathic physician's or osteopathic physician assistant's prescriptive practices are consistent with the appropriate treatment of pain.

**A.** The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

**B.** The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The practitioner shall discuss the risks and benefits of using controlled substances with the patient, or surrogate, or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized should be recorded. Prescriptions for opioids shall include indications for use. For chronic non-cancer pain patients treated with controlled substance and analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient

responsibilities. As part of a written agreement, chronic non-cancer pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

(6) The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic non-cancer pain, the patient's state of health, and any new information about the etiology of the chronic non-cancer pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient's condition, with a clinical pain expert. Consultation should occur early in the course of long-term treatment and at reasonable intervals during continued long-term treatment for assessment of benefit and need a minimum of once every six months.

(7) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

**C. Pain management for patients with substance abuse disorders shall include:**

- (1) a contractual agreement;
- (2) appropriate consultation;
- (3) urine or hair or salivary or blood drug screening shall be considered when other factors suggest an elevated risk of misuse or diversion; and
- (4) a schedule for re-evaluation at appropriate time intervals at least every six months.

**D.** The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work related factors.

**E.** The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection as a guiding principle.

**F.** Any physician or physician assistant that prescribes opiate based pain medication, shall obtain at least six CME credits in pain management over a three year period.

**G.** Any physician or physician assistant that prescribes opiate based pain medication shall utilize the state based prescription monitoring program at the initial office visit which results in a prescription for an opiate based pain medication, and at least at every three months intervals and at critical turning points in patient care.

**H.** A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Osteopathic Medicine Act or board rules.

[16.17.3.1 NMAC - N, 6-11-2018]

#### **16.17.4.9 PHYSICIANS OR PHYSICIAN ASISTANTS TREATED WITH OPIATES:**

Physicians or physician assistants who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on opiates while continuing to practice.

[16.17.4.9 NMAC - N, 6-11-2018]

#### **16.17.4.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

The intent of the New Mexico board of osteopathic medicine in requiring participation in the PMP is to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

**A.** Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

**C.** Before a practitioner prescribes or dispenses for the first time, a controlled substance in schedule II, III, IV, or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent

states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in schedule II, III, IV or V:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

**F.** Upon review of a prescription monitoring report for a patient, the practitioner shall identify and be aware of a patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than 12 consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day; or
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Paragraph F, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use

disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

[16.17.4.10 NMAC - N, 6-11-2018]

#### **16.17.4.11 NON-CANCER PAIN MANAGEMENT CONTINUING EDUCATION:**

This section applies to all New Mexico board of osteopathic medicine licensed physicians and osteopathic physician assistants who hold a federal drug enforcement administration registration and licensure to prescribe opioids. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

**A.** On or before July 1, 2014 all New Mexico board of osteopathic medicine licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids, shall complete no less than two continuing medical education hours in appropriate courses that include a review of 16.17.5 NMAC, management of the treatment of pain, an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction and diversion, and awareness of state and federal regulations for the prescription of controlled substances. All such courses are subject to board approval. Practitioners who have taken continuing education hours in these educational elements in the two years prior to July 1, 2014 may apply those hours toward the required two continuing education hours described in this subsection.

**B.** Beginning with the July 1, 2014 triennial renewal date, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico board of osteopathic medicine licensees, who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit six continuing education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. All such courses are subject to board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The two continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of the required continuing medical education hours in pain management.

[16.17.4.11 NMAC - N, 6-11-2018]

#### **16.17.4.12 NOTIFICATION:**

In addition to the notice of procedures set forth in the State Rules Act Chapter 14, Article 14, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 17 of the New Mexico board of osteopathic medicine rule;

**A.** health care practitioners under its jurisdiction; and

**B.** health care practitioners being investigated by the board in relation to the practitioner's pain management services.

[16.17.4.12 NMAC - N, 6-11-2018]

## **PART 5: REVOCATION OR REFUSAL OF LICENSURE**

### **16.17.5.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.5.1 NMAC - N, 6-11-2018]

### **16.17.5.2 SCOPE:**

All licensed osteopathic physicians.

[16.17.5.2 NMAC - N, 6-11-2018]

### **16.17.5.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10-5 NMSA 1978.

[16.17.5.3 NMAC - N, 6-11-2018]

### **16.17.5.4 DURATION:**

Permanent.

[16.17.5.4 NMAC - N, 6-11-2018]

### **16.17.5.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.5.5 NMAC - N, 6-11-2018]

### **16.17.5.6 OBJECTIVE:**

To establish causes for revoking, refusing, or suspending a license to practice osteopathic medicine in New Mexico.

[16.17.5.6 NMAC - N, 6-11-2018]

#### **16.17.5.7 DEFINITIONS:**

**[RESERVED]**

[16.17.5.7 NMAC - N, 6-11-2018]

#### **16.17.5.8 REVOCATION OR REFUSAL OF LICENSE:**

**A.** Causes for refusal or revocation of license. The board may either refuse to issue or may suspend or revoke any license for any one or more of the following causes, whether committed in the state of New Mexico or elsewhere:

(1) conviction of a felony, as evidenced by a certified copy of the record of the court issuing conviction;

(2) obtaining or attempting to obtain a license by fraudulent misrepresentation, or practicing in the profession by fraudulent misrepresentation;

(3) gross malpractice which means gross and flagrantly improper treatment of a patient, or such culpable neglect of a patient as to indicate a willful act or injury to the patient; gross malpractice also means such incompetence on the part of the practitioner as to render him unfit to hold himself out to the public as a licensed osteopathic physician and surgeon; gross malpractice shall also consist of performing, aiding, or abetting the performance of any act or operation upon or on behalf of a patient expressly forbidden by state and federal penal laws, such as criminal operations, dispensing and prescribing of narcotics;

(4) advertising, practicing, or attempting to practice under a name other than one's own;

(5) habitual or excessive use or abuse of drugs or alcohol;

(6) immoral, dishonorable or unprofessional conduct.

**B.** Dishonorable and unprofessional conduct shall include but shall not be limited to the following:

(1) willful violation of the code of ethics of the American osteopathic association;

(2) aiding unlicensed persons to practice medicine and surgery in the state of New Mexico;

(3) violation of the law pertaining to dangerous drugs, narcotics, or intoxicating liquors;

(4) the commission of any act involving moral turpitude; moral turpitude includes any act contrary to justice, honesty, modesty or good morals;

(5) incompetency to act as an osteopathic physician and surgeon; failure to possess and or exercise the requisite degree of skill, learning, and care commonly possessed by osteopathic physicians and surgeons in the state of New Mexico or the rendering of treatment to patients in a manner contrary to accepted rules;

(6) the performance of any act or omission which tends to degrade or place the physician and the osteopathic profession in bad public repute where the act or omission is contrary to the professional standards which an osteopathic physician and surgeon assumes;

(7) the unlawful use of the name "doctor of medicine" or its initials or emblems, either orally or otherwise;

(8) willful failure to comply with regulations of the department of health or the regulations of this board;

(9) continuing to practice while knowingly having an infectious or contagious disease;

[16.17.5.8 NMAC - N, 6-11-2018]

#### **16.17.5.9 SUMMARY SUSPENSION:**

This is a formal preliminary disciplinary action that immediately suspends a licensee's right to practice osteopathic medicine. The summary suspension remains in effect until a further order of the board is entered. The licensee has an opportunity for a full hearing before the board regarding the summary suspension.

**A.** The board may summarily suspend or restrict a license issued by the board without hearing, simultaneously with, or at any time after, the issuance of a notice of contemplated action and the initiation of proceedings for a hearing provided for under the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction;

(3) has pled guilty to or been found guilty of any offense related to their practice or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction; or

**(4)** uses conversion therapy on a minor.

**B.** A licensee is not required to comply with a summary action until service of the action has been made personally or by certified mail, return receipt requested, to the licensee's last known address as shown in the board's records, or until the licensee has actual knowledge of the order of suspension or restriction, whichever occurs first. The board's chair may sign a summary suspension order that the board has authorized.

**C.** A licensee whose license is summarily suspended is entitled to a hearing before the board on the summary suspension order, pursuant to the Uniform Licensing Act, within 15 days from the date the licensee requests a hearing. The hearing request shall be in writing, addressed to the board, and delivered by certified mail, return receipt requested.

[16.17.5.9 NMAC - N, 6-11-2018]

## **PART 6: REINSTATEMENT**

### **16.17.6.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.6.1 NMAC - N, 6-11-2018]

### **16.17.6.2 SCOPE:**

All licensed osteopathic physicians.

[16.17.6.2 NMAC - N, 6-11-2018]

### **16.17.6.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10-5 NMSA 1978.

[16.17.6.3 NMAC - N, 6-11-2018]

### **16.17.6.4 DURATION:**

Permanent

[16.17.6.4 NMAC - N, 6-11-2018]

### **16.17.6.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.6.5 NMAC - N, 6-11-2018]

**16.17.6.6 OBJECTIVE:**

To establish reinstate requirements for physicians who have allowed their license to lapse.

[16.17.6.6 NMAC - N, 6-11-2018]

**16.17.6.7 DEFINITIONS:**

[RESERVED]

**16.17.6.8 REINSTATEMENT OF LICENSE:**

**A. Lapsed license:** An applicant whose license has lapsed for failure to renew his license may apply for reinstatement of his license. An applicant who has allowed his license to lapse may reinstate his license without monetary penalty within 24 hours but will not be allowed to practice osteopathic medicine while the license is lapsed. An applicant who has allowed his license to lapse for a period greater than three years may not apply for reinstatement. Such an individual must re-apply for a license. All applications for reinstatement shall be accompanied by the following:

(1) proof of completion of 75 board approved continuing education hours obtained in the preceding three years; in the event an applicant has not completed the requisite number of continuing education credits, the board may require that the applicant successfully pass the SPEX examination or complete a course designated by the board;

(2) a chronology of medical activities during the entire period the license has been in a lapsed status. In the event an applicant has not actively engaged in the practice of medicine in New Mexico during the period of lapse, the board in its discretion may require the applicant to successfully pass the SPEX examination or complete a course designated by the board;

(3) three letters of recommendation from osteopathic physicians who have known the applicant professionally and personally for one year; all letters of recommendation must be mailed directly to the board from the recommending physician;

(4) a list of hospitals and their addresses where the applicant has worked during the five years immediately preceding application for reinstatement;

(5) a passport sized photograph taken within the preceding year; and

(6) payment of reinstatement fee and current renewal fee.

**B. Reinstatement of inactive license:** An applicant must request in writing to the board office a request for inactive license to be reactivated to a full unrestricted license.

**C. Disciplinary action:**

(1) An applicant whose license has been suspended or revoked pursuant to Section 61-10-15 NMSA 1978 may request reinstatement of his license. All requests must be in writing and must be accompanied by all required information. Additionally, the applicant must appear before the board and must demonstrate that he has been sufficiently rehabilitated from the offense that gave rise to his suspension or probation that he may engage in the practice of medicine as required by the Osteopathic Physician Practice Act, Sections 61-10-1 through 61-10-22 NMSA 1978.

(2) The board may require that the applicant successfully pass the SPEX examination or complete a course designated by the board.

[16.17.6.8 NMAC - N, 6-11-2018]

## **PART 7: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

### **16.17.7.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.7.1 NMAC - N, 6-11-2018]

### **16.17.7.2 SCOPE:**

Part 7 of Chapter 17 sets for application procedures to expedite licensure for military service members, their spouses and veterans.

[16.17.7.2 NMAC - N, 6-11-2018]

### **16.17.7.3 STATUTORY AUTHORITY:**

Part 8 of Chapter 17 is promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Sections 61-10-5 through 61-10-22 NMSA 1978, (specific authority to promulgate rules is Paragraph (2) of Subsection D of Section 61-2-6 NMSA 1978, and Section 61-1-34 NMSA 1978.

[16.17.7.3 NMAC - N, 6-11-2018]

### **16.17.7.4 DURATION:**

Permanent.

[16.17.7.4 NMAC - N, 6-11-2018]

**16.17.7.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.7.5 NMAC - N, 6-11-2018]

**16.17.7.6 OBJECTIVE:**

The objective of Part 8 of Chapter 17 is to expedite licensure for military service members, their spouses and veterans pursuant to Section 61-1-34-NMSA 1978.

[16.17.7.6 NMAC - N, 6-11-2018]

**16.17.7.7 DEFINITIONS:**

**A. "Military service member"** means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

**B. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

[16.17.7.7 NMAC - N, 6-11-2018]

**16.17.7.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the board.

**B.** The information shall include:

**(1)** completed application and fee pursuant to 16.17.2.8 NMAC and 16.17.2.9 NMAC;

**(2)** satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for New Mexico osteopathic physicians; and

**(3)** proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.

[16.17.7.8 NMAC - N, 6-11-2018]

**16.17.7.9 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this part shall not be renewed unless the license satisfies the requirements for issuance of a license pursuant to 16.17.2.9 NMAC and 16.17.2.12 NMAC and for the renewal of a license pursuant to 16.17.3 NMAC.

**B.** A license issued pursuant to this part shall be valid for one year or until July 1, whichever comes first.

**C.** Prior to the expiration of the license, all licensed osteopaths shall apply for registration renewal and shall pay the renewal fee as set forth in 16.17.2.8 NMAC.

**D.** The board office mails license renewal notifications at least 45 days before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility to timely renew the license by the expiration date.

[16.17.7.9 NMAC - N, 6-11-2018]

**PART 8: PHYSICIANS SUPERVISING PHARMACIST CLINICIANS**

**16.17.8.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.8.1 NMAC - N, 6-11-2018]

**16.17.8.2 SCOPE:**

The provisions in Part 9 of Chapter 17 apply to all osteopathic physicians who supervise pharmacist clinicians.

[16.17.8.2 NMAC - N, 6-11-2018]

**16.17.8.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Section 61-10-5 1978 and the Pharmacist Prescriptive Authority Act, Subsection B of Sections 61-11-1 to 61-11-3 NMSA 1978.

[16.17.8.3 NMAC - N, 6-11-2018]

**16.17.8.4 DURATION:**

Permanent.

[16.17.8.4 NMAC - N, 6-11-2018]

**16.17.8.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.8.5 NMAC - N, 6-11-2018]

**16.17.8.6 OBJECTIVE:**

The objective of Part 9 of Chapter 17 is to establish and adopt rules to carry out the board's responsibilities set forth in Section 61-11B-1 thru 61-11B-3 NMSA 1978, the "Pharmacist Authority Act".

[16.17.8.6 NMAC - N, 6-11-2018]

**16.17.8.7 DEFINITIONS:**

**A. "Consultation"** means in person, telephonically, by two-way radio, by e-mail or by other electronic means.

**B. "Alternate supervising physician"** means a physician who holds a current unrestricted license to practice medicine or osteopathic medicine, is a cosignatory on the notification of supervision, and agrees to act as the supervising physician in the supervising physician's absence with no change to the scope of practice or protocol of the pharmacist clinician. The alternate supervising physician must be approved by the board. The alternate supervising physician which should require the alternate supervising physician to register with the appropriate board and shall be exempt from fees associated with the supervising physician unless the alternate supervising physician becomes a supervising physician then the appropriate fees will be assessed.

**C. "Scope of practice"** means duties and limitations of duties placed upon a pharmacist clinician by their supervising physician or the alternate supervising physician(s) and the board; includes the limitations implied by the field of practice of the supervising physician or the alternate supervising physician(s) and the board.

[16.17.8.7 NMAC - N, 6-11-2018]

**16.17.8.8 APPROVAL OF SUPERVISING PHYSICIANS:**

A physician shall only be approved as a pharmacist clinician supervisor after the pharmacist clinician registers with the board by submitting an application for authority to practice under the supervision of a licensed physician. The application shall include:

**A.** the name, address, phone number of the applicant, and proof of current certification as a pharmacist clinician by the board of pharmacy;

**B.** the name, address, and phone number of the supervising physician;

**C.** a written protocol agreed to and signed by the pharmacist clinician and the supervising physician that shall include:

(1) a statement identifying the physician authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

(2) a statement of the types of prescriptive authority that the pharmacist clinician is authorized to make within his scope of practice which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication to and consultation with the supervising physician concerning specific decisions made; documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(d) a statement that describes appropriate mechanisms for reporting to the physician the pharmacist clinician's activities in monitoring the patients; and

(e) a statement that describes provisions for immediate communication or consultation between the pharmacist clinician and the supervising physician or alternate supervising physician.

**D.** The pharmacist clinician may be authorized in the protocol to monitor dangerous drug therapy as follows:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting.

**E.** A pharmacist clinician may only prescribe controlled substances if she:

(1) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(2) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3.A of 62-11B NMSA 1978, the Pharmacist Prescriptive Authority Act.

**F.** The protocol for each pharmacist clinician shall be reviewed by the board as least every two years.

**G.** A pharmacist clinician shall perform only those services that are set forth in the protocol.

**H.** Pharmacist clinicians may prescribe only those drugs described in a board approved protocol.

**I.** A physician may supervise as many pharmacist clinicians as the physician can effectively supervise and communicate with in the circumstances of their particular practice setting.

**J.** Within 30 days after an employer terminates the employment of a pharmacist clinician, the supervising physician or the pharmacist clinician shall submit a written notice to the board providing the date of termination and reason for termination. The pharmacist clinician shall not work as a pharmacist clinician until the board approves another supervising physician.

[16.17.8.8 NMAC - N, 6-11-2018]

#### **16.17.8.9 THE PHYSICIAN'S REQUIREMENTS OF SUPERVISION:**

**A.** Supervising physicians must provide direction to pharmacist clinicians to specify the pharmacotherapeutic services to be provided under the circumstances in each case. This may be done by written protocol or by oral consultation. It is the responsibility of the supervising physician to assure that the appropriate directions are given and understood.

**B.** Supervising physicians must establish a quality assurance program for review of medical services provided by the pharmacist clinician.

**C.** If the supervising physician is of the opinion that circumstances warrant exceptions to the requirements set forth in Subsections A or B above, the supervising physician must specify the circumstances in writing and deliver the same to the board. The board will review, grant or deny requests for exceptions or waivers, at the board's discretion.

**D.** Documentation of the supervising physician reviews must be retained by the pharmacist clinician and be available for board inspection for a period of not less than five years from the date of such reviews.

**E.** The pharmacist clinician must have prompt access to the physician by telephone or other electronic means for advice and direction.

**F.** If the supervising physician plans to be or is absent from his or her practice for any reason, the supervising physician cannot designate a pharmacist clinician to take over those duties or cover the practice during such absence. The supervising physician may designate an alternate supervising physician, approved by the board, to cover the practice and perform the duties of supervising physician. The alternate supervising physician will then supervise the pharmacist clinician and will be responsible for the pharmacist clinician's actions or omissions in exercising prescriptive authority or other duties as a pharmacist clinician.

**G.** In order to change a supervising physician between biennial renewals of registration, without a change to the pharmacist clinician's scope of practice or protocol, a pharmacist clinician shall submit to the board a change of supervising physician form and the required fee, as specified in 16.10.9.11 NMAC. The new supervising physician may only act after the application is approved by the board.

[16.17.8.9 NMAC - N, 6-11-2018]

#### **16.17.8.10 REPORT AND COMMITTEE:**

The chair of the board shall appoint two members of the board, or a member and an agent of the board to an oversight committee that shall also include two members appointed by the board of pharmacy. The oversight committee will make a report that may include non-binding recommendations to both the board of pharmacy and the board of osteopathic medical examiners regarding disciplinary action. Each board can accept or reject the recommendations.

[16.17.8.10 NMAC - N, 6-11-2018]

### **PART 9: PHYSICIAN ASSISTANTS: LICENSURE AND PRACTICE REQUIREMENTS**

#### **16.17.9.1 ISSUING AGENCY:**

Regulation and Licensing Department - New Mexico Board of Osteopathic Medicine.

[16.17.9.1 NMAC - N, 6-11-2018]

#### **16.17.9.2 SCOPE:**

All licensed osteopathic physician assistants.

[16.17.9.2 NMAC - N, 6-11-2018]

**16.17.9.3 STATUTORY AUTHORITY:**

These rules of practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine Act, Section 61-10-5 NMSA 1978.

[16.17.9.3 NMAC - N, 6-11-2018]

**16.17.9.4 DURATION:**

Permanent.

[16.17.9.4 NMAC - N, 6-11-2018]

**16.17.9.5 EFFECTIVE DATE:**

June 11, 2018, unless a later date is cited at the end of a section.

[16.17.9.5 NMAC - N, 6-11-2018]

**16.17.9.6 OBJECTIVE:**

This part regulates the licensing and practice of physician assistants and their supervision by licensed physicians.

[16.17.9.6 NMAC - N, 6-11-2018]

**16.17.9.7 DEFINITIONS:**

**A.** "AAPA" means American academy of physician assistants.

**B.** "Effective supervision" means the exercise of physician oversight, control, and direction of services rendered by a physician assistant. Elements of effective supervision include:

(1) on-going availability of direct communication, either face-to-face, telephonically or by electronic means;

(2) active, ongoing review of the physician assistant's services, as appropriate, for quality assurance and professional support;

(3) a predetermined plan for emergency situations; and

(4) identification of other supervising physicians, as appropriate to the practice setting.

**C.** "NCCPA" means national commission on certification of physician assistants.

**D.** "Direct communication" means communication between the supervising physician and physician assistant, in person, telephonically, by email or other electronic means.

**E.** "Scope of practice" means duties and limitations of duties placed upon a physician assistant by their supervising physician and the board; includes the limitations implied by the field of practice of the supervising physician.

**F.** "Supervising physician" means a physician who holds a current unrestricted license, or a physician with a stipulated license with expressed board approval to supervise a physician assistant, and provides a notification of supervision, assumes legal responsibility for health care tasks performed by the physician assistant and is approved by the board.

**G.** "PANCE" means physician assistant national certifying exam.

[16.17.9.7 NMAC - N, 6-11-2018]

#### **16.17.9.8 QUALIFICATIONS FOR LICENSURE AS A PHYSICIAN ASSISTANT:**

**A.** shall have successfully completed a physician assistant program accredited by the:

(1) accreditation review commission on education for the physician assistant;  
or

(2) if prior to January 1, 2001, either the:

(a) committee on accreditation of allied health education programs; or

(b) committee on allied health education and accreditation;

(c) or its successor agency.

**B.** shall have successfully completed the physician assistant national certifying exam issued and administered by the national commission on certification of physician assistants (NCCPA).

**C.** be of good moral and professional character; and

**D.** submit any other proof of competency as may be requested by the board.

[16.17.9.8 NMAC - N, 6-11-2018]

**16.17.9.9 APPLICATION FOR LICENSURE:**

**A.** A completed application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board.

**B.** Two letters of recommendation from physicians licensed to practice medicine in the United States or physician assistant program directors, or the director's designee, who have personal knowledge of the applicant's moral character and competence to practice.

**C.** Verification of licensure in all states where the applicant holds or has held a license to practice as a physician assistant, or other health care profession. Verification must be sent directly to the board from the other state board(s).

**D.** Verification of all work experience in the last two years, if applicable, provided directly to the board.

**E.** All applicants may be scheduled for a personal interview before the board or the board's designee and must present original documents, as the board requires. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

**F.** License by endorsement from New Mexico medical board. Applicants who are currently licensed in good standing by the New Mexico medical board may be licensed by endorsement upon receipt of a verification of licensure directly from the New Mexico medical board, and a supervising physician form signed by the osteopathic physician who will serve as supervising physician.

**G.** All applicants for licensure who meet the requirements for licensure will be granted a temporary license and the license will be ratified at its next scheduled meeting.

[16.17.9.9 NMAC - N, 6-11-2018]

**16.17.9.10 BIENNIAL LICENSURE RENEWAL REQUIREMENTS:**

**A.** Before July 1st, the year the license is due to expire, all physician assistants must submit an application for renewal form provided by the board. Physician assistants who fail to renew their certificates as of July 1st, will be subject to suspension of their license.

**B.** Proof of CME upon request or audit.

**C.** Renewal fee set forth in 16.17.2.8 NMAC.

**D.** A renewal of licensure will be valid for a period of two years and the expiration date will be printed on the certificate of licensure.

[16.17.9.10 NMAC - N, 6-11-2018]

**16.17.9.11 APPROVAL OF SUPERVISING PHYSICIANS:**

**A.** A physician may supervise and collaborate with no more than three physician assistants and communicate within the circumstances of their particular practice setting.

**B.** All supervising physicians shall submit written notice of intent to supervise a physician assistant on forms prescribed by the board.

**C.** Within 30 days after an employer terminates the employment of a physician assistant, the supervising physician or the physician assistant shall submit a written notice to the board providing the date of termination and reason for termination.

**D.** A physician assistant who is employed by the United States government and who works on land or in facilities owned or operated by the United States government or a physician assistant who is a member of the reserve components of the United States and on official orders or performing official duties as outlined in the appropriate regulation of that branch may be licensed in New Mexico with proof that their supervising physician holds an active medical license in another state.

[16.17.9.11 NMAC - N, 6-11-2018]

**16.17.9.12 SUPERVISION OF PHYSICIAN ASSISTANT:**

Supervision of a physician assistant must be rendered by a licensed supervising physician.

**A.** Responsibility of supervising physician.

**(1)** Provide direction to the physician assistant to specify what medical services should be rendered. This may be done through a written utilization plan or by other direct communications.

**(2)** Provide a means for immediate communication between the physician assistant and the supervising physician.

**(3)** Temporarily delegating supervisory responsibilities to another supervising physician during the supervising physician's period of absence.

**B.** A quality assurance program for review of medical services provided by the physician assistant must be in place.

[16.17.9.12 NMAC - N, 6-11-2018]

**16.17.9.13 SCOPE OF PRACTICE:**

**A.** Unless otherwise provided by law, physician assistants may provide medical services delegated to them by the supervising physician when such services are within the physician assistant's skills and form a usual component of the physician's scope of practice.

**B.** A physician assistant may assist a designated supervising physician in an inpatient or surgical health care institution within the institution's bylaws or policies including act as a first surgical assistant in the performance of surgery, when permitted by the institution's bylaws or regulations.

[16.17.9.13 NMAC - N, 6-11-2018]

**16.17.9.14 CONTINUING EDUCATION REQUIREMENTS:**

**A.** If a licensee has been practicing for at least two years, and applying for a new license, or upon licensure renewal, 50 hours of continuing education are required in the preceding two years for licensure.

(1) Of the 50 hours, 34 hours must be category 1A.

(2) Of the 50 hours, 30 hours must be in the area in which the physician assistant is currently practicing.

**B.** Applicants for licensure who have graduated from their physician assistant program in the previous two years are exempt from the continuing education requirements; or

**C.** Proof of current NCCPA certification will meet the continuing education requirements.

[16.17.9.14 NMAC - N, 6-11-2018]

## **CHAPTER 18: OSTEOPATHIC PHYSICIAN'S ASSISTANTS [REPEALED]**

### **PART 1: GENERAL PROVISIONS [REPEALED]**

[This part was repealed on June 11, 2018.]

## **PART 2: APPLICATION PROCEDURE RULE [REPEALED]**

[This part was repealed June 11, 2018.]

## **PART 3: RENEWAL OF CERTIFICATION RULE [REPEALED]**

[This Part was repealed June 11, 2018.]

## **PART 4: CHANGE OF EMPLOYMENT REGISTRATION [REPEALED]**

[This Part was repealed June 11, 2018.]

## **PART 5: [RESERVED]**

## **PART 6: SUPERVISION OF PHYSICIAN ASSISTANTS [REPEALED]**

[This part was repealed effective June 11, 2018.]

## **PART 7: PRESCRIBING AND DISTRIBUTION OF CONTROLLED SUBSTANCES [REPEALED]**

[This part was repealed effective June 11, 2018.]

## **PART 8: [RESERVED]**

## **PART 9: STUDENT PHYSICIAN ASSISTANTS [REPEALED]**

[This part was repealed effective June 11, 2018.]

# **CHAPTER 19: PHARMACISTS**

## **PART 1: GENERAL PROVISIONS**

### **16.19.1.1 ISSUING AGENCY:**

Board of Pharmacy.

[02-15-96; 16.19.1.1 NMAC - Rn, 16 NMAC 19.1.1, 03-30-02; A, 08-16-10; A, 5/7/2024]

### **16.19.1.2 SCOPE:**

All Board of Pharmacy members and employees.

[02-15-96; 16.19.1.2 NMAC - Rn, 16 NMAC 19.1.2, 03-30-02]

### **16.19.1.3 STATUTORY AUTHORITY:**

The board of pharmacy is authorized under Paragraph (1) of Subsection A of Section 61-11-6 NMSA 1978 to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Paragraph (3) of Subsection A of Section 61-11-6 directs the board to provide for the issuance and renewal of licenses for pharmacists. Paragraphs (12), (13) and (14) of Subsection A of Section 61-11-6 NMSA 1978 authorize the board to employ and define the duties of an executive officer, inspectors, and qualified employees. Subsection B of Section 61-11-5 NMSA 1978 directs the board to meet at least once every three months.

[02-05-96; 7-31-98; 16.19.1.3 NMAC - Rn, 16 NMAC 19.1.3, 03-30-02; A, 5/7/2024]

### **16.19.1.4 DURATION:**

Permanent.

[02-15-96; 16.19.1.4 NMAC - Rn, 16 NMAC 19.1.4, 03-30-02]

### **16.19.1.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96; 07-31-98; 16.19.1.5 NMAC - Rn, 16 NMAC 19.1.5, 03-30-02]

### **16.19.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 19 is to establish the location for regular meetings of the board, designate persons to preside over board meetings, establish standards for employees and members, and provide for employee job descriptions and a registry of pharmacists.

[02-15-96; 16.19.1.6 NMAC - Rn, 16 NMAC 19.1.6, 03-30-02; A, 5/7/2024]

### **16.19.1.7 DEFINITIONS:**

[RESERVED]

[02-15-96; 16.19.1.7 NMAC - Rn, 16 NMAC 19.1.7, 03-30-02]

### **16.19.1.8 MEETINGS:**

**A.** The chairman of the board shall preside at all meetings, preserve order, appoint committees and decide all questions of order subject to appeal to the board. In the absence of the chairman, the vice-chairman or a member of the board shall preside. Roberts Rules of Order shall govern all proceedings.

**B.** Meetings shall be held in the office of the board unless a different location (physical or virtual) is designated by the board.

**C.** Examinations shall be administered at a place or location specified by the board.

[08-27-90; 16.19.1.8 NMAC - Rn, 16 NMAC 19.1.8, 03-30-02; A, 5/7/2024]

#### **16.19.1.9 PENALTIES:**

As provided in the Uniform Licensing Act, those individuals found to have violated provisions of Subsection A of Section 61-11-20 NMSA 1978 may be fined up to \$1,000 for each violation committed plus the cost of the hearing and incurred investigative expenses.

[08-27-90; A, 07-31-98; 16.19.1.9 NMAC - Rn, 16 NMAC 19.1.9, 03-30-02; A, 5/7/2024]

#### **16.19.1.10 EXECUTIVE DIRECTOR:**

The duties and responsibilities of the executive director or any employee of this board shall be those which are detailed in the job descriptions filed with the state personnel department.

[08-27-90; 16.19.1.10 NMAC - Rn, 16 NMAC 19.1.10, 03-30-02]

#### **16.19.1.11 REGISTRY:**

The board shall provide a registry of all persons licensed as pharmacists or pharmacist interns in the state, the board's online license look up system shall satisfy this requirement.

[08-27-90; 16.19.1.11 NMAC - Rn, 16 NMAC 19.1.11, 03-30-02; A, 5/7/2024]

#### **16.19.1.12 PROTECTED ACTIONS AND COMMUNICATIONS:**

**A.** All written and oral communication made by any person to the board or any committee of the board relating to actual or potential disciplinary action, which includes complaints made to the board or the committee, shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. All data, communications and information acquired, prepared or disseminated by the board or a committee relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed except to the

extent necessary to carry out the purposes of the board or the committee or in a judicial appeal from the actions of the board or the committee or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

B. Information contained in complaint files is public information and subject to disclosure when the board or the committee acts on a complaint and issues a notice of contemplated action or reaches a settlement prior to the issuance of a notice of contemplated action.

[16.19.1.12 NMAC - N, 08-16-10]

## **PART 2: EXAMINATIONS**

### **16.19.2.1 ISSUING AGENCY:**

Board of Pharmacy.

[02-15-96; 16.19.2.1 NMAC - Rn, 16 NMAC 19.2.1, 03-30-02; A, 06-08-16; A, 5/7/2024]

### **16.19.2.2 SCOPE:**

All applicants for licensure as pharmacists by examination or reinstatement of licensure by examination.

[02-15-96; 16.19.2.2 NMAC - Rn, 16 NMAC 19.2.2, 03-30-02]

### **16.19.2.3 STATUTORY AUTHORITY:**

Section 61-11-9 NMSA 1978 establishes qualifications for licensure as a pharmacist by examination. Paragraph (2) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of pharmacy provide for examinations of applicants for licensure as pharmacists.

[02-15-96; 16.19.2.3 NMAC - Rn, 16 NMAC 19.2.3, 03-30-02; A, 06-08-16; A, 5/7/2024]

### **16.19.2.4 DURATION:**

Permanent

[02-15-96; 16.19.2.4 NMAC - Rn, 16 NMAC 19.2.4, 03-30-02]

### **16.19.2.5 EFFECTIVE DATE:**

February 15, 1996, unless a later date is cited at the end of a section.

[02-15-96; 16.19.2.5 NMAC - Rn, 16 NMAC 19.2.5, 03-30-02; A, 02-15-03]

### **16.19.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 19 is to identify candidate's qualifications and establish uniform criteria for obtaining licensure as a pharmacist by examination.

[02-15-96; 16.19.2.6 NMAC - Rn, 16 NMAC 19.2.6, 03-30-02; A, 5/7/2024]

### **16.19.2.7 DEFINITIONS:**

- A. "ACPE"** - Accreditation Council for Pharmacy Education
- B. "FPGEE"** - Foreign Pharmacy Graduate Equivalency Examination
- C. "MPJE"** - Multistate Pharmacy Jurisprudence Examination
- D. "NABP"** - National Association of Boards of Pharmacy
- E. "NAPLEX"** - North American Pharmacist Licensure Examination

[02-15-96; 16.19.2.7 NMAC - Rn, 16 NMAC 19.2.7, 03-30-02; A, 5/7/2024]

### **16.19.2.8 APPLICATIONS - SUBJECTS:**

Applicants for licensure by examination shall pass the standard national examination currently known as the NAPLEX and pass the MPJE.

#### **A. Examinations:**

- (1) In order to sit for the NAPLEX, the applicant must be a graduate from a college of pharmacy accredited by the ACPE.
- (2) Candidates must achieve a score of passing as set by NABP to pass the NAPLEX.
- (3) Candidates must achieve a score of passing as set by NABP to pass the MPJE.
- (4) Candidates taking the NAPLEX in participating states may transfer scores in compliance with NABP "score transfer program", upon payment of the fee to the New Mexico board of pharmacy for licensure by examination, and in compliance with such other requirements set by the New Mexico board of pharmacy so long as New Mexico participates in the NABP "score transfer program."
- (5) Only those score-transfer applicants who have passed the NAPLEX and received their score may take the MPJE.

**B.** Graduates of schools or colleges of pharmacy not accredited by the ACPE, shall be eligible to take the licensing examination required under this section by providing evidence satisfactory to the board that the applicant has satisfied the requirements of 61-11-9 NMSA 1978:

- (1) has submitted an application on a form supplied by the board;
- (2) has completed the internship requirements of 16.19.5 NMAC; and
- (3) has successfully completed the NABP FPGEE certification program.

**C.** Applicants with work experience as a pharmacist in another country may petition the board to accept the work experience in lieu of internship requirements of 16.19.5 NMAC. The board may elect to accept all, a portion or none of the experience as a substitute for internship requirements.

[04-30-98; 16.19.2.8 NMAC - Rn, 16 NMAC 19.2.8, 03-30-02; A, 02-15-03; A, 12-15-05; A, 06-08-16; A, 03-29-17; A, 5/7/2024]

#### **16.19.2.9 EXAMINATION REPEATS:**

A candidate who fails either the NAPLEX or MPJE may repeat that examination upon submittal of the proper application and fee. A candidate may not take either the NAPLEX or MPJE more than four consecutive times without passing, and the time limit is three years from the first exam attempt (respectively). Failure to finish an examination is counted as an attempt. Candidates who fail or do not complete the NAPLEX shall wait a period of at least 45 days prior to retaking the examination. Candidates who fail or do not complete the MPJE shall wait a period of at least 30 days prior to retaking the examination.

[04-30-98; 16.19.2.9 NMAC - Rn, 16 NMAC 19.2.9, 03-30-02; A, 06-08-16; A, 06-23-17; A, 5/7/2024]

#### **16.19.2.10 [RESERVED]**

[04-30-98; 16.19.2.10 NMAC - Rn, 16 NMAC 19.2.10, 03-30-02; A, 06-08-16; Repealed, 5/7/2024]

#### **16.19.2.11 COMPLETION OF INTERNSHIP:**

No applicant may be admitted to the examination until completion of required internship has been certified by the Board.

[04-30-98; 16.19.2.11 NMAC - Rn, 16 NMAC 19.2.11, 03-30-02]

#### **16.19.2.12 QUALIFICATIONS:**

The board shall not recognize as sufficient qualifications for licensure the diploma of any school or college of pharmacy.

[04-30-98; 16.19.2.12 NMAC - Rn, 16 NMAC 19.2.12, 03-30-02; A, 06-08-16]

**16.19.2.13 PHOTO REQUIRED:**

Each applicant for licensure shall furnish a current photograph, head and shoulders only, approximately 3 x 4 inches.

[04-30-98; 16.19.2.13 NMAC - Rn, 16 NMAC 19.2.13, 03-30-02; A, 06-08-16; A, 5/7/2024]

**16.19.2.14 REINSTATEMENT EXAMINATIONS:**

**A.** The board may require an applicant for reinstatement of licensure, for any reason, including revocation, to make a passing score on any combination of the NAPLEX and MPJE.

**B.** The criteria for passing these examinations shall be the same as required by this regulation.

**C.** If a pharmacist has not been active in the area of pharmacy practice for greater than two years but less than six years, the pharmacist candidate shall complete the following:

- (1) submit renewal form;
- (2) pay past renewal fees and reinstatement fees;
- (3) submit proof of continuing education for each inactive renewal period;
- (4) submit proof of completed internship of minimum of 60 hours for each year of inactivity;
- (5) successfully complete the MPJE; or

**D.** In lieu of past renewal fees, reinstatement fees and proof of continuing education an inactive pharmacist may successfully complete the internship minimum of 60 hours for each year of inactivity, and successfully pass the NAPLEX and the MPJE.

**E.** If a pharmacist has not been active in the area of pharmacy practice for six years or more, the pharmacist candidate shall:

- (1) complete the internship minimum of 60 hours for each year of inactivity;
- and

(2) successfully pass the NAPLEX and the MPJE.

F. The applicant must follow the same rules and procedures as if reciprocating his license as described in 16.19.3 NMAC.

[04-30-98; 16.19.2.14 NMAC - Rn, 16 NMAC 19.2.14, 03-30-02; A, 06-08-16; A, 03-29-17; A, 5/7/2024]

### **PART 3: RECIPROCITY**

#### **16.19.3.1 ISSUING AGENCY:**

Board of Pharmacy.

[02-15-96; 16.19.3.1 NMAC - Rn, 16 NMAC 19.3.1, 03-30-02; A, 01-31-07; A, 10-19-16; A, 5/7/2024]

#### **16.19.3.2 SCOPE:**

All applicants for licensure as pharmacists by reciprocity.

[02-15-96; 16.19.3.2 NMAC - Rn, 16 NMAC 19.3.2, 03-30-02]

#### **16.19.3.3 STATUTORY AUTHORITY:**

Section 61-11-10 NMSA 1978 authorizes the board of pharmacy to issue a certificate of licensure as a pharmacist, with or without examination, by reciprocity.

[02-15-96; 16.19.3.3 NMAC - Rn, 16 NMAC 19.3.3, 03-30-02; A, 10-19-16]

#### **16.19.3.4 DURATION:**

Permanent.

[02-15-96; 16.19.3.4 NMAC - Rn, 16 NMAC 19.3.4, 03-30-02]

#### **16.19.3.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96; A, 04-30-98; 16.19.3.5 NMAC - Rn, 16 NMAC 19.3.5, 03-30-02]

#### **16.19.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 19 is to recognize qualifications of pharmacists licensed by examination in other states that grant reciprocal privileges in New Mexico and to establish uniform criteria for obtaining licensure as a pharmacist by reciprocity.

[02-15-96; 16.19.3.6 NMAC - Rn, 16 NMAC 19.3.6, 03-30-02; A, 10-19-16]

**16.19.3.7 DEFINITIONS:**

**[RESERVED]**

[02-15-96; 16.19.3.7 NMAC - Rn, 16 NMAC 19.3.7, 03-30-02]

**16.19.3.8 RECIPROCAL LICENSURE:**

Reciprocal licensure shall be granted to those persons licensed by examination as a licensed pharmacist in other states or territories of the United States which grant reciprocal privileges to persons licensed as pharmacists by examination in New Mexico. An applicant must be a graduate of an approved college of pharmacy and have completed required intern training or have worked one year as a licensed pharmacist in the state in which the applicant has licensure by examination.

[08-27-90; 16.19.3.8 NMAC - Rn, 16 NMAC 19.3.8, 03-30-02; A, 10-19-16; A, 5/7/2024]

**16.19.3.9 APPLICANT INELIGIBLE:**

**A.** An applicant shall be deemed to be ineligible to reciprocate if licensure in the state of examination is not current; or if the pharmacist has worked less than one year or internship requirements at the time of examination, did not meet New Mexico's internship requirements.

**B.** An applicant who qualifies for and acquired a license in a state that does not grant reciprocal privileges with New Mexico shall be deemed ineligible for reciprocal licensure.

[08-27-90; 16.19.3.9 NMAC - Rn, 16 NMAC 19.3.9, 03-30-02; A, 10-19-16; A, 5/7/2024]

**16.19.3.10 REINSTATEMENT OF RECIPROCITY LICENSE, ELIGIBILITY:**

**A.** An applicant must have current pharmacist licensure in the state in which the applicant has licensed by examination.

**B.** If an applicant has not been active in the area of pharmacy practice for greater than two years but less than six years, the pharmacist candidate shall complete the following:

- (1) submit renewal form;

- (2) pay past renewal fees and reinstatement fees;
- (3) submit proof of continuing education for each inactive renewal period;
- (4) submit proof of completed internship a minimum of 60 hours for each year of inactivity;
- (5) successfully complete the Multistate Pharmacy Jurisprudence Examination (MPJE); and
- (6) submit a current letter of good standing from the state of examination.

**C.** In lieu of past renewal fees, reinstatement fees and proof of continuing education, an inactive pharmacist shall successfully complete the internship minimum of 60 hours for each year of inactivity, and successfully pass the North American Pharmacist Licensure Examination (NAPLEX) and the MPJE.

**D.** If a pharmacist has not been active in the area of pharmacy practice for six years or more, the pharmacist candidate shall:

- (1) complete the internship minimum of 60 hours for each year of inactivity;  
and
- (2) successfully pass the NAPLEX and the MPJE.

[08-27-90; 16.19.3.10 NMAC - Rn, 16 NMAC 19.3.10, 03-30-02; A, 10-19-16; A, 5/7/2024]

#### **16.19.3.11 JURISPRUDENCE EXAMINATION:**

**A.** An applicant for reciprocity will be required to submit all paperwork required for reciprocity, and take and pass the MPJE prior to issuance of a license.

**B.** Failure to take the MPJE within one year after the application is received shall nullify the application and a refund of fees will not be made.

**C.** Upon submittal of the proper application and fee, a candidate may repeat the MPJE. A candidate shall take the MPJE no more than four consecutive times without passing, and the time limit is three years from the first exam attempt. Failure to finish the examination is counted as an attempt. Candidates who fail or do not complete the MPJE shall wait a period of at least 30 days prior to retaking the examination.

[07-28-91; 16.19.3.11 NMAC - Rn, 16 NMAC 19.3.11, 03-30-02; A, 10-19-16; A, 5/7/2024]

#### **16.19.3.12 PHOTO REQUIRED:**

Each applicant for licensure shall furnish a current photograph, head and shoulders only, approximately 3 x 4 inches.

[07-28-91; 16.19.3.12 NMAC - Rn, 16 NMAC 19.3.12, 03-30-02; A, 10-19-16; A, 5/7/2024]

#### **16.19.3.13 EVIDENCE OF QUALIFICATIONS:**

The New Mexico board of pharmacy shall deem an applicant ineligible to be licensed by reciprocity if the application that they submit fails to furnish evidence:

**A.** that the license which applicant acquired by examination in the state from which they apply is in good standing;

**B.** that applicant completed the NAPLEX examination with a passing score;

**C.** that applicant is not addicted to the use of alcohol, narcotic or hypnotic drugs;

**D.** that the applicant has not been charged with, convicted, fined or had their license suspended or revoked for violation laws pursuant to the provisions of 16.19.4.8 NMAC.

[08-27-90; 16.19.3.13 NMAC - Rn, 16 NMAC 19.3.13, 03-30-02; A, 10-19-16; A, 5/7/2024]

#### **16.19.3.14 PENDING INDICTMENT OR ALLEGED VIOLATIONS:**

An applicant may be ineligible for reciprocal licensure if there is pending an indictment or alleged violation of any law pursuant to the provisions of 16.19.4.8 NMAC.

[08-27-90; 16.19.3.14 NMAC - Rn, 16 NMAC 19.3.14, 03-30-02; A, 10-19-16; A, 5/7/2024]

#### **16.19.3.15 EXPEDITED LICENSE:**

**A.** Definitions as used in this section.

(1) "expedited license" is a one-year provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board;

(2) "military service member" means a person who is:

(a) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard;

(b) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(c) the child of a military service member if the child is also a dependent of that person for federal income tax purposes.

(3) "veteran" means a person who has received an honorable discharge or separation from military service of the United States.

**B.** Alternative licensing procedure. An applicant for expedited licensure who meets all the requirements of this part may be granted a provisional license by reciprocity after completing the National Association of Boards of Pharmacy (NABP) application for pharmacist license by reciprocity (license transfer program application) and submitting an application for pharmacist license by reciprocity to the board, but prior to taking and passing the NM MPJE.

**C.** Persons who provide acceptable evidence of being currently licensed by examination under the laws of other states in the United States and the District of Columbia, shall be authorized to practice pharmacy for a period of one year from the date of expedited license issuance after receipt of a complete application in proper form and license fee as outlined in 16.19.12 NMAC.

**D.** Expedited licenses will be issued no more than 30 days after a complete application meeting all requirements for licensure is received by the board.

**E.** The expedited licensee shall be subject to discipline in the same manner as those holding a full license, and shall be subject to immediate suspension upon reasonable evidence of false or incorrect statements in the documents submitted or if found not to be in good standing in other states.

**F.** The expedited license shall not be renewed or extended as a provisional license except as allowed by Section 16 of this Part. Before the end of the expedited license term and upon application, a board may renew the license as a regular license after applicant passes the NM MPJE.

**G.** Military service members, including a spouse, dependent, and veteran, are exempt from the initial license fee and initial license renewal fee paid to the board set forth in 16.19.12 NMAC, and must provide documentation of eligibility:

(1) For a military service member, a copy of the service member's military orders.

(2) For a spouse of a military service member, a copy of the service member's military orders and a copy of the marriage license.

(3) For a spouse of a deceased military service member, a copy of the decedent's DD 214 and a copy of marriage license.

(4) For dependent children of military service members, a copy of military service members orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service federal tax return, or other governmental or judicial documentation establishing dependency.

(5) For veterans, retired or separated, proof of honorable discharge, a copy of DD 214, DD 215, DD 265, DD 257, NGB 22, military ID card, a state-issued driver's license or identification card with veteran's designation, a veteran ID card (VIC) issued by the U.S Department of Veteran's Affairs, or other official documentation verifying the veteran's honorable discharge from military service.

[16.19.3.15 NMAC - N, 01-31-07; A, 10-19-16; A, 5/7/2024]

### **16.19.3.16 PORTABILITY OF PHARMACIST LICENSE, SERVICE MEMBERS AND SPOUSES:**

Service members, as defined in 50 USC § 3911, and their spouses who relocate residency to New Mexico because of military orders for military service, may apply for and be issued a provisional pharmacist license by reciprocity, without taking the NM MPJE, during the duration of such military orders if the:

- A.** license is in good standing with the authority that issued it;
- B.** license was actively used during the two years immediately preceding the relocation;
- C.** applicant meets the requirements of this part and completes the NABP application for pharmacist license by reciprocity and submits an application for pharmacist license by reciprocity to the board;
- D.** applicant provides documentation of eligibility and a copy of such military orders to the board;
- E.** applicant remains in good standing with:
  - (1) the licensing authority that issued the covered license; and
  - (2) every other licensing authority that has issued to the service member or the spouse of a service member a pharmacist license;
- F.** applicant submits to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

[16.19.3.16 NMAC - N, 5/7/2024]

## **PART 4: PHARMACIST**

### **16.19.4.1 ISSUING AGENCY:**

Board of Pharmacy.

[2/15/1996; 16.19.4.1 NMAC - Rn, 16 NMAC 19.4.1, 3/30/2002; A, 12/15/2002; A, 8/16/2010; A, 9/14/2021]

### **16.19.4.2 SCOPE:**

All designations of pharmacists subject to licensure and regulation by the Board of Pharmacy.

[02-15-96; 16.19.4.2 NMAC - Rn, 16 NMAC 19.4.2, 03-30-02]

### **16.19.4.3 STATUTORY AUTHORITY:**

Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Those provisions include the authority to:

**A.** deny or take disciplinary action with respect to any certificate of registration or license held or applied for under the Pharmacy Act, Section 61-11-20 NMSA 1978;

**B.** require and establish criteria for continuing education as a condition of renewal of a pharmacist license, Paragraph (4) of Subsection A of Section 61-11-6 NMSA 1978;

**C.** issue permits or licenses, as defined and limited by board regulation, to nursing homes, industrial and public health clinics and home care services, Paragraph (6) of Subsection A of Section 61-11-6 and 61-11-14 NMSA 1978;

**D.** provide for the issuance and renewal of licenses for pharmacists, Paragraph (3) of Subsection A of Section 61-11-6, and 61-11-13 NMSA 1978;

**E.** provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline, Paragraph (5) of Subsection A of Section 61-11-6 NMSA 1978; and

**F.** adopt rules and regulations that establish patient counseling requirements, Paragraph (18) of Subsection A of 61-11-6 NMSA 1978. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the board is required to establish regulations governing certification as a pharmacist clinician. The

Impaired Pharmacists Act, Sections 61-11A-1 to 61-11A-8 NMSA 1978, requires the establishment by the board of a plan for treatment and rehabilitation of impaired pharmacists. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board of pharmacy to promulgate rules relating to listing specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board of pharmacy from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board of pharmacy the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.

[3/14/1998; 16.19.4.3 NMAC - Rn, 16 NMAC 19.4.3, 3/30/2002; A, 9/14/2021; A, 11/30/2021]

#### **16.19.4.4 DURATION:**

Permanent

[02-15-96; 16.19.4.4 NMAC - Rn, 16 NMAC 19.4.4, 03-30-02]

#### **16.19.4.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[03-14-98; 16.19.4.5 NMAC - Rn, 16 NMAC 19.4.5, 03-30-02]

#### **16.19.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 19 is to promote the delivery of quality pharmaceutical services by establishing comprehensive regulations governing pharmacists, conduct, continuing education and requirements, criteria for specialized certification, and duties and responsibilities.

[02-15-96; 16.19.4.6 NMAC - Rn, 16 NMAC 19.4.6, 03-30-02]

#### **16.19.4.7 DEFINITIONS:**

**A. "A year"** begins with the pharmacist's birth month and ends the last day of the pharmacist's birth month the following year.

**B. "Accredited Provider."** An institution, organization or agency that has been recognized by the Accreditation Council for Pharmacy Education, in accord with its

policy and procedures, as having demonstrated compliance with the standards which are indicative of the Provider's capability to develop and deliver quality continuing pharmacy education.

**C. "Activity"** as used in the ACPE criteria for quality and these regulations, the term refers to an individual educational experience or program such as a lecture, home study course, workshop, seminar, symposium, etc.

**D. "Alternate supervising physician"** means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence, or expand the "scope of practice or sites of practice" of the pharmacist clinician and is approved by the board.

**E. "Board"** means the New Mexico board of pharmacy.

**F. "Consultation"** means communication in person, telephonically, by two-way radio, by e-mail or by other electronic means.

**G. "Contact hour"** means a unit of measure equivalent to 60 minutes of participation in an approved organized learning experience or activity.

**H. "Continuing education unit (CEU)"** means ten contact hours of participation or its equivalent in an organized continuing education activity sponsored by an accredited provider.

**I. "Continuing pharmacy education (CPE)"** means a structured education activity offered by an accredited provider, designed or intended to support the continuing development of pharmacies or pharmacy technicians to maintain and enhance their competence. Continuing pharmacy education should promote problem-solving and critical thinking and be applicable to the practice of pharmacy.

**J. "Continuing professional development (CPD)"** means the responsibility of individual pharmacists for systematic maintenance, development and broadening of knowledge, skills and attitudes, to ensure continuing competence as a professional, throughout their careers.

**K. "Criteria for quality"** means continuing education provider shall show evidence of adherence to the criteria adopted by the American council on pharmaceutical education as indicative of the ability to provide continuing pharmaceutical education activities; areas include: administrative and organization; budget and resources; teaching staff; educational content management of activity; method of delivery; facilities; evaluation mechanism.

**L. "Dangerous drug"** means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a provider licensed by law to direct the use of such

drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription;" or "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.;" or "Rx only."

**M. "Guidelines or protocol"** means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a physician or group of physicians that delegates prescriptive authority.

**N. "Initial pharmacist licensure"** means the license issued shall be valid for no less than 24 months. The license will expire the last date of his/her birth month that immediately follows the minimum 24-month time period.

**O. "Live programs"** means CPE activities that provide for direct interaction between faculty and participants and may include lectures, symposia, live teleconferences, workshops, etc.

**P. "Monitor dangerous drug therapy"** means to review the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

- (1) collecting and reviewing patient dangerous drug histories;
- (2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration;
- (3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting and;
- (4) evaluating situations that require the immediate attention of the physician and instituting or modifying treatment procedures when necessary.

**Q. "Oversight committee"** means a joint committee made up of four members to hear issues regarding pharmacist clinicians' prescriptive authority activities and supervising physicians' direction of these activities.

**R. "Patient safety"** means the prevention of healthcare errors and the elimination or mitigation of patient injury caused by healthcare errors.

**S. "Pharmaceutical care"** means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related

problems, resolving actual drug-related problems and preventing potential drug-related problems.

**T. "Pharmacist"** means a person duly licensed by the board to engage in the practice of pharmacy pursuant to the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978.

**U. "Pharmacist clinician"** means a pharmacist with additional training required by regulations adopted by the board in consultation with the New Mexico medical board and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol.

**V. "Pharmacist in charge"** means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel.

**W. "Practice of pharmacy"** means continually optimizing medication safety, patient wellness, and quality of services through the effective use of pharmaceutical care and emerging technologies and competency-based and performance-based training. The practice of pharmacy may include:

- (1) Pharmaceutical dispensing including product selection.
- (2) specialty pharmacy practice including pharmacists working for licensed pharmaceutical manufacturers or wholesalers;
- (3) practice of telepharmacy within and across state lines;
- (4) engaging in health care educational activities;
- (5) pharmacy-specific academia;
- (6) provision of those acts or services necessary to provide pharmaceutical care in all areas of patient care including patient counseling, prescriptive authority, drug administration, primary care, medication therapy management, collaborative practice, and monitoring dangerous drug therapy;
- (7) inspecting on a full time basis to ensure compliance with the practice of pharmacy;
- (8) provision of pharmaceutical and drug information services, as well as consultant pharmacy services;
- (9) engaging in other phases of the pharmaceutical profession including those with research or investigational or dangerous drugs;

- (10) engaging in functions that relate directly to the administrative, advisory, or executive responsibilities pursuant to the practice of pharmacy in this state;
- (11) the responsibility for compounding and labeling of drugs and devices;
- (12) the proper and safe storage of drugs and devices; and
- (13) the maintenance of proper records.

**X. "Practitioner"** means a health care provider duly authorized by law in New Mexico to prescribe dangerous drugs including controlled substances in schedules II through V.

**Y. "Prescriptive authority"** means the authority to prescribe, administer, monitor or modify dangerous drug therapy.

**Z. "Professional judgment"** means a cognitive process, by a licensed pharmacist, that takes education, experience and current standards of practice into consideration when drawing conclusions and reaching decisions.

**AA. "Renewal period"** means continuing education programs or activities must be completed during the 24-month time period occurring between the last day of the pharmacist's birth month and the last day of his/her birth month 2 years later.

**BB. "Scope of practice"** means those duties and limitations of duties placed upon a pharmacist clinician and includes the limitations implied by the field of practice of the supervising physician and/or the alternate supervising physician(s) and the board.

**CC. "Supervising physician"** means a doctor, or group of doctors, of medicine or osteopathy approved by the respective board to supervise a pharmacist clinician; and includes a physician approved by the medical board as an alternate supervising physician.

[2/15/1996; 16.19.4.7 NMAC - Rn, 16 NMAC 19.4.7, 3/30/2002; A, 1/31/2007; A, 8/16/2010; A, 10/25/2012; A, 11/13/2018; A, 5/7/2024]

#### **16.19.4.8 DEFINING GROSS IMMORALITY:**

Gross immorality shall constitute a felony conviction of a crime involving a disqualifying criminal conviction. "Conviction" means either a plea of guilty or nolo contendere, or any other full adjudication on the merits by a court of competent jurisdiction, including but not limited to a trial. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence.

**A.** Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may result in license suspension,

or disqualify a licensee or applicant from receiving or retaining a license issued by the board:

- (1)** Section 30-2-1 NMSA 1978 "Murder";
- (2)** Sections 30-9-1 and 30-9-11 to 30-9-13 NMSA 1978, Criminal sexual offenses, including of a minor and enticement of a child;
- (3)** Sections 30-37-2 to 30-37-3.3 NMSA 1978, Sexually oriented material harmful to minors, including child solicitation by electronic communication device and criminal sexual communication with a child;
- (4)** Sections 30-6A-3 to 30-6A-4 NMSA 1978, Sexual exploitation of children, including prostitution;
- (5)** Section 30-16-2 NMSA 1978 "Robbery";
- (6)** Section 30-16-6 NMSA 1978 "Fraud";
- (7)** Section 30-16-8 NMSA 1978 "Embezzlement";
- (8)** Section 30-16-9 NMSA 1978 "Extortion";
- (9)** Section 30-16-10 NMSA 1978 "Forgery";
- (10)** Section 30-16-11 NMSA 1978 "Receiving stolen property";
- (11)** Section 30-16-24.1 NMSA 1978 "Theft of identity; obtaining identity by electronic fraud";
- (12)** Section 30-16-30 NMSA 1978 "Dealing in credit cards of another";
- (13)** Section 30-16-31 NMSA 1978 "Forgery of a credit card";
- (14)** Section 30-16-33 NMSA 1978 "Fraudulent use of a credit card";
- (15)** Section 30-28-3 NMSA 1978 "Criminal solicitation";
- (16)** Section 30-42-4 NMSA 1978 "Engaging in a pattern of racketeering activity";
- (17)** Sections 30-44-4 to 30-44-7 NMSA 1978, Offenses related to Medicaid Fraud;
- (18)** Sections 30-47-4 to 30-47-6 NMSA 1978, Abuse or neglect of a care facility resident, exploitation of a care facility resident's property;

**(19)** Section 30-51-4 NMSA 1978 "Money laundering";

**(20)** Section 30-52-1 NMSA 1978 "Human trafficking";

**(21)** Section 24-26-12 NMSA 1978 "Intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act" (Sections 24-26-1 to 24-26-12 NMSA 1978);

**(22)** Section 27-5-12 NMSA 1978 Making false statement in claim for payment under Indigent Hospital and County Health Care Act (Chapter 27, Article 5 NMSA 1978);

**(23)** Section 66-8-102 NMSA 1978 "Fourth or subsequent conviction for driving under the influence of intoxicating liquor or drugs";

**B.** Unless otherwise specified by law, the board shall not consider a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this Section 16.19.4.8 NMAC. Any decision by the Board to take action against an applicant or licensee on the basis of a disqualifying criminal conviction shall occur in conformance with the Uniform Licensing Act.

**C.** Nothing in this section prevents the board from denying an application or disciplining a licensee on the basis of the licensee or applicant's conduct to the extent that such conduct violated the Pharmacy Act (Chapter 61, Article 11 NMSA 1978), the Drug Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978), the Controlled Substances Act (Chapter 30, Article 31 NMSA 1978), the Imitation Controlled Substances Act (Chapter 30, Article 31A NMSA 1978), or the Drug Precursor Act (Chapter 30, Article 31B NMSA 1978), or similar act of another state or of the United States, or pursuant to the Impaired Health Care Provider Act (Chapter 61, Article 7 NMSA 1978), or the Impaired Pharmacists Act (Chapter 61, Article 11 NMSA 1978), regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule. Proceedings shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

**D.** Notwithstanding Subsection C of this Section, in connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this section.

[3/1/1993; 16.19.4.8 NMAC - Rn, 16 NMAC 19.4.8, 3/30/2002; A, 11/30/2021]

**16.19.4.9 DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:**

**A. Preamble:** In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

**B.** Professional conduct may be defined as complying with all the laws and regulations that apply to a given professional activity.

**C. Definition:** Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to:

(1) Violation of any provision of the Pharmacy Act as determined by the board.

(2) Violation of the board of pharmacy regulations as determined by the board.

(3) Violation of the Drug and Cosmetic Act as determined by the board.

(4) Violation of the Controlled Substances Act as determined by the board.

(5) Failure of the pharmacist to conduct themselves professionally in conformity with all applicable federal, state and municipal laws and regulations to their relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep their pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of their professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) Failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions, and other confidence entrusted or acquired of by them; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities.

(9) Participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare.

(10) The solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) The solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or

(b) a request for therapeutic interchange of a medication prescribed for the patient;

(12) The solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient.

(13) Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

(14) Failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.19.4.12 NMAC.

(15) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

(16) Conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States.

(17) Suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

(18) Dispensing a prescription for a dangerous drug to a patient without an established practitioner-patient relationship:

(a) except for the provision of treatment of partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health;

(b) except for on-call practitioners providing services for a patient's established practitioner;

(c) except for delivery of dangerous drug therapies to patients ordered by a New Mexico department of health physician as part of a declared public health emergency;

(d) except for dispensing the dangerous drug naloxone or other opioid antagonist as authorized in Section 24-23-1 NMSA 1978;

(e) except for the prescribing or dispensing and administering for immunizations programs.

(19) Dispensing a prescription for a dangerous drug to a patient if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription was issued on the basis of an internet-based questionnaire or an internet-based consultation without a valid practitioner-patient relationship.

(20) Failure to perform a prospective drug review as described in Subsection D of 16.19.4.16 NMAC and document steps taken to resolve potential problems.

[3/1/1993; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 3/30/2002; A, 7/15/2002; A, 1/15/2008; A, 9/16/2011; A, 8/31/2012; A, 3/23/2016; A, 10/19/2019; A, 11/13/2018; A, 9/13/2022; A, 5/7/2024]

#### **16.19.4.10 CONTINUING PHARMACY EDUCATION REQUIREMENTS:**

**A.** Continuing pharmacy education (CPE) shall include study in one or more of the general areas of socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology; characteristics and therapeutics of the disease state, or such other subjects as the board may from time to time approve. Continuing pharmacy education approved in New Mexico shall be limited to programs and activities offered by the accreditation council for pharmacy education (ACPE), accredited provider, programs or courses approved by the board or other state boards of pharmacy and pharmacy law programs offered by the board.

**B.** Continuing pharmacy education, certified as completed by an approved provider will be required of a registered pharmacist who applies for renewal of New Mexico registration as follows: 3.0 CEU (30 contact hours) every two years. Effective January 1, 2013, pharmacist and pharmacist clinician renewal applications shall document.

(1) A minimum of 1.0 CEU (10 contact hours) excluding the law requirement, per renewal period shall be obtained through "live programs" that are approved as such by the ACPE or the accreditation council for continuing medical education (ACCME). Live programs provided by other providers (such as continuing nursing education) may be acceptable based on review and approval of the board.

(2) A minimum of 0.2 CEU (two contact hours) per renewal period shall be in the area of patient safety as applicable to the practice of pharmacy.

(3) A minimum of 0.2 CEU (two contact hours) per renewal period shall be in the subject area of pharmacy law offered by the New Mexico board of pharmacy.

(4) Effective January 1, 2015, a minimum of 0.2 CEU (two contact hours) per renewal period shall be in the area of safe and appropriate use of opioids. An educational program consisting of a minimum of 0.2 CEU (2 contact hours) that addresses both patient safety as applicable to the practice of pharmacy and the safe and appropriate use of opioids will satisfy requirements of Paragraphs (2) and (4) of Subsection B of this section.

**C.** The number of CEU's to be awarded for successful completion shall be determined by the accredited provider in advance of the offering of the activity.

**D.** The board will accept CPE education units for programs or activities completed outside the state; provided, the provider has been approved by the ACPE under its' criteria for quality at the time the program was offered.

**E.** Continuing pharmacy education will be required of all registrants holding an in-state status and out-of-state active status license. (61-11-13D). Pharmacists granted New Mexico initial licensure are exempt from CPE requirements. Inactive status licensees will be required to furnish CPE for the current licensing period, 1.5 CEU for each year the licensee was inactive, only for the purpose of reinstating to active status.

**F.** Not less than ten percent of the registrants will be randomly selected each year by the board for audit of certificates by the state drug inspectors. Pharmacists and pharmacist clinicians without sufficient documentation of completion of CPE requirements shall.

(1) Be subject to a fine of not less that \$1000.00.

(2) Be required to complete the deficient CPE in a satisfactory time period as determined by the board.

**G.** In the event a pharmacist makes an application for renewal and does not furnish necessary proof of compliance upon request, the board will afford the applicant opportunity for hearing pursuant to the Uniform Licensing Act.

**H. [RESERVED]**

**I. [RESERVED]**

**J.** Pharmacy law requirement:

(1) Active status: A minimum of 0.2 CEU (two contact hours) of the 3.0 CEU (30 contact hours) required for registration renewal, shall be in the subject area pharmacy law as offered by the board. In lieu of a board program, pharmacists not

residing and not practicing pharmacy in New Mexico, may complete an ACPE accredited course, in the subject area pharmacy law, meeting the CEU requirements of this paragraph.

(2) Licensees may obtain 0.1 CEU (one contact hour) per year, in the subject area pharmacy law, by attending one full day of a regularly scheduled New Mexico board of pharmacy board meeting or serving on a board approved committee.

K. Board of pharmacy law programs shall offer 0.2 CEU and be two contact hours in length.

[02/26/1995; 16.19.4.10 NMAC - Rn, 16 NMAC 19.4.10, 3/30/2002; A, 12/15/2002; A, 1/31/2007; A, 8/16/2010; A, 3/23/2013; A, 8/12/2013; A, 5/7/2024]

#### **16.19.4.11 CONSULTANT PHARMACIST:**

##### **A. Duties and responsibilities:**

(1) To abide by the code of ethics of the *American Society of Consultant Pharmacists*. Must be qualified to practice as a consultant pharmacist and is to be aware of all federal and state drug laws, rules and regulations related to pharmacy services, and to provide the facility with current information pertaining to drug service.

(2) Ensure that drugs are handled in the facility in which he/she is the consultant pharmacist, in a manner that protects the safety and welfare of the patient.

(3) Set the policies and procedures in the facility as related to all facets of drug handling and distribution; these policies and procedures to be reviewed and updated on an annual basis.

(4) To visit the facility, commensurate with their duties, as specified by board regulations relative to the facility or by written contract with the administration of the facility not inconsistent with board regulations.

(5) His/her primary goal and objective shall be the health and safety of the patient, and he/she shall make every effort to assure the maximum level of safety and efficacy in the provision of pharmaceutical services.

(6) The consultant pharmacist shall not condone or participate in any transaction with any practitioner of another health profession, or any other persons whatsoever under which fees are divided, or rebates or kickbacks paid or caused to be paid, or which may result in financial exploitation of patients or their families in connection with the provision of drugs and medication or supplies or pharmaceutical services.

**B.** Consultant pharmacist serving skilled nursing facilities and intermediate care facilities - upper level care - long term care facilities by any other title:

(1) The consultant pharmacist's agreement with the facility shall include but is not limited to the following duties and responsibilities.

(a) Serve as a member of appropriate committees, and attend these meetings.

(b) Development of the drug control procedures manual.

(c) Monitor on a routine basis all aspects of the total drug distribution system - to be accomplished in a manner designed to monitor and safeguard all areas of the drug distribution system.

(d) Maintain active pharmacist status registration in the state.

(e) Assume responsibility for the destruction or removal of unwanted dangerous drugs and any controlled substances as prescribed by law and regulations.

(f) Maintain a log of all visits and activities in the facility indicating dates and other pertinent data; such logs are to be available to inspection by state drug inspectors upon request.

(g) Furnish and replenish emergency drug supply in acceptable containers. Maintain a log of use and replacement of drugs in the emergency tray.

(h) Make routine inspections of drug storage areas, patient health records, and review drug regimen of each patient at least once a month. Report irregularities, contraindication, drug interactions, etc., to the medical staff.

(i) Provide or make arrangements for provision of pharmacy services to the facility on a 24-hour, seven days a week basis, including stat orders.

(j) Provide in-service training of staff personnel as outlined in the procedures manual.

(k) Meet all other responsibilities of a consultant pharmacist as set forth in the board regulations and federal or state laws and which are consistent with quality patient care.

(l) The contract consultant pharmacist to a SNF or ICF facility, that is required to review patients' drug regimen as set forth in Subparagraph h of Paragraph (1) of Subsection B of 16.19.4.11 NMAC, who is under contract as sole supplier of unit-doses/state of the art medications, shall be exempt from charges of unprofessional conduct under Paragraph (10) of Subsection B of 16.19.4.9 NMAC.

(m) The consultant pharmacist to a SNF or ICF facility who delivers drugs in a unit-dose system, approved by an agent of the board, which is a tightly sealed, unopened, individual dose, shall be exempt from the requirements of 16.19.6.14 NMAC. The regulation shall not prohibit the return to the pharmacy stock, where partial credit may be given in accordance with any federal or state law or regulation, to the patient for such medication, when the physician discontinues the drug therapy, the patient expires or for any other reason, other than an outdated drug.

(n) Customized patient medication packages: In lieu of dispensing one, two, or more prescribed drug products in separate containers or standard vial containers, a pharmacist may, with the consent of the patient, the patient's care-giver, the prescriber, or the institution caring for the patient, provide a customized patient medication package. The pharmacist preparing a patient medication package must abide by the guidelines as set forth in the current edition of the United States Pharmacopoeia for labeling, packaging and record keeping.

(o) Repackaging of patient medication packages: In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient medication package has more than one drug within it, the pharmacist may repackage the patient's patient medication package and either add to or remove from the patient medication packaged as ordered by the physician. The same drugs returned by the patient for repackaging must be reused by the pharmacist in the design of the new patient medication package for the new regimen, and any drug removed must either be destroyed, returned to the DEA or returned to the patient properly labeled.

(p) Return of patient medication package drugs.

(i) Patient medication packages with more than one drug within a container may not under any circumstances be returned to a pharmacy stock.

(ii) Patient medication packages with only one drug within a container:  
1 Non-Institutional: A patient medication package stored in a non-institutional setting where there is no assurance of storage standards may not be returned to pharmacy stock.  
2 Institutional: A patient medication package stored in an institutional setting where the storage and handling of the drugs are assured and are consistent with the compendia standards may be returned to the pharmacy stock provided the following guidelines are followed: (1) the drug is to be kept within the patient medication package and it is to remain sealed and labeled until dispensed; (2) the expiration date of drug shall become fifty percent of the time left of the expiration for the drug; and (3) no schedule II - V drugs may be returned to inventory; and (4) proper record keeping for the addition of drugs into inventory must be done.

(2) When a consultant pharmacist enters into a written contractual agreement with a facility to which he/she will provide service.

(a) The consultant pharmacist whose practice is not in the immediate vicinity of the facility for which he has entered into a written service agreement, shall have a written agreement with a local pharmacist to be available on any emergency basis. The consultant pharmacist shall be responsible for the proper training and instruction of such local pharmacist. Said local pharmacist shall be known as a "co-consultant". The vendor shall be responsible for the safety and efficacy of back-up pharmaceutical services he provides.

(b) A copy of these agreements must be filed with the facility and a copy maintained by the consultant pharmacist. Any termination of such agreement shall be reported in writing, within 10 days, of termination to the administrator.

(c) Should a local pharmacist (co-consultant) not be available, the consultant pharmacist must provide an alternative procedure approved by the board. If the consultant is also the vendor, then such alternative procedure must reasonably assure rapid delivery of drugs; medical supplies and pharmacy service to the facility.

**C. Consultant pharmacist - clinic facility:**

(1) The consultant pharmacist providing services to a clinic shall.

(a) Assume overall responsibility for clinic pharmaceutical services, for clinic facility supportive personnel, and for procedures as outlined in the procedures manual, including all records of drugs procured, administered, transferred, distributed, repackaged or dispensed from the clinic.

(b) Assume responsibility for the destruction or removal of unwanted or outdated dangerous drugs, including controlled substances, as required by laws and regulations.

(c) Develop the pharmaceutical services procedures manual for the clinic establishing the system for control and accountability of pharmaceuticals.

(d) Provide in-service education and training to clinic staff, as applicable.

(e) Report in writing to the board within 10 days, any termination of services to the clinic.

(f) Comply with all other provisions of Part 10, limited drug clinics, as applicable to the individual clinic facility.

(g) The consultant pharmacist shall personally visit the clinic on the minimum basis described in Items (i) through (v) of this Subparagraph to ensure that the clinic is following set policies and procedures. Visitation schedules are as follows.

(i) Class A clinics shall have the on-site services of a consultant pharmacist for the dispensing or distribution of dangerous drugs. The consultant pharmacist shall comply with Paragraphs (4), (5) and (7) of Subsection A of 16.19.4.16 NMAC of this regulation.

(ii) Class B clinics shall have the services of a consultant pharmacist as listed below: 1. Category 1 clinics shall be visited by the consultant pharmacist at least every other month. 2. Category 2 clinics shall be visited by the consultant pharmacist at least monthly. 3. Category 3 clinics shall be visited by the consultant pharmacist at least every other week.

(iii) Class C clinics shall be visited by the consultant pharmacist at least every three months.

(iv) Class D clinic shall be reviewed at least once yearly during school session.

(v) Class E clinic shall be visited by the consultant pharmacist at least weekly for a clinic with a patient census of 150 or more or with a mobile narcotic treatment program, and at least every other week for a clinic with a patient census of less than 150.

(h) The consultant pharmacist shall review the medical records of not less than five percent of a Class B clinics patients who have received dangerous drugs (as determined by the dispensing or distribution records) since the consultant pharmacist's last visit. Such review shall be for the purpose of promoting therapeutic appropriateness, eliminating unnecessary drugs, and establishing the medical necessity of drug therapy, by identifying over-utilization or under-utilization, therapeutic duplication, drug-disease contraindications, drug-drug contraindications, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, appropriate medication indication, and/or clinical abuse/misuse. Upon recognizing any of the above, the consultant pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

(i) The consultant pharmacist shall maintain a log or record of all visits and activities in the clinic. Such record shall include a log of all medical records reviewed, along with a record of all consultant pharmacist interventions and/or consultations. This log or record shall be available for inspection by state drug inspectors upon request.

(j) Consultant pharmacist serving a Class D school based emergency medicine clinic shall:

(i) review records at least annually; this review shall include a review of the self-assessment form, receipt and disposition records, and storage records; this annual review does not require an on-site visit by the consultant pharmacist;

(ii) oversee the removal of expired or unwanted dangerous drugs; removal options are transfer to another licensed location, return to the legitimate source of supply or to a reverse distributor; remaining portions of used dangerous drugs may be destroyed by the consultant pharmacist;

(iii) review dangerous drug administration records within 72 hours of administration; this review shall be documented and available for inspection at the licensed location for three years; review shall include verification of compliance with procedures and protocols, including administration by properly trained personnel.

(iv) ensure required records are available for inspection at the licensed location for three years, including a log of comments and activities of consultant pharmacist;

(v) verify a current list of trained staff, in accordance with New Mexico department of health requirements, is maintained at the licensed location and available for inspection;

(vi) approve a policy and procedures manual outlining procedures for the receipt, storage, record keeping, administration and accountability of all dangerous drugs; this includes policies and procedures for the removal and destruction of unwanted, unused, outdated or recalled dangerous drugs; must verify compliance with all training and protocols required by the New Mexico department of health.

(k) The consultant pharmacist of a Class E clinic shall review dispensing, distribution, and supplying records since the consultant pharmacist's last visit, to ensure records are maintained accurately and in proper form. The consultant pharmacist shall also review the medical records of all clinic patients prior to initiation of take home dosing, and medical records of not less than five percent of clinic patients who have received dangerous drugs (as determined by the dispensing, distribution, or supplying records) since the consultant pharmacist's last visit. Such review shall be for the purpose of promoting therapeutic appropriateness, eliminating unnecessary drugs, and establishing the medical necessity of drug therapy, by identifying over-utilization or under-utilization, therapeutic duplication, drug-disease contraindications, drug-drug contraindications, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, appropriate medication indication, and/or clinical abuse/misuse. Upon recognizing any of the above, the consultant pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber. A log or record will be maintained in accordance with Subparagraph (i) of Paragraph (1) of Subsection C of 16.19.4.11 NMAC.

(2) A clinic may petition the board for an alternative visitation schedule as set forth in Subsection R of 16.19.10.11 NMAC

**D. Consultant pharmacists serving custodial care facilities:**

(1) Custodial care facility as used in this regulation includes: Any facility which provides care and services on a continuing basis, for two or more in-house residents, not related to the operator, and which maintains custody of the residents' drugs.

(2) Any facility which meets the requirements outlined in Paragraph (1) of Subsection D of 16.19.4.11 NMAC shall be licensed by the board, engage a consultant pharmacist, whose duties and responsibilities are indicated in 16.19.4 and 16.19.11 NMAC.

(3) Procurement of drugs or medications for residents will be on the prescription order of a licensed practitioner. Refills shall be as authorized by the practitioner. When refill authorization is indicated on the original prescription, a refill for a resident may be requested by the administrator of the licensed facility or his designee to the providing pharmacy.

(4) The administrator or a designated employee of the facility will sign a receipt for prescription drugs upon delivery.

(5) All prescription drugs will be stored in a locked cabinet or room and the key will be assigned to a designated employee or the administrator as indicated in the procedures manual.

(6) Proper storage as stipulated in the official compendium USP/NF will be the responsibility of the licensed facility.

(7) Records - the consultant pharmacist shall be responsible for the following records:

(a) incoming medications - including refills;

(b) record of administration;

(c) waste or loss; This accountability record shall be maintained on a patient log, on forms meeting requirements of the board of pharmacy.

(8) All prescription containers shall be properly labeled as required in 16.19.11 NMAC. No bulk containers of legend drugs will be kept on the premises, except in a facility with a 24-hour per day and 365 day per year on-site licensed nurse. Only the following stock dangerous drugs may be kept:

(a) tuberculin testing solution; and

(b) vaccines as recommended by the centers for disease control (CDC) and prevention's advisory committee on immunization practices and appropriate for the facility population served; and

(c) naloxone for opioid overdose.

(9) Consultant pharmacist shall include in the procedures manual the name of individual(s) responsible for the assistance with medications.

(10) It shall be the responsibility of the pharmacist to give proper training/instruction to the person(s) at the facility who have day-to-day responsibility for receipt and administration of medications to resident when adverse reactions, special diet, or any other information relative to the administration of a drug is needed by the staff.

(11) The consultant pharmacist shall be required to maintain a patient profile on each individual, if applicable to the facility and individual.

(12) The consultant pharmacist shall visit the facility no less than once a quarter or more often, commensurate with patient drug regimen review and shall be available in emergencies, when needed. A log shall be maintained indicating all visits to the facility and noting any activities or irregularities to be recorded or reported. This log shall be available for state drug inspectors' review upon request.

(13) The consultant shall be responsible for the preparation of a procedures manual outlining procedures for the receipt, storage, record keeping, maintenance of patient profiles, administration and accountability of all legend drugs and procedures for the removal and destruction of unwanted, unused, outdated or recalled drugs - controlled substances shall be handled pursuant to state and federal regulations.

**E.** No drug that has been dispensed pursuant to a prescription and has left the physical premises of the facility licensed by the board shall be dispensed or reused again except the re-labeling and reuse of pharmaceuticals may be permitted in the following situations: in a correctional facility, licensed by the board, under the following circumstances dangerous drugs, excluding controlled substances, may be re-used:

(1) the patients must reside in the same facility;

(2) the reused medication must have been discontinued from the original patient's drug regimen;

(3) the drug was never out of the possession of the licensee "keep on person" pharmaceuticals may never be reused;

(4) the drugs were originally dispensed in packaging that is unopened, single-dose or tamper-evident containers;

(5) the patient receiving the re-labeled medication must have a valid prescription/order for the medication that is to be reused;

(6) repackaging and re-labeling may only be completed on site by the consultant pharmacist designated for that facility.

**F.** The consultant pharmacist must maintain records at the facility for three years containing the following information:

- (1) date when the re-labeling occurred;
- (2) the name and ID of the patient for whom the medication was originally intended for and the date in which it was discontinued from his or her drug regimen;
- (3) the name and ID of the patient who will receive the reused medication;
- (4) the name, strength and amount of the medication being reused;
- (5) the name of pharmacist re-labeling the medication;
- (6) pursuant to 16.19.10.11 NMAC the pharmacist must label the reused pharmaceutical and maintain a dispensing log for all such re-issued pharmaceuticals and the expiration date for such re-issued drugs shall be no greater than fifty percent of the time remaining from the date of repackaging until the expiration date indicated on the original dispensing label or container.

[8/27/1990; 16.19.4.11 NMAC - Rn, 16 NMAC 19.4.11, 3/30/2002; A, 6/30/2006; A, 10/24/2014; A, 15/07/2015; A, 11/30/2021; A, 9/13/2022; A, 5/7/2024]

#### **16.19.4.12 IMPAIRED LICENSEE OR REGISTRANT:**

**A. Definitions:** For the purpose of this section:

- (1) Chemical dependence - repeated use of alcohol or drugs culminating in a pattern of chemical need.
- (2) Disciplinary authority - the board which may discipline pharmacists.
- (3) Diversion - illicit dispensing, distribution or administration of a scheduled controlled substance not in the normal course of professional practice.
- (4) Drug - a chemical substance alone or in combination including alcohol.
- (5) Drug abuse - improper or excessive use of a drug to the detriment of the individual and/or society.
- (6) Impaired pharmacist - a pharmacist who is unable to practice pharmacy with reasonable skill, competence or safety to the public because of drug abuse,

physical illness, mental illness, the aging process or loss of motor skills, sight or hearing.

(7) Licensing authority - authority that licenses/registers pharmacists.

(8) Recovering - a term used to describe an impaired pharmacist who has successfully completed the approved treatment program and is being rehabilitated in accordance with a professionally prescribed aftercare treatment. (Use of "recovering" rather than "recovered" is intended to indicate that recovery is a continuous process with no finite end point).

(9) Reinstatement - the process whereby the recovering impaired pharmacist is permitted to resume the practice of pharmacy.

(10) Treatment - the therapeutic interruption of the disease process by competent and skilled professional resources.

**B. Applicability:** This section is applicable to all licensed/registered externs, interns, pharmacists, and any other board licensee/registrant, and applicants for licensure or registration. For the purpose of this section, the word "licensee" shall include all persons licensed/registered by the board of pharmacy and applicants for license or registration.

**C. Procedures:**

(1) Impaired licensee reporting:

(a) If any person knows that a licensee is impaired, that person shall report any relevant information either to the board-contracted treatment program or to the board.

(b) When the board receives an initial report relating to an alleged impaired board licensee, the board may:

(i) refer the licensee to the examining committee who may require evaluation by the board-contracted program and require enrollment if recommended; or

(ii) refer the licensee to the board-contracted program with required enrollment if recommended; or

(iii) file a complaint to initiate disciplinary action.

(2) Disciplinary sanctions: board referral to the board-contracted program - when a licensee whose license or registration is suspended or revoked successfully completes a board approved treatment program, that licensee must appear before the board as a condition of consideration for reinstatement. The licensee must provide

documentary evidence from the [approved] contracted treatment program, stating that the licensee has reached recovery and may be allowed to practice without endangering the public.

(3) Confidentiality: The names of voluntary participants in the program and records relating to their referral and treatment are confidential provided, however, that this information may be disclosed:

(a) in a disciplinary hearing before the board and in court proceedings arising therefrom;

(b) to the board and to the pharmacist's licensing/disciplinary authorities of other jurisdictions in accordance with law;

(c) pursuant to an order of a court of competent jurisdiction;

(d) in injunctive proceedings brought by the board; and

(e) as otherwise provided by law.

(4) Civil immunity: No member of the board or the committee or any board-approved intervenor shall be liable for any civil damages because of acts or omissions which may occur while acting in good faith pursuant to the Impaired Health Care Provider Act 61-7-1 through 61-7-12 NMSA 1978.

[8/27/1990; 16.19.4.12 NMAC - Rn, 16 NMAC 19.4.12, 3/30/2002; A, 9/13/2022; A, 5/7/2024]

#### **16.19.4.13 CHANGE OF ADDRESS:**

Any registrant or licensee shall report in writing any change of address or employment to the board within 10 days.

[08-27-90; 16.19.4.13 NMAC - Rn, 16 NMAC 19.4.13, 03-30-02]

#### **16.19.4.14 ACTIVE STATUS:**

Any pharmacist who maintains competency through the development and maintenance of knowledge, skill and aptitude, to ensure continuing competence as a pharmacy professional, and is able to demonstrate to the board said competence in the practice of pharmacy shall be issued an active license. Records of continuing education or continuous professional development shall be maintained and available for inspection by the board or the board's agent. A pharmacist shall be issued an active status license upon proper application and payment of fees.

[08-27-90; 16.19.4.14 NMAC - Rn, 16 NMAC 19.4.14, 03-30-02; A, 12-15-02; A, 10-25-12]

#### **16.19.4.15 INACTIVE STATUS:**

**A.** A pharmacist not engaged or ceasing to be engaged in the practice of pharmacy for two or more years shall be issued an inactive status license upon proper application and payment of fees.

**B.** Pursuant to Section 61-11-13.B, an inactive status pharmacist applying for an active status license, who has not been actively engaged in pharmacy for two or more years, may be required to serve an internship training program and submit evidence of continuing education relating to the practice of pharmacy, as required by Section 61-11-6 and Section 61-11-13 and the board regulations.

[8/27/1990; 16.19.4.15 NMAC - Rn, 16 NMAC 19.4.15, 3/30/2002; Repealed, 12/15/2002; 16.19.4.15 NMAC - Rn, 16.19.4.16 NMAC, 12/15/2002; A, 5/7/2024]

#### **16.19.4.16 RESPONSIBILITIES OF PHARMACIST AND PHARMACIST INTERN:**

**A. The following responsibilities require the use of professional judgment and therefore shall be performed only by a pharmacist or pharmacist intern:**

- (1) receipt of all new verbal prescription orders and reduction to writing;
- (2) initial identification, evaluation and interpretation of the prescription order and any necessary clinical clarification prior to dispensing;
- (3) professional consultation with a patient or his agent regarding a prescription;
- (4) evaluation of available clinical data in patient medication record system;
- (5) oral communication with the patient or patient's agent of information, as defined in this section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;
- (6) professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized agent regarding a patient and any medical information pertaining to the prescription;
- (7) drug regimen review, as defined in Section 61-11-2L NMSA 1978;
- (8) professional consultation, without dispensing, will require that the patient be provided with the identification of the pharmacist or pharmacy intern providing the service.

**B. Only a pharmacist shall perform the following duties:**

- (1) final check on all aspects of the completed prescription including sterile products and cytotoxic preparations, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container;
- (2) evaluation of pharmaceuticals for formulary selection within the facility;
- (3) supervision of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications;
- (4) ensure that supportive personnel have been properly trained for the duties they may perform;
- (5) any verbal communication with a patient or patient's representative regarding a change in drug therapy or performing therapeutic interchanges (i.e. drugs with similar effects in specific therapeutic categories); this does not apply to substitution of generic equivalents;
- (6) any other duty required of a pharmacist by any federal or state law.

**C. Patient records.**

- (1) A reasonable effort must be made to obtain, record and maintain at least the following information:
  - (a) name, address, telephone number, date of birth (or age) and gender of the patient;
  - (b) individual medical history, if significant, including disease state or states, known allergies and drug reactions and a comprehensive list of medications and relevant devices; and
  - (c) pharmacist's comments relevant to the individuals drug therapy.
- (2) Such information contained in the patient record should be considered by the pharmacist or pharmacist intern in the exercise of their professional judgment concerning both the offer to counsel and the content of counseling.

**D. Prospective drug regimen review.**

- (1) Prior to dispensing any prescription, a pharmacist shall review the patient profile for the purpose of identifying:
  - (a) clinical abuse/misuse;

- (b) therapeutic duplication;
- (c) drug-disease contraindications;
- (d) drug-drug interactions;
- (e) incorrect drug dosage;
- (f) incorrect duration of drug treatment;
- (g) drug-allergy interactions;
- (h) appropriate medication indication.

(2) Upon recognizing any of the above, a pharmacist, using professional judgment, shall take appropriate steps to avoid or resolve the potential problem. These steps may include requesting and reviewing a controlled substance prescription monitoring report or another states' reports if applicable and available, and consulting with the prescriber and counseling the patient. The pharmacist shall document steps taken to resolve the potential problem.

**E. Prescription monitoring program (PMP) report for opioid prescriptions.**

When presented with an opioid prescription for a patient, obtaining and reviewing a PMP report for that patient can be an important tool that assists the pharmacist in identifying issues or problems that put his or her patient at risk of prescription drug abuse, overdose, or diversion. A pharmacist shall use professional judgment based on prevailing standards of practice in determining whether to obtain and review a PMP report before dispensing an opioid prescription to that patient, and shall document his or her action regarding such reports.

(1) A pharmacist shall request and review a PMP report covering at least a one year time period and another states' report, where applicable and available if;

(a) a pharmacist becomes aware of a person currently exhibiting potential abuse or misuse of opioids (i.e. over-utilization, early refills, multiple prescribers, appears sedated or intoxicated upon presenting a prescription for an opioid or an unfamiliar patient requesting an opioid by specific name, street name, color, or identifying marks, or paying cash when the patient has prescription insurance);

(b) a pharmacist receives an opioid prescription issued by a prescriber with whom the pharmacist is unfamiliar (i.e. prescriber is located out-of-state or prescriber is outside the usual pharmacy geographic prescriber care area);

(c) a pharmacist receives an opioid prescription for an unfamiliar patient who resides outside the usual pharmacy geographic patient population area;

(d) a pharmacist receives an initial prescription for any long-acting opioid formulations, including oral and transdermal dosage forms (e.g fentanyl or methadone);

(e) a pharmacist becomes aware of a patient receiving an opioid concurrently with a benzodiazepine or carisoprodol;

(2) The pharmacist shall document the review of these PMP reports.

(3) Upon recognizing any of the above conditions described in Paragraph (1) of Subsection E of 16.19.4.16 NMAC, a pharmacist, using professional judgment, shall take appropriate steps to avoid or resolve the potential problem. These steps may include consulting with the prescriber and counseling the patient. The pharmacist shall document steps taken to resolve the potential problem.

(4) After obtaining an initial PMP report on a patient, a pharmacist shall use professional judgment based on prevailing standards of practice, in deciding the frequency of requesting and reviewing further prescription monitoring reports and other states' reports for that patient. Except that PMP reports shall be reviewed a minimum of once every three months during the continuous use of opioids for each established patient. The pharmacist shall document the review of these reports.

(5) In the event a report is not immediately available, the pharmacist shall use professional judgment in determining whether it is appropriate and in the patient's best interest to dispense the prescription prior to receiving a report.

(6) A prescription for an opioid written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness is exempt from Subsection E of 16.19.4.16 NMAC. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner. The pharmacist shall document whether the patient is "terminally ill" or an "LTCF patient".

#### **F. Counseling.**

(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist or pharmacist intern shall personally offer to counsel on matters which will enhance or optimize drug therapy with each patient or the patient's agent. Upon receipt of a refill prescription drug order a pharmacy technician may query the patient or patient's agent regarding counseling by the pharmacist or pharmacist intern concerning drug therapy. Such counseling shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling which may include, in their professional judgment, one or more of the following:

(a) the name and description of the drug;

(b) the dosage form, dosage, route of administration, and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription's refill information;

(i) action to be taken in the event of a missed dose;

(j) the need to check with the pharmacist or practitioner before taking other medication; and

(k) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) [REPEALED]

(3) Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information leaflets, pictogram labels and video programs.

(4) Patient counseling, as described above and defined in this regulation shall not be required for in-patients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(5) A pharmacist shall in no way attempt to circumvent or willfully discourage a patient or patient's agent from receiving counseling. However, a pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(6) When the patient or agent is not present when the prescription is dispensed including, but not limited to, a prescription that was shipped by the mail, the pharmacist shall ensure that the patient receives written notice of available counseling. Such notice shall include days and hours of availability, and: (a) of his or her right to request counseling; and (b) a toll-free telephone number in which the patient or patient's

agent may obtain oral counseling from a pharmacist who has ready access to the patient's record. For pharmacies delivering more than fifty percent of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than six days per week. The facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

(7) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice concerning available counseling.

#### **G. [REPEALED]**

**H. Regulatory assessment.** Profiles, either electronic or hard copy, shall be available for inspection, and shall provide the capability of storing the described historical information. The profiles must demonstrate that an effort is being made to fulfill the requirements by the completion of the detail required. A patient record shall be maintained for a period of not less than three years from the date of the last entry in the profile record.

[8/27/1990; 16.19.4.16 NMAC - Rn, 16 NMAC 19.4.16, 3/30/2002; 16.19.4.16 NMAC - Rn, 16.19.4.17 NMAC, 12/15/2002; A, 2/1/2004; A, 11/30/2004; A, 1/15/2005; A, 1/31/2007; A, 8/31/2012; A, 10/25/2012; A, 10/19/2019; A, 9/13/2022; A, 5/7/2024]

#### **16.19.4.17 PHARMACIST CLINICIAN:**

**A. Purpose:** The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, registration, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 NMSA 1978 of the Pharmacist Prescriptive Authority Act.

#### **B. Initial certification and registrants.**

(1) The board may certify and register a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for certification and registration as a pharmacist clinician shall complete application forms as required by the board and shall pay a fee. The fee shall be set by the board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification and registration as a pharmacist clinician, the following must be submitted:

(a) proof of completion of 60 hour board approved physical assessment course, followed by a 150 hour, 300 patient contact preceptorship supervised by a physician or other practitioner with prescriptive authority, with hours counted only during direct patient interactions;

(b) the applicant will submit a log of patient encounters as part of the application;

(c) patient encounters must be initiated and completed within two years of the application;

(d) a pharmacist clinician requesting a controlled substance registration to prescribe controlled substance in schedule II or schedule III shall be trained in responsible opioid prescribing practices. Educational programs shall include an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction, and diversion, and awareness of the state and federal regulations of the prescribing of controlled substances.

(4) The board shall register each pharmacist certified as a pharmacist clinician.

(5) Upon certification and registration by the board, the name and address of the pharmacist clinician, (name of the supervising physician if applicable), and other pertinent information shall be enrolled by the board on a roster of pharmacist clinicians.

### **C. Biennial renewal of registration.**

(1) Renewal applications shall be submitted prior to the license expiration.

(2) Applications for renewal must include:

(a) documentation of continuing education hours, including proof of completion of 2.0 CEU 20 contact hours, at least 10 of which will be live CPE or continuing medical education (CME) approved by (ACPE) or ACCME (live programs provided by other continuing education providers may be submitted for review and approval to the board), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the board; and

(b) a pharmacist clinician with a controlled substance registration to prescribe controlled substances listed in schedule II or schedule III shall complete a minimum of 0.2 CEU (two contact hours) per renewal period in the subject area of responsible opioid prescribing practices, and

(c) a current protocol of collaborative practice signed by the supervising physician (if prescriptive authority is sought); and

(d) a copy of the pharmacist clinician's registration with the supervising physicians board (if prescriptive authority is sought); and

(e) other additional information as requested by the board.

**D. Prescriptive authority, guidelines or protocol.**

(1) Only a registered pharmacist clinician with current protocols, registered with the New Mexico medical board may exercise prescriptive authority.

(2) A pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the board. The application must include the supervising physicians' name and current medical license, protocol of collaborative practice and other information requested by the board. A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified and registered as a pharmacist clinician.

(3) The protocol will be established and approved by the supervising physician as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the board.

(4) The protocol must include:

(a) name of the physician(s) authorized to prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) ordering lab tests and other tests appropriate for monitoring of drug therapy;

(iii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing physician concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for consulting with the supervising physician, including a quality assurance program for review of medical services

provided by the pharmacist clinician, (this quality assurance program will be available for board review); and

(e) description of the scope of practice of the pharmacist clinician.

(5) Pharmacist clinicians shall not prescribe dangerous drugs including controlled substances for self-treatment or treatment of immediate family members, except under emergency situations. This will not apply to medications that may be prescribed under 16.19.26 NMAC.

#### **E. Scope of practice.**

(1) A pharmacist clinician shall perform only those services that are delineated in the protocol and are within the scope of practice of the supervising physician or alternate supervising physician(s).

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician:

(a) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(b) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Subsection A of 61-11B-3 NMSA 1978 of the Pharmacist Prescriptive Authority Act.

(4) The board may, in its discretion after investigation and evaluation, place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising physician or alternate supervising physician(s).

#### **F. Prescription monitoring program:**

(1) A pharmacist clinician exercising prescriptive authority in the prescribing of a controlled substance;

(a) shall register with the board to become a regular participant in PMP inquiry and reporting;

(b) may authorize delegate(s) to access the PMP report consistent with 16.19.29 NMAC; while a pharmacist clinician's delegate may obtain a report from the states' PMP, the pharmacist clinician is solely responsible for reviewing the PMP report and documenting the receipt and review of a report in the patient's medical record;

(c) before a pharmacist clinician prescribes for the first time, a controlled substance in schedule II, III or IV to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the pharmacist clinician shall review a PMP report for the patient for the preceding 12 months; when available, the pharmacist clinician shall review similar reports from adjacent states; the pharmacist clinician shall document the receipt and review of such reports in the patient's medical record;

(d) a PMP report shall be;

(i) reviewed a minimum of once every three months during the continuous use of an opioid, benzodiazepine, or carisoprodol for each patient; and

(ii) reviewed a minimum of once every six months during the continuous use of a controlled substance in schedule II, III or IV which is not an opioid, benzodiazepine, or carisoprodol for each patient; and

(iii) the pharmacist clinician shall document the review of these reports in the patient's medical record; nothing in this section shall be construed as preventing a pharmacist clinician from reviewing PMP reports with greater frequency than that required by this section;

(e) a pharmacist clinician does not have to obtain and review a PMP report before prescribing, ordering, or dispensing a controlled substance in schedule II, III or IV;

(i) to a patient in a nursing facility; or

(ii) to a patient in hospice care.

(f) upon review of a PMP report for a patient, the pharmacist clinician shall identify and be aware of a patient currently receiving:

(i) opioids from multiple prescribers;

(ii) opioids and benzodiazepines concurrently;

(iii) opioids for more than 12 consecutive weeks;

(iv) more than one controlled substance analgesic;

(v) opioids totaling more than 90 morphine milligram equivalents per day;

(vi) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for

specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

(g) upon recognizing any of the above conditions described in Subparagraph (f) of Paragraph (1) of Subsection F of 16.19.4.17 NMAC, the pharmacist clinician using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose; these steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, offering or arranging treatment for opioid or substance use disorder; the pharmacist clinician shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(2) Pharmacist clinicians licensed to practice in an opioid treatment program, shall review a PMP report upon a patients' initial enrollment into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II or III for the purpose of treating opioid use disorder. The pharmacist clinician shall document the receipt and review of a report in the patients' medical record.

#### **G. Complaints and appeals.**

(1) The chair of the board will appoint two members of the board, and the chair of the supervising physician board will appoint two members of the board to the oversight committee; the oversight committee will review complaints concerning the pharmacist clinician practice; the oversight committee will make a report that may include non-binding recommendations to the board regarding disciplinary action. The board can accept or reject the recommendations.

(2) Any applicant for certification or any pharmacist clinician may appeal a decision of the board in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 to 61-1-7 NMSA 1978.

[3/14/1998; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 3/30/2002; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12/15/2002; A, 9/30/2003; A, 1/31/2007; A, 5/14/2010; A, 8/16/2010; A, 10/25/2012; A, 3/23/2013; A, 6/29/2013; A, 8/12/2013; A, 10/19/2019; A, 9/14/2021; A, 9/13/2022; A, 5/7/2024]

#### **16.19.4.18 [RESERVED]**

[03-14-98; 16.19.4.18 NMAC - Rn, 16 NMAC 19.4.18, 03-30-02; Reserved, 12-15-02]

### **PART 5: INTERNSHIP TRAINING PROGRAM**

#### **16.19.5.1 ISSUING AGENCY:**

Board of Pharmacy.

[2/15/1996; 16.19.5.1 NMAC - Rn, 16 NMAC 19.5.1, 3/30/2002; A, 8/12/2013; A, 8/13/2024]

**16.19.5.2 SCOPE:**

All pharmacist interns and pharmacist preceptors.

[2/15/1996; 16.19.5.2 NMAC - Rn, 16 NMAC 19.5.2, 3/30/2002]

**16.19.5.3 STATUTORY AUTHORITY:**

Paragraph (17) of Subsection A of Section 61-11-6 NMSA 1978 requires that the Board of Pharmacy provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline. Section 61-11-11 NMSA 1978 establishes qualifications for registration as a pharmacist intern. Pursuant to Subsection B of Section 61-11-12, the Board is authorized to issue an appropriate certificate of registration or license to each person registered as a pharmacist intern.

[2/15/1996; 16.19.5.3 NMAC - Rn, 16 NMAC 19.5.3, 3/30/2002]

**16.19.5.4 DURATION:**

Permanent.

[2/15/1996; 16.19.5.4 NMAC - Rn, 16 NMAC 19.5.4, 3/30/2002]

**16.19.5.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a sentence or paragraph.

[2/15/1996; 3/02/1999; 16.19.5.5 NMAC - Rn, 16 NMAC 19.5.5, 3/30/2002; A, 8/13/2024]

**16.19.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 19 is described in 16.19.5.8 below.

[2/15/1996; 16.19.5.6 NMAC - Rn, 16 NMAC 19.5.6, 3/30/2002]

**16.19.5.7 DEFINITIONS:**

As used in the internship program.

**A. "Approved training area"** means a place for instructing an intern for licensure subject to requirements of the board.

**B. "Approved program"** means a program of training as outlined by the "standards of practice."

**C. "Computed time"** means that time credited towards the training period which begins from the date of intern registration and continues under the requirements of the approved program. Computed time shall consist of a maximum of 48 hours per week acquired in the internship program; including those hours acquired in an academic clinical pharmacy program, extern program, radiopharmacy program, or a "demonstration project" approved by the board.

**D. "Intern"** means a pharmacy student or a graduate from an accredited college of pharmacy and registered in an approved program of supervised training.

**E. "Intern certificate of registration"** means that certificate furnished by the board upon approval of, application for registration of intern, received from the intern applicant.

**F. "Training period"** means 1500 hours if in the doctor of pharmacy program of structured internship experience under the instruction of a licensed pharmacist that is a board approved or college approved preceptor, said hours to be acquired after the satisfactory completion of all courses in the first semester of college of pharmacy curriculum, or its equivalent. Satisfactory completion requires that the student be eligible to progress in the college of pharmacy curriculum.

**G. "Structured internship experience"** may be obtained through academic internship hours for a minimum of 1500 internship hours satisfactorily completed and documented in an academic setting in the doctor of pharmacy program.

**H. "Preceptor"** means a licensed pharmacist who meets those requirements for the supervision and training of an intern as stipulated in Subsection D of 16.19.5.8 NMAC of this regulation.

**I. "Supervision"** means that the preceptor shall maintain personal contact with the intern and shall be responsible for the required training at all times during the training period.

[8/27/1990; 16.19.5.7 NMAC - Rn, 16 NMAC 19.5.7, 3/30/2002; A, 12/19/2013; A, 3/22/2015, A, 8/2/2019]

#### **16.19.5.8 SUMMARY OF OBJECTIVES:**

**A.** Internship training, using academic training as a foundation, is to provide a learning experience in real life situations that will result in a complete professional, who

is competent to practice pharmacy, and render professional services on their own, without supervision, at the time of licensure. The objectives shall be:

- (1) A practically, accurately and safely trained intern.
- (2) An ethically trained intern.
- (3) A legally trained intern. Standards of practice and internship program constitute the basic implementation of the approved internship program.

**B. Instructional materials, affidavits, evaluation forms and reports.**

- (1) Forms shall be made available by the board.
  - (a) Application for registration of intern.
  - (b) Employers affidavit for internship.
  - (c) Employers affidavit for externship/clinical.
  - (d) Annual preceptors evaluation of intern.
  - (e) Annual intern evaluation of preceptor.
- (2) Reports and project assignments as may be required to accompany forms under the approved program.

**C. Requirements for approved training:** Areas may include retail and hospital pharmacies, radiopharmacies, state and county institutions, federal installations, agencies and clinics, board approved researchers, and drug manufacturers.

- (1) General requirements include.
  - (a) Current license or permit.
  - (b) No unresolved deficiencies relevant to the observance of all federal, state and municipal laws and regulations governing any phase of activity in which the facility is engaged.
  - (c) Required references: One current professional reference book of choice or internet access to approved resources.

**D. Requirements for preceptor. Each preceptor shall:**

- (1) Be certified as a preceptor by the board or be an approved preceptor for intern training in another state, by that state board of pharmacy.

- (2) Have been actively engaged in the practice of pharmacy for one year.
- (3) Not have been convicted of violation of any laws or regulations relating to pharmacy, unless this provision is waived by the board on an individual basis.
- (4) Submit all required forms, and evaluations to the board on or before the due date.
- (5) Be aware and responsible for following regulations governing legal and ethical professional conduct as outlined in the standards of practice and train the intern in this area.
- (6) Not be permitted to leave the intern alone to assume the responsibility of a pharmacist.

**E. Requirements for intern.**

- (1) Application shall be made to the board on the required application form provided by the board prior to the beginning of internship. An applicant for registration as a pharmacist intern shall have satisfactorily completed all courses in the first semester of college of pharmacy curriculum, or its equivalent. Satisfactory completion requires that the student be eligible to progress in the college of pharmacy curriculum.
- (2) The intern shall wear the standard identification tag, approved and issued by the board during any pharmacy area employment or internship training. A nominal fee is applicable. The intern will be responsible for imprinting their name on the identification tag.
- (3) The intern is responsible for the knowledge and observation of the extent of his legal liability and legal restrictions applicable under the federal, state and municipal laws and regulations.
- (4) The intern shall be responsible for ascertaining proper certification for him or herself, completion of all assignments, submittal of all forms, and reports under the approved program. After all assignments have been completed the preceptor will certify the affidavit and verify the completion of all requirements. Internship will not be evaluated or certified by the board until all forms are turned in to the board office in the form of certified affidavits.
- (5) Employment and the internship training period are not to be interpreted as being the same. An intern may work in excess of his computed time. A maximum of 48 hours per week, however, shall be considered computed time for the purpose of completing the internship requirement of 1500 hours.

(6) The intern shall notify the board of any change of address, employment or college of pharmacy suspension or disenrollment, in writing, within 10 days of such change.

(7) The intern certificate of registration and renewal shall be displayed in the training area where the intern is employed.

(8) The registration shall be renewable under the following conditions:

(a) the intern has received a degree from an ACPE accredited college of pharmacy, but has not completed the required intern hours to take the state board examination; or the intern has not completed the required number of hours and is enrolled as a pharmacy student;

(b) a candidate who has failed the NAPLEX exam or the MPJE may renew their intern registration to be valid until the next scheduled examination date; provided the renewal does not exceed the waiting period stated under 16.19.9 NMAC; or

(c) by prior approval or by direction of the board.

(9) The intern registration must be renewed annually by the last day of September.

**F. Revocation of registration.** An intern registration may be revoked or suspended upon violation of a statute or regulation; the failure to comply with the approved program or internship; or suspension or dismissal of an intern from university or college attendance; and after due notice is filed pursuant to the Uniform Licensing Act.

**G. Out-of-state training.**

(1) New Mexico registered interns wishing to earn intern hours out of state must comply with the regulations relating to internship and the approved program.

(2) Out of state registered interns or students wishing to earn internship hours in New Mexico must comply with the regulations relating to internship and the approved program of this state and shall register with the board.

(3) Computed time, under equivalent approved programs, submitted to the board by out-of-state applicants for licensure, will be evaluated.

[8/27/1990; A, 3/02/1999; 16.19.5.8 NMAC - Rn, 16 NMAC 19.5.8, 3/30/2002; A, 7/15/2002; A, 8/12/2013; A, 12/19/2013; A, 12/13/2015; A, 8/13/2024]

**16.19.5.9 [REPEALED]**

[3/7/1980...8/27/1990; A, 3/2/1999; 16.19.5.9 NMAC - Rn, 16 NMAC 19.5.9, 3/30/2002; A, 8/2/2019; R, 8/13/2024]

## **PART 6: PHARMACIES**

### **16.19.6.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.6.1 NMAC - Rp, 16 NMAC 19.6.1, 03/30/2002; A, 12/15/2020]

### **16.19.6.2 SCOPE:**

All pharmacies, resident and nonresident, as defined in Subsections S and Z of Section 61-11-2 NMSA 1978, and all persons or entities that own or operate, or are employed by, a pharmacy for the purpose of providing pharmaceutical products or services.

[16.19.6.2 NMAC - Rp, 16 NMAC 19.6.2, 3/30/2002; A, 12/15/2020]

### **16.19.6.3 STATUTORY AUTHORITY:**

Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of Pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.

[16.19.6.3 NMAC - Rp, 16 NMAC 19.6.3, 03-30-02]

### **16.19.6.4 DURATION:**

Permanent.

[16.19.6.4 NMAC - Rp, 16 NMAC 19.6.4, 03-30-02]

### **16.19.6.5 EFFECTIVE DATE:**

March 30, 2002, unless a later date is cited at the end of a section.

[16.19.6.5 NMAC - Rp, 16 NMAC 19.6.5, 03-30-02]

### **16.19.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 19 is to ensure the safe and competent delivery of quality pharmaceutical products and services to the public by establishing standards for the operation of pharmacies, including but not limited to minimum space requirements and standards for equipment, accessories, personnel, dispensing, labeling and advertising.

**16.19.6.7 DEFINITIONS:**

**A. "Contracted"** means having a written agreement (to include "business associate agreements" as required by federal law) between parties to ensure the authenticity and prescribing authority of each prescriber transmitting prescriptions, sufficient security to prevent the fraudulent creation or alteration of prescriptions by unauthorized parties, and assurance that "network vendors" or electronic prescription transmission intermediaries involved in the transmission and formatting of the prescription can provide documentation of chain of trust of who has had access to prescription content. Electronic prescription transmissions by non "contracted" parties will be invalid.

**B. "Drug utilization review"** (DUR) means evaluating or reviewing the patient record in order to determine the appropriateness of the drug therapy for a patient and which includes the prospective drug review in 16.19.4 NMAC and the verification of data entries including the correct interpretation and input of written prescriptions and the drug regimen review (Subsection L of Section 61-11-2 NMSA 1978) as required by the board.

**C. "Electronically transmitted prescriptions"** means communication of original prescriptions, refill authorizations, or drug orders, including controlled substances to the extent permitted by federal law, from an authorized licensed prescribing practitioner or his or her authorized agent directly or indirectly through one or more "contracted" parties to the pharmacy of the patient's choice by electronic means including, but not limited to, telephone, fax machine, routers, computer, computer modem or any other electronic device or authorized means.

**D. "Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a prescription record.

**E. "Network vendor"** means prescription transmission intermediary "contracted" by business associate agreements with appropriate parties involved, including point of care vendors, pharmacy computer vendors, pharmacies, to transmit the prescription information only having access to the prescription content to make format modification to facilitate secure and accurate data transmission in a format that can be received and deciphered by the pharmacy.

**F. "Point of care vendor"** means an entity contracted with a prescriber to generate or transmit electronic prescriptions authorized by a practitioner directly to a pharmacy or to a "contracted" intermediary or "network vendor", who will ultimately transmit the prescription order to a patient's pharmacy of choice. Vendor must provide an unbiased listing of provider pharmacies and not use pop-ups or other paid advertisements to influence the prescriber's choice of therapy or to interfere with patient's freedom of choice of pharmacy. Presentation of drug formulary information, including preferred and non-preferred drugs and co-pay information if available, is allowed.

**G. "Prescriber"** means a licensed practitioner who generates a prescription order and assumes responsibility for the content of the prescription.

**H. "Remote pharmacist DUR site"** means a remote pharmacist practice site electronically linked to the New Mexico licensed pharmacy it operates through at which a pharmacist conducts drug utilization reviews. No dispensing will occur from a remote pharmacist DUR site.

[16.19.6.7 NMAC - Rp, 16 NMAC 19.6.7, 03-30-02; A, 06-30-06; A, 12-15-08]

**16.19.6.8 PROCEDURE FOR NEW LICENSURE OF BUSINESS FOR DISTRIBUTION OF DRUGS AND FOR TRANSFER OF OWNERSHIP OF LICENSED BUSINESSES:**

**A.** Applicant shall submit required application and fee to the board of pharmacy office.

**B.** The board, at its discretion, may require all persons interested in the ownership, operation or management, pursuant to the applicant, to meet with the board to determine that all persons are qualified and cognizant of the laws and regulations pertaining to the distribution of dangerous drugs.

**C.** After preliminary approval of the application, the applicant shall submit a "request for inspection" and the inspection fee, where applicable, in advance of fourteen days of the requested date for inspection. All subsequent "request for inspection" shall be submitted in advance of 14 days of the requested date for inspection.

**D.** The board shall review the license application and the inspection report at its next meeting and shall cause the license to be issued or denied.

**E.** The license provided for herein shall terminate upon the sale or transfer of ownership. Operation of a business subsequent to the date of such transfer or sale without a new application and approval by the board shall constitute a violation of the law under Subsection I of Section 61-11-14 NMSA 1978, and is subject to the penalties contained in the Pharmacy Act. Any pharmacy license exempt from minimum standards by the Pharmacy Act, Section 61-11-26 NMSA 1978, will be considered to be a new license upon change of ownership and will be required to meet the standards set forth in the board of pharmacy 16.19.6.10 NMAC, before a new license will be issued for such pharmacy. Note change in ownership as defined in 16.19.6.20 NMAC.

[16.19.6.8 NMAC - Rp, 16 NMAC 19.6.8, 03-30-02]

**16.19.6.9 PHARMACIST-IN-CHARGE:**

**A.** The term "pharmacist-in-charge" means a pharmacist licensee in the state of New Mexico who has been designated pharmacist-in-charge pursuant to Section 61-11-

15 NMSA 1978. Failure to perform any of the following duties will constitute a violation of Paragraph (1) of Subsection A of Section 61-11-20 NMSA 1978. It shall be the duty and responsibility of the pharmacist-in-charge consistent with the regulations governing professional conduct and in compliance with all applicable laws and regulations:

**(1)** to establish for the employees of the pharmacy, written policies and procedures for procurement, storage, compounding and dispensing of drugs:

**(a)** the procurement, storage, compounding and dispensing of drugs;

**(b)** the operation and security for remote pharmacist drug utilization review sites where applicable;

**(c)** error prevention and reporting procedures according to the requirements of 16.19.25.8 NMAC;

**(2)** to supervise all of the professional employees of the pharmacy;

**(3)** to supervise all of the non-professional employees of the pharmacy in so far as their duties relate to the sale and storage of drugs;

**(4)** to establish and supervise the method and manner for the storing and safekeeping of drugs;

**(5)** to establish and supervise the record keeping system for the purchase, sale, possession, storage, safekeeping and return of drugs;

**(6)** to notify the board immediately upon his knowledge that his service as pharmacist-in-charge have been or will be terminated;

**(7)** inform the board in writing, within 10 days, of the employment or termination of any pharmacy technician; the information shall include name and location of pharmacy, name of employee, social security number, and date of hire or termination;

**(8)** to complete the New Mexico board of pharmacy self-assessment inspection form as provided by the board and to submit the signed and dated form with the pharmacy renewal application to the board office.

**B.** Every licensed pharmacy will be under continued daily supervision of a registered pharmacist who shall have direct control of the pharmaceutical affairs of the pharmacy.

**C.** Upon termination of the pharmacist-in-charge each pharmacy owner shall immediately designate a successor pharmacist-in-charge and immediately notify the state board of pharmacy of such designation. The owner shall request the license application form to be completed by the successor pharmacist-in-charge and filed with

the board within 10 days. The failure to designate a successor pharmacist-in-charge and notify the board of such designation shall be deemed a violation of the Pharmacy Act, Section 61-11-15 NMSA 1978.

[16.19.6.9 NMAC - Rp, 16 NMAC 19.6.9, 03-30-02; A, 06-30-06; A, 12-15-08]

#### **16.19.6.10 MINIMUM STANDARDS:**

**A.** The restricted area to be occupied by the prescription department shall be an undivided area of not less than 240 square feet. The floor area shall extend the full length of the prescription compounding counter. This area shall provide for the compounding and dispensing and storage of all dangerous or restricted drugs, pharmaceuticals, or chemicals under proper condition of sanitation, temperature, light, ventilation, segregation and security. No space in this area shall provide for an office, auxiliary store room or public restroom(s).

(1) A private restroom, for exclusive use by the pharmacy staff, may be attached to the restricted area. This restroom does not count as square footage for the restricted area.

(2) An office for the exclusive use by the pharmacy may be attached to the restricted area. No general store accounting functions may be performed in this office. This area will not be considered as square footage for the restricted area.

(3) An auxiliary storage area for the exclusive use of the pharmacy may be attached to the restricted area. No items may be stored in this area that are not directly related to the operations performed in the restricted area. This area will not be considered as square footage for the restricted area.

(4) Each pharmacy shall provide facilities whereby a pharmacist may professionally counsel a patient or a patients' agent and protect the right to privacy and confidentiality.

**B.** An exception to the minimum space footage requirement may be considered by the board on an individual basis. The board may consider such factors as:

(1) Rural area location with small population.

(2) No pharmacy within the same geographical area.

(3) No prescription area of less than 120 square feet will be acceptable.

(4) All special waivers will be subject to review annually for reconsideration.

**C.** The prescription compounding counter must provide a minimum of 16 square feet of unobstructed compounding and dispensing space for one pharmacist and a

minimum of 24 square feet for two or more pharmacists when on duty concurrently. The counter shall be of adequate height of at least 36 inches, if necessary, five-percent or at least one work station will comply with the American with Disabilities Act.

**D.** The restricted floor area shall be unobstructed for a minimum width of 30 inches from the prescription compounding center.

**E.** The pharmacy restricted area shall be separated from the merchandising area by a barrier of sufficient height and depth to render the dangerous drugs within the pharmacy inaccessible to the reach of any unauthorized person. All windows, doors, and gates to the restricted area shall be equipped with secure locks. The restricted area shall be locked in the absence of a pharmacist on the premises.

**F.** The restricted area shall contain an adequate sink with hot and cold water.

**G.** The restricted area shall contain a refrigerator capable of maintaining the adequate temperature.

**H.** The restricted area of a retail pharmacy established in conjunction with any other business other than a retail drug store, shall be separated from the merchandising area of the other business by a permanent barrier or partition from floor to roof with entry doors that may be securely locked when a pharmacist is not on duty.

[16.19.6.10 NMAC - Rp, 16 NMAC 19.6.10, 03-30-02; A, 05-14-10]

#### **16.19.6.11 MINIMUM EQUIPMENT AND ACCESSORY STANDARDS:**

The pharmacy shall have the necessary equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparations of drugs and parenteral products appropriate to the scope of pharmaceutical services provided. The following items shall be in the pharmacy; an updated reference source, appropriate to each practice site, either electronic or paper version; and one copy of the most recently published New Mexico pharmacy laws, rules and regulations and available revisions, either electronic or paper version.

[16.19.6.11 NMAC - Rp, 16 NMAC 19.6.11, 03-30-02; A, 01-15-05; A, 01-15-08; A, 05-14-10; A, 01-20-13; A, 06-28-14]

#### **16.19.6.12 NOTICE OF EMPLOYEE CHANGE:**

Proprietors of pharmacies must report on the annual application for renewal of pharmacy license the names and registry numbers of all registered pharmacist employees and registered interns and shall notify the secretary of the board of pharmacy within 10 days, in writing, of any change in personnel.

[16.19.6.12 NMAC - Rp, 16 NMAC 19.6.12, 03-30-02]

**16.19.6.13 CONSPICUOUS DISPLAY REQUIREMENTS NOTICE OF PERMANENT CLOSURE OF PHARMACIES:**

**A.** Every person shall have his or her license or registration and the license for the operation of the business conspicuously displayed in the pharmacy or place of business to which it applies or in which he or she is employed. All articles, including the following shall be in the vicinity of all prescription departments in full view of patrons:

- (1) the pharmacy license
- (2) the prohibition of the return of drugs sign
- (3) the current board of pharmacy inspection report
- (4) the current controlled substance registration
- (5) the "patient's bill of rights" as approved by the board.

**B.** Name tags, including job title and the designation R.Ph., shall be required of all pharmacists while on duty.

**C.** Pharmacies permanently closing shall notify the public and the board of pharmacy of the closure at least 30 days prior to the final day of service. The notice shall include the last date of service and the name, address, and phone number of the location where patient records will be transferred and /or stored. Notice must also occur by one of the following; newspaper notice, radio broadcast, or other method as approved by the executive director of the board.

[16.19.6.13 NMAC - Rp, 16 NMAC 19.6.13, 03-30-02; A, 03-01-08; A, 12-05-10]

**16.19.6.14 PROHIBITION OF RESALE OF DRUGS:**

**A.** Drugs, medicines, sickroom supplies and items of personal hygiene shall not be accepted for return or exchange of any pharmacist or pharmacy after such articles have been taken from the premises where sold or distributed.

**B.** Prescriptions returned to stock: The pharmacy shall maintain a record of prescriptions which are returned to stock. The record shall include patient name, date filled, prescription number, drug name, drug strength, and drug quantity. The record shall be retrievable within 72 hours.

[16.19.6.14 NMAC - Rp, 16 NMAC 19.6.14, 03-30-02]

**16.19.6.15 DISPOSITION OF DANGEROUS DRUGS OR CONTROLLED SUBSTANCES:**

Permission shall be obtained, in writing, from the board, after inspection, before any inventory of dangerous drugs or controlled substances may be sold, transferred, disposed of, or otherwise removed from the current premises. All sales shall be subject to the laws of the state.

**A. Dispensed pharmaceuticals, collection and disposal:** Patient dispensed legend and OTC medications that are unwanted or expired may be returned to an authorized pharmacy for destruction. The pharmacy must submit a protocol or subsequent changes to the board or the board's agent, for approval. Once approved the pharmacy is authorized to collect pharmaceuticals for destruction. A protocol is to be submitted to the board of pharmacy for staff approval. Such protocol must include:

- (1) Secure and enclosed collection unit that does not allow for unauthorized access.
- (2) A description of the dedicated area for collection unit inside the pharmacy within site of the authorized pharmacy staff.
- (3) Direction of collection that allows for safe and secure disposition.
- (4) Name of contracted disposal company that is licensed for pharmaceutical destruction.
- (5) Frequency of collection and destruction by the disposal company.
- (6) Records of collection and destruction supplied by the disposal company.

**B. Items accepted at a take back site may include:**

- (1) dangerous drugs (prescription drugs);
- (2) controlled substances if authorized under federal law or rule;
- (3) over-the-counter medications;
- (4) veterinary medications;
- (5) medicated ointments and lotions;
- (6) liquid medication in glass or leak-proof containers.

**C. Items NOT accepted at a take back site may include:**

- (1) needles;
- (2) thermometers;

- (3) bloody or infectious waste;
- (4) personal care products;
- (5) controlled substances (unless authorized by federal law);
- (6) hydrogen peroxide;
- (7) empty containers;
- (8) business waste.

D. Collected medications are not for re-dispensing.

E. Directions for take back for patients and list of accepted and non-accepted products must be posted on the collection unit.

F. Suspension of the pharmacy's authority to collect and dispose of dispensed pharmaceutical shall occur upon violation of the approved protocol. The pharmacy may petition the board for removal of that suspension.

[16.19.6.15 NMAC - Rp, 16 NMAC 19.6.15, 03-30-02; A, 05-14-10]

#### **16.19.6.16 ROBBERY, BURGLARY, FIRE, FLOOD REPORT:**

A. When a pharmacy is involved in a robbery, burglary, fire, flood or any unusual event in which dangerous drugs might be missing or damaged, the owner shall immediately file with the board a signed statement of the circumstances of such occurrence and evidence that local authorities were notified, if applicable.

B. When a business is sold or an ownership transfer is initiated and a new license application is submitted, the board may require examination of any stock which may be determined to be adulterated, deteriorated or questionable quality. Merchandise considered to be unfit for sale may be embargoed if the owner does not voluntarily consent to destruction. In the event the drugs are embargoed, the owner of the product must bear the expense of assay to prove purity, strength and product quality.

[16.19.6.16 NMAC - Rp, 16 NMAC 19.6.16, 03-30-02]

#### **16.19.6.17 SIGNS TO BE REMOVED WHEN PHARMACY DISCONTINUES OPERATION:**

When a pharmacy discontinues operation, the permit issued by the board shall be immediately surrendered to the board office, all drug signs and symbols, either within or without the premises, shall be immediately removed; all drugs, devices, poisons shall be removed or destroyed:

**A. Signs:** Any store, shop, laboratory or place of business which has upon it or in it a sign or words "pharmacist", "pharmaceutical chemist", "druggist", "pharmacy", "drug store", "drugs", "drug sundries", "prescriptions", or any of these words, or words of similar import either in English or any other language, or which is advertised by any sign containing any of these words, is defined by law to be a drug store or pharmacy and must obtain a license from the board of pharmacy. Any such place of business not licensed by the board shall remove any such sign or words which it may have upon or in it.

**B. Waiver:** The board may waive this requirement pursuant to a petition for waiver. Waivers granted by the board are limited to use by the party and business specified in the waiver document and other limitations set forth. Such petitions shall include:

- (1) name of the party;
- (2) address of the business;
- (3) type of business;
- (4) reason for waiver request;
- (5) supporting documents; and
- (6) photographs of the business demonstrating the use of the sign or words in question.

**C. Use of pharmacy, pharmacist and other names:** Any advertiser, as defined by Paragraph (2) of Subsection A of 16.19.6.21 NMAC, using the names "pharmacist", "pharmacy", "drug store", "druggist", "drug sundries", "prescriptions", or any other combination of these words or any other words of similar import that indicate to the public that the advertiser is a pharmacy, is prohibited unless the following occurs:

- (1) the advertiser is or has a licensed pharmacy in New Mexico; or
- (2) the advertiser is or has a non-resident pharmacy licensed in New Mexico;  
or
- (3) the advertiser has a clear statement, included with such advertisement, stating to the effect, "the advertiser is not a licensed pharmacy and does not fill prescriptions or practice pharmacy"; and
- (4) the advertiser must disclose the name of the licensed pharmacy where prescriptions are filled for New Mexico residents and such disclosure would be clear and concise; and

(5) any "confidential information", as defined by Subsection D of Section 61-11-2 NMSA 1978, is obtained by persons authorized by law to receive such information.

(6) pharmacists registered in this state may advertise their professional services except such advertisement shall not solicit prescription drug (dangerous drug) sales unless in conjunction with a licensed pharmacy.

[16.19.6.17 NMAC - Rp, 16 NMAC 19.6.17, 3/30/2002; A, 9/30/2003; A, 12/15/2020; A, 10/10/2023]

#### **16.19.6.18 LABELING OR TO LABEL:**

As used in the Pharmacy Act, Section 61-11-2 NMAC 1978, "labeling" or "to label". The act of affixing, applying or attaching a display of written, printed or graphic matter upon or in the immediate container of any human use drug, repackaging or dispensed on the order of a practitioner, shall be defined as "labeling" or "to label", and is a function restricted to registered pharmacists and registered pharmacist interns as required by the Pharmacy Act, Section 61-11-21 NMSA 1978, except that the pharmacist labeling requirement shall not apply to board Regulation Article 15. As used in the Drug and Cosmetic Act Section 26-1-11 NMSA 1978 "label" or "labeling" means the manufacturer or repackagers label required on the commercial container, when such substance is offered for sale, or distributed by the manufacturer or repackager.

**A. Prescription drug dispensing container requirements:** Prescription drug dispensing container requirements to be included on the label by the manufacturer. Both pharmacist and drug manufacturer are responsible for packaging a drug product in accordance with packing requirements specified in the monographs for drug products recognized in the official compendium as defined in Subsection L of Section 26-1-2 NMSA 1978. All drug products introduced or delivered into interstate commerce after August 27, 1978, must provide information for the pharmacist to be utilized when dispensing the drug to maintain the identity, strength, quality and purity of the product. The compendia standards for proper dispensing containers became effective on April 1, 1977, and applies to both containers used by manufacturers and containers used by pharmacists for dispensing compendia drugs. Manufacturers of non-compendia drug products must use terminology defined in an official compendium to describe a suitable container for dispensing the product. Proper container descriptions include standards of tightness of seal (well-closed or tight), light-resistant, and moisture permeability and other special instruction such as "Keep in a cold place, "Avoid exposure to excessive heat", etc.

**B. Dispensing container information:** The label attached to the dispensing container shall identify the contents by generic or trade name, or a compounded prescription containing more than three drugs or trade name products, may be labeled "Compound" at the discretion of the pharmacist or prescribing physician, and shall contain the expiration date, per USP/NF's guidelines, as well as the quantity dispensed. This information required by the Drug and Cosmetic Act, Subsection B of Section 26-1-

16 NMSA 1978; except, to those instances where the prescribing practitioner specifically requests that such information be omitted from the label.

[16.19.6.18 NMAC - Rp, 16 NMAC 19.6.18, 03-30-02]

**16.19.6.19 CHANGE IN LOCATION OF A PHARMACY:**

Before a licensed pharmacy changes the location of the business, or the physical dimensions or elements of physical security, a new application shall be submitted to the board, setting forth such changes. Upon approval and completion of the change, a request for inspection will be submitted to the chief inspector. There will be no charge for the new application, but the inspection will carry the same fee as applies for a new pharmacy inspection.

[16.19.6.19 NMAC - Rp, 16 NMAC 19.6.19, 03-30-02]

**16.19.6.20 TRANSFER OF OWNERSHIP:**

A transfer of ownership occurs upon.

**A.** The sale of the pharmacy to another individual or individuals by the present owner.

**B.** The addition or deletion of one or more partners in a partnership.

**C.** The death of a singular or sole owner.

**D.** The change of ownership of thirty percent or more of the voting stock of a corporation since the issuance of the license or last renewal application. A new license application will be required to be filed in each of the above circumstances. As stated in the Pharmacy Act, Subsection I of Section 61-11-14 NMSA 1978, licenses are not transferable, and shall expire on December 31 of each year unless renewed.

[16.19.6.20 NMAC - Rp, 16 NMAC 19.6.20, 03-30-02]

**16.19.6.21 GUIDELINES TO PREVENT FALSE AND MISLEADING ADVERTISING:**

**A. Definitions as used in this section:**

**(1)** "advertising" or "to advertise" means to inform customers by any means such as, but not limited to, shelf tags, preticketing, display card, handbills, billboards, and advertisements in the newspapers, magazines, the internet, radio and television or by mail;

(2) **"advertiser"** means any person or firm which advertises dangerous drug prices or services, defined as the practice of pharmacy (Subsection BB of Section 61-11-2 NMSA 1978), to consumers in this state;

(3) **"article"** includes services as well;

(4) **"price disclosure"** is defined as in-store verbal disclosure of price, disclosure of prices by telephone, price lists, posters in-store containing retail prices for selected drugs indicating "our price".

#### **B. Guidelines:**

(1) An advertisement shall in no way stimulate demand or promote overuse or abuse of a dangerous drug or drugs. Prescription drugs are so intimately related to the public health that any ad which tends to promote overuse or abuse of a drug would have an adverse effect on public health, safety and welfare.

(2) The advertiser who does more than state his asking price must tell the truth in such a way that it cannot be misunderstood. Truthful price advertising, offering real bargains may be a benefit to all. But the advertiser must shun sales "gimmicks" and/or adverbs which infer exclusively when they are not factual, i.e., "cheapest", "lowest", which lure customers into a belief that they are getting bargains when in fact they are not.

(3) No comparisons should be made or implied between the price at which an article is offered for sale and some other reference price unless the nature of the reference price is explicitly identified and the advertiser has a reasonable basis to substantiate the reference price.

(4) Comparative pricing is generally defined as the practice whereby a firm or business displays, states, or advertises, directly or by implication two or more prices for his product or services; the actual current prices and another reference price. A reference price may not be implied by a statement such as "same forty percent" unless it is substantiated pursuant to Paragraph (3) of Subsection B of 16.19.21 NMAC.

(5) No advertisement should be made expressly or impliedly offering lowered prices as a result of some unusual circumstances, unless the circumstances are true and the prices are actually lower than the advertiser's usual prices (i.e., clearance or special purchases, etc.)

(6) A firm should not advertise a "sale" or other temporary change in prices without disclosing as explicitly as possible, the terms of quantities available, and the period in which the advertised prices will be available.

(7) An advertised price for an article should not be compared with a price for another article unless the price for the article is explicitly identified, and the advertiser

has a reasonable basis to substantiate the existence of that price. In addition, one of the following conditions must be met:

(a) the comparability of the two articles can be established by reference to established standards of identity or performance; or

(b) the advertiser has otherwise established that the two articles are substantially identical in all significant respects; or

(c) the article is specifically identified.

(8) A retailer can be reasonably certain that his product is substantially identical to other products if he knows that all are made by the same manufacturer to the same specifications.

**C. Prescription drug advertising:** Every advertisement other than price disclosure of a prescription drug shall contain the following information:

(1) the proprietary or trade name of the drug product;

(2) the established name of the drug product;

(3) the established name and quantity of each active ingredient in the drug product;

(4) the declaration of the established name and quantity of each active ingredient is optional if the drug product contains more than three active ingredients. However, this option does not apply to drug products containing aspirin, phenacetin, and caffeine in combination with one or two other active ingredients;

(5) the name of the manufacturer, packager or distributor;

(6) the dosage form;

(7) the price charged for a specific number of dosage units or quantity of the drug product;

(8) the price is to include all charges to the customer;

(9) the following services are considered to be included in the price to the consumer. If any of these services are not included in the price, the advertisement shall indicate those not provided:

(a) professional fees or cost of product and mark-up;

(b) patient Rx records;

- (c) delivery services;
- (d) charge privileges;
- (e) pharmaceutical counseling;
- (f) emergency after hours service;
- (g) tax or insurance information;
- (h) the hours pharmaceutical services are available to the customer.

**D. Prohibited drug advertising:**

(1) There shall be no advertising, other than price disclosure, of a prescription drug or OTC drug which is a controlled substance regulated by the New Mexico Controlled Substances Act.

(2) There shall be no advertising, other than price disclosure, of a prescription drug product that is required by the federal Food and Drug Administration to contain a box warning statement on the label indicating there is evidence of significant incidence of fatalities or serious damage associated with the use of the drug product.

(3) Advertisements are not permitted for a drug evaluated by the drug efficacy study group, and for which no claim has been evaluated as higher than "possibly effective".

[16.19.6.21 NMAC - Rp, 16 NMAC 19.6.21, 03-30-02; A, 09-30-03]

**16.19.6.22 COMPUTERIZED PRESCRIPTION INFORMATION:**

**A.** Computers for the storage and retrieval of prescription information do not replace the requirement that a prescription written by a practitioner or telephoned to the pharmacist by a practitioner and reduced to hardcopy be retained as permanent record. Computers shall be maintained as required by the Pharmacy Act; the Drug, Device, and Cosmetic Act; the Controlled Substance Act; and the board of pharmacy regulations.

**B.** The computer shall be capable of producing a printout of prescription information within a 72 hour period on demand, with certification by the practitioner stating it is a true and accurate record. Requested printouts include: patient specific; practitioner specific; drug specific; or date specific reports. The printout shall include:

- (1) the original prescription number;
- (2) the practitioner's name;

- (3) full name and address of patient;
- (4) date of issuance of original prescription order by the practitioner and the date filled;
- (5) name, strength, dosage form, quantity of drug prescribed;
- (6) total number of refills authorized by the practitioner;
- (7) the quantity dispensed is different than the quantity prescribed, then record of the quantity dispensed;
- (8) in the case of a controlled substance, the name, address and DEA registration number of the practitioner and the schedule of the drug;
- (9) identification of the dispensing pharmacist; computer-generated pharmacist initials are considered to be the pharmacist of record unless overridden manually by a different pharmacist who will be the pharmacist of record.

**C.** Permanent records of electronic prescriptions, transmitted directly over approved secure electronic prescribing networks or other board approved transmissions standards, do not have to be reduced to hardcopy provided the following requirements are met.

- (1) Electronic prescription information or data must be maintained in the original format received for 10 years.
- (2) Documentation of business associate agreements with "network vendors", electronic prescription transmission intermediaries and pharmacy software vendors involved in the transmission and formatting of the prescription who can provide documentation of chain of trust of who has had access to prescription content is available.
- (3) Reliable backup copies of the information are available and stored in a secure manner as approved by the board.

(4) All elements required on a prescription and record keeping requirements are fulfilled including

identification of the dispensing pharmacist of record.

**D.** Electronically archived prescription records of scanned images of indirect written or faxed prescriptions are permitted provided the following requirements are met:

- (1) images of scanned prescriptions are readily retrievable and can be reproduced in a manner consistent with state and federal laws within a 72 hour period;

**(2)** the identity of the pharmacist approving the scanned imaging and of the pharmacist responsible for destroying the original document after three years is clearly documented;

**(3)** the electronic form shows the exact and legible image of the original prescription;

**(4)** the original paper prescription document must be maintained for a minimum of three years and the electronic image of the prescription for 10 years;

**(5)** the prescription is not for a controlled substance except as allowed by federal law;

**(6)** reliable backup copies of the information are available and stored in a secure manner as approved by the board;

**(7)** all elements required on a prescription and record keeping requirements are fulfilled including identification of the dispensing pharmacist of record;

**(8)** the original paper prescription document for a non-controlled substance must be maintained on the licensed premises for a period of 120 days from the initial date of dispensing;

**(9)** the original paper prescription document for a controlled substance must be maintained on the licensed premises for a period of two years from the initial date of dispensing.

**E.** Electronic records of prescriptions and patient prescription records may be stored offsite on secure electronic servers provided the following requirements are met:

**(1)** records are readily retrievable;

**(2)** all Health Insurance Portability and Accountability Act and board of pharmacy patient privacy requirements are met;

**(3)** reliable backup copies of the information are available and stored in a secure manner as approved by the board.

**F.** Original paper prescription documents may be stored offsite after the minimum period of storage on the licensed premises has been reached, provided that the following requirements are met:

**(1)** the storage area is maintained so that records are secure and prevented from unauthorized access;

(2) the storage area is maintained with appropriate fire suppression safeguards and climate control capabilities;

(3) all Health Insurance Portability and Accountability Act and board of pharmacy patient privacy requirements are met;

(4) the pharmacist-in charge maintains a record-keeping system that records storage location(s) and documents an inventory of original paper prescription documents that are maintained offsite;

(5) original paper prescription records must be able to be produced within three business days upon the request of the board or an authorized officer of the law.

[16.19.6.22 NMAC - Rp, 16 NMAC 19.6.22, 03-30-02; A, 06-30-06; A, 05-14-10]

### **16.19.6.23 PRESCRIPTIONS:**

**A.** A valid prescription is an order for a dangerous drug given individually for the person for whom prescribed, either directly from the prescribing practitioner to the pharmacist, or indirectly by means of a written order signed by the practitioner. Signed by the practitioner includes handwritten signature, stamped or printed images of the practitioners handwritten signature or electronic signature as defined in Paragraph (1) of Subsection F of 16.19.6.23 NMAC. Every prescription record shall contain the name and address of the prescriber, the name and address of the patient, the name and strength of the drug, the quantity prescribed, directions for use, the date of issue, and preferably the diagnosis or indication.

**B.** A prescription may be prepared by a secretary or agent, i.e., office nurse under supervision, for the signature of the practitioner and where applicable; a prescription may be communicated to the pharmacist by an employee or agent of the registered practitioner. The prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulation.

**C.** Prescription information received from a patient, other than a signed written prescription from a practitioner, has no legal status as a valid prescription. A pharmacist receiving such prescription information must contact the prescribing physician for a new prescription.

**D.** Exchange of prescription information between pharmacies for the purpose of filling or refilling is authorized under the following conditions only.

(1) The original prescription entry shall be marked in the pharmacy computer system. Pharmacies not using a computer shall mark the hard copy.

(2) The prescription shall indicate that it has been transferred and pharmacy location and file number of the original prescription.

**(3)** In addition to all information required to appear on a prescription, the prescription shall show the date of original fillings as well as the number of valid refills remaining.

**(4)** An original unfilled non-controlled substance prescription that is transferred shall be subject to the same record keeping requirements as filled prescriptions.

**(5)** Transfer or forwarding of controlled substance prescriptions shall not be allowed electronically except as permitted by federal law.

**(6)** A pharmacy may not refuse to transfer original prescription information to another pharmacy who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be done in a timely manner.

**E. Fax Machines:** Fax prescription means a valid prescription which is transmitted by an electronic device which sends an exact image of a written prescription signed by the practitioner to a pharmacy. The prescribing of controlled substances by fax must comply with all state and federal laws. No pharmacist may dispense a drug solely on the basis of a prescription received by fax except under the following circumstances:

**(1)** the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the prescription consistent with existing federal and state statutes and regulations;

**(2)** the original fax prescription shall be printed and stored in the pharmacy as required by state and federal law and board rules, and may serve as the record of the prescription;

**(3)** the fax prescription shall include name and fax number of the pharmacy, the prescriber's phone number, for verbal confirmation, time and date of transmission, as well as any other information required by federal and state statute or regulation;

**(4)** in institutional practice, the fax machine operator must be identified by a statement in the facility policy and procedures manual;

**(5)** the receiving fax machine must be physically located in a restricted area to protect patient confidentiality;

**(6)** electronically generated prescriptions may be transmitted directly to the pharmacy via telephone lines or indirectly through one or more "contracted" parties via valid "network vendors" directly to a pharmacy's fax machine;

**(7)** electronically generated prescriptions faxed from a practitioner's office computer shall include the prescriber's name, phone and fax number, time and date of

transmission as well as any other information required by federal and state statutes or regulation;

**(8)** electronically generated prescriptions faxed from a practitioner's "contracted" "point of care vendor" directly to the pharmacy must include the name and phone number of the "point of care vendor";

**(9)** "point of care vendors", "network vendors" or other prescription transmission intermediaries not compliant with the requirements of this section will be considered an invalid source;

**(10)** the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of prescriptions consistent with federal and state statutes and regulations; in the absence of unusual circumstances requiring further inquiry, the pharmacy and each of its associated pharmacists is entitled to rely on the accuracy and authenticity of electronically transmitted prescriptions from a "point of care vendor" or "network vendor" which has not been prohibited by the board.

**F. Electronic transmission of prescriptions.**

**(1)** Requirements for electronically transmitted prescriptions or drug orders, including controlled substances as permitted by federal law.

**(a)** The receiving computer or other similar electronic device used to view the prescription shall be located within the pharmacy or pharmacy department with only authorized personnel having access.

**(b)** The electronically transmitted prescription or drug order shall contain all information required by state and federal law including the prescriber's name, address and phone number, time and date of transmission.

**(c)** The prescribing practitioner's electronic signature, or other secure method of validation shall be provided with the electronically transmitted prescription or drug order.

**(d)** The electronically transmitted prescriptions may serve as the hard copy record of the prescription so long as the electronically transmitted prescription information can be stored in the original format as when received and is readily retrievable so as to comply with federal and state recordkeeping requirements.

**(e)** The electronic transmission of a prescription or drug order shall maintain patient confidentiality with no intervening person or other entity accessing or altering the prescription content. The accessing or altering prohibition does not include format modification for transmission purposes by approved secure electronic prescribing networks.

**(f)** Electronically transmitted prescriptions or drug orders shall be sent only to the pharmacy of the patient's choice.

**(2)** "Point of care vendors", "network vendors" or other prescription transmission intermediaries not compliant with the requirements of this section will be considered an invalid source.

**(3)** The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of prescriptions consistent with federal and state statutes and regulations. In the absence of unusual circumstances requiring further inquiry, the pharmacy and each of its associated pharmacists is entitled to rely on the accuracy and authenticity of electronically transmitted prescriptions from a "point of care vendor" or "network vendor" which has not been prohibited by the board.

**G.** Transmission of prescriptions to answering machines and electronic voice recording devices. Prescription information retrieved by a pharmacist from an answering machine or voice recording device from an authorized practitioner or approved agent is considered to be a direct transmission of a prescription order.

**H.** Confidentiality of patient records and prescription drug orders.

**(1)** Confidential information. As provided in Subsection D of Section 61-11-2 NMSA 1978, confidential information in the patient record, including the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical information furnished by the prescriber, may be released only as follows:

**(a)** pursuant to the express written consent or release of the patient or the order of direction of a court;

**(b)** to the patient or the patient's authorized representative;

**(c)** to the prescriber or other licensed practitioner then for the patient;

**(d)** to another licensed pharmacist where the best interest of the patient require such release;

**(e)** to the board or its representative or to such other person or governmental agencies duly authorized by the law to receive such information; a pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any person requesting confidential patient information pursuant to this rule are entitled to receive that information;

**(f)** in compliance with Health Insurance Portability and Accountability Act regulations regarding protected health information.

(2) Exceptions. Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

(a) transferring a prescription to another pharmacy as required by the provision of patient counseling;

(b) providing a copy of a non-refillable prescription to the person for whom the prescription was issued which is marked "for information purposed only";

(c) providing drug therapy information to physicians or other authorized prescribers for their patients;

(d) as required by the provision of patient counseling regulations.

I. Prescription adaptation: A pharmacist, using professional judgment, may determine in filling a new non-controlled substance prescription whether it is necessary to attempt to contact the prescriber before performing the following adaptations:

(1) change the quantity, dosage, dosage form, or directions for use of the medication dispensed if it meets the intent of the prescriber, or

(2) complete missing information on a prescription if there is sufficient evidence to support the change.

(3) The pharmacist will document the prescription adaptation as part of the original prescription record.

(4) The pharmacist will notify the prescriber of the prescription adaptation within 24 hours; and will maintain documentation of notification.

(5) The pharmacist will provide patient counseling, in accordance with Subsection F of 16.19.4.16 NMAC, to include information pertinent to the prescription adaptation.

[16.19.6.23 NMAC - Rp 16 NMAC 19.6.23, 3/30/2002; A, 6/30/2006; A, 3/22/2015; A, 12/15/2020; A, 10/10/2023]

#### **16.19.6.24 NONRESIDENT PHARMACIES:**

##### **A. Definitions.**

(1) "**Board**" means the New Mexico board of pharmacy.

(2) "**Nonresident pharmacy**" means any pharmacy located outside New Mexico that ships, mails or delivers in any manner prescription drugs to New Mexico patients or consumers. For purposes of this definition only, "delivers" includes the

provision of dispensing process pharmacy services such as prescription entry, prospective drug review, or prescription verification.

**(3) "Prescription drugs"** means any drug required by federal or New Mexico law or regulation to be dispensed only by a prescription and includes "dangerous drugs" and "controlled substances" as defined by federal and New Mexico law.

**(4) "Resident state"** means the state in which the nonresident pharmacy is a resident.

#### **B. Licensure requirement.**

**(1)** No nonresident pharmacy shall ship, mail or deliver prescription drugs to a patient in this state unless licensed by the board. In addition, no nonresident pharmacy shall ship, mail or deliver controlled substances to a patient in this state unless registered by the drug enforcement administration and the board for controlled substances.

**(2)** Separate Licensure. Any person that ships, mails or delivers prescription drug to New Mexico patients from more than one nonresident pharmacy shall obtain a separate New Mexico nonresident pharmacy license for each pharmacy.

#### **C. Requirements for obtaining licensure.**

**(1)** Application. Each nonresident pharmacy applying for licensure shall submit an application to the board which includes the following minimum information:

**(a)** The address of the principle office of the nonresident pharmacy and the name and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs to persons in New Mexico. A report containing this information shall be made on an annual basis and within 30 days after any change of office location, corporate officer or pharmacist in charge;

**(b)** Proof that the nonresident pharmacy maintains a valid license, permit or registration to operate the pharmacy in compliance with the laws of the resident state;

**(c)** A copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the resident state;

**(d)** If compounded sterile preparations (CSP) are to be shipped into New Mexico, a copy of the most recent CSP operations inspection report conducted by the regulatory or licensing agency of the resident state (or party recognized by that agency to perform such inspection, or party recognized by the board) which demonstrates the pharmacy operates in conformance with the requirements of applicable USP/NF General Chapters numbered below 1000. The inspection must have occurred within the

12 months immediately preceding receipt of the license application by the board. The board may deny licensure unless the applicant submits documentation satisfactory to the board that any deficiencies noted in the inspection report have been corrected. For entities also acting as outsourcing facilities, the required standard of operation shall be current good manufacturing practices (cGMP).

(e) The policy and procedure manual required by Paragraph (2) of Subsection D of 16.19.6.24 NMAC;

(f) Proof that the nonresident pharmacy has a toll-free telephone service available to New Mexico patients;

(g) The name and address of a resident in New Mexico for service of process;

(h) If the nonresident pharmacy wants to ship, mail or deliver controlled substances to New Mexico patients, then the pharmacy must submit an application for controlled substances under 16.19.20 NMAC; and

(i) All fees required by 16.19.12 NMAC.

(j) An application that is not successfully completed within 12 months of the date of initial receipt by the board will be considered withdrawn. For consideration of license issuance, a new application and fee are required.

(2) Agent of record. Each nonresident pharmacy that ships, mails or delivers prescription drugs to a patient in New Mexico shall designate a resident agent in New Mexico for service of process. If a nonresident pharmacy does not designate a registered agent, the shipping, mailing, or delivering of prescription drugs in the state of New Mexico shall be deemed an appointment by such nonresident pharmacy of the secretary of state to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against such pharmacy growing out of or arising from such delivery.

(3) A nonresident pharmacy may apply for license renewal by submitting a renewal application on a form provided by the board.

#### **D. Conditions of licensure.**

(1) Compliance. Each nonresident pharmacy licensed by the board must comply with the following:

(a) all statutory and regulatory requirements of the state of New Mexico regarding controlled substances, drug product selection, and the labeling, advertising, and dispensing of prescription drugs including all requirements that differ from federal law or regulations, unless compliance would violate the laws and regulations of the resident state;

(b) maintain, at all times, a valid license, permit, or registration to operate the pharmacy in compliance with the laws of the resident state;

(c) maintain, if applicable, a federal registration for controlled substances;

(d) supply, upon request from the board or the regulatory or licensing authority of the resident state, all information needed to carry out the board's responsibilities under state and federal law;

(e) provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the nonresident pharmacy who has access to the patient's records. A nonresident pharmacy shall provide the toll-free telephone service during its regular hours of operation, but not less than six days a week and for a minimum of 40 hours a week. The toll-free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(2) Policy and procedure manual. Each nonresident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(a) normal delivery protocols and times;

(b) the procedure to be followed if the patient's medication is not available at the nonresident pharmacy, or if delivery will be delayed beyond the normal delivery time;

(c) the procedure to be followed upon receipt of a prescription for an acute illness, which policy shall include a procedure for delivery of the medication to the patient from the nonresident pharmacy at the earliest possible time (i.e., courier delivery), or an alternative that assures the patient the opportunity to obtain the medication at the earliest possible time;

(d) the procedure to be followed when the nonresident pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mailed prescription drugs become available;

(e) the procedure for ensuring proper medication storage conditions until the medication is delivered to the patient.

#### **E. Disciplinary proceedings.**

(1) The board may withhold, suspend, or revoke any nonresident pharmacy license held or applied for upon the grounds established by law or regulations, including, without limitation, the failure to comply with the conditions specified in Subsection C of 16.19.6.24 NMAC. The board shall suspend or revoke a nonresident pharmacy license when the license, permit, or registration to operate the pharmacy in

the resident state has been suspended or revoked. A certified copy of the record of suspension or revocation by the resident state is conclusive evidence.

(2) Upon receipt of information indicating that the nonresident pharmacy may have violated the laws or regulations of the resident state, the board may file a complaint against the nonresident pharmacy with the regulatory or licensing authority of the resident state.

#### **F. Limitations.**

(1) Nothing in this regulation shall be construed to authorize the dispensing of contact lenses by nonresident pharmacies.

(2) Nothing in this regulation is intended to replace or modify any requirements that a nonresident business may be subject to under any other law or regulation.

[16.19.6.24 NMAC - Rp, 16 NMAC 19.6.24, 3/30/2002; A, 6/09/2017; A, 11/28/2017; A, 12/15/2020; A, 10/10/2023]

#### **16.19.6.25 CENTRALIZED PRESCRIPTION DISPENSING:**

The purpose of these regulations is to provide mandatory standards for centralized prescription dispensing by a retail or nonresident pharmacy.

##### **A. Definitions as used in this section.**

(1) "**Centralized prescription dispensing**" means the dispensing or refilling of a prescription drug order by a retail or nonresident pharmacy.

(2) "**Dispensing**" as defined in Paragraph (1) of Section 61-11-2, and pursuant to Subsection C of Section 61-11-21 NMSA 1978, dispensing is limited to a registered pharmacist.

##### **B. Operational standards and minimum requirements.**

(1) A retail pharmacy may outsource prescription drug order dispensing to another retail or nonresident pharmacy provided the pharmacies:

(a) have the same owner or;

(b) have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and

(c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to dispense or process a prescription drug order.

(2) The pharmacist-in-charge of the dispensing pharmacy shall ensure that:

(a) the pharmacy maintains and uses adequate storage or shipment containers and shipping processes to ensure drug stability and potency; such shipping processes shall include the use of appropriate packaging material or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process; and

(b) the dispensed prescriptions are shipped in containers which are sealed in a manner as to show evidence of opening or tampering.

(3) A retail or nonresidential dispensing pharmacy shall comply with the provisions of 16.19.6 NMAC and this section.

### **C. Notifications to patients.**

(1) A pharmacy that out-sources prescription dispensing to another pharmacy shall prior to outsourcing the prescription:

(a) notify patients that their prescription may be outsourced to another pharmacy; and

(b) give the name of that pharmacy or if the pharmacy is part of a network of pharmacies under common ownership and any of the network of pharmacies may dispense the prescription, the patient shall be notified of this fact; such notification may be provided through a one-time written notice to the patient or through the use of a sign in the pharmacy; and

(2) If the prescription is delivered directly to the patient by the dispensing pharmacy upon request by the patient and not returned to the requesting pharmacy, the pharmacist employed by the dispensing pharmacy shall ensure that the patient receives written notice of available counseling; such notice shall include days and hours of availability and his or her right to request counseling and a toll-free number from which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record; for pharmacies delivering more than fifty percent of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than six days per week; the facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

### **D. Prescription labeling.**

**(1)** The dispensing pharmacy shall place on the prescription label the name and address or name and pharmacy license number of the pharmacy dispensing the prescription and the name and address of the pharmacy which receives the dispensed prescription;

**(2)** The dispensing pharmacy shall indicate in some manner which pharmacy dispensed the prescription (e.g., filled by ABC pharmacy for XYZ pharmacy) and comply with all other prescription labeling requirements.

#### **E. Policies and Procedures.**

**(1)** A policy and procedure manual as it relates to centralized dispensing shall be maintained at both pharmacies and be approved by the board or its' agent and be available for inspection. Each pharmacy is required to maintain only those portions of the policy and procedure manual that relate to that pharmacy's operations. The manual shall:

**(a)** outline the responsibilities of each of the pharmacies;

**(b)** include a list of the name, address, telephone numbers, and all license/registration numbers of the pharmacies involved in centralized prescription dispensing.

**(2)** The manual shall include policies and procedures for:

**(a)** notifying patients that their prescription may be outsourced to another pharmacy for centralized prescription dispensing and providing the name of that pharmacy;

**(b)** protecting the confidentiality and integrity of patient information;

**(c)** dispensing prescription drug orders when the filled order is not received or the patient comes in before the order is received;

**(d)** complying with federal and state laws and regulations;

**(e)** operating a continuous quality improvement program for pharmacy services designated to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care and resolve identified problems;

**(f)** procedure identifying the pharmacist responsible for each aspect of prescription preparation including, but not limited to, the drug regimen review, the initial electronic entry, any changes or modifications to the prescription record or patient profile, and the final check of the completed prescription;

(g) identify the pharmacist responsible for counseling the patient pursuant to the requirements of 16.19.4.16 NMAC; and

(h) annually reviewing the written policies and procedures and documenting such review.

#### **F. Records.**

(1) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(a) the records maintained in the alternative system contain all of the information required on the manual record; and

(b) the data processing system is capable of producing a hard copy of the record upon request of the board, its' representative, or other authorized local, state, or federal law enforcement or regulatory agencies within 48 hours.

(2) Each pharmacy shall comply with all the laws and rules relating to the maintenance of records and be able to produce an audit trail showing all prescriptions dispensed by the pharmacy and each pharmacist's or technician's involvement.

(3) The requesting pharmacy shall maintain records which indicate the date:

(a) the request for dispensing was transmitted to the dispensing pharmacy;  
and

(b) the dispensed prescription was received by the requesting pharmacy, including the method of delivery (e.g., private, common, or contract carrier) and the name of the person accepting delivery.

(4) The dispensing pharmacy shall maintain records which indicate:

(a) the date the prescription was shipped to the requesting pharmacy;

(b) the name and address where the prescription was shipped; and

(c) the method of delivery (e.g., private, common, or contract carrier).

[16.19.6.25 NMAC - N, 06-30-06; A, 06-07-15; 09-06-15]

#### **16.19.6.26 REMOTE PHARMACIST DUR SITES:**

##### **A. General requirements.**

(1) A New Mexico licensed pharmacy may employ one or more pharmacists for the purpose of conducting drug utilization reviews in remote practice sites provided that all security requirements are met.

(2) All pharmacists employed to work at a remote DUR practice site must be New Mexico licensed pharmacists.

(3) All remote pharmacist DUR sites will operate under a New Mexico licensed pharmacy and under the authority of its pharmacist-in-charge.

(4) No drug inventory shall be kept at any remote pharmacist DUR site and no dispensing shall take place from a remote DUR site.

(5) The remote pharmacists will not be considered in the computation of the technician to pharmacist ration.

(6) Procedure identifying the pharmacist responsible for each aspect of the prescription preparations.

#### **B. Personnel.**

(1) The pharmacist-in-charge:

(a) shall provide a written policy and procedure document outlining the operation and security of each remote pharmacist DUR location; the document shall be available at each practice site;

(b) shall keep a continuously updated list of all remote DUR sites to include address, phone number and hours of operation for each site; the record shall be retained as part of the records of the licensed pharmacy;

(c) is responsible for ensuring that the New Mexico licensed pharmacy and each remote pharmacist has entered into a written agreement outlining all conditions and policies governing the operation of the remote site;

(d) shall ensure that all computer equipment used at the remote site is in good working order and complies with all security requirements.

(2) Remote pharmacist:

(a) shall be a New Mexico licensed pharmacist;

(b) shall be trained in the use of all equipment necessary for secure operation of the remote site.

#### **C. Operations.**

(1) If the remote DUR site is located within a home there must be a designated area in which all of the pharmacist's work will be performed.

(2) All computer equipment used at the remote DUR sites must be able to establish a secure connection which the site is operating. Remote equipment must be configured so that patient information is not stored at the remote site electronically or in printed form.

(3) Computer equipment may only be used for remote DUR. No other use of equipment will be allowed.

(4) Computer equipment must be locked or shut down whenever the pharmacist is absent.

(5) All remote DUR sites are subject to unannounced inspection by representatives of the New Mexico board of pharmacy during established hours of operation.

#### **D. Security.**

(1) Remote pharmacist DUR sites shall have adequate security to maintain patient confidentiality.

(2) Must utilize equipment that prevents unauthorized storage or transfer of patient information.

(3) If the remote site is in a home, the equipment must be located in a designated area where patient information cannot be viewed by anyone other than the remote pharmacist.

[16.19.6.26 NMAC - N, 12-15-08]

#### **16.19.6.27 AUTOMATED DRUG DISTRIBUTION SYSTEMS IN LICENSED HEALTH CARE FACILITIES:**

**A. Scope:** This section applies only to the use of automated drug distribution systems located within the facilities specified in Subsection B of this section.

#### **B. Definitions as used in this section.**

(1) "**Automated drug distribution system**", or "**automated medication system**" or, "system" means a mechanical system that performs operations or activities, other than compounding or administration, related to the storage, packaging, or dispensing of drugs, and collects, controls, and maintains transaction information and records.

(2) **"Health care facility"** means a facility licensed under 16.19.11 NMAC or an inpatient hospice facility licensed under 16.19.10.12 NMAC.

(3) **"Managing pharmacy"** means an in-state retail pharmacy licensed by the board, pursuant to 16.19.6 NMAC that controls and is responsible for the operation of an automated drug distribution system.

(4) **"Multi-disciplinary committee"** means the pharmacist-in-charge, or the consultant

pharmacist, and one or more representatives of the health care facility.

(5) **"Override medication"** means:

(a) a drug that may be removed from an automated medication system prior to pharmacist review because the multi-disciplinary committee has determined that the clinical status of the patient would be compromised by delay;

(b) a drug determined by the multi-disciplinary committee to have a low risk of drug allergy, drug interaction, dosing error, or adverse patient outcome, which may be removed from an automated medication system independent of a pharmacist's review of the medication order or clinical status of the patient.

**C. Authorization:** A managing pharmacy may use an automated drug distribution system to supply medications for patients of a health care facility. The automated drug distribution system may be located in a health care facility that is not at the same location as the managing pharmacy. When located within a health care facility, the system is considered to be an extension of the managing pharmacy. When the automated drug distribution system is used to deliver routine doses of controlled substances, the managing pharmacy submit and maintain a separate registration with the drug enforcement administration.

**D. Notification:** At least 60 days prior to the initial use of an automated drug distribution system, the pharmacist-in-charge of the managing pharmacy must provide the board with written notification of the following:

(1) the physical address at which the automated drug distribution system will be located;

(2) the health facility's board of pharmacy registration type and number;

(3) the managing pharmacy's registration number, address, and pharmacist-in-charge;

(4) written policies and procedures that govern the operation of the system; the policies and procedures must address the requirements of Subsection F of this section and the rules of the board;

(5) the managing pharmacy pharmacist-in-charge must notify the board within 10 days whenever an automated drug distribution system is taken permanently out of service.

**E. Operation of automated drug distribution systems:** The pharmacist-in-charge shall assure compliance with all requirements of the Pharmacy Act, Drug Device and Cosmetic Act, Controlled Substances Act and be responsible for the following:

- (1) maintaining a record of each transaction or operation;
- (2) controlling access to the automated medication system;
- (3) maintaining policies and procedures for:
  - (a) operating the automated medication system;
  - (b) training personnel who use the automated medication system;
  - (c) maintaining patient services whenever the automated medication system is not operating;
  - (d) defining a procedure for a pharmacist to grant access to the drugs in the automated medication system or to deny access to the drugs in the automated medication system;
  - (e) maintaining security of the automated medication system;
  - (f) assuring that a patient receives the pharmacy services necessary for appropriate pharmaceutical care;
  - (g) assuring that the automated medication system maintains the integrity of the information in the system and protects patient confidentiality;
  - (h) establishing a procedure for stocking or restocking the automated medication system; and
  - (i) insuring compliance with all requirements for packaging, storing, and labeling.

(4) A pharmacist shall perform prospective drug use review and approve each medication order prior to administration of a drug except an override medication.

(5) A pharmacist shall perform retrospective drug use review for an override medication.

(6) The pharmacist-in-charge shall convene or identify a multi-disciplinary committee, which is charged with advising on the operations of the automated medication system.

**F. Stocking or restocking of an automated medication system:**

(1) responsibility for accurate stocking and restocking of an automated medication system lies with the pharmacist-in-charge and with any pharmacist tasked with supervising such functions;

(2) the stocking or restocking of an automated medication system, where performed by someone other than a pharmacist, shall follow one of the following procedures to ensure correct drug selection:

(a) a pharmacist shall conduct and document a daily audit of drugs placed or to be placed into an automated medication system, which audit may include random sampling;

(b) a barcode verification, electronic verification, or similar verification process shall be utilized to assure correct selection of drugs placed or to be placed into an automated medication system; the utilization of a barcode, electronic, or similar verification process shall require an initial quality assurance validation, followed by a quarterly quality assurance review by a pharmacist; when a barcode verification, electronic verification, or similar verification process is utilized as specified in this section, stocking and restocking functions may be performed by a pharmacy technician or by a registered nurse trained and authorized by the pharmacist-in-charge.

(3) The pharmacist performing the quality assurance review shall maintain a record of the quality assurance process that occurred and the pharmacist approval of the drug stocking, restocking or verification process.

(4) Any drug that has been removed from the automated medication system shall not be replaced into the system unless: the drug's purity, packaging, and labeling have been examined according to established policies and procedures.

**G. Quality Assurance Program:** The pharmacist-in-charge shall be responsible for implementing and maintaining a quality assurance program for the automated medication system. The program shall provide for:

(1) review of override medication utilization;

(2) investigation and reporting of any medication error related to drugs distributed or packaged by the automated medication system;

(3) review of any discrepancy or transaction reports and identification of patterns of inappropriate use or access of the automated drug distribution system;

(4) review of the operation of the automated medication system;

(5) integration of the automated medication system quality assurance program with the overall continuous quality improvement program of the managing pharmacy; and

(6) assurance that individuals working with the automated medication system receive appropriate training on operation of the system and procedures for maintaining pharmacy services when the system is not in operation.

**H. Records:** The managing pharmacy pharmacist-in-charge shall maintain, for at least three years, the following records related to the automated medication system in a readily retrievable manner:

(1) managing pharmacy's distribution records for all dangerous drugs, including controlled substances, transferred to each automated medication system

(2) perpetual inventories of controlled substances contained within each automated medication system;

(3) at the time of any event involving the contents of the automated drug distribution system, the device shall automatically produce on demand, a written or electronic record showing:

(a) the date and time of transaction;

(b) the type of transaction;

(c) the nature of the emergency;

(d) the name, strength, and quantity of medication;

(e) the name of the patient for whom the drug was ordered;

(f) the name or identification code (electronic signature) of the person making the transaction;

(g) the name of the prescribing practitioner;

(h) the name of the pharmacist conducting the drug utilization review; and

(i) the identity of the device accessed.

(4) A delivery record shall be generated on demand for all drugs supplied to a facility for use by an automated drug distribution system which shall include:

- (a) date of receipt;
- (b) drug name;
- (c) dosage form;
- (d) strength;
- (e) quantity;
- (f) identity of device; and
- (g) documentation of individual accepting delivery.

(5) Any report or analysis generated as part of the quality assurance program required by Subsection G of this section.

**I. The multi-disciplinary committee shall:**

- (1) establish the criteria and process for determining which drug qualifies as an override medication;
- (2) develop policies and procedures regarding the operation of the automated drug distribution system;
- (3) conduct an annual review of override medications.

[16.19.6.27 NMAC - N, 06-07-15; A, 09-06-15]

**16.19.6.28 AUTOMATED FILLING SYSTEMS:**

**A. Definitions.** The following definitions shall apply to this section:

(1) **"Automated filling system"** means an automated system used by a pharmacy in the state of New Mexico to assist in filling a prescription drug order by selecting, labeling, filling, or sealing medication for dispensing. An "automated filling system" shall not include automated devices used solely to count medication that is then subject to final product check by a pharmacist prior to dispensing, vacuum tube drug delivery systems, or automated dispensing and storage systems used to dispense medication directly to a patient or to an authorized health care practitioner for immediate distribution or administration to the patient.

**(2) "Electronic verification system"** means an electronic verification, bar code verification, weight verification, radio frequency identification (RFID), or similar electronic process or system that accurately verifies medication has been properly dispensed and labeled by, or loaded into, an automated filling system.

**(3) "Manufacturer unit of use package"** means a drug dispensed in the manufacturer's original and sealed packaging, or in the original and sealed packaging of a repackager, without additional manipulation or preparation by the pharmacy, except for application of the pharmacy label.

**(4) "Prepacked"** means any drug that has been removed from the original packaging of the manufacturer or an FDA repackager and is placed in a properly labeled dispensing container by a pharmacy for use in an automated filling system for the purpose of dispensing to the ultimate user from the establishment in which the prepacking occurred.

**(5) "Repackager"** means a repackager registered with the United States food and drug administration (FDA).

**B. Medication stocking.** Automated filling systems (hereinafter "system") may be stocked or loaded by a pharmacist or by an intern pharmacist or pharmacy technician under the direct supervision of a pharmacist.

**C. Pharmacist verification.** Except as otherwise provided herein, a licensed pharmacist shall inspect and verify the accuracy of the final contents of any dispensing container filled or packaged by a system, and any label affixed thereto, prior to dispensing, pursuant to Paragraph (1) of Subsection B of 16.19.4.16 NMAC.

**D. Verification criteria.** The pharmacist verification requirements of Subsection C of 16.19.6.28 NMAC shall be deemed satisfied if all the following are met:

**(1)** pharmacy personnel establish and follow a policy and procedure manual that complies with Subsection E of 16.19.6.28 NMAC;

**(2)** the filling process is fully automated from the time the filling process is initiated until a completed, labeled, and sealed prescription is produced by the system that is ready for dispensing to the patient; no manual intervention with the medication or prescription may occur after the medication is loaded into the system; for purposes of this section, manual intervention shall not include preparing a finished prescription for mailing, delivery, or storage;

**(3)** a pharmacist performs a prospective DUR and verifies the accuracy of the prescription information used by or entered into the system for a specific patient prior to initiation of the automated fill process; the identity of the verifying pharmacist shall be recorded in the pharmacy's records;

**(4)** a pharmacist verifies the correct medication and strength, prepacked container, or manufacturer unit of use package was properly stocked, filled, and loaded in the system prior to initiating the fill process; alternatively, an electronic verification system may be used for verification of manufacturer unit of use packages or prepacked medication previously verified by a pharmacist;

**(5)** the medication to be dispensed is selected, filled, labeled, and sealed in the dispensing container by the system or dispensed by the system in a manufacturer's unit of use package or a prepacked container;

**(6)** an electronic verification system is used to verify the proper prescription label has

been affixed to the correct medication and strength, prepacked container, or manufacturer unit of use

package for the correct patient;

**(7)** daily random quality testing is conducted by a pharmacist on a sample size of prescriptions filled by the system; the required sample size shall not be less than two percent of the prescriptions filled by the automated system on the date tested or two percent of the prescriptions filled by the automated system on the last day of system operation, as designated in writing by the pharmacist-in-charge; proof of compliance with this subsection and random quality testing date(s) and results shall be documented and maintained in the pharmacy's records;

**(8)** the product dispensed is a solid oral dosage form; and

**(9)** the product dispensed is not a controlled substance listed in DEA or Schedule II of 16.19.20 NMAC.

**E.** Policies and procedures. Pharmacists verifying prescriptions pursuant to Subsection D of 16.19.6.28 NMAC shall follow written policies and procedures to ensure the proper, safe, and secure functioning of the system. Policies and procedures shall be established by, and reviewed annually by the pharmacist-in-charge and shall be maintained in the pharmacy's records. The required annual review shall be documented in the pharmacy's records. At a minimum, pharmacy personnel shall establish and follow policies and procedures for the following:

**(1)** maintaining the system and any accompanying electronic verification system in good working order;

**(2)** ensuring accurate filling, loading, and stocking of the system;

**(3)** ensuring sanitary operations of the system and preventing cross-contamination of cells, cartridges, containers, cassettes, or packages;

(4) reporting, investigating, and addressing filling errors and system malfunctions;

(5) testing the accuracy of the system and any accompanying electronic verification system; at a minimum, the system and electronic verification system shall be tested before the first use of the system or restarting the system and upon any modification to the system or electronic verification system that changes or alters the filling or electronic verification process;

(6) training persons authorized to access, stock, or load the system in equipment use and operations;

(7) tracking and documenting prescription errors related to the system that are not corrected prior to dispensing to the patient;

(8) conducting routine and preventive maintenance and, if applicable, calibration;

(9) removing expired, adulterated, misbranded, or recalled drugs;

(10) preventing unauthorized access to the system, including, assigning, discontinuing, or changing security access;

(11) identifying and recording persons responsible for stocking, loading, and filling the system;

(12) ensuring compliance with state and federal law, including, all applicable labeling, storage, and security requirements;

(13) ensuring proper drug storage within the system, consistent with the manufacturer's specifications and the *United States Pharmacopoeia* (USP);

(14) maintaining an ongoing quality assurance program that monitors performance of the system and any electronic verification system to ensure proper and accurate functioning.

**F. Recordkeeping.** Records and documentation required by this section shall be maintained in the pharmacy's records electronically or in writing for a minimum of three years. Records shall be made available for inspection and produced to the board or the board's agent upon request.

**G. Prepacking.** A pharmacist, or a pharmacist intern or pharmacy technician under the direct supervision of a licensed pharmacist, may prepack drugs for other than immediate dispensing purposes provided that the following conditions are met:

(1) prepacking occurs at the licensed pharmacy utilizing the system;

(2) only products which will be dispensed directly to the patient may be prepacked;

(3) containers utilized for prepacking shall meet standards specified by the USP, which has been incorporated herein by reference (e.g. preservation, packaging, storage and labeling section of the general notices and requirements); where needed, light resistant containers shall be used;

(4) any prepacked drug must have a label affixed to it which contains, at a minimum, the name and strength of the drug, quantity, the name of the manufacturer or distributor, the expiration date and lot number, the date prepacked, and the identity of the person who prepacked it;

(5) a record of drugs prepacked must be kept, and include the following: the name and strength of the drug, lot number, name of manufacturer or distributor, expiration date (per USP requirements), date of prepacking, total number of dosage units (tabs, caps) prepacked, quantity per prepacked container, number of dosage units (tabs, caps) wasted, initials of prepacker and of pharmacist performing final check;

(6) all drugs prepacked by a pharmacist intern or pharmacy technician must undergo a final check by the pharmacist.

[16.19.6.28 NMAC - N, 06-07-15]

#### **16.19.6.29 REMOTE PHARMACY TECHNICIAN DATA ENTRY SITES:**

##### **A. General requirements.**

(1) A New Mexico licensed pharmacy located in New Mexico may employ one or more certified pharmacy technicians for the purpose of data input in remote practice sites provided that all security requirements are met.

(2) All pharmacy technicians employed to work at a remote data entry practice site must be registered as a certified pharmacy technician with the board and have a minimum of one year experience performing data entry functions as a certified pharmacy tech.

(3) All remote pharmacy technician data entry sites will operate under a New Mexico licensed pharmacy located in New Mexico under the authority of its pharmacist-in-charge.

(4) No drug inventory shall be kept at any remote pharmacy technician data entry site and no dispensing shall take place from a remote pharmacy technician data entry site.

**(5)** All remote pharmacy technician data entry sites will have a procedure for identifying the pharmacy technician and the pharmacist responsible for each aspect of the prescription preparations.

**(6)** All remote pharmacy technician data entry sites will have quality monitoring and improvement programs in place.

**B. Personnel.**

**(1)** The pharmacist-in-charge shall:

**(a)** provide a written policy and procedure document outlining the operation and security of each remote pharmacy technician data entry sites location; the document shall be available at each practice site;

**(b)** keep a continuously updated list of all remote pharmacy technician data entry sites to include address, phone number and hours of operation for each site; the record shall be retained as part of the records of the licensed pharmacy;

**(c)** is responsible for ensuring that the New Mexico licensed pharmacy and each remote data entry pharmacy technician has entered into a written agreement outlining all conditions and policies governing the operation of the remote site;

**(d)** ensure that all computer equipment used at the remote site is in good working order, provides data protection and complies with all security and HIPAA requirements.

**(2)** Data entry pharmacy technician shall:

**(a)** be a certified pharmacy technician registered with the board and reside in New Mexico;

**(b)** have a minimum of one year experience performing data entry functions as a certified pharmacy technician;

**(c)** be trained in the use of all equipment necessary for secure operation of the remote site.

**C. Operations.**

**(1)** If the remote pharmacy technician data entry sites is located within a home there must be a designated area in which all of the pharmacy technicians work will be performed.

**(2)** All computer equipment used at the remote pharmacy technician data entry sites must be able to establish a secure connection which the site is operating.

Remote equipment must be configured so that patient information is not stored at the remote site electronically or in printed form.

(3) Computer equipment may only be used for remote pharmacy technician data entry. No other use of equipment will be allowed.

(4) Computer equipment must be locked or shut down whenever the pharmacy technician is absent.

(5) All remote pharmacy technician data entry sites are subject to unannounced inspection by representatives of the New Mexico board of pharmacy during established hours of operation.

**D. Security.**

(1) Remote pharmacy technician data entry sites shall have adequate security to maintain patient confidentiality.

(2) Must utilize equipment that prevents unauthorized storage or transfer of patient information.

(3) If the remote site is in a home, the equipment must be located in a designated area where patient information cannot be viewed by anyone other than the remote pharmacy technician.

[16.19.6.29 NMAC - N, 12-13-15]

**16.19.6.30 REPACKAGING AND DISTRIBUTION BY A PHARMACY:**

**A. Scope:** This section applies only to repackaging by a pharmacy licensed by the board under the conditions specified in this section.

**B. Definitions as used in this section:**

(1) "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

(2) "board" means the New Mexico Board of Pharmacy;

(3) "distribute" means the delivery of a drug or device other than by administering or dispensing;

(4) "finished drug product" of a prescription drug is defined as that form of the drug which is, or is intended, to be dispensed or administered to the patient and requires no further manufacturing or processing other than packaging and labeling;

(5) "FD&C Act" means the Federal Food Drug and Cosmetic Act;

(6) "repackaging" means the of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug, excluding:

(a) placing medication in a different container to dispense directly to the patient pursuant to a patient-specific prescription;

(b) removing a drug product from the original container at the point of care for immediate administration to a single patient after receipt of a valid patient-specific prescription or order for that patient.

(7) "USP" means United States Pharmacopoeia;

(8) "USP standards" means standards published in the current official United States pharmacopoeia-national formulary.

**C. A pharmacy licensed by the board may repackage under the following conditions:**

(1) The pharmacy must qualify for an exemption from registration and listing requirements under Section 510 of the FD&C Act. Specifically, under Section 510(g)(1), the registration and listing requirements of Section 510 do not apply to: pharmacies which maintain establishments in conformance with any applicable local laws regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs or devices, upon prescriptions of practitioners licensed to administer such drugs or devices to patients under the care of such practitioners in the course of their professional practice, and which do not manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail.

(2) The drug product is not sold or transferred by an entity other than the entity that repackaged such drug product. For purposes of this condition, a sale or transfer does not include administration of a repackaged drug product in a health care setting.

(3) The drug repackaged is a finished drug product of a prescription drug that is:

(a) a non-sterile solid or liquid oral dosage form;

(b) approved under Section 505 of the FD&C Act;

(c) repackaged by or under the direct supervision of a pharmacist, and undergoes a final check by a pharmacist;

(d) handled and repackaged in accordance with all applicable USP chapters numbered less than <1000>;

(e) assigned a beyond use date in accordance with USP standards;

(f) repackaged, stored, and shipped in a way that does not conflict with approved drug product labeling;

(g) not adulterated by preparing, packing, or holding the drug product under insanitary conditions; and

(h) repackaged into a sealed unit-dose container, unless distributed in an appropriately labeled and packaged form to a contracted correctional facility for distribution to an inmate upon release.

(4) The repackaged drug product is distributed under the following conditions:

(a) by a managing pharmacy for use in an automated drug distribution system to supply medications for patients of a health care facility licensed under 16.19.11 NMAC, or inpatient hospice facility licensed under 16.19.10.12 NMAC, in accordance with 16.19.6.27 NMAC, or emergency kit;

(b) to a correctional facility, licensed by the board under 16.19.10.11 NMAC, for administration to an inmate, or for distribution of a properly labeled take home supply to an inmate upon release to avoid interruption in prescribed treatment, pursuant to a patient-specific prescription or order;

(c) to a clinic licensed by the board under 16.19.10.11 NMAC, and under the same ownership as the repackaging pharmacy, for administration to a patient of the clinic pursuant to a patient-specific prescription or order.

(5) All units of repackaged medication must be labeled with the following information:

(a) name, address, and telephone number of repackaging pharmacy, unless the repackaged drug is used in an automated drug distribution system in accordance with 16.19.6.27 NMAC;

(b) name, strength, and quantity of the drug;

(c) lot number or control number;

(d) name of manufacturer;

(e) beyond use date;

- (f) date drug was repackaged;
- (g) name or initials of repackager; and
- (h) federal caution label, if applicable.

(6) A record of drugs repackaged must be maintained, and include the following:

- (a) date of repackaging;
- (b) name and strength of drug;
- (c) manufacturer assigned drug lot number, and expiration date;
- (d) name of drug manufacturer;
- (e) assigned beyond-use date and lot number or control number;
- (f) total number of dosage units (tabs, caps) repackaged;
- (g) quantity per each repackaged unit container;
- (h) number of dosage units wasted; and
- (i) initials of repackager, and of pharmacist performing final check.

(7) Records as required by the Pharmacy Act including the Drug, Device, and Cosmetic Act; the Controlled Substance Act; and board regulations shall be maintained.

[16.19.6.30 NMAC - N, 11/28/2017; A, 5/7/2024]

## **PART 7: HOSPITAL PHARMACIES**

### **16.19.7.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[8/16/1999; 16.19.7.1 NMAC - Rn, 16 NMAC 19.7.1, 3/30/2002; A, 06/9/2019]

### **16.19.7.2 SCOPE:**

All pharmacies, hospital-based skilled nursing facilities and all drug rooms maintained in hospitals.

[8/16/1999; 16.19.7.2 NMAC - Rn, 16 NMAC 19.7.2, 3/30/2002]

### **16.19.7.3 STATUTORY AUTHORITY:**

Paragraph (6) of Subsection (A) of Section 61-11-6 NMSA 1978 requires that the Board of Pharmacy provide for the licensing of hospital pharmacies and the drug rooms of hospitals and the inspection of their facilities and activities.

[8/16/1999; 16.19.7.3 NMAC - Rn, 16 NMAC 19.7.3, 3/30/2002; A, 06/9/2019]

### **16.19.7.4 DURATION:**

Permanent.

[8/16/1999; 16.19.7.4 NMAC - Rn, 16 NMAC 19.7.4, 3/30/2002]

### **16.19.7.5 EFFECTIVE DATE:**

August 16, 1999, unless a later date is cited at the end of a Section or Paragraph.

[8/16/1999; 16.19.7.5 NMAC - Rn, 16 NMAC 19.7.5, 3/30/2002]

### **16.19.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 19 is to establish standards for the safe and competent delivery of quality pharmaceutical care.

[8/16/1999; 16.19.7.6 NMAC - Rn, 16 NMAC 19.7.6, 3/30/2002]

### **16.19.7.7 DEFINITIONS:**

**A. "Automated Medication Management System"** means automated devices that compound, measure, count, or package and deliver a specified quantity of dosage units for a designated drug product and which collects, controls and maintains all transaction information.

**B. "Bar-Code"** means a graphic composed of variously patterned bars and spaces or other geometric patterns intended for use in the detection and automatic processing of item identities or other intelligence by electro-optical means.

**C. "Dispensing"** as defined in Subsection (I) of Section 61-11-2 NMSA 1978, and pursuant to Subsection (C) of Section 61-11-21 NMSA 1978 dispensing is limited to a registered pharmacist.

**D. "Electronic Signature"** means a unique security code or other identifier which specifically identifies the person entering information to a data processing system.

**E. "Facility"** means a hospital or other inpatient institution which has a pharmacy within the premises.

**F. "Formulary"** means a list of drugs approved for use in a facility by its medical staff through the Pharmacy and Therapeutics Committee or its equivalent.

**G. "Hard Copy"** means a paper-based record keeping system that is readable without the use of a special device, i.e., computer, microfiche reader, etc.

**H. "Hospital"** means any place offering in-patient skilled nursing, overnight care on a 24 hour basis for diagnosing, treating and providing medical or surgical care for patients.

**I. "Hospital-based Skilled Nursing Facility"** means a long-term care facility or unit thereof that is an integral and subordinate part of the hospital, is operated with other departments of the hospital under common governance and professional supervision such that the skilled nursing facility and the hospital are subject to the bylaws and operating decisions of common governing board, is fully integrated with all other services of the hospital, is owned, operated and managed by the hospital and is physically located within said hospital.

**J. "In-house Clinic"** means a clinic located in a hospital which has a pharmacy within the premises. The clinic is a facility where one or more licensed practitioners diagnose and treat patients, and where drugs are stored, dispensed, distributed or administered for the diagnosis and treatment of the facility's patients; provided that this definition shall not include the privately owned practice of any licensed practitioner or group of licensed practitioners exempt under Section 61-11-22 NMSA 1978 of the Pharmacy Act.

**K. "Integrated Healthcare System"** means an integrated network of healthcare services provided by a single corporation or system. Systems offer comprehensive care which may include, acute, urgent care, long term or home health.

**L. "Medication Profile"** means a record and drug listing for each patient based on available information, containing but not limited to, patient name, patient age, sex, patient weight, current diagnosis, allergies or sensitivities, and current therapy.

**M. "Medication-use Measurement Program"** means a program that entails measuring, assessing, and improving the prescribing or ordering; preparation and dispensing; administration; and monitoring of medications.

**N. "Parenteral Products"** means any preparation administered by injection through one or more layers of skin tissue.

**O. "Pharmacist-in-Charge"** means a pharmacist employed by the facility on either a part-time or full-time basis as the activity of service requires and as outlined in 16.19.6.9 NMAC.

**P. "Pharmacy and Therapeutics Committee"** means an advisory committee of the medical staff of the facility recommending policy regarding evaluation, selection, and therapeutics of drugs.

**Q. "Policy and Procedures Manual"** shall outline the scope of services for safe delivery of quality pharmaceutical care for all patients.

[8/16/1999; 16.19.7.7 NMAC - Rn, 16 NMAC 19.7.7, 3/30/2002; A, 06/9/2019]

#### **16.19.7.8 LEADERSHIP:**

**A.** There shall be a pharmacist-in-charge of the hospital pharmacy. The pharmacist in charge may be employed part-time or full-time as the activity of service requires. When services are provided on a part-time basis, the pharmacist-in-charge or designated pharmacist shall visit the facility at least every 72 hours. Visitation schedules exceeding 72 hours must request Board approval.

**B.** The pharmacist-in-charge shall be assisted by an adequate number of competent and qualified personnel.

**C.** Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.

**D.** A pharmacy policy and procedure manual shall be prepared by the pharmacist-in-charge and readily available. The manual shall be reviewed annually for the purpose of establishing its consistency with current hospital practices and the process documented. A copy of this manual shall be submitted to the Board or its agent for review and approval at the time of the hospital license application. Any subsequent changes shall be reviewed by the Board or its agent.

[8/16/1999; 16.19.7.8 NMAC - Rn, 16 NMAC 19.7.8, 3/30/2002; A, 4/30/2003]

#### **16.19.7.9 FACILITIES:**

**A.** The hospital pharmacy shall be enclosed and locked if a pharmacist is not present in the facility. Adequate security systems shall be maintained and be consistent with the security plan of the facility.

**B.** The pharmacist-in-charge shall control access to the pharmacy and develop an emergency access procedure that may include the following situations or conditions:

**(1)** The hospital administrator or designee may possess a key to the pharmacy for emergency access.

**(2)** For the purposes of withdrawing limited doses of a drug for administration in emergencies when the pharmacy is closed, if the drugs are not available in floor or emergency drug supplies, the following is applicable:

**(a)** Only one designated licensed nurse per shift may remove drugs from the pharmacy. The quantity of drugs shall not exceed the quantity needed to last until the pharmacist is in the facility:

**(b)** A record shall be made at the time of withdrawal by the authorized person removing the drugs. The record shall contain the following:

**(i)** name of patient;

**(ii)** name of drug, strength, and dosage form;

**(iii)** dose prescribed;

**(iv)** quantity taken;

**(v)** time and date; and

**(vi)** signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

**(c)** The original or direct copy of the medication order may substitute for such record, providing the medication order meets all of the requirements of Subparagraph (b) of Paragraph (2) of Subsection (B) of 16.19.7.9 NMAC (record).

**(d)** The nurse withdrawing the drug shall place upon the record of withdrawal an example of the medication removed.

**(e)** An electronic record of the withdrawal is required when the nurse is withdrawing more than a 72 hour supply.

**(f)** The pharmacist shall verify the withdrawal after a reasonable interval, but in no event may such interval exceed 72 hours from time of withdrawal. Verification may be accomplished electronically from a remote site, if approved by the board.

**(g)** A drug regimen review, pursuant to a new medication order, will be conducted by a pharmacist either on-site or by electronic transmission within 24 hours of the new order.

**(h)** Another duly registered pharmacy may supply medications pursuant to a patient specific medication order provided:

**(i)** supplying pharmacy is licensed in this state;

**(ii)** supplying pharmacist is licensed in this state;

**(iii)** all pharmacy preparations of sterile products (including total parenteral nutrition and chemotherapy) shall be performed in accordance with board of pharmacy 16.19.36 NMAC.

**(3)** The pharmacist-in-charge or designated pharmacist, intern or technician may prepackage drugs for emergency withdrawal.

**C.** A pharmacist shall be "on call" during all absences from the facility.

**D.** A hospital pharmacy shall have within the institutional facility it services sufficient floor space allocated to ensure that pharmaceutical services are provided in an environment which allows for the proper compounding, dispensing and storage of medications. The minimum required pharmacy floor space excluding office area is:

Average daily census including skilled beds	Specialty designation	1-25	26-50	51-100	101-200	201-500	>500
Minimum Square Feet	Adequate	Adequate	280	500	750	1000	1500
Min. square feet for Sterile Prep Area (in addition to above)	100	100	100	100	100	100	100

A hospital may petition the board for a variance to the required minimum square footage. The license application shall include an average daily inpatient census for the last year.

**E.** Specialty Designation:

**(1)** Adequate square footage will be decided by the board at the time of licensure. The yearly license application will be accompanied by photos and a drawing of the pharmacy area. The board may ask for more detailed information to make a determination.

**(2)** A hospital must petition the board for a specialty designation. The board may consider, but is not limited to the following:

**(a)** size of facility;

(b) type of patient population; or

(c) number and types of drugs stored and dispensed from the pharmacy.

**F.** Hospitals having licensed outpatient pharmacies shall comply with retail pharmacy 16.19.6.10 NMAC.

**G.** The hospital pharmacy shall have the necessary equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparation of drugs and parenteral products depending on the scope of pharmaceutical services provided.

(1) Refrigerator.

(2) Sink with hot and cold water.

**H.** Only one registered or certified pharmacy technician may be present in the pharmacy when the pharmacist is not in the facility, only to perform clerical tasks. A written log shall be maintained of technician activities while alone in the pharmacy

[8/16/1999; 16.19.7.9 NMAC - Rn, 16 NMAC 19.7.9, 3/30/2002; A, 4/30/2003; A, 1/31/2007; A, 06/9/2019]

#### **16.19.7.10 PHARMACY SERVICE UNIT:**

**A.** A pharmacy service unit:

(1) is a separate entity from the central hospital pharmacy, within the same physical building;

(2) provides limited and/or specialized inpatient pharmacy services with a minimum of 100 square feet;

(3) has the necessary space, references and equipment to perform the pharmacy service to be provided.

**B.** If controlled substances are stored in and/or dispensed from the Pharmacy Service Unit, a locked storage space must be provided and used to store all controlled substances.

**C.** The Pharmacy Service Unit shall be covered by the hospital pharmacy license.

**D.** A pharmacist shall be available to the Pharmacy Service Unit during operational hours.

**E.** A pharmacist shall control access to the Pharmacy Service Unit. Pharmacy technician(s) or intern(s) may be present in the Pharmacy Service Unit during operational hours when the pharmacist is present in the facility.

[8/16/1999; 16.19.7.10 NMAC - Rn, 16 NMAC 19.7.10, 3/30/2002]

#### **16.19.7.11 DRUG DISTRIBUTION AND CONTROL:**

**A.** In hospitals where there is not a pharmacy, prelabeled, prepackaged medications shall be stored in and distributed from a drug storage area or automated medication management system, which is under the supervision of a pharmacist.

**B.** The pharmacist-in-charge shall have the responsibility for the procurement and storage of all drugs.

**C.** All medications, with the exception of those for emergency use, shall be issued for inpatients use pursuant to the review of the physician's order or direct copy thereof, prior to dispensing. If the pharmacy is closed when the order is written, the pharmacist shall review the order within 24 hours.

**D.** A medication profile for all inpatients and outpatients shall be maintained and used. The medication profile shall serve as the distribution record for inpatient medications. Dangerous drug distribution records, for inpatient use, must include the following information:

- (1) the patient's name and room (or bed) number;
- (2) the name, strength, quantity and dosage form of the drug distributed;
- (3) the name of the technician filling the drug order and pharmacist responsible for checking the technician's work; or
- (4) the name of the pharmacist or pharmacist intern filling the drug order;
- (5) the date filled; and
- (6) the date and amount of unwanted/ unused drug returned to the pharmacy stock;
- (7) records for schedule II controlled substances must be kept separate; and
- (8) schedule III-V must be kept separate or if stored with non-controlled records, readily retrievable.

**E.** Floor stock dangerous drug distribution records must include the following:

- (1) name, strength, dosage form, and quantity of the drug distributed;
  - (2) date of filling;
  - (3) a name of technician filling the drug order and the supervising pharmacist;
- or
- (4) the name of the pharmacist or pharmacist intern filling the drug order;
  - (5) the destination location of the drug in the hospital; and
  - (6) the date and quantity of unwanted/ unused drug returned to the pharmacy's stock;
- (7) schedule II controlled substance records must be kept separate from all other records; and
  - (8) schedule IV controlled substance records must either be kept separate from other non-controlled substances records or are readily retrievable.

**F.** Dangerous drug distribution records, inpatient and floor stock, and medication profiles may be stored electronically if such system is capable of producing a printout of all the required information and the information is retrievable within 72 hours upon demand. The pharmacist stating that it is a true and accurate record must certify the printout. Hospitals utilizing automated drug distribution must comply with Subsection M of 16.19.7.11 NMAC in lieu of the above. Hospital pharmacies are subject to all applicable state and federal record keeping requirements when a prescription from a licensed practitioner is filled.

**G.** A distribution system for controlled substances shall be maintained including perpetual inventory of all schedule II controlled substances. All schedule II controlled substances that are stored in the pharmacy will be kept in a locked storage area in the pharmacy.

**H.** Drug storage and preparation areas within the facility shall be the responsibility of the pharmacist-in-charge. All areas shall be inspected on a monthly basis and documented by a pharmacist, intern or technician.

**I.** All pharmacy preparations of sterile products shall be performed in accordance with the sterile products regulations, 16.19.36 NMAC.

**J.** Floor stock drugs, including those issued from automated medication management systems, shall be limited to drugs for emergency use and routinely used items as listed in the pharmacy policy and procedure manual and approved by the pharmacy and therapeutics committee. Floor stock drugs shall be supplied in individual doses unless the bulk container cannot be individualized. Dangerous drug floor stock

must be reviewed by the pharmacist or pharmacist intern on a routine basis to insure appropriate use.

**K.** Where such committees exist, the pharmacist-in-charge or designated pharmacist shall be a voting member of the pharmacy and therapeutics committee or its equivalent.

**L.** Medications dispensed in the emergency room will be dispensed only by a licensed pharmacist, a licensed pharmacist intern or a licensed practitioner and shall comply with the following:

**(1)** a record shall be kept of all medications dispensed from the emergency room of a hospital; the record shall include:

- (a)** the date the drug was dispensed;
- (b)** name and address of the patient;
- (c)** name of the prescribing physician;
- (d)** the name of the drug;
- (e)** the strength of the drug;
- (f)** the quantity of drug dispensed;
- (g)** initials of the person recording the information if not a physician;

**(2)** a separate record shall be kept for schedule II controlled substances;

**(3)** the following will be recorded in the patient's medical chart:

- (a)** the name of the drug(s) prescribed;
- (b)** the strength of the drug;
- (c)** the quantity of the drug dispensed;

**(4)** when medications are prescribed by the physician and dispensed to the patient in the emergency room of the hospital the dispensing label shall contain the following information:

- (a)** the name of the patient;
- (b)** the name of the prescribing physician;

- (c) name of the drug;
- (d) strength of the drug;
- (e) quantity of the drug;
- (f) name and address of the hospital;
- (g) date the drug is dispensed;
- (h) directions for use;
- (i) expiration date of medication.

**M. Automated Pharmacy Systems.**

**(1) General Statement:** Automated devices for storage and distribution of floor stock or patient profile drugs or both, shall be limited to licensed health care facilities and shall comply with all the following provisions. Written policies and procedures, approved by the appropriate health care facility committee, shall be in place to ensure safety, accuracy, security, and patient confidentiality. Personnel allowed access to an automated dispensing device shall have a confidential access code that records the identity and electronic signature of the person accessing the device.

**(2) Security/Access:** The control of access to the automated device must be controlled by the pharmacist-in-charge. Proper identification and access control, including electronic passwords or other coded identification, must be limited and authorized by the pharmacist-in-charge. The pharmacist-in-charge must be able to stop or change access at any time. The pharmacist-in-charge must maintain a current and retrievable list of all persons who have access and the limits of that access. Review of user access reports shall be conducted at least quarterly as established by policy and procedures to ensure that persons who are no longer employed at the facility do not have access to the system.

**(3) Records:** The records kept by the automated drug delivery system must comply with all state, federal, and board requirements. Records must be maintained by the pharmacy and be readily retrievable. Records may be retained in hard copy or an alternative data retention system may be used where current technology allows.

**(4) Automated Drug Distribution:** An automated medication management system shall be under the control of the pharmacist-in-charge. If used for storage and dispensing of doses scheduled for administration, there shall be a procedure by which orders for a drug are reviewed and approved by the pharmacist before the drug may be withdrawn from the automated dispensing device. There shall be written procedures for downtime in the event of system malfunction or otherwise inoperable. A downtime log shall be maintained and include:

- (a)** date of transaction;
- (b)** patient;
- (c)** drug/dose;
- (d)** quantity of transaction;
- (e)** nurse signature;
- (f)** beginning count;
- (g)** ending count;
- (h)** wasted amount;
- (i)** witness signature, if needed; and
- (j)** prescriber (for controlled substances only).

**(5)** Quality Assurance: The pharmacist-in-charge shall be responsible for developing and implementing a quality assurance program which monitors total system performance. Quality monitors shall include:

- (a)** the proper loading/refilling of the device, including proof of delivery;
- (b)** the proper removal, return or waste of drugs;
- (c)** processes for recording, resolution, and reporting of discrepancies; and
- (d)** processes for conducting periodic audits to assure compliance with policies and procedures.

**(6)** Records: Transaction records: At the time of any event involving the contents of the automated device, the device shall automatically produce on demand, a written or electronic record showing:

- (a)** the date and time of transaction;
- (b)** the type of transaction;
- (c)** the name, strength, and quantity of medication;
- (d)** the name of the patient for whom the drug was ordered;

(e) the name or identification code (electronic signature) of the person making the transaction;

(f) the name of the attending, admitting or prescribing practitioner; and

(g) the identity of the device accessed.

(7) Delivery Records: A delivery record shall be generated on demand for all drugs filled into an automated dispensing device which shall include:

(a) date;

(b) drug name;

(c) dosage form

(d) strength;

(e) quantity;

(f) identity of device; and

(g) name or initials of the person filling the automated dispensing device.

(8) Filling: There shall be policies and procedures in place, utilizing either manual, bar coding or other electronic processing means of item identities as current technology allows, to ensure pharmacist verification of accuracy in the filling and refilling of the automated device. A delivery record of medications filled into an automated pharmacy system shall be maintained and shall include identification of the person filling the device.

(9) Labeling/Packaging: Drugs filled into automated dispensing devices shall be in manufacturers' sealed, original packaging or in repackaged containers in compliance with the requirements of the board regulations relating to packaging and labeling.

**N. Outsourcing of Pharmaceutical Services:** A hospital pharmacy may contract or enter into an agreement with another licensed pharmacy/pharmacist to provide pharmaceuticals and/or other pharmacist services under the following conditions:

(1) the contract pharmacy is licensed by the board of pharmacy;

(2) the pharmacist providing the services by the contracted pharmacy shall be licensed as a pharmacist in this state;

(3) the contract is incorporated into the pharmacy's policy and procedure manual and complies with the requirements of 16.19.7 NMAC;

(4) the contracted pharmacy/pharmacist must have complete access to the patient's profile in order to perform a drug regimen review;

(5) the contracted pharmacy/pharmacist must have access to the licensed practitioners of the hospital;

(6) records of all pharmaceuticals transferred from the contracted pharmacy to the hospital pharmacy comply with the requirements;

(7) documentation of the services provided by the contracted pharmacy/pharmacist.

[8/16/1999; 16.19.7.11 NMAC - Rn, 16 NMAC 19.7.11, 3/30/2002; A, 1/31/2007; A, 06/9/2019]

#### **16.19.7.12 DRUG INFORMATION:**

**A.** The pharmacist-in-charge is responsible for provision of drug information to the staff and patients of the healthcare facility. The pharmacist-in-charge shall be responsible for providing in-service education to the facility's professional staff. In-service activities shall be documented.

**B.** The pharmacist-in-charge is responsible for maintaining up-to-date reference materials or electronic access to reference publications commensurate with the scope of practice. At a minimum, these references will include the current editions of:

(1) a drug interactions text;

(2) an injectable drug text;

(3) a general drug information text; and

(4) New Mexico Pharmacy Law and Rules and Regulations and all available revisions.

**C.** The telephone number of a regional Poison and Drug Information Center shall be posted in all areas where medications are stored.

[8/16/1999; 16.19.7.12 NMAC - Rn, 16 NMAC 19.7.12, 3/30/2002]

#### **16.19.7.13 ASSURING RATIONAL DRUG THERAPY:**

**A.** The pharmacist in conjunction with practitioners, nurses and other professional staff shall develop a procedure for the review and reporting of significant adverse drug reactions and medication errors. These events shall be reported to the prescribing practitioner and the appropriate hospital quality assurance committee such as the Pharmacy and Therapeutics Committee or its equivalent.

**B.** Clinical information about patients must be available and accessible to the pharmacist for use in daily practice activities.

**C.** The pharmacist shall review each medication order for safety and appropriateness and communicate with the prescriber when adjustments may be necessary. Suggested changes made to the prescriber must be documented.

**D.** A documented medication-use-measurement program, developed shall be in place to evaluate the medication-use-process of prescribing, dispensing, administering and monitoring.

[8/16/1999; 16.19.7.13 NMAC - Rn, 16 NMAC 19.7.13, 3/30/2002]

#### **16.19.7.14 RESEARCH:**

**A.** The pharmacist shall conduct, participate in and support medical and pharmaceutical research appropriate to the goals, objectives and resources of the facility.

**B.** There shall be a pharmacist member on the facility's Institutional Review Board, or its equivalent. The pharmacist shall ensure that policies and procedures for the appropriate use of investigational drugs are established and followed.

**C.** A copy of the research protocol for a study involving investigational drugs and the facility's patients, shall be provided to the pharmacist. A copy of drug protocols shall be maintained in the pharmacy of all active investigational drug studies and similar research projects involving drugs in which the facility's patients are participants.

[8/16/1999; 16.19.7.14 NMAC - Rn 16 NMAC 19.7.14, 3/30/2002]

#### **16.19.7.15 IN-HOUSE CLINICS:**

In-house clinics owned and operated by the institution must meet regulations set forth in Part 10 "Limited Drug Clinics" and Part 4 "Pharmacists". The clinic may operate under the license of the hospital pharmacy and is not required to obtain a separate license or permit from the Board.

[8/16/1999; 16.19.7.15 NMAC - Rn, 16 NMAC 19.7.15, 3/30/2002]

#### **16.19.7.16 [RESERVED]**

[8/16/1999; 16.19.7.16 NMAC - Rn, 16 NMAC 19.7.16, 3/30/2002; Repealed, 6/9/2019]

**16.19.7.17 INPATIENT HOSPITAL PHARMACY LIMITED DISPENSING, HOSPITALIZATION DISCHARGE:**

**A.** In order to improve continuity of care by avoiding temporary disruption in a patient's prescribed medication regimen upon discharge from hospitalization, and to decrease medication waste (as in the case of a partially used multidose container, such as an inhaler), dispensing by a pharmacist in a hospital pharmacy not otherwise licensed as a retail pharmacy may occur under the conditions of this section.

**B.** A prescription or order is issued by a licensed practitioner of the hospital to be dispensed to the patient upon discharge. If not specified in the prescription or order, the pharmacist is responsible for obtaining and documenting any additional information needed for dispensing, including directions for use and quantity. The prescription or order may not be refilled, or transferred.

**C.** Naloxone for rescue use may be dispensed to the patient upon discharge pursuant to standing order, in accordance with Section 24-23-1 NMSA 1978.

**D.** The medication is not a controlled substance.

**E.** The dispensing label shall include all information as required in Paragraph (4) of Subsection (L) of 16.19.7.11 NMAC, and any other information required by state or federal law.

**F.** Responsibilities of pharmacist and pharmacist intern shall be fulfilled in accordance with 16.19.4.16 NMAC.

**(1)** Patient counseling shall be in person, whenever practicable, or by telephone.

**(2)** If the pharmacist is absent at the time of patient discharge, the patient shall be provided written information when appropriate on side effects, interactions, and precautions concerning the drug or device provided. Written information may be printed or electronic, consistent with patient preference.

**(3)** The pharmacy phone number shall be made available to patients for consultation.

**G.** When the drug or device is not dispensed directly to the patient or patient's agent upon discharge, the pharmacist shall require the patient or patient's agent to sign a drug receipt record listing those prescriptions received from the pharmacy.

**H.** Records will be readily retrievable and available for inspection for three years unless longer retention is otherwise required by board regulation; including the

prescription or order, dispensing and receipt records. If records are maintained electronically, the computer shall be capable of producing a printout of prescription or order information within a 72 hour period on demand, with certification by the pharmacist stating it is a true and accurate record. Requested printouts include: patient specific; practitioner specific; drug specific; or date specific reports. The printout shall include:

- (1) the prescription number, if applicable;
- (2) the prescriber's name and license classification;
- (3) full name and address of patient;
- (4) date of issuance of prescription or order and the date filled;
- (5) name, strength, dosage form, quantity dispensed;
- (6) identification of the dispensing pharmacist; computer-generated pharmacist initials are considered to be the pharmacist of record unless overridden manually by a different pharmacist who will be the pharmacist of record.

[16.19.7 NMAC – N, 6/9/2019]

## **PART 8: WHOLESALE DISTRIBUTORS; THIRD PARTY LOGISTICS PROVIDERS; REPACKAGERS; DRUG SUPPLY CHAIN SECURITY**

### **16.19.8.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.8.1 NMAC - Rp, 16.19.8.1 NMAC, 11-28-2017]

### **16.19.8.2 SCOPE:**

All individuals and entities engaged in the wholesale distribution of prescription drugs, including, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution; third-party logistics providers; manufacturers and repackagers.

[16.19.8.2 NMAC - Rp, 16.19.8.2 NMAC, 11-28-2017]

### **16.19.8.3 STATUTORY AUTHORITY:**

Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 directs the board of pharmacy to provide for the licensing of drug manufacturers, repackagers and wholesale drug distributors and for the inspection of their facilities and activities. Paragraph (7) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article I NMSA 1978. Pursuant to Section 26-1-18 of the Drug, Device and Cosmetic Act, the board is authorized to promulgate regulations for the efficient enforcement of the act.

[16.19.8.3 NMAC - Rp, 16.19.8.3 NMAC, 11-28-2017]

**16.19.8.4 DURATION:**

Permanent.

[16.19.8.4 NMAC - Rp, 16.19.8.4 NMAC, 11-28-2017]

**16.19.8.5 EFFECTIVE DATE:**

November 28, 2017, unless a different date is cited at the end of a section.

[16.19.8.5 NMAC - Rp, 16.19.8.5 NMAC, 11-28-2017]

**16.19.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 19 is to implement the Federal Food, Drug and Cosmetic Act, 21 United States Code (U.S.C.) 351 et seq., as amended by the Drug Supply Chain Security Act of 2013 (Pub. L. 113-54), by providing minimum standards, terms and conditions for the licensing by the board of wholesale distributors, third-party logistics providers and repackagers; and by replicating the federal requirements relating to product tracing, identification and verification.

[16.19.8.6 NMAC - Rp, 16.19.8.6 NMAC, 11-28-2017]

**16.19.8.7 DEFINITIONS:**

**A. "Adulterated"** a drug or device shall be deemed to be adulterated if it:

- (1) consists in whole or part of any filthy, putrid, or decomposed substance;
- (2) has been produced, prepared, packed or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

(3) is a drug and the methods used in or the facilities of controls used for its manufacture, processing, packing or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of the New Mexico Drug, Device and Cosmetic Act (this article) as to safety and has the identity and strength and meets the quality and purity characteristics which purports or is represented to possess;

(4) is a drug and its container is composed in whole or part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains for purposes of coloring only a color additive which is unsafe within the meaning of the Federal Act or it is a color additive the intended use of which in drugs is for the purpose of coloring only and is unsafe within the meaning of the Federal Act;

(6) purports to be or is represented as a drug the name of which is recognized in an official compendium and its strength differs from or its quality or purity falls below the standard set forth in such compendium; such determination as to strength, quality and purity shall be made in accordance with the tests or methods of assay set forth in such compendium or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the Federal Act; no drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality or purity therefore set forth if such standard is plainly stated on its label; whenever a drug is recognized both in the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not those of the United States pharmacopoeia;

(7) is not subject to the provisions of Paragraph (6) of this subsection and its strength differs from or its purity or quality falls below that which it purports or is represented to possess;

(8) is a drug and any substance has been mixed or packed therewith so as to reduce its quality or strength or substituted wholly or in part therefore.

**B. "Affiliate"** means a business entity that has a relationship with a second business entity if, directly or indirectly:

(1) one business entity controls, or has the power to control, the other business entity; or

(2) a third-party controls, or has the power to control, both of the business entities

**C. "Authorized" means:**

(1) in the case of a manufacturer or repackager, having a valid registration as a drug

establishment with the FDA under Section 510 of the Federal Act;

(2) a licensed wholesale distributor, who is compliant with the licensure reporting

requirements under section 503(e) of the Federal Act;

(3) a licensed third-party logistics provider, who is compliant with the licensure reporting

requirements under section 584(b) of the Federal Act;

(4) in the case of a dispenser, having a valid license under New Mexico state law.

**D. "Blood"** means the whole blood collected from a single donor and processed either for transfusion or further manufacturing.

**E. "Blood component"** means that part of blood separated by physical or mechanical means.

**F. "Co-licensed partner or product"** means an instance where two or more parties have the right to engage in the manufacturing or marketing of a prescription drug, consistent with FDA's implementation of the Drug Supply Chain Security Act (DSCSA).

**G. "Common carrier"** means any person or entity who undertakes, whether directly or by any other arrangement, to transport property including prescription drugs for compensation.

**H. "Counterfeiting"** means engaging in activities that create a counterfeit drug.

**I. "Counterfeit drug"** means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) identical copies: which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) look-alikes: which feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) rejects: which are drugs that have been rejected by the manufacturer for not meeting quality standards;

(4) re-labels: which have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials.

**J. "Counterfeit prescription drug"** means a dangerous drug which, or the container or labeling of which, without authorization:

(1) bears the trademark, trade name, or other identifying mark, print, device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packaged, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by such other drug manufacturer, processor, packer, or distributor;

(2) from the original manufacturer is an imitation of another dangerous drug or has been deliberately mislabeled (for example, as to its strength or expiration date) but it shall not include a dangerous drug or placebo intended for use in a clinical trial that is intentionally labeled or marked to maintain proper blinding of the study.

**K. "Dangerous drug"** also known as a "prescription drug" means a drug other than a controlled substance enumerated in Schedule I of the Controlled Substance Act, that because of potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use (directions under which the layman can use a drug or device safely and for the purposes for which intended) cannot be prepared. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe the drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the Federal Act and the board to be habit-forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the Federal Act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend "Caution: federal law prohibits dispensing without prescription";

(5) bears the legend "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

(6) bears the legend "RX only"; or

(7) has been declared a dangerous drug by the board of pharmacy.

**L. "Designated representative"** means an individual designated by the wholesale distributor, third-party logistics provider, or repackager who will serve as the responsible individual of the wholesale distributor, third-party logistics provider, or repackager with the board who is actively involved in and aware of the actual daily operation of the wholesale distributor, third-party logistics provider, or repackager. The designated representative is responsible for all aspects of the facility operations.

**M. "Dispenser"** means:

(1) a retail pharmacy, hospital pharmacy, a group of chain pharmacies under common ownership and control that do not act as a wholesale distributor, or other person authorized by law to dispense or administer prescription drugs, and the affiliated warehouses or distribution centers of such entities under common ownership and control that do not act as a wholesale distributor; and

(2) does not include a person who dispenses only products to be used in animals in accordance with Section 512(a)(5) of the Federal Act.

**N. "Disposition"** with respect to a product within the possession or control of an entity, means the removal of such product from the pharmaceutical distribution supply chain, which may include disposal or return of the product for disposal or other appropriate handling and other actions, such as retaining a sample of the product for further additional physical examination or laboratory analysis of the product by a manufacturer or regulatory or law enforcement agency.

**O. "Distribute or distribution"** means the sale, purchase, trade, delivery, handling, storage, or receipt of a product, and does not include the dispensing of a drug pursuant to a prescription.

**P. "Drug"** means articles:

(1) recognized as drugs in any official compendium or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(3) other than food, intended to affect the structure or any function of the body of humans or other animals;

(4) intended for use as a component of any articles specified in Paragraphs (1), (2), (3) or (4) of this subsection .

**Q. "Drug sample"** means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug as defined by the Prescription Drug Marketing Act of 1987.

**R. "DSCSA"** means the Drug Supply Chain Security Act.

**S. "Emergency medical reasons"** include, but are not limited to:

(1) the transfer or sales by a pharmacy to nearby emergency medical services, i.e. ambulance companies and firefighting organizations in the same state or same marketing or service area or nearby licensed practitioners of prescription drugs for use in the treatment of acutely ill or injured persons, consistent with the DSCSA and successor FDA regulations;

(2) the provision of minimal emergency supplies of prescription drugs by a pharmacy to nearby nursing homes for use in emergencies or during hours of the day when necessary prescription drugs cannot be obtained;

(3) the transfer or sale of naloxone by a dispenser for rescue use in accordance with Section 24-23-1 NMSA 1978 of the Public Health Act;

(4) the transfer or sale of a drug pursuant to a specific patient need.

**T. "Exclusive distributor"** means the wholesale distributor that directly purchased the product from the manufacturer and is the sole distributor of that manufacturer's product to a subsequent repackager, wholesale distributor, or dispenser.

**U. "Facility"** means facility of a wholesale distributor, repackager, or third-party logistics provider where prescription drugs are stored, handled, repackaged or offered for sale.

**V. "FDA"** means food and drug administration, a federal agency within the United States department of health and human services, established to set safety and quality standards for drugs, food, cosmetics and other consumer products.

**W. "Federal Act"** means the Federal Food, Drug and Cosmetic Act.

**X. "Homogeneous case"** means a sealed case containing only product that has a single NDC number belonging to a single lot.

**Y. "Illegitimate product"** means a product for which credible evidence shows that the product:

(1) is counterfeit, diverted, or stolen;

(2) is intentionally adulterated such that the product would result in serious adverse health

consequences or death to humans;

(3) is the subject of a fraudulent transaction; or

(4) appears otherwise unfit for distribution such that the product would be reasonably likely

to result in serious adverse health consequences or death to humans.

**Z. "Immediate container"** means a container and does not include package liners.

**AA. "Licensed"** means:

(1) in the case of a wholesale distributor:

(a) having valid licensure with the board; and

(b) for facilities located outside of New Mexico:

(i) having valid licensure by the state from which the drug is distributed;

or

(ii) if the state from which the drug is distributed has not established a licensure requirement, is licensed by the FDA (beginning at such time as federal regulations are promulgated to implement Section 583 of the Federal Act).

(2) in the case of a third-party logistics provider:

(a) for facilities located outside of New Mexico:

(i) having valid licensure by the state from which the drug is distributed when required by that state; and

(ii) having a valid registration with the FDA (beginning at such time as federal regulations are promulgated to implement Section 584 of the Federal Act), unless the FDA has made a finding that the third-party logistics provider does not utilize good handling and distribution practices and publishes notice thereof; or

(iii) having valid licensure with the board.

(b) for facilities located in New Mexico: having valid licensure with the board.

**BB. "Manufacturer" means:**

(1) a person that holds an application approved under Section 505 of the Federal Act or a license issued under Section 351 of the Federal Public Health Service Act for such drug, or if such drug is not the subject of an approved application or license, the person who manufactured the drug;

(2) a co-licensed partner of the person described in Paragraph (1) that obtains the drug directly from a person described in Paragraph (1) or (3) of this subsection; or

(3) an affiliate of a person described in Paragraph (1) or (2) of this subsection that receives the product directly from a person described in Paragraph (1) or (2) of this subsection.

**CC. "Manufacturing" means** the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis; and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices; also included is the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons.

**DD. "Misbranded" means** a label to an article that is misleading. In determining whether the label is misleading there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual.

**EE. "NDC" means** national drug code.

**FF. "Official compendium" means** the official USP-NF or the official homeopathic pharmacopoeia of the United States or any supplement to either of them.

**GG.** "Package" means the smallest individual saleable unit of product for distribution by a manufacturer or repackager that is intended by the manufacturer for ultimate sale to the dispenser of such product. An individual saleable unit is the smallest container of product introduced into commerce by the manufacturer or repackager that is intended by the manufacturer or repackager for individual sale to a dispenser.

**HH.** "Prescription drug" means any human drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

**II.** "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing (such as capsules, tablets, and lyophilized products before reconstitution), but does not include:

- (1) blood or blood components intended for transfusion;
- (2) radioactive drugs or radioactive biological products (as defined in Section 600.3(ee) of title 21, Code of Federal Regulations) that are regulated by the Nuclear Regulatory Commission or by the state pursuant to an agreement with such commission under Section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);
- (3) imaging drugs;
- (4) an intravenous product described in Paragraph (14), (15), or (16) of definition XX. ("transaction");
- (5) any medical gas as defined in Section 575 of the Federal Act;
- (6) homeopathic drugs marketed in accordance with applicable guidance under the federal act; or
- (7) a drug compounded in compliance with Section 503A or 503B of the Federal Act.

**JJ.** "Product identifier" means a standardized graphic that includes, in both human-readable form and on a machine-readable data carrier that conforms to the standards developed by a widely recognized international standards development organization, the standardized numerical identifier, lot number, and expiration date of the product, meeting the requirements of the DSCSA.

**KK.** "Product tracing information" means, for each transaction: the recorded transaction history, transaction information, and transaction statement meeting the requirements of the DSCSA.

**LL. "Quarantine"** means the storage or identification of a product, to prevent distribution or transfer of the product, in a physically separate area clearly identified for such use or through other procedures.

**MM. "Repackage"** means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug excluding that completed by the pharmacists responsible for dispensing product to the patient.

**NN. "Repackager"** means a person who owns or operates a facility that repackages and re-labels a product or package for:

- (1) further sale; or
- (2) distribution without a further transaction.

**OO. "Return"** means providing product to the authorized immediate trading partner from which such

product was purchased or received, or to a returns processor or reverse logistics provider for handling of such product.

**PP. "Returns processor or reverse logistics provider"** means a person who owns or operates an establishment that disposes or otherwise processes saleable or non-saleable product received from an authorized trading partner such that the product may be processed for credit to the purchaser, manufacturer, or seller or disposed of for no further distribution.

**QQ. "Selling of drugs, devices or cosmetics"** shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment.

**RR. "Significant loss"** means any loss of a prescription drug that exceeds a reasonable level established by like persons which requires that loss to be reported to the board or as required by the DEA or other state or federal agencies for prescription drugs and controlled substances.

**SS. "Specific patient need"** means the transfer of a product from one pharmacy to another to fill a prescription for an identified patient. Such term does not include the transfer of a product from one pharmacy to another for the purpose of increasing or replenishing stock in anticipation of a potential need.

**TT. "Standardized numerical identifier"** means a set of numbers or characters used to uniquely identify each package or homogenous case that is composed of the NDC that corresponds to the specific product (including the particular package

configuration) combined with a unique alphanumeric serial number of up to 20 characters.

**UU. "Suspect product"** means a product for which there is reason to believe:

- (1) is potentially counterfeit, diverted, or stolen;
- (2) is potentially intentionally adulterated such that the product would result in serious

adverse health consequences or death to humans;

- (3) is potentially the subject of a fraudulent transaction; or
- (4) appears otherwise unfit for distribution such that the product would result in serious

adverse health consequences or death to humans.

**VV. "Third-party logistics provider"** means an entity that provides or coordinates warehousing, or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor, or dispenser of a product, but does not take ownership of the product, nor have responsibility to direct the sale or disposition of the product.

**WW. "Trading partner"** means:

(1) a manufacturer, repackager, wholesale distributor, or dispenser from whom a manufacturer, repackager, wholesale distributor, or dispenser accepts direct ownership of a product or to whom a manufacturer, repackager, wholesale distributor, or dispenser transfers direct ownership of a product; or

(2) a third-party logistics provider from whom a manufacturer, repackager, wholesale distributor, or dispenser accepts direct possession of a product or to whom a manufacturer, repackager, wholesale distributor, or dispenser transfers direct possession of a product.

**XX. "Transaction"** means the transfer of product between persons in which a change of ownership occurs, but does not include:

(1) intracompany distribution of any product between members of an affiliate or within a manufacturer;

(2) the distribution of a product among hospitals or other health care entities that are under common control; for the purposes of this section "common control" means the power to direct or cause the direction of the management and policies of a

person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

**(3)** the distribution of a product for emergency medical reasons including a federal or state declared public health emergency, except that a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason;

**(4)** the dispensing of a product pursuant to a prescription executed in accordance with Section 503(b)(1) of the Federal Act;

**(5)** the distribution of product samples by a manufacturer or a licensed wholesale distributor in accordance with Section 503(d) of the Federal Act;

**(6)** the distribution of blood or blood components intended for transfusion;

**(7)** the distribution of minimal quantities of product by a licensed retail pharmacy to a licensed practitioner for office use;

**(8)** the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

**(9)** the distribution of a product pursuant to the sale or merger of a pharmacy or pharmacies or a wholesale distributor or wholesale distributors, except that any records required to be maintained for the product shall be transferred to the new owner of the pharmacy or pharmacies or wholesale distributor or wholesale distributors;

**(10)** the dispensing of an approved animal drug product approved under Section 512(c) of the Federal Act;

**(11)** products transferred to or from any location that is licensed by the Nuclear Regulatory Commission or by the state pursuant to an agreement with such commission under Section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

**(12)** a combination product that is not subject to approval under Section 505 or licensure under Section 351 of the Public Health Service Act, and that is:

**(a)** a product comprised of a device and one or more other regulated components (such as a device and a drug, biologic, or drug and biologic) that are physically, chemically, or otherwise combined or mixed and produced as a single entity;

**(b)** two or more separate products packaged together in a single package or as a unit and comprised of a drug and device or device and biological product; or

**(c)** two or more finished medical devices plus one or more drug or biological products that are packaged together in what is referred to as a "medical convenience kit" as described in Paragraph (13) below;

**(13)** the distribution of a collection of finished medical devices, which may include a product or biological product, assembled in kit form strictly for the convenience of the purchaser or user (referred to in this paragraph as a "medical convenience kit") if:

**(a)** the medical convenience kit is assembled in an establishment that is registered with the FDA as a device manufacturer in accordance with Section 510(b)(2) of the Federal Act;

**(b)** the medical convenience kit does not contain a controlled substance that appears in a schedule contained in the Comprehensive Drug Abuse Prevention and Control Act of 1970;

**(c)** in the case of a medical convenience kit that includes a product, the person that manufactures the kit:

**(i)** purchased such product directly from the pharmaceutical manufacturer or from a wholesale distributor that purchased the product directly from the pharmaceutical manufacturer; and

**(ii)** does not alter the primary container or label of the product as purchased from the manufacturer or wholesale distributor; and

**(d)** in the case of a medical convenience kit that includes a product, the product is:

**(i)** an intravenous solution intended for the replenishment of fluids and electrolytes;

**(ii)** a product intended to maintain the equilibrium of water and minerals in the body;

**(iii)** a product intended for irrigation or reconstitution;

**(iv)** an anesthetic;

**(v)** an anticoagulant;

**(vi)** a vasopressor; or

**(vii)** a sympathomimetic;

(14) the distribution of an intravenous product that, by its formulation, is intended for the replenishment of fluids and electrolytes (such as sodium, chloride, and potassium) or calories (such as dextrose and amino acids);

(15) the distribution of an intravenous product used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions;

(16) the distribution of a product that is intended for irrigation, or sterile water, whether intended for such purposes or for injection;

(17) the distribution of a medical gas (as defined in Section 575 of the Federal Act); or

(18) the distribution or sale of any licensed product under section 351 of the Public Health Service Act that meets the definition of a medical device under Section 201(h) of the Federal Act.

**YY.** "Transaction history" means a statement in paper or electronic form, including the transaction information for each prior transaction going back to the manufacturer of the product.

**ZZ.** "Transaction information" means:

- (1) the proprietary or established name or names of the product;
- (2) the strength and dosage form of the product;
- (3) the NDC number of the product;
- (4) the container size;
- (5) the number of containers;
- (6) the lot number of the product;
- (7) the date of the transaction;
- (8) the date of the shipment, if more than 24 hours after the date of the transaction;
- (9) the business name and address of the person from whom ownership is being transferred; and
- (10) the business name and address of the person to whom ownership is being transferred.

**AAA. "Transaction statement"** means a statement, in paper or electronic form, that the entity transferring ownership in a transaction:

- (1) is authorized as required under the DSCSA;
- (2) received the product from a person that is authorized as required under the DSCSA;
- (3) received transaction information and a transaction statement from the prior owner of the product, as required under Section 582 of the Federal Act;
- (4) did not knowingly ship a suspect or illegitimate product;
- (5) had systems and processes in place to comply with verification requirements under Section 582 of the Federal Act;
- (6) did not knowingly provide false transaction information; and
- (7) did not knowingly alter the transaction history.

**BBB. "USP-NF standards"** means standards published in the current official United States Pharmacopeia-National Formulary.

**CCC. "Verification or verify"** means determining whether the product identifier affixed to, or imprinted upon, a package or homogeneous case corresponds to the standardized numerical identifier or lot number and expiration date assigned to the product by the manufacturer or the repackager, as applicable in accordance with Section 582 of the Federal Act?

**DDD. "Wholesale drug distribution"** means the distribution of a prescription drug to a person other than a consumer or patient, or receipt of a prescription drug by a person other than the consumer or patient, but does not include:

- (1) intracompany distribution of any drug between members of an affiliate or within a manufacturer;
- (2) the distribution of a drug, or an offer to distribute a drug among hospitals or other health care entities which are under common control;
- (3) the distribution of a drug or an offer to distribute a drug for emergency medical reasons, including a federal or state declared public health emergency, except that, a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason;
- (4) the dispensing of a drug pursuant to a prescription;

**(5)** the distribution of minimal quantities of drug by a licensed retail pharmacy to a licensed practitioner for office use;

**(6)** the distribution of a drug or an offer to distribute a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

**(7)** the purchase or other acquisition by a dispenser, hospital, or other health care entity of a drug for use by such dispenser, hospital, or other health care entity;

**(8)** the distribution of a drug by the manufacturer of such drug;

**(9)** the receipt or transfer of a drug by an authorized third-party logistics provider provided that such third-party logistics provider does not take ownership of the drug;

**(10)** a common carrier that transports a drug, provided that the common carrier does not take ownership of the drug;

**(11)** the distribution of a drug, or an offer to distribute a drug by an authorized repackager that has taken ownership or possession of the drug and repacks it in accordance with Section 582(e) of the Federal Act;

**(12)** saleable drug returns when conducted by a dispenser;

**(13)** the distribution of a collection of finished medical devices, which may include a product or biological product, assembled in kit form strictly for the convenience of the purchaser or user (referred to as a "medical convenience kit") if:

**(a)** the medical convenience kit is assembled in an establishment that is registered with the FDA as a device manufacturer in accordance with Section 501(b)(2) of the federal act;

**(b)** the medical convenience kit does not contain a controlled substance that appears in a schedule contained in the Comprehensive Drug Abuse Prevention and Control Act of 1970 [21 U.S.C. 801 et seq.];

**(c)** in the case of a medical convenience kit that includes a product, the person that manufactures the kit:

**(i)** purchased such product directly from the pharmaceutical manufacturer or from a wholesale distributor that purchased the product directly from the pharmaceutical manufacturer; and

**(ii)** does not alter the primary container or label of the product as purchased from the manufacturer or wholesale distributor; and

(d) in the case of a medical convenience kit that includes a product, the product is

(i) an intravenous solution intended for the replenishment of fluids and electrolytes;

(ii) a product intended to maintain the equilibrium of water and minerals in the body;

(iii) a product intended for irrigation or reconstitution;

(iv) an anesthetic;

(v) an anticoagulant;

(vi) a vasopressor; or

(vii) a sympathomimetic;

(14) the distribution of an intravenous drug that, by its formulation, is intended for the replenishment of fluids and electrolytes (such as sodium, chloride, and potassium) or calories (such as dextrose and amino acids);

(15) the distribution of an intravenous drug used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions;

(16) the distribution of a drug that is intended for irrigation, or sterile water, whether intended for such purposes or for injection;

(17) the distribution of medical gas, as defined in Section 575 of the Federal Act;

(18) facilitating the distribution of a product by providing solely administrative services, including processing of orders and payments; or

(19) the transfer of a product by a hospital or other health care entity, or by a wholesale distributor or manufacturer operating at the direction of the hospital or other health care entity, to a repackager described in Section 581(16)(B) and registered under Section 510 of the Federal Act for the purpose of repackaging the drug for use by that hospital, or other health care entity and other health care entities that are under common control, if ownership of the drug remains with the hospital or other health care entity at all times.

**EEE. "Wholesale distributor"** means a person or entity (other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or repackager) engaged in wholesale drug distribution.

[16.19.8.7 NMAC - Rp, 16.19.8.7 NMAC, 11-28-2017]

**16.19.8.8 WHOLESALE DRUG DISTRIBUTOR LICENSING REQUIREMENTS:**

**A.** Every wholesale drug distributor, wherever located, who engages in wholesale distribution into, out of, or within this state must be licensed by the board in accordance with the laws and regulations of this state before engaging in wholesale distribution of prescription drugs.

**B.** Wholesale distributors cannot operate from a place of residence.

**C.** Where wholesale distribution operations are conducted at more than one location, each such location shall be licensed by the board of pharmacy.

**D.** A wholesale distributor located in New Mexico shall be located apart and separate from any pharmacy.

**E.** Common or contract carriers or warehousemen, or an employee thereof, whose involvement in the wholesale distribution of prescription drugs occurs in the usual course of his business or employment shall not be required to obtain a wholesale drug distributor license from the board.

[16.19.8.8 NMAC - Rp, 16.19.8.8 NMAC, 11-28-2017]

**16.19.8.9 MINIMUM REQUIRED INFORMATION FOR WHOLESALE DRUG DISTRIBUTION LICENSURE:**

**A.** Every wholesale distributor who engages in the wholesale distribution of drugs shall be licensed with the board by submitting an application and providing information required by the board on an application approved by the board including:

**(1)** applicant's full name; all trade or business names used by the licensee (includes "is doing business as" and "formerly known as") which cannot be identical to the name used by another unrelated wholesale distributor, third-party logistics provider, or repackager licensed by the board; full business address and telephone number;

**(2)** type of ownership, e.g., individual, partnership, limited liability company or corporation;

**(3)** name(s) of the owner(s) of the applicant, including;

(a) if a person, the name, address, social security number or Federal Employer Identification Number (FEIN), and date of birth;

(b) if other than a person, the name, address, social security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(c) if a corporation, the state of incorporation; and

(d) if a publicly traded corporation, the information in Subparagraph (b) of this paragraph is not required for corporate officers and corporate directors;

(e) any other relevant information that the board requires;

**(4)** name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the wholesale distributor that engages in the distribution of drugs;

**(5)** evidence of criminal background checks and fingerprinting of the applicant, if a person, and of the applicant's designated representative; the background check shall be sufficient to include all states residence since the person has been an adult;

**(6)** a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the wholesale drug distributor by any other state and federal authority that authorizes the wholesale distributor to purchase, possess and distribute drugs;

**(7)** a list of all disciplinary actions or any other sanction by state and federal agencies against the wholesale distributor as well as any such actions against principals, owners, directors or officers;

**(8)** a full description of each facility and warehouse located in New Mexico, including all locations utilized for drug storage or distribution; the description must include the following:

(a) square footage;

(b) security and alarm system descriptions;

(c) terms of lease or ownership;

(d) address and;

(e) temperature and humidity controls;

**(9)** a description of the wholesale distributor's drug import and export activities;

**(10)** a copy of the wholesale distributor's written policies and procedures as required in Subsection I of 16.19.8.13 NMAC, (Written policies and procedures);

**(11)** a facility located outside of New Mexico shall submit a copy of a current satisfactory inspection report issued by the FDA, or state licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such wholesale distributor, or by the board;

**(12)** the information collected pursuant to Paragraphs (5), (8) and (10) of this subsection shall be made available only to the board, and to state and federal law enforcement officials; the board shall make provisions for protecting the confidentiality of the information collected under this section.

**(13)** renewal applications shall be on a form furnished by the board.

**B.** Every wholesale drug distributor who engages in wholesale distribution shall submit a reasonable fee to be determined by the board.

**C.** Each facility located in New Mexico that engages in wholesale drug distribution must undergo an inspection by the board for the purpose of inspecting the wholesale drug distribution facility and operations prior to initial licensure. Manufacturing facilities located outside of this state are exempt from inspection by the board if the manufacturing facilities are currently registered with the food and drug administration in accordance with Section 510 of the Federal Act.

**D.** All wholesale distributors must publicly display or have readily available all licenses and the most recent inspection report administered by the board.

**E.** Changes in any information in this section shall be submitted to the board within 30 days of such change unless otherwise noted.

**F.** Information submitted by the wholesale drug distributor to the board that is considered trade secret or proprietary information as defined under this states privacy and trade secret or proprietary statutes shall be maintained by the board as private or trade secret proprietary information and be exempt from public disclosure.

**G.** The board shall have the authority to recognize a third-party to accredit and inspect wholesale distributors.

**H.** The board may license by reciprocity, a wholesale distributor that is licensed under the laws of another state if:

**(1)** the applicant submits documentation of a current satisfactory inspection conducted by the FDA, or state licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such wholesale distributor, or the board; and

(2) the requirements of that state are deemed by the board to be substantially equivalent.

I. Every wholesale distributor must furnish a bond or other equivalent means of security, as follows:

(1) for the issuance or renewal of a wholesale distributor license, an applicant that is not a government owned and operated wholesale distributor shall submit a surety bond of \$100,000 or other equivalent means of security acceptable to the board;

(2) for purposes of Paragraph (1) above, the board may accept a surety bond in the amount of \$25,000 if the annual gross receipts of the previous tax year for the wholesaler is \$10,000,000 or less;

(3) if a wholesale distributor can provide evidence that it possesses the required bond in a state, the requirement for a bond in New Mexico shall be waived.

[16.19.8.9 NMAC - Rp, 16.19.8.9 NMAC, 11/28/2017; A, 10/10/2023]

#### **16.19.8.10 MINIMUM QUALIFICATIONS:**

A. The board shall prohibit a person from receiving or maintaining licensure for wholesale distribution if the person:

(1) has been convicted of any felony for conduct relating to wholesale distribution, any felony violation of Subsection (i) or (k) of Section 301, or any felony violation of Section 1365 of title 18, United States Code, relating to product tampering; or

(2) has engaged in a pattern of violating the requirements of this section, or state requirements for licensure, that presents a threat of serious adverse health consequences or death to humans.

B. The board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the state:

(1) any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

(2) any felony convictions of the applicant under federal, state or local law;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

**(4)** the furnishing by the applicant of false or fraudulent material in any application;

**(5)** suspension, revocation or any other sanction by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

**(6)** compliance with regulatory and licensing requirements under previously granted licenses, if any;

**(7)** compliance with requirements to maintain or make available to the board or to federal, state, or local law enforcement officials those records required under 16.19.8 NMAC; and

**(8)** any findings by the board that the applicant has violated or been disciplined, or the subject of administrative action or other sanction, by a regulatory or licensing agency in any state for violating and federal, state, or local laws relating to drug or device wholesale distribution;

**(9)** any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

**C.** The board shall consider the results of a criminal and financial background check and fingerprinting of the applicant, and designated representative to determine if an applicant or others associated with the ownership, management or operations of the wholesale distributor have committed criminal acts that would constitute grounds for denial of licensure. Manufacturers licensed by the FDA in accordance with Section 510 of the Federal Act shall be exempt from criminal and financial background checks.

**D.** The applicant shall provide and attest to a statement providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts.

**E.** The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.

**F.** Request for an alternative reduced wholesale license fee: The board shall collect the full license fee as set by the board unless the board determines that collection of the license fee would be inconsistent with the public interest. The applicant/petitioner shall provide the board with any information necessary to make that determination including:

**(1)** business/organization profit status under federal and state code;

- (2) impact on the health and safety of New Mexico citizens;
- (3) volume of distribution in New Mexico;
- (4) sole source of dangerous drugs; and
- (5) financial hardship for applicant/registrant.

[16.19.8.10 NMAC - Rp, 16.19.8.10 NMAC, 11-28-2017]

#### **16.19.8.11 PERSONNEL:**

As a condition of receiving and retaining a wholesale drug distributor license, the licensee shall require each person employed in any prescription drug wholesale distribution activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained by law. Each person that is issued an initial or renewal license as a wholesale distributor whether in state or out of state must designate in writing on a form required by the board a person for each facility to serve as the designated representatives of the wholesale distributor.

##### **A. To be certified as a designated representative a person must:**

(1) submit an application on a form furnished by the board and provide information that includes:

(a) evidence of criminal background check and fingerprinting, the background check shall be sufficient to include all states residence since the person has been an adult;

(b) date of birth and social security number;

(c) occupations, positions of employment and offices held during the past seven years;

(d) whether the person during the past seven years has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating and state or federal laws regulating the possession, control or wholesale distribution of prescription drugs or devices, together with details of such events;

(e) whether the person has been during the past seven years, the subject of any proceeding for the revocation of any professional or business license or any criminal violation and if so, the nature of the proceeding and the disposition of the proceeding;

(f) description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, which manufactured, administered, prescribed, wholesale distributed or stored prescription drugs and devices in which such businesses were names as a party in a lawsuit;

(g) description of any criminal offense (not including minor traffic violations) of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere; if the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of the criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the board a copy of the final written order of disposition; and

(h) any other information the board deems relevant;

(2) may serve as the designated representative for only one wholesale distributor at any one time, except where more than one licensed wholesale distributor is co-located in the same facility and such wholesale distributors are members of an affiliated group as defined in Section 1504 of the Internal Revenue Code;

(3) be actively involved in and aware of the actual daily operations, purchasing and inventory control of the wholesale distributor;

(a) employed full-time in a managerial position by the wholesale distributor;

(b) physically present at the wholesale distributor during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation or other authorized absence;

(c) aware of and knowledgeable about all policies and procedures pertaining to the operations of the wholesale distributor.

**B.** The criminal and financial information collected pursuant to this section shall be made available only to the board, a third-party recognized by the board and to state and federal law enforcement officials. The board and a third-party recognized by the board shall make provisions for protecting the confidentiality of the information collected under this section.

**C.** Each licensed wholesale distributor located outside of this state that wholesale distributes prescription drugs in this state shall designate a registered agent in this state for service of process. Any licensed wholesale distributor that does not so designate a registered agent shall be deemed to have designated the secretary of state of this state to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed wholesale distributor growing out of or arising from such wholesale distribution. A copy of any such service or process shall be mailed to such wholesale distributor by the board by certified mail, return receipt

requested, postage prepaid, at the address such licensed wholesale distributor has designated on its application for licensure in this state. If any such wholesale distributor is not licensed in this state, service on the secretary of state only shall be sufficient service.

**D.** A designated representative must complete training programs that address applicable state and federal laws and are provided by qualified in-house specialists, outside counsel or counseling specialists with capabilities to help ensure compliance.

[16.19.8.11 NMAC - Rp, 16.19.8.11 NMAC, 11/28/2017; A, 10/10/2023]

#### **16.19.8.12 VIOLATIONS AND PENALTIES:**

The board shall have the authority to suspend or revoke any licenses granted under this part on the grounds established by law or regulations; and may impose fines or civil penalties if allowed by law.

[16.19.8.12 NMAC - Rp, 16.19.8.12 NMAC, 11-28-2017]

#### **16.19.8.13 MINIMUM REQUIREMENTS FOR THE STORAGE AND HANDLING OF PRESCRIPTION DRUGS AND FOR THE ESTABLISHMENT AND MAINTENANCE OF PRESCRIPTION DRUG DISTRIBUTION RECORDS BY WHOLESALE DRUG DISTRIBUTORS AND THEIR OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES:**

**A. Facilities.** All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security;

(3) have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, counterfeit or suspected of being counterfeit or adulterated, suspect or illegitimate, otherwise unfit for distribution or wholesale distribution or that are in immediate or sealed, secondary containers that have been opened;

(4) be maintained in a clean and orderly condition; and

(5) be free from infestation by insects, rodents, birds, or vermin of any kind;  
and

(6) be a commercial location and not a personal dwelling or residence; and

(7) provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information; and

(8) provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting or diversion of prescription drugs or devices; and

(9) controlled substances must be isolated from non-controlled substance drugs and stored in a secure area in accordance with DEA security requirements and standards.

**B. Security and anti-counterfeiting.** All facilities used for wholesale drug distribution shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) The outside perimeter of the premises shall be well-lighted.

(3) Entry into areas where prescription drugs are held shall be limited to authorized personnel.

(4) All facilities shall be equipped with an alarm system to detect entry after hours.

(5) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(6) All facilities shall be equipped with a security system that will provide suitable protection against, detect and document any instances of theft, diversion or counterfeiting.

**C. Storage.** All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or in compliance with standards in the current edition of an official compendium, such as the USP-NF.

(1) If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices or logs shall be utilized to document proper storage of prescription drugs.

#### **D. Examination of Materials.**

(1) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting, contraband, suspected of being counterfeit or contraband, or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

**F. Theft or Loss:** A wholesale distributor shall have and follow diversion detection and prevention plan that includes prescription drugs. Wholesale distributors shall report any theft, suspected theft, diversion or other significant loss of any prescription drug or device to the board and where applicable, to the DEA.

**G. Product tracing, product identifier, and verification:** Wholesale distributors licensed by the board shall comply with the requirements for tracing products through the distribution system as defined in Sections 353 and 360eee, et seq., of the DSCSA, 21 U.S.C. 301, et seq., and successor FDA regulations, with respect to the role of such wholesale distributor including any requirements with respect to: transaction history, transaction information, or transaction statement of a product as such product changes ownership in the supply chain, or verification, investigation, disposition, notification, or recordkeeping relating to such systems, including paper or electronic pedigree systems or for tracking and tracing drugs throughout the distribution system.

**H. Authorized trading partners:** The trading partners of a wholesale distributor may be only authorized trading partners.

**I. Written policies and procedures.** Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories; wholesale drug distributors shall include in their written policies and procedures the following:

(1) a procedure whereby the oldest approved stock of a prescription drug product is distributed first; the procedure may permit deviation from this requirement, if such deviation is temporary and appropriate;

(2) a procedure to be followed for handling recalls and withdrawals of prescription drugs; such procedure shall be adequate to deal with recalls and withdrawals due to:

**(a)** any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the state licensing agency;

**(b)** any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

**(c)** any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design;

**(3)** a procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

**(4)** a procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed; this procedure shall provide for written documentation of the disposition of outdated prescription drugs; this documentation shall be maintained for three years after disposition of the outdated drugs;

**(5)** a procedure for the destruction of outdated prescription drugs in accordance with state and federal laws, including all necessary documentation, maintained for a minimum of three years, and the appropriate witnessing of the destruction of outdated prescription drugs in accordance with all applicable federal and state requirements;

**(6)** a procedure for the disposing and destruction of containers, labels and packaging to ensure that the containers, labels, and packaging cannot be used in counterfeiting activities, including all necessary documentation, maintained for a minimum of three years, and the appropriate witnessing of the destruction of any labels, packaging, immediate containers or containers in accordance with all applicable federal and state requirements;

**(7)** a procedure for identifying, investigating and reporting significant prescription drug inventory discrepancies involving counterfeit, suspect of being counterfeit, contraband or suspect of being contraband, in the inventory and reporting of such discrepancies within 10 business days to the board and appropriate federal or state agency upon discovery of such discrepancies;

**(8)** a procedure for reporting criminal or suspected criminal activities involving the inventory of prescription drug(s) to the board, FDA as required by the agency, and if applicable, DEA, within three business days;

**(9)** a procedure that ensures all common carriers contracted with or utilized by the wholesale distributor conduct a criminal background check and drug screen of the employees whose responsibilities include the known handling of prescription drugs;

**(10)** a procedure for conducting periodic assessments of the security provisions of common carriers contracted with or utilized by the wholesale distributor that at a minimum must specify that vehicles must be secured by locks on all doors and windows when the driver is not present, there shall be no unapproved stops during the delivery route and that the vehicle must not be left running in the absence of the driver;

**(11)** a procedure or set procedures designated to address high-risk deliveries that may require the common carriers contracted with or utilized by the wholesale distributor to make deliveries only to highly-visible, well-lit locations during certain prescribed time periods agreed upon with the customer and the use of varied routing.

**J. Responsible persons.** Wholesale drug distributors shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

**K. Compliance with federal, state, and local law:** Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

**(1)** Wholesale drug distributors shall permit board authorized personnel and authorized federal, state and local law enforcement officials, to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law, and to confiscate prescription drugs and records to the extent authorized by law or rules. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

**(2)** Wholesale drug distributors that deal in controlled substances shall register with the board and with the DEA, and shall comply with all applicable state, local and DEA regulations.

**(3)** A wholesale distributor may distribute only to authorized trading partners. Product shall be delivered only to the licensed address of the authorized trading partner.

**(4)** Controlled substances may only be distributed or delivered to persons in this state who are registered by the board and the DEA to possess controlled substances.

**L. Salvaging and reprocessing.** Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to

prescription drug product salvaging or reprocessing including Subsection I of 16.19.8.13 NMAC, (**Written Policies and Procedures**).

[16.19.8.13 NMAC - Rp, 16.19.8.13 NMAC, 11-28-2017]

#### **16.19.8.14 THIRD-PARTY LOGISTICS PROVIDER LICENSING REQUIREMENTS:**

**A.** Every third-party logistics provider, wherever located, who engages in providing third-party logistics into, out of, or within this state must be licensed by the board in accordance with the laws and regulations of this state before engaging as a third-party logistics provider of prescription drugs.

**B.** Third-party logistics providers cannot operate from a place of residence.

**C.** Where third-party logistics operations are conducted at more than one location, each such location shall be licensed by the board.

**D.** A third-party logistics provider located in New Mexico shall be located apart and separate from any pharmacy.

[16.19.8.14 NMAC - Rp, 16.19.8.14 NMAC, 11-28-2017]

#### **16.19.8.15 MINIMUM REQUIRED INFORMATION FOR THIRD-PARTY LOGISTICS PROVIDER LICENSURE:**

**A.** Every third-party logistics provider, located in New Mexico or located in another state and not licensed as a third-party logistics provider by the FDA, who engages in third-party logistics activities involving product shall be licensed with the board, by submitting an application and providing information required by the board on an application approved by the board, including:

(1) applicant's full name; all trade or business names used by the licensee (includes "is doing business as" and "formerly known as"), which cannot be identical to the name used by another unrelated wholesale distributor, third-party logistics provider, or repackager licensed by the board; full business address and telephone number;

(2) type of ownership, e.g., individual, partnership, limited liability company or corporation;

(3) name(s) of the owner(s) of the applicant, including;

(a) if a person, the name, address, social security number or FEIN, and date of birth;

(b) if other than a person, the name, address, social security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(c) if a corporation, the state of incorporation; and

(d) if a publicly traded corporation, the information in Subparagraph (b) of this paragraph is not required for corporate officers and corporate directors.

(e) any other relevant information that the board requires;

(4) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the third-party logistics provider that engages in the distribution of drugs;

(5) evidence of criminal background checks and fingerprinting of the applicant, if a person, and of the applicant's designated representative; the background check shall be sufficient to include all states residence since the person has been an adult;

(6) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the third-party logistics provider by any other state and federal authority that authorizes the third-party logistics provider to possess and distribute drugs;

(7) a list of all disciplinary actions or any other sanction by state and federal agencies against the third-party logistics provider as well as any such actions against principals, owners, directors or officers;

(8) a full description of each facility and warehouse located in New Mexico, including all locations utilized for drug storage or distribution; the description must include the following:

(a) square footage;

(b) security and alarm system descriptions;

(c) terms of lease or ownership;

(d) address and;

(e) temperature and humidity controls;

(9) a description of the third-party logistics provider's drug import and export activities;

(10) a copy of the third-party logistics provider's written policies and procedures as required in Subsection D of 16.19.8.18 NMAC;

(11) a facility located outside of New Mexico shall submit a copy of a current satisfactory inspection report issued by the FDA, or state licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such third-party logistics provider, or by the board;

(12) the information collected pursuant to Paragraphs (5), (8) and (10) of this subsection shall be made available only to the board, and to state and federal law enforcement officials; the board shall make provisions for protecting the confidentiality of the information collected under this section.

(13) renewal applications shall be on a form furnished by the board.

**B.** Every third-party logistics provider who engages in third-party logistics activities involving prescription drugs and required to be licensed by the board shall submit a reasonable fee to be determined by the board.

**C.** Each facility located in New Mexico that engages in third-party logistics must undergo an inspection by the board for the purpose of inspecting the third-party logistics facility and operations prior to initial licensure.

**D.** All third-party logistics providers must publicly display or have readily available all licenses and the most recent inspection report administered by the board.

**E.** Changes in any information in Subsection A of 16.19.13 NMAC shall be submitted to the board within 30 days of such change unless otherwise noted.

**F.** Information submitted by the third-party logistics provider that is considered trade secret or proprietary information as defined under this states privacy and trade secret/proprietary statutes shall be maintained by the board as private or trade secret proprietary information and be exempt from public disclosure.

**G.** The board shall have the authority to recognize a third-party to inspect third-party logistics providers.

**H.** The board may license by reciprocity, a third-party logistics provider that is licensed under the laws of another state if:

(1) the applicant submits documentation of a current satisfactory inspection conducted by the FDA, or state licensing authority or by a third-party inspection service approved by the FDA or the state authority licensing such third-party logistics provider, or by the board; and

(2) the requirements of that state are deemed by the board to be substantially equivalent.

[16.19.8.15 NMAC - Rp, 16.19.8.15 NMAC, 11/28/2017; A, 10/10/2023]

**16.19.8.16 MINIMUM QUALIFICATIONS:**

**A.** The board will not license a third-party logistics provider when the FDA has made a finding that the third-party logistics provider does not utilize good handling and distribution practices and published notice thereof.

**B.** The board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in providing third-party logistics of prescription drugs within the state:

(1) any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

(2) any felony convictions of the applicant under federal, state or local law;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application;

(5) suspension, revocation or any other sanction by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with regulatory and licensing requirements under previously granted licenses, if any;

(7) compliance with requirements to maintain or make available to the board or to federal, state, or local law enforcement officials those records required under this part; and

(8) any findings by the board that the applicant has violated or been disciplined, or the subject of administrative action, by a regulatory or licensing agency in any state for violating and federal, state, or local laws relating to drug or device distribution;

(9) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

**C.** The board shall consider the results of a criminal and financial background check and fingerprinting of the applicant and designated representative responsible for facility operations, to determine if an applicant or others associated with the ownership, management or operations of the third-party logistics provider have committed criminal acts that would constitute grounds for denial of licensure.

**D.** The applicant shall provide and attest to a statement providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts.

**E.** The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.

[16.19.8.16 NMAC - Rp, 16.19.8.16 NMAC, 11-28-2017]

#### **16.19.8.17 PERSONNEL:**

As a condition of receiving and retaining a third-party logistics provider license, the licensee shall require each person employed in any prescription drug third-party logistics activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained by law. Each person that is issued an initial or renewal license as a third-party-logistics provider whether in state or out of state must designate in writing on a form required by the board a person for each facility to serve as the designated representatives of the third-party logistics provider.

**A.** To be certified as a designated representative a person must:

(1) submit an application on a form furnished by the board and provide information that includes:

(a) evidence of criminal background check and fingerprinting, the background check shall be sufficient to include all states residence since the person has been an adult;

(b) date of birth and social security number;

(c) occupations, positions of employment and offices held during the past seven years;

(d) whether the person during the past seven years has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating and state

or federal laws regulating the possession, control or wholesale distribution of prescription drugs or devices, together with details of such events;

(e) whether the person has been during the past seven years, the subject of any proceeding for the revocation of any professional or business license or any criminal violation and if so, the nature of the proceeding and the disposition of the proceeding;

(f) description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, which manufactured, administered, prescribed, distributed or stored prescription drugs and devices in which such businesses were names as a party in a lawsuit;

(g) description of any criminal offense (not including minor traffic violations) of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere; if the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of the criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the board a copy of the final written order of disposition;

(h) any other information the board deems relevant;

(2) may serve as the designated representative for only one third-party logistics provider at any one time, except where more than one licensed third-party logistics provider is co-located in the same facility and such third-party logistics providers are members of an affiliated group as defined in Section 1504 of the Internal Revenue Code;

(3) be actively involved in and aware of the actual daily operations and inventory control of the third-party logistics provider;

(a) employed full-time in a managerial position by the third-party logistics provider;

(b) physically present at the third-party logistics provider during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation or other authorized absence;

(c) aware of and knowledgeable about all policies and procedures pertaining to the operations of the third-party logistics provider.

**B.** The criminal and financial information collected pursuant to this section shall be made available only to the board, a third-party recognized by the board, and to state and federal law enforcement officials. The board and a third-party recognized by the

board shall make provisions for protecting the confidentiality of the information collected under this section.

**C.** No third-party logistics provider shall have as an owner or designated representative anyone convicted of any felony violation of Subsection (i) or (k) of Section 301 or any violation of Section 1365 of title 18, United States Code relating to product tampering;

**D.** Each licensed third-party logistics provider located outside of this state that distributes prescription drugs into this state shall designate a registered agent in this state for service of process. Any licensed third-party logistics provider that does not so designate a registered agent shall be deemed to have designated the secretary of state of this state to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed third-party logistics provider growing out of or arising from such drug distribution. A copy of any such service or process shall be mailed to such third-party logistics provider by the board by certified mail, return receipt requested, postage prepaid, at the address such licensed third-party logistics provider has designated on its application for licensure in this state. If any such third-party logistics provider is not licensed in this state, service on the secretary of state only shall be sufficient service.

**E.** A designated representative must complete training programs that address applicable state and federal laws and are provided by qualified in-house specialists, outside counsel or counseling specialists with capabilities to help ensure compliance.

[16.19.8.17 NMAC - Rp, 16.19.8.17 NMAC, 11/28/2017; A, 10/10/2023]

#### **16.19.8.18 MINIMUM STANDARDS FOR THIRD-PARTY LOGISTICS PROVIDERS:**

**A. Reporting:** Each facility of a third-party logistics provider shall comply with the FDA annual reporting requirements.

**B. Storage practices, facilities:** All third-party logistics provider facilities at which prescription drugs are stored, warehoused, handled, held, or displayed shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security;

(3) have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, counterfeit or suspected of being counterfeit or adulterated, suspect or illegitimate, otherwise unfit for distribution or that are in immediate or sealed, secondary containers that have been opened;

- (4) be maintained in a clean and orderly condition; and
- (5) be free from infestation by insects, rodents, birds, or vermin of any kind; and
- (6) be a commercial location and not a personal dwelling or residence; and
- (7) provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information; and
- (8) provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting or diversion of prescription drugs or devices; and
- (9) controlled substances must be isolated from non-controlled substance drugs and stored in a secure area in accordance with DEA security requirements and standards.

**C. Security and anti-counterfeiting:** All facilities used for third-party logistics drug storage or distribution shall be secure from unauthorized entry.

- (1) Access from outside the premises shall be kept to a minimum and be well-controlled.
- (2) The outside perimeter of the premises shall be well-lighted.
- (3) Entry into areas where prescription drugs are held shall be limited to authorized personnel.
- (4) All facilities shall be equipped with an alarm system to detect entry after hours.
- (5) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
- (6) All facilities shall be equipped with a security system that will provide suitable protection against, detect and document any instances of theft, diversion or counterfeiting.

**D. Policies and procedures:** Each third-party logistics provider must have written policies and procedures to:

- (1) address receipt, security, storage, inventory, shipment, and distribution of a product;

(2) identify, record, and report confirmed significant losses, or thefts in the United States;

(3) correct errors and inaccuracies in inventories;

(4) provide support for manufacturer recalls;

(5) prepare for, protect against, and address any reasonably foreseeable crisis that affects security or operation at the facility, such as a strike, fire, or flood;

(6) ensure that any expired product is segregated from other products and returned to the manufacturer, repackager, or their agent, or destroyed;

(7) maintain the capability to trace the receipt and outbound distribution of a product, and supplies and records of inventory; and

(8) quarantine or destroy a suspect product if directed to do so by the respective manufacturer, wholesale distributor, dispenser, or an authorized government agency;

**E. Storage:** All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or in compliance with standards in the current edition of an official compendium, such as the USP-NF.

(1) If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices or logs shall be utilized to document proper storage of prescription drugs.

**F. Inspection:** Each third-party logistics provider facility located in New Mexico shall be inspected as a condition of initial licensure and periodically inspected to ensure compliance with board regulations.

**G. Trading partner list:** A third-party logistics provider must provide the board, upon a request by the board, a list of all product manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services at such facility.

**H. Compliance with federal, state, and local law:** Third-party logistics providers shall operate in compliance with applicable federal, state, and local laws and regulations.

(1) Third-party logistics providers shall permit board authorized personnel and authorized federal, state and local law enforcement officials, to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law, and to confiscate prescription drugs and records to the extent authorized by law or rules. Such officials shall be required to show appropriate identification prior to being permitted access to third-party logistics providers' premises and delivery vehicles.

(2) Third-party logistics providers that deal in controlled substances shall register with the board as required, and with the DEA, and shall comply with all applicable state, local and DEA regulations.

(3) A third-party logistics provider may distribute only to authorized trading partners. Product shall be shipped only to the address listed on the licensee's license.

(4) Controlled substances may only be distributed or delivered to persons in this state who are registered by the board and the DEA to possess controlled substances.

[16.19.8.18 NMAC - Rp, 16.19.8.18 NMAC, 11-28-2017]

#### **16.19.8.19 REPACKAGER LICENSING REQUIREMENTS:**

**A.** Every repackager, wherever located, who engages in distribution into, out of, or within this state must be licensed by the board in accordance with the laws and regulations of this state before engaging in repackaging or distribution of prescription drugs.

**B.** A repackager shall have valid registration with the FDA as a drug establishment under section 510 of the Federal Act.

**C.** Repackagers cannot operate from a place of residence.

**D.** Where repackaging operations are conducted at more than one location, each such location shall be licensed by the board.

**E.** The repackaging facility shall be located apart and separate from any pharmacy licensed by the board.

[16.19.8.19 NMAC - Rp, 16.19.8.19 NMAC, 11-28-2017]

#### **16.19.8.20 MINIMUM REQUIRED INFORMATION FOR REPACKAGER LICENSURE:**

**A.** Every repackager who engages in the distribution of product shall be licensed with the board by submitting an application and providing information required by the board on an application approved by the board, including:

(1) applicant's full name; all trade or business names used by the licensee (includes "is doing business as" and "formerly known as"), which cannot be identical to the name used by another unrelated wholesale distributor, third-party logistics provider, or repackager licensed by the board; full business address and telephone number;

(2) type of ownership, e.g. individual, partnership, limited liability company or corporation;

(3) name(s) of the owner(s) of the applicant, including;

(a) if a person, the name, address, social security number or FEIN, and date of birth;

(b) if other than a person, the name, address, social security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(c) if a corporation, the state of incorporation; and

(d) if a publicly traded corporation, the information in Subparagraph (b) of this paragraph is not required for corporate officers and corporate directors.

(e) any other relevant information that the board requires;

(4) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the repackager that engages in the distribution of drugs;

(5) proof of valid registration as a drug establishment with the FDA;

(6) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the repackager by any other state and federal authority that authorizes the repackager to purchase, possess, repackage and distribute drugs;

(7) a list of all disciplinary actions or any other sanction by state and federal agencies against the repackager as well as any such actions against principals, owners, directors or officers;

(8) a full description of each facility and warehouse located in New Mexico, including all locations utilized for drug storage or distribution; the description must include the following:

- (a) square footage;
  - (b) security and alarm system descriptions;
  - (c) terms of lease or ownership;
  - (d) address and;
  - (e) temperature and humidity controls;
- (9) a description of the repackager's drug import and export activities;
- (10) a copy of the repackager's written policies and procedures as required in Subsection D of 16.19.8.23 NMAC;
- (11) a facility located outside of New Mexico shall submit a copy of a current satisfactory inspection report issued by the FDA, or State licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such repackager, or by the board.

(12) the information collected pursuant to Paragraphs (8) and (10) of this subsection shall be made available only to the board, and to state and federal law enforcement officials; the board shall make provisions for protecting the confidentiality of the information collected under this section.

(13) renewal applications shall be on a form furnished by the board.

**B.** Every repackager shall submit a reasonable fee to be determined by the board.

**C.** Each facility located in New Mexico that engages in repackaging must undergo an inspection by the board for the purpose of inspecting the repackaging facility and operations prior to initial licensure.

**D.** All repackagers must publicly display or have readily available all licenses and the most recent inspection report administered by the board.

**E.** Changes in any information in this section shall be submitted to the board within 30 days of such change unless otherwise noted.

**F.** Information submitted by the repackager to the board that is considered trade secret or proprietary information as defined under this states privacy and trade secret/proprietary statutes shall be maintained by the board as private or trade secret proprietary information and be exempt from public disclosure.

**G.** The board shall have the authority to recognize a third-party to inspect repackagers.

**H.** The board may license by reciprocity, a repackager that is licensed under the laws of another state if:

(1) the applicant submits documentation of a current satisfactory inspection conducted by the FDA, or state licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such repackager, or by the board; and

(2) the requirements of that state are deemed by the board to be substantially equivalent.

[16.19.8.20 NMAC - Rp, 16.19.8.20 NMAC, 11/28/2017; A, 10/10/2023]

**16.19.8.21 MINIMUM QUALIFICATIONS:**

**A.** The board shall prohibit a person from receiving or maintaining repackager licensure if the person:

(1) has been convicted of any felony for conduct relating to manufacturing or distribution, any felony violation of Subsection (i) or (k) of section 301, or any felony violation of Section 1365 of title 18, United States Code, relating to product tampering; or

(2) has engaged in a pattern of violating the requirements of this section, or state requirements for licensure, that presents a threat of serious adverse health consequences or death to humans.

**B.** The board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage as a repackager within the state:

(1) any conviction of the applicant under any federal, state or local laws relating to drug manufacture, samples, wholesale or retail drug distribution, or distribution of controlled substances;

(2) any felony convictions of the applicant under federal, state or local law;

(3) the applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(4) the furnishing by the applicant of false or fraudulent material in any application;

(5) suspension, revocation or any other sanction by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with regulatory and licensing requirements under previously granted licenses, if any;

(7) compliance with requirements to maintain or make available to the board or to federal, state, or local law enforcement officials those records required under this part; and

(8) any findings by the board that the applicant has violated or been disciplined or subject to administrative action by a regulatory or licensing agency in any state for violating and federal, state, or local laws relating to drug or device wholesale distribution;

(9) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

**C.** The applicant shall provide and attest to a statement providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts.

**D.** The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.

[16.19.8.21 NMAC - Rp, 16.19.8.21 NMAC, 11/28/2017; A, 10/10/2023]

#### **16.19.8.22 PERSONNEL:**

As a condition of receiving and retaining a repackager license, the licensee shall require each person employed in any repackaging or distribution activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained by law. Each person that is issued an initial or renewal license as a repackager whether in state or out of state must designate in writing on a form required by the board a person for each facility to serve as the designated representatives of the repackager.

**A.** Each licensed repackager located outside of this state that distributes prescription drugs in this state shall designate a registered agent in this state for service of process. Any licensed repackager that does not so designate a registered agent shall be deemed to have designated the secretary of state of this state to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed repackager growing out of or arising from such manufacture or distribution. A copy of any such service or process shall be mailed to such repackager by the board by certified mail, return receipt requested, postage prepaid, at the address

such licensed repackager has designated on its application for licensure in this state. If any such repackager is not licensed in this state, service on the secretary of state only shall be sufficient service.

**B.** A designated representative must complete training programs that address applicable state and federal laws and are provided by qualified in-house specialists, outside counsel or counseling specialists with capabilities to help ensure compliance.

[16.19.8.22 NMAC - Rp, 16.19.8.22 NMAC, 11/28/2017; A, 10/10/2023]

### **16.19.8.23 REPACKAGER MINIMUM STANDARDS:**

**A. Compliance with federal, state, and local law.** A repackager shall operate in compliance with applicable federal, state, and local laws and regulations.

**(1)** A repackager shall comply with 16.19.9 NMAC, including operation in compliance with the Federal Food, Drug, and Cosmetic Act; **Good Manufacturing Practices**, 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. 216, 262, 263a, 264; and 21 C.F.R. Parts 210 and 211.

**(2)** A repackager shall permit board authorized personnel and authorized federal, state and local law enforcement officials, to enter and inspect its premises and delivery vehicles, and to audit its records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law, and to confiscate prescription drugs and records to the extent authorized by law or rules. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

**(3)** Inventories, records and written operating procedures shall be made available for inspection and photocopying by authorized inspectors employed by the board for a period of three years following disposition of the drugs.

**(4)** Repackagers that deal in controlled substances shall register with the board and with the DEA, and shall comply with all applicable state, local and DEA regulations.

**(5)** A repackager may distribute only to authorized trading partners. Product shall be delivered only to the licensed address of the authorized trading partner.

**(6)** Controlled substances may only be distributed or delivered to persons in this state who are registered by the board and the DEA to possess controlled substances.

**(7)** Product tracing, product identifier, and verification: Repackagers licensed by the board shall comply with the requirements for tracing products through the distribution system as defined in Sections 353 and 360eee, et seq., of the DSCSA, 21

U.S.C. 301, et seq., and successor FDA regulations, with respect to the role of such repackager including any requirements with respect to: transaction history, transaction information, or transaction statement of a product as such product changes ownership in the supply chain, or verification, investigation, disposition, notification, or recordkeeping relating to such systems, including paper or electronic pedigree systems or for tracking and tracing drugs throughout the distribution system.

**(8)** Authorized trading partners: The trading partners of a repackager may be only authorized trading partners.

**B. Shipment.** A repackager shall ship product only to the address listed on the licensee's license.

**C. Theft or loss.** A repackager shall have and follow diversion detection and prevention plan that includes all prescription drugs. A repackagers shall report any theft, suspected theft, diversion or other significant loss of any prescription drug or device to the board and where applicable, to the DEA.

**D. Written policies and procedures.** Repackagers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories; repackagers shall include in their written policies and procedures the following:

**(1)** a procedure whereby the oldest approved stock of a prescription drug product is distributed first; the procedure may permit deviation from this requirement, if such deviation is temporary and appropriate;

**(2)** a procedure to be followed for handling recalls and withdrawals of prescription drugs; such procedure shall be adequate to deal with recalls and withdrawals due to:

**(a)** any action initiated at the request of the FDA or other federal, state, or local law enforcement or other government agency, including the state licensing agency;

**(b)** any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

**(c)** any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design;

**(3)** a procedure to ensure that repackagers prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike,

fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

(4) a procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed; this procedure shall provide for written documentation of the disposition of outdated prescription drugs; this documentation shall be maintained for three years after disposition of the outdated drugs;

(5) a procedure for the destruction of outdated prescription drugs in accordance with state and federal laws, including all necessary documentation, maintained for a minimum of three years, and the appropriate witnessing of the destruction of outdated prescription drugs in accordance with all applicable federal and state requirements;

(6) a procedure for the disposing and destruction of containers, labels and packaging to ensure that the containers, labels, and packaging cannot be used in counterfeiting activities, including all necessary documentation, maintained for a minimum of three years, and the appropriate witnessing of the destruction of any labels, packaging, immediate containers or containers in accordance with all applicable federal and state requirements;

(7) a procedure for identifying, investigating and reporting significant prescription drug inventory discrepancies involving counterfeit, suspect of being counterfeit, contraband or suspect of being contraband, in the inventory and reporting of such discrepancies within 10 business days to the board and appropriate federal or state agency upon discovery of such discrepancies;

(8) a procedure for reporting criminal or suspected criminal activities involving the inventory of prescription drug(s) to the board, FDA as required by the agency, and if applicable, DEA, within three business days;

(9) a procedure that ensures all common carriers contracted with or utilized by the repackager conduct a criminal background check and drug screen of the employees whose responsibilities include the known handling of prescription drugs;

(10) a procedure for conducting periodic assessments of the security provisions of common carriers contracted with or utilized by the repackager that at a minimum must specify that vehicles must be secured by locks on all doors and windows when the driver is not present, there shall be no unapproved stops during the delivery route and that the vehicle must not be left running in the absence of the driver;

**E. Responsible persons.** Repackagers shall establish and maintain lists of officers, directors, managers, and other persons in charge of operations, storage, and handling, including a description of their duties and a summary of their qualifications.

**F. Salvaging and reprocessing.** Repackagers shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing including Subsection D of 16.19.8.23 NMAC.

[16.19.8.23 NMAC - Rp, 16.19.8.23 NMAC, 11-28-2017]

#### **16.19.8.24 MANUFACTURER REQUIREMENTS:**

**A. Product tracing, product identifier, and verification:** Manufacturers shall comply with the requirements for tracing products through the distribution system as defined in Sections 353 and 360eee, et seq., of the DSCSA, 21 U.S.C. 301, et seq., and successor FDA regulations, with respect to the role of such manufacturer including any requirements with respect to: transaction history, transaction information, or transaction statement of a product as such product changes ownership in the supply chain, or verification, investigation, disposition, notification, or recordkeeping relating to such systems, including paper or electronic pedigree systems or for tracking and tracing drugs throughout the distribution system.

**B. Authorized trading partners:** The trading partners of a manufacturer may be only authorized trading partners.

**C. Compliance with federal, state, and local law:** Manufacturers shall operate in compliance with applicable federal, state, and local laws and regulations. Manufacturers that deal in controlled substances shall register with the board and with the DEA, and shall comply with all applicable state, local and DEA regulations.

[16.19.8.24 NMAC - Rp, 16.19.8.24 NMAC, 11-28-2017]

### **PART 9: MINIMUM STANDARDS FOR MANUFACTURERS AND REPACKAGING FIRMS**

#### **16.19.9.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[02-15-1889...02-15-96; 16.19.9.1 NMAC – Rn, 16 NMAC 19.9.1, 03-30-02]

#### **16.19.9.2 SCOPE:**

All manufacturers, packagers and distributors, other than wholesalers, of drugs, including radioactive pharmaceuticals.

[02-15-96; 16.19.9.2 NMAC – Rn, 16 NMAC 19.9.2, 03-30-02]

#### **16.19.9.3 STATUTORY AUTHORITY:**

Section 61-11-6A(6) NMSA 1978 directs the Board of Pharmacy to provide for the licensing of drug manufacturers and for the inspection of their facilities and activities. Section 61-11-6(A) NMSA 1978 authorizes the Board to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article I NMSA 1978. Pursuant to Section 26-1-18 of the Drug, Device and Cosmetic Act, the Board is authorized to promulgate regulations for the efficient enforcement of the Act.

[02-15-96; A, 03-14-98; 16.19.9.3 NMAC – Rn, 16 NMAC 19.9.3, 03-30-02]

#### **16.19.9.4 DURATION:**

Permanent.

[02-15-96; 16.19.9.4 NMAC – Rn, 16 NMAC 19.9.4, 03-30-02]

#### **16.19.9.5 EFFECTIVE DATE:**

February 15, 1996, unless another date is specified at the end of a section.

[02-15-96; A, 03-14-98; 16.19.9.5 NMAC – Rn, 16 NMAC 19.9.5, 03-30-02]

#### **16.19.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 19 is to establish standards for the safe and competent manufacture, packaging, repackaging and distribution of drugs, including radioactive pharmaceuticals.

[02-15-96; 16.19.9.6 NMAC – Rn, 16 NMAC 19.9.6, 03-30-02]

#### **16.19.9.7 DEFINITIONS:**

For the purpose of defining Section 26-1-11 A(3) NMSA Comp. the following definitions apply:

**A. "Manufacturer"** means the steps in the preparation, propagation, processing or compounding of a drug - the making by chemical, physical, biological or other procedures of any articles which meet the definition of drugs and includes manipulation, sampling or control procedures resulting in the finished dosage form. Manufacture includes all the steps performed on the product itself, which do not affect intrinsically the safety, purity or potency of the product.

**B. "Manufacturers"** means the person or company who manufactures a drug in its' finished dosage form.

**C. "Packager" or "Packer"** means a person or firm, other than a wholesaler, who distributes drugs.

**D. "Distributor"** means the original selling agent, other than a wholesaler, who distributes drugs.

**E. "The finished dosage form"** of a prescription drug is defined as that form of the drug which is or is intended to be dispensed or administered to the patient and requires no further manufacturing or processing other than packaging and labeling.

[03-07-80...08-27-90; 16.19.9.7 NMAC – Rn, 16 NMAC 19.9.7 NMAC, 03-30-02]

#### **16.19.9.8 MINIMUM STANDARDS:**

**A.** The following minimum standards shall apply to all manufacturing establishments and repackaging firms for which licenses have been issued by the Board:

**(1)** All drugs and chemicals used in the manufacturing process or held for sale shall conform to the New Mexico Drug and Cosmetic Act and shall be stored, preserved and disposed of as prescribed by laws regulating the labeling and manufacture of drugs. When necessary, and/or according to label requirements, all drugs and chemicals which require refrigeration shall be stored and preserved under proper temperature.

**(2)** All manufacturers must conform to current good manufacturing practices as set forth in Title 21, CFR, Subsection 211.1 to 211.208 inclusive. The definitions and interpretations contained in Section 201 of the Federal Food and Drug Act shall be applicable.

**(3)** All manufacturers must conform to (1141) Packaging, Storage, and Distribution of Pharmacopeial Articles, the United States Pharmacopeia. These include the following stability protocols:

**(4)** Stability of manufactured dosage forms must be demonstrated by the manufacturer by the use of the methods adequate for the purpose. Monograph assays may be used for stability testing if they are stability-indicating (i.e., if they accurately differentiate between the intact drug molecules and their degradation products). Stability considerations should include not only the specific compendial requirements, but also changes in physical appearance of the product that would warn users that the product's continued integrity is questionable.

**(5)** Stability studies on active substances and packaged dosage forms must be conducted by means of "real time", long-term tests at specific temperatures and relative humidities representing storage and shipping conditions experienced in the distribution chain of the climatic zones of the country or region of the world concerned. Labeling of the packaged active substance or dosage form shall reflect the effects of

temperature, relative humidity, air, and light on its stability. Label temperature storage warnings will reflect both the results of the real-time storage tests and also allow for expected seasonal excursions of temperature during distribution.

(6) All persons in the distribution or dispensing chain shall comply with the manufacturers directions.

## **B. RADIOACTIVE PHARMACEUTICALS**

(1) Radioactive pharmaceuticals require specialized techniques in their handling and testing in order that correct results may be obtained and hazards to personnel be minimized.

(2) The following minimum requirements must be met for a manufacturing establishment preparing radiopharmaceutical products. These requirements are in addition to the regulatory requirements of the Federal Atomic Energy Commission, the Federal Food and Drug Administration, the U.S. Public Health Service regulations and the New Mexico Radiation Protection Act administered by the Environmental Improvement Agency. **Minimum equipment and accessory standards:**

(a) Fume hood - minimum of 30 inches

(b) Laminar flow hood

(c) Dose calibrator

(d) Refrigerator (lead lined)

(e) Mettler balance

(f) Spectrophotometer

(g) Drawing Station (lead glass and lead)

(3) **Glassware:**

(a) 3 beakers 50 ml

(b) 3 beakers 150 ml

(c) 1 beaker 500 ml

(d) 2 volumetric flasks 50 ml

(e) 6 volumetric flasks 100 ml

(f) 2 graduated cylinders 10 ml

(g) 2 graduated cylinders 100 ml

(4) **Radiochromatographic strip scanner and/or well counter**

(5) **Supplies:**

(a) disposable syringes 1,3 and 5 cc

(b) multidose vials 10, 20 and 30 cc

(c) disposable alcohol swabs

(d) disposable gloves

(6) **Reference books:**

(a) American Hospital Formulary Service

(b) National Formulary

(c) United States Pharmacopoeia

(7) **Space:** The radiopharmaceutical manufacturing or preparation area shall be an undivided area of not less than 240 square feet for the hot lab and storage area. The area shall contain adequate sink with hot and cold water facilities.

[03-07-80...08-27-90;A, 03-14-98; 16.19.9.8 NMAC - Rn & A, 16 NMAC 19.9.8, 03-30-2002]

#### **16.19.9.9 LICENSURE OR REGISTRATION:**

Wholesale distributor and manufacturer distributor or manufacturer.

**A.** No manufacturer shipping dangerous drugs into New Mexico or who sells or distributes dangerous drugs in this state through any person or media, other than a wholesaler who has obtained a license, shall conduct the business of selling or distributing dangerous drugs without obtaining an out-of-state drug license from the Board.

**B.** Applications for an out-of-state drug distributor's license under this section shall be made on a form furnished by the Board of Pharmacy. The Board may require such information as it deems is reasonably necessary to carry out the purposes of this section. This requirement does not include the licensure of a parent corporation of a corporation or division.

**C.** The license fee shall be as specified in 16.19.12 NMAC, Fees, and shall be renewed annually before the last day of December each year.

**D.** No person acting as principal or agent (detail man) for any out-of-state manufacturer, wholesaler or distributor who has not obtained a license from the Board shall conduct the business of selling or distributing dangerous drugs within the state.

**E.** Any person acting as principal or agent for any manufacturer, wholesaler or distributor who is licensed by the Board and who possesses or distributes dangerous drugs, shall register as principal or agent for the licensed manufacturer, wholesaler or distributor.

**F.** Registration of persons under this section shall be made on a form furnished by the Board. The Board may require such information as it deems is reasonably necessary to carry out the purpose of this section, including, but not limited to, the name and address of the registrant and the name and address of the manufacturer whose drugs he is selling or distributing.

**G.** The Board may deny, revoke or suspend such person's registration for any violation of the State Drug Laws.

[03-07-80...08-27-90; Rn, 16.19.9.10.7, 03-14-98; 16.19.9.9 NMAC – Rn, 16 NMAC 19.9.9, 03-30-02; A, 12-01-2003]

#### **16.19.9.10 LABELS:**

Labels for legend drugs in package form shall conspicuously state the name and place of business of the manufacturer of the finished dosage form and the name and place of business of the packer or distributor.

[03-07-80...08-27-90; Rn, 16.19.9.11.1, 03-14-98; 16.19.9.10 NMAC – Rn, 16 NMAC 19.9.10, 03-30-02]

#### **16.19.9.11 FINISHED DOSAGE FORMS:**

Where the manufacturer of the finished dosage form and the packer or distributor are the same person, only the name and place of business of such persons are required to be on the labels, no qualifying language is necessary.

[03-07-80...08-27-90; Rn, 16.19.9.12.1, 03-14-98; 16.19.9.11 NMAC – Rn, 16 NMAC 19.9.11, 03-30-02]

#### **16.19.9.12 FINISHED DOSAGE FORMS - QUALIFYING LANGUAGE:**

Where the manufacturer of the finished dosage form and the packer or distributor are different persons, the labels shall contain qualifying language that states the connection

such persons have with the drugs: i.e., "Manufactured by \_\_\_\_\_, distributed by \_\_\_\_\_, "Manufactured by \_\_\_\_\_, for \_\_\_\_\_", or other wording which adequately expresses the facts.

[03-07-80...08-27-90; Rn, 16.19.9.13.1, 03-14-98; 16.19.9.12 NMAC – Rn, 16 NMAC 19.9.12, 03-30-02]

#### **16.19.9.13 FINISHED DOSAGE FORMS - CORPORATE NAME:**

In the case of a corporation, only the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation shall be required. In the case of an individual partnership or association, the name under which the business is conducted shall be used.

[03-07-80...08-27-90; Rn, 16.19.9.14.1, 03-14-98; 16.19.9.13 NMAC – Rn, 16 NMAC 19.9.13, 03-30-02]

#### **16.19.9.14 FINISHED DOSAGE FORMS - PLACE OF BUSINESS:**

If a person manufactures, packs or distributes a drug at a place other than his principle place of business, the label may state the principle place of business in lieu of the actual place where such drug is manufactured or packed or is to be distributed, unless such statement would be misleading.

[03-07-80...08-27-90; Rn, 16.19.9.15.1, 03-14-98; 16.19.9.14 NMAC – Rn, 16 NMAC 19.9.14, 03-30-02]

### **PART 10: LIMITED DRUG CLINICS**

#### **16.19.10.1 ISSUING AGENCY:**

Board of Pharmacy.

[2/15/1889...2/15/1996; 16.19.10.1 NMAC - Rn, 16 NMAC 19.10.1, 3/30/2002; A, 8/12/2013; A, 9/13/2022]

#### **16.19.10.2 SCOPE:**

All public health clinics, industrial health clinics, emergency medical services, and animal control clinics, and all individuals or entities that own or operate, or are employed by, such clinics for the purpose of providing pharmaceutical products and services.

[02-15-96; 16.19.10.2 NMAC - Rn, 16 NMAC 19.10.2, 03-30-02]

#### **16.19.10.3 STATUTORY AUTHORITY:**

Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires the Board of Pharmacy to provide for the licensing of industrial and public health clinics and for the inspection of their facilities and activities. Pursuant to Paragraphs (6), (7), (12), and (13) of Subsection B of Section 61-11-14 NMSA 1978, the Board is authorized to issue drug permits, as defined and limited by Board regulation, for industrial health clinics, community health clinics, animal control facilities, and wholesalers, retailers and distributors of veterinary drugs. Subsection (A) of Section 26-1-16 NMSA 1978 prohibits the sale, disposal or possession of any dangerous drug except by individuals and entities identified in the statute, including clinics licensed by the Board.

[2/15/1996; A, 3/31/1998; 16.19.10.3 NMAC - Rn, 16 NMAC 19.10.3, 3/30/2002; A, 9/13/2022]

**16.19.10.4 DURATION:**

Permanent.

[02-15-96; 05-15-96; A, 12-15-97; 16.19.10.4 NMAC - Rn, 16 NMAC 19.10.4, 03-30-02]

**16.19.10.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96; 16.19.10.5 NMAC - Rn, 16 NMAC 19.10.5, 03-30-02]

**16.19.10.6 OBJECTIVE:**

The objective of Part 10 of Chapter 19 is to ensure safe and competent maintenance, delivery and administration of drugs by emergency medical services and in industrial, public health, and animal control clinic settings.

[02-15-96; 16.19.10.6 NMAC - Rn, 16 NMAC 19.10.6, 03-30-02]

**16.19.10.7 DEFINITIONS:**

All terms defined in the Pharmacy Act or elsewhere in the Board Regulations shall have the same meanings in this regulation unless otherwise defined below:

**A.** "Clinic", means any facility where one or more licensed practitioners diagnose and treat patients, and where drugs are stored, dispensed, distributed or administered for the diagnosis and treatment of the facility's patients; provided that this definition shall not include the privately owned practice of any licensed practitioner or group of licensed practitioners exempt under Section 61-11-22 of the Pharmacy Act.

**B.** "Dispensing Unit", means a container or containers of a drug entity, either prepackaged (repackaged per Board requirements) or the manufacturer's original container(s), containing a quantity suitable for the prescribed treatment or condition.

**C.** "Distribute" means delivery of a dispensing unit (as defined in this section) by a licensed practitioner to a patient of the clinic by means other than dispensing.

**D.** "Drug Storage Area", means an area restricted to the storage, dispensing and distribution of dangerous drugs.

**E.** "Medical Records", means the medical information gathered and maintained for a clinic's patient, including but not restricted to the patients weight, height, sex, D.O.B., allergies, diagnosis and treatments.

**F.** "Mobile Narcotic Treatment Program" means a narcotic treatment program (NTP) operating from a motor vehicle, as defined in this section, that serves as a mobile component (conveyance) and is operating under the registration of the NTP, and engages in maintenance and/ or detoxification treatment with narcotic drugs in schedules II–V, at a location or locations remote from, but within the same State as, its registered location. Operating a mobile NTP is a coincident activity of an existing NTP.

**G.** Motor vehicle means a vehicle propelled under its own motive power and lawfully used on public streets, roads, or highways with more than three wheels in contact with the ground. This term does not include a trailer.

**H.** "Transfer", means the direct delivery, physically or electronically, of dangerous drug stock unopened containers, except samples, from a clinic or the clinic's supplier to a pharmacy to be dispensed by the pharmacy to patients of the clinic.

[02-15-96; 16.19.10.7 NMAC - Rn, 16 NMAC 19.10.7, 03-30-02; A, 9/13/2022]

#### **16.19.10.8 MEDICAL STATIONS AND FIRST AID STATIONS:**

**A.** The New Mexico Board of Pharmacy acknowledges the establishment of Medical Stations and First Aid Stations for employees in or of industrial plants and business organizations. In order to protect the people who utilize such facilities, laws and safeguards pertaining to drugs must be observed. Medications must occasionally be used and therefore require Board of Pharmacy supervision.

**B.** The variety and quantity of medications allowed at an Industrial Health Clinic must be kept to a minimum and must be only sufficient to meet the needs of the individual station.

**C.** The physician in charge of and responsible for the station must order the legend drugs to be used in such station. In order to purchase and stock any controlled

substances, the responsible physician must obtain a separate controlled substance registration.

**D.** All legend drugs must be under lock when the nurse or physician is not in attendance. Extra precautions should be provided for security of controlled substances.

**E.** A record book indicating the following information shall be kept to account for the receipt and administration of all legend drugs:

- (1) Date received
- (2) Quantity received
- (3) Date of administration
- (4) Name of patient
- (5) Name of medication
- (6) Dosage administration
- (7) Name of physician responsible for the order

[03-07-80; 08-27-90; 16.19.10.8 NMAC - Rn, 16 NMAC 19.10.8, 03-30-02]

#### **16.19.10.9 [RESERVED]**

[07-15-97; 12-15-99; 16.19.10.9 NMAC - Rn, 16 NMAC 19.10.9, 03-30-02]

#### **16.19.10.10 ANIMAL CONTROL CLINICS:**

**A.** The New Mexico Board of Pharmacy acknowledges the establishment of animal control clinics. In order to protect the people who utilize such clinics, laws and safeguards pertaining to drugs must be observed. Medications must occasionally be used and therefore require Board of Pharmacy supervision.

**B.** The veterinarian in charge of and responsible for the clinic must specify the dangerous drugs to be used in such clinic. In order to purchase and stock any controlled substances, the clinic must obtain a separate controlled substance registration to be issued under the name of the clinic.

**C.** All dangerous drugs must be under lock when the veterinarian or his designee is not in attendance. Extra precautions should be provided for security of controlled substances.

**D.** A record indicating the following information shall be kept to account for the administration of all dangerous drugs:

- (1) Date of administration;
- (2) Type of animal;
- (3) Name of medication;
- (4) Dosage administered;
- (5) Name of veterinarian responsible for the order;
- (6) Name of individual administering the dose.

**E.** SCHEDULE II - Controlled substances administration records must be kept in a separate record with the same information recorded.

**F.** SCHEDULE III, IV, and V controlled substances may be kept in the same record in which dangerous drugs are recorded provided a mechanism is employed to identify these entries (such as a red "C" marked in the margin of these entries).

**G.** The record must be kept up-to-date at all times and is subject to inspection by the Board of Pharmacy Drug inspectors.

**H.** Any clinic licensed by the Board of Pharmacy is required to have a consultant pharmacist.

(1) If the animal control facility does not use any controlled substance in its' operation, a consultant pharmacist should visit the facility at least annually.

(2) If the animal control facility uses any controlled substance in its' operation, a consultant pharmacist should visit the facility at least quarterly.

[3/7/1980; 7/29/1993; 16.19.10.10 NMAC - Rn, 16 NMAC 19.10.10, 3/30/2002; A, 9/13/2022]

#### **16.19.10.11 PUBLIC HEALTH CLINICS:**

**A.** Clinic Licensure: All clinics where dangerous drugs are administered, distributed or dispensed shall obtain a limited drug permit as described in Paragraph (7) of Subsection B of Section 61-11-14 NMSA 1978 of the Pharmacy Act which consists of the following types:

- (1) Class A clinic drug permit for clinics where:

(a) dangerous drugs are administered to patients of the clinic;

(b) more than 12,500 dispensing units of dangerous drugs are dispensed or distributed annually;

(c) clinics dispensing only one class of dangerous drug or controlled substance, such as oral contraceptives, may be approved by the board as a Class B3 clinic;

(2) Class B clinic drug permit for clinics where dangerous drugs are:

(a) administered to patients of the clinic; and

(b) dispensed or distributed to patients of the clinic. Class B drug permits shall be issued by categories based on the number of dispensing units of dangerous drugs to be dispensed or distributed annually, as follows: 1. CATEGORY 1 up to 2,500 dispensing units; 2. CATEGORY 2 from 2,501 - 7,500 dispensing units; 3. CATEGORY 3 from 7,501 - 12,500 dispensing units;

(3) Class C clinic drug permit for clinics where dangerous drugs are administered to patients of the clinic.

(4) Class D clinic drug permit for school based emergency medicine (SBEM) clinic (which does not include a Class A, B, or C school based health clinic) - any school based facility that chooses to possess a stock supply of emergency dangerous drugs; these emergency dangerous drugs are albuterol aerosol canisters with spacers and epinephrine standard-dose and pediatric-dose auto-injectors; these emergency dangerous drugs are for administration to students of the school; these emergency dangerous drugs shall be the property of the facility; these facilities will not stock of any other dangerous drug.

(5) Class E Narcotic Treatment Program (NTP) clinic drug permit for clinics where opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act [(21 U.S.C. 355)] for use in the treatment of opioid use disorder are used. An NTP shall be licensed and certified as required by state and federal law, including registration under 21 USC 823(g)(1) and certified as an Opioid Treatment Program by the Substance Abuse and Mental Health Services Administration in accordance with 42 CFR 8.11.

#### **B. Formularies:**

(1) For all clinic types, drug procurement and storage is limited to the drugs listed in the dispensing formulary for the clinic. The formulary shall be developed by the pharmacy and therapeutics committee of the facility, or if no such committee exists, by the pharmacist and medical director of the clinic. The formulary drugs shall be appropriate for the scope of medical services provided at the clinic facility. A dangerous

drug with the same generic name is considered one drug within the formulary (ie) all dosage forms and packages of ampicillin are considered one drug.

(2) For all clinic types, drug procurement and storage is limited to the drugs listed in the administration formulary for on-site administration. The formulary shall be developed by the pharmacy and therapeutics committee of the facility, or if no such committee exists, by the pharmacist and medical director of the clinic. The formulary drugs shall be appropriate for the scope of medical services provided at the clinic facility. A dangerous drug with the same generic name is considered one drug within the formulary (ie) all dosage forms and packages of ampicillin are considered one drug.

(3) For Class D, (SBEM) clinic may only stock the approved dangerous drugs; albuterol aerosol canisters with spacers and epinephrine standard-dose and pediatric-dose auto-injectors.

(4) A clinic may petition the board for an alternative dispensing formulary as set forth in Subsection R of 16.19.10.11 NMAC.

#### **C. Consultant Pharmacist:**

(1) Any facility licensed as a clinic by the board which does not employ a staff pharmacist must engage the services of a consultant pharmacist, whose duties and responsibilities are described in Subsection C of 16.19.4.11 NMAC.

(2) The consultant pharmacist shall wear an identification badge listing his name and job title while on duty in the clinic.

#### **D. Pharmacy Technicians and Support Personnel:**

(1) Pharmacy technicians, working in a clinic under the supervision of the pharmacist, may perform activities associated with the preparation and distribution of medications, including prepackaging medications and the filling of a prescription or medication order. These activities may include counting, pouring, labeling and reconstituting medications.

(2) The pharmacist shall ensure that the pharmacy technician has completed the initial training required in Subsection A of 16.19.22.9 NMAC.

(3) A written record of the initial training and education will be maintained by the clinic pursuant to requirements of Subsection C of 16.19.22.9 NMAC.

(4) The permissible ratio of pharmacy technicians to pharmacists on duty is to be determined by the pharmacist in charge or consultant pharmacist.

(5) Support personnel may perform clerical duties associated with clinic pharmacy operations, including computer data entry, typing of labels, processing of

orders for stock, duties associated with maintenance of inventory and dispensing records.

(6) The pharmacist is responsible for the actions of personnel; allowing actions outside the limits of the regulations shall constitute unprofessional conduct on the part of the pharmacist.

(7) Name tags including job title, shall be required of all personnel while on duty in the clinic.

**E. Procurement or Receipt of Dangerous Drugs:**

(1) The system of procurement for all drugs shall be the responsibility of the pharmacist.

(2) Records of receipt of dangerous drugs and inventories of controlled substances shall be maintained as required by the Drug, Device and Cosmetic Act 26-1-16 and the Controlled Substances Act 30-31-16 and board of pharmacy regulation 16.19.20 NMAC.

**F. Repackaging:**

(1) Repackaging from bulk containers to dispensing units for distribution at locations other than the site of repackaging requires FDA registration, whether or not the repackaged drugs enter interstate commerce. (See FDA Regulations Title 21, Sections 207, 210 and 211).

(2) Repackaging of drug from bulk containers into multiple dispensing units for future distribution to clinic patients at the site of repackaging may be done by a physician, dentist, pharmacist, or by a pharmacy technician under the supervision of the pharmacist as defined in Subsection B of 16.19.22.7 NMAC. All drugs repackaged into multiple dispensing units by a pharmacy technician must undergo a final check by the pharmacist.

(3) A record of drugs repackaged must be maintained, to include the following.

- (a) Date of repackaging.
- (b) Name and strength of drug.
- (c) Lot number or control number.
- (d) Name of drug manufacturer.
- (e) Expiration date (per USP requirements).

(f) Total number of dosage units (tabs, caps) repackaged (for each drug).

(g) Quantity per each repackaged unit container.

(h) Number of dosage units (tabs, caps) wasted.

(i) Initials of repackager.

(j) Initials of person performing final check.

(4) All dispensing units of repackaged medication must be labeled with the following information.

(a) Name, strength, and quantity of the drug.

(b) Lot number or control number.

(c) Name of manufacturer.

(d) Expiration date.

(e) Date drug was repackaged.

(f) Name or initials of repackager.

(g) Federal caution label, if applicable.

(5) Repackaged units must be stored with the manufacturer's package insert until relabeled for dispensing, as specified under Subsection G of 16.19.10.11 NMAC.

**G. Clinic Dispensing or Distributing:**

(1) Drugs shall be dispensed or distributed only to clinic patients on the order of a licensed practitioner of the clinic.

(2) The clinic practitioner shall record the prescribed drug therapy on the patient medical record indicating the name, strength, quantity and directions for use of the prescribed drug. This information shall be initialed or signed by the practitioner. A separate prescription form in addition to the medical record may be used.

(3) The prescription order may then be prepared by the practitioner, pharmacist or technician under the supervision of the pharmacist and a dispensing label affixed to the dispensing unit of each drug. The following information shall appear on the label affixed to the dispensing unit.

(a) Name of patient.

- (b) Name of prescriber.
- (c) Date of dispensing.
- (d) Directions for use.
- (e) Name, strength, and quantity of the drug.
- (f) Expiration date.
- (g) Name, address and phone number of the clinic.
- (h) Prescription number, if applicable.

(4) The pharmacist or practitioner must then provide a final check of the dispensing unit and sign or initial the prescription or dispensing record.

(5) Refill prescription orders must also be entered on the patient's medical record and the dispensing record.

#### **H. Patient Counseling:**

(1) Each clinic licensed by the board shall develop and provide to the board policies and procedures addressing patient counseling which are at least equivalent to the requirements of Subsection F of 16.19.4.16 NMAC.

(2) If the consultant pharmacist is absent at the time of dispensing or distribution of a prescription from clinic drug stock to a clinic patient, the patient shall be provided written information when appropriate on side effects, interactions, and precautions concerning the drug or device provided. Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information leaflets, pictogram labels and video programs. The clinic shall make the consultant pharmacist's phone number available to patients for consultation on drugs provided by the clinic.

**I. Dispensing Records:** A record shall be kept of the dangerous drugs dispensed indicating the date the drug was dispensed, name and address of the patient, the name of the prescriber, and the quantity and strength of the drug dispensed. The individual recording the information and the pharmacist or clinic practitioner who is responsible for dispensing the medication shall initial the record.

**J. Sample Drugs:** Samples of medications which are legend drugs or which have been restricted to the sale on prescription by the New Mexico board of pharmacy are subject to all the record keeping, storage and labeling requirements for prescription drugs as defined by Section 26-1-16 NMSA 1978 and other applicable state and federal laws.

## K. Drug Storage:

(1) Space for the storage and dispensing of drugs shall have proper ventilation, lighting, temperature controls, refrigeration and adequate security as defined by the board or its' agent. Minimum space requirements for main drug storage areas are as follows:

(a) for Class A clinics - 240 square foot room;

(b) for Class B clinics;

(i) categories 1, and 2 - 48 square foot room; and

(ii) category 3 - 96 square foot room;

(c) for Class C clinics - an area adequate for the formulary.

(d) for Class D clinics - an area adequate for the formulary:

(i) medication is stored in its original packaging until the time of administration, and secured in a secondary tamper-evident container;

(ii) the dangerous drug is stored in a restricted area, secure but unlocked, and readily accessible to authorized, trained personnel;

(iii) for Class D clinics only, the pre-licensing inspection may be completed by a New Mexico board of pharmacy state drug inspector's approval of record keeping procedures; the policy and procedure manual; any other required forms or documents; and photographs of the proposed dangerous drug storage area, secondary tamper-evident container, and drug storage area thermometer; this pre-licensing inspection may not require an onsite inspection.

(e) for Class E clinics – 96 square foot room.

(2) Controlled substances must be stored as defined in 16.19.20.48 NMAC.

(3) All drug containers in the facility shall be clearly and legibly labeled as required under Subsection F of 16.19.10.11 NMAC – (REPACKAGING and Sections 26-1-10 and 26-1-11 of the Drug, Device and Cosmetic Act).

(4) Purchase, storage and control of drugs shall be designed to prevent having outdated, deteriorated, impure or improperly standardized drugs in the facility.

(5) Access to the drug storage area shall be limited to clinic practitioners, the pharmacist, and supportive personnel who are performing pharmacy-related functions.

(6) Clinics licensed by the board prior to adoption of this regulation are exempt from the minimum space requirements set forth in Paragraph (1) of Subsection K of 16.19.10.11 NMAC. When these facilities change ownership, remodel the drug storage area, or relocate after May 15, 1996, the requirements of Paragraph (1) of Subsection K of 16.19.10.11 NMAC shall apply.

**L. Disposition of Unwanted or Outdated Drugs:**

(1) The pharmacist shall be responsible for removal of recalled, outdated, unwanted or otherwise unusable drugs from the clinic inventory.

(2) Options for disposal are destruction under the supervision of the pharmacist or return to the legitimate source of supply. Controlled substance disposition shall occur in accordance with 16.19.20.38 NMAC.

**M. Reference Material:** Adequate reference materials are to be maintained in the clinic. These shall include a current product information reference such as USPDI, facts and comparisons, or American hospital formulary service; a copy of the state drug laws and regulations and a poison treatment chart with the regional poison control center's telephone number.

**N. Procedures Manual:**

(1) Written policies and procedures shall be developed by the pharmacy and therapeutics committee, or if none, by the pharmacist-in-charge and clinic's executive director, and implemented by the pharmacist-in-charge.

(2) The policy and procedure manual shall include but not be limited to the following:

(a) a current list of the names and addresses of the pharmacist-in-charge, consultant-pharmacist, staff pharmacist(s), supportive personnel designated to provide drugs and devices, and the supportive personnel designated to supervise the day-to-day pharmacy related operations of the clinic in the absence of the pharmacist;

(b) functions of the pharmacist-in-charge, consultant pharmacist, staff pharmacist(s) and supportive personnel;

(c) clinic objectives;

(d) formularies;

(e) a copy of the written agreement, if any, between the pharmacist and the clinic;

(f) date of the last review or revision of policy and procedure manual; and

(g) policies and procedures for

- (i) security;
- (ii) equipment;
- (iii) sanitation;
- (iv) licensing;
- (v) reference materials;
- (vi) drug storage;
- (vii) packaging and repackaging;
- (viii) dispensing and distributing;
- (ix) supervision;
- (x) labeling and relabeling;
- (xi) samples;
- (xii) drug destruction and returns;
- (xiii) drug and device procuring;
- (xiv) receiving of drugs and devices;
- (xv) delivery of drugs and devices;
- (xvi) record keeping; and
- (xvii) scope of practice.

(3) The procedures manual shall be reviewed on at least an annual basis. A copy of the manual shall be kept at the clinic at all times.

(4) A written agreement defining specific procedures for the transfer, storage, dispensing and record keeping of clinic dangerous drug stock from a licensed New Mexico pharmacy will be included in the procedures manual. The agreement will be signed by a clinic official and pharmacy official and reviewed annually.

**O.** Patient Record: clinics shall maintain patient records as defined in Subsection C of 16.19.4.16 NMAC.

**P. Drug Transfer to a Pharmacy:**

(1) Dangerous drug stock unopened containers, except samples, may be transferred physically or electronically to a pharmacy licensed in New Mexico for dispensing to clinic patients.

(a) record of transfer shall be maintained at the clinic and the pharmacy. It will include:

- (i) date of transfer or shipment;
- (ii) name and strength of drug;
- (iii) package size;
- (iv) number of packages;
- (v) manufacturer or repackager; and

(vi) lot number and expiration date, unless transferred from a clinic supplier to a pharmacy.

(b) A copy of the transfer or shipment record will be provided to the pharmacy at the time of transfer. This record will be compared with the drugs for accuracy and retained by the pharmacy as the receipt document separate from other receiving records of the pharmacy.

(c) Transferred clinic drugs will be stored in the restricted area of the pharmacy and physically separated from all other pharmacy drugs.

(d) Drugs returned to the clinic by the pharmacy will be documented in a transfer record as described in Subparagraph (a) of Paragraph (1) of Subsection P of 16.19.10.11 NMAC. A copy will be maintained by the pharmacy and the clinic.

(2) A clinic may petition the board for an alternative drug transfer system as set forth in Subsection Q of 16.19.10.11 NMAC.

(3) The formulary of transferred drugs for pharmacy dispensing is restricted to the clinic's scope of practice.

**Q. Pharmacy Dispensing:** Clinic drug stock may be transferred to, and maintained by, a pharmacy for dispensing to clinic patients as provided in this regulation. Clinic drug stock may be dispensed by the pharmacy if:

(1) the drugs are dispensed only to a clinic patient with a valid prescription from a practitioner of that clinic;

(2) clinic prescriptions for clinic drugs are maintained separately from other prescriptions of the pharmacy;

(3) the prescription is dispensed in a container with a label attached which reads "DISPENSED FOR (clinic name and address) BY (pharmacy name and address)";

(4) all packaging and labeling requirements for prescriptions dispensed by a pharmacy have been met; and

(5) patient records and counseling requirements have been maintained separately for all clinic patients whose prescriptions were filled by the pharmacy from clinic drug stock.

**R. Petition for Alternative Plan:**

(1) A clinic may petition the board for an alternative visitation schedule, dispensing formulary, or drug transfer system (each an "alternative plan") as follows.

(a) Prior to implementation of any alternative plan, the clinic shall provide to the board a written petition that describes the proposed alternative plan and justifies the request. The petition shall include an affidavit that states that the clinic has a current policy and procedures manual on file, has adequate security to prevent diversion of dangerous drugs, and is in compliance with all rules applicable to the clinic. The affidavit shall be signed by the medical director, the consultant pharmacist, and the owner or chief executive officer of the clinic. In addition, a petition for an alternative drug transfer system must include a detailed, written description of the proposed alternative transfer system in the policy and procedures manual describing:

- (i) drug ownership;
- (ii) drug ordering;
- (iii) drug shipping;
- (iv) drug receiving;
- (v) drug accountability system;
- (vi) formulary for transfer; and
- (vii) records of transfer.

(b) The board may approve or deny the petition for an alternative plan, at the board's discretion. The board may consider the following:

- (i) degree of compliance by the clinic on past compliance inspections;
- (ii) size and type of the patient population;
- (iii) number and types of drugs contained in the clinic's formulary;
- (iv) the clinic's objectives; and
- (v) impact on the health and welfare of the clinic's patients.

(2) A copy of the board approved alternative plan shall be maintained at the clinic's license location for review by the board or its agent.

(3) The board may terminate the alternative plan if the board determines that the clinic's status or other circumstances justifying the alternative plan have changed.

**S. Class D (SBEM) clinic:**

(1) Only trained personnel may administer epinephrine. Trained personnel can be a school employee, agent or volunteer who has completed epinephrine administration training documented by the school nurse, school principal or school leader and approved by the New Mexico department of health and who has been designated by the school principal or school leader to administer epinephrine on a voluntary basis outside of the scope of employment. Epinephrine is administered on the standing order of a health care practitioner employed or authorized by the New Mexico department of health. If administering epinephrine, written policies and procedures must be maintained on the premises. These policies and procedures must follow New Mexico department of health requirements as well as any policy or procedure requirement listed in 16.19.10.11 NMAC. Documentation of New Mexico department of health required training must be maintained on-site for each trained and authorized person.

(2) Only a school nurse may administer albuterol to a student who is perceived to be in respiratory distress. Written policies and procedures must be maintained at the licensed location. Documentation of New Mexico department of health required training must be maintained on-site for each nurse.

(3) The following records must be kept on-site and available for inspection for three years:

- (a) receipt records;
- (b) destruction or other disposition records;
- (c) storage records; storage records include daily (on school days) documented drug storage area temperature; documented verification that medication is

sealed in its original packaging until the time of administration, and secured but unlocked in a secondary tamper-evident container; dangerous drugs are stored in a restricted area, unlocked, and readily accessible to trained personnel; policies and procedures must be in place to ensure proper drug storage conditions on non-school days;

(d) usage records; if a dangerous drug is used, a record must be kept; the consultant pharmacist must be notified within a 72-hour period in order to review the record; in addition, all New Mexico department of health guidelines must be followed;

(e) annual self-assessment form; this form will be supplied by the New Mexico board of pharmacy and shall be reviewed by the consultant pharmacist at least annually;

(f) consultant pharmacist record of activities and comments;

(g) a current copy of facility's New Mexico board of pharmacy registration and the consultant pharmacist's current license will be posted in the drug storage area;

(h) policy and procedure manual.

(4) Albuterol and epinephrine must be stored in a secure but unlocked, temper evident, container. This container must be in a restricted area but readily accessible to trained personnel. A list of the contents, including expiration dates, must be posted on the outside of the container.

#### **T. NTP clinic:**

(1) Administering, Dispensing, Distributing or Supplying:

(a) Drugs shall be administered, dispensed, distributed, or supplied only to clinic patients on the order of a licensed practitioner of the clinic. This provision does not prohibit guest dosing pursuant to policies and procedures and in compliance with federal law, or supplying an opioid antagonist for rescue use.

(b) The clinic practitioner shall record the prescribed drug therapy on the patient medical record indicating the name, strength, quantity and directions for use of the prescribed drug.

(c) The order may then be prepared by the practitioner, pharmacist, or technician under the supervision of the pharmacist and a dispensing label affixed to the dispensing unit of each drug. The pharmacist or practitioner must then provide a final check of the dispensing unit and sign or initial the prescription or dispensing record.

(d) Methadone for take-home purposes may be supplied to a clinic patient in a properly labeled dispensing unit by a registered nurse or licensed practical nurse

employed by the NTP. Supplying of methadone in this manner (pouring and labeling the take home dose) is not considered dispensing.

(e) The following information shall appear on the label affixed to the take home medication unit:

- (i) Name of patient;
- (ii) Name of prescriber;
- (iii) Date of dispensing;
- (iv) Directions for use;
- (v) Name, strength, and quantity of the drug;
- (vi) Expiration date;
- (vii) Name, address and phone number of the clinic;
- (viii) Prescription number, if applicable; and
- (ix) Additional required information, such as federal statement(s)

(2) Records and Reports:

(a) Each NTP clinic, including a mobile NTP, shall maintain records with the following information for each dangerous drug administered, dispensed, distributed or supplied indicating:

- (i) Name of substance;
- (ii) Strength of substance;
- (iii) Dosage form;
- (iv) Date dispensed;
- (v) Adequate identification of the patient;
- (vi) The name of the prescriber
- (vii) Amount consumed;
- (viii) Amount, units, and dosage form taken home by patient; and

(ix) Initials of personnel who administered, dispensed, distributed or supplied.

(b) These records will be maintained in an administration or dispensing, distributing or supplying log at the NTP site, or in the case of a mobile NTP, at the registered site of the NTP.

(c) As an alternative to maintaining a paper administration or dispensing, distributing or supplying log, an NTP or its mobile component may also use an automated/computerized data processing system for the storage and retrieval of the program's dispensing records, if the following conditions are met:

(i) The automated system maintains the information required in paragraph (a) above;

(ii) The automated system has the capability of producing a hard copy printout of the program's administration or dispensing, distributing or supplying records;

(iii) The NTP or its mobile component prints a hard copy of each day's administration or dispensing, distributing or supplying log, which is then initialed appropriately by each person who administered, dispensed, distributed or supplied medication to the program's patients;

(iv) The automated system is approved by DEA;

(v) The NTP or its mobile component maintains an off-site back-up of all computer generated program information; and

(vi) The automated system is capable of producing accurate summary reports for both the registered site of the NTP and any mobile component, for any time-frame selected by Board personnel during an investigation. If these summary reports are maintained in hard copy form, they must be kept in a systematically organized file located at the registered site of the NTP.

(d) The NTP must retain all records for the NTP as well as any mobile component for three years from the date of execution.

(3) Patient Counseling: Each NTP clinic shall develop and provide to the board policies and procedures addressing patient counseling which are at least equivalent to the requirements of Subsection F of 16.19.4.16 NMAC. When a medication is started, the patient should be provided with patient information to supplement patient counseling. Examples of patient information include, but not are limited to, written information leaflets, pictogram labels and video programs. The clinic shall maintain a mechanism for the patient to be provided with medication information and counseling as requested.

(4) Policies and Procedures: In addition to requirements of 16.19.10.11(N) NMAC (Procedures Manual), NTPs must maintain procedures to:

(a) ensure appropriate training and qualifications of personnel for competent performance of assigned functions.

(b) ensure appropriate medication administration and supplying,

(c) ensure appropriate supervision consistent with state and federal law.

(d) support prevention of medication errors, including through adequate staffing, training, and supervision.

(5) Controls: Each NTP clinic must maintain effective controls and procedures to ensure maintenance of required records in proper form and to identify theft or diversion of NTP clinic controlled substances.

(6) Responsibility: While the consultant pharmacist is responsible for overall clinic pharmacy services, a corresponding responsibility rests with the NTP clinic, the practitioner, and nurses for ensuring proper completion of medication related functions and record maintenance as applicable.

(7) Prescription Monitoring Program (PMP) Utilization: The consultant pharmacist shall request and review a PMP report covering at least a one year time period and another states' report for each program patient receiving an opioid, at least quarterly. The pharmacist will use professional judgement to determine whether more frequent monitoring is appropriate, as in the case of patients who are receiving a benzodiazepine or carisoprodol, or an opioid prescribed outside of the NTP. The pharmacist will use professional judgment in taking steps to avoid or resolve potential issues identified on PMP report review. The pharmacist shall document review of these PMP reports, and his or her action regarding such reports.

(8) Mobile NTP: An NTP may operate one or more mobile NTPs, subject to:

(a) For any NTP intending to operate a mobile NTP, the NTP must notify the Board, in writing, of its intent to do so, and the NTP must receive written approval from the board prior to operating the mobile NTP. The mobile NTP may only operate in New Mexico.

(b) An NTP clinic is not required to obtain a separate clinic license or registration for conveyances (mobile components) utilized by the NTP to transport controlled substances away from registered locations for administration or provision of take home doses at unregistered locations as part of a mobile NTP. Vehicles must possess valid county/city and State information (e.g., a vehicle information number (license plate number) on file at the registered location of the NTP.

(i) A mobile NTP is not permitted to reverse distribute, share, or transfer controlled substances from one mobile component to another mobile component while deployed away from the registered location. NTPs with mobile components are not allowed to modify their registrations to authorize their mobile components to act as collectors under 21 CFR 1301.51 and 1317.40. Mobile components of NTPs may not function as hospitals, long-term care facilities, or emergency medical service vehicles, and will not transport patients.

(ii) A mobile NTP may operate at any remote location or locations within the state, including correctional facilities, so long as doing so is otherwise consistent with applicable Federal, State, tribal, and local laws and regulations, and so long as the local DEA office, does not otherwise direct.

(c) Physical security controls, mobile NTP; storage areas:

(i) For any conveyance operated as a mobile narcotic treatment program (NTP), a safe must be installed and used to store narcotic drugs in schedules II–V for the purpose of maintenance or detoxification treatment, when not located at the clinic’s registered location. The safe must conform to the requirements set forth in 21 CFR 1301.72 (a)(1).

(ii) The mobile component must also be equipped with an alarm system that conforms to the requirements set forth 21 CFR 1301.70 (a)(1)(iii).

(iii) Accessibility to storage areas. The controlled substances storage areas shall be accessible only to an absolute minimum number of specifically authorized employees. When it is necessary for employee maintenance personnel, nonemployee maintenance personnel, business guests, or visitors to be present in or pass through controlled substances storage areas, the NTP shall provide for adequate observation of the area by an employee specifically authorized in writing. The storage area for controlled substances in a mobile component of an NTP must not be accessible from outside of the vehicle. Personnel transporting the controlled substances on behalf of the mobile NTP are required to retain control over all controlled substances when transferring them between the registered location and the conveyance, and when providing medication to patients at remote locations. At all other times during transportation, all controlled substances must be properly secured in the safe. Upon completion of the operation of the mobile NTP on a given day, the conveyance must be immediately returned to the registered location, and all controlled substances must be removed from the conveyance and secured within the registered location. After the conveyance has returned to the registered location and the controlled substances have been removed, the conveyance may be parked until its next use at the registered location or any secure, fenced-in area, once the local DEA office has been notified of the location of this secure, fenced-in area. All NTPs with mobile components shall be required to establish a standard operating procedure to ensure, if the mobile component becomes inoperable (mechanical failure, accidents, fire, etc.), that all controlled

substances on the inoperable conveyance are accounted for, removed from the inoperable conveyance, and secured at the registered location.

(iv) Upon completion of the operation of the mobile NTP on a given day, the conveyance must be immediately returned to the registered location, and all controlled substances must be removed from the conveyance and secured within the registered location. An NTP may apply for an exception to this requirement after receiving an exception from the DEA.

(d) Other security controls: Persons enrolled in any NTP, including those receiving treatment at a mobile NTP, will be required to wait in an area that is physically separated from the narcotic storage and preparation area by a physical entrance such as a door or other entryway. Patients must wait outside of a mobile NTP component if that conveyance does not have seating or a reception area that is separated from the narcotic storage and preparation area. This requirement will be enforced by the program practitioner and NTP employees.

(e) Any controlled substances being transported for disposal from the remote location of a mobile NTP shall be secured and disposed of in compliance with 21 CFR part 1317, and all other applicable Federal, State, tribal, and local laws and regulations.

(f) A conveyance used as part of a mobile NTP may only be supplied with narcotic drugs by the registered NTP that operates such conveyance.

[5/15/1996; 16.19.10.11 NMAC - Rn, 16 NMAC 19.10.11, 3/30/2002; A, 8/12/2013; A, 10/24/2014; A, 12/13/2015; A, 9/13/2022; A, 6/13/2023]

### **16.19.10.12 INPATIENT HOSPICE FACILITIES:**

#### **A. Licensure:**

**(1)** All inpatient hospice facilities which maintain custody of patients' drugs, and such drugs are administered by the facilities' designated personnel shall obtain a custodial care facility license as described in 16.19.11.7.A or 7.B NMAC.

**(2)** All inpatient hospice facilities where dangerous drugs are acquired and maintained for administration, to patients of the facility shall obtain a limited drug permit as described in 16.19.10.11(A).

**(3)** All inpatient hospice facilities holding a limited drug permit where controlled substances are maintained for administration from stock to patients of the facility shall obtain controlled substance registration as described in 16.19.20.8 NMAC through 16.19.20.10 NMAC.

**B. Consultant Pharmacist:** All licensed inpatient hospice facilities shall engage the services of a pharmacist whose duties and responsibilities are described in 16.19.4.11(2) NMAC.

**C. Drug Control:**

**(1)** Inpatient hospice facilities holding a license as described in 16.19.11 NMAC shall comply with 16.19.11 NMAC.

**(2)** Inpatient hospice facilities holding a license as described in 16.19.10.11.A NMAC shall comply with 16.19.10.11.A.(1), 11.C through 11.K.

**D. Procedure Manual:**

**(1)** Inpatient hospice facilities holding a license as described in 16.19.11 NMAC shall comply with 16.19.11.H.(1) NMAC.

**(2)** Inpatient hospice facilities holding a license as described in 16.19.10.11.A shall comply with 16.19.10.11(12).

**E. Fees:**

**(1)** Inpatient hospice facilities holding a license as described in 16.19.11 NMAC shall submit application with license fees as described in 16.19.12.14 NMAC.

**(2)** Inpatient hospice facilities holding a license as described in 16.19.10.11.A NMAC shall submit application with fees as described in 16.19.12.15 NMAC.

**(3)** Inpatient hospice facilities holding a license as described in 16.19.10.11.A NMAC shall submit application with fees as described in 16.19.12.18 NMAC for initial inspection of facility prior to issuance of license.

**(4)** An inpatient hospice facility whose board license has expired and who seeks reinstatement shall submit application with fees as described in 16.19.12.20 NMAC.

[12-15-97; 16.19.10.12 NMAC - Rn, 16 NMAC 19.10.12, 03-30-02]

## **PART 11: NURSING HOME DRUG CONTROL**

### **16.19.11.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM, (505) 841-9102.

[16.19.11.1 NMAC - Rp 16 NMAC 19.11.1, 12-15-02]

#### **16.19.11.2 SCOPE:**

All nursing homes and custodial care facilities; all health care professionals who provide pharmaceutical products or services, including the ordering and administration of drugs, to patients in nursing homes and custodial care facilities. Hospital based Skilled Nursing Facilities are not subject to this regulation - See Part 7.

[16.19.11.2 NMAC - Rp 16 NMAC 19.11.2, 12-15-02]

#### **16.19.11.3 STATUTORY AUTHORITY:**

Section 61-11-6.A(6) NMSA 1978 authorizes the Board of Pharmacy to license nursing home drug facilities and all places where dangerous drugs are dispensed or administered and to provide for the inspection of their facilities and activities. Section 61-11-14.B(9) NMSA 1978 directs the Board to issue drug custodial licenses for licensed nursing homes and to adopt regulations that define and limit those licenses.

[16.19.11.3 NMAC - Rp 16 NMAC 19.11.3, 12-15-02]

#### **16.19.11.4 DURATION:**

Permanent.

[16.19.11.4 NMAC - Rp 16 NMAC 19.11.4, 12-15-02]

#### **16.19.11.5 EFFECTIVE DATE:**

December 15, 2002, unless a later date is cited at the end of a Section.

[16.19.11.5 NMAC - Rp 16 NMAC 19.11.5, 12-15-02]

#### **16.19.11.6 OBJECTIVE:**

The objective of Part 11 of Chapter 19 is to establish standards for the ordering, administration, maintenance and disposal of drugs for patients in nursing homes, skilled nursing facilities, and long-term care and custodial care facilities and to ensure that the facilities' pharmaceutical services are organized and carried out for the benefit and safety of the patients.

[16.19.11.6 NMAC - Rp 16 NMAC 19.11.6, 12-15-02]

#### **16.19.11.7 DEFINITIONS:**

**A.** Licensed Facility - Any facility, skilled nursing facility, intermediate care or any other upper level of care facility as defined by Health and Human Services Department

that is required to maintain custody of patients drugs in a drug room, and such drugs are administered by the facilities' designated personnel.

**B.** Licensed Custodial Care Facility - Any facility or business, including non-profit entity which provides retirement care, mental care or other facility that provides extended health care to patients.

**C.** Consultant pharmacist - means a pharmacist who is responsible to the administrator of the facility and the Board of Pharmacy for the development of the drug storage and distribution and record keeping requirements of a licensed nursing home facility, and as further defined in 16.19.4.11 NMAC.

**D.** Designated agent - A licensed nurse, certified nurse practitioner, physician assistant, pharmacist or pharmacist clinician authorized by a practitioner and employed in a facility to whom the practitioner communicates a prescription drug order.

**E.** Prescription drug order - An order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed.

[16.19.11.7 NMAC - Rp 16 NMAC 19.11.7, 12-15-02; A, 5/07/2024]

#### **16.19.11.8 MINIMUM STANDARDS:**

##### **A. MINIMUM STANDARDS FOR THE DISTRIBUTION, STORAGE, HANDLING AND RECORD KEEPING OF DRUGS:**

**(1)** The pharmaceutical service shall be organized and maintained primarily for the benefit and safety of the patient.

**(2)** All medications administered to patients shall be by direct order of a physician, or other licensed practitioner, as defined in the Pharmacy Act, 61-11-2P.

**(3)** The pharmaceutical service shall be under the direction of a registered pharmacist, who may be on a part-time or consultant basis.

**(4)** Policies relating to the control, distribution and administration of medications shall be developed by the pharmacist. Preparation of a written procedures manual shall be the responsibility of the pharmacist.

**(5)** An automatic stop-order policy shall be adopted to provide guidance in these instances where medications ordered are not specifically limited as to time or number of doses.

**(6)** Adequate facilities to be provided for storage of medications. Proper labeling is required on each patient's medication container.

**(7)** Complete records - In addition to those records specifically required by federal and state laws, records shall be maintained of the receipt, use, or disposition of medications. The receipt and destruction journal shall show:

- (a)** date;
- (b)** patient's name;
- (c)** pharmacy's name;
- (d)** name of drug;
- (e)** strength and dosage form;
- (f)** prescription number;
- (g)** quantity;
- (h)** initials of person accepting delivery; and
- (i)** inventory of drugs to be destroyed.

**(8)** Appropriate current drug reference sources shall be provided at the facility.

**(9)** In licensed nursing homes an emergency drug supply shall be maintained to be used in a medical emergency situation, contents and quantity to be determined by a physician, nursing director and the pharmacist of each institution. In licensed custodial care facilities an emergency drug supply may be used. This emergency drug supply shall be accessed only when licensed personnel are on duty. In licensed custodial care facilities without a 24-hour/365 day per year on-site nurse, the emergency drug tray shall not contain any controlled substances. Licensed custodial care facilities, with a 24-hour/365 day per year on-site nurse may use an emergency drug tray containing controlled substances. A list of the contents of the emergency drug supply shall be attached to the outside of the tray.

**(10)** Medication errors and drug reactions should be documented and a method of reporting shall be addressed in the pharmacy procedure manual.

#### **B. POLICY AND PROCEDURES MANUAL:**

**(1)** The pharmacist shall be responsible for the preparation of a written procedures manual, the aim of which shall be:

- (a)** To improve communications with the facility;

- (b)** To improve patient care;
- (c)** To aid in personnel training;
- (d)** To increase legal protection;
- (e)** To aid in evaluating performance;
- (f)** To promote consistency and continuity.

**(2)** There shall be a copy of the policy and procedure manual at each facility location. This copy must be read and initialed by all personnel responsible for the procurement, administration or control of the patient's medication.

**(3)** The consultant pharmacist shall make an annual review of the procedures manual. Findings of which shall be reported to the facility administration.

**(4)** Guidelines for developing a pharmaceutical procedures manual;

**(a)** Drug Policy: A written policy concerning methods and procedures for the pharmaceutical services stating the appropriate methods and procedures for obtaining, dispensing and administering drugs and biologicals.

**(b)** Prescription Drug Orders: The designated agent of the facility may transcribe prescription drug orders from a licensed practitioner and transmit those orders via telephone or facsimile to the pharmacy.

**(c)** Licensed practitioners will identify the designated agents of a facility by written authorization according to the facility's policy and procedures manual.

**(d)** The facility shall have a medication administration record (MAR) documenting medications administered to residents, including over-the-counter medications. This documentation shall include:

- (i)** Name of resident;
- (ii)** Date given;
- (iii)** Drug product name;
- (iv)** Dosage and form;
- (v)** Strength of drug;
- (vi)** Route of administration;

- (vii)** How often medication is to be taken;
- (viii)** Time taken and staff initials;
- (ix)** Dates when the medication is discontinued or changed;
- (x)** The name and initials of all staff administering medications.

**(e)** Any medications removed from the pharmacy container or blister pack must be given immediately and documented by the person assisting.

**(f)** All PRN medications shall have complete detail instructions regarding the administering of the medication. This shall include:

- (i)** Symptoms that indicate the use of the medication;
- (ii)** Exact dosage to be used;
- (iii)** The exact amount to be used in a 24 hour period.

**(g)** Describe medication storage, procedures, and function at the nursing stations.

**(h)** Describe the medication administration system used with means of verifying accuracy of delivered dosage. Describe the procedure for recording missed or refused doses and the procedure followed for missed or refused doses.

**(i)** State that medications prescribed for one patient shall not be administered to any other patient.

**(j)** Describe policy concerning self-administration of medications by patients. A physician's order shall be required before any resident is allowed to self-administer medications.

**(k)** State procedures for documenting medication errors and drug reactions:

**(i)** Should a staff member of the facility notice an error, possible overdose, or any discrepancy in any of the prescriptions filled by the pharmacy, they will immediately contact the pharmacy. If necessary, the pharmacy will contact the physician.

**(ii)** In the event of an adverse drug reaction the facility will immediately contact the physician.

**(l)** List labeling and storage requirements of medications in conformity with the official compendium (USP/NF).

**(5) OTHER INFORMATION**

**(a)** Emergency Drug Tray - use, inventory control, replacement of drugs, security when licensed staff is not on duty.

**(b)** Location of Emergency Drug Tray.

**(c)** 24-hour emergency pharmaceutical services.

**(d)** Part-time or consultant pharmacist hours on premises.

**(e)** In-service training.

**(f)** Drug information service.

**(g)** Automatic stop orders.

**(h)** Controlled substances - inventory, security and control.

**(i)** Renewal of physician's orders.

**(j)** A policy concerning "PASS" medications.

**(k)** Discontinued medication.

**(l)** Records and standards of storage of over-the-counter drugs.

**(m)** Drug receipt and disposition records.

**(6) DRUG DISTRIBUTION**

**(a)** All dangerous drugs shall be obtained from a properly licensed facility. Stock dangerous drugs acquired, maintained and administered by or at the nursing home shall be listed in the nursing home policy and procedure manual. The stock dangerous drugs shall be used when a licensed nurse (LPN or RN) is on duty. The following is the approved list of stock dangerous drugs:

**(i)** Sterile normal saline and water - injectable;

**(ii)** Sterile normal saline and water - irrigation;

**(iii)** Tuberculin testing solution;

**(iv)** Vaccines as recommended by the centers for disease control (CDC) and prevention's advisory committee on immunization practices and appropriate for the facility population served;

**(v)** Any additional nursing home stock dangerous drugs must be defined and listed in the policy and procedure manual and must be approved by the board of pharmacy or board's agent prior to obtaining or using.

**(b)** No drugs will be compounded by other than a pharmacist unless done in accordance with that exemption in the State Pharmacy Act - Section 61-11-22.

**(c)** The pharmacist shall be responsible for the proper removal and destruction of unused, discontinued, outdated or recalled drugs.

**(d)** The pharmacist shall require the person receiving a patient's drugs from the pharmacist or his agent to sign a drug receipt record listing those prescriptions received from the pharmacy.

**(e)** The pharmacist shall provide the staff with a receipt listing those prescriptions removed from the facility.

**(f)** Medications will be released to patients on discharge from the facility only upon the authorization of the physician.

## **(7) DRUG CONTROL**

**(a)** All state and federal laws relating to storage, administration and disposal of controlled substances and dangerous drugs shall be complied with.

**(b)** Separate sheets shall be maintained for controlled substances records indicating the following information for each type and strength of controlled substances: date, time administered, name of patient, dose, physician's name, signature of person administering dose, and balance of controlled substance in the container.

**(c)** All drugs shall be stored in locked cabinets, locked drug rooms, or state of the art locked medication carts.

**(d)** Medication requiring refrigeration shall be kept in a secure locked area of the refrigerator or in the locked drug room.

**(e)** All refrigerated medications will be kept in separate refrigerator or compartment from food items.

**(f)** Medications for each patient shall be kept and stored in their originally received containers, and stored in separate compartments. Transfer between containers is forbidden, waiver shall be allowed for oversize containers and controlled substances at the discretion of the drug inspector.

**(g)** Prescription medications for external use shall be kept in a locked cabinet separate from other medications.

**(h)** No drug samples shall be stocked in the licensed facility.

**(i)** All drugs shall be properly labeled with the following information:

**(i)** Patient's full name;

**(ii)** Physician's name;

**(iii)** Name, address and phone number of pharmacy;

**(iv)** Prescription number;

**(v)** Name of the drug and quantity;

**(vi)** Strength of drug and quantity;

**(vii)** Directions for use, route of administration;

**(viii)** Date of prescription (date of refill in case of a prescription renewal);

**(ix)** Expiration date where applicable: The dispenser shall place on the label a suitable beyond-use date to limit the patient's use of the medication. Such beyond-use date shall be not later than (a) the expiration date on the manufacturer's container, or (b) one year from the date the drug is dispensed, whichever is earlier;

**(x)** Auxiliary labels where applicable;

**(xi)** The Manufacturer's name;

**(xii)** State of the art drug delivery systems using unit of use packaging require items i and ii above, provided that any additional information is readily available at the nursing station.

**(j)** Customized Patient Medication Packages: In lieu of dispensing one, two, or more prescribed drug products in separate containers or standard vial containers, a pharmacist may, with the consent of the patient, the patient's care-giver, the prescriber, or the institution caring for the patient, provide a customized patient medication package. The pharmacist preparing a patient medication package must abide by the guidelines as set forth in the current edition of the U. S. Pharmacopoeia for labeling, packaging and record keeping.

**(k)** Repackaging of Patient Medication Packages: In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient medication package has more than one drug within it, the pharmacist may repackage the patient's patient medication package and either add to or remove from the patient medication packaged as ordered by the physician. The same drugs returned

by the patient for repackaging must be reused by the pharmacist in the design of the new patient medication package for the new regimen, and any drug removed must either be destroyed, returned to the DEA or returned to the patient properly labeled. Under no circumstances may a drug within a container of a patient medication package which contains more than one drug be returned to the pharmacy stock.

**(l)** Return of Patient Medication Package Drugs: Patient medication packages with more than one drug within a container may not under any circumstances be returned to a pharmacy stock.

**(m)** Patient Medication Packages with only one drug within a container:

**(i)** Non-Institutional: A patient medication package stored in a non-institutional setting where there is no assurance of storage standards may not be returned to pharmacy stock;

**(ii)** Institutional: A patient medication package stored in an institutional setting where the storage and handling of the drugs are assured and are consistent with the compendia standards may be returned to the pharmacy stock provided the following guidelines are followed: (1) the drug is to be kept within the patient medication package and is to remain sealed and labeled until dispensed; (2) the expiration date of drug shall become 50% of the time left of the expiration for the drug; (3) no Schedule II drugs may be returned to inventory; and (4) proper record keeping for the addition of other scheduled drugs into inventory must be done.

## **(8)** DRUG INFORMATION

**(a)** The pharmacist shall be accessible for providing drug information.

**(b)** A current reference books shall be located in each nursing station.

**(c)** Each nursing station shall have poison control information and phone number and a conversion chart for pharmaceutical weights and measures, and as a part of the drug procedures manual.

## **(9)** EMERGENCY DRUG SUPPLY

**(a)** There shall be an accountability record indicating the following:

**(i)** Name of drug, strength, and amount of medication used;

**(ii)** Date used;

**(iii)** Time;

**(iv)** Patient's name;

- (v) Physician's name;
- (vi) Nurse administering drug;
- (vii) Nature of emergency.

(b) Pharmacist shall make notation of date and time medication replacement is made on the line following that line containing withdrawal information and sign his name, unless the pharmacy chooses to change out the complete emergency box each time it is used. The pharmacy shall keep a record of each time the box is changed and a list of all drugs that were replaced in the box.

(10) Destruction of dispensed drugs for patients in health care facilities or institutions:

(a) The drugs are inventoried and such inventory is verified by the consultant pharmacist. The following information shall be included on this inventory:

- (i) name and address of the facility or institution;
- (ii) name and pharmacist license number of the consultant pharmacist;
- (iii) date of drug destruction;
- (iv) date the prescription was dispensed;
- (v) unique identification number assigned to the prescription by the pharmacy;
- (vi) name of dispensing pharmacy;
- (vii) name, strength, and quantity of drug;
- (viii) signature of consultant pharmacist destroying drugs;
- (ix) signature of witness(es); and
- (x) method of destruction.

(b) The drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(c) The actual destruction of the drug is witnessed by the consultant pharmacist and one of the following:

- (i) An agent of the New Mexico board of pharmacy;
- (ii) Facility administrator;
- (iii) The director of nursing.

**(11)** A consultant pharmacist may utilize a waste disposal service or reverse distributor to destroy dangerous drugs and controlled substances in health care facilities, boarding homes or institutions provided the following conditions are met:

**(a)** The inventory of drugs is verified by the consultant pharmacist. The following information must be included on this inventory:

- (i) Name and address of the facility or institution;
- (ii) Name and pharmacist license number of the consultant pharmacist;
- (iii) Date of packaging and sealing of the container;
- (iv) Date the prescription was dispensed;
- (v) Unique identification number assigned to the prescription by the pharmacy;
- (vi) Name of dispensing pharmacy;
- (vii) Name, strength and quantity of drug;
- (viii) Signature of consultant pharmacist packaging and sealing container; and
- (ix) Signature of the witness.

**(b)** The consultant pharmacist seals the container or drugs in the presence of the facility administrator, the director of nurses or an agent of the board of pharmacy.

**(c)** The sealed container is maintained in a secure area at the facility or pharmacy until transferred to the waste disposal service or the reverse distributor by the consultant pharmacist, facility administrator, director of nursing or agent of the board of pharmacy.

**(d)** A record of the transfer to the waste disposal service or reverse distributor is maintained and attached to the inventory of drugs. Such records shall contain the following information:

- (i) Date of the transfer;

(ii) Signature of the person who transferred the drugs to the waste disposal service or reverse distributor;

(iii) Name and address of the waste disposal service or reverse distributor;

(iv) Signature of the employee of the waste disposal service or the reverse distributor who receives the container; and

(v) The waste disposal service or reverse distributor shall provide the facility with proof of destruction of the sealed container.

(12) Record Retention: All records required above shall be maintained by the consultant pharmacist and the health care facility or institution for three years from the date of destruction.

[16.19.11.8 NMAC - Rp 16.19.11.8, 12-15-02; A, 10-24-14; A, 12-13-15]

## **PART 12: FEES**

### **16.19.12.1 ISSUING AGENCY:**

Board of Pharmacy.

[2/15/1889...2/15/1996; 16.19.12.1 NMAC - Rn, 16 NMAC 19.12.1, 3/30/2002; A, 12/15/2002; A, 1/31/2007; A, 8/2/2019; A, 12/15/2020]

### **16.19.12.2 SCOPE:**

All applicants for licensure, registration or certification by the Board of Pharmacy.

[2/15/1996; 16.19.12.2 NMAC - Rn, 16 NMAC 19.12.2, 3/30/2002; A, 8/2/2019]

### **16.19.12.3 STATUTORY AUTHORITY:**

Section 30-31-11 NMSA 1978 authorizes the board of pharmacy ("board") to charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31B-6 NMSA 1978 authorizes the board to charge reasonable fees for the registration and control of the manufacture, possession, transfer and transportation of drug precursors. Sections 61-11-12, 61-11-13, and 61-11-14 NMSA 1978 authorize the board to charge, and limit the maximum charges for:

A. applications for registration and renewal of registration as a pharmacist, pharmacist intern, or pharmacy technician; and

**B.** applications for the registration of retail pharmacies, wholesale drug distributors, nonresident pharmacies, drug manufacturers, hospital pharmacies, drug rooms, nursing homes, industrial or public health clinics, the department of health clinics and health facilities, home care services, wholesalers, retailers and distributors of legend-bearing veterinary drugs, medicinal gas repackagers, medicinal gas sellers, outsourcing facilities, repackagers, and third party logistics providers. Section 61-1-34 NMSA 1978 authorizes the board to waive license fees for the first three years for military service members, spouses, dependents, and veterans where the license is issued by reciprocity.

[2/15/1996; 16.19.12.3 NMAC - Rn, 16 NMAC 19.12.3, 3/30/2002; A, 8/2/2019; A, 11/30/2021; A, 02/28/2023]

**16.19.12.4 DURATION:**

Permanent.

[2/15/1996; 16.19.12.4 NMAC - Rn, 16 NMAC 19.12.4, 3/30/2002]

**16.19.12.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a section. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2/15/1996.

[2/15/1996; A, 7/31/1998; 16.19.12.5 NMAC - Rn, 16 NMAC 19.12.5, 3/30/2002]

**16.19.12.6 OBJECTIVE:**

The objective of Part 12 of Chapter 19 is to ensure uniform imposition and collection of fees that conform to statutory requirements for individuals and entities that provide pharmaceutical products and services.

[2/15/1996; 16.19.12.6 NMAC - Rn, 16 NMAC 19.12.6, 3/30/2002]

**16.19.12.7 DEFINITIONS:**

**[RESERVED]**

[2/15/1996; 16.19.12.7 NMAC - Rn, 16 NMAC 19.12.7, 3/30/2002]

**16.19.12.8 FEES:**

All fees shall be paid in advance of the issuance of any license, permit, certificate or replacement of a certificate and shall not be refundable.

[3/7/1980...8/27/1990; 16.19.12.8 NMAC - Rn, 16 NMAC 19.12.8, 3/30/2002; A, 10/24/2014]

**16.19.12.9 REGISTRATION FEES:**

- A. Registration by examination \$200.00.
- B. Registration by reciprocity \$200.00.
- C. Registration as an intern \$25.00.
- D. Registration as a pharmacy technician \$25.00.

E. Waiver of registration fees: The board of pharmacy waives the registration fee set forth in regulation 16.19.12.9 for change of duty location to New Mexico for individuals who are currently serving in the United States military, and for those service member spouses.

F. Registration fees are waived for United States military service members, spouses (includes surviving spouse of a member who at the time of member's death was serving on active duty), dependent children, and veterans who are applying for pharmacist licensure by reciprocity.

[3/7/1980...8/27/1990; A, 7/15/1997; A, 7/31/1998; 16.19.12.9 NMAC - Rn, 16 NMAC 19.12.6, 3/30/2002; A, 12/15/2002; A, 9/30/2003; A, 3/22/2015; A, 8/2/2019; A, 11/30/2021; A, 5/7/2024]

**16.19.12.10 CERTIFICATE OF REGISTRATION OR REPLACEMENT:**

Any replacement of a certificate shall be accompanied by a notarized statement of the reason or cause of the loss of the original, or by the original certificate to be replaced in case of damage or name change. All replacement certificates will be given the same number as the original certificate and will be marked "DUPLICATE".

- A. Certificate of registration \$20.00
- B. Replacement of a certificate of registration \$20.00

[3/7/1980...8/27/1990; 16.19.12.10 NMAC - Rn, 16 NMAC 19.12.10, 3/30/2002; A, 8/2/2019]

**16.19.12.11 CERTIFICATION OF GRADES AND INTERNSHIP HOURS:**

- A. Certification of grades \$10.00
- B. Certification of internship hours \$10.00

[3/7/1980...8/27/1990; 16.19.12.11 NMAC - Rn, 16 NMAC 19.12.11, 3/30/2002]

**16.19.12.12 LICENSE/REGISTRATION RENEWAL:**

- A. Pharmacist license renewal for active \$200.00 bi-ennially
- B. Pharmacist license renewal for in-active \$70.00 bi-ennially
- C. Intern renewal \$25.00 per year
- D. Duplicate license for interns and pharmacists \$10.00
- E. Controlled substance registration \$180.00 tri-ennially

A locum tenens practitioner may apply for an initial registration which expires no more than one year after date of issuance, and this registration fee shall be \$60.00. The board may issue a registration for a time period determined by the board and shorter than three years if it is consistent with the public health and safety.

- F. Duplicate license for controlled substance \$10.00
- G. Pharmacy technician renewal \$30.00 bi-ennially
- H. Pharmacist clinician \$70.00 bi-ennially
- I. Pharmacist license renewal for active pharmacists with 50 or more years of service \$70.00 bi-ennially

J. Note: Waiver of license renewal fees: The board of pharmacy waives the renewal fee set forth in regulation 16.19.12.12 for individuals who are currently serving in the United States military in an active war zone or who serve in direct support of operation in active war zones.

K. Initial renewal fees are waived for United States military service members, spouses (includes surviving spouse of a member who at the time of member's death was serving on active duty), dependent children, and veterans, who obtained pharmacist licensure by reciprocity.

[3/7/1980...8/27/1990; A, 7/31/1998; A, 11-14-98; 16.19.12.12 NMAC - Rn, 16 NMAC 19.12.12, 3/30/2002; A, 12/15/2002; A, 9/30/2003; A, 7/15/2004; A, 12/15/2005; A, 1/31/2007; A, 3/22/2015; A, 6/26/2018, A, 12/15/2020; A, 11/30/2021]

**16.19.12.13 LICENSE FEES:**

- A. Drug manufacturer \$1000.00 bi-ennially.
- B. Wholesale drug distributor \$1000.00 bi-ennially.
- C. Drug manufacturer/re-packager \$1000.00 bi-ennially.
- D. Re-packager \$1000.00 bi-ennially.
- E. Retail pharmacy \$300.00 bi-ennially.
- F. Hospital pharmacy \$300.00 bi-ennially.

<b>G.</b>	Nonresident pharmacy	\$400.00 bi-ennially.
<b>H.</b>	Nonresident pharmacy, sterile compounding	\$600.00 bi-ennially.
<b>I.</b>	Seller or dispenser of contact lenses	\$200.00 bi-ennially.
<b>J.</b>	Dangerous drug research	\$200.00 bi-ennially.
<b>K.</b>	Drug warehouse	\$200.00 bi-ennially.
<b>L.</b>	Duplicate license or permit(for all types)	\$10.00 per each request.
<b>M.</b>	Letter of good standing, verification, and certification	\$10.00 per each request.
<b>N.</b>	Outsourcing facility	\$2000.00 bi-ennially.
<b>O.</b>	Third party logistics provider	\$1000.00 bi-ennially.
<b>P.</b>	Medical gas repackager, or seller	\$200 bi-ennially.

[3/7/1980...5/1/1993; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 3/30/2002; A, 9/30/2003; A, 7/15/2004; A, 1/15/2005; A, 12/15/2005; A, 1/31/2007; A, 11/15/2010; A, 12/13/2015; A, 3/23/2016; A, 11/28/2017; A, 8/2/2019, A, 12/15/2020, A, 2/28/2023; A, 5/7/2024]

**16.19.12.14 DRUG ROOM PERMIT:**

**A.** Drug room permit in adult shelter care or custodial care facility:

**(1)** 10 or fewer beds: \$100.00 bi-ennially

**(2)** 11 or more beds: \$200.00 bi-ennially

**B.** Drug room permit in an intermediate nursing home facility \$200.00 bi-ennially

**C.** Drug room permit in a skilled nursing home facility \$200.00 bi-ennially

[3/7/1980...8/27/1990; 16.19.12.14 NMAC - Rn, 16 NMAC 19.12.14, 3/30/2002; A, 9/30/2003; A, 10/24/2014; A, 12/13/2015]

**16.19.12.15 CLINIC LICENSE FEES:**

**A.** Class A, B, C, or E clinic \$300.00 bi-ennially

**B.** Class D clinic \$50.00 bi-ennially

**C.** Animal control clinic \$100.00 bi-ennially.

[3/7/1980...8/6/1994; 12/15/1999; 16.19.12.15 NMAC - Rn, 16 NMAC 19.12.15, 3/30/2002; A, 9/30/2003; A, 10/24/2014; A, 12/13/2015; A, 02/28/2023]

**16.19.12.16 HOME CARE SERVICES DRUG PERMIT FEE:**

\$75.00 per year

[3/7/1980...8/6/1994; 16.19.12.16 NMAC - Rn, 16 NMAC 19.12.16, 3/30/2002; A, 8/2/2019]

**16.19.12.17 LIMITED VETERINARY DRUG RETAIL OR WHOLESALE LICENSE:**

Limited veterinary drug retail or wholesale license shall be: \$150.00 per year

[3/7/1980...2/22/1993; 16.19.12.17 NMAC - Rn, 16 NMAC 19.12.17, 3/30/2002; A, 8/2/2019]

**16.19.12.18 INSPECTION FEE:**

- A. Initial inspection or reinspection \$150.00
- B. Pre-licensing inspection for Class D clinic \$30.00

[3/7/1980...2/22/1993; 16.19.12.18 NMAC - Rn, 16 NMAC 19.12.18, 3/30/2002; A, 12/13/2015]

**16.19.12.19 DRUG PRECURSOR LICENSE:**

Drug precursor manufacturer or distributor license \$500.00 bi-ennially

[3/7/1980...2/22/1993; 16.19.12.19 NMAC - Rn, 16 NMAC 19.12.19, 3/30/2002; A, 8/2/2019]

**16.19.12.20 REINSTATEMENT FEES:**

Any person whose board registration or license has expired and who seeks reinstatement of the certificate of license must pay the following reinstatement fee in addition to all delinquent renewal fees:

- A. Pharmacists \$25.00

**B.** All other licenses issued by the board of pharmacy under the Pharmacy Act and the Drug Precursor Act including, but not limited to, licenses for retail pharmacy, non-resident pharmacy, wholesale drug distributor, drug manufacturer, hospital pharmacy, drug room, nursing home, clinic facility, wholesalers, retailers or distributors of veterinary drugs, and drug precursor, twenty-five percent of the license renewal fee not to exceed \$100.00

**C.** Controlled substance registrations are exempt from reinstatement fees. Delinquent renewal fees shall not exceed \$180.00.

[3/7/1980...2/22/1993; 16.19.12.20 NMAC - Rn, 16 NMAC 19.12.20, 3/30/2002; A, 12/13/2015; A, 8/2/2019; A, 12/15/2020]

**16.19.12.21 EMS LICENSURE FEES:**

Annual license fees shall be paid to the board according to the following schedule:

- A. The home office or headquarters shall pay \$50.00;
- B. Every additional location shall pay \$25.00.

[N, 12/15/1999; 16.19.12.21 NMAC - Rn, 16 NMAC 19.12.21, 3/30/2002]

**PART 13: TEMPORARY BUSINESS LICENSES**

**16.19.13.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[16.19.13.1 NMAC - Rp, 16 NMAC 19.13.1, 12-15-02]

**16.19.13.2 SCOPE:**

All business entities that possess, administer, dispense and/or distribute prescription drugs and/or devices for the purpose of providing pharmaceutical products and services.

[16.19.13.2 NMAC - Rp, 16 NMAC 19.13.2, 12-15-02]

**16.19.13.3 STATUTORY AUTHORITY:**

Section 61-11-6.B.(1) NMSA 1978 authorizes the Board to delegate its authority to the Executive Director to issue temporary licenses as provided in Section 61-11-14.H. NMSA 1978.

[16.19.13.3 NMAC - Rp, 16 NMAC 19.13.3, 12-15-02]

**16.19.13.4 DURATION:**

Permanent.

[16.19.13.4 NMAC - Rp, 16 NMAC 19.13.4, 12-15-02]

**16.19.13.5 EFFECTIVE DATE:**

December 15, 2002, unless a later date is cited at the end of a Section.

[12-15-97; 16.19.13.5 NMAC - Rp, 16 NMAC 19.13.5, 12-15-02]

**16.19.13.6 OBJECTIVE:**

To expedite the licensure of business entities providing pharmaceutical products and services. Temporary licenses shall only be issued after the applicant has completed a deficiency free facility inspection.

[16.19.13.16 NMAC - Rp, 16 NMAC 19.13.6, 12-15-02]

**16.19.13.7 DEFINITIONS:**

All terms defined in the Pharmacy Act or elsewhere in the Board regulations shall have the same meaning in this regulation unless otherwise defined below:

A. Deficiency Free Inspection means compliance with all Board pre-licensing inspection requirements.

B. **[RESERVED]**

[16.19.13.7 NMAC - Rp, 16 NMAC 19.13.7, 12-15-02]

**16.19.13.8 PROCEDURE FOR TEMPORARY LICENSURE OF BUSINESS ENTITIES THAT POSSESS, ADMINISTER, DISPENSE AND/OR DISTRIBUTE PRESCRIPTION DRUGS AND/OR DEVICES:**

A. Prior to issuance of a permanent license, an applicant may apply once, for each location, for a temporary license. The applicant shall submit required application and fee to the Board office.

B. After preliminary approval of the application, the applicant shall submit a "Request for Inspection" and the inspection fee, where applicable, a minimum of fourteen days in advance of the requested date for inspection.

C. Upon receipt of a deficiency free inspection report the Executive Director may issue a temporary facility license for this location.

D. The Board shall review the license application and the inspection report at its next meeting and shall cause a license to be issued or denied in accordance with the Uniform Licensing Act 61-1-1 to 61-1-33 NMSA 1978.

E. The temporary license shall expire at the close of business on the last day of the next regular Board meeting.

[16.19.13.8 NMAC - Rp, 16 NMAC 19.13.8, 12-15-02]

**PART 14: DEVICES; MEDICAL GAS REPACKAGERS AND SELLERS**

**16.19.14.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.14.1 NMAC – Rp, 16.19.14.1 NMAC, 02/28/2023]

**16.19.14.2 SCOPE:**

All individuals and entities subject to the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article I NMSA 1978.

[16.19.14.2 NMAC – Rp, 16.19.14.2 NMAC, 02/28/2023]

**16.19.14.3 STATUTORY AUTHORITY:**

Paragraph 7 of Subsection A of Section 61-11-6 NMSA 1978 authorizes the Board to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act. Paragraphs 18 and 19 of Subsection B of Section 61-11-14 authorize the Board to license and otherwise establish minimum standards for medical gas sellers and repackagers. Section 26-1-18 of the Drug, Device and Cosmetic Act authorizes the Board to promulgate regulations for the efficient enforcement of the Act.

[16.19.14.3 NMAC – Rp, 16.19.14.3 NMAC, 02/28/2023]

**16.19.14.4 DURATION:**

Permanent.

[16.19.14.4 NMAC – Rp, 16.19.14.4 NMAC, 02/28/2023]

**16.19.14.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[16.19.14.5 NMAC – Rp, 16.19.14.5 NMAC, 02/28/2023]

**16.19.14.6 OBJECTIVE:**

The objective of Part 14 of Chapter 19 is to establish mandatory controls and performance standards for health care devices so as to minimize the risk of injury from the distribution and use of adulterated or misbranded devices, and to establish standards for the repackaging and selling of medical gases, so as to minimize the risk of injury from the distribution and use of adulterated or misbranded medical gases.

[16.19.14.6 NMAC – Rp, 16.19.14.6 NMAC, 02/28/2023]

**16.19.14.7 DEFINITIONS:**

**A. "Device"**, as used in the New Mexico Drug and Cosmetic Act, is any health care product that does not achieve any of its principal intended purpose through chemical action within or on the body of man or other animal and which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

**B. "Board"** means the New Mexico board of pharmacy.

**C. "Distribution of medical gases"** means the distribution of medical gas, to persons other than consumers or patients.

**D. "Drug order"** means a prescription drug order issued by a licensed prescriber for medical gas.

**E. "FDA"** means the United States Food and Drug Administration.

**F. "Federal Act"** means the Federal Food, Drug and Cosmetic Act.

**G. "Medical gas"** means:

(1) a drug that is manufactured or stored in a liquefied, nonliquefied, or cryogenic state and is administered as a gas; and

(2) that is labeled for medical use in compliance with federal law and is otherwise a designated medical gas as defined at 21 U.S.C. Section 360ddd(1) of the Federal Act, including each of the following that meets the standards set forth in an official compendium: oxygen, nitrogen, nitrous oxide, carbon dioxide, helium, and medical air.

**H. "Medical gas repackager"** means a person that manufactures or repackages a medical gas, which includes producing, cascading, distributing, filling, mixing, purifying, separating, transferring, and transfilling medical gases. This includes original manufacturers as defined by the FDA that repackage medical gas and have a valid registration as a drug establishment with the FDA. A medical gas manufacturer shall be issued the license type medical gas repackager.

**I. "Medical gas seller"** means a person licensed to distribute a medical gas to a person other than a consumer or patient, or to supply medical gases on drug orders to a patient or ultimate user.

**J. "Repackage"** means persons or entities manufacturing bulk medical gases or transferring gas or liquefied gas product from one container to another (e.g., liquid to gas, gas to gas, liquid to liquid).

[16.19.14.7 NMAC – Rp, 16.19.14.7 NMAC, 02/28/2023]

#### **16.19.14.8 CLASSIFICATION OF DEVICES:**

Three regulatory classes are established based on the extent of control necessary to ensure safety and effectiveness of each device:

##### **A. Class I -- General Controls**

- (1) prohibiting adulteration or misbranding
- (2) requiring federal registration and listing by the manufacturer
- (3) requiring notification of risks, repairs, replacement or refund
- (4) requirement restricting sale, distribution or use
- (5) requirement with respect to good manufacturing practices, record keeping, reports and inspections
- (6) authority to ban the device.

##### **B. Class II -- Performance Standards**

- (1) general controls not sufficient to assure safety and effectiveness
- (2) performance standards required by federal FDA
- (3) FDA regulations establishing the performance standard.

##### **C. Class III -- Pre-Market Approval**

- (1) represents life sustaining, life-supporting or implanted in the body or which presents a potential unreasonable risk of illness or injury
- (2) requires investigational device exemption for research (IDE under federal act Sec. 520 (g)).

[16.19.14.8 NMAC – Rp, 16.19.14.8 NMAC, 02/28/2023]

#### **16.19.14.9 ADULTERATION:**

A device may be considered to be adulterated:

- A.** It is subject to a performance standard and does not comply with all requirements of such standard.

- B.** Class II device FDA pre-market approval is not completed.
- C.** It is a banned device.
- D.** It is in violation of good manufacturing practice requirements.
- E.** It fails to comply with the IDE (Investigational Device Exemption) protocol.

[16.19.14.9 NMAC – Rp, 16.19.14.9 NMAC, 02/28/2023]

#### **16.19.14.10 MISBRANDING:**

A device may be deemed to be misbranded if:

- A.** Manufactured in a nonregistered establishment pursuant to federal requirements.
- B.** If advertising and description literature fails to meet minimum requirements for disclosure of product information.
- C.** Devices subject to performance standards set by FDA, whose labeling fails to meet those prescribed in the standard.
- D.** Devices that fail or whose manufacturer refuses to comply with requirements relating to notification and other remedies and requirements or fails to maintain adequate records and necessary reports as required under the federal act Section 518-519.
- E.** If its label does not bear adequate directions for use and adequate warning against unsafe use.
- F.** If the labeling is false or misleading.
- G.** If it is a restricted device and fails to bear required labeling.

[16.19.14.10 NMAC – Rp, 16.19.14.10 NMAC, 02/28/2023]

#### **16.19.14.11 RESTRICTED DEVICE (PRESCRIPTION STATUS):**

- A.** FDA requirements may restrict the sale, distribution, or use of a device if there cannot be reasonable assurance of its safety and effectiveness.
- B.** Prescription status devices are determined on the basis of its intended use and whether or not the device can be adequately labeled as usable by the layman (i.e., pacemaker, hearing aids, hear valves, etc.).

**C.** Labeling must contain certain information such as name of device, statement of intended use, relevant warnings, precaution, side effects and contraindications.

**D.** Labeling of a restricted device, other than surgical instruments, shall bear:

(1) "CAUTION: Federal law restricts this device to sale by or on the order of a \_\_\_\_\_; physician, dentist, veterinarian, or with the descriptive designation of any other practitioner licensed by the laws of this State to prescribe or use the device in his practice.

(2) The method of its application or use.

(3) The label meets all other requirements under CFR Title 21, Section 801.109 (c) and (d) and (e).

[16.19.14.11 NMAC – Rp, 16.19.14.11 NMAC, 02/28/2023]

#### **16.19.14.12 CUSTOM DEVICES:**

**A.** A custom device is one which is sometimes ordered from manufacturers by practitioners to conform to their own special needs or to those of their patients (i.e., prosthetic devices, dental devices and specially designed orthopedic footwear).

**B.** Custom devices are exempt from performance standards or pre-market approval requirements; however, they are subject to FDA requirements for investigational use, banning, restriction of distribution, adulteration and misbranding.

**C.** The exemption applied only to devices which are not generally available in finished form for dispensing, or on prescription, or for commercial distribution or generally available to other practitioners.

[16.19.14.12 NMAC – Rp, 16.19.14.11 NMAC, 02/28/2023]

#### **16.19.14.13 PROCEDURE FOR LICENSURE OF BUSINESS FOR MEDICAL GAS REPACKAGER OR SELLER AND FOR TRANSFER OF OWNERSHIP OF LICENSED BUSINESSES:**

**A.** An applicant shall submit required application and fee to the board. Applications for a license or license renewal under this section shall be made on a form furnished by the board. The board may require such information as it deems is reasonably necessary to carry out the purposes of this part.

**B.** After preliminary approval of a new application for licensure, an applicant that is located in New Mexico shall submit a request for inspection and the inspection fee, where applicable, in advance of fourteen days of the requested date for inspection. All

subsequent requests for inspection shall be submitted in advance of fourteen days of the requested date for inspection.

**C.** The license provided for herein shall terminate upon the sale or transfer of ownership. Operation of a business subsequent to the date of such transfer or sale without a new application and approval by the board shall constitute a violation of the law under Subsection I of Section 61-11-14 NMSA 1978, and is subject to the penalties contained in the Pharmacy Act.

[16.19.14.13 NMAC – N, 02/28/2023]

#### **16.19.14.14 LICENSE REQUIREMENTS MEDICAL GAS REPACKAGER OR SELLER:**

**A.** Every medical gas repackager or seller, wherever located, shall be licensed by the board in accordance with the laws and regulations of this state before engaging in repackaging, distribution or selling of medical gases in this state.

**B.** Repackagers and sellers cannot operate from a place of residence. No primary business location will be operated out of a storage unit. Use of a storage unit shall be consistent with accrediting body approval and allowance.

**C.** Where operations are conducted at more than one location, each such location shall be licensed by the board.

**D.** A manufacturer or wholesale drug distributor licensed by the board may distribute medical gas without the requirement of a separate medical gas license. Said licensees shall distribute only to an entity licensed to receive medical gas. A pharmacy, dentist, or licensed prescriber's license verifies their authority to receive prescription only medical gases.

**E.** A pharmacy licensed by the board may provide medical gas pursuant to a drug order, or to nearby emergency medical services, i.e., ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners allowed to prescribe medical gases for use in the treatment of acutely ill or injured persons; to nearby or contracted nursing homes or home care services; or to another pharmacy to alleviate a temporary shortage without the requirement of a separate medical gas license.

**F.** The Board may prohibit a person or entity from receiving or maintaining licensure if the person or entity:

(1) has been convicted of any felony for conduct relating to manufacturing or distribution, any felony violation of Subsection (i) or (k) of Section 301, or any felony violation of Section 1365 of title 18, United States Code, relating to product tampering; or

(2) has been found by the board to have violated the requirements of this part, or state requirements for licensure.

**G.** The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

[16.19.14.14 NMAC – N, 02/28/2023].

**16.19.14.15 MINIMUM QUALIFICATIONS MEDICAL GAS REPACKAGER OR SELLER:**

**A.** Compliance with federal, state, and local law. Repackagers and sellers shall operate in compliance with all applicable federal, state, and local laws and regulations.

**B.** Every person or entity subject to this part shall meet the federal requirements to handle medical gas, the Prescription Drug Marketing Act at 21 U.S.C., Sec. 331 et seq., and any other applicable federal, state, or local laws and regulations. Said applicants and licensees shall be registered with the FDA, if required.

**C.** Every person or entity subject to this part must conform to the Compressed Medical Gases Guidelines published by the FDA.

**D.** Personnel. As a condition of receiving and retaining a license under this part, the licensee or applicant shall require each person employed in any medical gas related activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the medical gas quality, safety and security will at all times be maintained by law.

[16.19.14.15 NMAC – N, 02/28/2023]

**16.19.14.16 MINIMUM REQUIREMENTS:**

**A.** Written policies and procedures. Repackagers and sellers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the proper receipt, security, storage, handling, repackaging, labeling, inventory, distribution, quarantine, return or disposition of medical gases, for identifying, recording and reporting losses or thefts, for correcting all errors and inaccuracies in inventories, for maintenance of required drug records in proper form, and handling recalls.

**B.** The facility shall be of suitable size and construction, with adequate lighting, environmental control, quarantine, cleanliness and pest control.

**C.** The facility shall be secure from unauthorized entry.

**D. Recordkeeping.** Medical gas repackagers and sellers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of medical gas.

**E.** Inventories and records shall be made available for inspection and copying by Board inspectors for a period of at least three (3) years.

**F.** All repackagers or sellers in New Mexico must publicly display or have readily available all required licenses and the most recent inspection report administered by the board.

**G.** Medical gas repackagers shall distribute only to an entity licensed to receive medical gas. A pharmacy, dentist, or licensed prescriber's license verifies their authority to receive prescription only medical gases.

[16.19.14.16 NMAC – N, 02/28/2023]

**16.19.14.17 CHANGE IN LOCATION OF A MEDICAL GAS REPACKAGER OR SELLER:**

Before any person or entity subject to this part located in New Mexico changes the location of the facility, a new application shall be submitted to the board, setting forth such changes. Upon approval and completion of the change, a request for inspection will be submitted to the board. There will be no charge for the new application, but the inspection will carry the same fee as applies for a new facility inspection.

[16.19.14.17 NMAC – N, 02/28/2023]

**16.19.14.18 TRANSFER OF OWNERSHIP:**

A transfer of ownership occurs upon.

**A.** The sale of the facility to another individual or individuals by the present owner.

**B.** The addition or deletion of one or more partners in a partnership.

**C.** The death of a singular or sole owner.

**D.** The change of ownership of thirty percent or more of the voting stock of a corporation since the issuance of the license or last renewal application.

**E.** A new license application will be required to be filed in each of the above circumstances. As stated in the Pharmacy Act, Subsection I of Section 61-11-14 NMSA 1978, licenses are not transferable, and shall expire on December 31 of every other year unless renewed.

[16.19.14.18 NMAC – N, 02/28/2023]

**16.19.14.19 PRESCRIPTION REQUIREMENT:**

**A.** Prescription requirement, in general: A designated medical gas shall be subject to the requirements of 21 U.S.C. section 353(b)(1) unless the Secretary of the FDA exercises the authority provided in section 353(b)(3) to remove such medical gas from the requirements of section 353(b)(1), the gas is approved for use without a prescription pursuant to an application under 21 U.S.C. section 355 or 360b, or the use in question is authorized pursuant to another provision of this part relating to use of medical products in emergencies.

**B.** Oxygen, no prescription required for certain uses: oxygen may be provided without a prescription for the following uses:

(1) for use in the event of depressurization or other environmental oxygen deficiency; and

(2) for oxygen deficiency or for use in emergency resuscitation, when administered by properly trained personnel.

(3) Labeling - For oxygen provided pursuant to this Subsection B., the requirements of section 353(b)(4) of 21 U.S.C. shall be deemed to have been met if its labeling bears a warning that the oxygen can be used for emergency use only and for all other medical applications a prescription is required.

**C.** Prescription requirement. Except as provided above, medical gas sellers shall not supply medical gas to a patient or consumer without a drug order.

(1) An original or copy of a prescription drug order must be kept at the licensed location supplying the medical gas.

(2) A prescription drug order shall be valid for a period of time consistent with the indication for which it was prescribed. Prescription drug orders shall be maintained for three years and be readily retrievable and available at inspection.

[16.19.14.19 NMAC – N, 02/28/2023]

**16.19.14.20 REPORT OF ROBBERY, FIRE AND FLOOD:**

When a medical gas repackager or seller located in New Mexico is involved in a robbery, fire, flood or any unusual event in which medical gases might be missing or damaged, the owner shall immediately file with the Board, a signed statement of the circumstances of such occurrence and evidence that local authorities were notified, if applicable.

[16.19.14.20 NMAC – N, 02/28/2023]

## **PART 15: DANGEROUS VETERINARY DRUGS - RETAIL DISTRIBUTION**

### **16.19.15.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Pharmacy, Albuquerque NM.

[02-15-96; 16.19.15.1 NMAC - Rn, 16 NMAC 19.15.1, 03-30-02; A, 10-25-12]

### **16.19.15.2 SCOPE:**

All retail veterinary drug distributors.

[02-15-96; 16.19.15.2 NMAC - Rn, 16 NMAC 19.15.2, 03-30-02]

### **16.19.15.3 STATUTORY AUTHORITY:**

Section 61-11-14.B. (13) NMSA 1978 authorizes the board of pharmacy to issue drug permits for wholesalers, retailers and distributors of dangerous drugs limited to veterinary use. Section 26-3-3(A) NMSA 1978 (the Drug Product Selection Act or "DPSA") authorizes pharmacists to dispense lower cost versions of multiple-source drugs that meet a final determination of the federal government that is published in the federal register. Section 26-3-2 of the DPSA states that the purpose of the DPSA is to assure that all New Mexico citizens continue to receive high quality drugs at a reasonable cost.

[02-15-96; A, 04-30-98; 16.19.15.3 NMAC - Rn, 16 NMAC 19.15.3, 03-30-02; A, 10-25-12]

### **16.19.15.4 DURATION:**

Permanent.

[02-15-96; 16.19.15.4 NMAC - Rn, 16 NMAC 19.15.4, 03-30-02]

### **16.19.15.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96; A, 04-30-98; 16.19.15.5 NMAC - Rn, 16 NMAC 19.15.5, 03-30-02]

### **16.19.15.6 OBJECTIVE:**

The objective of Part 15 of Chapter 19 is to establish standards to be followed by retailers and distributors for the safe and competent delivery, distribution, and disposal of dangerous drugs limited to veterinary use and to carry out the purpose of the Drug Product Selection Act by providing a uniform standard for drug product selection of animal drugs. Section 26-3-3(A) NMSA 1978 permits a pharmacist to select a lower cost multiple source drug that meets a final determination in the federal register when a more costly version of the drug is prescribed. Animal drugs approved by FDA are subject to final determinations in the federal register and therefore qualify for drug product selection as described in this regulation.

[02-15-96; 16.19.15.6 NMAC - Rn, 16 NMAC 19.15.6, 03-30-02; A, 10-25-12]

#### **16.19.15.7 DEFINITIONS:**

A. "**Limited licensure for retailers of veterinary drugs**" means a license issued in accordance with the Pharmacy Act 61-11-14.B (13), which authorizes licensees to retail dangerous drugs limited to veterinary use, in accordance with the labeling provisions of the Drug and Cosmetic Act.

B. "**Dangerous drug**" means a drug...because of any potentiality for harmful effect or the method of its' use, or the collateral measures necessary to its' use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug, and hence for which adequate directions for use cannot be prepared.

C. "**Animal drug**" means a dangerous (prescription) drug that is the subject of an approved new animal drug application or an approved abbreviated new animal drug application under the Federal Food, Drug, and Cosmetic Act.

D. "**FDA**" means the United States food and drug administration.

E. "**Adequate directions for use**" means directions under which the layman can use a drug safely and for the purpose for which it is intended. A dangerous drug shall be sold at retail only on the order or prescription of a practitioner licensed by law to administer or prescribe such drug, if it bears the legend: "CAUTION -- federal law restricts this drug to use by or on the owner of a licensed veterinarian".

F. "**Licensed practitioner**" means a person engaged in a profession licensed by the state, who within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition, and includes doctors of medicine, osteopathy, dentistry, podiatry and veterinary medicine.

G. "**Prescription**" means an order given individually for the person for whom prescribed, either directly from the prescriber or indirectly by means of a written order, signed by the prescriber and shall bear the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the

drug prescribed, directions for use and the date of issue. No person other than a licensed practitioner shall prescribe or write a prescription.

H. **"Therapeutically equivalent"** means animal drug products which have the same amount of the active drug in the same dosage form which when administered can be expected to provide the same therapeutic effect.

I. **"Expiration date"** means those drugs and particularly those that are biologic in origin, on which the label is required to bear an expiration date limiting the period during which the drug may be expected to have the labeled potency if it is stored as directed.

J. **"Proper storage temperature"** means the temperature at which the label on the drug indicates the product must be kept.

- (1) Cold; any temperature not exceeding 46 degrees F.
- (2) Cool; any temperature between 46 and 50 degrees F.
- (3) Room temperature; the temperature prevailing in a working area.
- (4) Controlled room temperature; temperature maintained thermostatically between 59 and 86 degrees F.
- (5) Excessive heat; any temperature above 104 degrees F.
- (6) Protection from freezing; where, in addition to the risk of breakage of the original container, freezing subjects a product to a loss of strength or potency, or to destructive alteration of the dosage form. The container label bears the appropriate notice to protect from freezing.

[03-07-80...08-27-90, 04-30-98; 16.19.15.7 NMAC - Rn, 16 NMAC 19.15.7, 03-30-02; A, 10-25-12]

#### **16.19.15.8 MANUFACTURER'S LABEL:**

Retail distribution of veterinary drugs which by federal law require the manufacturer to label the following legend: "CAUTION: Federal law restricted this drug to use or on the order of a licensed veterinarian" shall be as follows:

A. shall be sold at retail by the licensee or an employee or employees designated by the licensee only on the written order or prescription of a veterinarian licensed in this state; or

B. if the order or prescription is other than a written order, the designated individual receiving the oral order or prescription shall immediately reduce such order to writing

and the person receiving the order shall indicate the following information on the written record.

- (1) name and address of the licensed veterinarian;
- (2) name and strength of drug prescribed;
- (3) quantity of drug ordered by the veterinarian;
- (4) directions for use and cautionary statements, if given, by the veterinarian prescriber;
- (5) date of order;
- (6) name of owner and/or consignee of animal or animals;
- (7) name of individual taking order from veterinarian prescriber.

[03-07-80...08-27-90; 16.19.15.8 NMAC - Rn, 16 NMAC 19.15.8, 03-30-02]

#### **16.19.15.9 DANGEROUS VETERINARY DRUGS AND ANIMAL DRUG PRODUCT SELECTION:**

All dangerous drugs distributed at retail on the order of a licensed veterinarian by the limited retail veterinary drug distributor shall be sold in the original, unbroken manufacturer's containers.

A. Upon receipt of a prescription for an animal drug, a pharmacist may dispense any lower cost animal drug that is:

- (1) therapeutically equivalent to the prescribed animal drug;
- (2) bioequivalent to the prescribed animal drug; and
- (3) listed in FDA's list of approved animal drug products (the "green book").

B. When performing animal drug product selection pursuant to this regulation, a pharmacist may rely on the bioequivalence information found in the FDA FOIA summaries published on the FDA internet website.

C. A licensed practitioner may prohibit animal drug product selection by writing with his hand the words "no substitution" or the diminution "no sub" on the face of a prescription.

D. If animal drug product selection occurs as permitted in this regulation, the pharmacist shall indicate on the label of the dispensed container the brand of drug prescribed and the name of the drug dispensed.

E. A pharmacist may not select a therapeutically equivalent animal drug unless he passes on to the purchaser all savings between the net cost of the product prescribed and the product dispensed.

[03-07-80...08-27-90; 16.19.15.9 NMAC - Rn, 16 NMAC 19.15.9, 03-30-02; A, 10-25-12]

#### **16.19.15.10 DRUGS, LABEL CONTENT:**

A. All such drugs shall be labeled by the licensed retail distributor as follows:

- (1) name and address of the retail distributor;
- (2) consecutively numbered prescription or order number;
- (3) date of the prescription, or in the case of a refill, the date of the refill of the original order or prescription;
- (4) name and address of licensed veterinarian prescriber;
- (5) name of owner and/or consignee of the animal or animals;
- (6) directions for use and cautionary statements, if any, contained in the order or prescription.

B. The attached label, where possible, will not obstruct the manufacturer's label.

[03-07-80...08-27-90; 16.19.15.10 NMAC - Rn, 16 NMAC 19.15.10, 03-30-02]

#### **16.19.15.11 PACKAGE INSERT:**

The package insert shall be left in the dispensed container, unless the prescribing veterinarian indicates on the prescription that it be removed by the dispenser.

[03-07-80...08-27-90; 16.19.15.11 NMAC - Rn, 16 NMAC 19.15.11, 03-30-02]

#### **16.19.15.12 LABELS, CASE LOT DISTRIBUTION:**

A. Labels as required in Section 10 of this Regulation shall be placed on each drug container when quantity is in less than case lot distribution.

B. If the prescriber orders in quantities of case lot or carton, which is the same strength and dose units, the label shall be placed on each case or carton.

[03-07-80...08-27-90; 16.19.15.12 NMAC - Rn, 16 NMAC 19.15.12, 03-30-02]

**16.19.15.13 DANGEROUS VETERINARY USE DRUGS, MISBRANDED:**

Dangerous veterinary use drugs which are distributed at retail without the label required in Section 10 of this regulation shall be deemed to be misbranded under the provisions of the New Mexico Drug and Cosmetic Act and the federal law.

[03-07-80...08-27-90; 16.19.15.13 NMAC - Rn, 16 NMAC 19.15.13, 03-30-02]

**16.19.15.14 AUTHORIZATION:**

A. A prescription or order of a licensed veterinarian shall not be refilled without the authorization of the prescribing veterinarian. If such authorization is other than written authorization, indicate the information on the back of the original order or prescription with the date of such authorization and the signature of the individual receiving such authorization from the prescriber.

B. A prescription or order shall be valid for no more than 12 months from the date of issue.

[03-07-80...08-27-90; 16.19.15.14 NMAC - Rn, 16 NMAC 19.15.14, 03-30-02]

**16.19.15.15 NUMBERED PRESCRIPTIONS:**

Prescriptions or orders must be consecutively numbered and filed by the retail veterinary drug distributor. Such files shall be kept for three years.

[03-07-80...08-27-90; 16.19.15.15 NMAC - Rn, 16 NMAC 19.15.15, 03-30-02]

**16.19.15.16 INVOICES AND RECORDS FOR DANGEROUS VETERINARY DRUGS:**

All procurement invoices and distribution records for dangerous veterinary drugs shall be kept for three years and shall be open to the inspection by an enforcement officer of the State.

[03-07-80...08-27-90; 16.19.15.16 NMAC - Rn, 16 NMAC 19.15.16, 03-30-02]

**16.19.15.17 STOCK OR INVENTORY OF DANGEROUS VETERINARY DRUGS:**

A. All stock or inventory of dangerous veterinary drugs shall be maintained in an area not accessible to the public. Such area shall provide for the proper storage of drugs with adequate ventilation, lighting, temperature controls and refrigeration as may be required.

B. Purchase, storage and control of dangerous drugs shall be such as to prevent having outdated or deteriorated drugs in stock. Expiration dated drugs shall be checked periodically for outdated products. Outdated products shall be returned to the supplier or destroyed.

[03-07-80...08-27-90; 16.19.15.17 NMAC - Rn, 16 NMAC 19.15.17, 03-30-02]

**16.19.15.18 DISPOSAL OF INVENTORY - PERMISSION REQUIRED:**

Written permission shall be obtained from the Board before any disposal or sale, transfer, or other removal of a major part or all the inventory, not in the ordinary course of business by a licensed retailer of veterinary dangerous drugs.

[03-07-80...08-27-90; 16.19.15.18 NMAC - Rn, 16 NMAC 19.15.18, 03-30-02]

**16.19.15.19 REPORT OF ROBBERY, FIRE AND FLOOD:**

When a retail veterinary drug distributor is involved in a robbery, fire, flood or any unusual event in which dangerous veterinary drugs might be missing or damaged, the owner shall immediately file with the Board, a signed statement of the circumstances of such occurrence and evidence that local authorities were notified, if applicable.

[03-07-80...08-27-90; 16.19.15.19 NMAC - Rn, 16 NMAC 19.15.19, 03-30-02]

**16.19.15.20 CONSULTANT PHARMACIST:**

Any retail distributor licensed by the Board to dispense veterinary prescription drugs is required to have a consultant pharmacist.

A. Consultant pharmacists to retail distributors of veterinary prescription products are required to visit the facility every other month. Consultant pharmacists to retail distributors of veterinary prescription products that do not dispense controlled substances are required to visit the licensed facility quarterly.

B. The consultant pharmacist shall maintain a log or record of all visits and activities at the retail distributor of veterinary prescription products. That record shall document at least the following:

(1) the date of the annual review of the Policy and Procedure Manual required by 16.19.4.11 NMAC;

(2) prescriptions are in a consecutively numbered file;

(3) all procurement, distribution by prescription wholesalers, and disposition records are maintained for at least 3 years;

(4) all inventory of dangerous drugs is stored in an area not accessible to unauthorized persons;

(5) all dangerous drugs are stored according to USP/NF requirements with adequate ventilation, lighting, temperature controls and refrigeration;

(6) the facility is in compliance with all State and Federal laws and regulations for the procurement, storage and dispensing of dangerous drugs; and

(7) orientation and training of all facility employees, who have access to the dangerous drugs, to the legal requirements of dangerous drugs and to the Policy and Procedure Manual of the facility.

[06-30-99; 16.19.15.20 NMAC - Rn, 16 NMAC 19.15.20, 03-30-02]

## **PART 16: SAMPLE DRUG DISTRIBUTION**

### **16.19.16.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[02-15-1889...02-15-96; 16.19.16.1 NMAC - Rn, 16 NMAC 19.16.1, 03-30-02]

### **16.19.16.2 SCOPE:**

All individuals and entities that distribute, furnish or supply pharmaceutical product samples.

[02-15-96; 16.19.16.2 NMAC - Rn, 16 NMAC 19.16.2, 03-30-02]

### **16.19.16.3 STATUTORY AUTHORITY:**

Section 61-11-6.A.(1) NMSA 1978 authorizes the Board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Section 61-11-6.A.(7) gives the Board authority to enforce the provisions of all laws of the state pertaining to the distribution of drugs.

[02-15-96; A, 04-30-98; 16.19.16.3 NMAC - Rn, 16 NMAC 19.16.3, 03-30-02]

### **16.19.16.4 DURATION:**

Permanent.

[02-15-96; 16.19.16.4 NMAC - Rn, 16 NMAC 19.16.4, 03-30-02]

### **16.19.16.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96; A, 04-30-98; 16.19.16.5 NMAC - Rn, 16 NMAC 19.16.5, 03-30-02]

**16.19.16.6 OBJECTIVE:**

The objective of Part 16 of Chapter 19 is to protect the health and safety of New Mexico citizens by regulating the distribution of pharmaceutical samples not intended for resale.

[02-15-96; 16.19.16.6 NMAC - Rn, 16 NMAC 19.16.6, 03-30-02]

**16.19.16.7 DEFINITIONS:**

A. Sample - means a drug which is not intended to be sold and is intended to promote the sale of the drug.

**B. [RESERVED]**

[03-07-80...08-27-90; 16.19.16.7 NMAC - Rn, 16 NMAC 19.16.7, 03-30-02]

**16.19.16.8 DISTRIBUTION OF PHARMACEUTICAL SAMPLES:**

A. No person regulated by this Board including a person acting as principal or agent (detail person) for a manufacturer, wholesaler, or distributor shall buy, sell, trade, barter or exchange, or offer to buy, sell, trade, barter or exchange:

- (1) Pharmaceutical product samples;
- (2) Pharmaceutical products sold for export only;
- (3) Pharmaceuticals purchased by hospitals, and/or clinics, including agencies of state and local governments for the exclusive use of those institutions and not intended for resale;
- (4) Pharmaceutical products donated or supplied at reduced prices to charitable institutions in the United States or abroad for their own institutional use;
- (5) Complementary pharmaceutical product trade packages.

B. Sales otherwise permitted by law to affiliated corporations in furtherance of a planned, integrated approach to the delivery of health care within a health care corporate structure and sales by a bona fide group purchasing arrangement to members are not subject to 16.19.16.8 NMAC nor are emergency borrowing/lending between licensed health care facilities.

C. Violations of these regulations is grounds for revocation of licenses or permits issued by the Board of Pharmacy.

[03-07-80...08-27-90; 16.19.16.8 NMAC - Rn, 16 NMAC 19.16.8, 03-30-02]

## **PART 17: DANGEROUS DRUGS AND DANGEROUS DRUG RESEARCH**

### **16.19.17.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Pharmacy.

[02-15-1989...02-15-96; 16.19.17.1 NMAC - Rn, 16 NMAC 19.17.1, 03-30-02; A, 09-15-06]

### **16.19.17.2 SCOPE:**

All individuals or entities who sell, dispose of or possess any dangerous drug, including institutions of higher education, private organizations, or other applicants who do not possess a pharmacy license, and are not subject to licensure with any professional licensing board or the New Mexico department of health.

[02-15-96; 16.19.17.2 NMAC - Rn, 16 NMAC 19.17.2, 03-30-02; A, 09-15-06]

### **16.19.17.3 STATUTORY AUTHORITY:**

Chapter 26, Article 1 of the New Mexico Drug, Device and Cosmetic Act, Section 26-1-18 NMSA 1978, authorizes the board of pharmacy to promulgate regulations for the efficient enforcement of the act and to declare, by regulation, a substance a dangerous drug. Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to provide for the licensing of all places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities. Paragraph (2) of Subsection A of Section 26-1-16 NMSA 1978 authorizes the board to license any person to sell, dispose of or possess any dangerous drug. Appropriate records of receipt and disposition must be kept.

[02-15-96; 16.19.17.3 NMAC - Rn, 16 NMAC 19.17.3, 03-30-02; A, 09-15-06]

### **16.19.17.4 DURATION:**

Permanent.

[02-15-96; 16.19.17.4 NMAC - Rn, 16 NMAC 19.17.4, 03-30-02]

### **16.19.17.5 EFFECTIVE DATE:**

February 15, 1996, unless a later date is cited at the end of a section.

[02-15-96; A, 04-30-98; 16.19.17.5 NMAC - Rn, 16 NMAC 19.17.5, 03-30-02; A, 07-15-2004]

#### **16.19.17.6 OBJECTIVE:**

The objective of Part 17 of Chapter 19 is to provide notice of the board's designation of particular substances as dangerous drugs and for the licensure of dangerous drug researchers. A dangerous drug researcher will be allowed to possess dangerous drugs for the purpose of conducting research, including demonstrations or special projects, after receiving approval from the board.

[02-15-96; 16.19.17.6 NMAC - Rn, 16 NMAC 19.17.6, 03-30-02; A, 09-15-06]

#### **16.19.17.7 DEFINITIONS:**

**A. "Board"** means the New Mexico board of pharmacy.

**B. "Dangerous Drug"** as defined in the New Mexico Drug, Device and Cosmetic Act, Subsection F of Section 26-1-2 NMSA 1978.

**(1)** The following substance(s) has(have) been declared by the N.M. board of pharmacy as "Dangerous Drugs" in accordance with Section 26-1-18 NMSA 1978 of the Drug, Device and Cosmetic Act, Section 26-1-18 NMSA 1978 and the Uniform Licensing Act (Sections 61-1-1 to 61-1-31 NMSA 1978). The board of pharmacy shall by regulation declare a substance a "dangerous drug" when necessary and notification shall be sent to all registered pharmacies in the state within 60 days of the adoption of the regulation. Ephedrine, USP, as ephedrine hydrochloride or ephedrine sulfate or as any other salt form. Any compound, mixture, or preparation containing one-half percent or less of ephedrine or of any salt form of ephedrine is exempt from the above. These products are exempt because they are approved for sale over the counter (OTC) without a prescription under federal law, are labeled and marketed in a manner consistent with the pertinent OTC tentative final or final monograph, are manufactured and distributed for legitimate medical use in a manner that reduces or eliminates the likelihood for abuse, and are not marketed, advertised or labeled for an indication of stimulation, mental alertness, energy, weight loss, appetite control, or muscle enhancement. These approved OTC products shall be reported as required of a pseudoephedrine containing product as defined in Subsection B of 16.19.20.53 NMAC.

**(2)** A dangerous drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug.

**C. "Drug storage area"** means the area restricted to the storage, dispensing and distribution of dangerous drugs.

**D. "Research protocol"** is the written documentation stating the objective, method, means of measurement, and utilization procedure of the dangerous drug.

[04-19-92; 16.19.17.7 NMAC - Rn, 16 NMAC 19.17.7, 03-30-02; A, 07-15-2004; A, 09-15-06; A, 11-28-17]

### **16.19.17.8 RESEARCH LICENSING REQUIREMENTS:**

**A.** Authorized persons to be licensed: public agencies, institutions of higher education and private organizations, or individuals for the purpose of conducting research, demonstration or special projects with the use of a dangerous drug.

**B.** The person applying for licensure must fill out a license for dangerous drug research application prior to purchasing any dangerous drug. The applicant must provide information pertinent to the research including:

(1) name, address, and date of birth of persons who will be involved in handling of dangerous drugs, and if they have been convicted of a felony:

(2) drug protocol:

(a) formulary of dangerous drugs for research;

(b) how will the dangerous drug be utilized;

(c) how much of the dangerous drug will be used for each administered dose or experiment;

(d) how much drug will be purchased annually.

(3) policy and procedure manual including:

(a) drug security: storage area, list of individuals with access to dangerous drugs;

(b) drug procurement: invoices, receipts, and drug sources;

(c) drug usage: records or logs for accountability;

(d) drug waste/destruction: memorandum report describing accountability;

(e) drug storage area;

(f) research protocol: proprietary or trade secrets are confidential and not subject to public disclosure;

(4) qualifications of the applicant to conduct such research with dangerous drugs which may include:

- (a) degrees;
- (b) higher education;
- (c) specialized training.

C. The board will review all applicants for licensure for consistency with the public's best interest.

[16.19.17.8 NMAC - N, 09-15-06; A, 11-28-17]

## **PART 18: NUCLEAR PHARMACY**

### **16.19.18.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[02-15-1889...02-15-96; 16.19.18.1 NMAC - Rn, 16 NMAC 19.18.1, 03-30-02]

### **16.19.18.2 SCOPE:**

All individuals and entities that provide radiopharmaceutical products or services or engage in the practice of nuclear pharmacy, including owners of nuclear pharmacies.

[02-15-96; 16.19.18.2 NMAC - Rn, 16 NMAC 19.18.2, 03-30-02]

### **16.19.18.3 STATUTORY AUTHORITY:**

Section 61-11-6.A.(1) NMSA 1978 authorizes the Board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Section 61-11-6.A.(3) directs the Board to provide for the registration and annual renewal of licenses of pharmacists. Pursuant to 61-11-6.A.(6), the Board is authorized to provide for the licensing of retail pharmacies, nonresident pharmacies and wholesale drug distributors and to provide for the inspection of their facilities and activities.

[02-15-96; A, 05-30-98; 16.19.18.3 NMAC - Rn, 16 NMAC 19.18.3, 03-30-02]

### **16.19.18.4 DURATION:**

Permanent.

[02-15-96; 16.19.18.4 NMAC - Rn, 16 NMAC 19.18.4, 03-30-02]

### **16.19.18.5 EFFECTIVE DATE:**

February 15, 1996 unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96; A, 05-30-98; 16.19.18.5 NMAC - Rn, 16 NMAC 19.18.5, 03-30-02]

#### **16.19.18.6 OBJECTIVE:**

The objective of Part 18 of Chapter 19 is to recognize and provide for the specialization of nuclear pharmacy and to protect the public health and welfare of New Mexico citizens by establishing standards for the practice.

[02-15-96; 16.19.18.6 NMAC - Rn, 16 NMAC 19.18.6, 03-30-02]

#### **16.19.18.7 DEFINITIONS:**

A. The "Practice of Nuclear Pharmacy" means a patient-oriented service that embodies the scientific knowledge and professional judgement required to improve and promote health through the assurance of the same and efficacious use of radiopharmaceuticals and other drugs.

B. "Nuclear Pharmacy" means a pharmacy which provides radiopharmaceutical services, and shall be licensed by the Board as a wholesaler and/or retail pharmacy.

C. "Qualified Nuclear Pharmacist" means a pharmacist currently licensed by the Board who meets either of the following criteria:

(1) Must be currently certified as a Nuclear Pharmacist by the Board of Pharmaceutical Specialties or

(2) Must have successfully completed the requirements of Paragraph 7.C.2.a., and meet a minimum of 250 contact hours of didactic instruction in nuclear pharmacy and the safe handling and use of radioactive materials from a nationally-accredited college of pharmacy or other training program sponsored by an ACPE-accredited provider of continuing pharmaceutical education, with the minimum 250 contact hours apportioned according to 7.C.2.b. and 7.C.2.c:

(a) Must have attained a minimum of 500 contact hours of experiential training in nuclear pharmacy under the supervision of a qualified nuclear pharmacist in, but not limited to, the following areas:

- (i) procurement of radioactive materials;
- (ii) compounding of radiopharmaceuticals;
- (iii) maintenance of a quality assurance program;

- (iv) dispensing of radiopharmaceuticals;
- (v) distribution of radiopharmaceuticals;
- (vi) implementation of basic health and safety practices and procedures;
- (vii) provision of information and consultation related to the practice of nuclear pharmacy and the use of radiopharmaceuticals:
- (viii) monitoring of outcomes in patients who receive radiopharmaceuticals and related ancillary medications;
- (ix) research and development of radiopharmaceuticals.

(b) 200 hours in the following five areas:

- (i) radiation physics and instrumentation;
- (ii) radiation protection;
- (iii) mathematics pertaining to the use and measurement of radioactivity;
- (iv) radiation biology;
- (v) radiopharmaceutical chemistry; and

(c) 50 hours in the clinical use of radiopharmaceuticals.

(3) "Radiopharmaceutical Services" means the procurement, storage, handling, compounding, labeling, quality control testing, dispensing, distribution, transfer, record keeping and disposal of radiochemicals, radiopharmaceuticals and ancillary drugs, and also includes quality assurance procedures, radiological health activities, any consulting activities associated with the use of radiopharmaceuticals, and any other activities required for provision of pharmaceutical care.

(4) "Quality Control Testing" means the performance of appropriate chemical, biological and physical tests on compounded radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals.

(5) "Quality Assurance Procedures" means all activities necessary to assure the quality of the process used to provide radiopharmaceutical services, including authentication of product history and maintenance of all records as required by pertinent regulatory agencies.

(6) "Authentication of Product History" means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

(7) "Radiopharmaceutical" means any drug which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or protons and includes any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides. The term 'radiopharmaceutical' also includes any biological product which is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

D. Any pharmacist who has been legally listed on a radioactive material license for a nuclear pharmacy in the State of New Mexico for at least six months prior to the effective date of these regulations, is exempt from Paragraphs 7.C.1 and 7.C.2.

[05-29-94, 05-30-98; 16.19.18.7 NMAC - Rn, 16 NMAC 19.18.7, 03-30-02]

#### **16.19.18.8 LICENSING REQUIREMENTS FOR A NUCLEAR PHARMACY:**

A. The licensing provisions contained in this section are in addition to, and not a substitute for, general licensing requirements for all pharmacies in New Mexico.

B. Any pharmacy that will provide radiopharmaceutical services must obtain a nuclear pharmacy license from the Board.

C. A nuclear pharmacy shall employ one or more qualified nuclear pharmacists. The application for a nuclear pharmacy license must include documentation that all pharmacists who provide radiopharmaceutical services in the nuclear pharmacy meet the criteria specified for a qualified nuclear pharmacist.

[05-20-94; 16.19.18.8 NMAC - Rn, 16 NMAC 19.18.8, 03-30-02]

#### **16.19.18.9 REQUIREMENTS FOR OPERATION OF A NUCLEAR PHARMACY:**

A. A nuclear pharmacy shall meet the requirements of 16 NMAC 19.6 of the Board, except as provided for in this section.

B. A qualified nuclear pharmacist shall be in personal attendance when the nuclear pharmacy is open for business.

C. A nuclear pharmacy shall meet minimum space requirements established for all pharmacies in the state (see 16 nmac 19.6.10, with the exception that the space may be interrupted.)

D. The nuclear pharmacy shall maintain records of procurement, inventory and disposition of all radioactive drugs and other radioactive materials.

E. A nuclear pharmacy shall have a current copy of city, state, and federal regulations governing the safe storage, handling, use, dispensing, transport and disposal of radiopharmaceuticals.

F. The following minimum equipment requirements for a nuclear pharmacy are in lieu of those contained in 16.19.6.11.A NMAC, Paragraphs 11.A.6-11.A.9; 11.A.12-11.A.14; 11.A.18; 11.A.20 and 11.1.21 (the remainder of Sub-Section 11.A remains in force):

- (1) Radionuclide Dose Calibrator;
- (2) Refrigerator;
- (3) Single or multiple channel scintillation counter with well-type NaI(Tl) or Ge(Li) detector ;
- (4) Radiochemical fume hood and filter system;
- (5) Area rate meter;
- (6) At least two (2) GM survey meters;
- (7) Microscope and hemacytometer;
- (8) Laminar air flow hood and/or biologic safety cabinet;
- (9) Syringe and vial radiation shields;
- (10) Lead-shielded drawing station;
- (11) Decontamination supplies;

[05-20-94; 16.19.18.9 NMAC - Rn, 16 NMAC 19.18.9, 03-30-02]

#### **16.19.18.10 REQUIREMENTS FOR PROVISION OF RADIOPHARMACEUTICAL SERVICES:**

A. Medications shall be dispensed from a nuclear pharmacy in accordance with the requirements contained in 16 NMAC 19.6, except as provided for in this section.

B. A radiopharmaceutical shall be dispensed only to a licensed practitioner authorized by the Nuclear Regulatory Commission or an equivalent agreement state agency to possess, use and administer such drug. A radiopharmaceutical shall be

dispensed only upon receipt of a prescription from such licensed practitioner. Otherwise, a radiopharmaceutical may be transferred to a person who is authorized to possess and use such drug for non-clinical applications.

C. In addition to other labeling requirements of the Board for nonradioactive drugs, the outer container shield of a radiopharmaceutical to be dispensed or transferred shall also be labeled with the following information:

- (1) the standard radiation symbol;
- (2) the words "Caution -- Radioactive Materials";
- (3) the radionuclide;
- (4) the chemical form;
- (5) the amount of radioactivity and the calibration date and time;
- (6) the expiration date and time;
- (7) if a liquid, the volume;
- (8) if a solid, the number of dosage units or weight;
- (9) if a gas, the number of ampules or vials;
- (10) the name of the patient (required only for radiolabeled blood components and all radiopharmaceuticals intended for therapeutic use.).

D. The inner container (e.g., syringe, vial, etc.) used to dispense or transfer a radiopharmaceutical shall be labeled with the following information:

- (1) the standard radiation symbol;
- (2) the prescription or lot number;
- (3) the name of the radiopharmaceutical;
- (4) the name of the patient (required only for radiolabeled blood components and all radiopharmaceuticals intended for therapeutic use.)

E. A licensed nuclear pharmacy, upon receiving a verbal prescription for a radiopharmaceutical, shall immediately have the prescription reduced to writing or recorded in a data processing system. The writing and/or record shall contain at least the following information, in addition to other requirements of the Board:

- (1) the name of the institution represented;
- (2) the date of the prescription;
- (3) the name and dose of the radiopharmaceutical;
- (4) the name of the procedure;
- (5) the requested date/time of calibration (tentative date/time of administration) of the prescribed radiopharmaceutical;
- (6) the name of the patient (required for radiolabeled blood components and all radiopharmaceuticals intended for therapeutic use.);
- (7) any specific instructions, if required.

F. Whenever a radiopharmaceutical is dispensed under the authority of an Investigational New Drug Application (INDA), the nuclear pharmacy records shall include an investigator's protocol for the preparation of the radiopharmaceutical, a copy of the Institutional Review Board approval form (or letter), and a letter from the manufacturer (sponsor) indicating that the physician requesting the radiopharmaceutical is a qualified investigator.

G. Pharmacists practicing at a facility licensed under 16 NMAC 19.18 are exempt from 16.19.4.22.5 NMAC through 16.19.4.22.7 NMAC.

[05-20-94; 16.19.18.10 NMAC - Rn, 16 NMAC 19.18.10, 03-30-02]

## **PART 19: HOME CARE SERVICES**

### **16.19.19.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[02-15-1889...02-15-96; 16.19.19.1 NMAC - Rn 16 NMAC 19.19.1, 03-30-02]

### **16.19.19.2 SCOPE:**

All entities that provide home care services.

[02-15-96; A, 07-31-98; 16.19.19.2 NMAC - Rn, 16 NMAC 19.19.2, 03-30-02]

### **16.19.19.3 STATUTORY AUTHORITY:**

Section 61-11-6(A)(6) NMSA 1978 authorizes the Board to provide for the licensing of all places where dangerous drugs are stored or administered and for the inspection of their facilities and activities. Section 61-11-14(B)(10) NMSA 1978 authorizes the Board to issue limited drug permits for home care services.

[02-15-96; A, 07-31-98; 16.19.19.3 NMAC - Rn, 16 NMAC 19.19.3, 03-30-02]

**16.19.19.4 DURATION:**

Permanent.

[02-15-96; 16.19.19.4 NMAC - Rn, 16 NMAC 19.19.4, 03-30-02]

**16.19.19.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of each Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96; A, 07-31-98; 16.19.19.5 NMAC - Rn, 16 NMAC 19.19.5, 03-30-02]

**16.19.19.6 OBJECTIVE:**

The objective of Part 19 of Chapter 19 is to establish standards for the safe and competent delivery of pharmaceutical products and services to persons who utilize home care services outside the institutional setting.

[02-15-96; 16.19.19.6 NMC - Rn, 16 NMAC 19.19.6, 03-30-02]

**16.19.19.7 DEFINITIONS:**

Definitions as used in this regulation, are:

A. "Home care services" means any organization licensed by the New Mexico Department of Health and the Board of Pharmacy to provide skilled nursing services and at least one other therapeutic or supportive service to patients/clients in their place of residence.

B. "Authorized employee" means any employee of a home care service organization, who in the course of their duties, is licensed by their appropriate board to administer dangerous drugs.

[08-06-94; 16.19.19.7 NMAC - Rn, 16 NMAC 19.19.7, 03-30-02]

**16.19.19.8 HOME CARE SERVICES:**

A. The New Mexico Board of Pharmacy acknowledges the establishment of home care services outside the institutional setting. In order to protect the people who utilize such services, laws, regulations and safeguards pertaining to drugs must be observed.

B. The dangerous drugs acquired, maintained, and administered by the Home Care Services shall be listed in the agency policy and procedure manual and approved by the Board of Pharmacy. The following is an approved list of dangerous drugs:

- (1) Sterile Normal Saline and water - injectable
- (2) Sterile Normal Saline and water - irrigation
- (3) Acetic Acid -- irrigation
- (4) Heparin flush solution
- (5) Tuberculin testing solution
- (6) Hepatitis B vaccine
- (7) Flu vaccine
- (8) Topical anesthetic
- (9) Diphenhydramine injectable
- (10) Epinephrine injectable

C. Any additional dangerous drugs must be defined and listed in the policy and procedure manual and must be approved by the Board.

[08-06-94; 16.19.19.8 NMAC - Rn, 16 NMAC 19.19.7.2, 03-30-02]

#### **16.19.19.9 DRUG STORAGE:**

A. There shall be adequate space for the proper storage of drugs provided with proper ventilation, lighting, temperature controls and refrigeration.

B. Dangerous drugs must be stored in a special locked space which provides adequate security.

C. Purchase, storage and control of drugs shall be designed to prevent having outdated, deteriorated or impure drugs in the facility.

D. Access to the drug storage area shall be limited to authorized employees.

E. Dangerous drugs shall be stored at the Home Care Service's licensed location except that small quantities of dangerous drugs, not to exceed the quantity necessary to meet the needs for a 96 hour period, may be possessed and transported, to other locations by authorized employees of the Home Care Service.

(1) The quantities of dangerous drugs allowed to be in the possession of authorized employees for administration will be included in the Home Care Service's policy and procedure manual and requests for change must be approved by the Board.

(2) A list of authorized employees shall be made available at the request of the Board or its' staff.

(3) A record of all dangerous drugs issued to authorized employees will be kept for a period of three years and will include the following:

(a) Date issued;

(b) Name of authorized employee;

(c) Name and strength of dangerous drugs issued;

(d) Quantity of dangerous drug issued.

F. A record listing the following information shall be kept to account for the administration of all dangerous drugs.

(1) Date of administration;

(2) Name of patient;

(3) Name of dangerous drug;

(4) Dose or amount administered;

(5) Name of practitioner ordering administration;

(6) Name of licensed person administering dangerous drug.

G. Home Care services are required to have a consultant pharmacist who shall visit the service on no less than a quarterly basis.

H. In order to purchase and store any controlled substances, the services must obtain a separate state controlled substance registration and DEA controlled substance registration. These registrations are to be issued under the name of the facility and physician.

[08-06-94; 16.19.19.9 NMAC - Rn, 16 NMAC 19.19.7.5, 03-30-02]

## **PART 20: CONTROLLED SUBSTANCES**

### **16.19.20.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.20.1 NMAC - Rp 16.19.20.1 NMAC, 6/26/2018; A, 12/15/2020]

### **16.19.20.2 SCOPE:**

All persons or entities that manufacture, distribute, dispense, administer, prescribe, deliver, analyze, or conduct research using controlled substances.

[16.19.20.2 NMAC - Rp 16.19.20.2 NMAC, 06-26-2018]

### **16.19.20.3 STATUTORY AUTHORITY:**

Section 30-31-11 of the Controlled Substances Act, 30-31-1 through 30-31-42 NMSA 1978, authorizes the board of pharmacy to promulgate regulations and charge reasonable fees for the registration and control of the manufacture, distribution and dispensing of controlled substances. Paragraph (2) of Subsection B of Section 61-11-6 NMSA 1978 authorizes the board to provide by regulation for the electronic transmission of prescriptions.

[16.19.20.3 NMAC - Rp 16.19.20.3 NMAC, 6/26/2018; A, 12/15/2020]

### **16.19.20.4 DURATION:**

Permanent.

[16.19.20.4 NMAC - Rp 16.19.20.4 NMAC, 06-26-2018]

### **16.19.20.5 EFFECTIVE DATE:**

June 26, 2018, unless a different date is cited at the end of a section.

[16.19.20.5 NMAC - Rp 16.19.20.5 NMAC, 06-26-2018]

### **16.19.20.6 OBJECTIVE:**

The objective of Part 20 of Chapter 19 is to protect the public health and welfare of the citizens of New Mexico by controlling and monitoring access to controlled substances and to give notice of the board's designation of particular substances as controlled substances.

[16.19.20.6 NMAC - Rp 16.19.20.6 NMAC, 06-26-2018]

**16.19.20.7 DEFINITIONS:**

**[RESERVED]**

[16.19.20.7 NMAC - Rp 16.19.20.7 NMAC, 06-26-2018]

**16.19.20.8 REGISTRATION REQUIREMENTS:**

Persons required to register:

- A.** manufacture - term includes repackagers;
- B.** distributors - term includes wholesale drug distributors;
- C.** dispensers - pharmacies, hospital pharmacies, clinics (both health and veterinarian);
- D.** practitioners - includes a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian, pharmacist, pharmacist clinician, certified registered nurse anesthetists, psychologists, chiropractic examiner, euthanasia technicians or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act. Practitioners, excluding veterinarians, must register with the New Mexico prescription monitoring program in conjunction with their controlled substance registration.
- E.** scientific investigators or researchers;
- F.** analytical laboratories and chemical analysis laboratories;
- G.** teaching institutes;
- H.** special projects and demonstrations which bear directly on misuse or abuse of controlled substances - may include public agencies, institutions of higher education and private organizations;
- I.** registration waiver: an individual licensed practitioner (e.g., intern, resident, staff physician, mid-level practitioner) who is an agent or employee of a hospital or clinic, licensed by the board, may, when acting in the usual course of employment or business, order controlled substances, for administration to the patients of the facility, under controlled substance registration of the hospital or clinic in which he or she is employed provided that:

(1) the ordering of controlled substances for administration, to the patients of the hospital or clinic, is in the usual course of professional practice and the hospital or clinic authorizes the practitioner to order controlled substances for the administration to its patients under its state controlled substance registration;

(2) the hospital or clinic has verified with the practitioner's licensing board that the practitioner is permitted to order controlled substances within the state;

(3) the practitioner acts only within their scope of employment in that hospital or clinic;

(4) the hospital or clinic maintains a current list of practitioners given such authorization and includes the practitioner's full name, date of birth, professional classification and license number, and home and business addresses and phone numbers;

(5) the list is available at all times to board inspectors, the DEA, law enforcement and health professional licensing boards; and

(6) the hospital or clinic shall submit a current list of authorized practitioners with each hospital or clinic controlled substance renewal application.

[16.19.20.8 NMAC - Rp 16.19.20.8 NMAC, 06-26-2018]

#### **16.19.20.9 REGISTRATION AND EXPIRATION DATES:**

**A.** Any person who is required to be registered and who is not registered may apply for registration at any time.

**B.** In December 1982 all registrant renewal dates will be assigned to one of 12 groups which shall correspond to the months of the year. Thereafter, any person who first registers will also be assigned to one of the 12 groups.

**C.** Expiration date of the registration of all individuals or businesses within any group will be the last day of the month designated for that group. Renewal date will be within 30 days of the date shown on the registration permit and will expire on that date if not renewed by the registrant.

[16.19.20.9 NMAC - Rp 16.19.20.9 NMAC, 6/26/2018; A, 12/17/2019; A, 10/10/2023]

#### **16.19.20.10 REGISTRATION FEE:**

**A.** The registration fee or renewal fee required by the Controlled Substances Act shall be as listed in 16.19.12 NMAC.

**B.** Research applicants registered as a practitioner shall not be required to register as a scientific investigator if he is registered as a practitioner. However, this does not exempt him from the regulations applicable to a scientific investigator.

**C.** Duplicate license - \$10.00

[16.19.20.10 NMAC - Rp 16.19.20.10 NMAC, 6/26/2018; A, 12/15/2020]

**16.19.20.11 APPLICATION FORMS:**

Application forms may be obtained from the board of pharmacy, Albuquerque, New Mexico.

[16.19.20.11 NMAC - Rp 16.19.20.11 NMAC, 06-26-2018]

**16.19.20.12 SCHEDULES:**

Applications shall designate the schedule of controlled substances and whether the application is for narcotic or non-narcotic in schedules I through V.

[16.19.20.12 NMAC - Rp 16.19.20.12 NMAC, 06-26-2018]

**16.19.20.13 SEPARATE REGISTRATION OF EACH PRINCIPAL PLACE OF BUSINESS:**

Separate registration is required for each principal place of business or professional practice with the address indicated on the application if drugs are dispensed or distributed from the different locations. **NOTE:** This does not include warehouse storage areas; office used by agents for soliciting which contain no controlled substances other than samples, physician's office where controlled substances are prescribed but not administered or otherwise dispensed.

[16.19.20.13 NMAC - Rp 16.19.20.13 NMAC, 06-26-2018]

**16.19.20.14 INFORMATION REQUIRED:**

**A.** The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board may consider the following factors from information listed on the application:

(1) maintenance of effective controls against diversion of controlled substances;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

**B.** Each application shall include all information as required on the application form, including but not limited to a current DEA registration and professional license, and shall be signed by the applicant.

[16.19.20.14 NMAC - Rp 16.19.20.14 NMAC, 06-26-2018]

#### **16.19.20.15 FACILITY INSPECTION:**

The board of pharmacy may direct the drug inspector to inspect the facilities prior to approval of any application for security provision and other applicable standards as required by the Controlled Substances Act.

[16.19.20.15 NMAC - Rp 16.19.20.15 NMAC, 06-26-2018]

#### **16.19.20.16 PROCEDURE SUMMARY:**

A scientific investigator or research applicant shall submit a summary of procedures indicating the nature, extent and duration of such research. The summary shall also include the names of individuals engaged in the project (other than those exempt under the Controlled Substances Act) the name or names of the substances to be used in the research project, the adequacy of safeguards against diversion of the controlled substance(s) to be used, source of supply of controlled substance(s) if applicable, and evidence of FDA and DEA approval and registration if registered by the federal agencies.

[16.19.20.16 NMAC - Rp 16.19.20.16 NMAC, 06-26-2018]

#### **16.19.20.17 ANALYTICAL LABORATORIES:**

**A.** Analytical laboratory applicants shall submit application on the form provided by the board. All applicable questions on the application shall be filled in and signed by the person in charge of the facility.

**B.** Quantities of controlled substances in possession of analytical laboratories shall be limited to such quantities as required for reference standards, assays or other scientific purposes.

[16.19.20.17 NMAC - Rp 16.19.20.17 NMAC, 06-26-2018]

**16.19.20.18 EXEMPTION OF LAW ENFORCEMENT OFFICIALS:**

Registration is waived for the following persons:

**A.** Any officer or employee of the state or federal customs agency, the state police, or any enforcement officer of any political subdivision of the state, who is engaged in the enforcement of any federal, state and local law relating to controlled substances and is duly authorized to possess controlled substances in the course of his official duties.

**B.** Any official exempted by this section may procure any controlled substance in the course of an inspection pursuant to Section 31 of the Controlled Substances Act or in the course of any criminal investigation involving the person from whom the substance was procured.

**C.** Laboratory personnel, when acting in the scope of their official duties, are also exempt from registration under the Controlled Substances Act.

[16.19.20.18 NMAC - Rp 16.19.20.18 NMAC, 06-26-2018]

**16.19.20.19 MODIFICATION, TRANSFER AND TERMINATION OF REGISTRATION:**

**A.** Modification of a registration to authorize additional controlled substances may be made by filing an application in the same number as an application for a new registration. No fee shall be required for such modification.

**B.** Registration shall terminate if and when a registrant dies, discontinues business or professional practice, has his professional license revoked or suspended, no longer possesses a DEA registration or has had his DEA registration revoked or suspended, or changes his name or address as shown on the registration. In such instances, the registrant or his estate shall notify the board of pharmacy promptly of such fact and return certificate of registration to the board within 30 days.

**C.** Inventories and records of controlled substances listed in schedules II, III, IV and V shall be maintained either separately from all other records or in such form that the information required is readily retrievable from ordinary business records of the registrant.

**D.** In the event of a change in name or address the person shall file an application in the same number as an application for modification of a registration. No fee shall be required for such modification.

**E.** Registration under the Controlled Substances Act shall not be transferable.

[16.19.20.19 NMAC - Rp 16.19.20.19 NMAC, 06-26-2018]

#### **16.19.20.20 INVENTORY RECORDS:**

**A.** All registrants are required to keep inventory and procurement records.

**B.** All registrants shall comply with the following inventory requirements: schedule I, II, III, IV and V annual inventory

**C.** The annual inventory date shall be May 1 for the initial inventory by the registrant or on the registrant's regular general physical inventory date, provided that date does not vary by more than six months before or after May 1. The registrant shall notify the board of pharmacy of the date on which the annual inventory will be taken, if different from May 1. The actual taking of the inventory should not vary more than four days from the annual inventory date. The inventory shall document being taken either as of the opening or as of the close of business activity, the inventory date and time, and shall be entered on the inventory record.

**D.** Controlled substances added to the Controlled Substances Act after date of enactment, which substance was, immediately prior to that date, not listed on any schedule, every registrant who possesses that substance shall take an inventory of all stock of the substance on hand and file this record with the other inventory records as required.

**E.** Upon the change of a pharmacist-in-charge, an inventory of all controlled substances shall be taken within 72 hours, by the new pharmacist-in-charge. The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.

**F.** Upon transfer of ownership of a pharmacy, an inventory of all controlled substances shall be taken by the pharmacist-in-charge. The inventory shall be taken either as of the opening or as of the close of business activity on the inventory date, and such time and date taken shall be entered on the inventory record.

[16.19.20.20 NMAC - Rp 16.19.20.20 NMAC, 06-26-2018]

#### **16.19.20.21 INVENTORY RECORDS OF MANUFACTURERS AND REPACKAGERS:**

Manufacturers and repackagers inventory records shall contain the following information:

**A.** Finished form:

- (1) name of substance;
- (2) each finished form of the substance (10 milligram tablet, etc.)
- (3) the number of units or volume of each finished form in each commercial container (100 tablet bottle, etc.)
- (4) the number of commercial containers of each such finished form.

**B.** Controlled substances not included above such as damaged, defective impure substances awaiting a disposal giving total quantity and the name of the substance. A statement of reason for the substance being included in this category.

[16.19.20.21 NMAC - Rp 16.19.20.21 NMAC, 06-26-2018]

**16.19.20.22 DISTRIBUTION INVENTORY RECORDS:**

Distributor inventory records shall contain the same information required of manufacturers.

[16.19.20.22 NMAC - Rp 16.19.20.22 NMAC, 06-26-2018]

**16.19.20.23 INVENTORY REQUIREMENTS - RESEARCH:**

**A.** Research registrant shall include in his inventory the name of the substance, each finished form of the substance, the number of units or volume of each finished form in each commercial container (100 tablet bottle, etc.) and the number of commercial containers of each such finished form.

**B.** A commercial container which has been opened shall be the exact count or measure of substances listed in schedule I or schedule II. If the substance is listed in schedule III, IV or V, he shall make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case the count must be exact.

[16.19.20.23 NMAC - Rp 16.19.20.23 NMAC, 06-26-2018]

**16.19.20.24 ANALYTICAL LABORATORIES:**

Analytical laboratories shall include in the inventory record the same information required of manufacturer's.

[16.19.20.24 NMAC - Rp 16.19.20.24 NMAC, 06-26-2018]

**16.19.20.25 CONTROLLED SUBSTANCES INVENTORIES AND RECORDS:**

**A.** Pharmacies, hospitals, clinics and practitioners who dispense controlled substances shall maintain inventories and records of controlled substances listed in schedules II and II-N separately from all of the other prescription records.

**B.** "Readily retrievable" means records kept in such a manner as to be easily separated out from all other records in a reasonable time or records are kept on which certain items are redlined, starred or in some manner are visually identifiable apart from other items appearing on the record.

[16.19.20.25 NMAC - Rp 16.19.20.25 NMAC, 06-26-2018]

**16.19.20.26 PROCUREMENT RECORDS:**

"Order forms" refer to DEA form 222 required for distribution or procurement of a schedule I or II controlled substance under the federal act. Order forms are issued in books of six forms in triplicate to registrants by requisition from DEA registration branch, Department of Justice, P.O. Box 28083, Central Station, Washington, DC, 20005.

[16.19.20.26 NMAC - Rp 16.19.20.26 NMAC, 06-26-2018]

**16.19.20.27 ORDER FORMS AS RECORDS:**

Order forms for schedule I and II controlled substances shall be deemed proper record of receipt, if the purchaser records on copy 3 of the order form the number of commercial or bulk containers furnished of each item and the date on which such containers are received by the purchaser.

[16.19.20.27 NMAC - Rp 16.19.20.27 NMAC, 06-26-2018]

**16.19.20.28 INVENTORY RECORDS:**

All schedule I and II narcotic substance inventory records and procurement records will be kept separate from other records of the registrant.

[16.19.20.28 NMAC - Rp 16.19.20.28 NMAC, 06-26-2018]

**16.19.20.29 PROCUREMENT RECORDS:**

Procurement records, other than the inventory, may be kept at a central location, rather than at the registered location, if prior approval has been obtained under the federal regulations; provided such records are delivered, upon request of the board, to the registered location within 48 hours of such request.

[16.19.20.29 NMAC - Rp 16.19.20.29 NMAC, 06-26-2018]

**16.19.20.30 DISPOSITION RECORDS:**

Practitioner's disposition records shall include date of dispensing, name of patient, name and strength of substance and amount dispensed.

[16.19.20.30 NMAC - Rp 16.19.20.30 NMAC, 06-26-2018]

**16.19.20.31 PHARMACY AND HOSPITAL PRESCRIPTION AND DISPENSING RECORDS:**

**A.** Prescriptions for schedule II shall be maintained in a separate file.

**B.** In pharmacies without computerized prescription information, prescriptions for schedules II, III, IV and V shall have the name of the dispensing pharmacist and the date filled inscribed on the face of the prescription. (Typewritten, printed or rubber stamp are acceptable.)

**C.** Prescriptions for schedule III, IV and V shall be maintained either in a separate file only, or in such form that they are readily retrievable from other records of the pharmacy. "Readily retrievable" means that at the time of filing, the face of the prescription is stamped in red ink in the lower right hand corner with the letter "C" no less than 1 inch high, or the records comply with 16.19.6.22 NMAC "Computerized Prescription Information".

**D.** Prescriptions so marked may then be filed with prescriptions for schedule II substances, or in the usual consecutively numbered prescription file for non-controlled drugs.

**E.** Pharmacies employing automatic data processing systems or other electronic record keeping systems for prescriptions must comply with 16.19.6.22 NMAC "Computerized Prescription Information".

**F.** Hospital floor stock records. A record of controlled substances administered from floor stock shall contain the following information:

- (1) name of patient;
- (2) date and time administered;
- (3) name of drug;
- (4) strength of drug;
- (5) amount administered;

- (6) name of prescribing physician;
- (7) name of person administering the controlled substance.

[16.19.20.31 NMAC - Rp 16.19.20.31 NMAC, 06-26-2018]

**16.19.20.32 RESEARCH DISPOSITION RECORDS:**

**A.** A registered person using any controlled substance under FDA regulations in research at a registered establishment which maintains records in accordance with FDA approved research requirements is not required to keep records if he notifies the DEA and the board of pharmacy of the name, address and all registration numbers of establishments maintaining such records.

**B.** A registered person using any controlled substance in preclinical research or in teaching at a registered establishment which maintains records of such substances is not required to keep records if he notifies the DEA and the board of pharmacy of the name, address and all registration numbers of the establishments maintaining the records.

[16.19.20.32 NMAC - Rp 16.19.20.32 NMAC, 06-26-2018]

**16.19.20.33 MANUFACTURERS AND REPACKAGERS:**

**A.** Disposition records shall be maintained on all controlled substances. Schedule I and II records shall be maintained separately from all other records.

**B.** Disposition records for schedules III, IV and V shall be maintained either separately from all other records or in such form that the information required is readily retrievable from the ordinary business records of the registrant.

[16.19.20.33 NMAC - Rp 16.19.20.33 NMAC, 06-26-2018]

**16.19.20.34 WHOLESALE DISTRIBUTORS:**

Wholesale distributors disposition records shall contain the same information required of manufacturers.

[16.19.20.34 NMAC - Rp 16.19.20.34 NMAC, 06-26-2018]

**16.19.20.35 ANALYTICAL LABORATORIES RECORDS:**

Analytical laboratories records shall include:

- A.** name of substance;

**B.** the form or forms in which substance is received, imported or manufactured and the concentration of the substance;

**C.** quantity and strength received;

**D.** date of receipt;

**E.** name and DEA registry number of supplier;

**F.** adequate record of distribution.

[16.19.20.35 NMAC - Rp 16.19.20.35 NMAC, 06-26-2018]

**16.19.20.36 REPORT OF LOSS OR THEFT OF A CONTROLLED SUBSTANCE:**

**A.** The registered supplier shall be responsible for reporting in-transit losses of controlled substances by a common carrier or contract carrier selected by the supplier upon discovery of such loss or theft. Registrant shall complete DEA form 106 as required and furnish a copy to the board of pharmacy.

**B.** A significant loss or theft of a controlled substance shall be reported in writing to the board of pharmacy and DEA on form 106 as required by federal regulations. "Significant loss" includes suspected diversions, in-transit losses or any other unexplained loss and must be reported to the board of pharmacy within five days of becoming aware of that loss. DEA form 106 may be obtained from the board of pharmacy or DEA.

[16.19.20.36 NMAC - Rp 16.19.20.36 NMAC, 06-26-2018]

**16.19.20.37 HOSPITALS, INSTITUTIONS AND CLINICS:**

Disposal of excess or undesirable controlled substances resulting from extemporaneous amounts of residue or wasted controlled substances. A registrant who needs to dispose of excess or undesirable controlled substances resulting from injections from ampules or less than the full ampule or other such circumstances shall keep a written memorandum report on the hospital narcotic records and periodically file a report on DEA form 41 with DEA pursuant to the requirements of the federal DEA Regulations 1307.21(c).

[16.19.20.37 NMAC - Rp 16.19.20.37 NMAC, 06-26-2018]

**16.19.20.38 DISPOSITION OF DAMAGED, OUTDATED OR UNWANTED CONTROLLED SUBSTANCES:**

Any registrant in possession of any controlled substances and desiring or required to dispose of such substances(s) may contact the regional director of DEA for authority and instructions to dispose of such substance.

[16.19.20.38 NMAC -Rp 16.19.20.38 NMAC, 06-26-2018]

**16.19.20.39 EXEMPTION FOR PHARMACY REGISTRATION AS A DISTRIBUTOR, DISTRIBUTION BY A DISPENSER TO ANOTHER PRACTITIONER REGISTERED TO DISPENSE CONTROLLED SUBSTANCES:**

A registrant who is registered to dispense controlled substances may distribute a quantity of such substances to a registered practitioner for general dispensing to his patients if:

**A.** the distribution is recorded by the pharmacist indicating the number of units or volume of such finished forms and commercial containers dispensed, the date and manner of disposition;

**B.** the same information is recorded as a procurement by the registrant receiving the substance;

**C.** if the substance is listed in schedule I or II, an order form is used as required by the federal regulations;

**D.** the total number of dosage units of all controlled substances distributed by the pharmacy by this method during the 12 month period in which the practitioner is registered to dispense does not exceed five percent of the total number of dosage units of all controlled substances distributed and dispensed by the pharmacy during the 12 month period.

[16.19.20.39 NMAC - Rp 16.19.20.39 NMAC, 06-26-2018]

**16.19.20.40 DISTRIBUTION UPON TRANSFER OR DISCONTINUANCE OF BUSINESS:**

**A.** Upon transfer of a business from one owner to another, the registrant may dispose of the controlled substances in his possession as follows:

**(1)** On the date of transfer of controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with 16.19.20.19 NMAC, board of pharmacy regulations to Title 21, Section 1304.11-1304.14 of the federal DEA regulations. This inventory of the registrant-transferee and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with DEA or the board of pharmacy unless requested by either agency. Transfer of schedule I or II substances require the use of order forms (Form DEA 222c).

**(2)** All records required to be kept by the registrant-transferor with reference to the controlled substances being transferred, shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

**(3)** All schedule II substances must be transferred pursuant to order forms as required by the federal regulations. A copy of the inventory will constitute a record of receipt for the purchaser.

**B.** Upon discontinuance of business, if there are controlled substances which are not transferred to another registrant, these substances shall be handled as unwanted controlled substances under 16.19.20.37 NMAC.

[16.19.20.40 NMAC - Rp 16.19.20.40 NMAC, 06-26-2018]

#### **16.19.20.41 PRESCRIPTIONS:**

**A.** A prescription for a controlled substance may be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, and who is registered under the Controlled Substances Act. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

**B.** A prescription may not be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.

**C.** A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic dependent person for the sole purpose of continuing his dependence upon such drugs, unless all the following conditions are met:

(1) the narcotic controlled drug is in Schedule III, IV, or V and is approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment; and

(2) the prescribing practitioner meets all state and federal requirements to prescribe the narcotic for maintenance or detoxification treatment (e.g., 21 CFR 1301.28 or successor regulation).

[16.19.20.41 NMAC - Rp 16.19.20.41 NMAC, 6/26/2018; A, 12/17/2019; A, 6/13/2023]

#### **16.19.20.42 PRESCRIPTION REQUIREMENTS:**

**A.** All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner. Information on the prescription may be added or clarified by the pharmacist after consultation with the practitioner. A practitioner may sign a paper prescription in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). Where an oral order is not permitted, paper prescriptions must be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by the practitioner. A computer-generated prescription that is printed out or faxed by the practitioner must be manually signed.

**B.** Electronic prescriptions shall be created and signed using an application that meets the requirements of Part 1311 of the Code of Federal Regulations. An individual practitioner may sign and transmit electronic prescriptions for controlled substances in a manner that meets all of the requirements of Part 1306.08 of the Code of Federal Regulations.

**(1)** Effective April 1, 2021 all controlled substance prescriptions must be electronically

transmitted ("Electronic Prescriptions for Controlled Substances," EPCS) except:

**(a)** for patients residing in an intermediate care, skilled nursing or correctional facility;

**(b)** for patients enrolled in hospice;

**(c)** for an animal by a licensed veterinarian;

**(d)** a prescription dispensed by a federal facility not subject to state regulation (e.g. department of veteran affairs, Indian health services, military bases);

**(e)** a prescription requiring information that makes electronic transmission impractical, such as complicated or lengthy directions for use or attachments; or new medications not yet in electronic system;

**(f)** for compounded prescriptions;

**(g)** for prescriptions issued during a temporary technical or electronic failure at the practitioner's or pharmacy's location;

**(h)** for prescriptions issued in an emergency pursuant to federal law and rules of the board;

(i) for prescriptions issued in response to a public health emergency where a non-patient specific prescription would be permitted;

(j) under extenuating circumstance, not inconsistent with federal law and where the practitioner communicates directly with the pharmacist. The pharmacist, using professional judgment, may accept the non-EPCS and is responsible for ensuring documentation of the circumstance in the prescription record; and that the prescription is otherwise in compliance with state and federal law and rules.

**C.** Unless otherwise specified, a pharmacist who receives a written, oral, or facsimile prescription shall not be required to verify that the prescription is subject to an exemption and may dispense a prescription drug pursuant to an otherwise valid written, oral, or facsimile prescription.

**D.** A prescription that falls under an exception to the EPCS requirement may be transmitted to a pharmacy in one of the following ways:

(1) A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in Paragraphs 2, 3 and 4 of this Subsection. The original prescription shall be maintained in accordance with 16.19.20.31 NMAC.

(2) A prescription prepared in accordance with Subsection A of 16.19.20.42 NMAC written for a schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, or subcutaneous infusion may be transmitted by the practitioner or the practitioner's agent to the parenteral products pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph and it shall be maintained in accordance with 16.19.20.31 NMAC.

(3) A prescription prepared in accordance with Subsection A of 16.19.20.42 NMAC written for a schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

(4) A prescription prepared in accordance with Subsection A of 16.19.20.42 NMAC written for a schedule II narcotic substance for a patient enrolled in a hospice program certified by Medicare under title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this sub-section and it shall be maintained in accordance with 16.19.20.31 NMAC.

**(5)** A pharmacist may dispense directly a controlled substance listed in schedule III, IV, or V which is a prescription drug as determined under the New Mexico Drug, Device and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all information required for a prescription except the signature of the practitioner. A telephone order for a new therapy for an opiate listed in schedule III, IV, or V shall not exceed a 10 day supply, based on the directions for use, unless a written prescription is on file at this pharmacy from any practitioner for the same opiate within the past six months. A telephone order for this new opiate therapy may not be refilled.

**E.** A pharmacy employee shall verify the identity of the patient or the patient's representative who is receiving any prescription for a controlled substance listed in schedule II, III, IV, or V before it is released. Acceptable identification means a current state issued driver's license, including photo, or other current government issued photo identification of the person presenting said identification. The identification type (*e.g.* driver's license, identification card, passport, etc.), number, name imprinted on that identification, and state must be recorded. Exceptions are, a new controlled substance prescription filled for a patient known to the pharmacist or pharmacist intern, whose identification has already been documented in a manner determined by a written policy developed by the pharmacist-in-charge; a controlled substance prescription filled for home delivery; or a controlled substance prescription filled for and delivered to a licensed facility.

[16.19.20.42 NMAC - Rp 16.19.20.42 NMAC, 6/26/2018; A, 12/15/2020]

#### **16.19.20.43 PRESCRIPTIONS NOT TO BE REFILLED:**

Prescriptions for schedule II drugs may not be refilled.

[16.19.20.43 NMAC - Rp 16.19.20.43 NMAC, 06-26-2018]

#### **16.19.20.44 REFILL PROCEDURE:**

Each refilling of a schedule III, IV or V controlled substance prescription shall be entered in the prescription record, indicating the amount dispensed, if less than the amount called for on the prescription, the date of refill and the initials of the pharmacist dispensing the substance.

[16.19.20.44 NMAC - Rp 16.19.20.44 NMAC, 6/26/2018; A, 12/15/2020]

#### **16.19.20.45 PRESCRIPTION FILL AND REFILL REQUIREMENTS:**

**A.** Prescriptions for any controlled substance shall not be filled more than six months after the date of issue.

**(1)** Controlled substance prescriptions dispensed directly to a patient shall not be refilled before seventy-five percent of the prescription days' supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

**(2)** Controlled substance prescriptions delivered to a patient indirectly (as mail order) to a patient shall not be refilled before sixty-six percent of a 90 day supply has passed or fifty percent of a 30 day supply has passed, unless the practitioner authorizes the early refill, which must be documented by the pharmacist.

**B.** Prescriptions for schedule III, IV, or V controlled substances shall not be filled or refilled more than six months after the date of issue or be refilled more than five times unless renewed by the practitioner and a new prescription is placed in the pharmacy files.

[16.19.20.45 NMAC - Rp 16.19.20.45 NMAC, 06-26-2018]

**16.19.20.46 PRESCRIPTION - PARTIALLY FILLED:**

**A.** A prescription for a controlled substance in schedule II may be partially filled if:

**(1)** the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;

**(2)** the partial fill amount is recorded on the written prescription or in the electronic prescription record; and

**(3)** the remaining portions shall be filled not later than 30 days after the date on which the prescription is issued.

**B.** A prescription for a controlled substance in schedule II initially filled later than 30 days after the date issued may be partially filled if;

**(1)** the pharmacist is unable to dispense the total quantity prescribed;

**(2)** the partial fill amount is recorded on the written prescription or in the electronic prescription record;

**(3)** the remaining portion is filled within 72 hours of the partial filling; and

**(4)** the pharmacist notifies the prescribing physician if the remaining portion cannot be filled within the 72 hour period. No further quantity may be supplied beyond 72 hours without a new prescription.

**C.** Partial filling of a prescription for schedule III, IV or V shall be recorded in the same manner as a refill, providing the total quantity of partial filling does not exceed the total quantity prescribed and no dispensing occurs after six months from date of prescription.

**D.** A prescription for a schedule II controlled substance written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities, to include individual dosage units.

**(1)** If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF patient".

**(2)** A prescription that is partially filled and does not contain the notation "terminally ill" or LTCF patient" shall be deemed to have been filled in violation of this regulation. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist.

**(3)** The total quantity of schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions, for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

[16.19.20.46 NMAC - Rp 16.19.20.46 NMAC, 6/26/2018; A, 12/15/2020]

#### **16.19.20.47 EMERGENCY DISPENSING:**

**A.** Emergency dispensing of schedule II controlled substances. "**Emergency situation**" means the prescribing physician determines:

**(1)** that immediate administration of a controlled substance is necessary for proper treatment of the intended patient;

**(2)** that no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under schedule II; and

**(3)** that it is not reasonably possible for the prescribing practitioner to provide an electronically prescribed or written prescription to be presented to the person dispensing the substance prior to the dispensing.

**B.** A pharmacy may dispense a schedule II controlled substance in the above instance only if he receives oral authorization of a practitioner or authorization via facsimile machine and provided:

(1) the quantity prescribed is limited to the amount needed to treat the patient during the emergency period;

(2) the pharmacist shall reduce the prescription to a written form and it contains all information required of a schedule II controlled substance prescription except the signature of the prescribing practitioner;

(3) the prescribing physician, within seven days after authorization of the emergency dispensing, shall furnish a written, signed prescription to the pharmacist. The signed prescription shall have written on the face "AUTHORIZATION FOR EMERGENCY DISPENSING" and the date of the oral order or facsimile order;

(4) the signed prescription shall be attached to the oral emergency prescription order or the facsimile emergency prescription order and be filed as other schedule II prescriptions.

**C.** In the event the prescribing physician fails to deliver a signed written prescription to the pharmacist, within the seven days period, the pharmacist shall notify the nearest DEA office, and the board of pharmacy.

[16.19.20.47 NMAC - Rp 16.19.20.47 NMAC, 6/26/2018; A, 12/15/2020]

#### **16.19.20.48 SECURITY REQUIREMENTS:**

**A.** All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances.

**B.** In evaluating the overall security system of a registrant or applicant, the following factors may be considered, where applicable to the need for strict compliance with security requirements:

(1) the type of activity;

(2) the type and form of controlled substances handled;

(3) the quantity of controlled substances handled;

(4) the location of the premises and relationship such location bears on security needs;

(5) the type of building construction of the facility and the general characteristics of the building;

- (6) the type of vault, safe, and secure enclosures or other storage system used;
- (7) the type of closures on vaults, safes, and secure enclosures;
- (8) the adequacy of key control systems and lock control system;
- (9) the extent of unsupervised public access to the facility;
- (10) the adequacy of supervision over employees having access to storage or distribution areas;
- (11) the procedures for handling business guests, visitors, maintenance personnel and non-employee service personnel;
- (12) the adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution and disposition of controlled substances in its operation.

[16.19.20.48 NMAC - Rp 16.19.20.48 NMAC, 06-26-2018]

**16.19.20.49 MANUFACTURERS, REPACKAGERS AND WHOLESALE DISTRIBUTORS:**

Security requirements which meet the federal DEA provision shall be deemed adequate under New Mexico Controlled Substances Act.

[16.19.20.49 NMAC - Rp 16.19.20.49 NMAC, 06-26-2018]

**16.19.20.50 PHARMACIES AND HOSPITALS, EMPLOYING STAFF PHARMACISTS:**

Controlled substances listed in schedule I shall be stored in a securely locked, substantially constructed cabinet. Controlled substances listed in schedule II, III, IV and V shall be stored either in securely locked, substantially constructed cabinets or dispersed throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the substances.

[16.19.20.50 NMAC - Rp 16.19.20.50 NMAC, 06-26-2018]

**16.19.20.51 HOSPITALS SERVED BY CONSULTANT OR PART-TIME PHARMACISTS, CLINICS AND PHYSICIANS:**

Controlled substances listed in schedule I through V shall be stored in a securely locked, substantially constructed cabinet.

[16.19.20.51 NMAC - Rp 16.19.20.51 NMAC, 06-26-2018]

**16.19.20.52 RESEARCH REGISTRANTS AND CHEMICAL ANALYSIS LABORATORIES:**

Controlled substances listed in schedules I and II shall be stored in a securely locked, substantially constructed cabinet. Schedules III, IV and V substances shall be stored either in a securely locked, substantially constructed cabinet or dispersed in with the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the substances.

[16.19.20.52 NMAC - Rp 16.19.20.52 NMAC, 06-26-2018]

**16.19.20.53 DISPENSING WITHOUT PRESCRIPTION:**

**A.** A controlled substance listed in schedule V and a substance listed in schedules II, III, or IV ***which is not a prescription drug*** as determined by FDA and the Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription provided:

(1) such dispensing is made by a pharmacist or registered pharmacist intern and not by a non-pharmacist employee;

(2) not more than eight ounces of any controlled substance containing opium, nor more than 48-dosage units is dispensed at retail to the same person in any given 48-hour period;

(3) not more than four ounces of any other controlled substance or more than 24-dosage units may be dispensed at retail to the same person in any given 48-hour period;

(4) the purchaser is at least 18 years of age;

(5) the pharmacist requires every purchaser of such substance, not known to him to furnish suitable identification (including proof of age where appropriate);

(6) a bound record book for dispensing such substances is maintained requiring the signature and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance; the book shall contain a statement on each page where purchaser is required to sign, stating no purpose of such substance has been made within the given 48-hour period at another pharmacy and the purchaser shall be made aware of such statement before signing the record.

**B.** Exempt pseudoephedrine product.

**(1)** Any pseudoephedrine containing product listed as a schedule V controlled substance in Paragraph (2) of Subsection B of 16.19.20.69 NMAC shall be dispensed, sold or distributed only by a licensed pharmacist, pharmacist intern, or a registered pharmacy technician.

**(2)** Unless pursuant to a valid prescription, a person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

**(a)** produce a driver's license or other government-issued photo identification showing the date of birth of the persons;

**(b)** sign a log after reading the purchaser statement for pseudoephedrine receipt or other program or mechanism indicating the date and time of the transaction, name of the person, address, driver's license number or government issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction, the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; this log will be only for exempt pseudoephedrine products and shall be kept separate from all other records; the log is to be produced in a way that a customer's personal information is not available to other purchasers;

**(c)** be limited to no more than three and six-tenths grams per day or more than a total of nine grams of a product, mixture or preparation containing pseudoephedrine within a thirty-day period.

**(3)** Pseudoephedrine purchaser statement must state in addition to any federal requirements: "I have not purchased more than three and six-tenths grams today or more than a total of nine grams of pseudoephedrine as a single entity or in a combination with other medications in the last 30 days. Entering false statements or misrepresentations in this logbook may subject me to criminal penalties."

**(4)** Prices charged for compounds, mixtures, and preparations that contain pseudoephedrine shall be monitored. The board may adopt rules to prevent unwarranted price increases as a result of compliance with this section.

**(5)** Pharmacies shall submit the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC electronically, in a board defined format, to the board or its agents. Pharmacies will submit data every seven days beginning September 15, 2013. Pharmacies may petition the executive director of the board for an alternative method for the submission of the information collected pursuant to this section.

**(6)** Authority to contract: The board is authorized to contract with another agency of this state or with a private vendor, as necessary, for the collection of the information collected pursuant to Paragraph (2) of Subsection B of 16.19.20.53 NMAC. Any contract shall be bound to comply with the provisions regarding confidentiality of

prescription or personal information in 16.19.20.53 NMAC of this regulation and shall be subject to the penalties specified in 16.19.20 NMAC and 16.19.27 NMAC.

[16.19.20.53 NMAC - Rp 16.19.20.53 NMAC, 06-26-2018]

**16.19.20.54 EXEMPTED OVER-THE-COUNTER DRUGS:**

(Information published by DEA.)

[16.19.20.54 NMAC - Rp 16.19.20.54 NMAC, 06-26-2018]

**16.19.20.55 EXEMPT CHEMICAL PREPARATIONS:**

The board hereby exempts such chemical preparations and mixtures which are intended for laboratory, industrial, educational, or special research purposes, which are not intended for general administration to a human being or other animal and which:

**A.** contains no narcotic controlled substances and is packaged in such a form or concentration that the package quantity does not present any significant potential for abuse, or;

**B.** contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agent in such a manner, combination, quantity, proportion or concentration, that the preparation or mixture does not present any potential for abuse, and the narcotic substance cannot in practice be removed, and;

**C.** are exempt from federal regulations (CFR 21 Part 1308.24).

[16.19.20.55 NMAC - Rp 16.19.20.55 NMAC, 06-26-2018]

**16.19.20.56 HEARINGS, DENIAL OF REGISTRATION, REVOCATION OR SUSPENSION OF REGISTRATION:**

Proceedings to suspend or revoke a registration or to refuse renewal of a registration shall be held pursuant to the Uniform Licensing Act.

[16.19.20.56 NMAC - Rp 16.19.20.56 NMAC, 06-26-2018]

**16.19.20.57 ADMINISTRATIVE INSPECTION - DEFINED:**

Administrative inspection means - the inspection of any place where registrants are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substances. When authorized by an administrative inspection warrant, the inspector may:

**A.** inspect and copy records required by the Controlled Substances Act;

**B.** inspect the restricted area and all pertinent equipment, all container substances, containers and labeling found at the controlled area;

**C.** make a physical inventory of specific items or all controlled substances on-hand at the premises;

**D.** collect samples, if applicable;

**E.** check records and information of distribution of controlled substances by the registrant as they relate to total distribution;

**F.** examination of records, invoices, appropriate for verification of the records or otherwise bearing on the provisions of the Controlled Substances Act.

[16.20.20.57 NMAC - Rp 16.19.20.57 NMAC, 06-26-2018]

**16.19.20.58 VOLUNTARY CONSENT TO INSPECTION:**

The board inspector will ask the registrant to voluntarily consent to the inspection. He will inform the registrant of his constitutional rights to an inspection warrant, however, if the registrant consents to inspection without warrant, the inspector will obtain a signed consent waiver statement from the registrant before proceeding with an accountability audit or inspection.

[16.19.20.58 NMAC - Rp 16.19.20.58 NMAC, 06-26-2018]

**16.19.20.59 WRITTEN CONSENT:**

**A.** The written consent shall contain the following information:

(1) that the owner, or agent in charge of the premises has been informed of his constitutional right not to have an administrative inspection made without an administrative inspection warrant;

(2) of his right to refuse to consent to such an inspection;

(3) of the possibility that anything of an incriminating nature which may be found may be seized and used against him in a board hearing or a criminal prosecution;

(4) that he had been presented with a notice of inspection;

(5) that the consent given by him is voluntary and without threats of any kind;  
and

(6) that he may withdraw his consent at any time during the course of inspection.

**B.** Written consent shall be produced in duplicate and one copy shall be retained by the person being inspected and one copy shall be retained by the inspector for filing in the board office.

[16.19.20.59 NMAC - Rp 16.19.20.59 NMAC, 06-26-2018]

**16.19.20.60 ADMINISTRATIVE WARRANT:**

**A.** A copy of the administrative warrant need not be given to the registrant unless items are seized or confiscated.

**B.** To serve the warrant, all that is required is to announce possession of it, the contents of the warrant need not be stated to the person upon whom the warrant is served.

[16.19.20.60 NMAC - Rp 16.19.20.60 NMAC, 06-26-2018]

**16.19.20.61 CONSENT TO CHARGES:**

Unless the person in charge of the premises so consents in writing, these regulations shall not extend to financial data, sales data other than shipping date, or pricing data.

[16.19.20.61 NMAC - Rp 16.19.20.61 NMAC, 06-26-2018]

**16.19.20.62 ADMINISTRATIVE WARRANT - NOT REQUIRED:**

An administrative warrant shall not be required for a new pharmacy or drug distribution facility applying for initial registration under the Controlled Substances Act or the Pharmacy Act, or in any other situation where a warrant is not constitutionally required.

[16.19.20.62 NMAC - Rp 16.19.20.62 NMAC, 06-26-2018]

**16.19.20.63 ADMINISTRATIVE WARRANT - REFUSAL:**

If a registrant or any person subject to the Controlled Substances Act refuses to permit execution of an administrative warrant or impedes the inspection in the execution of that warrant, he shall be advised that such refusal or action constitutes a violation of Section 30-31-32 NMSA 1978, Controlled Substances Act.

[16.19.20.63 NMAC - Rp 16.19.20.63 NMAC, 06-26-2018]

**16.19.20.64 CONTROLLED SUBSTANCE PRECURSORS:**

See 16.19.21 NMAC - Drug Precursors

[16.19.20.64 NMAC - Rp 16.19.20.64 NMAC, 06-06-2018]

#### 16.19.20.65 SCHEDULE I:

A. Section 30-31-6 NMSA 1978, schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; **OPIOIDS**, unless specifically exempt or unless listed in another schedule, any of the following opioids, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Alpha-methyl fentanyl;
- (7) Benzethidine;
- (8) Betacetylmethadol;
- (9) Betameprodine;
- (10) Betamethadol;
- (11) Betaprodine;
- (12) Clonitazene;
- (13) Desmethyltramadol;
- (14) Dextromoramide;
- (15) Diampromide;
- (16) Diethylthiambutene;
- (17) Dimethylthiambutene;
- (18) Difenoxyin;
- (19) Dimenoxadol;

- (20) Dimepheptanol;
- (21) Dimethylthiambutene;
- (22) Dioxaphetyl Butyrate;
- (23) Dipipanone;
- (24) Ethylmethylthiambutene;
- (25) Etonitazene;
- (26) Etoxidine;
- (27) Furethidine;
- (28) Hydroxypethidine;
- (29) Isotonitazene;
- (30) Ketobemidone;
- (31) Levomoramide;
- (32) Levophenacymorphan;
- (33) Morpheridine;
- (34) Noracymethadol;
- (35) Norlevorphanol;
- (36) Normethadone;
- (37) Norpipanone;
- (38) Phenadoxone;
- (39) Phenampromide;
- (40) Phenomorphan;
- (41) Phenoperidine;
- (42) Pirtramide;

- (43) Proheptazine;
- (44) Properidine;
- (45) Propiram;
- (46) Racemoramide;
- (47) Tilidine;
- (48) Trimeperidine
- (49) U-48800; (2-(2,4-dichlorophenyl)-N-((1S,2S)-2-(dimethylamino)cyclohexyl)-N-methylacetamide, monohydrochloride;
- (50) U-49900; (trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide);
- (51) Beta-Hydroxy-3-Methylfentanyl;
- (52) 3-Methylthiofentanyl;
- (53) Acetyl-Alpha-Methyl fentanyl ;
- (54) Alpha-Methylthiofentanyl ;
- (55) Beta-hydroxfentanyl ;
- (56) Para-Fluoro fentanyl;
- (57) Thiofentanyl;
- (58) Acetyl fentanyl;
- (59) Butyryl fentanyl;
- (60) Betahydroxythiofentanyl;
- (61) Furanyl fentanyl;
- (62) AH-7921; (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide);
- (63) U47700; (trans-3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide);

(64) MT-45; (1-(4-Nitrophenylethyl)piperidylidene-2-(4-chlorophenyl)sulfonamide);

(65) W-15; (4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide);

(66) W-18; (1-(4-Nitrophenylethyl)piperidylidene-2-(4-chlorophenyl)sulfonamide);

(67) U-50488; (2-(3,4-dichlorophenyl)-N-methyl-N-[(1R,2R)-2-pyrrolidin-1-ylcyclohexyl]acetamide);

(68) U50488H; ((-)(trans)-3,4-dichloro-N-methyl-N-[2-(1-pyrrolidiny)cyclohexyl]benzeneacetamide).

(69) Fentanyl-related substances, their isomers, esters, ethers, salts, and salts of isomers, esters and ethers. Fentanyl-related substance means any substance, unless specifically exempted or unless listed in another schedule, that is structurally related to fentanyl by one or more of the following modifications:

(a) replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(b) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;

(c) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(d) replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; or

(e) replacement of the N-propionyl group by another acyl group; or

(f) any combination of the above substances include, but are not limited to, the following substances: (reserved)

(70) Acryl Fentanyl;

(71) 4F-butyrfentanyl;

(72) 4-methoxybutyrfentanyl;

(73) Fluorobutyrfentanyl;

(74) Fluorofentanyl;

- (75) FIBF; (Para Fluoro Isobutyryl Fentanyl);
- (76) Cyclopropyl fentanyl;
- (77) Thiofuranyl fentanyl (Thiophene fentanyl);
- (78) 3-methylfentanyl (N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts and salts of isomers;
- (79) crotonyl fentanyl ((E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide);
- (80) valeryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide);
- (81) N-(1-(2-fluorophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide (2'-fluoro ortho-fluorofentanyl; 2'-fluoro 2-fluorofentanyl);
- (82) N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide (4'-methyl acetyl fentanyl);
- (83) beta-phenyl fentanyl or N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide ( $\beta'$ -phenyl fentanyl; beta'-Phenyl fentanyl; 3-phenylpropanoyl fentanyl);
- (84) beta-methyl fentanyl or N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide ( $\beta$ -methyl fentanyl);
- (85) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (ortho-fluorobutyryl fentanyl; 2-fluorobutyryl fentanyl);
- (86) (N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide (ortho-methyl acetylfentanyl; 2-methyl acetylfentanyl);
- (87) 2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide (ortho-methyl methoxyacetylfentanyl; 2-methyl methoxyacetyl fentanyl);
- (88) N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide (para-methylfentanyl; 4-methylfentanyl);
- (89) N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide (phenyl fentanyl; benzoyl fentanyl);
- (90) N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide (thiofuranyl fentanyl; 2-thiofuranyl fentanyl; thiophene fentanyl)
- (91) Ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate (fentanyl carbamate);

(92) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide (ortho-fluoroacryl fentanyl);

(93) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (ortho-fluoroisobutyryl fentanyl);

(94) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide (para-fluoro furanyl fentanyl);

(95) cyclopentyl fentanyl;

(96) isobutyryl fentanyl;

(97) *para*-chloroisobutyryl fentanyl;

(98) *para*-methoxybutyryl fentanyl;

(99) *para*-fluorobutyryl fentanyl;

(100) ocfentanil;

(101) Ortho-Fluorofentanyl;

(102) Tetrahydrofuranlyl Fentanyl;

(103) Methoxyacetyl Fentanyl;

(104) 4-Fluoroisobutyryl Fentanyl;

(105) Para-Fluorofentanyl;

(106) Butonitazene (2-(2-(4-butoxybenzyl)-5-nitro-1Hbenzimidazol-1-yl)-N,N-diethylethan-1-amine);

(107) Etodesnitazene; etazene (2-(2-(4-ethoxybenzyl)-1Hbenzimidazol-1-yl)-N,N-diethylethan-1-amine);

(108) Metonitazene (N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine);

(109) Flunitazene (N,N-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine);

(110) Metodesnitazene (N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine);

(111) Protonitazene (N, N -diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1 H - benzimidazol-1-yl)ethan-1-amine);

(112) Brorphine (1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2 H- benzo[d]imidazol-2-one);

(113) Zipeprol (1-methoxy-3-[4-(2-methoxy-2- phenylethyl)piperazin-1-yl]-1- phenylpropan-2-ol).

**B. OPIUM DERIVATIVES:** Unless specifically exempt or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation.

- (1) Acetorphine;
- (2) Acetyl dihydrocodeine;
- (3) Benzyl morphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dehydro morphine;
- (9) Etorphine;
- (10) Heroin;
- (11) Hydromorphinol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;

- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Pholcodine;
- (22) Thebacon;
- (23) Drotebanol;
- (24) 6AM; (6-acetylmorphine).

**C. STIMULANTS:** Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

- (1) Fenethylline;
- (2) N-ethylamphetamine;
- (3) cis-4-methylaminorex;
- (4) N, N-dimethylamphetamine;
- (5) (BZP), 1-benzylpiperazine; N-benzylpiperazine;
- (6) (DCPP); 2,3-dichlorophenylpiperazine;
- (7) (DBZP); dibenzylpiperazine;
- (8) (MBZP); methylbenzylpiperazine;
- (9) (mCPP); meta-chlorophenylpiperazine;
- (10) (MDBZP); methylenedioxybenzylpiperazine;
- (11) (meOPP); para-methoxyphenylpiperazine;
- (12) (pCPP); para-chlorophenylpiperazine;
- (13) (pFPP); para-fluorophenylpiperazine;

- (14) (2-DPMP), desoxypipradrol; 2-diphenylmethylpiperidine;
- (15) D2PM, diphenylprolinol; diphenyl-2-pyrrolidinemethanol;
- (16) HDMP-28; methylnaphthidate;
- (17) Cocaine, (+)-CPCA; 3 $\alpha$ -carbomethoxy-4 $\beta$ -(4-chlorophenyl)-N-methylpiperidine;
- (18) BTQ or butyltolylquinuclidine; (2-Butyl-3-(p-tolyl)quinuclidine);
- (19) Methiopropamine; (N-methyl-1-(thiophen-2-yl)propan-2-amine);
- (20) Mesocarb; (N-phenyl-N'-(3-(1-phenylpropan-2-yl)-1,2,3-oxadiazol-3-ium-5-yl)carbamimidate);
- (21) Amineptine (7-[(10,11-dihydro-5H-dibenzo[a,d]cyclohepten-5-yl)amino]heptanoic acid);
- (22) 4,4'-Dimethylaminorex (4,4'-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine).

**D. DEPRESSANTS:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone;
- (3) Benzodiazepines;
  - (a) Bromazepam;
  - (b) Camazepam;
  - (c) Cloxazolam;
  - (d) Delorazepam;
  - (e) Ethylloflazepate;
  - (f) Fudiazepam;

- (g) Flunitrazepam;
- (h) Haloxazolam;
- (i) Ketazolam;
- (j) Loprazolam;
- (k) Lormetazepam;
- (l) Medazepam;
- (m) Nimetazepam;
- (n) Nitrazepam;
- (o) Nordiazepam;
- (p) Oxazolam;
- (q) Phenazepam
- (r) Pinazepam;
- (s) Tetrazepam;
- (t) Flubromazepan;
- (u) Diclazepam;
- (v) Etizolam;
- (w) Flualprazolam;
- (x) Clonazolam;
- (y) Flubromazolam;
- (z) Bromazolam

(4) Gamma hydroxybutyric acid and any chemical compound that is metabolically converted to GHB;

(5) Gamma butyrolactone and any chemical compound that is metabolically converted to GHB;

(6) 1-4 butane diol and any chemical compound that is metabolically converted to GHB

(7) GHV or 4-methyl-GHB;  $\gamma$ -hydroxyvaleric acid;

(8) GVL;  $\gamma$ -valerolactone;

(9) MMQ; methylmethaqualone;

(10) MBQ; mebroqualone.

**E. HALLUCINOGENIC SUBSTANCES:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purpose of this sub-section only, the term "isomers" includes the optical, positional, and geometric isomers).

(1) 3,4 -methylenedioxy amphetamine;

(2) 5 - methoxy - 3,4-methylenedioxy amphetamine;

(3) 3,4,5 -trimethoxy amphetamine;

(4) Bufotenine;

(5) DET; (Diethyltryptamine);

(6) DMT; (Dimethyltryptamine);

(7) DOM or STP; (4-methyl-2,5-dimethoxy amphetamine);

(8) Lysergic acid amide;

(9) Lysergic acid diethylamide;

(10) Mescaline;

(11) Peyote;

(12) N-ethyl-3-piperidyl benzilate;

(13) N-methyl-3-piperidyl benzilate;

(14) Psilocybin;

- (15) Psilocyn;
- (16) Parahexyl (synthetic analog of delta-9-tetrahydrocannabinol);
- (17) 2, 5 -dimethoxyamphetamine; 2, 5-DMA;
- (18) 4-bromo-2, 5-dimethoxy-amphetamine; 2, 5-DMA;
- (19) PMA; 4-methoxyamphetamine;
- (20) PCE; (Ethylamine N-ethyl-1-phenylcyclohexylamine);
- (21) Pyrrolidine 1-(1-phenylcyclohexyl)-pyrrolidine (PCPy), (PHP) analog of the drug phencyclidine;
- (22) Thiophene (analog of phencyclidine) TCP or TPCP;
- (23) Alpha-ethyltryptamine;
- (24) 2, 5-dimethoxy-4-ethylamphet-amine;
- (25) Ibogaine;
- (26) 2C-T-7; (2,5-dimethoxy-4-(n)-propylthiophenethylamine);
- (27) AMT; (Alpha-methyltryptamine);
- (28) 5-MeO-DIPT; (5-methoxy-N,N-diisopropyltryptamine);
- (29) 25B-NBOMe; (2-(4-bromo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine);
- (30) 25C-NBOMe; (2-(4-chloro-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine);
- (31) 25I-NBOMe; (2-(4-iodo-2.5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine).
- (32) Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following synthetic cannabinoids which demonstrates binding activity to the cannabinoid receptor or analogs or homologs with binding activity. Substances include but are not limited to:
  - (a) CP 55,244 ((hydroxymethyl)-4-[2-hydroxy-4-(2-methyloctan-2-yl)phenyl]1,2,3,4,4a,5,6,7,8,8a-decahydronaphthalen-2-ol);

(b) CP 55,940 (5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]-5-(2-methyloctan-2-yl)phenol);

(c) JWH-081 (1-pentyl-3-[1-(4-methoxynaphthoyl)]indole);

(d) JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole);

(e) JWH-133 3-(1,1-dimethylbutyl)-6a,7,10,10a-tetrahydro -6,6,9-trimethyl-6H dibenzo[b,d]pyran;

(f) JWH 203 1-pentyl-3-(2-chlorophenylacetyl)indole);

(g) JWH 210 4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone;

(h) AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole);

(i) AM-1221 (1-(N-methylpiperidin-2-yl)methyl-2-methyl-3-(1-naphthoyl)-6-nitroindole);

(j) AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole);

(k) RCS-4 or SR-19 (1-pentyl-3-[(4-methoxy)-benzoyl]indole);

(l) RCS-8 or SR-18 (1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole);

(m)JWH-210 (1-pentyl-3-(4-ethylnaphthoyl)indole);

(n) WIN-49,098 (Pravadoline) (4-methoxyphenyl)-[2-methyl-1-(2-morpholin-4-ylethyl)indol-3-yl]methanone;

(o) WIN-55,212-2 (2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo-1,4-benzooxazin-6-yl)-1-naphthalenylmethanone);

(p) any of the following synthetic cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation;

(i) naphthoylindoles: any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398 and AM-2201;

(ii) naphthylmethylindoles: any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-175, JWH-184, and JWH-199;

(iii) naphthoylpyrroles: any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-307;

(iv) naphthylmethylindenenes: any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent including, but not limited to, JWH-176;

(v) phenylacetylindoles: any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, JWH-203, JWH-250, JWH-251, and RCS-8;

(vi) cyclohexylphenols: any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not substituted in the cyclohexyl ring to any extent including, but not limited to, Cannabicyclohexanol (CP 47,497 C8 homologue), CP 47,497 and CP 55,490;

(vii) benzoylindoles: any compound containing a 3-(benzoyl) [ 5 ] OTS-3833.4 indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, and AM-1241;

(q) UR-144 1-(pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl) methanone;

- (r) XLR11 1-(5-fluoro-pentyl)-1H-indol-3-yl(2,2,3,3-tetramethylcyclopropyl)methanone;
- (s) AKB48 N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide;
- (t) QUPIC; Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate;
- (u) 5-fluoro-PB22; 5F-PB22; Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;
- (v) AB-FUBINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide;
- (w) ADB-PINACA; N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamine;
- (x) AB-CHMINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;
- (y) AB-PINACA; N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide;
- (z) THJ-2201; [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone;
- (aa) FDU-PB-22 IUPAC: 1-Naphthyl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- (bb) 5-fluoro ABICA: N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide;
- (cc) FUB-144 or FUB-UR-144; [1-(4-fluorobenzyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone;
- (dd) MN-18; N-(1-Naphthyl)-1-pentyl-1H-indazole-3-carboxamide;
- (ee) FUB-PB-22; Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate;
- (ff) ADB-CHMINACA (N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide);
- (gg) AMB-FUBINACA or FUB-AMB (methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate);
- (hh) 5-fluoro-AMB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-L-valine, methyl ester);

(ii) 5-fluoro-ADB (N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-3-methyl-D-valine, methyl ester);

(jj) Bk-DMBDB or dibutylone; 1-(Benzo[d][1,3]dioxol-5-yl)-2-(dimethylamino)butan-1-one;

(kk) MMB-FUBINACA; methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate;

(ll) MDMB-CHMICA; methyl (S)-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate;

(mm) NM2201; Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate;

(nn) 5-Fluoro-AKB48 or 5F-APINACA; N-((3s,5s,7s)-adamanta-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide;

(oo) 5-Fluoro-ADB; Methyl(S)-2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate;

(pp) 5-Fluoro-AMB; N-[[1-(5-fluoropentyl)-1H-indazol-3-yl]carbonyl]-L-valine, methyl ester;

(qq) MAB-CHMINACA; N-[1-(aminocarbonyl)-2,2-dimethylpropyl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide;

(rr) SDB-006; N-benzyl-1-pentyl-1H-indole-3-carboxamide;

(ss) Cumyl-PINACA; 1-pentyl-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide;

(tt) Cumyl-PICA; 1-pentyl-N-(2-phenylpropan-2-yl)-1H-indole-3-carboxamide;

(uu) 5F-CUMYL-PINACA; SGT-25; 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide;

(vv) 5F-EDMB-PINACA; Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate;

(ww) methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate [5F-ADB; 5F-MDMB-PINACA];

(xx) N-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (FUB-AKB48; FUB-APINACA; AKB48 N-(4-fluorobenzyl));

(yy) 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1 H-indazole-3-carboxamide (4-CN-CUMYL-BUTINACA, 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, or SGT-78);

(zz) methyl 2-(1-(cyclohexylmethyl)-1 H-indole-3-carboxamido)-3-methylbutanoate (MMB-CHMICA or AMB-CHMICA);

(aaa) 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1 H-pyrrolo[2,3-b]pyridine-3-carboxamide (5F-CUMYL-P7AICA)

(33) Substances determined by the board to have the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of 30-31-23C NMSA 1978. Substances include but are not limited to:

(a) *Salvia divinorum*;

(b) Salvinorin A (methyl (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(furan-3-yl)-6a,10b-dimethyl-4,10-dioxododecahydro-2*H*-benzo[*f*]isochromene-7-carboxylate);

(34) (4-MEC); 4-methyl-ethylcathinone;

(35) (4-EMC); 4-ethyl-methcathinone;

(36) Ethcathinone; 2-ethylamino-1-phenyl-propan-1-one;

(37) Ethylone; 3',4'-methylenedioxyethylcathinone;

(38) Bk-MBDB, butylone; beta-keto-N-methyl-3,4-benzodioxolybutanamine;

(39) (NRG-1), naphyrone; naphthylpyrovalerone;

(40) Metamfepramone; N,N-dimethylcathinone;

(41) Alpha-PPP; alpha-pyrrolidinopropiophenone;

(42) ( $\alpha$ -PBP); alpha-pyrrolidinobutiophenone;

(43) (MOPPP); 4'-methoxy-alpha-pyrrolidinopropiophenone;

(44) (MaPPP); 4'-methyl- $\alpha$ -pyrrolidinopropiophenone;

(45) (MDPPP); 3',4'-methylenedioxy-alpha-pyrrolidinopropiophenone;

- (46) (MDPBP); 3',4'-methylenedioxy-alpha-pyrrolidinobutiophenone;
- (47) (MPBP); 4'-methyl- $\alpha$ -pyrrolidinobutiophenone;
- (48) Alpha-PVP; alpha-pyrrolidinovalerophenone;
- (49) (MDAI); 5,6-methylenedioxy-2-aminoindane;
- (50) Buphedrone; alpha-methylamino-butyrophenone;
- (51) Eutylone; beta-keto-ethylbenzodioxolylbutanamine;
- (52) beta-keto-ethylbenzodioxolylpentanamine;
- (53) beta-keto-methylbenzodioxolylpentanamine (pentylone);
- (54) 4-Bromo-2,5-dimethoxyphenethylamine (2c-B, Nexus);
- (55) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine, and N-hydroxy MDA);
- (56) 5-methoxy-N,N-dimethyltryptamine (5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);
- (57) Mephedrone; 4-methylmethcathinone;
- (58) (MDPV); 3,4-methylenedioxypropylvalerone;
- (59) (2C-E); 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine;
- (60) (2C-D); 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine;
- (61) (2C-T-2); 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine;
- (62) (2C-T4); 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine;
- (63) (2C-H); 2-(2,5-Dimethoxyphenyl)ethanamine;
- (64) (2C-N); 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine;
- (65) (2C-P); 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine;
- (66) Methylone; 3,4-Methylenedioxy-N-methylcathinone;
- (67) Aminorex (2-amino-5-phenyl-2-oxazoline);

- (68) Pentedrone;
- (69) 4-FMC or flephedrone; 4-fluro-N-methylcathinone;
- (70) (3-FMC); 3-fluro-N-methylcathinone;
- (71) (3-MMC); 3-methylmethcathinone;
- (72) (3,4 DMMC); 3,4-Dimethylmethcathinone;
- (73) (3-MEC); 3-Methyl-N-ethylcathinone;
- (74) 4-methylbuphedrone or 4-MeBP; 2-methylamino-1-(4-methylphenyl)butan-1-one
- (75) (4 MTA); 4-methylthioamphetamine;
- (76) (5-Me MDA); 5-methyl-3,4-methylenedioxyamphetamine;
- (77) (6-APB); 6-benzofuran;
- (78) (PMA); 4-methoxyamphetamine;
- (79) (2C-B); 2,5-dimethoxy-4-bromophenethylamine;
- (80) (2C-C); 2,5-dimethoxy-4-chlorophenethylamine;
- (81) (2C-D); 4-methyl-2,5-dimethoxyphenethylamine;
- (82) (2C-E, aquarust, cindy); 2,5-dimethoxy-4-ethylphenethylamine;
- (83) (2C-G); 3,4-dimethyl-2,5-dimethoxyphenethylamine;
- (84) (2C-I); 2,5-dimethoxy-4-iodophenethylamine;
- (85) (2C-T21); 2-[2,5-dimethoxy-4-(2-fluoroethylthio)phenyl]ethanamine;
- (86) (2C-B-FLY); 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine;
- (87) Bromo-DragonFLY or 3C-Bromo-Dragonfly or DOB-Dragonfly; 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine;
- (88) (DOB); 2,5-Dimethoxy-4-bromoamphetamine;
- (89) (DOC); 2,5-Dimethoxy-4-chloroamphetamine;

- (90) (DOM); 2,5-Dimethoxy-4-methylamphetamine;
- (91) (TMA2); 2,4,5-trimethoxyamphetamine;
- (92) (TMA6); 2,4,6-trimethoxyamphetamine;
- (93) (MDAT); 6,7-methylenedioxy-2-aminotetralin;
- (94) (4-acetoxy DiPT, ipracetin); 4-acetoxy-N,N-diisopropyltryptamine;
- (95) (4-acetoxy DMT, psilacetin;) O-Acetylpsilocin;
- (96) 4-HO MET, metocin; 4-hydroxy-N-methyl-N-ethyltryptamine;
- (97) 4-HO MiPT, hats; 4-hydroxy-N-methyl-N-isopropyltryptamine;
- (98) 5-MeO-aMT, Alpha-O; 5-methoxy- $\alpha$ -methyltryptamine;
- (99) (5-MeO-MiPT); N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine;
- (100) (DiPT); N,N-diisopropyltryptamine;
- (101) (DPT); dipropyltryptamine;
- (102) (5-MeO-DALT); N,N-diallyl-5-methoxytryptamine;
- (103) (3-MeO PCP); 3-methoxyphencyclidine;
- (104) (4-MeO PCP); 4-methoxyphencyclidine;
- (105) (MK-801); dizocilpine;
- (106) (PCE, perchloroethylene, perchloroethene), Perc; tetrachloroethylene;
- (107) (PCE, perchloroethylene, perchloroethene), Perc; tetrachloroethylene;
- (108) (PCPr); phencyclamine, N-(1-phenylcyclohexyl)propanamine;
- (109) (Tenocyclidine); 1-(1-(2-thienyl)cyclohexyl)piperidine
- (110) (3-MeO PCE); 3-methoxyeticyclidine, N-ethyl-1-(3-methoxyphenyl)cyclohexanamine;
- (111) (ETH-LAD); 6-ethyl-6-nor-lysergic acid diethylamide;

- (112) (AL-LAD); 6-allyl-6-nor-LSD;
- (113) (PRO-LAD); 10-didehydroergoline-8-carboxamide;
- (114) ((1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one, N-ethylpentylone);
- (115) (MPHP), 4'-methyl-alpha-pyrrolidinohexiophenone;
- (116) 4'-chloro-alpha-pyrrolidinovalerophenone (4-chloro- $\alpha$ -PVP; 4'-chloro- $\alpha$ -pyrrolidinopentiophenone);
- (117) 4-methyl-alpha-ethylaminopentiophenone (4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);
- (118) alpha-pyrrolidinoheptaphenone (PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one);
- (119) alpha-pyrrolidinohexanophenone ( $\alpha$ -PHP;  $\alpha$ -pyrrolidinohexanophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);
- (120) N-ethylhexedrone ( $\alpha$ -ethylaminohexanophenone; 2-(ethylamino)-1-phenylhexan-1-one);
- (121) Methoxetamine; 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one; 2-(3-methoxyphenyl)-2-(N-ethylamino)cyclohexanone; MXE).

**F.** Any material, compound, mixture or preparation which contains any quantity of the following substances.

- (1) 3, 4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;
- (2) (MPPP); 1-methyl-4-phenyl-4-propionoxypiperidine its optical isomers, salts, and salts of isomers;
- (3) 1-(-2-phenylethyl)-4-phenyl-4-acetoxy piperidine (PEPAP), its optical isomers, salts and salts of isomers;
- (4) Cathinone;
- (5) Methcathinone;
- (6) Tianeptene;
- (7) *para*-Methoxymethamphetamine (PMMA)

[16.19.20.65 NMAC - Rp 16.19.20.65 NMAC, 6/26/2018; A, 12/17/2019; A, 9/14/2021; A, 6/13/2023]

**16.19.20.66 SCHEDULE II:**

**A. OPIOIDS:** Unless specifically excepted or unless in another schedule any of the following opioids, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation except dextro and levopropoxyphene.

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Diphenoxylate;
- (5) Dihydrocodeine;
- (6) Dextropropoxyphene (bulk) non-dosage form;
- (7) Fentanyl;
- (8) Isomethadone;
- (9) Levomethorphan;
- (10) Levorphanol;
- (11) Metazocine;
- (12) Methadone;
- (13) 4-cyano-2-dimethylamino-4, 4-diphenylbutane;
- (14) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-dipehyl-propane-carboxylic acid;
- (15) Pethidine;
- (16) 4-cyano-1-methyl-4-phenylpiperidine;
- (17) ethyl-4-phenyl-piperdine-4-carboxylate;
- (18) 1-methyl-4-phenylpiperidine-4-carboxylic acid;

- (19) Phenazocine;
- (20) Piminodine;
- (21) Racemethorphan;
- (22) Racemorphan;
- (23) Sufentanil;
- (24) Carfentanil;
- (25) (LAAM); Levo-alphaacetylmethadol;
- (26) Tapentadol.
- (27) Thiafentanil;
- (28) Norfentanyl;
- (29) Oliceridine.

**B.** Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Substance, vegetable origin or chemical synthesis. Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) Opium and opiate, and any salts, compound, derivative, or preparation of opium or opiate excluding naloxone, dextrorphan, nalbuphine, naltrexone and apomorphine but including the following:

- (a) Raw opium;
- (b) Opium extracts;
- (c) Opium fluid extracts;
- (d) Powdered opium;
- (e) Granulated opium;
- (f) Tincture of opium;

- (g) Codeine;
- (h) Ethylmorphine;
- (i) Etorphine hydrochloride;
- (j) Hydrocodone;
- (k) Hydromorphone;
- (l) Metopon;
- (m) Morphine;
- (n) Oxycodone;
- (o) Oxymorphone;
- (p) Thebaine;
- (q) Alfentanil;
- (r) Oripavine.

(2) Any salt, compound derivative, or preparation thereof, which is chemically equivalent or identical with any of the substances referred to in Paragraph (1) of Subsection A of 16.19.20.66 NMAC, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include de-cocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

**C. STIMULANTS:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system. (See 16.19.21 NMAC- Drug Precursors)

- (1) Amphetamine, its salts, optical isomers and salts of its optical isomers.
- (2) Methamphetamine, its salts, isomers and salts of isomers.

- (3) Phenmetrazine and its salts.
- (4) Methylphenidate.
- (5) Lisdexamfetamine.

**D. DEPRESSANTS:** Unless specifically exempt or unless listed in another schedule any material, compound mixture or preparation which contains any quantity of the substance having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers is possible within the specific chemical designation.

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Glutethimide;
- (6) 1-phenylcyclohexylamine;
- (7) 1-piperidinocyclohexanecarbonitrile.

**E. HALLUCINOGENIC SUBSTANCES:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomers" includes the optical, positional, and geometric isomers):

- (1) Nabilone;
- (2) Phenylacetone (P2P, benzyl methyl ketone; methyl benzyl ketone).

**F. MISCELLANEOUS:**

- (1) Dihydroetorphine;
- (2) Bulk dextropropoxyphene;
- (3) Remifentanil.

### 16.19.20.67 SCHEDULE III:

Shall consist of drugs and other substances, by whatever official name, common or usual name designated listed in this section.

**A. NARCOTIC DRUGS:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of the following narcotic drugs, or any salts thereof.

(1) Not more than one and eight-tenths grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than one and eight-tenths grams of codeine per 100 milliliters or not more than 90 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than one and eight-tenths grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

**B. STIMULANTS:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system.

(1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant, amphetamine, phenmetrazine or methamphetamine previously exempt, for which the exemption was revoked by FDA Regulation Title 21, Part 308.13, and any other drug of the quantitative composition shown in that regulation for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine;

(3) Phendimetrazine;

(4) Chlorphentermine;

(5) Clortermine.

**C. DEPRESSANTS:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system.

(1) Any compound, mixture or preparation containing:

(a) Amobarbital;

(b) Secobarbital;

(c) Pentobarbital;

(d) Butalbital; or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(a) Amobarbital;

(b) Secobarbital;

(c) Pentobarbital; or any salt of any of these drugs approved by the FDA for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid.

(4) Chlorhexadol;

(5) Lysergic Acid;

- (6) Lysergic Acid Amide;
- (7) Methyprylon;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;
- (10) Sulfonmethane;
- (11) Telazol; Tiletamine/zolazepam;
- (12) Ketamine Hydrochloride.

(13) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug and Cosmetic Act.

(14) Embutramide;

(15) Dronabinol (synthetic) in sesame oil and encapsulated in soft gelatin capsules in a drug product approved by the U.S. food and drug administration.

(16) Perampanel.

**D. MISCELLANEOUS:**

- (1) Nalorphine (a narcotic drug);
- (2) Buprenorphine;
- (3) Clenbuterol.

**E. ANABOLIC STEROIDS:** The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth. Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances listed in this section:

- (1) Boldenone;
- (2) Chloro testosterone;
- (3) Clostebol;

- (4)** Dehydrochlormethyltestosterone;
- (5)** Dihydrotestosterone ;
- (6)** Drostanolone;
- (7)** Ethylestrenol;
- (8)** Fluoxymesterone;
- (9)** Formebolone;
- (10)** Mestanolone;
- (11)** Mesterolone;
- (12)** Methandienone;
- (13)** Methandranone;
- (14)** Methandriol;
- (15)** Methandrostenolone;
- (16)** Methenolone;
- (17)** Methyltrienolone;
- (18)** Methyltestosterone;
- (19)** Mibolerone;
- (20)** Nandrolone;
- (21)** Norbolethone;
- (22)** Norethandrolone;
- (23)** Oxandrolone;
- (24)** Oxymesterone;
- (25)** Oxymetholone;
- (26)** Stanolone;

- (27) Sanozolol;
- (28) Testolactone;
- (29) Testosterone;
- (30) Trenbolone; and

(31) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

**F. Exempt anabolic steroids:** Compounds, mixtures, or preparations that contain an anabolic steroid that have been exempted by the board from Subsection E of 16.19.20.67 NMAC, schedule III to the same extent that the substance has been exempted from the application of the Federal Controlled Substance Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.

[16.19.20.67 NMAC - Rp 16.19.20.67 NMAC, 06-26-2018]

#### **16.19.20.68 SCHEDULE IV:**

Shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

**A. DEPRESSANTS:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Alfaxalone;
- (2) Alprazolam;
- (3) Barbital;
- (4) Chloral Betaine;
- (5) Chloral Hydrate;
- (6) Chlordiazepoxide;
- (7) Clobazam;
- (8) Clonazepam;

- (9) Clorazepate;
- (10) Clotiazepam
- (11) Diazepam;
- (12) Estazolam;
- (13) Ethchlorvynol;
- (14) Ethinamate;
- (15) Flurazepam;
- (16) Fospropofol;
- (17) Halazepam;
- (18) Lorazepam;
- (19) Mebutamate;
- (20) Meprobamate;
- (21) Methohexital;
- (22) Methylphenobarbital;
- (23) Midazolam;
- (24) Oxazepam;
- (25) Paraldehyde;
- (26) Petrichloral;
- (27) Phenobarbital;
- (28) Prazepam;
- (29) Quazepam;
- (30) Remimazolam;
- (31) Suvorexant;

- (32) Temazepam;
- (33) Triazolam;
- (34) Brexanolone.

**B. LORCASERIN:** Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, positional, or geometric) and its salts, or such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin.

**C. STIMULANTS:** Unless specifically exempt or unless listed in another schedule any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Pemoline (including organometallic complexes and chelates thereon);
- (4) Pipradrol;
- (5) SPA ((-)-1-dimethyl amino-1,2-diphenylmethane);
- (6) Mazindol;
- (7) Cathine;
- (8) Fencamfamin;
- (9) Fenproporex;
- (10) Mefenorex;
- (11) Modafinil;
- (12) Sibutramine;
- (13) Solriamfetol;
- (14) Serdexmethylphenidate.

**D. OTHER SUBSTANCES:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (1) Dextropropoxyphene(Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane);
- (2) Pentazocine;
- (3) Carisoprodol;
- (4) Nalbuphine Hydrochloride;
- (5) Butorphanol Tartrate;
- (6) Dezocine;
- (7) Dichloralphenazone;
- (8) Zaleplon;
- (9) Zolpidem;
- (10) Eszopiclone;
- (11) Tramadol;
- (12) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers
- (13) Lemborexant;
- (14) Daridorexant

**E. NARCOTIC DRUG:** Unless specifically exempt or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof: Not more than one milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

**F. EXEMPTION OF CHLORAL:** When packaged in a sealed, oxygen-free environment, under nitrogen pressure, safeguarded against exposure to the air. Chloral when existing under the above conditions is a substance which is not intended for general administration to a human being or another animal, and contains no narcotic controlled substances and is packaged in such a form that the package quantity does not present any significant potential for abuse. All persons who engage in industrial

activities with respect to such chloral are subject to registration; but shall be exempt from Section 30-31-16 through 19 of the New Mexico Controlled Substances Act and 16.19.20.19 NMAC through 16.19.20.52 NMAC of the board of pharmacy regulations.

**G. EXEMPT COMPOUNDS:** Librax and Menrium are preparations which contain chlordiazepoxide, a depressant listed in schedule IV, Paragraph (6) of Subsection A of 16.19.20.68 NMAC and other ingredients in such combinations, quantity, preparation or concentration as to vitiate the potential for abuse of chlordiazepoxide, and are hereby exempt preparations.

- (1) Librax;
- (2) Menrium, 5-2;
- (3) Menrium, 4-5;
- (4) Menrium, 10-4.

[16.19.20.68 NMAC - Rp 16.19.20.68 NMAC, 6/26/2018; A, 9/14/2021; A, 6/13/2023]

#### **16.19.20.69 SCHEDULE V:**

**A.** Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (4) Not more than two and five-tenths milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- (6) Not more than five-tenths milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

**B. Stimulants.** Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers.

(1) Pyrovalerone.

(2) Pseudoephedrine as a drug that includes any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. Pursuant to 30-31-10.C the following substances are excluded from schedule V controlled substances: pseudoephedrine products in liquid form including liquid filled gel caps and pseudoephedrine products already classified as dangerous drugs.

**C. Depressants.** Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Lacosamide [(R)-2acetoamido-N-benzyl-3-methoxy-propionamide];

(2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid];

(3) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino-phenyl)]-carbamic acid ethyl ester];

(4) Brivaracetam;

(5) Cenobamate;

(6) Lasmiditan;

(7) Ganaxolone

[16.19.20.69 NMAC - Rp 16.19.20.69 NMAC, 6/26/2018; A, 12/17/2019, A, 12/15/2020; A, 9/14/2021; A, 6/13/2023]

#### **16.19.20.70 EXEMPT DANGEROUS DRUGS (PRESCRIPTION STATUS DRUGS):**

The drugs set forth in the *Federal DEA Table of Excepted Prescription Drugs* published in a separate volume under Code of Federal Regulations, Title 21, Chapter II, Part 1308.32 have been exempt by the New Mexico board of pharmacy. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exemption to the Federal DEA in order that a drug may be exempt by DEA and the New Mexico board of pharmacy.

[16.19.20.70 NMAC - Rp 16.19.20.70 NMAC, 06-26-2018]

## **PART 21: DRUG PRECURSORS**

### **16.19.21.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM.

[02-14-1889...02-15-96; 16.19.21.1 NMAC - Rn, 16 NMAC 19.21.1, 03-30-02; A, 01-15-2005]

### **16.19.21.2 SCOPE:**

All individuals and entities that manufacture, possess, transfer, or transport drug precursors.

[02-15-96; 16.19.21.2 NMAC - Rn, 16 NMAC 19.21.2, 03-30-02]

### **16.19.21.3 STATUTORY AUTHORITY:**

Pursuant to 30-31B-6 of the Drug Precursor Act, 30-31B-1 through 30-31-B-18 NMSA 1978, the Board of Pharmacy may promulgate regulations and charge reasonable fees relating to the licensing and control of the manufacture, possession, transfer and transportation of drug precursors. Section 30-31B-4 NMSA 1978 authorizes the Board to add substances to the list of precursors enumerated in the Drug Precursor Act.

[02-15-96; 16.19.21.3 NMAC - Rn, 16 NMAC 19.21.3, 03-30-02]

### **16.19.21.4 DURATION:**

Permanent.

[02-15-96; 16.19.21.4 NMAC - Rn, 16 NMAC 19.21.4, 03-30-02]

### **16.19.21.5 EFFECTIVE DATE:**

February 15, 1996, unless a different date is cited at the end of a Section or Paragraph. This Part reformatted for inclusion into the New Mexico Administrative Code (NMAC) effective 2-15-96.

[02-15-96, A, 04-30-98; 16.19.21.5 NMAC - Rn, 16 NMAC 19.21.5, 03-30-02]

### **16.19.21.6 OBJECTIVE:**

The objective of Part 21 of Chapter 19 is to protect the public health and welfare of the citizens of New Mexico by establishing effective controls against unlawful diversion of drug precursors.

[02-15-96; 16.19.21.6 NMAC - Rn, 16 NMAC 19.21.6, 03-30-02]

#### **16.19.21.7 DEFINITIONS:**

**[RESERVED]**

[02-15-96; 16.19.21.7 NMAC - Rn, 16 NMAC 19.21.7, 03-30-02]

#### **16.19.21.8 PERSONS REQUIRED TO REGISTER:**

A. The board shall license an applicant to manufacture, possess, transfer or transport drug precursors unless it determines that the issuance of that license would be inconsistent with the public interest. In determining the public interest, the board may consider the following factors:

- (1) maintenance of effective controls against diversion of drug precursors into other than legitimate medical, scientific or industrial channels;
- (2) compliance with applicable state and local law;
- (3) any conviction of the applicant under federal or state laws relating to any controlled substance or drug precursor;
- (4) past experience in the manufacture, possession, transfer or transportation of drug precursors and the existence in the applicant's establishment of effective controls against diversion;
- (5) furnishing by the applicant of false or fraudulent material in any application filed under the Drug Precursor Act or the Controlled Substances Act;
- (6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances or drug precursors as authorized by federal law; and
- (7) any other factors relevant to and consistent with the public health and safety.

B. Licensing under this section does not entitle a licensee to manufacture, possess, transfer or transport drug precursors other than those allowed in the license.

[03-07-80...08-27-90; 16.19.21.8 NMAC - Rn, 16 NMAC 19.21.8, 03-30-02; A, 01-15-2005; A, 01-31-07]

#### **16.19.21.9 REGISTRATION AND EXPIRATION DATE:**

A. Any person who is required to be registered under this part and who is not registered may apply for registration at any time.

B. The license for persons required to register under this part shall be renewed biennially before the last day of December.

[03-07-80...08-27-90; 16.19.21.9 NMAC - Rn, 16 NMAC 19.21.9, 03-30-02; A, 01-15-2005]

#### **16.19.21.10 REGISTRATION FEE:**

The registration fee or annual renewal fee required by the Drug Precursor Act shall be \$250.00 per year for a wholesaler, manufacturer, or distributor.

[03-07-80...08-27-90; 16.19.21.10 NMAC - Rn, 16 NMAC 19.21.10, 03-30-02; A, 01-15-2005; A, 01-31-07]

#### **16.19.21.11 APPLICATION FORMS:**

Application forms may be obtained from the Board of Pharmacy.

[03-07-80...08-27-90; 16.19.21.11 NMAC - Rn, 16 NMAC 19.21.11, 03-30-02]

#### **16.19.21.12 SEPARATE REGISTRATION OF EACH PRINCIPLE PLACE OF BUSINESS:**

Separate registration is required for each principle place of business or professional practice with the address indicated on the application if precursors are distributed from the different locations.

[03-07-80...08-27-90; 16.19.21.12 NMAC - Rn, 16 NMAC 19.21.12, 03-30-02]

#### **16.19.21.13 INFORMATION REQUIRED:**

Each application shall include all information as required on the application form and shall be signed by the applicant.

[03-07-80...08-27-90; 16.19.21.13 NMAC - Rn, 16 NMAC 19.21.13, 03-30-02]

#### **16.19.21.14 FACILITY INSPECTION:**

The board of pharmacy may direct the drug inspector to inspect the facilities prior to approval of any registration application filed under this part of any wholesaler, manufacturer, or distributor, for security provisions and other applicable standards as

required by the Drug Precursor Act or regulations passed by the board. A fee of \$150.00 must be submitted before such inspection of any wholesaler, manufacturer, or distributor.

[03-07-80...08-27-90; 16.19.21.14 NMAC - Rn, 16 NMAC 19.21.14, 03-30-02; A, 01-15-2005]

#### **16.19.21.15 PROCEDURE SUMMARY:**

A scientific investigator or research applicant shall submit a summary of procedures indicating the nature, extent and duration of such research. This summary shall include, but is not limited to, the names of individuals engaged in the project, the name or names of the precursor substances to be used, safeguards to be used against diversion, the source of supply of substances, record keeping and forms to be used in receipt, use, and destruction of precursor substances.

[03-07-80...08-27-90; 16.19.21.15 NMAC - Rn, 16 NMAC 19.21.15, 03-30-02]

#### **16.19.21.16 ANALYTICAL LABORATORIES:**

A. Analytical laboratory applicants shall submit application on the form provided by the Board. All applicable questions on the application shall be filled in and signed by the person in charge of the facility.

B. Quantities of drug precursors in possession of analytical laboratories shall be limited to such quantities as required for reference standards, assays, or other analytical scientific purposes.

[03-07-80...08-27-90; 16.19.21.16 NMAC - Rn, 16 NMAC 19.21.16, 03-30-02]

#### **16.19.21.17 EXEMPTION OF LAW ENFORCEMENT OFFICIALS:**

Registration is waived for the following persons:

A. Any officer or employee of the state or federal customs agency, the state police, or any enforcement officer of any political subdivision of the state, who is engaged in the enforcement of federal, state and local law relating to drug precursors and is duly authorized to possess drug precursors in the course of his official duties.

B. Any official exempted by this section may procure any drug precursor in the course of an inspection pursuant to any section of the Drug Precursor Act or in the course of any criminal investigation involving the person from whom the substance was procured.

C. Laboratory personnel, when acting in the scope of his official duties, are also exempt from registration under the Drug Precursor Act.

[03-07-80...08-27-90; 16.19.21.18 NMAC - Rn, 16 NMAC 19.21.18, 03-30-02]

**16.19.21.18 TRANSFER AND TERMINATION OF REGISTRATION:**

A. Registration shall terminate if and when a registrant dies, discontinues business or professional practice, has his professional license revoked or suspended, or changes his name or address as shown on the registration. In such instance, the registrant or his estate shall notify the Board of Pharmacy promptly of such fact and return certificate of registration to the Board.

B. Inventories and records of drug precursors shall be maintained separately from all other records or in such form that the information is readily retrievable from ordinary business records of the registrant.

C. In the event of a change in name or address, the registrant shall file an application in the same manner as an application for a new registration. No fee shall be required for such modification.

D. Registration under the Drug Precursor Act is not transferable.

[03-07-80...08-27-90; 16.19.21.18 NMAC - Rn, 16 NMAC 19.21.18, 03-30-02]

**16.19.21.19 INVENTORY RECORDS:**

All registrants are required to keep procurement records in a readily retrievable manner for 3 years.

[03-07-80...08-27-90; 16.19.21.19 NMAC - Rn, 16 NMAC 19.21.19, 03-30-02; A, 01-15-2005]

**16.19.21.20 ORDER FORMS (INVOICES) AS RECORDS:**

Order forms (invoices) for drug precursors shall be deemed proper records of receipt if the purchaser records on their copy the number of commercial or bulk containers furnished of each item, the date received and the name of person receiving the order.

[03-07-80...08-27-90; 16.19.21.20 NMAC - Rn, 16 NMAC 19.21.20, 03-30-02]

**16.19.21.21 PROCUREMENT RECORDS:**

Procurement records, and all other records, must be kept at the registered location and must be available for inspection.

[03-07-80...08-27-90; 16.19.21.21 NMAC - Rn, 16 NMAC 19.21.21, 03-30-02]

**16.19.21.22 REPORT OF LOSS OR THEFT OF A DRUG PRECURSOR:**

A significant loss or theft of a drug precursor shall be reported in writing to the Board of Pharmacy. "Significant loss" includes suspected diversions, in-transit losses or any other unexplained loss.

[03-07-80...08-27-90; 16.19.21.22 NMAC - Rn, 16 NMAC 19.21.22, 03-30-02]

#### **16.19.21.23 DISTRIBUTION RECORDS:**

All wholesaler, manufacturer, or distributor registrants shall include the following in distribution records for drug precursors under this part:

**A.** purchaser's name, address and telephone number, and drug precursor registration number or other license number issued by the board in lieu of a drug precursor registration number;

**B.** quantity purchased;

**C.** date supplied;

**D.** suppliers name, address, telephone number, and drug precursor registration number or other license number issued by the board in lieu of a drug precursor registration number;

**E.** distribution records must be retained for three (3) years.

[03-07-80...08-27-90; 16.19.21.23 NMAC - Rn, 16 NMAC 19.21.23, 03-30-02; A, 01-15-2005; A, 09-30-2005; A, 01-31-07]

#### **16.19.21.24 DISPOSITION OF DAMAGED, OUTDATED, OR UNWANTED DRUG PRECURSORS:**

Any registrant in possession of any drug precursor and desiring to dispose of such substance must abide by any applicable federal, state, local law or regulation for the destruction of such substance. This destruction must be witnessed by at least one law enforcement officer certified in the State of New Mexico. Appropriate records must be kept of the destruction.

[03-07-80...08-27-90; 16.19.21.24 NMAC - Rn, 16 NMAC 19.21.24, 03-30-02]

#### **16.19.21.25 DISTRIBUTION UPON TRANSFER OR DISCONTINUANCE OF BUSINESS:**

**A.** Upon transfer of a business from one owner to another, the owner may dispose of the drug precursors in the following manner:

(1) have the drug precursor destroyed as discussed in 16.19.21.24 NMAC;

(2) transfer the drug precursors to the new owner. All records required to be kept by the registrant-transferor with reference to the drug precursors being transferred shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

B. Upon discontinuance of business, if there are drug precursors which are not transferred to another registrant, these substances shall be handled as unwanted drug precursors under 16.19.21.24 NMAC.

[03-07-80...08-27-90; 16.19.21.25 NMAC - Rn, 16 NMAC 19.21.25, 03-30-02]

#### **16.19.21.26 SECURITY REQUIREMENTS:**

A. All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of drug precursors.

B. In evaluating the overall security system of a registrant or applicant, the following factors may be considered:

- (1) the type of activity;
- (2) the quantity of drug precursors;
- (3) the location of premises and the relationship such location plays on security needs;
- (4) the type of building construction of the facility and the general characteristic of the building;
- (5) the adequacy of key control systems and/or lock control systems;
- (6) the extent of unsupervised public access to the facility;
- (7) the adequacy of supervision over employees having access to storage and distribution areas;
- (8) the process for handling business guests, visitors, maintenance personnel, and non-employee service personnel;
- (9) the adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution and disposition of drug precursors in its' operation.

[03-07-80...08-27-90; 16.19.21.26 NMAC - Rn, 16 NMAC 19.21.26, 03-30-02]

**16.19.21.27 HEARINGS, DENIAL OF REGISTRATION, REVOCATION OR SUSPENSION OF REGISTRATION:**

Proceedings to suspend or revoke a registration or to refuse renewal of a registration shall be held pursuant to the Uniform Licensing Act.

[03-07-80...08-27-90; 16.19.21.27 NMAC - Rn, 16 NMAC 19.21.27, 03-30-02]

**16.19.21.28 ADMINISTRATIVE INSPECTION - DEFINED:**

Administrative inspection means: the inspection of any place where registrants are permitted to hold, manufacture, compound, process, sell, deliver, transport, or otherwise dispose of any drug precursors. When authorized by an administrative inspection warrant, the inspector may:

- A. inspect and copy records required by the Drug Precursor Act;
- B. inspect the restricted area and all pertinent equipment, all containers, substances, and labeling found at the controlled area;
- C. make a physical inventory of the specific items or all drug precursors on hand at the premises;
- D. collect samples, if applicable;
- E. check records and information of distribution of substances by the registrant as they relate to total distribution;
- F. examination of records, invoices, appropriate for verification of the records or otherwise bearing on the provisions of the Drug Precursor Act.

[03-07-80...08-27-90; 16.19.21.28 NMAC - Rn, 16 NMAC 19.21.28, 03-30-02]

**16.19.21.29 VOLUNTARY CONSENT TO INSPECTION:**

The Board inspector will ask the registrant to voluntarily consent to the inspection. He will inform the registrant of his constitutional rights to an inspection warrant. However, if the registrant consents to inspection without warrant, the inspector will obtain a signed consent waiver statement from the registrant before proceeding with an accountability audit or inspection.

[03-07-80...08-27-90; 16.19.21.29 NMAC - Rn, 16 NMAC 19.21.29, 03-30-02]

**16.19.21.30 WRITTEN CONSENT:**

- A. The written consent shall contain the following information:

- (1) that the owner, or agent in charge of the premises has been informed of his constitutional rights not to have an administrative inspection made without an administrative inspection warrant;
- (2) of his right to refuse to consent to such an inspection;
- (3) of the possibility that anything of an incriminating nature which may be found may be seized and used against him in a Board hearing or a criminal prosecution;
- (4) that he had been presented with a notice of inspection;
- (5) that the consent given by him is voluntary and without threats of any kind;  
and
- (6) that he may withdraw his consent at any time during the course of inspection.

B. Written consent shall be produced in duplicate and one copy shall be retained by the person being inspected and one copy shall be retained by the inspector for filing in the Board office.

[03-07-80...08-27-90; 16.19.21.30 NMAC - Rn, 16 NMAC 19.21.30, 03-30-02]

#### **16.19.21.31 ADMINISTRATIVE WARRANT:**

A. A copy of the administrative warrant need not be given to the registrant unless items are seized or confiscated.

B. To serve the warrant, all that is required, is to announce possession of it, the contents of the warrant need not e stated to the person upon whom the warrant is served.

[03-07-80...08-27-90; 16.19.21.31 NMAC - Rn, 16 NMAC 19.21.31, 03-30-02]

#### **16.19.21.32 CONSENT:**

Unless the person in charge of the premises so consents in writing, these regulations shall not extend to financial data; pricing data; or sales data other than shipping dates.

[03-07-80...08-27-90; 16.19.21.32 NMAC - Rn, 16 NMAC 19.21.32, 03-30-02]

#### **16.19.21.33 ADMINISTRATIVE WARRANT - NOT REQUIRED:**

An administrative warrant shall not be required for a new facility applying for initial registration under the Drug Precursor Act, or in any situation where a warrant is not constitutionally required.

[03-07-80...08-27-90; 16.19.21.33 NMAC - Rn, 16 NMAC 19.21.33, 03-30-02]

**16.19.21.34 ADMINISTRATIVE WARRANT - REFUSAL:**

If a registrant or any person subject to the Drug Precursor Act refuses to permit execution of an administrative warrant or impedes the inspection in the execution of that warrant, he shall be advised that such refusal or action constitutes a violation of the Drug Precursor Act.

[03-07-80...08-27-90; 16.19.21.34 NMAC - Rn, 16 NMAC 19.21.34, 03-30-02]

**16.19.21.35 CONTROLLED SUBSTANCE PRECURSORS:**

The following substances are designated as immediate precursors used in the manufacture of controlled substances:

- A. phenyl acetone;
- B. ephedrine;
- C. phenyl-2-propanone;
- D. norephedrine;
- E. ethyl-1-methyl butyl diethyl malonate;
- F. allyl-1-methyl butyl diethyl malonate;
- G. hydroxyindole;
- H. 3,4,5-trimethoxybenzyl cyanide;
- I. 3,4,5-trimethoxybenzyl alcohol;
- J. 3,4,5-trimethoxyphenylacetone nitrile;
- K. 3,4,5-trimethoxybenzoic acid amide;
- L. 4-benzyloxyindole;
- M. 4-chloro indole;
- N. indole;
- O. tryptophol;

P. 3-indole glyoxylic acid;

Q. 3-indole glyoxylic acid ethyl ester;

R. lysergic acid;

S. lysergic acid amide;

T. ergotamine tartrate;

U. 1-phenyl cyclohexylamine;

V. 1-piperidinocyclohexanecarbonitrile;

W. pseudoephedrine as a substance in a form not approved in 26-1-14 NMSA;

X. methylamine;

Y. methylformamide

Z. phenylacetic acid;

AA. anhydrous ammonia:

(1) a person shall not possess any amount of anhydrous ammonia;

(2) a person must store anhydrous ammonia in a container approved for the transport of anhydrous ammonia;

(3) the provisions of this section do not apply to a:

(a) person who is actively operating land used for agricultural purposes;

(b) retail distributor;

(c) wholesaler;

(d) manufacturer;

(e) warehouseman;

(f) common carrier; or

(g) person engaged in the regular course of conducting a lawful business;

BB. red phosphorous;

CC. iodine matrix, a retail distributor registrant, pharmacy, hospital, clinic may not sell more than 2 ounces of iodine matrix in a single transaction;

DD. crystal iodine, a retail distributor registrant, pharmacy, hospital, clinic may not sell more than 2 ounces of iodine crystals in a single transaction.

[03-07-80...08-27-90; 16.19.21.35 NMAC - Rn, 16 NMAC 19.21.35, 03-30-02; A, 12-01-03; A, 01-15-2005; A, 01-31-07

## **PART 22: SUPPORT PERSONNEL AND PHARMACY TECHNICIANS**

### **16.19.22.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.22.1 NMAC - Rp, 16 NMAC 19.22.1, 6/27/2001; A, 11/15/2010; A, 11/30/2021]

### **16.19.22.2 SCOPE:**

All Pharmacy technicians and non-technicians supportive personnel, supervising pharmacists and pharmacists in charge of entities that utilize supportive personnel.

[16.19.22.2 NMAC - Rp, 16. NMAC 19.22.2, 06-27-01]

### **16.19.22.3 STATUTORY AUTHORITY:**

Subsection A of Section 61-11-6 NMSA 1978 authorizes the Board of pharmacy to register and regulate qualifications, training and permissible activities of pharmacy technicians.

[16.19.22.3 NMAC - Rp, 16 NMAC 19.22.3, 6/27/2001; A, 11/30/2021]

### **16.19.22.4 DURATION:**

Permanent.

[16.19.22.4 NMAC - Rp, 16 NMAC 19.22.4, 06-27-01]

### **16.19.22.5 EFFECTIVE DATE:**

June 27, 2001, unless a later date is cited at the end of a section.

[16.19.22.5 NMAC - Rp, 16 NMAC 19.22.5, 06-27-01]

### **16.19.22.6 OBJECTIVE:**

The objective of Part 22 of Chapter 19 is to promote responsive delivery of pharmaceutical products and services to the public by establishing standards for training and supervision of support personnel and limitations on their use.

[16.19.22.6 NMAC - Rp, 16 NMAC 19.22.6, 06-27-01]

#### **16.19.22.7 DEFINITIONS:**

**A. "Direct supervision"** means that the pharmacist onsite shall observe and direct to a degree sufficient to assure the accurate completion of the activities of the pharmacy technicians and must provide a final check of all aspects of the prepared product and document the final check before dispensing.

**B. "Indirect supervision"** means that the pharmacist offsite shall observe via live surveillance cameras and direct pharmacy activity remotely via remote tele-pharmacy communication technology to a degree sufficient to assure the accurate completion of the activities of the pharmacy technicians and must provide a final check of all aspects of the prepared product and document the final check before dispensing.

**C. "Pharmacy technician"** means a person who, under the supervision of a licensed pharmacist, performs repetitive tasks not requiring the professional judgment of a pharmacist. This includes assisting in various technical activities associated with the preparation and distribution of medications.

**(1) "Certified pharmacy technician"** means a pharmacy technician who has completed the training and certification outlined in 16.19.22.9 NMAC, completed a board approved certification exam, is registered by the board of pharmacy and maintains current board approved certification.

**(2) "Non-certified pharmacy technician"** means a pharmacy technician who is in the process of completing the training and education outlined in 16.19.22.9 NMAC and is registered by the board of pharmacy.

**(3) "Remote pharmacy technician"** means a certified pharmacy technician who meets the special requirements for indirect supervision at a remote dispensing site as specified in the board of pharmacy tele-pharmacy regulations.

**D. "Prescription drug"** means and human drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

**E. "Professional judgment"** means a cognitive process, by a licensed professional, that takes education, experience, current primary literature and current standards of practice into consideration when drawing conclusions and reaching decisions.

**F. "Stocking"** means placing prescription drugs on pharmacy shelf, in bin or dispensing technology system.

**G. "Supervision"** means that the pharmacist shall observe and direct to a sufficient degree to assure the accurate completion of the activities of the pharmacy technicians and must provide a final check of all aspects of the prepared product and document the final check before dispensing.

**H. "Support personnel"** means pharmacy personnel other than pharmacy technicians, which may include clerks, secretary's and delivery personnel, who under the supervision of a pharmacist, may perform duties associated with the practice of pharmacy, excluding the direct processing and filling of prescriptions, stocking prescription drugs, in sites that do not utilize a barcode verification, electronic verification or similar verification process to ensure correct selection of medication or duties restricted to only a pharmacist, pharmacist intern, or pharmacy technician.

**I. "Technician training sponsor"** means pharmacist-in-charge, pharmacist or designated administrator at a pharmacy technician training program who assumes responsibility for training and duties performed by a non-certified technician.

[16.19.22.7 NMAC - Rp, 16 NMAC 19.22.7, 06-27-01; A, 11-15-10; A, 11-27-11; A, 06-29-13]

#### **16.19.22.8 PERMISSIBLE ACTIVITIES:**

Pharmacy technician activities under the direct supervision of a pharmacist shall be limited to tasks enumerated in policies and procedures implemented by the pharmacist-in-charge that do not require professional judgment.

[16.19.22.8 NMAC - Rp, 16 NMAC 19.22.8, 06-27-01; A, 11-15-10]

#### **16.19.22.9 TRAINING AND EDUCATION:**

**A.** The pharmacist-in-charge shall ensure that the pharmacy technician has completed initial training which includes:

(1) federal and state laws and regulations that affect pharmacy practice; specific regulations which address the use of supportive personnel and technicians;

(2) ethical and professional standards of practice;

(3) medical and pharmaceutical terminology, symbols and abbreviations used in the practice of pharmacy and components of a prescription;

(4) pharmaceutical calculations necessary for the preparation and dispensing of drug products;

(5) manufacturing, preparation, packaging, labeling and proper storage of drug products;

(6) dosage forms and routes of administration; and

(7) trade and generic names for medications frequently dispensed by the pharmacy;

(8) basic comprehension of pharmacology;

(9) basic knowledge of appropriate pharmacy references.

**B.** If the duties of the technician will include the preparation of sterile products then, in addition to the training and education requirements listed in this section, the technician will complete training outlined in Subsection C of 16.19.36.13 NMAC.

**C.** A written record of training and education will be maintained by the pharmacy technician and contain the following:

(1) name of person receiving the training;

(2) date(s) of the training;

(3) description of the topics covered;

(4) names of the person(s) who provided the training; and

(5) signature of the technician and the technician training sponsor.

**D.** A written record of training and education must be submitted to the board with certification exam documentation to obtain certified pharmacy technician registration.

**E.** All technicians are required to obtain board approved certification within one year of registration with the board as a technician. Extensions will no longer be granted to pharmacy technicians registered on or after November 15, 2010.

**F.** The pharmacist-in-charge shall be responsible for the implementation of policies and procedures for additional training appropriate to duties and responsibilities performed by a pharmacy technician as well as an ongoing quality assurance plan to assure competency.

[16.19.22.9 NMAC - Rp, 16 NMAC 19.22.9, 06-27-01; A, 11-15-10; A, 11-27-11; A, 06-08-16]

**16.19.22.10 RATIO OF TECHNICIANS TO PHARMACISTS:**

**A.** The permissible ratio of pharmacy technicians to pharmacists on duty is to be determined by the pharmacist in charge.

**B.** The board reserves the right to impose a ratio of pharmacy technicians to pharmacists if circumstances so dictate.

[16.19.22.10 NMAC - Rp, 16 NMAC 19.22.10, 06-27-01; A, 06-29-13]

#### **16.19.22.11 IMPROPER ACTIVITIES OF PHARMACY TECHNICIANS:**

**A.** The supervising pharmacist and the pharmacist-in-charge are responsible for the actions of pharmacy technicians. Performance of tasks by the pharmacy technician and support personnel outside the limits of the regulations that are authorized by the supervising pharmacist shall constitute unprofessional conduct on the part of the pharmacist and the pharmacist-in-charge.

**(1)** The following responsibilities require the use of professional judgment and therefore shall be performed only by a pharmacist or pharmacist intern:

**(a)** receipt of all new verbal prescription orders and reduction to writing;

**(b)** evaluation and interpretation of the prescription order and any necessary clinical clarification prior to dispensing;

**(c)** clinical consultation with a patient or his agent regarding a prescription or over-the-counter drug;

**(d)** evaluation of available clinical data in patient medication record system;

**(e)** oral communication with the patient or patient's agent of information, as defined in the section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;

**(f)** professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized agent regarding a patient and any medical information pertaining to the prescription.

**(2)** ONLY A PHARMACIST SHALL PERFORM THE FOLLOWING DUTIES:

**(a)** final check on all aspects of the completed prescription including sterile products and cytotoxic preparations, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container;

**(b)** evaluation of pharmaceuticals for formulary selection within the facility;

(c) supervision of all pharmacy technicians and support personnel activities including preparations, mixing, assembling, packaging, labeling and storage of medication;

(d) ensure the pharmacy technicians and support personnel have been properly trained for the duties they may perform;

(e) any verbal communication with a patient or patient's representative regarding a change in drug therapy or performing therapeutic interchanges (i.e. drugs with similar effects in specific therapeutic categories); this does not apply to substitution of generic equivalents;

(f) any other duty required of a pharmacist by any federal or state law.

**B.** In accordance with section 61-11-20 NMSA 1978 a pharmacy technicians registration may be revoked, denied, or suspended for grounds stated in section 61-11-20(A).

[16.19.22.11 NMAC - Rp, 16 NMAC 19.22.11, 06-27-01; A, 11-15-10]

#### **16.19.22.12 IDENTIFICATION OF PHARMACY PERSONNEL:**

All personnel in pharmacy restricted area shall wear an identification badge which must include name and job title.

[16.19.22.12 NMAC - Rp, 16 NMAC 19.22.12, 06-27-01]

#### **16.19.22.13 (RESERVED)**

[16.19.22.13 NMAC - Rp, 16 NMAC 19.22.13, 06-27-01]

#### **16.19.22.14 REGISTRATION OF PHARMACY TECHNICIANS:**

**A.** Application (and required registration fee) shall be submitted to the board prior to performing any technician duties. Non-certified pharmacy technicians must:

(1) Complete requirements for certified pharmacy technician within (1) one year of original application.

(2) Not re-apply with the board of pharmacy as a non-certified pharmacy technician unless enrolled in a board recognized technician training program.

(3) Provide the name of the technician training sponsor responsible for training and education with application.

**(4)** Provide documentation of training and completion of certification exam to be registered as a certified pharmacy technician.

**B.** Registration for certified pharmacy technicians will expire biennially on the last day of their birth month and must be renewed prior to expiration. Registration renewal applications must include documentation of current national certification.

[16.19.22.14 NMAC - Rp, 16 NMAC 19.22.14, 06-27-01; A, 11-15-10; A, 06-29-13]

#### **16.19.22.15 CHANGE OF ADDRESS:**

Pharmacy technicians shall report in writing or through the online process available on the board's website of any change of address or employment to the board within ten (10) days.

[16.19.22.15 NMAC - Rp, 16 NMAC 19.22.15, 06-27-01; A, 11-15-10]

#### **16.19.22.16 PHARMACY TECHNICIAN ADMINISTRATION OF VACCINES:**

A certified pharmacy technician may administer vaccines prescribed by and under the direct supervision of a New Mexico licensed pharmacist with current immunization prescriptive authority "qualified pharmacist," if all requirements of this section are met.

##### **A. Training and education:**

**(1)** The pharmacy technician must successfully complete an accreditation council for pharmacy education (ACPE) accredited immunization certification course for pharmacy technicians. This training must include study materials, hands-on injection technique, and the recognition and treatment of emergency reactions to vaccines. Pharmacy technicians who successfully completed said training prior to the enactment date of this section will be grandfathered.

**(2)** The pharmacy technician must complete and maintain current basic life support/cardiopulmonary resuscitation (BLS/CPR) certification.

**(3)** Continuing Education: Any pharmacy technician engaging in administration of vaccines shall complete a minimum of 0.2 CEU of ACPE accredited vaccine related continuing education during each registration period.

##### **B. Competency assurance:**

**(1)** The pharmacist-in-charge is responsible for ensuring that the technician has completed the required training; and possesses the knowledge, skills and abilities to appropriately engage in vaccine administration.

(2) The pharmacist-in-charge is responsible for developing, implementing and maintaining proper policies and procedures, which must include training and competency oversight to ensure compliance with the requirements of this section. Such procedures shall include an initial observation by a qualified pharmacist to ensure proper administration technique.

(3) The pharmacist-in-charge and technician are responsible for maintaining training and education documentation.

**C. Oversight and activities:**

(1) While the pharmacy technician may draw up the vaccine into a syringe, the supervising qualified pharmacist is responsible for final verification.

(2) The qualified pharmacist must provide patient counseling, as appropriate.

(3) The identity of the pharmacy technician who administered each dose of vaccine will be documented. The qualified pharmacist is responsible for ensuring proper documentation.

(4) Supervision: A qualified pharmacist may not supervise more than two pharmacy technicians administering vaccines in a pharmacy setting. A pharmacist whose duties are dedicated to vaccination (e.g. vaccination clinic) may not supervise more than six qualified pharmacy technicians administering vaccines at one time. It is the responsibility of the pharmacist in charge to ensure adequate staffing levels for duties performed.

**D.** All records required under this section shall be readily available for inspection and produced to the board or the board's agent upon request.

[16.19.22.16 NMAC – N, 11/30/2021]

## **PART 23: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

### **16.19.23.1 ISSUING AGENCY:**

New Mexico Board of Pharmacy.

[10-14-95; 16.19.23.1 NMAC - Rn, 16 NMAC 19.23.1, 03-30-02; A, 06-15-12]

### **16.19.23.2 SCOPE:**

All persons subject to licensure or registration by the board of pharmacy.

[10-14-95; 16.19.23.2 NMAC - Rn, 16 NMAC 19.23.2, 03-30-02; A, 06-15-12]

### **16.19.23.3 STATUTORY AUTHORITY:**

Section 61-11-6(A)(1) of the Pharmacy Act directs the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act after hearings open to the public. The board adopts part 23 of Chapter 19 pursuant to the Parental Responsibility Act (NMSA 1978, Sections 40-5A-1 through 40-5A-13, Ch. 25, Laws of 1995), that requires all professional licensing boards to promulgate rules and regulations to implement the Parental Responsibility Act.

[10-14-95, A, 04-30-98; 16.19.23.3 NMAC - Rn, 16 NMAC 19.23.3, 03-30-02; A, 06-15-12]

### **16.19.23.4 DURATION:**

Permanent.

[10-14-95; 16.19.23.4 NMAC - Rn, 16 NMAC 19.23.4, 03-30-02]

### **16.19.23.5 EFFECTIVE DATE:**

October 14, 1995, unless a later date is cited at the end of a Section or Paragraph.

[10-14-95, A, 04-30-98; 16.19.23.5 NMAC - Rn, 16 NMAC 19.23.5, 03-30-02]

### **16.19.23.6 OBJECTIVE:**

The objective of part 23 of Chapter 19 is to ensure compliance with the Parental Responsibility Act by all persons licensed by, registered with, applying for licensure or registration from, the board of pharmacy.

[10-14-95; 16.19.23.6 NMAC - Rn, 16 NMAC 19.23.6, 03-30-02; A, 06-15-12]

### **16.19.23.7 DEFINITIONS:**

**A. "Applicant"** means an individual seeking a license or registration issued by the board of pharmacy pursuant to either the Pharmacy Act, Controlled Substance Act or Drug Precursor Act.

**B. "HSD"** means the New Mexico Human Services Department.

**C. "License"** means a license or registration issued to an individual by the board of pharmacy pursuant to either the Pharmacy Act, Controlled Substance Act or Drug Precursor Act.

**D. "Licensee"** means an individual holding any license issued by the board of pharmacy or an individual registrant holding any registration issued by the board of pharmacy.

**E. "Statement of compliance"** means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support.

**F. "Statement of non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[10-14-95; 16.19.23.7 NMAC - Rn, 16 NMAC 19.23.7, 03-30-02; A, 06-15-12]

#### **16.19.23.8 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the board:

- A.** shall deny an application for a license;
- B.** shall deny the renewal of a license; and
- C.** has grounds for suspension or revocation of the license.

[10-14-95; 16.19.23.8 NMAC - Rn, 16 NMAC 19.23.8, 03-30-02]

#### **16.19.23.9 CERTIFIED LIST:**

HSD shall provide the board with a certified list of obligors not in compliance with a judgement and order for child support on a monthly basis. The board shall report to HSD the names of applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

[10-14-95; 16.19.23.9 NMAC - Rn, 16 NMAC 19.23.9, 03-30-02; A, 06-15-12]

#### **16.19.23.10 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the board shall:

- A.** Commence a formal proceeding under section 11 of part 23 to take the appropriate action under section 8 of part 23; or
- B.** For current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD by the earlier of the application for license renewal

or a specified date not to exceed sixty (60) days. If the licensee fails to provide this statement, the board shall commence a formal proceeding under section 11 of part 23.

[10-14-95; 16.19.23.10 NMAC - Rn, 16 NMAC 19.23.10, 03-30-02; A, 06-15-12]

#### **16.19.23.11 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in section 8 of part 23, the board shall serve upon the applicant or licensee a written notice stating that:

**A.** The board has grounds to take such action, and that the board shall take such action unless the licensee or applicant:

**(1)** mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

**(2)** provides the board, within thirty (30) days of the date of the notice, with a statement of compliance from HSD; and

**B.** If the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

[10-14-95; 16.19.23.11 NMAC - Rn, 16 NMAC 19.23.11, 03-30-02; A, 06-15-12]

#### **16.19.23.12 EVIDENCE AND PROOF:**

In a hearing under this section, relevant evidence is limited to the following:

**A.** a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under section 8 of part 23, unless

**B.** the applicant or licensee provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this part.

[10-14-95; 16.19.23.12 NMAC - Rn, 16 NMAC 19.23.12, 03-30-02; A, 06-15-12]

#### **16.19.23.13 ORDER:**

When a disciplinary action is taken under part 23 solely because the applicant or licensee is not in compliance with a judgment and order for support, the board's order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

[10-14-95; 16.19.23.13 NMAC - Rn, 16 NMAC 19.23.13, 03-30-02; A, 06-15-12]

**16.19.23.14 PROCEDURES:**

Proceedings under this part shall be governed by the Uniform Licensing Act, NMSA 1978, Section 61-1-1 through 61-1-31.

[10-14-95; 16.19.23.14 NMAC - Rn, 16 NMAC 19.23.14, 03-30-02; A, 06-15-12]

**PART 24: EMERGENCY MEDICAL SERVICES - DANGEROUS DRUGS**

**16.19.24.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[12-15-99; 16.19.24.1 NMAC - Rn, 16 NMAC 19.24.1, 03-30-02]

**16.19.24.2 SCOPE:**

All Emergency Medical Services Providers (EMS) that operate in the State and administer drugs. Other rules applying to EMS drug use are found in 7.27.3 NMAC.

[12-15-99; 16.19.24.2 NMAC - Rn, 16 NMAC 19.24.2, 03-30-02]

**16.19.24.3 STATUTORY AUTHORITY:**

Section 61-11-6(A) NMSA 1978 requires the Board of Pharmacy to provide for the licensing of EMSs and for the inspection of their facilities and activities. Pursuant to 61-11-14(B) 11 the Board is authorized to issue licenses for EMSs. Section 26-1-16(A) NMSA 1978 prohibits the sale, disposal, or possession of any dangerous drug except by individuals and entities identified in the statute.

[12-15-99; 16.19.24.3 NMAC - Rn, 16 NMAC 19.24.3, 03-30-02]

**16.19.24.4 DURATION:**

Permanent.

[12-15-99; 16.19.24.4 NMAC - Rn, 16 NMAC 19.24.4, 03-30-02]

**16.19.24.5 EFFECTIVE DATE:**

December 15, 1999, unless a later date is cited at the end of a Section.

[12-15-99; 16.19.24.5 NMAC - Rn & A, 16 NMAC 19.24.5, 03-30-02]

**16.19.24.6 OBJECTIVE:**

To ensure the safe and competent maintenance, and administration of drugs by EMS.

[12-15-99; 16.19.24.6 NMAC - Rn, 16 NMAC 19.24.6, 03-30-02]

**16.19.24.7 DEFINITIONS:**

All terms defined in the Pharmacy Act or elsewhere in the Board regulations shall have the same meanings in this regulation unless otherwise defined as follows:

**A.** "Emergency Medical Service" or "EMS" refers to an organization which: transports patients and/or in which patient care is delivered off-site primarily by mobile units in which one or more licensed practitioners assesses or diagnose and treat patients; and in which drugs are stored, distributed, dispensed, or administered for patient treatment.

**B.** "In Use" means when dangerous drugs and controlled substances are removed from the principle place of business' stored inventory and placed in jump kits or mobile units for emergency use.

**C.** "Jump Kit" means portable carrying devices that contain emergency medical supplies and drugs.

**D.** "Location" refers to any sites which are part of the EMS's operations, including its headquarters, stations, vehicle bays, docks, or hangars. This can include the mobile units or the practitioner's jump kits.

**E.** "Medical Director" means a physician who is responsible for all aspects of patient care of an EMS as defined in NMSA 24 10 B(3).

**F.** "Mobile Unit" means to a vehicle such as an ambulance, rescue or fire truck; boat or ship; or aircraft.

**G.** "Practitioner" refers to a licensee under the laws and regulations who is an employee or contractee of an EMS and is authorized to assess or diagnose patients, and to dispense drugs for emergency treatment. They may include physicians, physician's assistants, nurses, and/or emergency medical technicians/paramedics.

**H.** "Principle Place of Business" refers to any site's which are part of the EMS's operations, including its headquarters, stations, vehicle bays, docks, or hangars where dangerous drugs and/or controlled substances are stored, but does not include dangerous drugs or controlled substances "in use".

[12-15-99; 16.19.24.7 NMAC - Rn, 16 NMAC 19.24.7, 03-30-02; A 11-30-04]

**16.19.24.8 MEDICAL DIRECTOR:**

**A.** The Medical Director shall specify the dangerous drugs to be used in such service.

**B.** The Medical Director shall develop protocols for use of medical procedures and dangerous drugs.

[12-15-99; 16.19.24.8 NMAC - Rn, 16 NMAC 19.24.8, 03-30-02]

**16.19.24.9 ADDITIONAL REGISTRATIONS:**

In order to purchase and stock any controlled substance, the EMS must obtain separate Drug Enforcement Administration (DEA) and state of New Mexico controlled substance registrations to be issued under the name of the service.

[12-15-99; 16.19.24.9 NMAC - Rn, 16 NMAC 19.24.9, 03-30-02]

**16.19.24.10 CONSULTANT PHARMACIST:**

Any EMS licensed by the Board is required to have a consultant pharmacist as defined in 16 NMAC 19.4.11. In addition, the consultant pharmacist shall:

**A.** review all instances in which controlled substances were used, and review all or a sample of instances in which other drugs were used, at least every 90 days;

**B.** report in writing any exceptions to the Medical Director and the chief executive within 24 hours upon learning of same;

**C.** otherwise make a written report to the Medical Director and chief executive at least annually on the EMS's drug handling practices, including corrective action taken on exception; and

**D.** such reports shall be available for review by the Board upon request.

**E.** the consultant pharmacist will develop policies and procedures for EMS regarding the following:

(a) functions of consultant pharmacist;

(b) formulary;

(c) security of drugs;

- (d) equipment;
- (e) universal precautions;
- (f) licensing;
- (g) drug storage;
- (h) packaging and repackaging;
- (i) distribution records;
- (j) document use of expired drugs for training;
- (k) administration and/or patient care records;
- (l) storage of drugs in jump kits;
- (m) drug destruction and records;
- (n) drug and device procurement;
- (o) receipt of drugs and devices;
- (p) delivery of drugs and devices;

(q) designate items to be included in jump kits, define par levels of drugs, storage conditions and locations where the jump kits are in use.

[12-15-99; 16.19.24.10 NMAC - Rn, 16 NMAC 19.24.10, 03-30-02]

#### **16.19.24.11 STORAGE OF DANGEROUS DRUGS BY EMS:**

**A.** All dangerous drugs must be stored with appropriate security to limit access when authorized personnel are not present. Extra precautions shall be provided for security of controlled substances.

**B.** Jump kits shall be kept in the possession of a licensed emergency practitioner or in a locked compartment of a mobile unit when not in use.

**C.** Jump kits shall be stored in the facility if the mobile unit is parked outside of a secure vehicle bay.

**D.** Drugs shall be stored in an area: providing proper ventilation, lighting, and temperature controls as specified by the drug manufacturer.

E. Drugs that are outdated or which have been exposed to adverse conditions shall be segregated from the inventory and held for disposition by the consultant pharmacist.

[12-15-99; 16.19.24.11 NMAC - Rn, 16 NMAC 19.24.11, 03-30-02]

**16.19.24.12 ADMINISTRATION OF DANGEROUS DRUGS BY EMS:**

A. EMS drug administration shall be limited to drugs currently authorized by scopes of practice for EMS personnel. Each licensee shall provide a formulary to the Board on an annual basis or as changes occur.

B. EMS shall keep an up to date record in readily retrievable format for review by the Board, indicating the following information for the administration of all dangerous drugs;

- (1) date of administration;
- (2) name of patient;
- (3) drug name and dosage administered;
- (4) name of physician responsible for the order, if by other than the Medical Director's protocols;
- (5) name of EMS personnel administering the drug or drugs.

C. EMS shall keep SCHEDULE II controlled substances administration and receipt records separately from other drug records.

D. EMS may keep SCHEDULE III - V controlled substances receipt and administration records in the same record in which dangerous drugs are recorded, provided a mechanism is employed to identify these records (such as a red "C" marked in the margin of these entries).

E. All drug receipt and administration records must be readily retrievable and retained for a period of at least three years.

[12-15-99; 16.19.24.12 NMAC - Rn 16 NMAC 19.24.12, 03-30-02]

**16.19.24.13 EMS LICENSURE FEES:**

Fees for initial and renewal applications are listed in 16.19.12.15.1.4 NMAC.

[12-15-99; 16.19.24.13 NMAC - Rn 16 NMAC 19.24.13, 03-30-02]

**16.19.24.14 TRAINING FACILITIES:**

**A.** EMS Training facilities. Injury Prevention and EMS Bureau of the Department of Health will be licensed by the Board.

**B.** Pre-licensing inspections and fees for licensure will be waived.

**C.** EMS Training Facilities will conduct periodic (no less that quarterly) inventories of dangerous drugs.

**D.** Other than 16.19.24.14.1 NMAC and 16.19.24.14.3 NMAC regarding EMS will not apply to these training facilities.

[16.19.24.14 NMAC - N, 03-30-02]

## **PART 25: ADVERSE DRUG EVENT**

### **16.19.25.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM, (505) 841-9102.

[16.19.25.1 NMAC - N, 03-30-02]

### **16.19.25.2 SCOPE:**

All persons or entities that dispense, administer, deliver or conduct research using dangerous drugs.

[16.19.25.2 NMAC - N, 03-30-02]

### **16.19.25.3 STATUTORY AUTHORITY:**

Section 61-11-2 DD defines significant adverse drug event. Section 61-11-18.1 NMSA 1978 authorizes the Board of pharmacy to promulgate regulations regarding the prevention and reporting of significant adverse drug events.

[16.19.25.3 NMAC - N, 03-30-02]

### **16.19.25.4 DURATION:**

Permanent.

[16.19.25.4 NMAC - N, 03-30-02]

### **16.19.25.5 EFFECTIVE DATE:**

March 30, 2002, unless a later date is cited in the history note at the end of a section.

[16.19.25.5 NMAC - N, 03-30-02]

**16.19.25.6 OBJECTIVE:**

The objective of Part 25 of Chapter 19 is to protect the health and welfare of the citizens of the State of New Mexico against significant adverse drug events.

[16.19.25.6 NMAC - N, 03-30-02]

**16.19.25.7 DEFINITIONS:**

A. "Significant Adverse Drug Event" means a drug related incident that results in harm to the patient.

B. "Incident" means a drug that is dispensed in error, that is administered and results in harm, injury or death.

C. "Dispensing Error" means a prescription that was dispensed from the pharmacy differently from what was prescribed.

D. "Harm" means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.

[16.19.25.7 NMAC - N, 03-30-02]

**16.19.25.8 THE PHARMACIST IN CHARGE SHALL:**

A. Develop and implement written error prevention procedures as part of the Policy and Procedures Manual.

B. Report incidents, including relevant status updates, to the Board on Board approved forms within fifteen (15) days of discovery.

[16.19.25.8 NMAC - N, 03-30-02]

**16.19.25.9 THE BOARD SHALL:**

A. Maintain confidentiality of information relating to the reporter and the patient identifiers.

B. Compile and publish, in the newsletter and on the Board web site, report information and prevention recommendations.

C. Assure reports are used in a constructive and non-punitive manner.

[16.19.25.9 NMAC - N, 03-30-02]

## **PART 26: PHARMACIST PRESCRIPTIVE AUTHORITY**

### **16.19.26.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.26.1 NMAC - N, 12/15/2002; A, 3/7/2011; A, 5/31/2021]

### **16.19.26.2 SCOPE:**

All pharmacists that intend to exercise the authority to prescribe dangerous drugs based on written protocols approved by the board.

[16.19.26.2 NMAC - N, 12-15-02]

### **16.19.26.3 STATUTORY AUTHORITY:**

Paragraph (1) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Paragraph (7) of Subsection A of Section 61-11-6 NMSA 1978 gives the board authority to enforce the provisions of all laws of the state pertaining to the distribution of drugs. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the board is required to establish regulations governing certification as a pharmacist clinician. Paragraph (19) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to adopt rules and protocols for the prescribing of dangerous drug therapy.

[16.19.26.3 NMAC - N, 12/15/2002; A, 5/31/2021]

### **16.19.26.4 DURATION:**

Permanent.

[16.19.26.4 NMAC - N, 12-15-02]

### **16.19.26.5 EFFECTIVE DATE:**

12-15-02, unless a later date is cited at the end of a section.

[16.19.26.5 NMAC - N, 12-15-02]

### **16.19.26.6 OBJECTIVE:**

The objective of Part 26 of Chapter 19 is to protect the health and safety of New Mexico citizens by regulating the prescriptive authority of pharmacists.

[16.19.26.6 NMAC - N, 12-15-02]

#### **16.19.26.7 DEFINITIONS:**

**A. "Antigen"** means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.

**B. "Antibody"** means a protein in the blood that is produced in response to stimulation by a specific antigen.

**C. "Immunization"** means the act of inducing antibody formation, thus leading to immunity.

**D. "Vaccine"** means a specially prepared antigen, which upon administration to a person, will result in immunity.

**E. "Vaccination"** means the administration of any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.

**F. "Written protocol"** means a physician's order, standing delegation order, or other order or protocol as defined by rule of the New Mexico board of pharmacy.

**G. "Emergency contraception drug therapy"** means the use of a drug to prevent pregnancy after intercourse.

**H. "Tobacco cessation drug therapy"** means the use of therapies, which may include drugs to assist in quitting any form of tobacco use.

**I. "Hormonal contraception drug therapy"** means the use of hormonal therapies to prevent pregnancy, and formulary products delineated in the written contraception protocol approved by the board (e.g., progestin receptor modulator approved by the United States food and drug administration for emergency contraception).

[16.19.26.7 NMAC - N, 12/15/2002; A, 7/15/2004; A, 6/9/2017; A, 5/31/2021]

#### **16.19.26.8 REFERRAL:**

Any pharmacist not certified to provide a prescriptive authority service is required to refer patients to a pharmacist or other provider who provides such a service.

[16.19.26.8 NMAC - N, 12-15-02; 16.19.26.8 NMAC - N, 07-15-04]

## **16.19.26.9 VACCINES:**

### **A. Protocol:**

(1) Prescriptive authority for vaccines shall be exercised solely in accordance with the written protocol for vaccine prescriptive authority approved by the board.

(2) Any pharmacist exercising prescriptive authority for vaccines must maintain a current copy of the protocol for vaccine prescriptive authority approved by the board.

### **B. Education and training:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), provided by:

(a) the centers for disease control and prevention (CDC); or

(b) a similar health authority or professional body approved by the board.

(2) Training must include study materials, hands-on training and techniques for administering vaccines, comply with current CDC guidelines, and provide instruction and experiential training in the following content areas:

(a) mechanisms of action for vaccines, contraindication, drug interaction, and monitoring after vaccine administration;

(b) standards for pediatric, adolescent, and adult immunization practices;

(c) basic immunology and vaccine protection;

(d) vaccine-preventable diseases;

(e) recommended pediatric, adolescent, and adult immunization schedule;

(f) vaccine storage management;

(g) biohazard waste disposal and sterile techniques;

(h) informed consent;

(i) physiology and techniques for vaccine administration;

(j) pre and post-vaccine assessment and counseling;

(k) immunization record management;

(l) management of adverse events, including identification, appropriate response, documentation and reporting;

(m) reimbursement procedures and vaccine coverage by federal, state and local entities.

(3) Continuing education: Any pharmacist exercising prescriptive authority for vaccines shall complete a minimum of 0.2 CEU of live ACPE approved vaccine related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

(4) Basic life support/cardiopulmonary resuscitation (BLS/CPR): Any pharmacist exercising prescriptive authority for vaccines shall complete and have current live BLS/CPR certification.

#### **C. Authorized drugs:**

(1) Prescriptive authority shall be limited to those drugs and vaccines delineated in the written protocol for vaccine prescriptive authority approved by the board, and;

(2) Other vaccines as determined by the CDC, the advisory committee on immunization practices (ACIP) or New Mexico department of health that may be required to protect the public health and safety

#### **D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized.

(2) Informed consent must be documented in accordance with the written protocol for vaccine prescriptive authority approved by the board and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient or guardian the pharmacist shall update the New Mexico department of health immunization program's electronic database (NMSIIS) of any vaccine administered.

[16.19.26.9 NMAC - N, 12/15/2002; 16.19.26.9 NMAC - Rn, 16.19.26.8 NMAC & A, 7/15/2004; A, 1/31/2007; A, 9/6/2015; A, 5/31/2021]

### **16.19.26.10 TOBACCO CESSATION DRUG THERAPY:**

#### **A. Protocol:**

**(1)** Prescriptive authority for tobacco cessation drug therapy shall be exercised solely in accordance with the written protocol for tobacco cessation drug therapy approved by the board.

**(2)** Any pharmacist exercising prescriptive authority for tobacco cessation drug therapy must maintain a current copy of the written protocol for tobacco cessation drug therapy approved by the board.

**B. Education and training:**

**(1)** The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of tobacco cessation drug therapy provided by:

**(a)** the department of health;

**(b)** health and human services; or

**(c)** a similar health authority or professional body approved by the board.

**(2)** Training must include study materials and instruction in the following content areas:

**(a)** mechanisms of action for contraindications, drug interactions, and monitoring cessation;

**(b)** current standards for prescribing tobacco cessation drug therapy;

**(c)** identifying indications for the use of tobacco cessation drug therapy;

**(d)** interviewing patient to establish need for tobacco cessation drug therapy;

**(e)** counseling patient regarding the safety, efficacy and potential adverse effects of drug products for tobacco cessation;

**(f)** evaluating patient's medical profile for drug interaction;

**(g)** referring patient follow-up care with primary healthcare provider;

**(h)** informed consent;

**(i)** record management;

**(j)** management of adverse events, including identification, appropriate response, documentation and reporting;

(k) reimbursement procedures and tobacco cessation drug therapy and education coverage by federal, state and local entities.

(3) Continuing education: Any pharmacist exercising prescriptive authority for tobacco cessation drug therapy shall complete a minimum of 0.2 CEU of ACPE approved tobacco cessation drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

**C. Authorized drugs:**

(1) Prescriptive authority shall be limited to tobacco cessation drug therapy including prescription and non-prescription therapies.

(2) Prescriptive authority for tobacco cessation drug therapy shall be limited to those drugs delineated in the written protocol approved by the board.

**D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized.

(2) Informed consent must be documented in accordance with the approved protocol for tobacco cessation drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider of tobacco cessation drug therapy prescribed.

[16.19.26.11 NMAC – N, 7/15/2004; A, 9/6/2015; Rn, 16.19.26.10 NMAC, 5/31/2021]

**16.19.26.11 TB TESTING:**

**A. Protocol:**

(1) Prescriptive authority for Tuberculosis (TB) testing shall be exercised solely in accordance with the written protocol for TB testing drug therapy approved by the board.

(2) Any pharmacist exercising prescriptive authority for TB testing must maintain a current copy of the written protocol for TB testing approved by the board.

**B. Education and training:**

(1) The pharmacist must successfully complete training as specified by the New Mexico department of health tuberculosis department provided by:

(a) the department of health or;

(b) a similar health authority or professional body approved by the board.

(2) Continuing education: Any pharmacist exercising prescriptive authority for TB testing shall complete continuing education as specified by the centers for disease control.

**C. Authorized drugs:**

(1) TB skin antigen serum(s).

(2) Prescriptive authority for TB testing shall be limited to those drugs delineated in the written protocol approved by the board.

**D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any TB test administered.

(2) Informed consent must be documented in accordance with the approved protocol for TB testing and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider and the department of health of any positive TB test.

[16.19.26.12 NMAC - N, 3/7/2011; A, 9/6/2015; Rn. & A 16.19.26.11 NMAC, 5/31/2021]

**16.19.26.12 NALOXONE FOR OPIOID OVERDOSE:**

**A. Protocol:**

(1) Prescriptive authority for naloxone drug therapy shall be exercised solely in accordance with the written protocol for naloxone drug therapy approved by the board.

(2) Any pharmacist exercising prescriptive authority for naloxone drug therapy must maintain a current copy of the written protocol for naloxone drug therapy approved by the board.

**B. Education and training:**

**(1)** The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject area of naloxone for opioid overdose drug therapy provided by:

- (a)** the New Mexico pharmacists association; or
- (b)** a similar health authority or professional body approved by the board.

**(2)** Training must include study materials and instruction in the following content areas:

- (a)** mechanisms of action;
- (b)** contraindications;
- (c)** identifying indications for the use of naloxone drug therapy;
- (d)** patient screening criteria;
- (e)** counseling and training patient and care-giver regarding the safety, efficacy and potential adverse effects of naloxone;
- (f)** evaluating patient's medical profile for drug interactions;
- (g)** referring patient for follow-up care with primary healthcare provider;
- (h)** informed consent;
- (i)** record management;
- (j)** management of adverse events.

**(3)** Continuing education: Any pharmacist exercising prescriptive authority for naloxone drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved naloxone drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

**C. Authorized drug(s):**

**(1)** Prescriptive authority shall be limited to naloxone and shall include any device(s) approved for the administration of naloxone.

**(2)** Prescriptive authority for naloxone drug therapy shall be limited to naloxone as delineated in the written protocol for naloxone drug therapy approved by the board.

#### **D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any naloxone dispensed.

(2) Informed consent must be documented in accordance with the approved protocol for naloxone drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider within 15 days of naloxone dispensing.

[16.19.26.13 NMAC - N, 3/14/2014; Rn., 16.19.26.12 NMAC, 5/31/2021]

#### **16.19.26.13 HORMONAL CONTRACEPTION DRUG THERAPY:**

##### **A. Protocol:**

(1) Prescriptive authority for hormonal contraception drug therapy shall be exercised solely in accordance with the written protocol for hormonal contraception drug therapy approved by the board.

(2) Any pharmacist exercising prescriptive authority for hormonal contraception drug therapy must maintain a current copy of the written protocol for hormonal contraception drug therapy approved by the board.

##### **B. Education and training:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), in the subject of hormonal contraception drug therapy provided by:

(a) the New Mexico pharmacists association or;

(b) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a) mechanisms of action, contraindication, drug interaction and monitoring of hormonal contraception drug therapy;

(b) current standards for prescribing hormonal contraception drug therapy;

(c) identifying indications for use of hormonal contraception drug therapy;

(d) interviewing patient to establish need for hormonal contraception drug therapy;

(e) counseling patient regarding the safety, efficacy and potential adverse effects of drug products for hormonal contraception;

(f) evaluating patient's medical profile for drug interaction;

(g) referring patient follow-up care with primary healthcare provider;

(h) informed consent;

(i) management of adverse events, including identification, appropriate response, documentation and reporting.

(3) Continuing education: any pharmacist exercising prescriptive authority for hormonal contraception drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved hormonal contraception drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

#### **C. Authorized drugs:**

(1) Prescriptive authority shall be limited to hormonal contraception drug therapy and shall exclude any device intended to prevent pregnancy after intercourse.

(2) Prescriptive authority for hormonal contraception drug therapy shall be limited to those drugs delineated in the written protocol for hormonal contraception drug therapy approved by the board.

#### **D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized.

(2) Informed consent must be documented in accordance with the approved protocol for hormonal contraception drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient or guardian, the pharmacist shall notify the patient's designated physician or primary care provider of hormonal contraception drug therapy prescribed.

[16.19.26.14 NMAC - N, 6/9/2017; Rn, 16.19.26.13 NMAC, 5/31/2021]

#### **16.19.26.14 PRESCRIBING DANGEROUS DRUGS IN CONJUNCTION WITH POINT-OF-CARE TESTING:**

##### **A. Protocol:**

(1) Prescriptive authority shall be exercised solely in accordance with the written protocol for prescribing of dangerous drugs in conjunction with point-of-care testing (POCT) approved by the board.

(2) Any pharmacist exercising prescriptive authority for prescribing of dangerous drugs in conjunction with POCT must maintain a current copy of the written protocol approved by the board.

##### **B. Education and training:**

(1) The pharmacist must successfully complete a course of training, accredited by the accreditation council for pharmacy education (ACPE), for each category of POCT for which the pharmacist exercises prescriptive authority, provided by:

(a) the New Mexico pharmacists association; or

(b) a similar health authority or professional body approved by the board.

(2) Training must include study materials and instruction in the following content areas:

(a) mechanisms of action;

(b) contraindications;

(c) identifying indications for the use of protocol formulary drug therapy;

(d) patient screening, history and assessment criteria;

(e) counseling and training patient and care-giver regarding the safety, efficacy and potential adverse effects of prescribed protocol formulary dangerous drug(s);

(f) evaluating patient's medical profile for drug interactions;

(g) patient referrals;

(h) informed consent;

(i) record management;

(j) management of adverse events.

(3) Continuing education: Any pharmacist exercising prescriptive authority for POCT formulary drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved formulary drug therapy related continuing education every two years, for each category of POCT for which the pharmacist exercises prescriptive authority. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

**C. Authorized drug(s):** Prescriptive authority shall be limited to those drugs in the Board-approved protocol.

**D. Records:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any medication dispensed under the protocol.

(2) Informed consent must be documented in accordance with the approved protocol and a record of such consent maintained in the pharmacy for a period of at least three years.

**E. Notification:** Upon signed consent of the patient, the pharmacist shall notify the patient's designated physician or primary care provider within 15 days of dispensing.

[16.19.26.14 NMAC - N, 5/31/2021]

## **PART 27: DISHONORABLE CONDUCT**

### **16.19.27.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.27.1 NMAC - N, 12/1/2003; A, 11/30/2021]

### **16.19.27.2 SCOPE:**

Pharmacist interns, pharmacy technicians and businesses licensed pursuant to the New Mexico Pharmacy Act.

[16.19.27.2 NMAC - N, 12-01-2003]

### **16.19.27.3 STATUTORY AUTHORITY:**

Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Paragraph (7) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all state laws

pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act. Section 61-11-20 NMSA 1978, authorizes the board in accordance with the Uniform Licensing Act, to deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant: (1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board; (17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board to promulgate rules relating to listing specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.

[16.19.27.3 NMAC - N, 12/1/2003; A, 11/30/2021; A, 02/28/2023]

**16.19.27.4 DURATION:**

Permanent.

[16.19.27.4 NMAC - N, 12-01-2003]

**16.19.27.5 EFFECTIVE DATE:**

December 1, 2003, unless a later date is cited at the end of a section.

[16.19.27.5 NMAC - N, 12-01-2003]

**16.19.27.6 OBJECTIVE:**

The objective of Part 27 of Chapter 19 is to protect the health and safety of New Mexico citizens by regulating the conduct of pharmacist interns, pharmacy technicians and facilities licensed pursuant to the New Mexico Pharmacy Act.

[16.19.27.6 NMAC - N, 12-01-2003]

**16.19.27.7 DEFINITIONS:**

Dishonorable conduct by a pharmacist intern licensed pursuant to Section 61-11-6 NMSA 1978, or pharmacy technician registered pursuant to Section 61-11-6 NMSA 1978.

**A. "Dishonorable conduct by a pharmacist intern or pharmacy technician"**  
shall mean, among other things, but not to be limited to:

- (1) violation of any provision of the Pharmacy Act as determined by the board;
- (2) violation of the board of pharmacy regulations as determined by the board;
- (3) violation of the Drug and Cosmetic Act as determined by the board;
- (4) violation of the Controlled Substances Act as determined by the board;
- (5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;
- (6) acquiring prescription stock from unlicensed sources;
- (7) failure to hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;
- (8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;
- (9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;
- (10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:
  - (a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or
  - (b) a request for therapeutic interchange of a medication prescribed for the patient;
- (11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;
- (12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(14) suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

(15) Disqualifying criminal conviction: "Conviction" means either a plea of guilty or nolo contendere, or any other full adjudication on the merits by a court of competent jurisdiction, including but not limited to a trial. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence.

(a) A felony conviction for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may result in suspension of a license or registration, or disqualify a licensee or applicant from receiving or retaining a license or registration issued by the board.

(i) Section 30-2-1 NMSA 1978 "Murder";

(ii) Sections 30-9-1 and 30-9-11 to 30-9-13 NMSA 1978 Criminal sexual offenses, including of a minor and enticement of a child;

(iii) Sections 30-37-2 to 30-37-3.3 NMSA 1978, Sexually oriented material harmful to minors, including child solicitation by electronic communication device and criminal sexual communication with a child;

(iv) Sections 30-6A-3 to 30-6A-4 NMSA 1978, Sexual exploitation of children, including prostitution;

(v) Section 30-16-2 NMSA 1978 "Robbery";

(vi) Section 30-16-6 NMSA 1978 "Fraud";

(vii) Section Section 30-16-8 NMSA 1978 "Embezzlement";

(viii) Section 30-16-9 NMSA 1978 "Extortion";

(ix) Section 30-16-10 NMSA 1978 "Forgery";

(x) Section 30-16-11 NMSA 1978 "Receiving stolen property";

(xi) Section 30-16-24.1 NMSA 1978 "Theft of identity; obtaining identity by electronic fraud";

- (xii) Section 30-16-30 NMSA 1978 "Dealing in credit cards of another";
- (xiii) Section 30-16-31 NMSA 1978 "Forgery of a credit card";
- (xiv) Section 30-16-33 NMSA 1978 "Fraudulent use of a credit card";
- (xv) Section 30-28-3 NMSA 1978 "Criminal solicitation";
- (xvi) Section 30-42-4 NMSA 1978 "Engaging in a pattern of racketeering activity";
- (xvii) Sections 30-44-4 to 30-44-7 NMSA 1978, Offenses related to Medicaid Fraud;
- (xviii) Sections 30-47-4 to 30-47-6 Abuse or neglect of a care facility resident, exploitation of a care facility resident's property;
- (xix) Section 30-51-4 NMSA 1978 "Money laundering";
- (xx) Section 30-52-1 NMSA 1978 "Human trafficking";
- (xxi) Section 24-26-12 NMSA 1978 "Intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act" (Sections 24-26-1 to 24-26-12 NMSA 1978);
- (xxii) Section 27-5-12 NMSA 1978, Making false statement in claim for payment under Indigent Hospital and County Health Care Act (Chapter 27, Article 5);
- (xxiii) Section 66-8-102 NMSA 1978 "Fourth or subsequent conviction for driving under the influence of intoxicating liquor or drugs".

(b) Unless otherwise specified by law, the board shall not consider a criminal conviction as part of an application for licensure or registration unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph 15 of Subsection A of this section 16.19.27.7 NMAC. Any decision by the board to take action against an applicant or licensee (including a registrant) on the basis of a disqualifying criminal conviction shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

(c) Nothing in this section prevents the board from denying an application or disciplining a licensee (including a registrant) on the basis of the licensee or applicant's conduct to the extent that such conduct violated the Pharmacy Act (Chapter 61, Article 11 NMSA 1978), the Drug Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978), the Controlled Substances Act (Chapter 30, Article 31 NMSA 1978), the Imitation Controlled Substances Act (Chapter 30, Article 31A NMSA 1978), or the Drug Precursor

Act (Chapter 30, Article 31B NMSA 1978), or similar act of another state or of the United States, or pursuant to the Impaired Health Care Provider Act (Chapter 61, Article 7 NMSA 1978), or the Impaired Pharmacists Act (Chapter 61, Article 11 NMSA 1978), regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule. Proceedings shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

(d) Notwithstanding Subparagraph (c) of this Section, in connection with an application for licensure or registration, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (i) an arrest not followed by a valid conviction;
- (ii) a conviction that has been sealed, dismissed, expunged or pardoned;
- (iii) a juvenile adjudication; or
- (iv) a conviction for any crime other than the disqualifying criminal convictions listed in this section.

**B. "Dishonorable conduct by a facility (business)"** shall mean but not to be limited to:

- (1) violation of any provision of the Pharmacy Act as determined by the board;
- (2) violation of the board of pharmacy regulations as determined by the board;
- (3) violation of the Drug and Cosmetic Act as determined by the board;
- (4) violation of the Controlled Substances Act as determined by the board;
- (5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;
- (6) acquiring prescription stock from unlicensed sources;
- (7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a) the inpatient, or institutional setting (i.e., long term care or correctional facility) by an in-house or contracted pharmacy; or

(b) a request for therapeutic interchange of a medication prescribed for the patient;

(11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

(12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(14) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;

(15) failure to correct written deficiencies, documented by drug inspectors during routine inspections;

(16) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC);

(17) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public;

(18) failure to provide a work environment that allows a pharmacist and pharmacist intern to adequately perform duties requiring professional judgment, and for

a pharmacist to fulfill duties as enumerated in 16.19.4.16 NMAC and all other duties and responsibilities of a pharmacist as listed in the rules of the board. In determining whether a work environment is appropriate, the board may consider factors including workload (e.g. sufficiency of staffing to prevent fatigue, distraction, or other conditions that interfere with a pharmacist's ability to complete required duties);

(19) introducing or enforcing external factors, such as productivity or production quotas or other programs against pharmacists, pharmacist interns or pharmacy technicians, to the extent that they interfere with the ability of those individuals to provide appropriate professional services to the public;

(20) retaliation against a pharmacy employee for reporting or filing a complaint regarding violation of board requirements that the business has the authority to correct. Violation of board requirements includes unreasonable workload, such that pharmacy employee(s) are not able to adequately fulfill duties and responsibilities as outlined in board administered rules and statutes;

(21) having a policy or procedure which hinders the apprehension and/or prosecution of individuals who the pharmacist or pharmacist intern after reasonable inquiry suspect of prescription forgery, alteration, fraud, misrepresentation or a prescription transaction which is not otherwise in accordance with the law;

(22) failure to adhere to the written policy and procedures established by the pharmacist-in-charge.

**C. "Pharmaceutical care"** means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems. (Subsection V of Section 61-11-2 NMSA 1978)

**D. "Dispensing error"** means a prescription that was dispensed from the pharmacy differently from what was prescribed.

**E. "Harm"** means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.

**F. "Patient counseling"** means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or a device. (Subsection T of Section 61-11-2 NMSA 1978).

**G. "Physical environment"** means the facility layout design, fixtures, and surroundings that affect lighting levels, sound levels, temperature, interruptions, and distractions.

[16.19.27.7 NMAC - N, 12/1/2003; A, 4/1/2004; A, 9/30/2005; A, 12/15/2008; A, 11/13/2018; A, 11/30/2021; A, 02/28/2023]

## **PART 28: SELLER OR DISPENSER OF CONTACT LENSES (EXCLUDING LICENSED OPTOMETRISTS AND PHYSICIANS)**

### **16.19.28.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.28.1 NMAC - N, 12-01-2003; A, 06/30/06]

### **16.19.28.2 SCOPE:**

All persons or entities selling or dispensing contact lenses pursuant to a valid prescription to patients in New Mexico.

[16.19.28.2 NMAC - N, 12-01-2003]

### **16.19.28.3 STATUTORY AUTHORITY:**

The board of pharmacy is authorized pursuant to the Optometry Act, Section 61-2-1 through Section 61-2-18 NMSA 1978 (1997 Repl. Pamp.) to register sellers or dispensers of contact lenses and collect a fee for registration.

[16.19.28.3 NMAC - N, 12-01-2003]

### **16.19.28.4 DURATION:**

Permanent.

[16.19.28.4 NMAC - N, 12-01-2003]

### **16.19.28.5 EFFECTIVE DATE:**

December 1, 2003, unless a different date is cited at the end of a section.

[16.19.28.5 NMAC - N, 12-01-2003]

### **16.19.28.6 OBJECTIVE:**

The objective of Part 28 of Chapter 19 is to establish the registration of sellers or dispensers of contact lenses.

[16.19.28.6 NMAC - N, 12-01-2003]

#### **16.19.28.7 DEFINITIONS:**

A. "Board" means the New Mexico board of pharmacy, herein referred to as the board.

B. "Optometry Act" means NMSA 1978 Section 61-2-1 through 61-2-18 (1995 Repl. Pamph.), herein referred to as the Optometry Act or Section 61-2-1 et seq.

C. "Contact lens prescription" means a prescription that shall explicitly state that it is for contact lenses; specify the lens type; include all specifications for the ordering and fabrication of the lenses; include the date of issue, the name and address of the patient and the name and address of the prescriber; and indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interest of the patient.

D. "Replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses that have already been properly fitted.

E. "Contact lens" means any contact lens for which state law requires a prescription.

F. "Dispensing facility" means the building or structure for which contact lens are stored, shipped or distributed from.

G. "Seller/dispenser" means one who is in the business of the sale or distribution of contact lenses.

[16.19.28.7 NMAC - N, 12-01-2003; A 06/30/06]

#### **16.19.28.8 REGISTRATION:**

A. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy.

B. Pharmacies, hospitals and clinics licensed by the board are exempt from this regulation.

C. Registration will be submitted in forms provided by the board with the appropriate fee attached as a check or money order.

D. Fees for registration are listed in 16.19.12 NMAC.

E. Period of registration is for two years with renewals due by the last day of the expiration month listed on the registration.

F. Refer to NMSA 1978, Section 61-11-14F for application requirements.

[16.19.28.8 NMAC - N, 12-01-2003; A, 06/30/06]

#### **16.19.28.9 POLICY MANUAL:**

A policy manual containing at a minimum the information listed below shall be submitted with the registration application. The initial manual, must be approved by the board and any subsequent changes or modifications require prior approval of the board or its agent.

A. A contact lens may not be sold, dispensed, or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

B. The prescription contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

(1) lens manufacturer;

(2) type of lens;

(3) power of the lens;

(4) base curve;

(5) lens size;

(6) name of the patient;

(7) date the prescription was given to the patient;

(8) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and

(9) expiration date of the replacement contact lens prescription.

C. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for three years.

D. Security requirements: restricting access, to all lenses and patient health records, to authorized personnel only.

E. Storage requirements: The registrant must have policies and procedures for maintaining the proper storage conditions for contact lenses. The lenses must be stored at the licensed location.

[16.19.28.9 NMAC - N, 12-01-2003; A, 06/30/06]

#### **16.19.28.10 REGISTRATION LIST:**

The board shall maintain a current list of all registered sellers and dispensers of contact lenses.

[16.19.28.10 NMAC - N, 12-01-2003]

#### **16.19.28.11 VIOLATION PENALTIES:**

Any person who violates any of the provisions of this part shall be subject to the provisions of the New Mexico Uniform Licensing Act.

[16.19.28.11 NMAC - N, 06/30/06]

### **PART 29: CONTROLLED SUBSTANCE PRESCRIPTION MONITORING PROGRAM**

#### **16.19.29.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.29.1 NMAC - N, 07-15-04]

#### **16.19.29.2 SCOPE:**

All persons that dispense controlled substances and drugs of concern pursuant to prescriptions from practitioners and practitioners who dispense controlled substances and drug(s) of concern directly to a patient under their care. All persons authorized to receive disclosure of prescription monitoring program prescription information.

[16.19.29.2 NMAC - N, 07/15/2004; A, 03/22/2015; A, 11/27/2016; A, 02/28/2023]

### **16.19.29.3 STATUTORY AUTHORITY:**

Sections 30-31-1 through 30-31-41 of the Controlled Substance Act NMSA 1978, authorizes the board of pharmacy to promulgate rules and charge reasonable fees regarding controlled substances. Section 30-31-16 of the Controlled Substance Act NMSA 1978 authorizes the board to collect information regarding controlled substances. Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to promulgate rules to carry out the provisions of the Pharmacy Act, Paragraph (18) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the Board to promulgate rules that prescribe the activities and duties of pharmacy owners and pharmacists in each practice setting. Section 61-11-8 NMSA requires drug records to be kept for all dangerous drugs pursuant to the Pharmacy Act.

[16.19.29.3 NMAC - N, 07/15/2004, A, 03/22/2015; A, 02/28/2023]

### **16.19.29.4 DURATION:**

Permanent.

[16.19.29.4 NMAC - N, 07-15-04]

### **16.19.29.5 EFFECTIVE DATE:**

July 15, 2004, unless a later date is cited at the end of a section.

[16.19.29.5 NMAC - N, 07-15-04]

### **16.19.29.6 OBJECTIVE:**

The objective of Part 29 of Chapter 19 is to promote the public health and welfare by detecting and preventing substance abuse and misuse, and encouraging appropriate treatment of pain and other conditions for which controlled substances are prescribed. The purpose of the program is to improve access to controlled substances prescription information for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient's pharmaceutical history related to controlled substances and drug(s) of concern. The program's objectives will include education of the public and health care professionals regarding the nature and extent of the problem of drug abuse, and appropriate prescribing and use of controlled substances and drug(s) of concern.

[16.19.29.6 NMAC - N, 07/15/2004; A, 03/22/2015; A, 03/22/2015; A, 02/28/2023]

### **16.19.29.7 DEFINITIONS:**

**A. "Audit trail information"** means any query based information resulting from an authorized prescription monitoring program user's request for a prescription monitoring

program report, which could include the user's name, date and time of the query or other related information.

**B. "Board"** means the New Mexico board of pharmacy, herein referred to as the board.

**C. "Controlled substance"** has the meaning given such term in Section 30-31-2 NMSA 1978.

**D. "Delegate"** means an individual authorized as an agent of a practitioner or pharmacist for the purpose of obtaining data from the PMP for review by the practitioner or pharmacist. The delegate must report directly to said practitioner or pharmacist and the practitioner or pharmacist shall be accountable for the delegate's actions:

(1) a pharmacist's delegate must be a certified pharmacy technician or a registered intern;

(2) a pharmacy technician or pharmacist intern may access information to the extent the information relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing any controlled substance or drug(s) of concern, or for the purposes of a pharmacist providing pharmaceutical care as defined in law.

**E. "Dispenser"** means the person who delivers a schedule II - V controlled substance or drug(s) of concern to the ultimate user, but does not include the following:

(1) a licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a practitioner, or other authorized person who administers such a substance; or

(3) a practitioner who dispenses to the patient no more than 12 dosage units or 72 hours' worth (whichever is less) of such a substance or;

(4) a wholesale distributor of a schedule II - V controlled substance or drug(s) of concern;

(5) clinics, urgent care or emergency departments dispensing to the patient no more than 12 dosage units or 72 hours' worth (whichever is less) of such a substance or;

(6) a veterinarians or veterinary clinics dispensing to non-human patients.

**F. "Drug of concern"** means a non-controlled dangerous drug that the Board has by rule determined to require dispenser PMP reporting of in the same manner as controlled substance prescription dispensing, when required reporting is expected to

protect patients due to interaction of the drug of concern with controlled substances or other compelling issue. Gabapentin is a drug of concern, except when dispensed pursuant to a prescription issued by a veterinarian.

**G. "Patient"** means the ultimate user of a drug for whom a prescription is issued and for whom a drug is dispensed.

**H. "Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.

**I. "PMP director"** means the individual authorized by the board to administer the prescription monitoring program (PMP).

**J. "PMP report"** means a compilation of data generated from the PMP concerning a patient, a dispenser, a practitioner, or a schedule II - V controlled substance or drug(s) of concern.

**K. "Practitioner"** means a person maintaining licensure pursuant to state law that allows him or her to prescribe controlled substance medications in accordance with that licensure.

**L. "Prescription monitoring program" (PMP)** means a program as described in 16.19.29.6 NMAC which includes a centralized system to collect, monitor, and analyze electronically, for schedules II - V controlled substances and drug(s) of concern, prescribing and dispensing data submitted by dispensers of which the data is to be used to support efforts in education, research, enforcement and abuse prevention.

**M. "Schedule II - V controlled substance"** means a substance listed in schedules II, III, IV, and V as set forth in the Controlled Substance Act, Sections 30-31-5 through 30-31-10 NMSA 1978 or the federal Controlled Substances Regulation (21 U.S.C. 812).

**N. "State"** means the state of New Mexico.

[16.19.29.7 NMAC - N, 7/15/2004; A, 6/11/2011; A, 8/31/2012; A, 10/24/2014; A, 3/22/2015; A, 11/27/2016; A, 9/25/2018; A, 2/28/2023; A 10/10/2023]

#### **16.19.29.8 MANDATORY REPORTING OF PRESCRIPTION INFORMATION TO THE PMP:**

**A.** The board shall monitor the dispensing of all schedule II - V controlled substances and drug(s) of concern by all dispensers licensed to dispense such substances to patients in this state.

**B.** Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this

section. Information to be submitted for each prescription as well as the standards for how this information shall be formatted, not contrary to law, is defined in the PMP data reporting manual available on the state PMP website at <http://nmpmp.info> shall include at a minimum:

- (1) dispenser NPI number;
- (2) dispenser NCPDP number;
- (3) dispenser DEA number (unless no controlled substances are dispensed and dispenser has no DEA number);
- (4) patient name;
- (5) patient address;
- (6) patient date of birth;
- (7) patient gender;
- (8) reporting status (new, revised, void);
- (9) prescription number;
- (10) date prescription written;
- (11) refills authorized;
- (12) date prescription filled;
- (13) refill number;
- (14) product ID (NDC) + product ID qualifier;
- (15) quantity dispensed;
- (16) days' supply;
- (17) drug dosage units;
- (18) transmission form of Rx origin;
- (19) payment type;
- (20) prescriber NPI number; (except veterinarians)

(21) prescriber DEA number (unless prescriber is prescribing a drug of concern and has no DEA number).

**C. Dispenser reporting:**

(1) each dispenser shall submit the information required under Subsection B of this section in accordance with transmission methods and frequency established by the board; but shall report within one business day of the prescription being filled.

(2) if a dispenser pharmacy did not dispense any schedule II – V controlled substances or drug(s) of concern during an operating business day, the dispenser shall submit a "zero report" within one business day. Information to be submitted with each zero report as well as the standards for how this information shall be formatted, not contrary to law, is defined in the PMP data reporting manual available on the state PMP website at <http://nmpmp.org> shall include at a minimum:

(a) dispenser DEA number;

(b) reporting start date; and

(c) reporting end date.

(3) the PMP director shall have the authority to approve submission schedules that exceed one business day.

**D. Corrections to information submitted to the PMP must be addressed including:**

(1) file upload or "outstanding uncorrected errors" as defined in the PMP data reporting manual;

(2) prescriptions that were not dispensed to the patient must be voided from the PMP;

(3) incorrect information in prescriptions records submitted to the PMP must be submitted to the PMP database within five business days once the dispenser has been notified or becomes aware of the incorrect information.

[16.19.29.8 NMAC - N, 7/15/2004; A, 6/11/2011; A, 8/31/2012; A, 3/22/2015; A, 3/23/2016; A, 9/25/2018; A, 2/28/2023; A, 10/10/2023]

**16.19.29.9 DISCLOSURE OF PRESCRIPTION INFORMATION:**

**A.** Prescription information submitted to the board shall not be subject to the Inspection of the Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978 and shall be confidential except as provided in Subsections C through G of 16.19.29.9 NMAC.

**B.** The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained in the PMP is not disclosed to persons except as provided in Subsection C through G of 16.19.29.9 NMAC.

**C.** Board inspectors may review prescription information after receiving complaints, and in the course of their enforcement of board administered statutes and regulations.

**D.** The board shall be authorized to provide PMP information to the following persons:

(1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(2) a consultant pharmacist for the purpose of providing pharmaceutical care for a facility's patients; and in ensuring that facility records appropriately account for controlled substance receipt, administration and disposition;

(3) a delegate designated by a practitioner; or pharmacist; who must also maintain an active account, can designate one or more (up to four) delegates for the purpose of requesting and receiving PMP reports for the practitioner or pharmacist; the practitioner or pharmacist shall be responsible for terminating the delegate's access to the PMP within five business days of a delegate's authorization ending;

(4) state practitioner licensing boards whose licensees have prescriptive authority for controlled substances, including the medical board, board of nursing, board of veterinarian medicine, board of dental health care, board of examiners in optometry, board of osteopathic medicine, board of acupuncture and oriental medicine, and board of podiatry, as the PMP information relates to their licensees;

(5) practitioner licensing authorities of other states if their licensees practice in this state or prescriptions provided by their licensees are dispensed in this state;

(6) local, state and federal law enforcement or prosecutorial officials engaged in an ongoing investigation of an individual in the enforcement of the laws governing licit drugs;

(7) the state human services department regarding medicaid program recipients;

(8) a state metropolitan, magistrate and district, or federal court as required by a grand jury subpoena or criminal court order;

(9) state drug court personnel as authorized by the PMP director;

(10) personnel of the board for purposes of administration and enforcement of this rule or of 16.19.20 NMAC;

(11) the prescription monitoring program of another state or group of states with whom the state has established an interoperability agreement;

(12) a living individual who request's his or her own PMP report in accordance with procedures established under the Pharmacy Act, Subsection D of Section 61-11-2 NMSA 1978 and Subsection H of 16.19.6.23 NMAC, or an agent authorized by the living individual along with a valid HIPAA release form or court issued subpoena, or;

(13) a parent to have access to the prescription records about his or her minor child, as his or her minor child's personal representative when such access is not inconsistent with state or other laws;

(14) licensed healthcare professionals (nurses, pharmacists and practitioners) from Medicare, health insurers, workers compensation program/insurers and pharmacy benefit managers for persons enrolled in or covered by their programs, as part of patient care for those persons.

**E.** The board shall use de-identified data obtained from the PMP database to identify and report to state and local public health authorities the geographic areas of the state where anomalous prescribing dispensing or use of controlled substances is occurring.

**F.** The board shall share PMP database data with the department of health for the purpose of tracking inappropriate prescribing and misuse of controlled substances or drug(s) of concern, including drug overdose.

**G.** The board shall provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and persons who have received prescriptions from dispensers.

**H.** PMP information gained from other states' prescription monitoring programs shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason.

[16.19.29.9 NMAC - N, 07/15/2004; A, 06/11/2011; A, 08/31/2012; A, 03/22/2015; A, 11/27/2016; A, 09/25/2018; A, 02/28/2023]

#### **16.19.29.10 DISCLOSURE OF AUDIT TRAIL INFORMATION:**

**A.** Audit trail information maintained by the board shall not be subject to the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, and shall be confidential except as provided in Subsection C and D of 16.19.29.10 NMAC.

**B.** The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained in the PMP is not disclosed to persons except as provided in Subsection C and D of 16.19.29.10 NMAC.

**C.** Board inspectors may review audit trail information after receiving complaints, and in the course of their enforcement of board administered statutes and regulations.

**D.** The board shall be authorized to provide audit trail information to the following persons:

(1) state practitioner licensing boards whose licensees have prescriptive authority for controlled substances, including the medical board, board of nursing, board of veterinary medicine, board of dental health care, board of optometry, board of osteopathic medicine, board of acupuncture and oriental medicine, and board of podiatry, as the audit trail information relates to their licensees for the purposes of reviewing compliance with PMP utilization;

(2) practitioner licensing authorities of other states if their licensees practice in this state or prescriptions provided by their licensees are dispensed in this state as the audit trail information relates to their licensees for the purposes of reviewing compliance with PMP utilization requirements;

(3) personnel of the board for purposes of administration and enforcement of this rule or of 16.19.20 NMAC;

(4) the board shall share PMP database data with the department of health for the purpose of tracking inappropriate prescribing and misuse of controlled substances or drug(s) of concern, including drug overdose.

**E.** Audit trail information shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason.

[16.19.29.10 NMAC - N, 07/15/2004; A, 06/11/2011; Repealed, 03/22/2015; A, 09/25/2018; A, 02/28/2023]

#### **16.19.29.11 AUTHORITY TO CONTRACT:**

The board may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the PMP. A contractor shall comply with the provisions regarding confidentiality of prescription information in 16.19.29.9 NMAC and shall be subject to the penalties specified in 16.19.29.14 NMAC.

[16.19.29.11 NMAC - N, 07-15-04; A, 03-22-15]

#### **16.19.29.12 REGISTRATION FOR ACCESS TO PRESCRIPTION INFORMATION:**

**A.** Persons authorized for access to PMP information as listed in Paragraphs (1) through (10) and (14) of Subsection D of 16.19.29.9 NMAC must apply for access as described at the PMP website located at <http://nmpmp.org> or as otherwise indicated. Persons granted access must maintain individual accounts and shall not share access information with other persons.

**B.** All persons authorized for access to PMP information and applying for such access to the PMP shall successfully complete a web based training program as determined by the PMP director.

**C.** Persons reporting prescription information to the PMP, but not authorized for access to PMP information must also apply for access as described at the PMP website located at <http://nmpmp.org> or as otherwise indicated.

**D.** The PMP director shall have the authority to set account access and registration renewal requirements necessary for accounts to be considered active and shall also have authority to cancel inactive accounts.

[16.19.29.12 NMAC - N, 07-15-04; 16.19.29.12 NMAC - N, 06-11-11; A, 08-31-12; A, 03-22-15; A, 11-27-16; A, 09-25-18]

#### **16.19.29.13 INFORMATION EXCHANGE WITH OTHER PRESCRIPTION MONITORING PROGRAMS:**

**A.** The board may provide PMP information to other states' prescription monitoring programs and such information may be used by those programs consistent with the provisions of this rule.

**B.** The board may request and receive PMP information from other states' prescription monitoring programs and may use such information under provisions of this rule.

**C.** The board may develop the capability to transmit information to and receive information from other prescription monitoring programs employing the standards of interoperability.

**D.** The board may enter into written agreements with other states' prescription monitoring programs or other persons hosting compatible information sharing technologies for the purpose of describing the terms and conditions for sharing of PMP information under this section.

[16.19.29.13 NMAC - N, 07-15-04; 16.19.29.13 NMAC - N, 06-11-11; A, 03-22-15]

#### **16.19.29.14 PENALTIES:**

**A.** A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this rule or knowingly submits incorrect prescription information shall be subject to disciplinary proceedings as defined in Section 61-11-20 of the Pharmacy Act NMSA 1978.

**B.** Prescription information submitted to the PMP is protected health information. Persons with access to the PMP shall exercise due diligence in protecting this information and access it only as necessary in the course of legitimate professional regulatory, or law enforcement duties.

**C.** A person found to be in violation of this section may be subject to one or more of the following actions.

(1) Termination of access to PMP information.

(2) A complaint may be filed with his or her appropriate professional licensing entities.

[16.19.29.14 NMAC - Rn, 16.19.29.12 NMAC, 06-11-11; A, 08-31-12; A, 03-22-15]

#### **16.19.29.15 SEVERABILITY:**

If any provisions of this rule or its application to any person or circumstance is held invalid or unenforceable, the remainder of this rule shall not be affected and shall be valid and enforceable.

[16.19.29.15 NMAC - Rn, 16.19.29.13 NMAC, 06-11-11; A, 03-22-15]

### **PART 30: COMPOUNDING OF NON-STERILE PHARMACEUTICALS**

#### **16.19.30.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.30.1NMAC - N, 9/15/2006; A, 12/15/2020]

#### **16.19.30.2 SCOPE:**

All pharmacies as defined in Subsections S and Z of Section 61-11-2 NMSA 1978, and all persons or entities that own or operated, or are employed by a pharmacy for the purpose of providing pharmaceutical products or services.

[16.19.30.2 NMAC - N, 9/15/2006, A, 12/15/2020]

#### **16.19.30.3 STATUTORY AUTHORITY:**

Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.

[16.19.30.3 NMAC - N, 9/15/2006; A, 12/15/2020]

**16.19.30.4 DURATION:**

Permanent.

[16.19.30.4 NMAC - N, 09-15-06]

**16.19.30.5 EFFECTIVE DATE:**

09-15-06, unless a later date is cited at the end of a section.

[16.19.30.5 NMAC - N, 09-15-06]

**16.19.30.6 OBJECTIVE:**

The objective of part 30 of chapter 19 is to provide standards for the compounding of non-sterile pharmaceuticals. Pharmacies compounding non-sterile pharmaceuticals shall comply with the requirements of this part in addition to all provisions for their specific license classification.

[16.19.30.6 NMAC - N, 9/15/2006; A, 8/13/2024]

**16.19.30.7 DEFINITIONS:**

In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

**A. "Active pharmaceutical ingredient (API)"** any substance or mixture of substances intended to be used in the compounding of a drug preparation, thereby becoming the active ingredient in that preparation and furnishing pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans and animals or affecting the structure and function of the body.

**B. "Beyond-use date (BUD)"** the date after which a compounded preparation should not be used and is determined from the date the preparation was compounded.

**C. "Component"** any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product labeling.

**D. "Compounding"** the preparation, mixing, assembling, packaging, or labeling of a drug or device (reconstitution of commercial products is not considered compounding for purposes of this article).

(1) as the result of a practitioner's prescription order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(2) preparing limited quantities of prescription orders based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice;

(3) reconstitution of commercial products is not considered compounding for purpose of this article.

(4) the addition of a flavoring agent to a conventionally manufactured product is not considered compounding as long as the following conditions are met:

(a) the flavoring agent is inert, nonallergenic, and produces no effect other than the instillation or modification of flavor;

(b) the flavoring agent does not alter a medication's concentration beyond USP's accepted level of variance;

(c) the addition of flavoring agent(s) is documented in the prescription record.

**E. "FDA"** Food and Drug administration.

**F. "SOP's"** standard operating procedures.

**G. "USP/NF"** the current edition of the United States Pharmacopeia/National Formulary.

[16.19.30.7 NMAC - N, 9/15/2006; A, 12/13/2015; A, 9/14/2021; A, 8/13/2024]

#### **16.19.30.8 PERSONNEL:**

**A. Pharmacist-in-charge.** The pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(1) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised;

(2) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

- (3) assuring that the equipment used in compounding is properly maintained;
- (4) maintaining an appropriate environment in the area where non-sterile compounding occurs;
- (5) assuring that effective quality control procedures are developed and followed; and
- (6) assuring availability of current reference source for the type of compounding conducted.

**B. Pharmacists. Special requirements for non-sterile compounding;**

- (1) all pharmacists engaged in compounding shall:
  - (a) possess the education, training and proficiency necessary to properly and safely perform compounding duties undertaken or supervised and
  - (b) obtain continuing education for the type of compounding done by the pharmacist.
- (2) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling and any other material involved in the compounding process.
- (3) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.
- (4) A pharmacist is responsible for the proper maintenance, cleanliness and use of all equipment used in the compounding process.

**C. Pharmacy technicians. All technicians engaged in compounding shall:**

- (1) possess the education, training and proficiency necessary to properly and safely perform compounding duties undertaken;
- (2) obtain continuing education for the type of compounding done by the pharmacy technician; and
- (3) perform compounding duties under the direct supervision of and responsible to a pharmacist.

**D. Training.** All personnel involved in non-sterile compounding shall be trained and must participate in continuing relevant training programs.

[16.19.30.8 NMAC - N, 9/15/2006; A, 9/14/2021]

### **16.19.30.9 OPERATIONAL STANDARDS:**

#### **A. General requirements.**

(1) Non-sterile drug products may be compounded in licensed pharmacies as a result of a practitioner's prescription order based on the practitioner-patient-pharmacist relationship in the course of professional practice.

(2) Preparing limited quantities of prescription drug orders in anticipation based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice.

(a) The beyond-use date should be based on the criteria outlined in USP Chapter <795>.

(b) Any product compounded in anticipation of future prescription drug or medication orders shall be labeled. Each label shall contain:

(i) name and strength of the compounded medication or list of the active ingredient and strengths;

(ii) facility's lot number;

(iii) beyond-use date;

(iv) quantity or amount in the container.

(3) Commercially available product may be compounded for dispensing to individual patients provided the following conditions are met:

(a) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs; and

(b) the prescribing practitioner has requested that the drug be compounded;  
or

(c) if the compounded product is changed to produce for that patient a significant difference, as authorized by the prescriber, between the compounded drug and the comparable commercially available drug product, or if use of the compounded product is in the best interest of the patient; "significant difference" would include the removal of a dye for medical reason such as an allergic reaction; when a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

(4) Compounding veterinary preparations.

(a) Preparations for animals may be compounded based on an order or prescription from a duly authorized veterinarian.

(b) These preparations are to be handled and filled the same as the human prescriptions.

(c) Compounding of drugs for animals must be in accordance with the Animal Medicinal Drug Use Clarification Act of 1994 or successor Act.

(d) A licensed pharmacy may compound veterinary drug preparations in reasonable quantities, in accordance with Paragraph (5) of Subsection DDD of 16.19.8.7 NMAC to be used by veterinarians in their office for administration to patients ("office use preparations").

(e) Compounded office use preparations may be dispensed by a veterinarian to clients only under the following conditions:

(i) a valid veterinarian client patient relationship exists;

(ii) the patient has an emergency condition that the compounded drug is necessary to treat;

(iii) dispensed amount is for use in a single course of treatment, not to exceed a 120-hour supply;

(iv) timely access to a compounding pharmacy is not available; and

(v) the medication is not a controlled substance;

(f) Compounded controlled substance veterinary office use preparations may be distributed by a pharmacy under the following conditions:

(i) the preparation is not readily available from an outsourcing facility;

(ii) ordering and distribution occur in compliance with applicable state and federal law;

(iii) the pharmacy shall be registered with the DEA as a manufacturer; and

(iv) in addition to other required labeling, such preparations shall bear a statement "For administration only. Not for dispensing or resale."

(g) Prohibition on wholesaling:

(i) Office use preparations will not be distributed by a person other than the pharmacy that compounded such veterinary drug preparations.

(ii) This does not prohibit administration or dispensing pursuant to a prescription drug order executed in accordance with federal and state law; and the conditions of this Paragraph (4).

(h) Providing samples of compounded veterinary preparations is prohibited.

(5) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services which may include specific drug products and classes of drugs.

#### **B. Environment.**

(1) Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of drug products including the placement of equipment and materials. Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activity, which is adequate for safe and orderly compounding.

(2) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(3) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition.

(4) When drug products that require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its' use for the preparation of other drug products, must be used in order to prevent cross-contamination.

#### **C. Equipment and supplies. The pharmacy shall:**

(1) have a Class A prescription balance, or analytical balance and weights when necessary which shall be properly maintained and subject to inspection by the New Mexico board of pharmacy; and

(2) have equipment and utensils necessary for the proper compounding of prescription or medication drug orders; such equipment and utensils used in the compounding process shall be:

(a) of appropriate design and capacity, and be operated within designated operational limits;

(b) of suitable composition so that surfaces that contact components, in-process material or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality or purity of the drug product beyond the desired result;

(c) cleaned and sanitized appropriately prior to each use; and

(d) routinely inspected, calibrated when necessary or checked to ensure proper performance.

**D. Labeling.** In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription or medication drug order shall contain the following:

(1) the generic name(s) or the designated name and the strength of the compounded preparation;

(2) the quantity dispensed;

(3) the date on which the product was compounded;

(4) a lot or batch number; and

(5) the beyond-use date after which the compounded preparation should not be used;

(a) in the absence of stability information applicable for a specific drug or preparation in the USP/NF the preparation shall adhere to the following maximum beyond-use date guidelines: unless pursuant to methodology and specifications outlined in the current chapter of USP <795>.

(i) for non-aqueous formulations (other than oral liquid) - the BUD is not later than the time remaining until the earliest expiration date of any API or six months, whichever is earlier when stored at controlled room temperature or refrigerator;

(ii) for non-aqueous oral liquids – the BUD is not later than the time remaining until the earliest expiration date of any API or 90 days, whichever is earlier, when stored at controlled room temperature or refrigerator;

(iii) for nonpreserved aqueous formulations - the BUD is not later than the time remaining until the earliest expiration date of any API or 14 days, whichever is earlier, when stored at controlled cold temperatures;

(iv) for preserved aqueous formulations, the BUD is not later than the time remaining until the earliest expiration date of any API or 35 days, whichever is earlier, when stored at controlled room temperature or refrigerator.

(b) beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation; **the BUD shall not be later than the expiration date on the container of any component.**

**E.** Drugs, components and material used in non-sterile compounding.

(1) Drugs used in non-sterile compounding shall preferably be a USP/NF grade substance manufactured in a FDA registered facility.

(2) In the event that USP/NF grade substances are not available, documentation of stability and purity must be established and documented.

(3) A pharmacy may not compound a drug product which has been withdrawn or removed from the market for safety reasons.

**F.** Compounding process. The safety, quality and performance of compounded prescriptions depend on correct ingredients and calculations, accurate and precise measurements, appropriate formulation conditions and procedures, and prudent pharmaceutical judgment. Each pharmacy shall develop and follow written SOP's based on established compounding procedures as outlined in chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process.

**G.** Quality control.

(1) The safety, quality, and monitoring is used to insure that the output of compounded drug products for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity or pH of solutions are met. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations, chapter 1075 of the USP/NF concerning good compounding practices, and chapter 1160 of the USP/NF concerning pharmaceutical calculations in prescription compounding. Such procedures shall be documented and be available for inspection.

(2) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(3) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than ninety percent and not more than one hundred-ten percent of the theoretically calculated and labeled quantity of active ingredient per unit volume and not less than ninety percent and not more than one hundred-ten percent of the theoretically calculated weight or volume per unit of the preparation.

[16.19.30.9 NMAC - N, 9/15/2006; A, 6/29/2013; A, 12/19/2013; A, 12/13/2015; A, 12/15/2020; A, 9/14/2021; A, 8/13/2024]

#### **16.19.30.10 RECORDS:**

**A.** Maintenance of records. Every record required by this section shall be kept by the pharmacy for at least three (3) years.

**B.** Compounding records.

(1) Master Formulation records must include:

(a) provides a consistent source document for preparing the preparation (recipe);

(b) is a file of individual compounded preparations;

(c) list the name, strength, and dosage form of the preparation compounded;

(d) list all ingredients and their quantities;

(e) list equipment needed to prepare the preparation, when appropriate, and mixing instructions;

(f) other environmental controls, such as the duration of mixing and other factors pertinent to the replication of the preparation as compounded;

(g) the beyond-use date and reference source to support the assigned BUD, the container closure system(s) used in dispensing, the storage requirements, quality control procedures (e.g., pH testing, visual inspection) and expected results;

(h) physical description of the final compounded nonsterile preparation;

(i) if applicable, calculations to determine and verify quantities and/or concentrations of components and strength or activity of the API(s); and

(j) labeling requirements (e.g. shake well).

(2) Compounding records:

(a) document the name and weight or measurement of each ingredient;

(b) contain the name and strength of the compounded preparation, the formulation record reference for the preparation, the vendors or manufacturers, lot numbers, and expiration dates of the ingredients;

(c) contain information on the total quantity and number of dosage units compounded, the name of the person who prepared the preparation and the name of the pharmacist who approved the preparation;

(d) contain the date of the preparation, the assigned internal identification number or the prescription number and an assigned beyond-use date; and

(e) for all compounded preparations, results of quality control procedures are to be recorded;

(f) if applicable, calculations to determine and verify quantities and/or concentrations of components and strength or activity of the API(s);

(g) physical description of the final compounded non-sterile preparation.

[16.19.30.10 NMAC - N, 9/15/2006; A, 8/13/2024]

## **PART 31: EMERGENCY PROVISIONS**

### **16.19.31.1 ISSUING AGENCY:**

Board of Pharmacy.

[16.19.31.1 NMAC - N, 4/3/2006; A, 9/14/2021]

### **16.19.31.2 SCOPE:**

All pharmacies, resident and non-resident, as defined in Subsections S and Z of Section 61-11-2 NMSA 1978, and all persons or entities that own or operate, or are employed by, a pharmacy for the purpose of providing pharmaceutical products or services. Pharmacists and technicians subject to licensure, registration, and regulation by the Board of Pharmacy. Practitioners subject to registration by the Board of Pharmacy pursuant to Section 30-31-12 of the Controlled Substances Act.

[16.19.31.1 NMAC - N, 4/3/2006; A, 9/14/2021]

### **16.19.31.3 STATUTORY AUTHORITY:**

Paragraph (1) of Subsection A of Section 61-11-6 NMAC 1978 authorizes the Board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Paragraph (3) of Subsection A of Section 61-11-6 NMSA 1978 provides for the issuance and renewal of licenses for pharmacists. Paragraph (4) of Subsection A of Section 61-11-6 authorizes the Board of Pharmacy to require and establish criteria for continuing education as a condition of renewal of licensure for pharmacists. Paragraph (16) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the Board of

Pharmacy to register and regulate qualifications, training and permissible activities of pharmacy technicians. Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the Board of Pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities. Section 30-31-11 NMSA 1978 authorizes the Board of Pharmacy to promulgate regulations and charge reasonable fees for the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31-12 NMSA 1978 requires Board registration to engage in activities relating to controlled substances including possession, dispensing, prescribing or conducting research.

[16.19.31.1 NMAC - N, 4/3/2006; A, 9/14/2021]

**16.19.31.4 DURATION:**

Permanent.

[16.19.31.4 NMAC - N/E, 04/03/06]

**16.19.31.5 EFFECTIVE DATE:**

April 3, 2006, unless a later date is cited in the history note at the end of a Section.

[16.19.31.5 NMAC - N/E, 04/03/06]

**16.19.31.6 OBJECTIVE:**

The objective of Part 31 of Chapter 19 is to ensure the safe and competent delivery of quality pharmaceutical products and services to the public by establishing standards for the operation of pharmacies, including but not limited to minimum space requirements and standards for equipment, accessories, personnel, dispensing, labeling and advertising during emergency situations.

[16.19.31.6 NMAC - N/E, 04/03/06]

**16.19.31.7 DEFINITIONS:**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**A.** Emergency situation - and emergency caused by a natural or manmade disaster or any other exceptional situation that causes and extraordinary demand for pharmacist services.

**B.** Sponsoring pharmacy - a pharmacy licensed by the board in which the emergency temporary pharmacist will practice.

**C.** State - One of the 50 United States of America, the District of Columbia, and Puerto Rico.

[16.19.31.7 NMAC - N/E, 04/03/06]

**16.19.31.8 EMERGENCY TEMPORARY PHARMACIST LICENSE:**

**A.** Emergency temporary pharmacist license. In an emergency situation, the board may grant a pharmacist who holds a license to practice pharmacy in another state an emergency temporary pharmacist license to practice in New Mexico. The following is applicable for the emergency temporary pharmacist license.

**(1)** An applicant for an emergency temporary pharmacist license under this section must:

**(a)** hold a current pharmacist license in another state and that license and other licenses held by the applicant in any other state may not be suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and

**(b)** be sponsored by a pharmacy with an active license in New Mexico.

**(2)** To qualify for an emergency temporary pharmacist license, the applicant must submit an application including the following information:

**(a)** name, address, and phone number of the applicant;

**(b)** name and license number of the pharmacist-in-charge of the sponsoring pharmacy;

**(c)** name and license number of the sponsoring pharmacy; and

**(d)** any other information that is required by the board.

**(3)** An emergency temporary pharmacist license shall be valid for a period as determined by the executive director of the board not to exceed six months. The executive director, in his/her discretion, may renew the license for an additional six months, if the emergency situation still exists.

**(4)** The board will notify the sponsoring pharmacy of the approval of an emergency temporary pharmacist license.

**B.** Limitations on practice. A holder of an emergency temporary pharmacist license:

**(1)** may only practice in the sponsoring pharmacy; and

(2) must notify the board in writing, prior to beginning employment in another sponsoring pharmacy.

[16.19.31.8 NMAC - N/E, 04/03/06]

**16.19.31.9 PROVISIONS FOR PHARMACIST LICENSURE DURING DECLARED DISASTER:**

**A.** Emergency provisions for license by endorsement. Pharmacist currently licensed in a state in which a federal disaster has been declared may be licensed by endorsement in New Mexico during the four months following the declared disaster at no cost with the following requirements:

(1) receipt of a completed application which has been signed and notarized accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) other required verification will be obtained online if possible by board staff to include:

(a) current licensure status;

(b) national pharmacists data bank;

(c) national association of boards of pharmacy disciplinary database; and

(3) nothing in this provision shall constitute a waiver of the requirements for licensure contained in 16.19.2 NMAC.

**B.** License expiration. Pharmacist licenses under 16.19.2 NMAC shall expire six months after issue date.

[16.19.31.9 NMAC - N/E, 04/03/06]

**16.19.31.10 PROVISIONS FOR PRACTITIONER CONTROLLED SUBSTANCES REGISTRATION DURING A DECLARED DISASTER:**

**A.** Emergency provisions for registration by endorsement. Practitioners currently possessing a temporary license issued by a New Mexico regulatory agency and possessing a current drug enforcement administration controlled substance registration in a state in which a federal disaster has been declared may be registered by endorsement in New Mexico during the four months following the declared disaster at no cost with the following requirements:

(1) receipt of a completed application which has been signed and accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) other required verification will be obtained online if possible by board staff to include: current licensure status, national practitioners data banks; and

(3) nothing in this provision shall constitute a waiver of the requirements for licensure contained in 16.19.20 NMAC.

**B.** Registration expiration. Practitioners registrations issued under 16.19.20 NMAC shall expire six months after issue date.

[16.19.31.10 NMAC - N/E, 04/03/06]

**16.19.31.11 PROVISIONS FOR PHARMACIST OR PHARMACY TECHNICIAN, UNAVAILABLE TESTING OR TRAINING:**

**A.** During a declared civil or public health emergency resulting in unavailable required testing or training, the board may authorize a temporary extension for a:

(1) temporary pharmacist license under reciprocity issued pursuant to 16.19.3 NMAC;

(2) pharmacy technician registration;

(3) pharmacist to exercise prescriptive authority pursuant to 16.19.26 NMAC (e.g. current live basic life support/cardiopulmonary resuscitation).

**B.** Pharmacists and technicians are to complete required testing or training as soon as practicable.

[16.19.31.11 NMAC - N, 9/14/2021]

**PART 32: WAIVER PROVISIONS**

**16.19.32.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.32.1 NMAC - N, 04/30/07]

**16.19.32.2 SCOPE:**

Any person or business pursuant to 26-1-17 of the New Mexico Drug, Device and Cosmetic Act, 30-31-12(A), (B) of the Controlled Substance Act, and 61-11-9, 61-11-11, 61-11-11.1, 61-11-14(A), (B) of the Pharmacy Act.

[16.19.32.2 NMAC - N, 04/30/07]

**16.19.32.3 STATUTORY AUTHORITY:**

Section 26-1-18(A) NMSA 1978 authorizes the board to promulgate regulations for the efficient enforcement of the New Mexico Drug, Device and Cosmetic Act (26-1-1 NMSA 1978). The board shall conform the regulations promulgated under the New Mexico Drug, Device and Cosmetic Act, insofar as practical, with regulations promulgated under the federal act as defined in Section 26-1-2 NMSA 1978. Section 30-31-11 NMSA 1978 authorizes the board to promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 61-11-6(A)(1) NMSA 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Section 61-11B-3 NMSA 1978 authorizes the board to adopt regulations to carry out the provisions of the Pharmacist Prescriptive Authority Act. Section 30-31B-6 NMSA 1978 authorizes the board to promulgate regulations and charge reasonable fees relating to the licensing and control of the manufacture, possession, transfer and transportation of drug precursors.

[16.19.32.3 NMAC - N, 04/30/07]

**16.19.32.4 DURATION:**

Permanent.

[16.19.32.4 NMAC - N, 04/30/07]

**16.19.32.5 EFFECTIVE DATE:**

April 30, 2007, unless a later date is cited in the history note at the end of a section.

[16.19.32.5 NMAC - N, 04/30/07]

**16.19.32.6 OBJECTIVE:**

This regulation established guidelines to waive provisions of the New Mexico board of pharmacy regulations as authorized by law.

[16.19.32.6 NMAC - N, 04/30/07]

**16.19.32.7 DEFINITIONS:**

"Waive/waivers" means to refrain from pressing or enforcing compliance with certain regulations for the specified period of time provided the health, safety, or welfare of patients and staff are not in danger. Waivers are issued at the sole discretion of the New Mexico board of pharmacy.

[16.19.32.7 NMAC - N, 04/30/07]

**16.19.32.8 PROVISIONS FOR ENTITY SEEKING TO OBTAIN A WAIVER:**

**A.** Petition for a waiver must be submitted to the board of pharmacy. Waivers granted by the board are limited to use by the party and business specified in the waiver document and other limitations set forth. Such petitions shall include:

- (1) name of party;
- (2) address of the business;
- (3) type of business;
- (4) reason for waiver request, including each affected New Mexico administrative code citation;
- (5) supporting documents;
- (6) the expected public benefit as a result of the waiver, and;
- (7) other information requested by the board as deemed necessary.

**B.** Any licensed facility granted a waiver must publicly display the "waiver" in proximity to the facility's current registration.

**C.** Waivers granted: the board shall include in any waiver granted:

- (1) date granted;
- (2) name and license number of person or facility;
- (3) type of license;
- (4) specific regulation(s) waived;
- (5) duration of the waiver; and
- (6) any alternative requirements imposed by the board.

**D.** All waivers will be subject to review and reconsideration.

[16.19.32.8 NMAC - N, 04/30/07]

## **PART 33: TELE-PHARMACY AND REMOTE DISPENSING**

### **16.19.33.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.33.1 NMAC - N, 05-14-10]

### **16.19.33.2 SCOPE:**

This section applies to hub pharmacies and remote tele-pharmacies. Both the hub pharmacy and remote tele-pharmacy must be located within and licensed by the New Mexico board of pharmacy. The remote tele-pharmacy must be greater than 20 miles from an existing retail pharmacy to qualify under these rules.

[16.19.33.2 NMAC - N, 05-14-10; A, 06-09-17]

### **16.19.33.3 STATUTORY AUTHORITY:**

Section 61-11-6.A(6) NMSA 1978 requires that the board of pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities. Section 61-11-6.A(1) NMSA 1978 requires the board of pharmacy to adopt, regularly review and revise or repeal rules and regulations necessary to carry out the provisions of the Pharmacy Act.

[16.19.33.3 NMAC - N, 05-14-10]

### **16.19.33.4 DURATION:**

Permanent.

[16.19.33.4 NMAC - N, 05-14-10]

### **16.19.33.5 EFFECTIVE DATE:**

May 14, 2010, unless a different date is cited at the end of a section.

[16.19.33.5 NMAC - N, 05-14-10]

### **16.19.33.6 OBJECTIVE:**

The objective of Part 33 of Chapter 19 is to ensure the safe and competent delivery of quality pharmaceutical products and the provision of pharmaceutical care to the public by establishing standards for the operation of remote dispensing sites and tele-

pharmacy, including but not limited to minimum space requirements and standards for equipment, accessories, personnel, dispensing and labeling.

[16.19.33.6 NMAC - N, 05-14-10]

#### **16.19.33.7 DEFINITIONS:**

**A. "Board"** means the New Mexico board of pharmacy.

**B. "Electronic link"** means a real time, continuous HIPAA-compliant computer video and audio link between the hub pharmacy and the remote tele-pharmacy during all hours of the remote tele-pharmacy's operation and in compliance with Paragraph (4) of Subsection A of 16.19.33.9 NMAC.

**C. "Indirect supervision"** means continuous supervision through a constant live video link with not less than four camera views which provide for real time live monitoring by the hub pharmacy of the remote tele-pharmacy which is recorded for a minimum of 90 days. This indirect supervision must be in compliance with Subsection B of 16.19.22.7 NMAC.

**D. "Patient-pharmacist audio visual link"** means a real time HIPAA-compliant audio visual link from the private patient counseling area of the remote tele-pharmacy to the pharmacist at the hub pharmacy.

**E. "Hub pharmacy"** means a board licensed pharmacy located in New Mexico operating under the direct control of a board registered pharmacist from which computer-aided pharmacist supervision of a remote tele-pharmacy occurs.

**F. "Hub pharmacist"** means a board registered pharmacist who provides the indirect supervision of a remote tele-pharmacy via HIPAA-compliant electronic link that includes provisions for visual observations and inspection of the inside of the remote tele-pharmacy and all prescription orders prior to dispensing and is in compliance with Subsection B of 16.19.22.7 NMAC. This oversight is to include visual inspection of and patient consultation for any prescription order dispensed from the remote tele-pharmacy.

**G. "Pharmacist-in-charge"** means the pharmacist for the hub pharmacy from which the hub pharmacist oversees the day to day operation of a remote tele-pharmacy and who shall comply with 16.19.6.9 NMAC.

**H. "Pharmacist site visits"** means the visitation and inspection of the tele-pharmacy by the hub pharmacist by which the hub pharmacist is physically present to assess the remote tele-pharmacy's compliance with all laws and regulations.

**I. "Remote dispensing site"** means a pharmacy location primarily staffed by technicians and remote dispensing technology electronic link and indirect supervision with required pharmacist supervision and pharmacist site visits.

**J. "Remote tele-pharmacy"** means a board licensed pharmacy located in the state of New Mexico staffed by a remote tele-pharmacy technician who practices under the direct, computer aided and supervision of a hub pharmacist working from the hub pharmacy by electronic link during all hours of operation.

**K. "Remote tele-pharmacy technician"** means a board registered pharmacy technician employed by the hub pharmacy, with a minimum of 2,000 hours of experience working as a certified registered pharmacy technician who under the computer aided supervision of an off-site pharmacist, handles the day to day operation of a remote tele-pharmacy, including the preparation and dispensing of prescription drugs.

**L. "Practice of tele-pharmacy"** means the provision of pharmacist care by board licensed pharmacies and board licensed pharmacists through the use of telecommunications or other technologies to patients or their agents at a remote tele-pharmacy site.

[16.19.33.7 NMAC - N, 05-14-10; A, 06-09-17]

#### **16.19.33.8 PURPOSE:**

The board is responsible for maintaining, continuing and enhancing the development of the education and professional role of the pharmacist for the protection of the health, welfare and safety of the citizens of New Mexico. In order to maintain, augment or expand the availability of pharmacy services in communities that have pharmacy access issues, rules are necessary to permit remote tele-pharmacy services and remote dispensing.

[16.19.33.8 NMAC - N, 05-14-10; A, 06-09-17]

#### **16.19.33.9 OPERATIONS:**

**A.** A remote tele-pharmacy shall comply with all standards of 16.19.6.8 NMAC governing the procedure for obtaining a license to operate a pharmacy in New Mexico.

**(1)** The license holder of the hub pharmacy must apply for a license to operate a remote tele-pharmacy. A remote tele-pharmacy license is established for the purpose of conducting a remote tele-pharmacy. The license is issued to a remote tele-pharmacy connected to a hub pharmacy via an electronic link. The initial licensure fee and subsequent license renewal fee are the same as those for retail pharmacies, as required by Subsection E of 16.19.12.13 NMAC.

**(2)** A remote tele-pharmacy that operates under different ownership than the hub pharmacy to which it is attached; shall have a written contractual agreement outlining the responsibilities of each pharmacy. This written agreement shall be submitted with the initial licensure application for a remote tele-pharmacy. Any subsequent changes to that contractual agreement shall be submitted to the board's executive director for approval. The applicant must provide sufficient evidence that the addition of a tele-pharmacy will augment or expand the availability of pharmacy services and pharmacy access within the proposed area of location.

**(3)** A remote tele-pharmacy shall comply with all the applicable requirements for a pharmacy as contained in 16.19.6 NMAC, including the requirement that all medications are stored under proper conditions.

**(4)** A remote tele-pharmacy shall be connected to a hub pharmacy via HIPAA-compliant electronic link. All links must be fully operational during all hours of operation of the remote tele-pharmacy. If the link malfunctions, the remote tele-pharmacy must be closed to the public unless a pharmacist is physically present at the remote tele-pharmacy site.

**(a)** Video equipment must be capable of providing not less than four simultaneous camera views of the pharmacy operation at the remote tele-pharmacy.

**(b)** The video equipment at the remote tele-pharmacy site must be capable of resolution sufficient to allow for pharmacist identification of medication dosage forms and the reading of bottle labels via video camera.

**(c)** The video equipment at the remote tele-pharmacy site must be capable of recording and maintaining at least 90 days of video surveillance of the remote tele-pharmacy site and operations for future review.

**(d)** Only a remote tele-pharmacy technician designated for that site or a pharmacist who is physically present at the remote tele-pharmacy may access a remote tele-pharmacy site, linked to a hub pharmacy via an electronic link.

**(e)** The remote tele-pharmacy may only remain open to the public as long as the designated pharmacy technician is present in the remote tele-pharmacy and the hub pharmacist is providing indirect supervision from the hub pharmacy or the hub pharmacist is physically present at the remote site.

**(f)** The name of each certified pharmacy technician that works at a remote tele-pharmacy shall be recorded with the board.

**(5)** The remote tele-pharmacy shall utilize bar coding or similar technology that effectively recognizes the drug or device selected to fill the prescription is the same as indicated on the prescription label.

**(6)** The hub pharmacy and hub pharmacist are responsible for ensuring fulfillment of all pharmacist responsibilities in accordance with 16.19.4.16 NMAC.

**(7)** Written policies and procedures must be submitted to the board prior to the issuance of any license. The pharmacist-in-charge is responsible for the development, implementation, maintenance, and review of written policies and procedures for the safe and effective operation of the remote tele-pharmacy and the oversight by the hub pharmacy. These policies and procedures shall comport with board regulations and laws and shall be available for board inspection in both the remote tele-pharmacy and the hub pharmacy. The policy and procedure manual shall be reviewed by the pharmacist-in-charge at least annually and revised if necessary to promote improvements in safety and service at the remote tele-pharmacy. The annual review and any changes to the manual shall be documented. The policy and procedure manual must address each of the following, at a minimum:

**(a)** standards and practices necessary to ensure safety, accuracy, security, and patient confidentiality;

**(b)** standards and practices necessary to ensure drugs and devices are procured, handled, stored, and dispensed or otherwise dispositioned in accordance with state and federal laws and regulations;

**(c)** identification of pharmacy personnel authorized to access drug storage and dispensing areas at the remote tele-pharmacy and to receive drugs delivered to the remote tele-pharmacy;

**(d)** standards and practices necessary to ensure all records are maintained in compliance with board laws and regulations;

**(e)** processes to assure the integrity, legitimacy and authenticity of prescriptions;

**(f)** criteria for monthly inspections conducted during pharmacist site visits and appropriate site visit documentations;

**(g)** medication error prevention;

**(h)** training standards and practices to ensure facility personnel are properly trained and comply with all applicable policies and procedures. Training shall be required for the remote tele-pharmacy technicians and pharmacists to ensure the competence and ability of each person that operates the electronic verification system, electronic record keeping, and communication systems. Technician training documentation shall be maintained in accordance with 16.19.22 NMAC.

**(8)** The pharmacist-in-charge is responsible for an ongoing review of incident reports and outcomes, with appropriate corrective action taken and documented.

**(9)** The pharmacist-in-charge must ensure each remote tele-pharmacy location records, for each prescription dispensed, the identification of each pharmacist who performed:

- (a)** order interpretation;
- (b)** order entry verification;
- (c)** prospective drug utilization review;
- (d)** final order verification;
- (e)** any intervention required; and
- (f)** patient counseling, when there are no other means of definitively determining the identity of the pharmacist who provided counseling.

**(10)** A hub pharmacist shall not provide direct or indirect supervision for more than four pharmacies.

**(11)** The hub pharmacist must conduct pharmacist site visits and complete inspections of the remote tele-pharmacy at least once monthly. The pharmacist shall increase frequency of the monthly site visits if issues are identified, and additional pharmacist intervention shall be taken and documented until the issue is resolved. A list of inspection criteria shall be included in the policy and procedure manual for the remote tele-pharmacy. The pharmacist's inspection shall include a determination of the average number of prescriptions filled per day. A copy of the inspection report shall be reviewed and signed by the pharmacist-in-charge of the hub pharmacy and a copy of the inspection report shall be maintained at both the remote tele-pharmacy and at the hub pharmacy for the board of pharmacy inspection.

**(12)** The number of pharmacy technicians that a hub pharmacist shall oversee shall be limited according to 16.19.22.10 NMAC. Any pharmacy technician on duty at the hub pharmacy site shall be taken into account along with any remote tele-pharmacy technicians working at a remote tele-pharmacy site, when computing the ratio of pharmacists to pharmacy technicians.

**(13)** A remote tele-pharmacy may have a dangerous drug inventory. Any controlled substances shall be kept at the remote site in accordance with 16.19.20 NMAC.

**(a)** If controlled substances are kept, the remote tele-pharmacy shall be registered with the drug enforcement administration and obtain a DEA number.

**(b)** If controlled substances are kept, the remote tele-pharmacy shall have a valid New Mexico controlled substance registration as required in 16.19.20 NMAC.

(c) All controlled substances kept in inventory by the remote tele-pharmacy shall be listed on a perpetual inventory log, which shall be updated upon the dispensing of each controlled substance prescription or other disposition.

(d) The pharmacist shall perform monthly inventory of all controlled substances during pharmacist site visits to the remote tele-pharmacy. If a perpetual reconciliation is not achieved through the use of technology, the pharmacist shall perform and document a complete monthly reconciliation.

(14) Prescriptions may be received, entered and filled or re-filled by the hub pharmacy and sent to the remote tele-pharmacy for distribution to the patient during hours when the technician is present in the remote tele-pharmacy. A pharmacist at the hub pharmacy must complete a final check of each prescription before it leaves the remote tele-pharmacy site, in accordance with Subsection B of 16.19.4.16 NMAC.

(a) The pharmacist's initials and the technician's initials shall be recorded.

(b) The pharmacist shall compare the stock bottle, drug dispensed and drug strength. The entire prescription label must be checked for accuracy. All prescriptions distributed by the remote- tele-pharmacy must have the label affixed to the prescription container prior to being inspected by the pharmacist via electronic link.

(15) Patient counseling shall be done by a hub pharmacist via patient-pharmacist audio-visual link in accordance with Subsection F of 16.19.4.16 NMAC.

(16) A remote tele-pharmacy is limited to filling no more than 200 prescriptions per day. If filling more than 200 prescriptions per day, the remote tele-pharmacy shall be converted to a retail pharmacy and is subject to all applicable requirements of 16.19.6 NMAC.

(17) No drug compounding shall occur at any remote tele-pharmacy.

(18) All records required by this part shall be kept on-site at the tele-pharmacy for a period of at least three years and shall be readily retrievable for inspection by the board or the board's agent.

[16.19.33.9 NMAC - N, 05-14-10; A, 06-09-17; A, 06-23-17]

## **PART 34: PRESCRIPTION DRUG DONATIONS**

### **16.19.34.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.34.1 NMAC - N, 11-27-11]

**16.19.34.2 SCOPE:**

This section applies to licensed clinics and participating practitioners located within the state of New Mexico who provide for the donation and redistribution of previously dispensed prescription drugs that have not been used.

[16.19.34.2 NMAC - N, 11-27-11]

**16.19.34.3 STATUTORY AUTHORITY:**

Section 26-1-3.2 of the New Mexico Drug, Device and Cosmetic Act requires the board of pharmacy to promulgate rules establishing standards and procedures necessary for the safe redistribution of previously dispensed prescription drugs.

[16.19.34.4 NMAC - N, 11-27-11]

**16.19.34.4 DURATION:**

Permanent.

[16.19.34.4 NMAC - N, 11-27-11]

**16.19.34.5 EFFECTIVE DATE:**

November 27, 2011, unless a different date is cited at the end of a section.

[16.19.34.5 NMAC - N, 11-27-11]

**16.19.34.6 OBJECTIVE:**

The objective of Part 34 of Chapter 19 is to ensure the safe donation and redistribution of unused prescription drugs by licensed clinics and participating practitioners by establishing standards and procedures including but not limited to accepting, storing, packaging, labeling, inspecting, record keeping and disposal.

[16.19.34.6 NMAC - N, 11-27-11]

**16.19.34.7 DEFINITIONS:**

**A. "Board"** means the New Mexico board of pharmacy.

**B. "Clinic"** means a facility licensed pursuant to Section 61-22-14 NMSA 1978 in which one or more licensed practitioners diagnose and treat patients and in which drugs are stored, dispensed or administered for the diagnosis and treatment of the facility's patients; provided that "clinic" does not include the privately owned practice of a

licensed practitioner or group of licensed practitioners exempt under Section 61-11-11 NMSA 1978.

**C. "Donor"** means an individual who donates an unused prescription drug to a clinic or participating practitioner, who originally prescribed that prescription drug for their patient, for the purpose of redistribution of established patients of that clinic or practitioner.

**D. "Eligible drug"** means an unused prescription drug stored in a tamper-evident container, or by a tamper-evident process preventing unauthorized access, and has an expiration date of six months or greater listed on the packaging. No drug shall be re-dispensed more than one time.

**E. "Ineligible drug"** means any controlled substances or any prescription drug within the risk evaluation and mitigation strategies (REMS) requirements as set forth by Section 505-1[21 USC355-1] of the Food Drug and Cosmetic Act (FD&C Act), with the exception of a medication guide (MedGuide) as set forth in Title 34, CFR, Subsection 208, patient package insert (PPI) or a communication plan, without prior board approval.

**F. "Participating practitioner"** means a licensed practitioner who is authorized to prescribe drugs, who registers with the board and is subject to rules promulgated by the board to participate in the collection of donated drugs prescribed for use by established patients of that practitioner, and donated for the purpose of redistribution to established patients of that practitioner.

**G. "Prescription drug"** for the purposes of this rule means any drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

**H. "Recipient"** means an individual who voluntarily receives donated prescription drugs.

**I. "Tamper-evident"** means a device or process that makes unauthorized access to protected pharmaceutical packaging easily detected.

**J. "REMS"** means risk evaluation and mitigation strategy as required by the Food and Drug Administration Amendments Act of 2007.

[16.19.34.7 NMAC - N, 11-27-11]

#### **16.19.34.8 PROCEDURES:**

All clinics and participating practitioners shall follow the procedures for accepting and redistributing certain donated prescription drugs, including refrigerated drugs, consistent with public health and safety standards.

**A.** Before accepting donated prescription drugs the clinic or the participating practitioner shall:

(1) register with the New Mexico board of pharmacy as a practitioner who will facilitate prescription drug donation;

(2) provide donor with appropriate form for documentation and verification upon acceptance of an eligible donated drug;

(3) identify drug as eligible or ineligible prior to accepting the donated drug;

(a) ineligible drugs may not be accepted for donation;

(b) only drugs originally prescribed by a licensed clinic or practitioner may be accepted.

**B.** Standards and procedures for storing donated prescription drugs.

(1) Donated prescription drugs must be stored in compliance with the manufacturer's storage requirements per the drug monograph.

(2) All donated drugs must be stored in compliance with the manufacturer's storage requirements per the drug monograph.

**C.** Standards and procedures for labeling donated prescription drugs:

(1) all personal information from the donor must be removed from packaging;

(2) labeling donated prescription drugs must be in compliance with the food and drug administration (FDA) and the state of New Mexico's requirements for labeling prescription drugs.

**D.** Before redistributing donated prescription drugs the clinic or the participating practitioner shall.

(1) Comply with all applicable federal laws and the laws of the state that deal with the inspection, storage, labeling and redistribution of donated prescription drugs.

(2) Confirm that the donor of a prescription drug is or was a patient of that practitioner or clinic.

(3) Examine the donated prescription drug to determine that it has not been adulterated or misbranded and certify that the drug has been stored in compliance with the requirements of the product.

**(4)** Have the donor read and sign the board approved donor form, this form will serve as documentation and verification upon acceptance of eligible donated drugs.

**(5)** Have all recipients of donated prescription drugs read and sign the board approved recipient form.

**(6)** Confirm the patient receiving the donated prescription drug has a valid prescription/order for the drug.

**(7)** Provide the recipient of any prescription drug with a REMS's required patient-directed instructional document accompanying the medication, which could be either a MedGuide or a PPI.

**(8)** Confirm they have received and read the formal communication plan from the drug manufacturer as part of the REMS requirement for that prescription drug if applicable.

**E.** Standards and procedures for inspecting donated prescription drugs to determine that the packaging is tamper-evident and that the donated prescription drugs are unadulterated, within the labeled expiration date, and are safe and suitable for distribution.

**(1)** When inspecting packaging ensure:

**(a)** tamper-resistant packaging is intact;

**(b)** there are no breaks, cracks or holes in packaging;

**(c)** appropriate quantity as indicated on package;

**(d)** consistency of information is maintained on packaging, expiration date, lot number and outer packaging is applicable.

**(2)** When inspecting liquids observe:

**(a)** color;

**(b)** thickness;

**(c)** unusual particles;

**(d)** transparency;

**(e)** odor.

**(3)** When inspecting tablets or capsules observe and confirm uniformity of:

- (a) color;
- (b) shape;
- (c) unusual spots;
- (d) texture;
- (e) odor;
- (f) imprint or markings;
- (g) physical damage, cracks, breaks, erosion, abrasion.

**F.** A handling fee not to exceed twenty dollars (\$20.00) may be charged to the recipient by the clinic or the participating practitioner to cover the costs of inspecting, storing, labeling and redistributing the donated prescription drug.

[16.19.34.8 NMAC - N, 11-27-11]

#### **16.19.34.9 RECORD KEEPING:**

All clinics and participating practitioners shall provide separate records or forms documenting the receipt and redistribution of all unused prescription drugs and maintain the records for three years.

**A.** A form to be signed by the donor serving as receipt of the drug verifying the donor voluntarily donating the drug, the donated prescription drug has been properly stored-not stored at temperature extremes nor hazardous conditions and protected from light and humidity, the container has not been tampered with, and the drug has not been adulterated or misbranded. The form shall include at least the following:

- (1) date the drug was donated;
- (2) name, address and telephone number of donor;
- (3) name, strength and quantity of the drug;
- (4) manufacturer and lot number (if applicable) of drug;
- (5) the expiration date of drug;
- (6) name, date and signature of the practitioner or pharmacist who is accepting and inspecting the donated drugs.

**B.** A form to be signed by the recipient specifying; knowledge that the donor is not a pharmacist and took reasonable care of the donated prescription drug, that the donor is known to the clinic or the participating practitioner and that there is no reason to believe that the donated prescription drug was improperly handled or stored and any person who exercises reasonable care in donating, accepting or redistributing pursuant to this Section 26-1-3.2 NMSA 1978 shall be immune from civil or criminal liability or professional disciplinary action of any kind for any related injury, death or lose, and that the immunity provided by this section shall not decrease or increase the civil or criminal liability of a drug manufacturer, distributors or dispenser that would have existed but for the donation. The form shall include at least the following:

- (1) date the recipient received the drug;
- (2) name, address and phone number of the recipient;
- (3) name, strength and quantity of the drug;
- (4) manufacturer and lot number (if applicable) of drug;
- (5) the expiration date of drug;
- (6) documentation that donated drug was dispensed with applicable forms as deemed by the REMS requirement;
- (7) no product where integrity cannot be assured shall be accepted for redistribution.

**C.** All records and forms required by this rule may be in electronic form.

[16.19.34.9 NMAC - N, 11-27-11]

**16.19.34.10 LIABILITY:**

**A.** Any person who exercises reasonable care in donating, accepting or redistributing prescription drugs pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any related injury, death or loss.

**B.** The immunity provided by this section shall not decrease or increase the civil or criminal liability of a drug manufacturer, distributor or dispenser that would have existed but for the donation.

**C.** A manufacturer shall not be liable for failure to transfer or communicate product consumer information or the expiration date of the donated prescription drug pursuant to this section.

**D.** This section does not restrict the authority of an appropriate government agency to regulate or ban the use of any prescription drugs.

[16.19.34.10 NMAC - N, 11-27-11]

**16.19.34.11 PARTICIPATING PRACTITIONERS AND LICENSED CLINICS:**

**A.** Practitioners and licensed clinics must submit the required application form provided by the board to obtain eligibility for participation.

**B.** The board may remove at any time practitioners or any licensed clinics from participating in the reuse of prescription drug donation should they fail to comply with regulations stated therein.

**C.** The board shall maintain and publish a current listing of participating practitioners and licensed clinics including names(s) and address.

[16.19.34.11 NMAC - N, 11-27-11]

**16.19.34.12 DISPOSAL:**

Participating practitioners and licensed clinics may dispose of unused donated prescription drugs, that were collected but not redistributed, in accordance with state and federal requirements for disposal of prescription drugs.

[16.19.34.12 NMAC - N, 11-27-11]

**16.19.34.13 RECALLS:**

Participating practitioners shall monitor FDA recalls, market withdrawals, and safety alerts and will communicate with recipients if medications they received may be impacted by this FDA action.

[16.19.34.13 NMAC - N, 11-27-11]

**PART 35: DRUG WAREHOUSE**

**16.19.35.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.35.1 NMAC - N, 11-15-10]

**16.19.35.2 SCOPE:**

This section applies to all licensed clinics, hospitals and pharmacies.

[16.19.35.2 NMAC - N, 11-15-10]

**16.19.35.3 STATUTORY AUTHORITY:**

Section 61-11-6(A)(6) NMSA 1978 authorizes the board of pharmacy to provide for the licensing of all places where dangerous drugs are stored or administered and for the inspection of their facilities and activities. Section 61-11-14(B)(10) NMSA 1978 authorizes the board to issue limited drug permits for home care services.

[16.19.35.3 NMAC - N, 11-15-10]

**16.19.35.4 DURATION:**

Permanent.

[16.19.35.4 NMAC - N, 11-15-10]

**16.19.35.5 EFFECTIVE DATE:**

November 15, 2010, unless a different date is cited at the end of a section.

[16.19.35.5 NMAC - N, 11-15-10]

**16.19.35.6 OBJECTIVE:**

The objective of Part 35 of Chapter 19 is to establish standards for the safe and competent storage of pharmaceutical products in facilities located off-site from the licensed clinic, hospital or pharmacy.

[16.19.35.6 NMAC - N, 11-15-10]

**16.19.35.7 DEFINITIONS:**

"Drug warehouse" means an off-site physical storage location of a clinic, hospital or pharmacy currently licensed by the New Mexico board of pharmacy. Dangerous drugs may be stored for the use of the licensed clinic, hospital or pharmacy.

[16.19.35.7 NMAC - N, 11-15-10]

**16.19.35.8 FACILITIES:**

**A.** All facilities at which prescription drugs are stored shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security;

(3) have a quarantine area for storage of prescriptions that are outdated, damaged, deteriorated, misbranded, counterfeit or suspected of being counterfeit or adulterated, otherwise unfit for use;

(4) be maintained in a clean and orderly condition;

(5) be free from infestation by insects, rodents, birds, or vermin of any kind;

(6) be a commercial location and not a personal dwelling or residence;

(7) provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting or diversion of prescription drugs or devices.

**B.** Controlled substances must be isolated from non-controlled substance drugs and stored in a secure area in accordance with DEA security requirements and standards.

[16.19.35.8 NMAC - N, 11-15-10]

#### **16.19.35.9 STORAGE:**

All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or in compliance with standards in the current edition of an official compendium, such as United States pharmacopeia-national formulary (USP/NF).

**A.** If no requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality and purity are not adversely affected.

**B.** Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices or logs shall be utilized to document proper storage of prescription drugs.

**C.** The record keeping requirements in Subsection F of 16.19.8.13 NMAC shall be followed for all stored prescription drugs.

[16.19.35.9 NMAC - N, 11-15-10]

#### **16.19.35.10 SECURITY:**

**A.** All facilities used for drug warehouses shall be secure from unauthorized entry and;

(1) access from outside the premises shall be kept to a minimum and well-controlled;

(2) the outside perimeter of the premises shall be well-lighted;

(3) entry into areas where prescription drugs are held shall be limited to authorized personnel.

**B.** All facilities shall be equipped with a security system that will provide suitable protection against, detect and document any instances of theft, diversion or counterfeiting and;

(1) all facilities shall be equipped with an alarm system to detect entry after hours;

(2) all facilities shall be equipped with a security system that will provide suitable protection against theft and diversion;

(3) the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

[16.19.35.10 NMAC - N, 11-15-10]

#### **16.19.35.11 EXAMINATION OF MATERIALS:**

**A.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting, contraband, suspected of being counterfeit or contraband, or other damage to the contents.

**B.** Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

**C.** Upon receipt, a drug warehouse must review records for the acquisition of prescription drugs or devices for accuracy and completeness.

[16.19.35.11 NMAC - N, 11-15-10]

#### **16.19.35.12 RECORD KEEPING:**

**A.** Drug warehouses shall establish and maintain inventories and records of all transactions regarding receipt and distribution of other disposition of prescription drugs.

These records shall be maintained at the clinic, hospital or pharmacy and must include the following information:

- (1) the identity and quantity of the drugs received and distributed or disposed of; and
- (2) the dates of receipt and distribution or other disposition of the drugs;
- (3) the name, location and license number of the business, health care practitioner or other entity appropriately licensed to possess, dispense, distribute, administer or destroy prescription drugs.

**B.** Inventories and records shall be made available for inspection and photocopying by authorized inspectors employed by the board and authorized federal, state or local law enforcement agency officials for a retention period of three (3) years following disposition of the drugs.

**C.** Registrants must petition the board for a waiver in order to store the required records at an alternate location. The registrant must provide the board in writing, of the address (mailing and street), telephone number, and the name and title of the person designated by the registrant as the custodian of the records. Any changes of custodian or location of records must be reported in writing to the board within fifteen (15) actual days. Any records approved by waiver to be stored at an alternate location must be available within two (2) working days of a request by authorized board personnel or officials of a federal, state or local law enforcement agency.

**D.** Drug warehouses shall report any theft, suspected theft, diversion or other significant loss of any prescription drug or device to the board and FDA and where applicable to the DEA.

[16.19.35.12 NMAC - N, 11-15-10]

#### **16.19.35.13 WRITTEN POLICIES AND PROCEDURES:**

**A.** Drug warehouses shall establish, maintain and adhere to written policies and procedures which shall be followed:

- (1) for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures;
- (2) for identifying, recording and reporting losses or thefts; and
- (3) for correcting all errors and inaccuracies in inventories.

**B.** Drug warehouses shall include in their written policies and procedures the following:

(1) a procedure whereby the oldest approved stock of a prescription drug product is distributed first; the procedure may permit deviation from this requirement if such deviation is temporary and appropriate;

(2) a procedure to be followed for handling recalls and withdrawals of prescription drugs; such procedure shall be adequate to deal with recalls and withdrawals due to;

(a) any action initiated at the request of the food and drug administration or other federal, state or local law enforcement or other government agency, including the state licensing agency;

(b) any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(c) any action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design;

(3) a procedure to ensure that drug warehouses prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state, or national emergency;

(4) a procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed; this procedure shall provide for written documentation of the disposition of outdated prescription drugs; this documentation shall be maintained for three (3) years after

disposition of the outdated drugs;

(5) a procedure for the destruction of outdated prescription drugs in accordance with state and federal laws, including all necessary documentation, maintained for a minimum of three (3) years and the appropriate witnessing of the destruction of outdated prescription drugs in accordance with all applicable federal and state requirements;

(6) a procedure for the disposing and destruction of containers, labels and packaging to ensure that the containers, labels and packaging can not be used in counterfeiting activities, including all necessary documentation, maintained for a minimum of three (3) years and the appropriate witnessing of the destruction of any labels, packaging, immediate containers or containers in accordance with all federal and state requirements;

(7) a procedure for reporting criminal or suspected criminal activities involving the inventory of prescription drugs to the board, FDA as required by the agency and if applicable, DEA, within three (3) business days.

[16.19.35.13 NMAC - N, 11-15-10]

**16.19.35.14 RESPONSIBLE PERSONS:**

Drug warehouses shall establish and maintain lists of officers, directors, managers and other persons in charge of drug warehouse storage and handling, including a description of their duties and a summary of their qualifications.

[16.19.35.14 NMAC - N, 11-15-10]

**16.19.35.15 COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW:**

Drug warehouses shall operate in compliance with applicable federal, state and local laws and regulations.

**A.** Drug warehouses shall permit board authorized personnel and authorized federal, state and local law enforcement officials to enter and inspect their premises, delivery vehicles and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law. Such officials shall be required to show appropriate identification prior to being permitted access to wholesale drug distributors' premises and delivery vehicles.

**B.** Drug warehouses that deal in controlled substances shall register with the board and the DEA and shall comply with all applicable state, local and DEA regulations.

**C.** A licensed drug warehouse may distribute only to persons who are licensed to possess dangerous drugs.

**D.** Controlled substances may only be distributed or delivered to persons in this state who are registered by the board and the DEA to possess controlled substances.

[16.19.35.15 NMAC - N, 11-15-10]

**16.19.35.16 MINIMUM REQUIRED INFORMATION FOR DRUG WAREHOUSE LICENSURE:**

**A.** Every clinic, hospital or pharmacy requiring off-site storage of drugs shall license with the board by application and provide information required by the board on an application approved by the board, including but not limited to:

(1) all trade or business names used by the licensee (includes "is doing business as" and "formerly known as") which cannot be identical to the name used by another unrelated wholesale distributor licensed to purchase drugs or devices in the state;

(2) name(s) of the owner and operator of the licensee (if not the same person) including;

(a) if a person: the name, business address and date of birth;

(b) if a partnership: the name, business address, date of birth of each partner and the name of the partnership and federal employer identification number;

(c) if a corporation: the name, business address, date of birth, title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, the name of the parent company, if any; the name and business address of each shareholder owning ten percent (10%) or more of the voting stock of the corporation, including over-the-counter (OTC) stock, unless the stock is traded on a major stock exchange and not OTC, publicly held corporations may request a waiver to the requirements of this Paragraph pursuant to 16.19.32 NMAC;

(d) if sole proprietorship: the full name, business address, date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(e) if a limited liability company: the name of each member, the name of each manager, the name of the limited liability company and federal employer identification number, the name of the state in which the limited liability company was originated;

(f) any other relevant information that the board requires;

(3) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the wholesale distributor that engages in the distribution of drugs and additional information as required in Subsection F of 16.19.8.13 NMAC;

(4) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the wholesale drug distributor by any other state and federal authority that authorizes the wholesale distributor to purchase, possess and distribute drugs;

(5) a list of all disciplinary actions by state and federal agencies against the wholesale distributor as well as any such actions against principals, owners, directors or officers;

(6) a full description of each facility and warehouse, including all locations utilized for drug storage or distribution; the description must include the following:

(a) square footage;

- (b) security and alarm system descriptions;
  - (c) terms of lease or ownership;
  - (d) address and;
  - (e) temperature and humidity controls;
- (7) a copy of the drug warehouse written policies and procedures.

**B.** Every clinic, hospital or pharmacy who operates a drug warehouse shall submit a reasonable fee to be determined by the board.

**C.** Each drug warehouse must undergo an inspection by the board or a third party working on behalf of the board for the purpose of inspecting the warehouse operations prior to initial licensure and periodically thereafter in accordance with a schedule to be determined by the board.

**D.** All drug warehouses must display or have readily available all licenses and the most recent inspection report administered by the board.

**E.** Changes in any information in this section shall be submitted to the board or to the third party working on behalf of the board within thirty (30) days of such change unless otherwise noted.

[16.19.35.16 NMAC - N, 11-15-10]

**16.19.35.17 MINIMUM QUALIFICATIONS:**

**A.** The board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in warehousing of prescription drugs within the state:

- (1) any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;
- (2) any felony convictions of the applicant under federal, state or local law;
- (3) the applicant's past experience in the distribution of prescription drugs, including controlled substances;
- (4) the furnishing by the applicant of false or fraudulent material in any application made in connection with prescription drug manufacturing or prescription drug distribution;

(5) suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(6) compliance with licensing requirements under previously granted licenses, if any;

(7) compliance with requirements to maintain or make available to the board or to federal, state, or local law enforcement officials those records required under this section; and

(8) any findings by the board that the applicant has violated or been disciplined by a regulatory agency in any state for violating and federal, state, or local laws relating to drug or device wholesale distribution;

(9) any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

**B.** The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.

[16.19.35.17 NMAC - N, 11-15-10]

## **PART 36: COMPOUNDED STERILE PREPARATIONS**

### **16.19.36.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.36.1 NMAC - N, 06-28-14]

### **16.19.36.2 SCOPE:**

All facilities as defined in Paragraph (1), (2), (5) through (11) and (15) of Subsection B of 61-11-14 NMSA 1978, and all persons or entities that own or operate, or are employed by a facility for the purpose of providing pharmaceutical compounded sterile preparations or services.

[16.19.36.2 NMAC - N, 06-28-14; A, 03-22-15]

### **16.19.36.3 STATUTORY AUTHORITY:**

Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board of pharmacy to provide for the licensing of all places where dangerous drugs are stored,

dispensed, distributed or administered and for the inspection of their facilities and activities. Paragraph (7) of Subsection A of 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs and their standards of strength and purity.

[16.19.36.3 NMAC - N, 06-28-14]

**16.19.36.4 DURATION:**

Permanent.

[16.19.36.4 NMAC - N, 06-28-14]

**16.19.36.5 EFFECTIVE DATE:**

June 28, 2014, unless a different date is cited at the end of a section.

[16.19.36.5 NMAC - N, 06-28-14]

**16.19.36.6 OBJECTIVE:**

The objective of Part 36 of Chapter 19 is to establish standards to ensure that the citizens of New Mexico receive properly compounded contaminant-free sterile preparations properly compounded in accordance with all applicable USP/NF General Chapters numbered below 1000.

[16.19.36.6 NMAC - N, 6-28-14; A, 03-22-15]

**16.19.36.7 DEFINITIONS:**

**A. "Air changes per hour" (ACPH)** means the number of times a volume of air equivalent to the room passes through the room each hour.

**B. "Anteroom"** means an ISO Class 8 or cleaner area where personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high-particulate generating activities are performed. It is also a transition area that:

(1) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(2) contains a line of demarcation which is a visible line on the floor that separates the clean and dirty sides of the anteroom.

**C. "Aseptic processing"** A method by which separate, sterile components (e.g., drugs, containers, or closures) are brought together under conditions that maintain their

sterility. The components can either be purchased as sterile or, when starting with nonsterile components, can be separately sterilized prior to combining (e.g., by membrane filtration or by autoclave).

**D. "Aseptic technique"** means proper manipulation of preparations to maintain sterility.

**E. "Batch"** More than one CSP prepared as described in the MFR in a single, discrete process, and expected to have uniform character and quality, within specified limits.

**F. "Beyond-use date" (BUD)** means the date, or as appropriate, date and time, after which a compounded preparation is not to be used and is determined from the date and time the preparation is compounded.

**G. "Biological safety cabinet" (BSC)** A ventilated cabinet that may be used for compounding. These cabinets are divided into three general classes (Class I, Class II, and Class III). Class II BSCs are further divided into types (Type A1, Type A2, Type B1, Type B2, and Type C1).

**H. "Biological safety cabinet (BSC), Class II"** A ventilated cabinet with an open front and inward and downward unidirectional HEPA-filtered airflow and HEPA-filtered exhaust. A BSC used to prepare a CSP must be capable of providing an ISO Class five or better environment for preparation of the CSPs.

**I. "Buffer room"** An ISO Class seven or cleaner room with fixed walls and doors where PEC(s) that generate and maintain an ISO Class five environment are physically located. The buffer room may only be accessed through the anteroom or another buffer room.

**J. "Category one CSP"** A CSP that is assigned a BUD of 12 h or less at controlled room temperature or 24 h or less refrigerated that is compounded in accordance with all applicable requirements for Category one CSPs in USP/NF <797>.

**K. "Category two CSP"** A CSP that may be assigned a BUD of greater than 12 h at controlled room temperature or greater than 24 h refrigerated that is compounded in accordance with all applicable requirements for Category 2 CSPs in USP/NF <797>.

**L. "Category three CSP"** A CSP that may be assigned a BUD exceeding the limits in for Category two CSPs and is compounded in accordance with all applicable requirements for Category three CSPs in USP/NF <797>.

**M. "Certification"** means independent third party documentation declaring that the specific requirements of USP/NF <797> (USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations) have been met.

**N. "Cleaning"** The process of removing substances (e.g., organic and inorganic material) from objects and surfaces, normally accomplished by manually or mechanically using water with detergents or enzymatic products.

**O. "Cleaning agent"** An agent, usually containing a surfactant, used for the removal of substances (e.g., dirt, debris, microbes, and residual drugs or chemicals) from surfaces.

**P. "Cleanroom suite"** A classified area that consists of both an anteroom and buffer room.

**Q. "Closed system vial-transfer device"** means a vial-transfer system that allows no venting or exposure of substances to the environment.

**R. "Component"** Any ingredient used in the compounding of a preparation, including any active ingredient, added substance, or conventionally manufactured product.

**S. "Compounded sterile preparations"** (CSP's) include, but are not limited, to the following dosage forms which must be sterile when administered to patients:

- (1) parenteral preparations;
- (2) aqueous bronchial and nasal inhalations;
- (3) baths and soaks for live organs and tissues;
- (4) injections (e.g. colloidal dispersions, emulsions, solutions, suspensions);
- (5) irrigations for wounds and internal body cavities;
- (6) ophthalmic drops and ointments; and
- (7) implants.

**T. "Compounding aseptic containment isolator"** (CACI) A type of RABS that uses HEPA filtration to provide an ISO Class five unidirectional air environment designed for the compounding of sterile HDs.

**U. "Compounding aseptic isolator"** (CAI) A type of RABS that uses HEPA filtration to provide an ISO Class five unidirectional air environment designed for compounding of sterile non-HDs.

**V. "Compounding record"** (CR) Documents the compounding of each CSP.

**W. "Container closure system"** Packaging components that together contain and protect the dosage form. This includes primary packaging components and secondary packaging components, if the latter are intended to provide additional protection.

**X. "Containment ventilated enclosure" (CVE)** A non-ISO classified full or partial enclosure that uses ventilation principles to capture, contain, and remove airborne contaminants through HEPA filtration and prevent their release into the work environment.

**Y. "Critical area"** means an ISO Class five environment.

**Z. "Critical site"** means a location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination.

**AA. "Designated person"** Individual assigned to be responsible and accountable for the performance and operation of the facility and personnel as related to the preparation of CSPs. For pharmacies the designated person must be the pharmacist-in-charge. For clinic facilities the designated person must be the consultant pharmacist.

**BB. "Direct compounding area" (DCA)** means a critical area within the ISO Class five primary engineering control (PEC) where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

**CC. "Disinfectant"** A chemical or physical agent used on inanimate surfaces and objects to destroy fungi, viruses, and bacteria. Sporocidal disinfectants are considered a special class of disinfectants that also are effective against bacterial and fungal spores.

**DD. "Dynamic airflow smoke pattern test"** A PEC test in which a visible source of smoke, which is neutrally buoyant, is used to observe air patterns within the unidirectional space (i.e., the DCA) under dynamic operating conditions (see the entry for Dynamic operating conditions). This test is not appropriate for ISO Class seven or ISO Class eight cleanrooms that do not have unidirectional airflow (see the entry for Visual smoke study).

**EE. "Dynamic operating conditions"** Conditions in the compounding area in which operating personnel are present and simulating or performing compounding. The conditions should reflect the largest number of personnel and highest complexity of compounding expected during routine operations as determined by the designated person(s).

**FF. "Garb"** Items such as gloves, garments (e.g., gowns), shoe covers, head and facial hair covers, masks, and other items designed to reduce particle-shedding from personnel and minimize the risk of contamination of CSP(s).

**GG. "Hazardous drug" (HD)** Any drug identified by at least one of the following six criteria: carcinogenicity, teratogenicity or developmental toxicity, reproductive toxicity in humans, organ toxicity at low dose in humans or animals, genotoxicity, or new drugs that mimic existing HDs in structure or toxicity. (Reference current NIOSH publications).

**HH. "High-efficiency particulate air (HEPA) filtration"** Being, using, or containing a filter designed to remove ninety-nine and ninety-seven one-hundredths percent of airborne particles measuring zero and three-micron or greater in diameter passing through it.

**II. "Home care"** means health care provided in the patient's home (not a hospital or skilled nursing facility) by either licensed health professionals or trained caregivers. May include hospice care.

**JJ. "Integrated vertical laminar flow zone" (IVLFZ)** A designated ISO Class five area serving as the PEC within an ISO Class seven or cleaner buffer room. In the IVLFZ, unidirectional airflow is created by placing HEPA filters over the entire surface of the worktables and by effective placement of air returns.

**KK. "ISO class"** An air-quality classification from the International Organization for Standardization.

**LL. "Laminar airflow"** means a non-turbulent, non-mixing streamline flow of air in parallel layers.

**MM. "Laminar airflow system" (LAFS)** A device or zone within a buffer room that provides an ISO Class five or better air quality environment for sterile compounding. The system provides a unidirectional HEPA filtered airflow.

**NN. "Laminar airflow workbench" (LAFW)** A device that is a type of LAFS that provides an ISO Class five or better air quality environment for sterile compounding. The device provides a unidirectional HEPA-filtered airflow.

**OO. "Line of demarcation"** A visible line on the floor that separates the clean and dirty sides of the anteroom.

**PP. "Master formulation record" (MFR)** A detailed record of procedures that describes how the CSP is to be prepared.

**QQ. "Media-fill test"** A simulation used to qualify processes and personnel engaged in sterile compounding to ensure that the processes and personnel are able to prepare CSPs without contamination.

**RR. "Multiple-dose container"** means a multiple-unit container for articles or preparations intended for parenteral administration only and usually containing antimicrobial preservatives. Once opened or entered, a multiple dose container with antimicrobial preservative has a BUD of 28 days unless otherwise specified by the manufacturer.

**SS. "Negative pressure room"** means a room that is at a lower pressure than the adjacent spaces and therefore, the net flow of air is into the room.

**TT. "One-step disinfectant cleaner"** A product with an EPA-registered (or equivalent) claim that it can clean and disinfect a nonporous surface in the presence of light to moderate organic soiling without a separate cleaning step.

**UU. "Parenteral product"** means any preparation administered by injection through one or more layers of skin tissue.

**VV. "Pass-through chamber"** An enclosure with sealed doors on both sides that should be interlocked. The pass-through chamber is positioned between two spaces for the purpose of minimizing particulate transfer while moving materials from one space to another.

**WW. "Personal protective equipment"** (PPE) means items such as gloves, gowns, respirators, goggles, face shields, and others that protect individual workers from hazardous physical or chemical exposures.

**XX. "Pharmacy bulk packages"** means a container of a sterile preparation for parenteral use that contains many single doses. Contents are intended for use in a pharmacy admixture program and are restricted to use in a suitable ISO Class 5 environment.

**YY. "Plan of care"** means an individualized care plan for each patient receiving parenteral products in a home setting to include the following:

- (1) description of actual or potential drug therapy problems and their proposed solutions;
- (2) a description of desired outcomes of drug therapy provided;
- (3) a proposal for patient education and counseling; and

(4) a plan specifying proactive objective and subjective monitoring (e.g. vital signs, laboratory test, physical findings, patient response, toxicity, adverse reactions, and noncompliance) and the frequency with which monitoring is to occur.

**ZZ. "Positive pressure room"** means a room that is at a higher pressure than the adjacent spaces and, therefore, the net airflow is out of the room.

**AAA. "Primary engineering control" (PEC)** A device or zone that provides an ISO Class five air quality environment for sterile compounding.

**BBB. "Process validation"** means documented evidence providing a high degree of assurance that a specific process will consistently produce a preparation meeting its predetermined specifications and quality attributes.

**CCC. "Product"** means a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the FDA. Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

**DDD. "Quality assurance"** means a program for the systematic monitoring and evaluation of the various aspects of a service or facility to ensure that standards of quality are being met.

**EEE. "Quality control"** means a system for verifying and maintaining a desired level of quality in a preparations or process, as by planning, continued inspection, and corrective action as required.

**FFF. "Reconstitution"** The process of adding a diluent to a conventionally manufactured product to prepare a sterile solution or suspension.

**GGG. "Repackaging"** The act of removing a sterile product or preparation from its original primary container and placing it into another primary container, usually of smaller size without further manipulation.

**HHH. "Restricted-access barrier system" (RABS)** An enclosure that provides HEPA-filtered ISO Class five unidirectional air that allows for the ingress and/or egress of materials through defined openings that have been designed and validated to preclude the transfer of contamination, and that generally are not to be opened during operations. Examples of RABS include CAIs and CACIs.

**III. "Secondary engineering control"** The area where the PEC is placed (e.g., a cleanroom suite or an SCA). It incorporates specific design and operational parameters required to minimize the risk of contamination within the compounding area.

**JJJ. "Segregated compounding area"** A designated space, area, or room that is not required to be classified and is defined with a visible perimeter. The SCA must contain a PEC and is suitable for preparation of Category one CSPs only.

**KKK. "Single-dose container"** means a single-dose, or a single-unit, container for articles or preparations intended for parenteral administration only. It is intended for a single use. Examples of single-dose containers include prefilled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

**LLL. "Sporicidal disinfectant"** A chemical or physical agent that destroys bacterial and fungal spores when used in sufficient concentration for a specified contact time. It is expected to kill all vegetative microorganisms.

**MMM. "Stability"** The extent to which a product or preparation retains physical and chemical properties and characteristics within specified limits throughout its expiration or BUD.

**NNN. "Standard operating procedure"** (SOP) means a written protocol detailing the required standards for performance of tasks and operations within a facility.

**OOO. "Sterile Compounding"** The process of combining, admixing, diluting, pooling, reconstituting, repackaging, or otherwise altering a drug product or bulk drug substance to create a sterile preparation.

**PPP. "Sterility"** The absence of viable microorganisms.

**QQQ. "Sterilization by filtration"** means passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

**RRR. "Sterilizing grade filter"** means filter membranes that are documented to retain one hundred percent of a culture of 10<sup>7</sup> microorganisms of a strain of *Brevundimonas* (*Pseudomonas*) *diminuta* per square centimeter of membrane surface under a pressure of not less than 30 psi. Such filter membranes are nominally at zero and twenty-two mm or zero and two mm pore size.

**SSS. "Terminal sterilization"** means the application of a lethal process (e.g., steam, dry heat, irradiation) to sealed containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10<sup>-6</sup>, or a probability of less than one in one million of a non-sterile unit.

**UUU. "Unidirectional airflow"** Air within a PEC moving in a single direction in a uniform manner and at sufficient velocity to sweep particles away from the DCA.

**VVV. "USP"** means United States pharmacopeia.

**WWW. "Visual smoke study"** A test, used in ISO Class seven and ISO Class eight rooms that do not have unidirectional airflow, in which a visible source of smoke, which is neutrally buoyant, is used to verify an absence of stagnant airflow. This test does not need to be performed under dynamic operating conditions and is not appropriate for PECs (see the entry for Dynamic airflow smoke pattern test).

**XXX. "Workflow management system"** Technology comprised of hardware and/or software that allows for automation to assist in the verification of components of, and preparation of, CSPs and to document components and processes.

[16.19.36.7 NMAC – N, 06-28-14; A, 03-22-15; A, 8/13/2024]

#### **16.19.36.8 PHARMACIST IN CHARGE:**

**A.** All facilities compounding sterile preparations must designate a pharmacist in charge of operations who is licensed as a pharmacist in the state of residence of the facility.

**B.** The pharmacist-in-charge (or consultant pharmacist, for in-state clinics) is responsible for:

(1) the development, implementation and continuing review and maintenance of written policies, procedures and SOP's which comply with USP/NF standards;

(2) providing a pharmacist who is available for 24 hour seven-day-a-week services;

(3) establishing a system to ensure that the CSP's prepared by compounding personnel are administered by licensed personnel or properly trained and instructed patients;

(4) establishing a system to ensure that CSP's prepared by compounding personnel are prepared in compliance with USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*) standards;

(5) ensuring facility personnel comply with written policies, procedures, and SOP's; and

(6) developing an appropriate and individualized plan of care in collaboration with patient or caregiver and other healthcare providers for each patient receiving parenteral preparations in a home setting.

[16.19.36.8 NMAC – N, 06-28-14; A, 8/13/2024]

#### **16.19.36.9 FACILITIES:**

**A.** The room or area in which compounded sterile preparations (CSP's) are prepared:

(1) must be physically designed and environmentally controlled to meet standards of compliance as required by USP/NF <797> (USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations);

(2) must be periodically monitored, evaluated, tested, and certified by environmental sampling testing (includes both viable and nonviable particle sampling) as required by USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*) with documentation retained for three years;

(3) must have a minimum of 100 square feet dedicated to compounding sterile preparations;

(a) the minimum size of a retail pharmacy must be 240 square feet; a retail pharmacy with preparation of sterile products capabilities must have 340 square feet with 100 square feet exclusive to compounding sterile preparations;

(b) the stand alone CSP facility must have a minimum of 240 square feet with 100 square feet exclusive to compounding sterile preparations; and

(4) must be clean, lighted, and at an average of 80-150 foot candles; and

(5) must minimize particle generating activities; and

(6) must have a sink of sufficient size for compounding personnel to adequately wash hands and forearms up to the elbows with soap and water.

**B.** Addition of a compounding sterile preparations area in existing pharmacies will require submission of plans for remodeling to the board office for approval and inspection prior to licensure.

**C.** A new CSP facility must comply with 16.19.6.8 NMAC through 16.19.6.11 NMAC of the regulations.

[16.19.36.9 NMAC - N, 06-28-14; A, 8/13/2024]

#### **16.19.36.10 EQUIPMENT:**

Each facility compounding sterile preparations shall have sufficient equipment for the safe and appropriate storage, compounding, packaging, labeling, dispensing and preparation of compounded sterile preparations drugs and parenteral preparations appropriate to the scope of pharmaceutical services provided and as specified in USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*).

**A.** All equipment shall be cleaned, maintained, monitored, calibrated, tested, and certified as appropriate to insure proper function and operation with documentation retained for three years.

**B.** Primary and secondary engineering controls used to provide an aseptic environment shall be tested in the course of normal operation by an independent qualified contractor and certified as meeting the requirements presented in USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*) at least every six months and when relocated, certification records will be maintained for three years.

**C.** A library of current references (hard copy or electronic) shall be available including:

- (1) All USP/NF chapters applicable to the facility's sterile compounding practice;
- (2) New Mexico pharmacy laws, rules and regulations;
- (3) specialty references (stability and incompatibility references, sterilization and preservation references, pediatric dosing, and drug monograph references) as appropriate for the scope of services provided.

**D.** Automated compounding devices shall:

- (1) have accuracy verified on a routine basis at least every 30 days per manufacturer's specifications;
- (2) be observed every 30 days by the operator during the mixing process to ensure the device is working properly;
- (3) have data entry verified by a pharmacist prior to compounding or have accurate final documentation of compounded preparations to allow for verification of ingredients by a pharmacist prior to dispensing; and
- (4) have accuracy of delivery of the end product verified according to written policies and procedures.

[16.19.36.10 NMAC – N, 06-28-14; A, 8/13/2024]

#### **16.19.36.11 DOCUMENTATION REQUIRED:**

**A.** Written policies, procedures and SOPs consistent with USP/NF <797> (*General Chapter <797> Pharmaceutical Compounding-Sterile Preparations*) standards as well as those required below, must be established, implemented, followed by facility personnel, and available for inspection and review by authorized agents of the board of

pharmacy. All personnel who perform or oversee sterile compounding must be trained in these policies, procedures and SOPs.

**B.** Written policies and procedures must be submitted to the state board of pharmacy prior to the issuance of any license. These policies and procedures must include but are not limited to:

- (1) cleaning, disinfection, evaluation, validation, testing, certification, and maintenance of the sterile compounding area;
- (2) personnel qualifications, training, assessment and performance validation;
- (3) operation, maintenance, validation, testing, and certification of facility and equipment;
- (4) SOP's for compounding, storing, handling, and dispensing of all components used and all compounded sterile preparations;
- (5) SOP's for proper disposal of physical, chemical, and infectious waste;
- (6) quality control guidelines and standards;
- (7) quality assurance guidelines and standards;
- (8) SOP's for determination of stability, incompatibilities, and drug interactions;
- (9) error prevention and incident reporting policies and procedure as per 16.19.25 NMAC.

**C.** All records required by this part shall be kept by the facility for at least three years and shall be readily available for inspection by the board or boards' agent.

[16.19.36.11 NMAC – N, 06-28-14; A, 03-22-15; A, 8/13/2024]

#### **16.19.36.12 RECORD KEEPING AND PATIENT PROFILE:**

The compounded sterile preparations facility is required to maintain patient's records which include but are not limited to the following.

**A.** Prescription records or provider orders including the original prescription or original provider order, refill authorization, alterations in the original prescription or original provider order, and interruptions in therapy due to hospitalization.

**B.** Patient's history including pertinent information regarding allergy or adverse drug reactions experienced by the patient.

C. Patients receiving parenteral preparations in a home setting are contacted at a frequency appropriate to the complexity of the patient's health problems and drug therapy as documented on patient specific

plan of care and with each new prescription, change in therapy or condition.

D. Documentation that the patient receiving parenteral preparations in a home setting or the agent has received a written copy of the plan of care and training in the safe administration of the medication.

[16.19.36.12 NMAC - N, 06-28-14]

### **16.19.36.13 REQUIREMENTS FOR TRAINING:**

All personnel, including pharmacists, pharmacists who supervise compounding personnel (including designated persons), pharmacists interns and pharmacy technicians, shall have completed didactic and experiential training with competency evaluation through demonstration and testing (written or practical) as required by USP/NF <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*) and as outlined by the pharmacist-in-charge and described in the site policy and procedures or training manual, prior to compounding sterile preparations.

A. Instructional topics shall include:

- (1) aseptic technique;
- (2) achieving and/or maintaining sterility (and apyrogenicity if compounding with nonsterile components);
- (3) principles of high-efficiency particulate air (HEPA)-filtered unidirectional airflow within the ISO Class five area
- (4) environmental monitoring;
- (5) proper use of PECs;
- (6) equipment and supplies;
- (7) sterile pharmaceutical calculations, measuring, mixing, and terminology;
- (8) documentation of the compounding process (MFR and CR);
- (9) quality assurance procedures;
- (10) hand hygiene

- (11) proper gowning and gloving technique;
- (12) the handling of cytotoxic and hazardous drugs (if applicable);
- (13) principles of movement of materials and personnel within the compounding area; and
- (14) cleaning and disinfection.

**B.** Training shall be obtained through completion of a site-specific, structured on-the-job didactic and experiential training program (not transferable to another practice site).

**C.** Pharmacy technicians shall complete 100 hours of documented experiential training in compounded sterile preparations in accordance with Section 61-11-11.1 of the Pharmacy Act NMSA 1978 prior to compounding sterile preparations. Documentation of experiential training as defined in Subsection A of this section is transferrable to another practice site.

**D.** Experiential training shall include those areas of training as outlined in USP <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*) with appropriate observational assessment and testing of performance as outlined in USP <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*) including garbing competency and aseptic manipulation competency evaluations.

**E.** All personnel, including pharmacists compounding sterile hazardous drugs, pharmacists supervising compounding personnel, pharmacy interns compounding sterile hazardous drugs, and pharmacy technicians compounding sterile hazardous drugs, shall have completed didactic and experiential training with competency evaluation through demonstration and written or practical testing as required by USP/NF <800> (*USP General Chapters: <800> Hazardous Drugs – Handling in Healthcare Settings*) in addition to training in sterile non-hazardous preparations as listed above. Training will be conducted as outlined by the pharmacist-in-charge and described in the site policy and procedures or training manual and shall be completed prior to compounding sterile hazardous preparations.

**F.** Frequency of training and assessment shall be conducted as required by USP <797> (*USP General Chapters: <797> Pharmaceutical Compounding-Sterile Preparations*) to assure continuing competency and include:

- (1) initial training before compounding sterile preparations;
- (2) annual refresher training and assessment in didactic topics;

(3) garbing competency and aseptic manipulation competency evaluations every six months for personnel compounding Category one and Category two CSPs;

(4) garbing competency and aseptic manipulation competency evaluations every three months for personnel compounding Category three CSPs.

(5) Personnel who have direct oversight of compounding personnel (including designated persons) must complete garbing competency and aseptic manipulation competency evaluations annually (unless a more frequent requirement applies).

**G.** Documentation of training: Written documentation of initial and in-service training, the results of written or practical testing, and process validation of compounding, personnel shall be retained for three years and contain the following information:

(1) name of person receiving the training or completing the testing or process validation;

(2) date(s) of the training, testing, or process validation;

(3) general description of the topics covered in the training or testing or of the process validated;

(4) name of person supervising the training, testing, or process validation;

(5) signature of the person receiving the training or completing the testing or process validation and the designated person or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

[16.19.36.13 NMAC - N, 06-28-14; A, 03-22-15; A, 8/13/2024]

#### **16.19.36.14 PATIENT OR CAREGIVER TRAINING FOR USE OF COMPOUNDED STERILE PREPARATIONS IN A HOME SETTING:**

**A.** The pharmacist shall maintain documentation that the patient has received training consistent with Subsection F of 16.19.4.16 NMAC.

**B.** The facility shall provide a 24-hour toll free telephone number for use by patients of the pharmacy.

**C.** There shall be a documented, ongoing quality assurance program that monitors patient care and pharmaceutical care outcomes, including the following:

(1) routine performance of prospective drug use review and patient monitoring functions by a pharmacist;

(2) patient monitoring plans that include written outcome measures and systems for routine patient assessment;

(3) documentation of patient training.

[16.19.36.14 NMAC - N, 6-28-14]

**16.19.36.15 QUALITY ASSURANCE OF COMPOUNDED STERILE PREPARATIONS:**

A. There shall be a documented, ongoing performance improvement control program that monitors personnel performance, equipment, and facilities:

(1) all aspects of sterile product preparation, storage, and distribution, including details such as the choice of cleaning materials and disinfectants and monitoring of equipment accuracy shall be addressed in policy and procedures;

(2) if non-sterile to sterile bulk compounding of more than 25 units of compounded sterile preparations is performed using non-sterile chemicals, containers, or devices, and the results of appropriate end product testing must be documented prior to the release of the product from quarantine; the test must include appropriate tests for particulate matter and pyrogens;

(3) there shall be documentation of quality assurance audits at regular, planned intervals, including infection control and sterile technique audits; a plan for corrective action of problems identified by quality assurance audits shall be developed which includes procedures for documentation of identified problems and action taken; a periodic evaluation as stated in the policy and procedures of the effectiveness of the quality assurance activities shall be completed and documented;

(4) the batch label of each sterile compounded product shall contain:

(a) drug product name(s), diluent names(s), and amount(s) of each;

(b) assigned internal identification number (e.g., barcode, prescription, order, or lot number);

(c) final concentration(s), and volume when appropriate, solution ingredient names and amounts;

(d) beyond use date, and time when applicable;

(e) dosage form

(f) route of administration when applicable;

(g) date of preparation;

(h) name or initials of person preparing the product and, if prepared by supportive personnel, the name or identifying initials and the name or initials of the pharmacist that completed the final check;

(i) when appropriate, ancillary instructions such as storage instructions or cautionary systems, including hazardous material warning labels and containment bags;

(j) device instructions when needed;

(k) if it is a single-dose container, a statement stating such;

(l) if it is a multiple-dose container, a statement stating such; and

(m) compounding facility name and contact information if the CSP is to be sent outside of the facility or healthcare system in which it was compounded.

(5) the patient specific label of a CSP shall contain:

(a) patient name;

(b) solution, ingredient names, amounts;

(c) beyond use date, and time when applicable;

(d) dosage form;

(e) route of administration;

(f) directions for use, including infusion rates, specific times scheduled, when appropriate and applicable;

(g) identifier of person preparing the product and, if prepared by supportive personnel (i.e., pharmacist intern or pharmacy technician), the identifier of the pharmacist that completed the final check;

(h) when appropriate, ancillary instructions such as storage instructions or cautionary systems, including hazardous material warning labels and containment bags;

(i) device instructions when needed;

(j) assigned internal identification number (e.g., barcode, prescription, order, or lot number);

(k) if it is a single-dose container, a statement stating such;

(l) if it is a multiple-dose container, a statement stating such; and

(m) if dispensed for other than inpatient use, the label shall include all other required information.

B. There shall be a mechanism for tracking and retrieving products which have been recalled. The following records must be maintained for CSPs.

(1) A master formulation record (MFR) shall be created for all CSPs prepared from nonsterile ingredients(s) and CSP batch preparations and shall include the following:

(a) name, strength, dosage form, and final volume of the compounded preparation;

(b) all ingredients and their quantities; if applicable, relevant characteristics of components (e.g., particle size, salt form, purity grade, solubility)

(c) complete instructions for preparing the CSP, including equipment, supplies, a description of the compounding steps, and any special precautions;

(d) other information as needed to describe the compounding process and ensure repeatability (e.g., adjusting pH and tonicity; sterilization method, such as steam, dry heat, irradiation, or filter);

(e) beyond use dating and storage requirements;

(f) information needed for proper labeling (e.g. sample label);

(g) type and size of container closure system(s);

(h) physical description of the final CSP;

(i) quality control (QC) procedures (e.g., pH testing, filter integrity testing);  
and

(j) reference source to support the stability of the CSP.

(2) A compounding record (CR) must be created for all Category one, Category two, and Category three CSPs. A CR must also be created for immediate-use CSPs prepared for more than one patient. The CR must include at least the following information:

(a) reference to the MFR for the CSP (if applicable);

(b) name, strength, weight or volume, manufacturer, manufacturer's lot number, and expiration date for each component;

(c) name, strength, dosage form, and volume of the finished CSP;

(d) reconciliation of actual yield with anticipated yield, and total number of CSP units produced;

(e) identifier of person preparing the product and, if prepared by a pharmacist intern or pharmacy technician, the identifier of the pharmacist that completed the final check;

(f) date and time of preparation;

(g) assigned internal identification number (e.g. prescription, order, or lot number);

(h) assigned beyond use date, and time when appropriate and storage requirements;

(i) results of applicable quality control procedures; and

(j) calculations made to determine and verify quantities and/or concentrations of components, if applicable.

[16.19.36.15 NMAC - N, 09-07-14; A, 03-22-15; A, 8/13/2024]

## **PART 37: MINIMUM STANDARDS FOR OUTSOURCING FACILITIES**

### **16.19.37.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Pharmacy.

[16.19.37.1 NMAC - N, 12-13-15]

### **16.19.37.2 SCOPE:**

All outsourcing facilities, resident and nonresident, and all persons or entities that own or operate, or are employed by, an outsourcing facility for the purpose of providing pharmaceutical products or services.

[16.19.37.2 NMAC - N, 12-13-15]

### **16.19.37.3 STATUTORY AUTHORITY:**

Section 61-11-6 A(6) NMSA 1978 authorizes the board of pharmacy to provide for the licensing of drug manufacturers and for the inspection of their facilities and activities; and to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture,

production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article I NMSA 1978. Pursuant to Section 26-1-18 of the Drug, Device and Cosmetic Act, the board is authorized to promulgate regulations for the efficient enforcement of the act.

[16.19.37.3 NMAC - N, 12-13-15]

**16.19.37.4 DURATION:**

Permanent.

[16.19.37.4 NMAC - N, 12-13-15]

**16.19.37.5 EFFECTIVE DATE:**

December 13, 2015, unless another date is cited at the end of a section.

[16.19.37.5 NMAC - N, 12-13-15]

**16.19.37.6 OBJECTIVE:**

The objective of 16.19.37 NMAC is to establish standards for the safe and competent manufacture and distribution of drugs by outsourcing facilities.

[16.19.37.6 NMAC - N, 12-13-15]

**16.19.37.7 DEFINITIONS:**

**A. "Administer"** means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner.

**B. "Board"** means the New Mexico board of pharmacy.

**C. "CFR"** means code of federal regulations.

**D. "Compounding"** means;

**(1)** manufacturing by an outsourcing facility in accordance with the conditions and requirements of Section 503B of the Federal Food, Drug, and Cosmetic Act; and

(2) manufacturing by a dual purpose facility in accordance with the conditions and requirements of Section 503A, and 503B as applicable, of the Federal Food, Drug, and Cosmetic Act; and

(3) the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug; by an outsourcing facility or dual purpose facility.

**E. "Dispense"** means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient.

**F. "Distribute"** means the delivery of a drug or device other than by administering or dispensing.

**G. "Dual purpose facility"** an outsourcing facility licensed in the state of New Mexico that is also licensed in the state of New Mexico as a pharmacy or non-resident pharmacy.

**H. "Manufacture"** means the steps in the preparation, propagation, processing or compounding of a drug - the making by chemical, physical, biological or other procedures of any articles which meet the definition of drugs and includes manipulation, sampling or control procedures resulting in the finished dosage form. Manufacture includes all the steps performed on the product itself, which do not affect intrinsically the safety, purity or potency of the product.

**I. "Nonresident outsourcing facility"** means any outsourcing facility located outside New Mexico, that ships, mails or delivers, in any manner, prescription drugs into New Mexico.

**J. "Outsourcing facility"** means a facility that is currently registered with the Food and Drug Administration (FDA) as an outsourcing facility under Section 503B of the Federal Food, Drug, and Cosmetic Act, and that meets the requirements of that agency to engage in the compounding and distribution of sterile drugs.

**K. "Pharmacist in charge"** means a pharmacist who accepts responsibility for the operation of a dual purpose facility or outsourcing facility in conformance with all laws and rules pertinent to the facility operational standards, the practice of pharmacy, and the distribution or dispensing of drugs and who is personally in full and actual charge of the facility and its personnel.

**L. "REMS"** means a FDA approved risk evaluation and mitigation strategy.

**M. "Resident state"** means the state in which the nonresident outsourcing facility is physically located in.

**N. "The finished dosage form"** of a prescription drug is defined as that form of the drug which is or is intended to be dispensed or administered to the patient and requires no further manufacturing or processing other than packaging and labeling.

[16.19.37.7 NMAC - N, 12-13-15]

**16.19.37.8 LICENSURE OR REGISTRATION:**

**A.** Any outsourcing facility that is engaged in the compounding of sterile drugs in this state shall be registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act and be licensed as an outsourcing facility in this state.

**B.** Any nonresident outsourcing facility, that distributes or causes to be distributed, compounded sterile drugs into New Mexico shall be registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act and be licensed as a nonresident outsourcing facility.

**C.** No outsourcing facility shall ship, mail or deliver controlled substances in or into this state unless registered by the Drug Enforcement Administration (DEA) and the board for controlled substances.

**D.** Applications for a nonresident outsourcing facility under this section shall be made on a form furnished by the board. The board may require such information as it deems is reasonably necessary to carry out the purposes of this section.

**E.** The board shall not issue an initial or renewed license for an outsourcing facility unless the facility furnishes the board with a report, issued by the appropriate regulatory agency of the resident state, or entity approved by the appropriate regulatory agency of the resident state, or by the FDA, of an inspection that has occurred within the 12 months immediately preceding receipt of the license application by the board (with no intervening change in outsourcing facility ownership). The board may deny licensure unless the applicant submits documentation satisfactory to the board that any deficiencies noted in an inspection report have been corrected.

**F.** No license shall be issued or renewed for an outsourcing facility unless the applicant supplies the board with proof of such registration by the FDA.

**G.** No license shall be issued or renewed for a non-resident outsourcing facility that is required to be licensed or registered by the state in which it is physically located unless the applicant supplies the board with proof of such licensure or registration. The board may establish, by rule, standards for the licensure of an outsourcing facility that is not required to be licensed or registered by the state in which it is physically located.

**H.** The license fee shall be as specified in 16.19.12 NMAC, and shall be renewed biennially before the last day of December each year.

I. The board may deny, revoke or suspend an outsourcing facility's registration for any violation of the state drug laws.

[16.19.37.8 NMAC - N, 12-13-15]

**16.19.37.9 OPERATIONAL STANDARDS:**

The following minimum standards shall apply to all outsourcing facilities and dual purpose facilities for which licenses have been issued by the board:

A. All drugs and chemicals used in the manufacturing process or held for sale shall conform to the Drug, Device and Cosmetic Act and shall be stored, preserved and disposed of as prescribed by laws regulating the labeling and manufacture of drugs. When necessary, and/or according to label requirements, all drugs and chemicals which require refrigeration shall be stored and preserved under proper temperature.

B. Facilities must comply with applicable FDA current good manufacturing practice requirements as set forth in title 21, CFR, Subsection 211.1 to 211.208 inclusive (or successor regulations). The definitions and interpretations contained in Section 201 of the Federal Food and Drug Act shall be applicable.

C. Facilities must be in compliance with applicable DEA regulations.

D. Facilities must comply with applicable United States Pharmacopeia requirements.

[16.19.37.9 NMAC - N, 12-13-15]

**16.19.37.10 MINIMUM REQUIREMENTS:**

A. PHARMACIST IN CHARGE.

(1) Any drugs compounded in an outsourcing facility or dual purpose facility licensed pursuant to this rule shall be compounded by or under the direct supervision of a licensed pharmacist and in accordance with all applicable federal and state laws.

(2) Any drugs repackaged in an outsourcing facility licensed pursuant to this rule shall be repackaged by or under the direct supervision of a licensed pharmacist and in accordance with all applicable federal and state laws.

(3) The pharmacist in charge shall be responsible for the maintenance and implementation of appropriate policies and procedures.

(4) The pharmacist in charge shall be responsible for ensuring proper training and competence of personnel for all duties assigned to or undertaken by personnel.

**(5)** The pharmacist in charge shall be responsible for ensuring personnel are properly licensed or registered with the board.

**(6)** The pharmacist in charge shall be responsible for compliance with all federal regulations applicable to outsourcing facilities, and all regulations administered by the board.

#### B. DUAL PURPOSE FACILITY.

**(1)** No outsourcing facility may dispense any drug to any person pursuant to a prescription unless it is also licensed as a pharmacy (or nonresident pharmacy) in this state and meets all other applicable requirements of federal and state law.

**(2)** Required records of the outsourcing facility shall be maintained separate from required records of the pharmacy.

#### C. RESTRICTIONS.

**(1)** Any drugs compounded in an outsourcing facility licensed pursuant to this rule shall be compounded in accordance with all applicable federal and state laws.

**(2)** Any drugs repackaged in an outsourcing facility licensed pursuant to this rule shall be repackaged in accordance with all applicable federal and state laws.

**(3)** Each repackaged drug product is also accompanied by a copy of the prescribing information that accompanied the original drug product that was repackaged.

**(4)** The drug product is included on a report submitted to FDA each June and December identifying the drug products made by the outsourcing facility during the previous six month period, and providing the active ingredient(s); source of the active ingredient(s); national drug code (NDC) number of the source ingredient(s), if available; strength of the active ingredient(s) per unit; the dosage form and route of administration; the package description; the number of individual units produced; and the NDC number of the final product, if assigned.

#### D. LABELING OF DRUGS COMPOUNDED OR REPACKAGED BY AN OUTSOURCING FACILITY.

**(1)** The label of any drug compounded by an outsourcing facility shall include, but not be limited to the following:

**(a)** a statement that the drug is a compounded drug or a reasonable comparable alternative statement that prominently identifies the drug as a compounded drug;

**(b)** the name, address, and phone number of the applicable outsourcing facility; and

**(c)** with respect to the drug:

**(i)** the lot or batch number;

**(ii)** the established name of the drug;

**(iii)** the dosage form and strength;

**(iv)** the statement of quantity or volume, as appropriate;

**(v)** the date that the drug was compounded;

**(vi)** the expiration date;

**(vii)** storage and handling instructions;

**(viii)** the NDC number, if available;

**(ix)** the statement that the drug is not for resale, and if the drug product is distributed by an outsourcing facility other than pursuant to a prescription for an individual identified patient, the statement "office use only";

**(x)** a list of the active and inactive ingredients, identified by established name, and the quantity or proportion of each ingredient.

**(2)** The label on the immediate container (primary packaging, e.g., the syringe) of the repackaged product includes the following:

**(a)** the statement "this drug product was repackaged by (name of outsourcing facility)";

**(b)** the address and phone number of the outsourcing facility that repackaged the drug product;

**(c)** the established name of the original, approved drug product that was repackaged;

**(d)** the lot or batch number of the repackaged drug product;

**(e)** the dosage form and strength of the repackaged drug product;

**(f)** a statement of either the quantity or volume of the repackaged drug product, whichever is appropriate;

- (g) the date the drug product was repackaged;
- (h) the beyond use date of the repackaged drug product;
- (i) storage and handling instructions for the repackaged drug product;
- (j) the NDC number of the repackaged drug product, if available;

(k) the statement "not for resale," and, if the drug product is distributed by an outsourcing facility other than pursuant to a prescription for an individual identified patient, the statement "office use only";

(l) when included on the label of the FDA approved drug product from which the drug product is being repackaged, a list of the active and inactive ingredients, unless such information is included on the label for the container from which the individual units are removed, as described below:

(i) the label on the container from which the individual units are removed for administration (secondary packaging, e.g., the bag, box, or other package in which the repackaged products are distributed) includes;

(ii) the active and inactive ingredients, if the immediate drug product label is too small to include this information;

(iii) the directions for use, including, as appropriate, dosage and administration, and the following information to facilitate adverse event reporting: [www.fda.gov/medwatch](http://www.fda.gov/medwatch) and 1-800-FDA-1088.

E. CONTAINER. The container from which the individual units of the drug are removed for dispensing or for administration (such as a plastic bag containing individual product syringes) shall include:

(1) a list of active and inactive ingredients, identified by established name, and the quantity or proportion of each ingredient; and

(2) any other information required by regulations promulgated by the commissioner to facilitate adverse event reporting in accordance with the requirements established in Section 310.305 of title 21 of the Code of Federal Regulations (CFR).

F. BULK DRUGS. A drug may only be compounded in an outsourcing facility that does not compound using bulk drug substances as defined in Section 207.3(a)(4) of title 21 of the CFR or any successor regulation unless:

(1) the bulk drug substance appears on a list established by the FDA identifying bulk drug substances for which there is a clinical need;

**(2)** the drug is compounded from a bulk drug substance that appears on the federal drug shortage list in effect at the time of compounding, distributing, and dispensing;

**(3)** if an applicable monograph exists under the USP-NF, or another compendium or pharmacopeia recognized by the FDA and the bulk drug substances each comply with the monograph; and

**(4)** the bulk drug substances are each manufactured by an establishment that is registered with the federal government.

**G. INGREDIENTS.** When an outsourcing facility uses ingredients, other than bulk drug substances, such ingredients must comply with the standards of the applicable USP-NF monograph, if such monograph exists, or of another compendium or pharmacopeia recognized by the FDA for purposes of this subdivision, if any.

**H. UNSAFE OR INEFFECTIVE DRUGS.** No outsourcing facility may compound or repackage a drug that appears on a list published by the FDA that has been withdrawn or removed from the market because such drugs or components of such drugs have been found to be unsafe or not effective.

**I. PROHIBITION ON WHOLESALING.** No compounded or repackaged drug will be sold or transferred by any entity other than the outsourcing facility that compounded or repackaged such drug. This does not prohibit the administration of a drug in a health care setting or dispensing a drug pursuant to a properly executed prescription.

**J. PROHIBITION AGAINST COPYING AN APPROVED DRUG.** No outsourcing facility may compound a drug that is essentially a copy of one or more approved drugs.

**K. PROHIBITION AGAINST COMPOUNDING DRUGS PRESENTING DEMONSTRABLE DIFFICULTIES.** No outsourcing facility may compound a drug:

**(1)** that is identified, directly or as part of a category of drugs, on a list published by the FDA that present demonstrable difficulties for compounding that are reasonably likely to lead to an adverse effect on the safety or effectiveness of the drug or category of drugs, taking into account the risks and benefits to patients; or

**(2)** that is compounded in accordance with all applicable conditions identified on the drug list as conditions that are necessary to prevent the drug or category of drugs from presenting demonstrable difficulties.

**L. DISPENSING, COMPOUNDING, AND SALE OF DRUGS; LIMITATIONS.** A resident pharmacy shall limit the interstate dispensing of compounded sterile human drug preparation to five percent of the total prescriptions dispensed by that pharmacy, unless registered with the FDA and the board as an outsourcing facility. This

requirement will be effective at the time it becomes enforced by the FDA in states that have not entered into a memorandum of understanding with the FDA.

#### M. ADVERSE EVENT REPORTS.

**(1)** Outsourcing facilities shall submit a copy of all adverse event reports submitted to the FDA in accordance with the content and format requirements established in section 310.305 of title 21 of the CFR, or any successor regulation, to the executive director of the board. Upon request, follow up reports required by the FDA shall be submitted to the executive director of the board.

**(2)** Outsourcing facilities shall develop and implement written processes for the surveillance, receipt, evaluation, and reporting of adverse events for the drug products it compounds or repackages as described in 310.305(a) and 211.198 of title 21 of the CFR.

N. DRUG THAT IS THE SUBJECT OF A REMS. If the outsourcing facility compounds from a drug that is the subject of a REMS approved with elements to assure safe use, or from a bulk drug substance that is a component of such drug, the outsourcing facility must demonstrate to FDA before beginning to compound that it will use controls comparable to the controls applicable under the REMS.

#### O. DRUG RECORDS.

**(1)** Outsourcing facilities shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of compounded sterile drugs. These records shall include the following information:

**(a)** the identity and quantity of the drugs received and distributed or disposed of;

**(b)** the dates of receipt and distribution or other disposition of the drugs;

**(c)** the name, location and license number of the business, health care practitioner or other entity appropriately licensed to possess, dispense, distribute, administer or destroy prescription drugs.

**(2)** There shall be a mechanism for tracking and retrieving products that have been recalled.

**(3)** Resident outsourcing facilities shall maintain compounded sterile preparation batch records in accordance with Subsection B of 16.19.36.15 NMAC.

**(4)** A record of drugs repackaged must be kept, and include the following: the name and strength of the drug, lot number, name of manufacturer or distributor, beyond use date, date of repackaging, total number of dosage units repackaged, quantity or

volume per repackaged container, number of dosage units wasted, initials of repackager and of pharmacist performing final check.

**(5)** All drugs repackaged by a pharmacist intern or pharmacy technician must undergo a final check by the pharmacist.

**(6)** Every registrant under the Controlled Substances Act, manufacturing, distributing or dispensing a controlled substance shall maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold or delivered by him in accordance with regulations of the board.

**(7)** Records shall be kept by all persons licensed pursuant to the Pharmacy Act of all dangerous drugs, their receipt, withdrawal from stock and use or other disposal. The records shall be open to inspection by the board or its agents, and the licensee shall be responsible for the maintenance of the records in proper form.

**(8)** Records required by board-administered law or regulation shall be available for inspection and photocopying by the board's state drug inspectors for three years.

P. SUCCESSOR REGULATIONS OR FEDERAL FOOD, DRUG AND COSMETIC ACT SECTIONS. 16.19.37 NMAC shall apply to any successor or re-designated CFR, or Federal Food, Drug, and Cosmetic Act section referenced in this part.

[16.19.37.10 NMAC - N, 12-13-15]

# **CHAPTER 20: PHYSICAL THERAPISTS**

## **PART 1: GENERAL PROVISIONS**

### **16.20.1.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[12-15-97; 16.20.1.1 NMAC - Rn & A, 16 NMAC 20.1.1, 08-31-00]

### **16.20.1.2 SCOPE:**

All individuals who wish to practice physical therapy in the state of New Mexico.

[12-15-97; 16.20.1.2 NMAC - Rn & A, 16 NMAC 20.1.2, 08-31-00]

### **16.20.1.3 STATUTORY AUTHORITY:**

Sections 61-12-4, 61-12-9, 61-12-14 NMSA 1978.

[03-29-83 . . . 12-15-97; 16.20.1.3 NMAC - Rn, 16 NMAC 20.1.3, 08-31-00]

### **16.20.1.4 DURATION:**

Permanent.

[12-15-97; 16.20.1.4 NMAC - Rn, 16 NMAC 20.1.4, 08-31-00]

### **16.20.1.5 EFFECTIVE DATE:**

December 15, 1997, unless a later date is cited at the end of a section.

[12-15-97; 16.20.1.5 NMAC - Rn & A, 16 NMAC 20.1.5, 08-31-00]

### **16.20.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 20 is to set forth the provisions which apply to all of Chapter 20, and to all persons and entities affected or regulated by Chapter 20 of Title 16.

[12-15-97; 16.20.1.6 NMAC - Rn, 16 NMAC 20.1.6, 08-31-00]

### **16.20.1.7 DEFINITIONS:**

**[RESERVED]**

[12-15-97; 16.20.1.7 NMAC - Rn, 16 NMAC 20.1.7, 08-31-00]

#### **16.20.1.8 TELEPHONE CONFERENCES:**

Telephone conferences shall be held in accordance with the Open Meetings Act (Section 10-15-1 NMSA 1978). In accordance with the Open Meetings Act, Section 10-15-1C, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[12-15-97; 16.20.1.8 NMAC - Rn, 16 NMAC 20.1.8, 08-31-00]

#### **16.20.1.9 DISPLAY OF LICENSE:**

A. License and renewal certificate - displayed reproduction of the original license and/or the annual renewal certificate is unauthorized. The original license and renewal certificate must be displayed in the principal place of practice. The wallet-size certificate of license renewal may be presented for identification. Reproduction of the original license or renewal certificate is authorized for institutional file purpose only. At secondary places of employment, documentation of license must be verified by photocopy with a note attached indicating where original license is posted.

B. Consumer information sign - a consumer information sign must be displayed in the principal place of practice. The consumer information sign shall read: Complaints regarding non-compliance with the New Mexico Physical Therapy Practice Act can be directed to: New Mexico Physical Therapy Board, P.O. Box 25101 Santa Fe, NM 87504.

[12-15-97; 16.20.1.9 NMAC - Rn, 16 NMAC 20.1.9, 08-31-00; A, 9-30-14]

#### **16.20.1.10 USE OF TITLES:**

A. Only a person holding a license as a physical therapist may use the title "physical therapist," "licensed physical therapist", or the letters "P.T."

B. Only a person holding a license as a physical therapist assistant may use the title "physical therapist assistant", "licensed physical therapist assistant", or the letters "P.T.A."

C. Only a student in a college program accredited or actively pursuing accreditation by the American physical therapy association may use the title "student physical therapist", or the letters "S.P.T."

D. Only a student in a college program accredited or actively pursuing accreditation by the American physical therapy association may use the title "student physical therapist assistant", or the letters "S.P.T.A."

[12-15-97; 16.20.1.10 NMAC - Rn, 16 NMAC 20.1.10, 08-31-00]

**16.20.1.11 BOARD MEMBER REQUIREMENTS:**

A. Board members are required to attend board meetings as scheduled by the board. Any board member failing to attend three (3) consecutive board meetings shall automatically be recommended for removal from the board.

B. Board members may be excused from attending board meetings for any of the reasons set forth below:

- (1) illness;
- (2) death in the immediate family;
- (3) military service;
- (4) inclement weather;
- (5) any other reason deemed appropriate by the president of the board.

[12-15-97; 16.20.1.11 NMAC - Rn, 16 NMAC 20.1.11, 08-31-00]

**16.20.1.12 CONFIDENTIAL INFORMATION:**

A. Confidential information and requests for inspection of public records pertaining to any proceeding before the New Mexico physical therapy board shall be governed by the Inspection of Public Records Act (Section 14-2-1 NMSA 1978).

(1) Copies of public records may be made for any person at a cost to be approved by the board. Under no circumstances will any person be allowed to remove board records from the board premises, by any means, without permission. Permission to examine, inspect or obtain copies of public records must be obtained from the board administrator.

(2) Complaints against licensees may result in legal action by the board and may involve denial, suspension or revocation of a license and be subject to review and recommendations by legal counsel for the board. Such complaints shall be considered confidential, unless otherwise directed by the board, until final action or disposition is taken on the complaint. A separate legal file shall be maintained for complaints, investigative reports, legal opinions, briefs and other legal papers. The contents of the file shall be considered privileged as documents accumulated in anticipation of legal

action except as otherwise provided by law. Provided, however, any proceeding before the board may be made public upon written request of the licensee or applicant involved.

B. Waiver of rules - upon its own motion or by motion of any party showing good cause and such notice as the board or hearing officer may deem proper, the board or any hearing officer may waive the application of any of these General Provisions, except where otherwise precluded by law.

C. Construction and amendment - these rules, and any policies incorporated herein by reference, shall be so constructed by the board or any hearing officer as to secure just and speedy determination of the issues. Amendments to these rules may be made periodically by the board under its general rule-making authority.

[12-15-97; 16.20.1.12 NMAC - Rn, 16 NMAC 20.1.12, 08-31-00; A, 9-30-14]

#### **16.20.1.13 PARENTAL RESPONSIBILITY ACT (PRA):**

By the end of each month in which a certified list is received, the board shall report to the New Mexico human services department the names of board applicants and licensees who are on the certified list as being more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for child support in New Mexico, and the action the board has taken in connection with such applicants and licensees.

[12-15-97; 16.20.1.13 NMAC - Rn, 16 NMAC 20.1.13, 08-31-00]

#### **16.20.1.14 CODE OF ETHICS:**

The New Mexico physical therapy board adopts the current New Mexico physical therapy and physical therapist assistant code of ethics as per Section 61-12D-13L NMSA 1978.

A. Physical therapists and physical therapist assistants will honor the significance of patients and their families' needs, rights, and dignity. When addressing patients' needs, rights, and dignity, all will be adhered to with confidentiality and compassion.

B. Physical therapists and physical therapist assistants will make appropriate and well informed decisions, regarding patient care, that are within their scope of practice.

C. Physical therapists and physical therapist assistants should avoid conflicts of interest that would impact negatively on a patient's care.

D. Physical therapists and physical therapist assistants will have integrity in all dealings with patients and others associated with their care.

E. Physical therapists and physical therapist assistants will fulfill all professional duties, as required.

F. Physical therapists and physical therapist assistants will seek new ways of improving patient care and encourage best practice skills through continuing education and interaction with other providers.

G. Physical therapists and physical therapist assistants will participate in sound and reasonable business practice.

H. Physical therapists and physical therapist assistants will use proper utilization practice patterns to meet the needs of those they serve.

[16.20.1.14 NMAC - N, 02-15-04; A, 1-12-08; A, 9-30-14]

#### **16.20.1.15 PUBLIC RECORDS:**

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the board. Upon notification of the defendant, the *notice of contemplated action* and information contained in the complaint file becomes public record and subject to disclosure.

[16.20.1.15 NMAC - N, 03-02-2006]

## **PART 2: EXAMINATIONS**

#### **16.20.2.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[5/15/1996; 10/15/1997; 16.20.2.1 NMAC - Rn & A, 16 NMAC 20.2.1, 8/31/2000]

#### **16.20.2.2 SCOPE:**

All individuals who wish to practice physical therapy in the State of New Mexico.

[5/15/1996; 10/15/1997; 16.20.2.2 NMAC - Rn & A, 16 NMAC 20.2.2, 8/31/2000]

#### **16.20.2.3 STATUTORY AUTHORITY:**

Section 61-12-10 NMSA 1978.

[3/29/1983...10/15/1997; 16.20.2.3 NMAC - Rn, 16 NMAC 20.2.3, 8/31/2000]

#### **16.20.2.4 DURATION:**

Permanent.

[5/15/1996; 10/15/1997; 16.20.2.4 NMAC - Rn, 16 NMAC 20.2.4, 8/31/2000]

**16.20.2.5 EFFECTIVE DATE:**

October 15, 1997, unless a later date is cited at the end of a section

[3/29/1983...10/15/1997; 16.20.2.5 NMAC - Rn & A, 16 NMAC 20.2.5, 8/31/2000]

**16.20.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 20 is to establish examination requirements for applicants applying for a license to practice as a physical therapist or physical therapist assistant.

[5/15/1996; 10/15/1997; 16.20.2.6 NMAC - Rn, 16 NMAC 20.2.6, 8/31/2000]

**16.20.2.7 DEFINITIONS:**

**[RESERVED]**

[10/15/1997; 16.20.2.7 NMAC - Rn, 16 NMAC 20.2.7, 8/31/2000]

**16.20.2.8 REQUIREMENTS FOR THE NATIONAL PHYSICAL THERAPY EXAMINATION:**

**A.** All applicants for licensure must take the national physical therapy examination (NPTE), or show proof of having taken the NPTE in another state. The examination must be taken in English, without the use of an interpreter, and without the aid of an English/foreign language dictionary.

**B.** Alternate Approval Pathway: the alternate approval pathway is an alternate method of licensure application for the physical therapist or the physical therapist assistant applying for an initial license in the state of New Mexico. The applicant will follow these steps, prior to completing the application process for New Mexico licensure:

**(1)** Apply directly to the federation of state boards of physical therapy (FSBPT) for permission to sit for the physical therapist or physical therapist assistant national licensing exam.

**(2)** Once the national licensing exam has been completed, the FSBPT will send the score to the state of New Mexico, as identified by the physical therapist or physical therapist assistant applicant.

**(3)** The state of New Mexico will receive the score from the FSBPT and then determine if the licensing eligibility requirements have been met. The applicant **MUST** provide a complete licensure application with all required fees to the board for verification of eligibility for licensure in New Mexico, prior to the state of New Mexico issuing a physical therapist or physical therapist assistant license, pursuant to Section 16.20.3.8 NMAC.

**C.** The federation of state boards of physical therapy (FSBPT) will notify applicants, in writing, of the procedure to follow in order to register for the exam with an approved computer based testing (CBT) company.

**(1)** Applicants **MUST** take the exam within 60 days from the date of notification to register by [FSBPT].

**(2)** Applicants will register in New Mexico, but may take the exam in any state.

**(3)** Applicants will be scheduled to sit for the exam within 30 days from the time they call the computer based testing (CBT) company.

**(4)** Applicants may change their appointment up to two days prior to the test date.

**D.** Effective August 28, 1995, an applicant for licensure as a physical therapist shall obtain a score on the NPTE for physical therapists that equals or exceeds the criterion-referenced passing point of 600, based on a scale ranging from 200 to 800. Per changes in the eligibility requirements through the FSBPT, effective January 2016, applicants scoring 400 or less on two exams will be unable to test again for licensure. In addition, applicants will be able to take the exam a maximum of six times (three attempts annually) with no additional attempts allowed.

Applicants may not complete more than three attempts on the NPTE, in a 12 month period.

**(1)** For applicants who took the NPTE during the period from June 10, 1971 to August 28, 1995, the passing score for the national examination shall be 1.5 standard deviation below the national mean on the date the exam was taken by the applicant.

**(2)** Exams taken prior to June 10, 1971 may be reviewed on a case-by-case basis or the applicant may qualify under 16.20.3.10 NMAC (Licensure by Endorsement).

**E.** Effective August 28, 1995, an applicant for licensure as a physical therapist assistant shall obtain a score on the NPTE for physical therapist assistants that equals or exceeds the criterion-referenced passing point of 600, based on a scale ranging from 200 to 800. Per changes in the eligibility requirements through the FSBPT, effective January 2016, applicants scoring 400 or less on two exams will be unable to test again

for licensure. In addition, applicants will be able to take the exam a maximum of six times (three attempts annually) with no additional attempts allowed. Applicants may not complete more than three attempts on the NPTE, in a 12 month period.

**(1)** For applicants who took the NPTE during the period from June 10, 1971 to August 28, 1995, the passing score for the national examination shall be 1.5 standard deviation below the national mean on the date the exam was taken by the applicant.

**(2)** Exams taken prior to June 10, 1971 may be reviewed on a case-by-case basis or the applicant may qualify under 16.20.3.10 NMAC (Licensure by Endorsement).

**F.** Any applicant who fails the NPTE may retake the exam at the next available opportunity.

**G.** Any applicant who has failed the NPTE will not be issued a temporary license, or if a temporary license has been issued, it will automatically be revoked. The revocation is effective upon recording of the test results by the registrar. The registrar will promptly notify the applicant of results by certified mail.

**H.** An applicant who fails the NPTE two or more times must complete and submit proof of completion of remedial work as recommended by the board before being permitted to take subsequent NPTE's. Refer to the remedial criteria for specific requirements for each subsequent exam failed, up to six lifetime attempts.

CRITERIA FOR REMEDIAL WORK, DESCRIBED BY THE PHYSICAL THERAPY BOARD			
Number of failures	Number of points from passing	Mentorship and tutorial	Other
2	Score is within 6 points of passing	20 hours of mentorship or tutorial or any combination of both	Proof of a national licensing exam review course
2	Score is greater than 6 points of passing	40 hours of either mentorship or tutorial or any combination of both	Proof of a national licensing exam review course
3	Score is within 6 points of passing	20 hours of mentorship and 40 hours of tutorial	NONE
3	Score is greater than 6 points of passing	60 hours of mentorship and 60 hours of tutorial	NONE

After the fourth failure of the NPTE for PT/PTA applicant, the applicant must complete the following remedial work, to sit for the exam

**(1)** Letter confirming completion of remedial clinical mentorship with a licensed PT/PTA Supervisor for:

- (a)** 160 hours in an outpatient clinic/facility
- (b)** 160 hours in an inpatient/rehabilitation clinic/ facility
- (c)** 160 hours in a clinic/ facility of their choice

**(2)** Letter confirming (with both scores listed) completion of a National License Review course and the FSBPT PEAT exam.

**(a)** Applicant must retake a national licensing review course (providing proof of completion)

**(b)** Applicant must retake the FSBPT PEAT exam (providing both scores). Per FSBPT guidelines, beginning January 2016, all applicants will be restricted to six lifetime attempts at passing the national licensing exam. In addition, two scores at 400/800 will preclude the applicant from any additional attempts at examination.

[3/29/1983; 2/19/1988; 8/1/1989; 5/8/1991; 6/31/1994; 7/28/1995; 5/15/1996; 16.20.2.8 NMAC - Rn & A, 16 NMAC 20.2.8, 8/31/2000; A, 7/28/2001; A, 8/16/2010; A, 9/30/2014; A, 7/28/2019]

#### **16.20.2.9 PHYSICAL THERAPIST ASSISTANT EXAM REQUIREMENTS:**

The minimum knowledge and skill required of applicants to take the physical therapist assistant examination requires graduation from a physical therapist assistant program accredited by the commission on accreditation in physical therapy education (CAPTE).

[10/15/1997; 16.20.2.9 NMAC - Rn, 16 NMAC 20.2.9, 8/31/2000; A, 7/28/2001; A, 3/2/2006]

#### **16.20.2.10 REQUIREMENTS FOR THE JURISPRUDENCE EXAMINATION:**

**A.** All applicants for licensure except those applicants applying for expedited licensure pursuant to 16.20.12.9 and 16.20.12.13 NMAC, must take the New Mexico jurisprudence examination and have a passing score of eighty percent, based on a total available score of one hundred percent. Any applicant who fails to pass the jurisprudence examination may retake the examination upon receipt of the required fees.

**B.** A licensee who received an expedited license by 16.20.12.9 or 16.20.12.13 NMAC must take the New Mexico jurisprudence examination when renewing their license for the first time and have a passing score of eighty percent, based on a total available score of one hundred percent. Any licensee who fails to pass the jurisprudence examination may retake the examination upon receipt of the required fees.

[6/3/1994; 10/15/1997; 16.20.2.10 NMAC - Rn, 16 NMAC 20.2.10, 8/31/2000; A, 6/27/2023]

## **PART 3: ISSUANCE OF LICENSES**

### **16.20.3.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[16.20.3.1 NMAC - Rp, 16.20.3.1 NMAC, 11/1/2004]

### **16.20.3.2 SCOPE:**

All individuals who wish to practice physical therapy in the state of New Mexico.

[16.20.3.2 NMAC - Rp, 16.20.3.2 NMAC, 11/1/2004]

### **16.20.3.3 STATUTORY AUTHORITY:**

Section 61-12-10 NMSA 1978.

[16.20.3.3 NMAC - Rp, 16.20.3.3 NMAC, 11/1/2004]

### **16.20.3.4 DURATION:**

Permanent.

[16.20.3.4 NMAC - Rp, 16.20.3.4 NMAC, 11/1/2004]

### **16.20.3.5 EFFECTIVE DATE:**

November 1, 2004, unless a later date is cited at the end of a section.

[16.20.3.5 NMAC - Rp, 16.20.3.5 NMAC, 11/1/2004]

### **16.20.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 20 is to establish regulations for applicants applying for a license to practice as a physical therapist or physical therapist assistant.

[16.20.3.6 NMAC - Rp, 16.20.3.6 NMAC, 11/1/2004]

### **16.20.3.7 DEFINITIONS:**

"Disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.20.3.7 NMAC - Rp, 16.20.3.7 NMAC, 11/1/2004; A, 2/24/2022]

### **16.20.3.8 APPLICATION FOR LICENSURE:**

**A.** The board may issue a license to an applicant, other than one applying for expedited licensure or licensure by reciprocity, who fulfills the following requirements:

- (1) completes the application;
- (2) includes a passport-size photograph taken within the preceding 12 months and affixes it to the application;
- (3) pays the non-refundable application fee in full as provided in Part 5;
- (4) passes the jurisprudence exam (as specified in 16.20.2.10 NMAC) and pays the non-refundable exam fee as provided in Part 5;
- (5) submits official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
  - (a) post-baccalaureate degree in physical therapy;
  - (b) associate degree as a physical therapist assistant;
- (6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program requirements by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:
  - (a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;
  - (b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

(7) passes the national physical therapy licensure examination (NPTE) (as specified in 16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

(8) Effective February 1, 2020, all applicants for licensure must submit nationwide and statewide department of public safety (DPS) criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the applicant.

(a) Applicants will follow the criminal background check process required by the New Mexico department of public safety or its agents.

(b) Applications for exam or endorsement will not be processed without results of a criminal background check.

(c) If the criminal background check reveals a crime of moral turpitude or relevant felony or violation of the New Mexico physical therapy practice act, the applicant will be notified to submit copies of legal documents and other related information to the board that will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

**B.** For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three consecutive years, full licensure requires fulfilling the following requirements:

(1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

(2) provides proof of having taken 15 continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

(3) provides evidence of additional competency to practice as required by the board.

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

- (1) crimes involving homicide, murder, manslaughter, assisting suicide or resulting in death;
- (2) crimes involving human trafficking, or trafficking in controlled substances;
- (3) crimes involving kidnapping, false imprisonment, assault, aggravated assault, battery or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;
- (5) crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, custodial interference, unlawful interference with custody, injury to pregnant woman, breaking and entering, damage to property of a household member, or exploitation of a care facility resident's property;
- (6) contributing to the delinquency of a minor, unlawful carrying of a deadly weapon on school premises, unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages, or a felon in possession of a firearm;
- (7) criminal damage to property, damaging insured property, falsely obtaining services or accommodations;
- (8) accepting the earnings of a prostitute;
- (9) crimes involving the unauthorized distribution of sensitive images, computer abuse or unauthorized computer use;
- (10) crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud, credit card theft, dealing in credit cards of another, unauthorized use of a credit card, receiving or transferring stolen property, money laundering, shoplifting, or stolen vehicles;
- (11) crimes involving making a bomb scare, arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;
- (12) crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;
- (13) violation of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act;
- (14) crimes involving the unlawful disposal of, use or sale of an unclaimed body;

(15) intentionally hampering, obstructing, tampering or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act;

(16) crimes involving the second or subsequent offense of certain prohibited acts of the owner of a dangerous potentially dangerous dog in the Dangerous Dog Act;

(17) crimes involving cruelty to animals, dog fighting, cockfighting, unlawful tripping of an equine causing the maiming, crippling or death of the equine, injury to police dog, police horse or fire dog;

(18) crimes involving the use of telephone to terrify, intimidate, threaten, harass, annoy or offend;

(19) crimes involving the use of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder;

(20) violations of the Model State Commodity Code, the Uniform Securities Act, the Mortgage Loan Company Act, the Mortgage Loan Originator Licensing Act, the Savings and Loan Act;

(21) violations of the Election Code or the Indian Arts and Crafts Sales Act;

(22) crimes involving procuring or attempting to procure telecommunications service without paying charge, theft or intentional damage of, communications or public utility equipment, whether customer- or utility-owned, which created a public safety hazard or causes a disruption of communications services or public utility services to ten or more households;

(23) crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;

(24) crimes involving jury tampering, or impersonating a police officer;

(25) crimes involving escape from custody, community custody release program, jail or penitentiary, fleeing a law enforcement officer;

(26) crimes involving unlawful rescue, procuring escape, or conniving at, aiding or assisting escape of a person confined or held in lawful custody or confinement, or harboring or aiding a felon;

(27) crimes involving furnishing articles for a prisoner's escape, furnishing drugs or liquor to a prisoner, or bringing contraband into a prison or jail;

(28) crimes involving tax evasion or tax fraud;

(29) willful failure to collect and pay over taxes;

(30) crimes involving attempts to evade or defeat any tax;

(31) crimes involving violations of officers or employees engaging in the administration of the property tax who buy property sold for delinquent property taxes that is unlawful;

(32) crimes involving paying or receiving public money for services not rendered;

(33) crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;

(34) crimes involving violations of the Cigarette Enforcement Act;

(35) crimes involving the Credit Union Act;

(36) crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

(37) unlawful dealing in federal food coupons or WIC checks, unlawful use of food stamp identification card or medical identification card;

(38) crimes involving the Medicaid Fraud Act,

(39) failure to reimburse the human services department upon receipt of third party payment;

(40) an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act;

(41) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;

(42) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;

(43) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;

(44) crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;

(45) crimes involving a false public voucher, false reports, uttering or making false statements, paying or receiving public money for services not rendered;

(46) crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so;

(47) crimes involving extortionate extensions of credit or racketeering;

(48) crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;

(49) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of an official act, performance of an official act for personal gain or illegal kickbacks;

(50) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

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

(52) second or subsequent conviction of Chiropractic Physician Practice Act;

(53) crimes involving certain violations of the Optometry Act;

(54) fourth or subsequent driving under the influence of intoxicating liquor or drugs;

(55) crimes involving controlled substances, including violations of the Controlled Substances Act;

(56) crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;

(57) misuse of public funds;

(58) intent to defraud uses on a public security or instrument of payment;

(59) crimes involving commercial gambling, dealing in gambling devices, possession of an unlicensed or illegal gaming device, or a violation of the Gaming Control Act;

(60) crimes involving a violation of the Horse Racing Act;

(61) crimes involving having possession with the intent to sell or resell alcoholic beverages that have been manufactured or transported in violation of state law, or manufacturing any spirituous liquor by a person who is not a licensed distiller or rectifier manufacturing;

(62) crimes involving selling or giving alcoholic beverages to minors, and possession of alcoholic beverages to minors, or the manufacture, possession, offering to sell or sale of any alcoholic beverages in the state that are not in accordance with the Liquor Control Act, or other violations of the Liquor Control Act;

(63) willfully attempting to evade or defeat any fee or other payment imposed pursuant to the Professional Athletic Competition Act;

(64) second or subsequent conviction for failing to comply with restrictions imposed by proclamation of the governor under the Riot Control Act during a state of emergency, or failure to comply with proclamation of the governor;

(65) willfully setting on fire or igniting or causing to be set on fire or ignited any building equipment or anything whatsoever at or within any mine when any person is present in such mine when any person is present in such mine at the time, or willfully setting fire upon state lands;

(66) crimes involving a violation of the Procurement Code;

(67) crimes involving a violation of the Governmental Conduct Act; or

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

**D.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection C of this rule.

**E.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection C of this rule.

**F.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Physical Therapy Act, regardless of whether the individual was convicted of

a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**G.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

**H.** A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

**I.** Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC as well as those requirements listed in 16.20.9 NMAC.

**J.** Initial application is valid for a period of 12 months.

[16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11/1/2004; A, 3/2/2006; A, 1/12/2008; A, 8/1/2009; A, 8/16/2010; A, 7/27/2017; A, 7/28/2019; A, 2/24/2022; A, 6/27/2023]

### **16.20.3.9 [RESERVED]**

[16.20.3.9 NMAC - Rp, 16.20.3.9 NMAC, 11/1/2004; A, 3/2/2006; A, 1/12/2008; 16.20.3.9 NMAC - N, 8/1/2009; Repealed, 2/24/2022]

### **16.20.3.10 REINSTATEMENT OF LICENSURE:**

**A.** To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for less than one year one must:

- (1) complete the renewal form;
- (2) pay the late fee;
- (3) pay the current year renewal fee;
- (4) submit proof of the required continuing education contact hours; and

**(5)** submit a notarized statement by the therapist that they have not practiced physical therapy in the state of New Mexico while their physical therapy license was expired.

**B.** To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than one year, where there is evidence of continued practice with an unrestricted license in another state one must:

- (1)** complete the initial application;
- (2)** pay the application fee;
- (3)** pay the jurisprudence exam fee; and

**(4)** submit verification of all licenses from other U.S. jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

- (a)** name and address of the applicant;
- (b)** license number and date of issuance;
- (c)** current status of the license;
- (d)** expiration date of the license;
- (e)** a statement as to whether the applicant was denied a license by the agency; and
- (f)** a statement as to whether any disciplinary action is pending or has been taken against the applicant;

**(5)** submit verification of employment from the applicant's most recent physical therapy employer; the applicant must use the board approved verification of employment form;

**(6)** pass the jurisprudence examination; and

**(7)** meet the continuing education requirement in the state of practice during the period of lapse.

**C.** To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than one year, where there is no evidence of continued practice with an unrestricted license in another state one must:

- (1) complete the initial application;
- (2) pay the application fee;
- (3) pay the jurisprudence exam fee; and

(4) submit verification of all licenses from other U.S jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

- (a) name and address of the applicant;
  - (b) license number and date of issuance;
  - (c) current status of the license;
  - (d) expiration date of the license;
  - (e) a statement as to whether the applicant was denied a license by the agency;
  - (f) a statement as to whether any disciplinary action is pending or has been taken against the applicant;
- (5) pass the jurisprudence examination; and
- (6) take continuing education hours in the amount of 15 contact hours for each year the New Mexico license had lapsed.

**D.** To reinstate a New Mexico physical therapist or physical therapist assistant license that has lapsed for more than three years, where there is no evidence of practice in another state one must:

- (1) complete and submit a new application form satisfying all requirements for original licensure pursuant to 16.20.3.8 NMAC; and
- (2) the board will require 15 contact hours for each year the New Mexico license has lapsed as well as an additional course of study on a case-by-case basis, to ensure competence and fitness to practice.

[16.20.3.10 NMAC - Rp, 16.20.3.10 NMAC, 11/1/2004; A, 3/2/2006; A, 1/12/2008; 16.20.3.10 NMAC - Rn, 16.20.3.9 NMAC & A, 8/1/2009; A, 8/16/2010]

#### **16.20.3.11 LICENSURE BY RECIPROCITY:**

**A.** The board shall issue a license by reciprocity to an applicant who holds a current license in good standing in another U.S. jurisdiction that meets or exceeds the licensing and qualification requirements set out in Section 61-12D-10 NMSA 1978, provided the applicant submits an application on a form approved by the board with the required fee as forth in Subsection F of Section 61-12D-10 NMSA1978 and 16.20.3.8 NMAC.

**B.** A foreign-educated physical therapist or physical therapist assistant who has a current license in good standing from another U.S. jurisdiction may be issued a license provided the applicant meets all of the requirements set forth in Subsection A and B of Section 61-12D-10 NMSA 1978 and Section A of 16.20.3.11 NMAC and 16.20.4.8 NMAC.

[16.20.3.11 NMAC - N/E, 11-16-2005; Re-pr, 3/2/2006; A, 1/12/2008; 16.20.3.11 NMAC - Rn, 16.20.3.10 NMAC, 8/1/2009; A, 7/27/2017]

### **16.20.3.12 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Physical therapists and physical therapist assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon:

(1) completing a signed application accompanied by proof of identity, which may consist of a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) submitting documentation of graduation from an educational program approved by the commission on accreditation in physical therapy education (CAPTE), proof of successful completion of the national physical therapy examination (NPTE) and jurisprudence exam as specified in 16.20.3.8 NMAC, of these rules (verification may be obtained by email, online verification from the testing agency or university, mail or by fax);

(3) verification of licenses held in other states and verification of employment if applicable (verification may be sent to the board by mail, fax or email, through online verification from the state of licensure); and

(4) proof or documentation of residency and or employment in the area of the federal disaster.

**B.** The board may waive the following requirements for licensure:

(1) application fees prorated for four months;

(2) the specific forms required under 16.20.3.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

**C.** Nothing in this section shall constitute a waiver of the requirements for licensure contained in the board's rules and regulations.

**D.** Licenses issued under (this emergency provision) shall expire four months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before February 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.20.3.12 NMAC - N/E, 11-16-2005; Re-pr & A, 3/2/2006; 16.20.3.12 NMAC - Rn, 16.20.3.11 NMAC, 8/1/2009; A, 8/16/2010; 7/28/2019]

#### **16.20.3.13 EMERGENCY LICENSURE TERMINATION:**

**A.** The emergency license shall terminate upon the following circumstances:

- (1)** the issuance of a permanent license under 16.20.3.8 NMAC; or
- (2)** proof that the emergency license holder has engaged in fraud deceit, misrepresentation in procuring or attempting to procure a license under this section.

**B.** Termination of an emergency license shall not preclude application for permanent licensure.

[16.20.3.13 NMAC - N, 3/6/2009; 16.20.3.13 NMAC - Rn, 16.20.3.12 NMAC, 8/1/2009]

#### **16.20.3.14 INACTIVE LICENSE:**

**A.** A license in good standing may be transferred to inactive status upon written request to the board. Such request shall be made prior to the expiration of the license.

**B.** Until the inactive license has been reactivated, the licensee may not practice physical therapy in New Mexico unless employed by the federal government.

**C.** An annual inactive fee must be submitted to the board as set forth in 16.20.5.8 NMAC.

**D.** A licensee may reactivate the license upon submission of the following:

- (1)** the renewal form for the year in which the licensee wishes to reactivate;
- (2)** payment of the annual renewal fee for the year in which the licensee wishes to reactivate;

(3) proof of 15 continuing education contact hours for each year of inactive status;

(4) passage of the jurisprudence examination;

(5) submit verification of licenses from other U.S. jurisdictions; verifications may be sent to the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and must include the following:

(a) name and address of the applicant;

(b) license number and date of issuance;

(c) current status of the license;

(d) expiration date of the license;

(e) a statement as to whether the applicant was denied a license by the agency; and

(f) a statement as to whether any disciplinary action is pending or has been taken against the applicant.

E. A license can only be placed in an inactive status for four years.

[16.20.3.14 NMAC - Rn, 16.20.3.13 NMAC, 8/1/2009; A, 8/16/2010; A, 9/30/2014]

### **16.20.3.15 ELECTRONIC APPLICATIONS AND SIGNATURES:**

**A. ELECTRONIC APPLICATIONS:** In accordance with Sections 14-16-1 thru 14-16-21 NMSA 1978 of the Uniform Electronic Transactions Act, the board or its designee will accept electronic applications.

(1) Any person seeking a New Mexico physical therapy or physical therapist assistant license may do so by submitting an electronic application. Applicants are required to also submit all required information as stated in 16.20.3.8 and 16.20.3.9 NMAC.

(2) Any licensee may renew his or her license electronically through a designated website provided by the board. All license holders renewing their physical therapy or physical therapist assistant license are also required to submit all documentation as stated in 16.20.3.8 NMAC.

(3) Any persons whose license has been expired may apply electronically to the board for renewal of the license at any time within 60 days of expiration. Any

persons seeking renewal are also required to submit all supporting documents as stated in 16.20.3.8 NMAC.

**(4)** Any persons whose license has lapsed may apply electronically to the board for reinstatement of the license at any time. Any persons seeking reinstatement are also required to submit all supporting documents as stated in 16.20.3.8 and 16.20.3.10 NMAC.

**(5)** Any persons seeking licensure by endorsement in New Mexico, 16.20.3.16 NMAC may apply electronically to the board for endorsement, at any time. Any persons seeking endorsement are also required to submit all supporting documents as stated in 16.20.3.11 NMAC.

**(6)** Any persons seeking emergency licensure or termination of emergency licensure in New Mexico may apply electronically to the board, at any time. Any persons seeking emergency licensure or termination of emergency licensure are also required to submit all supporting documents as stated in 16.20.3.12 and 16.20.3.13 NMAC.

**(7)** Any persons seeking transfer of licensure to an inactive status in New Mexico may apply electronically to the board, at any time. Any persons seeking inactive status of their license are required to submit all supporting documents as stated in 16.20.3.14 NMAC.

**B. ELECTRONIC SIGNATURES:** Electronic signatures will be acceptable for applications pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

[16.20.3.15 NMAC - N, 9/30/2014]

## **PART 4: TEMPORARY LICENSES**

### **16.20.4.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[11/30/1995; Rn, 16 NMAC 20.5, 10/15/1997; 16.20.4.1 NMAC - Rn & A, 16 NMAC 20.4.1, 8/31/2000]

### **16.20.4.2 SCOPE:**

All individuals who wish to practice physical therapy in the state of New Mexico.

[11/30/1995; Rn, 16 NMAC 20.5, 10/15/1997; 16.20.4.2 NMAC - Rn & A, 16 NMAC 20.4.2, 8/31/2000]

### **16.20.4.3 STATUTORY AUTHORITY:**

Section 61-12-10 NMSA 1978.

[3/29/1983 . . . 11/30/1995; Rn, 16 NMAC 20.5, 10/15/1997; 16.20.4.3 NMAC - Rn, 16 NMAC 20.4.3, 8/31/2000]

**16.20.4.4 DURATION:**

Permanent.

[11/30/1995; Rn, 16 NMAC 20.5, 10/15/1997; 16.20.4.4 NMAC - Rn, 16 NMAC 20.4.4, 8/31/2000]

**16.20.4.5 EFFECTIVE DATE:**

November 30, 1995, unless a later date is cited at the end of a section.

[3/29/1983 . . . 11/30/1995; Rn, 16 NMAC 20.5, 10/15/1997; A, 10/15/1997; 16.20.4.5 NMAC - Rn & A, 16 NMAC 20.4.5, 8/31/2000]

**16.20.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 20 is to establish regulations for applicants applying for a temporary license to practice as a physical therapist or physical therapist assistant.

[11/30/1995; Rn, 16 NMAC 20.5, 10/15/1997; A, 10/15/1997; 16.20.4.6 NMAC - Rn, 16 NMAC 20.4.6, 8/31/2000]

**16.20.4.7 DEFINITIONS:**

**A. "On-site"** means a physical therapist shall be continuously present in the same building where the assistive personnel are performing services.

**B. "NPTE"** means the national physical therapy examination.

[Rn, 16 NMAC 20.5, 10/15/1997; 16.20.4.7 NMAC - Rn & A, 16 NMAC 20.4.7, 8/31/2000]

**16.20.4.8 TEMPORARY LICENSES FOR U.S. TRAINED APPLICANTS:**

**A.** Upon receipt of an application form which evidences satisfactory completion of all application requirements for licensure as provided in Section 61-12-10 NMSA 1978, of the Physical Therapy Act except passage of the NPTE, the registrar of the board may issue to the applicant a non-renewable temporary license to practice physical therapy in New Mexico.

**B.** Under no circumstance will the non-renewable temporary license be valid for a period longer than 180 days.

**C.** Issuance of a temporary license may be denied if:

(1) the applicant has worked as a physical therapist or physical therapist assistant without a license in New Mexico;

(2) the applicant has violated the New Mexico physical therapy and physical therapist assistant code of ethics.

(3) the applicant has failed the licensure examination in any state.

**D.** The holder of a temporary license **must** sit for the NPTE within 180 days after issuance of the temporary license. Failure to sit for the examination within 180 days automatically voids the temporary license. Where the holder of the temporary license is a foreign national, the 180 days begin to run once the foreign national has entered the United States.

**E.** The holder of a temporary license may work only under the direct supervision of a New Mexico unrestricted licensed physical therapist who is on-site. The supervising physical therapist may **not** hold a temporary license. The supervising physical therapist shall be licensed in New Mexico with a minimum of six months experience in a clinical setting. Prior to the issuance of an applicant's temporary license, the supervising physical therapist shall file with the board a written statement assuming full responsibility for the temporary licensee's professional activities. Filing is effective upon receipt by the board. This statement shall remain in effect until licensure of the temporary licensee, or until expiration of the temporary license.

**F.** The temporary licensee may not provide physical therapy services until the temporary license is received and is posted in a conspicuous place at the temporary licensee's principle place of practice.

**G.** No supervising physical therapist shall be responsible for the simultaneous supervision of more than two temporary licensees.

**H.** The supervising physical therapist shall co-sign all evaluations, progress notes, and discharge summaries written by the temporary licensee.

**I.** The temporary license shall state the name and address of the licensee's place of employment. Should the place of employment or the employer change during the period of temporary licensure, the temporary licensee **must** notify the board of any such change within five workdays of termination of employment. A new temporary supervisory form from the new employer will be required before a revised temporary license is issued. The board will issue a revised temporary license as per the fee

schedule as set forth in 16.20.5 NMAC, for each issuance; however, the date of issue and expiration will remain the same as the first temporary license.

**J.** The temporary supervisory form may be obtained from the board office.

[03-29-83; 2/19/1988; 08-01-89; 09-03-92; 02-01-95; Rn & A, 16 NMAC 20.4, 10/15/1997; 16.20.4.8 NMAC - Rn & A, 16 NMAC 20.4.8, 8/31/2000; A, 03-02-06; A, 01-12-08; A, 08-01-09; A, 08-16-10; A, 09-30-14]

#### **16.20.4.9 TEMPORARY LICENSES FOR FOREIGN-TRAINED APPLICANTS:**

Foreign-trained applicants for temporary licenses must fulfill all application requirements provided in 16.20.3 NMAC, "Issuance of Licenses" and 16.20.9 NMAC, "Education Criteria for Foreign-Educated Applicants", and subject to the requirements of 16.20.4.8 NMAC, "Temporary Licenses for U.S. Trained Applicants".

[3/29/1983; 2/19/1988; 8/1/1989; 9/3/1992; 6/4/1994; 9/30/1995; 11/30/1995; Rn, 16 NMAC 20.5, 10/15/1997, 10/15/1997; 16.20.4.9 NMAC - Rn, 16 NMAC 20.4.9, 8/31/2000; A, 3/2/2006; A, 8/1/2009]

#### **16.20.4.10 TEMPORARY LICENSES FOR PT'S OR PTA'S TEACHING AN EDUCATIONAL SEMINAR:**

**A.** Completion of an instructor license application and pay the non-refundable application fee as provided in Part 5.

**B.** The instructing physical therapist must provide the board with proof of a valid current license from the state in which they are currently practicing. This verification of licensure must be received by the New Mexico board directly from the state board where the instructing therapist is licensed.

**C.** A temporary license may not be used to practice physical therapy for any other purposes than for the continuing education program for which it was issued.

**D.** This section applies only to educational seminars which include hands-on demonstrations.

**E.** A temporary license for an instructor shall only be valid through the end of the calendar year in which the license is issued.

[10/15/1997; 16.20.4.10 NMAC - Rn & A, 16 NMAC 20.4.10, 8/31/2000; A, 3/2/2006; A, 8/16/2010; A, 7/28/2019]

### **PART 5: SCHEDULE OF FEES**

#### **16.20.5.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[10-15-97; 16.20.5.1 NMAC - Rn & A, 16 NMAC 20.5.1, 08-31-00]

**16.20.5.2 SCOPE:**

All individuals who wish to practice physical therapy in the State of New Mexico.

[10-15-97; 16.20.5.2 NMAC - Rn & A, 16 NMAC 20.5.2, 08-31-00]

**16.20.5.3 STATUTORY AUTHORITY:**

Section 61-12-7 NMSA 1978.

[10-15-97; 16.20.5.3 NMAC - Rn, 16 NMAC 20.5.3, 08-31-00]

**16.20.5.4 DURATION:**

Permanent.

[10-15-97; 16.20.5.4 NMAC - Rn, 16 NMAC 20.5.4, 08-31-00]

**16.20.5.5 EFFECTIVE DATE:**

October 15, 1997, unless a later date is cited at the end of a section.

[10-15-97; 16.20.5.5 NMAC - Rn & A, 16 NMAC 20.5.5, 08-31-00]

**16.20.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 20 is to outline fees for examinations, application, renewal, late penalty fee, duplicate license, and administrative fees.

[10-15-97; 16.20.5.6 NMAC - Rn, 16 NMAC 20.5.6, 08-31-00]

**16.20.5.7 DEFINITIONS:**

**[RESERVED]**

[10-15-97; 16.20.5.7 NMAC - Rn, 16 NMAC 20.5.7, 08-31-00]

**16.20.5.8 SCHEDULE OF FEES:**

The following fees shall be nonrefundable.

A. Application for full licensure:

- (1) physical therapist: \$250.00;
- (2) physical therapist assistant: \$200.00.

B. Request for temporary license: \$35.00; revised temporary license: \$10.00.

C. Jurisprudence exam: \$25.00; applicants who fail to pass this exam will need to pay the fee for each subsequent exam taken.

D. National physical therapy examination: contact the board for the current fees set by the testing contractor for both physical therapists and physical therapist assistants.

E. Biennial renewal:

- (1) physical therapist: \$160.00;
- (2) physical therapist assistant: \$120.00.

F. Penalty for late renewal:

- (1) physical therapist: \$250.00;
- (2) physical therapist assistant: \$200.00.

G. Replacement license: \$25.00; a replacement license may be provided subject to administrative review.

H. Mailing list (paper copy): \$250.00.

I. Electronic list: \$250.00.

J. Verification of licensure by endorsement: \$30.00.

K. Continuing education approval for course provider: to be determined by board designee.

L. Copy charge for public records (per page): \$0.25.

M. Returned check charge (per check): \$25.00.

N. Other administrative fees, i.e., credit card transactions, bank fees.

O. Inactive status fees:

- (1) inactive status fee: \$20.00;

- (2) reactivation fee for physical therapists: \$160.00;
- (3) reactivation fee for physical therapist assistants: \$120.00;

P. Instructor license fee: \$50.00

[10-15-97; 16.20.5.8 NMAC - Rn & A, 16 NMAC 20.5.8, 08-31-00; A, 11-01-04; A, 03-02-06; A, 1-12-08; A, 8/1/09; A, 8/16/10]

## **PART 6: PHYSICAL THERAPIST ASSISTANTS**

### **16.20.6.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[5/15/1996; Rn, 16 NMAC 20.7, 10/15/1997; 16.20.6.1 NMAC - Rn & A, 16 NMAC 20.6.1, 8/31/2000]

### **16.20.6.2 SCOPE:**

All individuals who wish to practice physical therapy in the state of New Mexico.

[5/15/1996; Rn, 16 NMAC 20.7, 10/15/1997; 16.20.6.2 NMAC - Rn & A, 16 NMAC 20.6.2, 8/31/2000]

### **16.20.6.3 STATUTORY AUTHORITY:**

Section 61-12-12 NMSA 1978.

[3/29/1983 . . . 5/15/1996; Rn, 16 NMAC 20.7, 10/15/1997; 16.20.6.3 NMAC - Rn, 16 NMAC 20.6.3, 8/31/2000]

### **16.20.6.4 DURATION:**

Permanent.

[5/15/1996; Rn, 16 NMAC 20.7, 10/15/1997; 16.20.6.4 NMAC - Rn, 16 NMAC 20.6.4, 8/31/2000]

### **16.20.6.5 EFFECTIVE DATE:**

May 1, 1996, unless a later date is cited at the end of a section.

[3/29/1983 . . . 5/15/1996; Rn, 16 NMAC 20.7, 10/15/1997; A, 10/15/1997; 16.20.6.5 NMAC - Rn & A, 16 NMAC 20.6.5, 8/31/2000]

#### **16.20.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 20 is to establish regulations for physical therapist assistants.

[5/15/1996; Rn, 16 NMAC 20.7, 10/15/1997; A, 10/15/1997; 16.20.6.6 NMAC - Rn, 16 NMAC 20.6.6, 8/31/2000]

#### **16.20.6.7 DEFINITIONS:**

**"Referring physical therapist"** is the licensed therapist who sets the plan of care for the patient being treated by the physical therapist assistant.

[10/15/1997; 16.20.6.7 NMAC - Rn, 16 NMAC 20.6.7, 8/31/2000; A, 1/12/2008]

#### **16.20.6.8 PHYSICAL THERAPIST ASSISTANTS:**

**A.** A physical therapist assistant may work only under the direction and supervision of a New Mexico physical therapist who is licensed pursuant to Subsections A and B of Section 61-12-10 NMSA 1978 of the Physical Therapy Act. The referring physical therapist shall assume full responsibility for the professional activities of the assistant, which are undertaken pursuant to his/her direction or supervision.

**B.** A physical therapist may not be responsible for the direction and supervision of more than three full-time physical therapist assistants working three FTE's (full-time equivalency, totaling 120 work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, or full-licensed physical therapist assistants.

**C.** A physical therapist may supervise more than three physical therapist assistants provided combined FTE's do not exceed 120 hours per week.

**D.** The direction and supervision of the physical therapist assistant shall require the following:

**(1)** the referring physical therapist is responsible for the patient's care;

**(2)** when physical therapy services are being provided, a licensed physical therapist must be on call and readily available for consultation by phone, electronic mail or cellular phone when the referring physical therapist leaves the area or facility, for any length of time, or the referring physical therapist must appoint a stand in physical therapist as a supervising therapist until such time the referring physical therapist returns to the facility;

(3) the referring physical therapist will formulate a current written plan of care for each patient; the referring physical therapist will review the plan of care at least every 30 days;

(4) the physical therapist should only delegate interventions to physical therapist assistant's that are competent and trained in these interventions; the physical therapist assistant shall not:

(a) interpret referrals;

(b) specify or perform definitive (initial, progress/re-evaluation, discharge) evaluative and assessment procedures;

(c) alter goals or a plan of care; or

(d) determine when to utilize the physical therapist assistant to perform selected interventions of physical therapy care.

(5) the physical therapist assistant may sign daily notes without the physical therapist's co-signing; each daily treatment note in a patient's permanent record completed by a physical therapist assistant must include the name of the referring physical therapist; and

(6) the physical therapist assistant shall respond to acute changes in the patient's physiological state; the physical therapist assistant shall notify the referring physical therapist of those changes prior to the next treatment session.

[3/29/1983; 2/19/1988; 8/1/1989; 5/8/1991; 9/3/1992; 5/1/1996; 16 NMAC 20.6.8 - Rn & A, 16 NMAC 20.7, 10/15/1997; 16.20.6.8 NMAC - Rn, 16 NMAC 20.6.8, 8/31/2000; A, 3/2/2006; A, 1/12/2008; A, 4/15/2010; A, 8/16/2010; A, 9/30/2014; A, 2/27/2015; A, 7/28/2019]

## **PART 7: SUPERVISION**

### **16.20.7.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[10/15/1997; 16.20.7.1 NMAC - Rn & A, 16 NMAC 20.7.1, 8/31/2000]

### **16.20.7.2 SCOPE:**

All individuals who wish to practice physical therapy in the State of New Mexico.

[10/15/1997; 16.20.7.2 NMAC - Rn & A, 16 NMAC 20.7.2, 8/31/2000]

**16.20.7.3 STATUTORY AUTHORITY:**

Section 61-12-12 NMSA 1978.

[10/15/1997; 16.20.7.3 NMAC - Rn, 16 NMAC 20.7.3, 8/31/2000]

**16.20.7.4 DURATION:**

Permanent.

[10/15/1997; 16.20.7.4 NMAC - Rn, 16 NMAC 20.7.4, 8/31/2000]

**16.20.7.5 EFFECTIVE DATE:**

October 15, 1997, unless a later date is cited at the end of a section.

[10/15/1997; 16.20.7.5 NMAC - Rn & A, 16 NMAC 20.7.5, 8/31/2000]

**16.20.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 20 is to outline the definitions and requirements of supervision.

[10/15/1997; 16.20.7.6 NMAC - Rn, 16 NMAC 20.7.6, 8/31/2000; A, 1/12/2008]

**16.20.7.7 DEFINITIONS:**

**"Unlicensed physical therapy assistive personnel (physical therapy aide or other assistive personnel)"** means a person trained under the direction of a physical therapist that performs designated and supervised routine physical therapy tasks related to physical therapy services.

[10/15/1997; 16.20.7.7 NMAC - Rn, 16 NMAC 20.7.7, 8/31/2000; A, 1/12/2008; A, 8/1/2009; A, 8/16/2010; A, 9/30/2014]

**16.20.7.8 SUPERVISION OF LICENSED PERSONNEL:**

**A.** A physical therapist may not be responsible for the direction and supervision of more than three full-time physical therapist assistants, or three FTE's (full-time equivalency totaling 120 work hours per week) requiring supervision, including temporary physical therapists, temporary physical therapist assistants, and licensed physical therapist assistants.

**B.** A physical therapist may supervise three or more physical therapist assistants provided combined FTE's do not exceed more than 120 hours per week.

**C.** When physical therapy services are being provided, a licensed physical therapist must be on call and readily available for consultation by phone or electronic mail when the referring physical therapist leaves the area or facility, for any length of time or the referring physical therapist must appoint a stand in physical therapist as a supervising therapist until such time the referring physical therapist returns to the facility.

**D.** A physical therapist supervising a temporary licensee must notify the New Mexico physical therapy licensing board, in writing, when they are no longer responsible for supervision of a temporary licensee.

**E.** The referring physical therapist must hold documented conferences with the physical therapist assistant regarding the patient. The physical therapist is responsible for determining the frequency of the conferences consistent with accepted standards of practice within the facility in which they work.

[10/15/1997; 16.20.7.8 NMAC - Rn, 16 NMAC 20.7.8, 8/31/2000; A, 03-02-06; A, 1/12/2008; A, 8/1/2009; A, 9/30/2014; A, 7/28/2019]

#### **16.20.7.9 SUPERVISION OF UNLICENSED ASSISTIVE PERSONNEL (PHYSICAL THERAPY AIDE/TECHNICIAN/ATTENDANT):**

**A.** A licensed physical therapist may only supervise unlicensed aides working as care-giving assistive personnel, provided the assistive personnel's combined full time equivalency does not exceed 120 hours per week.

**B.** Physical therapy aides and other assistive personnel shall perform patient care activities under on-site supervision of a physical therapist. "On-site supervision" means the supervising physical therapist:

(1) be continuously on-site and present in the department or facility where the assistive personnel are performing services;

(2) be immediately available to assist the person being supervised in the services being performed; and

(3) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

[10/15/1997; 16.20.7.9 NMAC - Rn, 16 NMAC 20.7.9, 8/31/2000; A, 1/12/2008; A, 8/1/2009; A, 8/16/2010; A, 9/30/2014; A, 7/28/2019]

### **PART 8: RENEWAL REQUIREMENTS AND CONTINUING EDUCATION**

#### **16.20.8.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[16.20.8.1 NMAC – Rp, 16.20.8.1 NMAC, 2/24/2022]

**16.20.8.2 SCOPE:**

All individuals who wish to practice physical therapy in the state of New Mexico.

[16.20.8.2 NMAC - Rp, 16.20.8.2 NMAC, 2/24/2022]

**16.20.8.3 STATUTORY AUTHORITY:**

Section 61-12-10 NMSA 1978.

[16.20.8.3 NMAC - Rp, 16.20.8.3 NMAC, 2/24/2022]

**16.20.8.4 DURATION:**

Permanent.

[16.20.8.4 NMAC - Rp, 16.20.8.4 NMAC, 2/24/2022]

**16.20.8.5 EFFECTIVE DATE:**

October 15, 1997, unless a later date is cited at the end of a section.

[16.20.8.5 NMAC – Rp, 16.20.8.5 NMAC, 2/24/2022]

**16.20.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 20 is to inform licensees of continuing education requirements for license renewal.

[16.20.8.6 NMAC – Rp, 16.20.8.6 NMAC, 2/24/2022]

**16.20.8.7 DEFINITIONS:**

**A.** One "**contact hour**" requires 60 minutes.

**B.** "**Lecture**" means an educational talk given by a qualified individual.

**C.** "**Continuing professional education**" means learning experiences which enhance and expand the skills, knowledge, and abilities of physical therapists and physical therapist assistants to enable them to remain current and render competent professional service to clients, the profession, and the public.

**D.** "**Fellowship**" means a planned program designed to provide greater depth in a specialty or subspecialty area and requires a minimum of 1000 hours of instruction.

**E. "Panel"** means the presentation of a number of views by several qualified individuals on a given subject.

**F. "Workshop"** means a series of meetings designed for intensive study, skill development, or discussion in a specific field of interest.

**G. "Seminar/In-service"** means directed study for a group for advanced study, work or discussion in a specific field of interest.

**H. "Symposium"** means a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

[16.20.8.7 NMAC – Rp, 16.20.8.7 NMAC, 2/24/2022]

#### **16.20.8.8 RENEWAL REQUIREMENT:**

**A.** Renewal of license.

**(1)** A licensed physical therapist and a physical therapist assistant shall apply for license renewal and pay the renewal fee as set forth in 16.20.5 NMAC, Schedule of Fees.

**(2)** Licenses will be renewed biennially. Licenses will expire on February 1 following no more than two years of licensure.

**B.** The board office will mail a renewal notice to each licensee no later than December 15 at the address on record. Timely renewal of license is the full and complete responsibility of the licensee. If the licensee does not receive the renewal notification within a reasonable time after December 15, it is the responsibility of the licensee to contact the board office. Non-receipt of the renewal form by the licensee will not exempt licensure expiration or late penalty fees.

**C.** Each licensee is responsible for submitting the required renewal fee by the expiration date whether or not a renewal notice is received by the licensee and licensee shall not practice if license is expired.

**D.** All license renewals postmarked after February 1 will be subject to a late fee of \$250 for a physical therapist and \$200 for a physical therapist assistant. (Refer to 16.20.5 NMAC, Schedule of Fees.)

[16.20.8.8 NMAC – Rp, 16.20.8.8 NMAC, 2/24/2022]

#### **16.20.8.9 CONTINUING EDUCATION REQUIREMENT:**

Continuing education is required for license renewal of physical therapists and physical therapist assistants in order to ensure that New Mexico licensees are providing the highest quality professional services.

**A.** Thirty hours of continuing education will be required biennially, except those who will renew their license for the first time. No continuing education is required of those who are renewing for the first time. All continuing education hours must be earned during the current two year renewal period of February 1 through January 31.

**B.** The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. If the licensee is audited, proof of participation in or presentation of continuing education activity must be submitted along with a renewal form.

**(1)** If a notice of audit is received with the license renewal notice, the licensee must submit evidence of continuing education hours earned during the current biennial renewal cycle to the board as requested and as required in the Physical Therapy Act and by this rule.

**(2)** If the licensee is not audited, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and the licensee shall retain all documentation of attendance for the previous cycle immediately preceding the current renewal.

**(3)** The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

**C.** Licensees serving in the armed forces reserve or national guard.

**(1)** The license of a physical therapist or physical therapist assistant who does not earn the required continuing education contact hours as provided in this section due to his or her call to active duty in the armed forces reserves or the New Mexico national guard, will not lapse for failure to earn continuing education hours.

**(2)** A physical therapist or physical therapist assistant who was or is called to active duty in the armed forces reserves or New Mexico national guard is required to provide official documentation that the licensee is a member of the armed forces reserves or the national guard and was or is being called to active duty.

**(3)** Upon the physical therapist or physical therapist assistant's return to civilian status, the licensee shall pay the license renewal fee and resume earning continuing education contact hours prorated according to the licensee's months of service as required to maintain his or her licensure as a physical therapist or physical therapist assistant.

[16.20.8.9 NMAC – Rp, 16.20.8.9 NMAC, 2/24/2022]

**16.20.8.10 CONTINUING EDUCATION CREDIT CARRYOVER:**

No carryover hours will be permitted. Thirty continuing education hours must be earned during the current two year renewal period of February 1 through January 31.

[16.20.8.10 NMAC – Rp, 16.20.8.10 NMAC, 2/24/2022]

**16.20.8.11 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS:**

Failure to meet continuing education requirements will cause the board to refuse to renew the physical therapist or physical therapist assistant license in accordance with the Uniform Licensing Act.

[16.20.8.11 NMAC – Rp, 16.20.8.11 NMAC, 2/24/2022]

**16.20.8.12 APPROVAL OF CONTINUING EDUCATION CONTACT HOURS:**

**A.** The process for approval of continuing education is as follows:

(1) the board or its designee will approve each request for continuing education credit; course approval must be requested by the course sponsor prior to the course or retroactively; however, licensee's are not required to obtain approval but can request approval prior to a course or retroactively to ascertain that a course is acceptable as continuing education;

(2) the party requesting approval will be informed of the board's or designee's determination within 30 calendar days of receipt of the request;

(3) the course sponsor or licensee whose request has been denied may appeal the denial at the next board meeting; and

(4) the same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.

**B.** Programs must follow the criteria and guidelines established by the board as follows to receive continuing education credit:

(1) each program or any course(s), with board approval that are sponsored by the APTA/NMAPTA will automatically be accepted for CEU approval without the need to apply for such approval;

(2) each program addresses needs (problems and issues) faced by physical therapists and physical therapist assistants;

(3) each program has specific written learning outcomes (objectives) based on identified needs;

(4) each program is planned and conducted by qualified individuals;

(5) program content and instructional methods for each program are based on learning objectives; and

(6) participants demonstrate their attainment of the learning outcomes, (i.e., various methods can be used such as: questions, discussions, written oral exercises, problems, case studies, etc.); and

(7) programs approved by the APTA will be automatically accepted by the board.

**C.** Final determination of values of continuing education will remain at the discretion of the board.

**D.** Programs considered appropriate for continuing education, include, but are not limited to those listed below.

(1) **Live programs**, (i.e., various programs such as workshops, in-service two-way video conferencing, etc.) awarded by providing the board with the following:

(a) certificate of completion;

(b) course schedule;

(c) learning outcomes (objectives); and

(d) name of instructor and credentials; 30 contact hours will be accepted).

(2) In the case of **university or college courses** taken for credit, provide the board with:

(a) name of course;

(b) number of course credit hours;

(c) inclusive dates of attendance;

(d) name of instructor and instructor's credentials;

(e) published course description from college or university;

(f) completed transcript or grade report with a passing grade of "C" or better;

(g) name of institution; and

(h) brief course summary demonstrating the course's relationship to physical therapy; (maximum 30) contact hours are awarded for each three credit course).

(3) Physician **in-service programs** or regular physical therapy staff in-service programs, provide the board with:

(a) name of program;

(b) number of hours spent in program;

(c) inclusive dates of attendance;

(d) name of instructor or supervisor of program; documentation of instructor background and expertise;

(e) name of institution; and

(f) brief course summary demonstrating the course's relationship to physical therapy; (maximum allowed biennially is 30 contact hours).

(4) **Management courses:** (maximum allowed biennially is 15 contact hours.)

(5) **Preparation or presentation of a workshop/in-service**, awarded on a case by case basis for any one given presentation, by providing the board the following:

(a) proof of preparation may be an outline, copy of handouts, copy and

(b) a copy of the agenda showing name of licensee as presenter; (maximum allowed biennially is 15 contact hours);

(c) contact hours for the presenter will be calculated at three times the number of hours of audience participation (e.g., a two hour workshop equals six hours for the presenter).

(6) **Certificate courses for an advanced specialty**, provide the board a certificate of completion signed by the program sponsor. (Maximum allowed biennially is 30 contact hours.)

(7) **Reading journal articles**, provide the board the following:

(a) title of article and journal;

(b) author and author's credentials'; and

(c) summary (subject of article, what was learned, and how it relates to the physical therapy scope of practice or the licensee's position; (maximum allowed per article is one-half contact hour); (maximum allowed biennially is 15 contact hours).

**(8) Conducting physical therapy research**, provide the board the following:

(a) title and description of research project, including brief timeline;

(b) names of other persons involved in project (i.e., co-investigators or supervisors);

(c) a brief statement indicating how participation in the project is related to the licensee's present or future position in the field of physical therapy;

(d) a brief statement indicating how participation in the project is benefiting the applicant's therapy skills or research skills; and

(e) provide a copy of the research report (if project has been completed); (if report is incomplete), credit will be allowed by providing the listed information or by receipt of the college transcript; (the board will determine the number of contact hours allowed); (maximum allowed biennially is 30 contact hours).

**(9) Home study courses**, awarded by providing the board with the following:

(a) certificate of completion;

(b) course schedule;

(c) learning outcomes (objectives); and

(d) name of instructor and credentials; (maximum allowed biennially is 30 contact hours).

**(10) Internet courses**, awarded by providing the board with the following:

(a) certificate of completion;

(b) course schedule;

(c) learning outcomes (objectives); and

(d) name of instructor and credentials; (maximum allowed biennially is 30 contact hours).

**(11) Alternative medicine seminars**, provide the board a letter from the licensee explaining how the course relates to the physical therapy scope of practice. The board will approve these courses on a case by case basis.

**(12) Courses where certificates of attendance are not issued**, provide the board the following:

**(a)** a canceled check for the course registration fee (submit copy of front and back of check);

**(b)** proof of transportation (i.e., copy of plane ticket and hotel receipt); and

**(c)** list of courses attended and hours attended (i.e., copy descriptions of courses and hours from program agenda).

**(13) Credit for supervising a student in clinical education**, provide the board with a copy of the cover and signature page (with student's name blacked out to maintain confidentiality) of the student evaluation completed by the licensee-supervisor. One continuing education contact hour may be approved for each 40 contact hours of supervision in clinical education. The maximum number of continuing education contact hours approved for supervision in clinical education is 15 contact hours biennially.

**(14) Residencies, fellowships, and examinations.**

**(a)** Successful completion of a specialty examination may be submitted for continuing education consideration. A list of the specialty examinations that qualify for continuing education will be maintained by the board. The maximum number of continuing education contact hours is 30 biennially.

**(b)** Successful completion of an American physical therapy association (APTA) credentialed residency or fellowship program may be submitted for continuing education consideration. The maximum number of continuing education contact hours is 30 biennially.

**(c)** Successful completion of an examination of the federation of state boards of physical therapy pertaining to continued competence may be submitted for continuing education consideration. The maximum number of continuing education contact hours is 30 biennially.

**(15) The American physical therapy association code of ethics for physical therapists and standards of ethical conduct for physical therapist assistants**, online course or live program, awarded by providing the board with the following:

**(a)** certificate of completion;

(b) course schedule;

(c) learning outcomes (objectives); and

(d) name of instructor and credentials; (the maximum number of contact hours awarded will be accepted).

**(16) Education presentations on state and federal legislative updates, and APTA house of delegates at NMAPTA business meetings**, awarded by providing the board with the following:

(a) proof of attendance;

(b) outline of agenda; and

(c) name of instructor and instructor's credentials; (maximum allowed biennially is eight contact hours or four contact hours annually).

**E. Ineligible activities** include, but are not limited to:

(1) orientation and in-service programs dealing with organizational structures, processes, or procedures;

(2) meetings for purposes of policy making;

(3) annual association, chapter, district, or organizational and non-educational meetings;

(4) entertainment or recreational meetings or activities;

(5) committee meetings, holding of offices, serving as an organizational delegate;

(6) visiting exhibits; and

(7) CPR education.

[16.20.8.12 NMAC – Rp, 16.20.8.9 NMAC, 2/24/2022]

## **PART 9: EDUCATION CRITERIA FOR FOREIGN-EDUCATED APPLICANTS**

### **16.20.9.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[11-30-95; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.1 NMAC - Rn & A, 16 NMAC 20.9.1, 08-31-00]

**16.20.9.2 SCOPE:**

All individuals who wish to practice physical therapy in the State of New Mexico.

[11-30-95; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.2 NMAC - Rn & A, 16 NMAC 20.9.2, 08-31-00]

**16.20.9.3 STATUTORY AUTHORITY:**

Section 61-12-10 NMSA 1978.

[03-29-83 . . . 11-30-95; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.3 NMAC - Rn, 16 NMAC 20.9.3, 08-31-00]

**16.20.9.4 DURATION:**

Permanent.

[11-30-95; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.4 NMAC - Rn, 16 NMAC 20.9.4, 08-31-00]

**16.20.9.5 EFFECTIVE DATE:**

December 15, 1997, unless a later date is cited at the end of a section.

[03-29-83 . . . 11-30-95; Rn, 16 NMAC 20.10, 12-15-97, A, 12-15-97; 16.20.9.5 NMAC - Rn & A, 16 NMAC 20.9.5, 08-31-00]

**16.20.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 20 is to establish regulations for foreign educated applicants applying for licensure and to establish educational criteria providing proof of competency to practice as a physical therapist in the State of New Mexico.

[11-30-95; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.6 NMAC - Rn, 16 NMAC 20.9.6, 08-31-00]

**16.20.9.7 DEFINITIONS:**

A. "Foreign-educated applicant" means a physical therapist that graduated from any physical therapy educational program outside the fifty states, Puerto Rico, District of Columbia, or U.S. territories.

B. "Substantially equivalent" means the applicant meets criteria as set forth in 16.20.9.8 NMAC.

[Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.7 NMAC - Rn, 16 NMAC 20.9.7, 08-31-00]

#### **16.20.9.8 EQUIVALENT:**

The foreign-educated applicant must have graduated from a physical therapist educational program that prepares the applicant to practice without restriction in the United States. This includes coursework in those elements of practice that are necessary for autonomous practice such as determining a patient's diagnosis for physical therapy and managing a patient's care within healthcare systems found in the United States. The coursework content should be substantially equivalent to coursework completed by graduates of accredited programs in the United States. Substantially equivalent means the applicant has satisfied or exceeded the minimum number of credits required in general and professional education needed for a U.S. first professional degree in physical therapy. Substantial equivalency in coursework content, as well as, required semester credits is determined by a board-sanctioned credentials review using the appropriate coursework evaluation tool (CWT) adopted by the federation of state boards of physical therapy (FSBPT). The appropriate CWT means the latest edition CWT that applies to the time the foreign educated physical therapist graduated from his or her physical therapy program.

[03-29-83; 02-19-88; 01-28-93; 06-30-94; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.8 NMAC - Rn & A, 16 NMAC 20.9.8, 08-31-00; A, 02-15-04; A, 01-12-08; A, 09-30-14]

#### **16.20.9.9 CREDENTIAL EVALUATION:**

Foreign-educated applicants must submit a credential evaluation from an educational credentialing evaluation service that uses a course work evaluation tool approved by the board.

A. The minimum educational credentials of a foreign-educated physical therapist should be a degree in physical therapy with all credits being earned at an institution of higher learning.

B. The board will accept final credential reports only from the credentialing service and only if the credential evaluation has been prepared within one year prior to the application date.

C. The credentialing agency must identify and list those courses which would not transfer to the U.S. as a "C" or above or "pass" or "credit" in accordance with the most current version of the *national association for foreign student affairs handbook on the placement of foreign graduate students*. The agency must omit any of these courses that are required physical therapy courses when evaluating the equivalency of the credentials to a U.S. degree in physical therapy.

D. Should the foreign-educated applicant's credential evaluation fail to demonstrate equivalency according to standards of accredited physical therapy programs in the United States, upon a request by the applicant for reconsideration, the board will reconsider whether the applicant has substantially met the requirements of 16.20.9.8 NMAC.

[03-29-83; 08-01-89; 05-08-91; 09-30-95; Rn & A, 16 NMAC 20.10.11, 12-15-97; 16.20.9.9 NMAC - Rn, 16 NMAC 20.9.9, 08-31-00; A, 02-15-04; A, 1-12-08]

#### **16.20.9.10 CURRENT LICENSE:**

A. Foreign-educated applicants must show evidence of an active, valid license in good standing, without limitation, or other current authorization to practice physical therapy from an appropriate authority in the country where the foreign-educated applicant was educated or eligible for licensure. Original documentation must be sent directly to the board by the licensure authority in the country of education (documents handled by a courier service or third party will not be accepted). All documentation must be in English or accompanied by a certified English translation.

B. Foreign-educated applicants who have been licensed and have practiced in good standing for a minimum of one year in another state, in the United States, will not be required to provide proof of a license from their country of education. Proof of licensure will be required from each state in which the applicant has been licensed. Such proof of licensure must be received by the New Mexico board directly from the state boards where currently and previously licensed.

[1-28-93; 06-03-94; 09-30-95; 11-30-95; Rn & A, 16 NMAC 20.10, 12-15-97; 16.20.9.10 NMAC - Rn, 16 NMAC 20.9.10, 08-31-00; A, 03-02-06; A, 09-30-14]

#### **16.20.9.11 VERIFICATION OF EDUCATION:**

Foreign-educated applicants must provide the board with original transcripts submitted directly from the educational institution in the country of origin; (documents handled by courier service or third party will not be accepted), signed only by the university registrar, physiotherapy school director or dean of the college. All documentation must be in English or accompanied by a certified English translation.

[Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.11 NMAC - Rn, 16 NMAC 20.9.11, 08-31-00]

#### **16.20.9.12 VERIFICATION OF EMPLOYMENT:**

Foreign-educated applicants must provide the board with a letter from the applicant's most recent employer verifying the applicant's position and dates of employment in the field of physical therapy. This letter must be received by the board directly from the employer. (Documents handled by courier service or third party will not be accepted).

[09-30-95; Rn & A, 16 NMAC 20.10, 12-15-97; 16.20.9.12 NMAC - Rn, 16 NMAC 20.9.12, 08-31-00]

### **16.20.9.13 CORRECTION OF EDUCATIONAL DEFICIENCIES:**

Applicants may correct educational deficiencies by completing any of the following requirements.

A. College level examination program (CLEP) scores may be applied towards college credit. The conversion of CLEP scores to college credits must be provided by a board approved credentialing agency.

B. An applicant may obtain college-level credits in the deficient areas.

C. Complete other course work as approved by the board.

[03-29-83; 09-30-95; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.13 NMAC - Rn, 16 NMAC 20.9.13, 08-31-00]

### **16.20.9.14 CERTIFICATION:**

The documentation required in 16.20.9.8 NMAC through 16.20.9.12 NMAC does not have to be submitted if the applicant provides a notarized copy of a type I comprehensive credential evaluation certificate for the physical therapist from the foreign credentialing commission of physical therapy (FCCPT) that is required for all applicants who received their education outside the United States to verify that the applicant's education is substantially equivalent to a US degree in physical therapy, that the applicant satisfies the FCCPT's English proficiency requirements, and that the license or authority to practice obtained in the applicant's country of education is unencumbered.

[03-29-83; R, 12-15-97; 16.20.9.14 NMAC - Rn & N, 16 NMAC 20.9.14, 08-31-00]

## **PART 10: DIRECT CARE REQUIREMENTS**

### **16.20.10.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[12-15-97; 16.20.10.1 NMAC - Rn & A, 16 NMAC 20.10.1, 08-31-00]

### **16.20.10.2 SCOPE:**

All individuals who wish to practice physical therapy in the state of New Mexico.

[12-15-97; 16.20.10.2 NMAC - Rn & A, 16 NMAC 20.10.2, 08-31-00]

**16.20.10.3 STATUTORY AUTHORITY:**

Section 61-12D-10 NMSA 1978.

[12-15-97; 16.20.10.3 NMAC - Rn, 16 NMAC 20.10.3, 08-31-00; A, 10-10-15]

**16.20.10.4 DURATION:**

Permanent.

[12-15-97; 16.20.10.4 NMAC - Rn, 16 NMAC 20.10.4, 08-31-00]

**16.20.10.5 EFFECTIVE DATE:**

December 15, 1997, unless a later date is cited at the end of a section.

[03-29-83 . . . 12-15-97; 16.20.10.5 NMAC - Rn & A, 16 NMAC 20.10.5, 08-31-00]

**16.20.10.6 OBJECTIVE:**

The objective of Part 10 of Chapter 20 is to define direct care requirements.

[12-15-97; 16.20.10.6 NMAC - Rn, 16 NMAC 20.10.6, 08-31-00]

**16.20.10.7 DEFINITIONS:**

As used in this section, "licensed health care provider" means: a physician licensed pursuant to the Medical Practice Act; an osteopathic physician licensed pursuant to Chapter 61, Article 10 NMSA 1978; a chiropractic physician licensed pursuant to the Chiropractic Physician Practice Act; a podiatrist licensed pursuant to the Podiatry Act; a dentist licensed pursuant to the Dental Health Care Act; a doctor of oriental medicine licensed pursuant to the Acupuncture and Oriental Medicine Practice Act; a certified nurse practitioner licensed pursuant to the Nursing Practice Act; a certified nurse-midwife licensed pursuant to the Nursing Practice Act and registered with the public health division of the department of health as a certified nurse-midwife; a certified nurse specialist licensed pursuant to the Nursing Practice Act; or a physician assistant licensed pursuant to the Medical Practice Act.

[12-15-97; 16.20.10.7 NMAC - Rn, 16 NMAC 20.10.7, 08-31-00; A, 02-15-04; A, 8-16-10; A, 10-10-15]

**16.20.10.8 DIRECT CARE REQUIREMENTS:**

A physical therapist shall refer a patient to the patient's licensed health care provider if:

**A.** After thirty (30) days of initiating physical therapy intervention, the patient has not made measurable or functional improvement with respect to the primary complaints of the patient; provided that the thirty (30)-day limit shall not apply to:

**(1)** treatment provided for a condition related to a chronic, neuromuscular or developmental condition for a patient previously diagnosed by a licensed health care provider as having a chronic, neuromuscular or developmental condition;

**(2)** services provided for health promotion, wellness, fitness or maintenance purposes; or

**(3)** services provided to a patient who is participating in a program pursuant to an individual education plan or individual family service plan under federal law; or

**B.** At any time, the physical therapist has reason to believe the patient has symptoms or conditions requiring treatment that is beyond the scope of practice of the physical therapist.

[12-15-97; 16.20.10.8 NMAC - Rn, 16 NMAC 20.10.8, 08-31-00; A, 10-10-15]

## **PART 11: DISCIPLINARY PROCEEDINGS**

### **16.20.11.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[16.20.11.1 NMAC - N, 1-12-08]

### **16.20.11.2 SCOPE:**

All individuals who wish to practice physical therapy in the state of New Mexico.

[16.20.11.2 NMAC - N, 1-12-08]

### **16.20.11.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Physical Therapy Act, NMSA 1978, Sections 61-12D-5C, 61-12D-13, 61-12D-14 and 61-12D-15.

[16.20.11.3 NMAC - N, 1-12-08]

### **16.20.11.4 DURATION:**

Permanent.

[16.20.11.4 NMAC - N, 1-12-08]

**16.20.11.5 EFFECTIVE DATE:**

January 12, 2008, unless a later date is cited at the end of a section.

[16.20.11.5 NMAC - N, 1-12-08]

**16.20.11.6 OBJECTIVE:**

The objective of Part 11 of Chapter 20 is to establish the procedures for filing complaints and taking disciplinary actions against licensed physical therapists and physical therapist assistants, applicants for such licensure and unlicensed persons engaging in the practice of physical therapy.

[16.20.11.6 NMAC - N, 1-12-08; A, 9-30-14]

**16.20.11.7 DEFINITIONS:**

- A. "Complaint" means a sworn written complaint, filed with the board.
- B. "Complaint committee" means the committee consisting of a member of the board appointed by the chairperson and the board administrator.
- C. "Complainant" means the complaining party who has filed a complaint with the board.
- D. "Notice of contemplated action" means the administrative process used by the board for a licensee, registrant or applicant for licensure or registration to be afforded notice and an opportunity to be heard in a formal hearing before the board, before the board has authority to take any action which would result in denial, suspension, revocation, restriction, probation, monitoring, censuring, etc., of a license, registration, application or licensure or registration.
- E. "Respondent" is the party against whom a complaint is filed.

[16.20.11.7 NMAC - N, 1-12-08]

**16.20.11.8 COMPLAINT PROCEDURES:**

A complaint may be initiated by any person through a telephone call, in writing or by visiting the board office. Only complaints written on the official physical therapy complaint form will be formally addressed by the board. The forms required for an official complaint can be obtained from the board office, board of examiners for physical therapy, P.O. Box 25101, Santa Fe, NM, 87504. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Physical Therapy Act.

[16.20.11.8 NMAC - N, 1-12-08]

**16.20.11.9 GENERAL PROVISIONS:**

A. A complaint may be initiated in writing by any person.

B. Complaints must be legible, either printed in black ink or typed.

C. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Physical Therapy Practice Act and 16.20 NMAC.

[16.20.11.9 NMAC - N, 1-12-08]

**16.20.11.10 PROCEDURES FOR RECEIPT OF A COMPLAINT:**

A. The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).

B. Upon receipt of a complaint the board's designee will:

(1) log in the date the complaint was received;

(2) determine whether the respondent is licensed, registered or an applicant for licensure or registration with the board;

(3) assign a complaint number and create an individual file. Complaint numbering shall begin in January of each year;

(4) send complainant written acknowledgment of receipt of the complaint;

(5) immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s).

[16.20.11.10 NMAC - N, 1-12-08]

**16.20.11.11 COMPLAINT COMMITTEE:**

A. The board chair will appoint a complaint committee consisting of at least one member of the board, who will chair the committee. The board chair may also appoint to the complaint committee the board administrator and/or a complaint manager.

B. The complaint committee will handle complaints in a confidential manner as required by law.

C. The complaint committee will review all complaints received by the board and make recommendations for disposition of the complaint to the full board in executive session.

D. No complaint committee meeting will be held without the presence of the board member.

E. A complaint committee member who believes he or she is not capable of judging a particular complaint fairly on the basis of its own circumstances will not participate; another professional member will be appointed by the chair to serve as committee chair for the complaint being considered.

F. For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint.

G. The foregoing notwithstanding, the complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

H. If the complaint committee determines that further information is needed, it may issue investigative subpoenas pursuant to the Uniform Licensing Act; it may employ an investigator, experts, or other persons whose services are determined to be necessary to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons without prior approval of the board. The board administrator will determine budgetary availability and will contract for investigative services.

I. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. A complaint number will identify the summary without identifying the complainant(s) or respondent(s) by name.

[16.20.11.11 NMAC - N, 1-12-08; A, 9-30-14]

#### **16.20.11.12 BOARD ACTION:**

A. If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case shall be closed.

B. The board's designee shall send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.

C. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action.

D. The board's designee shall forward a complete copy of the complaint committee's report, including exhibits to the attorney general's office for assignment of an administrative prosecutor.

E. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referring the complaint to district attorneys for prosecution of persons alleged to be practicing physical therapy without a proper license or registration.

F. Any board member who believes that he/she is not capable of judging a particular complaint fairly on the basis of its own circumstances shall not participate in the decision to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.

G. Where the appearance of impropriety or any violation of the government conduct act may occur a board member shall recuse himself/herself from any hearing, deliberation or decision of the board.

H. A member of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than by making a recommendation to the board whether to issue a notice of contemplated action, and shall not participate in the hearing, deliberation, or decision of the board.

[16.20.11.12 NMAC - N, 1-12-08]

#### **16.20.11.13 SETTLEMENT AGREEMENT:**

A. The board may enter into a settlement with the licensee or registrant as a means of resolving the complaint.

B. Any proposed settlement agreement must be approved by the board, and must also be approved by the respondent, upon a knowing and intentional waiver by the respondent of his/her right to a hearing as provided by the Uniform Licensing Act.

C. The licensee's attorney must sign the settlement agreement or the licensee must acknowledge that he or she has been advised to seek the advice of an attorney.

[16.20.11.13 NMAC - N, 1-12-08; A, 9-30-14]

#### **16.20.11.14 NOTICE OF CONTEMPLATED ACTION:**

A. All disciplinary proceedings will be conducted in accordance with the Uniform licensing Act.

B. The board chair, or his/her designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedural decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendment, pre-hearing conferences, and proposed findings of fact and conclusions of law.

C. The hearing officer may make such orders as he or she determines may be necessary to implement the authority conferred by Subsection B of 16.20.11.14 NMAC above, including but not limited to discovery schedules, pleading schedules, and briefing schedules.

D. No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.

E. Licensees and registrants who have been found culpable and sanctioned by the board will be responsible for the payments of all costs of the disciplinary proceedings.

F. Following the board's order for suspending or revoking the license, any license or registration, including a wall certificate, issued by the board and subsequently suspended or revoked will be promptly returned to the board office, but no later than 30 days of receipt of such order, by the licensee or registrant of the board's order suspending or revoking the license.

[16.20.11.14 NMAC - N, 1-12-08; A, 9-30-14]

### **PART 12: LICENSING OF MILITARY SERVICE MEMBERS, SPOUSES, AND VETERANS**

#### **16.20.12.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[16.20.12.1 NMAC - Rp, 16.20.12.1 NMAC, 6/27/2023]

#### **16.20.12.2 SCOPE:**

All those individuals who wish to practice physical therapy in the state of New Mexico.

[16.20.12.2 NMAC - Rp, 16.20.12.2 NMAC, 6/27/2023]

### **16.20.12.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Subsection C of Section 62-23D-5, Section 61-1-1 to -34 (ULA) (HB 180) NMSA 1978 and Section 61-1-1 to -37 (ULA) (HB 191) NMSA 1978.

[16.20.12.3 NMAC - Rp, 16.20.12.3 NMAC, 6/27/2023]

### **16.20.12.4 DURATION:**

Permanent.

[16.20.12.4 NMAC - Rp, 16.20.12.4 NMAC, 6/27/2023]

### **16.20.12.5 EFFECTIVE DATE:**

June 27, 2023, unless a later date is cited at the end of a section.

[16.20.12.5 NMAC - Rp, 16.20.12.5 NMAC, 6/27/2023]

### **16.20.12.6 OBJECTIVE:**

The purpose of this part is to provide for the issuance of expedited licenses pursuant to Section 61-1-31.1 NMSA and 1978 Section 61-1-34 NMSA 1978.

[16.20.12.6 NMAC - Rp, 16.20.12.6 NMAC, 6/27/2023]

### **16.20.12.7 DEFINITIONS:**

**A. "Eligible jurisdiction"** means any state or territory of the United States except those included in the list of disapproved licensing jurisdictions under 16.20.12.8 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Subsection E of Paragraph (1) of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Subsection E of Paragraph (2) of Section 61-1-34 NMSA 1978.

**G. "Qualified applicant"** means an applicant who:

- (1) holds a current license in good standing in another jurisdiction, as defined by Subsection D of this rule;
- (2) does not have a disqualifying criminal conviction, as defined by Subsection C of 16.20.3.8 NMAC of the Board's rules; and
- (3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.20.12.7 NMAC - Rp, 16.20.12.7 NMAC, 6/27/2023]

**16.20.12.8 APPLICATION REQUIREMENTS:**

**A.** Applicants for licensure as physical therapists licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Subsection H of Section 61-12D-10 of the Physical Therapy Act:

- (1) American Samoa, on the grounds that education and licensure requirements cannot be determined to be consistent with those requirements in New Mexico;
- (2) Guam, on the grounds that Guam, on the grounds that it cannot be determined if there is an examination requirement.

**B.** Applicants for licensure as physical therapist assistants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Subsection H of Section 61-12D-10 of the Physical Therapy Act:

- (1) American Samoa, on the grounds that this profession is not licensed;
- (2) Guam, on the grounds that it cannot be determined if there is an examination requirements.

[16.20.12.8 NMAC - Rp, 16.20.12.8 NMAC, 6/27/2023]

**16.20.12.9 [RESERVED]:**

[16.20.12.9 NMAC – Rp, 16.20.12.9 NMAC, 6/27/2023]

**16.20.12.10 EXPEDITED LICENSURE BY RECIPROCITY; APPLICATION:**

**A.** A candidate for expedited licensure must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of current unrestricted license in good standing held by the applicant in another jurisdiction, including a branch of the United States armed forces;
- (3) Submission of fingerprints and other information necessary for a state criminal background check;
- (4) Payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all of the materials, including documentation from third parties, required by subsection A.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant is not a qualified applicant as defined by this rule and has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12D-18 of the Physical Therapy Act:

- (1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) The license may not be issued within 30 days of submission of the complete application; and
- (3) The board/commission may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.20.12.10 NMAC - N, 6/27/2023]

**16.20.12.11 CONTINUING EDUCATION REQUIREMENTS; FIRST RENEWAL OF EXPEDITED LICENSURE:**

15 hours of continuing education is required for physical therapists or physical therapists assistants after one (1) year of the expedited licensure.

[16.20.12.11 NMAC – N, 6/27/2023]

**16.20.12.12 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS; APPLICATION REQUIREMENTS:**

**A.** A candidate for expedited licensure must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of current unrestricted license in good standing held by the applicant in another jurisdiction, including a branch of the United States armed forces;
- (3) Submission of fingerprints and other information necessary for a state criminal background check;
- (4) Submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
  - (e) for veterans (retired or separated): proof of honorable discharge, such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all of the materials, including documentation from third parties, required by subsection A.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant is not a qualified applicant as defined by this rule and has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-12D-13 of the Physical Therapy Act:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member, spouse, dependent or veteran who is issued an expedited license shall not be charged a any initial licensing fees or renewal fees for the first three years of licensure with the board;

[16.20.12.12 NMAC; N, 6/27/2023]

### **16.20.12.13 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS; DURATION AND RENEWAL:**

**A.** An expedited license issued to an applicant under this rule shall be valid for one year from the date of issuance.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules. If the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the national physical therapy examination and the New Mexico jurisprudence exam, the licensee shall be required to take and pass the national physical therapy examination and the New Mexico jurisprudence exam in accordance with as a prerequisite to license renewal.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license granted under this rule.

[16.20.12.13 NMAC; N, 6/27/2023]

## **PART 13: DRY NEEDLING PROVISION**

### **16.20.13.1 ISSUING AGENCY:**

New Mexico Physical Therapy Board.

[16.20.13.1 NMAC - N, 7/28/2019]

### **16.20.13.2 SCOPE:**

All individuals who wish to practice physical therapy in New Mexico.

[16.16.13.2 NMAC - N, 7/28/2019]

**16.20.13.3 STATUTORY AUTHORITY:**

Section 61-12-10 NMSA 1978.

[16.16.13.3 NMAC - N, 7/28/2019]

**16.20.13.4 DURATION:**

Permanent.

[16.16.13.4 NMAC - N, 7/28/2019]

**16.20.13.5 EFFECTIVE DATE:**

30 days from filing date unless a later date is cited at the end of the section.

[16.16.13.5 NMAC - N, 7/28/2019]

**16.20.13.6 OBJECTIVE:**

the objective for Part 13 of Chapter 20 is to establish regulations for applicants applying for dry needling for physical therapists.

[16.20.13.6 NMAC - N, 7/28/2019]

**16.20.13.7 DEFINITIONS:**

**A. "Dry needling"** is defined as a skilled technique performed by a physical therapist using filiform needles to penetrate the skin or underlying tissues or both to effect change in body structures and functions for the evaluation and management of neuromusculoskeletal conditions, pain, movement impairments, functional limitations and disability.

**B. "High risk areas"** are defined as any area that the physical therapist has not been formally trained to needle, via a board approved course.

[16.20.13.7 NMAC - N, 7/28/2019]

**16.20.13.8 REQUIREMENTS FOR PHYSICAL THERAPIST TO PROVIDE DRY NEEDLING:**

**A.** Dry needling may be performed by a physical therapist who meets the following requirements:

(1) the physical therapist must complete and maintain documentation of a board approved dry needling course that includes, but is not limited to, training in indications, contraindications, potential risks, proper hygiene, proper use and disposal of needles, and appropriate selection of clients.

(2) the physical therapist must complete a minimum of 24 hours of a dry needling course, with both a written and practical (in-person) training.

(3) dry needling in a high-risk area, without formal training, is not to be performed until the physical therapist has received appropriate training.

(4) a physical therapist must have at least 6 months of experience as a licensed physical therapist before providing dry needling to any patients.

(5) the physical therapist bears the burden of proof of sufficient education and training to ensure competence. If requested by the board or a member of the public, the physical therapist practicing dry needling shall provide documentation of completion of the training required by this regulation. Failure to provide written document to the board of meeting the training requirement shall be deemed prima facie evidence that the physical therapist is not competent and shall not be permitted to perform dry needling.

**B.** Dry needling shall only be performed by a competent and licensed physical therapist and may not be delegated to a physical therapist assistant, aide or assistive personnel.

**C.** Gradual implementation of this dry needling provision (16.20.13.8 NMAC) will allow all physical therapists who are currently practicing dry needling to continue while they submit the required documentation during the 2019-2020 licensing renewal period. The transition period will be completed by 2021. All physical therapists practicing dry needling thereafter, will be required to follow the provision outlined in this document, prior to implementing this treatment technique on patients.

[16.20.13 NMAC - N, 7/28/2019]

## **CHAPTER 21: PODIATRISTS**

### **PART 1: GENERAL PROVISIONS**

#### **16.21.1.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry.

[16.21.1.1 NMAC - Rp, 16.21.1.1 NMAC 5/3/2019]

#### **16.21.1.2 SCOPE:**

The provisions in 16.21.1 NMAC apply to all parts of Chapter 21 and provide information for applicants, licensed podiatrists, board members, and members of the public.

[16.21.1.2 NMAC - Rp, 16.21.1.2 NMAC 5/3/2019]

**16.21.1.3 STATUTORY AUTHORITY:**

Podiatry Act, Subsection E of Section 61-8-6 NMSA 1978.

[16.21.1.3 NMAC - Rp, 16.21.1.3 NMAC 5/3/2019]

**16.21.1.4 DURATION:**

Permanent.

[16.21.1.4 NMAC - Rp, 16.21.1.4 NMAC 5/3/2019]

**16.21.1.5 EFFECTIVE DATE:**

May 3, 2019, unless a later date is cited at the end of a section.

[16.21.1.5 NMAC - Rp, 16.21.1.5 NMAC 5/3/2019]

**16.21.1.6 OBJECTIVE:**

This part provides general provisions for the practice of podiatry, licensee responsibility, and requirements for the conduct of board business.

[16.21.1.6 NMAC - Rp, 16.21.1.6 NMAC 5/3/2019]

**16.21.1.7 DEFINITIONS:**

- A. "APMLE" means American podiatric medical licensing examination.
- B. "Board" means board of podiatry.
- C. "CPME" means the council on podiatric medical education.
- D. "NBPME" means the national board of podiatric medical examiners.

[16.21.1.7 NMAC - Rp, 16.21.1.7 NMAC 5/3/2019]

**16.21.1.8 SCOPE OF PRACTICE:**

**A.** For the purpose of clarification of the Podiatry Act, Subsection C of Section 61-8-2 NMSA 1978, the practice of podiatry:

(1) in regard to surgical treatment shall include the skin and subcutaneous tissues of the thigh and all structures distal to the knee.

(2) does include amputation of any portion of the foot;

(3) does allow the use of the services of a certified registered nurse anesthetist; and

(4) a licensed podiatrist may assist a licensed medical or osteopathic physician in the performance of any surgery of the lower extremities.

**B.** A podiatric physician shall be recognized and permitted to supervise and administer hyperbaric oxygen following the published recommendations of the undersea and hyperbaric medical society, inc. "UHMS" and within the credentials and bylaws of the facility that operates the hyperbaric unit with the following stipulation; prior to administering hyperbaric oxygen, a podiatric physician must have on file with the New Mexico board of podiatry, documentation certifying compliance with the above requirements.

[16.21.1.8 NMAC - Rp, 16.21.1.8 NMAC 5/3/2019]

#### **16.21.1.9 LICENSE DISPLAY:**

A valid license must be displayed and must be visible to the public in each place of business.

[16.21.1.9 NMAC - Rp, 16.21.1.9 NMAC 5/3/2019]

#### **16.21.1.10 RESPONSIBILITY OF LICENSEE:**

It is the responsibility of the licensed podiatrist to keep the board informed of a current mailing address within 30 days of changes. All correspondence, including renewal forms, will be mailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of mailing address or email address.

[16.21.1.10 NMAC - Rp, 16.21.1.10 NMAC 5/3/2019]

#### **16.21.1.11 SEVERABILITY:**

The provisions of these regulations are severable. If any parts of these regulations are held invalid, the remaining provisions shall remain in force and effect.

[16.21.1.1 NMAC - Rp, 16.21.1.11 NMAC 5/3/2019]

#### **16.21.1.12 TELEPHONIC ATTENDANCE BY BOARD MEMBERS:**

**A.** Pursuant to the provisions of the Open Meetings Act, Subsection C of Section 10-15-1 NMSA 1978, board members may participate in a board meeting by means of a conference telephone or similar communications equipment, and participation by such means shall constitute presence in person at the meeting. Such participation by telephone may only occur when it is difficult or impossible for the member to attend in person.

**B.** Each board member participating by conference telephone must be identified when speaking and all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the public or board members participating by phone.

[16.21.1.12 NMAC - Rp, 16.21.1.12 NMAC 5/3/2019]

#### **16.21.1.13 CONDUCT OF BOARD BUSINESS:**

**A. Officers.** The board shall elect a chairperson, vice-chair, and secretary at the first regularly scheduled meeting in each calendar year.

**B. Excused absences.** A board member may be excused from a board meeting at the discretion of the board chairperson. The member shall notify the board chairperson and board administrator prior to meeting with an explanation of why they will be unable to attend. All other unattended meetings will be unexcused absences. After three consecutive unexcused absences, the member shall be recommended for removal as a board member pursuant to the Podiatry Act, Subsection D of Section 61-8-5 NMSA 1978.

**C. Quorum.** Three board members shall constitute a quorum.

**D. Notice of meetings.** Regular meetings, special meetings and emergency meetings shall be noticed in accordance with the provisions of the board's open meetings resolution.

[16.21.1.13 NMAC - Rp, 16.21.1.13 NMAC 5/3/2019]

#### **16.21.1.14 ADVERTISING GUIDELINES:**

**A.** All advertisements shall include the podiatrist's name or medical group name, address and telephone number consistent with the Health Care Advertising Act, Section 57-27-1 NMSA 1978.

**B. Specialty practice:** A podiatrist may only advertise a specialty practice if they qualify under one of the following provisions:

**(1)** the licensee is board certified or board eligible by a recognized certifying board; if an abbreviation of the certifying board is used then the name of the certifying board must be included in the advertisement;

**(2)** the licensee is a fellow or an associate of a specialty organization which admits fellows and associates on the basis of an examination; if an abbreviation of the certifying board is used then the name of the certifying board must be included in the advertisement.

[16.21.1.16 NMAC - Rp, 16.21.1.14 NMAC 5/3/2019]

**16.21.1.15 [RESERVED]**

**16.21.1.16 [RESERVED]**

## **PART 2: FEES**

### **16.21.2.1 ISSUING AGENCY:**

Regulation and Licensing Department, NM Board of Podiatry.

[16.21.2.1 NMAC - N, 10-15-04]

### **16.21.2.2 SCOPE:**

All applicants for licensure, licensees and members of the public.

[16.21.2.2 NMAC - N, 10-15-04]

### **16.21.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Podiatry Act, Sections 61-8-1 through 61-8-17 NMSA 1978.

[16.21.2.3 NMAC - N, 10/15/2004; A, 1/18/2023]

### **16.21.2.4 DURATION:**

Permanent.

[16.21.2.4 NMAC - N, 10-15-04]

### **16.21.2.5 EFFECTIVE DATE:**

October 15, 2004, unless a later date is cited at the end of a section.

[16.21.2.5 NMAC - N, 10-15-04]

**16.21.2.6 OBJECTIVE:**

To establish fees to fund the cost of board operation.

[16.21.2.6 NMAC - N, 10-15-04]

**16.21.2.7 DEFINITIONS:**

**[RESERVED]**

**16.21.2.8 FEES:**

A. Application fee for licensure by examination is \$400.00.

B. Application fee for expedited licensure by reciprocity is \$600.00.

C. Duplicate license fee is \$25.00.

D. Temporary license fee is \$100.00.

E. Annual renewal fee is \$300.00.

F. Late fee for license renewal applications that are received but not complete, or not received or postmarked by December 31, is \$50 per month for each month or part thereof.

G. Reinstatement fee is \$200.00 for the first 12 months of delinquency and \$500.00 for a license that has lapsed more than one year but not more than three years.

H. Fees for requests for copies of public records will be charged reasonable administrative fees.

[16.21.2.8 NMAC - N, 10/15/2004; A, 7/15/2007; A, 1/18/2023]

**PART 3: LICENSE BY EXAM**

**16.21.3.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry.

[16.21.3.1 NMAC - Rp, 16.21.3.1 NMAC 5/3/2019]

**16.21.3.2 SCOPE:**

Applicants for licensure as a podiatrist by examination.

[16.21.3.2 NMAC - Rp, 16.21.3.2 NMAC 5/3/2019]

**16.21.3.3 STATUTORY AUTHORITY:**

Podiatry Act, Paragraph (10) of Subsection E of Section 61-8-6 and 61-8-8 NMSA 1978.

[16.21.3.3 NMAC - Rp, 16.21.3.3 NMAC 5/3/2019]

**16.21.3.4 DURATION:**

Permanent.

[16.21.3.4 NMAC - Rp, 16.21.3.4 NMAC 5/3/2019]

**16.21.3.5 EFFECTIVE DATE:**

May 3, 2019, unless a later date is cited at the end of a section.

[16.21.3.5 NMAC - Rp, 16.21.3.5 NMAC 5/3/2019]

**16.21.3.6 OBJECTIVE:**

This part lists the requirements and documentation, which must be submitted to the board to obtain licensure as a podiatrist by examination.

[16.21.3.6 NMAC - Rp, 16.21.3.6 NMAC 5/3/2019]

**16.21.3.7 DEFINITIONS:**

"Jurisprudence exam" means an examination concerning the laws and rules of the New Mexico board of podiatry.

[16.21.3.7 NMAC – Rp, 16.21.3.7 NMAC 5/3/2019]

**16.21.3.8 REQUIREMENTS FOR LICENSE:**

Each applicant for a license as a podiatrist must possess the following qualifications:

**A.** graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Paragraph (3) of Subsection A of Section 61-8-8 NMSA 1978;

**B.** passed the NBPME examinations part 1, 2, and 3;

**C.** every applicant prior to 2015 shall have completed at minimum one year of residency approved by the CPME and after 2015 completion of three year residency approved by the CPME; and

**D.** passed the New Mexico jurisprudence examination with a score of ninety percent or higher.

[16.21.3.8 NMAC - Rp, 16.21.3.8 NMAC 5/3/2019]

### **16.21.3.9 DOCUMENTATION REQUIREMENTS:**

The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Each applicant for a license by examination must submit the required fees and following documentation:

**A.** completed application, with signature and a passport quality photo taken within the past six months; applications are valid for one year from the date of receipt;

**B.** official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

**C.** certificate or letter from residency director verifying completion of residency program approved by the CPME; after completion of 24 months of residency applicants may submit a letter from residency director indicating good standing of applicant and anticipated completion of full 36 month residency program.

**D.** proof that the applicant has passed the NBPME examinations sent directly from the NBPME;

**E.** verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification from the other state(s) may be received via US mail, electronically or facsimile, and must attest to the status, issue date, license number, and other information contained in the form; and

**F.** electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.

[16.21.3.9 NMAC - Rp, 16.21.3.9 NMAC 5/3/2019]

### **16.21.3.10 REPORTS:**

The board requires obtainment of reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank.

[16.21.3.10 NMAC - Rp, 16.21.3.10 NMAC 5/3/2019]

**16.21.3.11 LICENSURE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may ratify the approval of the application at the next scheduled board meeting. Any application which cannot be approved by the designee of the board will be reviewed by the board at the next scheduled meeting.

[16.21.3.11 NMAC - Rp, 16.21.3.11 NMAC 5/3/2019]

**PART 4: EXPEDITED LICENSE BY RECIPROCITY**

**16.21.4.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry.

[16.21.4.1 NMAC - Rp, 16.21.4.1 NMAC 5/3/2019]

**16.21.4.2 SCOPE:**

The provisions in Part 4 of Chapter 21 apply to all applicants for expedited licensure by reciprocity.

[16.21.4.2 NMAC - Rp, 16.21.4.2 NMAC 1/18/2023]

**16.21.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Podiatry Act, Sections 61-8-1 to 61-8-17 NMSA 1978.

[16.21.4.3 NMAC - Rp, 16.21.4.3 NMAC 1/18/2023]

**16.21.4.4 DURATION:**

Permanent.

[16.21.4.4 NMAC - Rp, 16.21.4.4 NMAC 1/18/2023]

#### **16.21.4.5 EFFECTIVE DATE:**

January 18, 2023, unless a later date is cited at the end of a section.

[16.21.4.5 NMAC - Rp, 16.21.4.5 NMAC 1/18/2023]

#### **16.21.4.6 OBJECTIVE:**

The objective of Part 4 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure by reciprocity.

[16.21.4.6 NMAC - Rp, 16.21.4.6 NMAC 1/18/2023]

#### **16.21.4.7 DEFINITIONS:**

##### **A. "Eligible jurisdiction" means:**

- (1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in of 16.21.4.8 NMAC; and
- (2) any foreign country included in 16.21.4.9 NMAC.

**B. "Expedited license by reciprocity"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing Fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

##### **G. "Qualified applicant" means an applicant who:**

- (1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined in the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of 61-1-34 NMSA 1978.

[16.21.4.7 NMAC - Rp, 16.21.4.7 NMAC 1/18/2023]

#### **16.21.4.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure by reciprocity under Section 61-8-9 NMSA 1978 of the Podiatry Act:

**A.** American Samoa, on the grounds that the board cannot determine the education or examination requirements in this jurisdiction;

**B.** Guam, on the grounds that this jurisdiction does not require licensees to pass any examination;

**C.** Kentucky and Pennsylvania, on the grounds that these jurisdictions do not require licensees to complete a residency program;

**D.** Minnesota, New Jersey, and Puerto Rico, on the grounds that these jurisdictions do not require licensees to pass Part III of the NBPME AMPLE exam considered by New Mexico to be an integral portion of the national examinations to determine competency to practice podiatry;

**E.** Montana, North Carolina and North Dakota, on the grounds that the boards cannot determine sufficiency of residency requirements in these jurisdictions; and

**F.** Virgin Islands, on the grounds that the board cannot determine the examination requirements in this jurisdiction.

[16.21.4.8 NMAC - Rp, 16.21.4.8 NMAC, 1/18/2023]

#### **16.21.4.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

Applicants licensed in the following foreign countries outside of the United States may be eligible for expedited licensure under Section 61-8-9 NMSA 1978 of the Podiatry Act:

**A.** Spain; and

**B.** Canada.

[16.21.4.9 NMAC - Rp, 16.21.4.9 NMAC, 1/18/2023]

**16.21.4.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure by reciprocity under Section 61-1-31.1 NMSA 1978 of the Uniform Licensing Act must submit to the board a complete application containing all the following:

- (1) a completed and signed application form;
- (2) proof of current licensure in an eligible jurisdiction as defined in these rules;
- (3) certificate of good standing for the license held by the applicant in an eligible jurisdiction;
- (4) official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;
- (5) certificate or letter from residence director verifying completion of residence program approved by the CPME;
- (6) proof of active practice for the five consecutive years immediately preceding the date of application (such proof may include a letter from an accountant, the professional society, tax forms, or other documentation approved by the board);
- (7) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by 16.21.4.10 NMAC, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-8-11 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.21.4.10 NMAC - Rp, 16.21.4.10 NMAC, 1/18/2023]

**16.21.4.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure by reciprocity under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of current license in another jurisdiction;
- (3) certificate of good standing for the license held by the applicant in another jurisdiction, including a branch of the United States armed forces;
- (4) submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following; a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
  - (e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD 214, DD 215, DD 256, DD 257, NGB Form 22, Military ID card, a driver's license or state ID card with a veterans designation, or other documentation as provided by a governmental entity verifying an honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of all of the materials required by 16.21.4.20 NMAC, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-8-11 NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.21.4.11 NMAC - Rp, 16.21.4.11 NMAC, 1/18/2023]

#### **16.21.4.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular license issued by the board and must be renewed on or before January 1 of each year, as provided by 16.21.7.8 and 16.21.7.9 NMAC.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, upon renewal, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the NBPME examinations part 1, 2, and 3, the licensee shall be required to do so as a prerequisite to license renewal.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.21.4.12 NMAC - N, 1/18/2023]

### **PART 5: TEMPORARY LICENSE AND EMERGENCY LICENSE**

#### **16.21.5.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry.

[16.21.5.1 NMAC - Rp, 16.21.5.1 NMAC 5/3/2019]

#### **16.21.5.2 SCOPE:**

Applicants for a temporary license to practice podiatry in New Mexico.

[16.21.5.2 NMAC - Rp, 16.21.5.2 NMAC 5/3/2019]

#### **16.21.5.3 STATUTORY AUTHORITY:**

The Podiatry Act, Subsection E of Section 61-8-6 NMSA 1978 and Subsections B and C of Section 61-8-14 NMSA 1978.

[16.21.5.3 NMAC - Rp, 16.21.5.3 NMAC 5/3/2019]

**16.21.5.4 DURATION:**

Permanent.

[16.21.5.4 NMAC - Rp, 16.21.5.4 NMAC 5/3/2019]

**16.21.5.5 EFFECTIVE DATE:**

May3, 2019 unless a later date is cited at the end of a section.

[16.21.5.5 NMAC - Rp, 16.21.5.5 NMAC 5/3/2019]

**16.21.5.6 OBJECTIVE:**

This part provides the circumstances under which a temporary license and or temporary emergency license will be issued and lists the requirements and documentation that must be submitted to the board in a complete application. It provides the procedure by which the board may approve the application and provides for expiration of the temporary license and or temporary emergency license.

[16.21.5.6 NMAC - Rp, 16.21.5.6 NMAC 5/3/2019]

**16.21.5.7 DEFINITIONS:**

**A. "Background findings"** the board may deny, or otherwise limit a license if it is determined the applicant hold or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the Podiatric Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

**B. "Complaint/review committee"** means a committee established by the board to review all complaints and applicants with background findings and to report to the board at its next scheduled meeting.

**C. "Emergency"** for purposes of this rule means any sudden or unforeseen situation that requires immediate action. The sudden onset of physical or mental illness,

injury, impairment or other incapacitating condition by a New Mexico licensed podiatrist is considered an emergency.

**D. "Fellowship"** the period of medical training a podiatrist may undertake after completing residency.

**E. "Preceptorship"** a period of practical experience and training for a podiatric medical school or college that is not defined as a residency program approved by the council podiatric medical education (CPME) and supervised by a New Mexico licensed podiatrist.

[16.21.5.7 NMAC - Rp, 16.21.5.7 NMAC 5/3/2019]

#### **16.21.5.8 TEMPORARY LICENSE:**

A temporary license may be issued by the board in the following situations.

**A.** In cases of emergency as determined by the board; a temporary license to practice podiatry may be issued under this rule for practice in the office of a New Mexico licensed podiatrist who is unable to continue his or her practice due to an emergency.

**B.** To facilitate educational programs; a temporary license to practice podiatry in New Mexico may be issued to:

**(1)** a participant in a residency training program located in New Mexico accredited by the "CPME" and insure that at all times throughout the program the temporary license holder is supervised by a New Mexico licensed podiatrist; or

**(2)** a participant in a residency program that is located in the United States accredited by the "CPME" and insure that at all times the temporary license holder is supervised by a New Mexico licensed podiatrist, if the program offers part of its program residency in New Mexico;

**(3)** a participant in a post-graduate 1 year preceptorship program in New Mexico that at all times throughout the program is supervised by a New Mexico licensed podiatrist(s) in good standing and without restriction(s) of license; the board of podiatry requires the supervising podiatrist(s) of this preceptorship to have notified the board in writing of the start and end dates for this post-graduate training position.

**(4)** a participant in a Fellowship program known and listed by a recognized medical specialty organization provided that at all times the temporary license holder is supervised by a New Mexico Licensed podiatrist.

**C.** In cases to assist or perform surgical procedures with a licensed New Mexico podiatrist which is beyond the training and experience available in New Mexico.

[16.21.5.8 NMAC - Rp, 16.21.5.8 NMAC 5/3/2019]

**16.21.5.9 DISASTER RELATED LICENSE:**

Podiatric physician currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost.

[16.21.5.9 NMAC - Rp, 16.21.5.9 NMAC 5/3/2019]

**16.21.5.10 REQUIREMENTS FOR TEMPORARY LICENSURES:**

The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Applicants for temporary license due to situations defined under Subsection A or C of 16.21.5.8 NMAC must meet the qualifications set forth in 16.21.3.8 NMAC:

[16.21.5.10 NMAC - Rp, 16.21.5.10 NMAC 5/3/2019]

**16.21.5.11 TEMPORARY LICENSE DOCUMENTATION REQUIREMENTS:**

Each applicant for a temporary license must submit the required fees and submit or provide for the following documentation set forth in 16.21.3.9 NMAC.

[16.21.5.11 NMAC - Rp, 16.21.5.11 NMAC 5/3/2019]

**16.21.5.12 DISASTER RELATED LICENSE DOCUMENTATION REQUIREMENTS:**

**A.** Podiatric physicians currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost, upon satisfying the following requirements set forth in 16.21.4.8 NMAC. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.21.5 NMAC.

**B.** Upon receipt of a completed application, including all required documentation designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be reviewed by the complaint/review committee. The board may formally accept the recommendation of the complaint/review committee at the next scheduled meeting.

[16.21.5.12 NMAC - RP, 16.21.5.12 NMAC 5/3/2019]

**16.21.5.13 REPORTS:**

The board requires obtainment of reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed as a podiatrist in another state.

[16.21.5.13 NMAC - Rp, 16.21.5.13 NMAC 5/3/2019]

#### **16.21.5.14 TEMPORARY LICENSE PROCEDURE:**

Upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application.

**A.** The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall ratify the approval of the application at the next scheduled board meeting. Any application which cannot be approved by the designee of the board will be reviewed by the board at the next scheduled meeting. The board's decision in regard to the issuance of a temporary license shall be final.

**B.** When issued, a temporary license shall state on its face that the license only authorizes the individual to practice podiatry at the location or locations stated on the license and shall expire automatically on December 31<sup>st</sup> of the year the license was issued or on the date the applicant's residency educational program terminates.

[16.21.5.14 NMAC - Rp, 16.21.5.14 NMAC 5/3/2019]

#### **16.21.5.15 DISASTER RELATED LICENSE PROCEDURE:**

**A.** An emergency license shall expire at the next board meeting after four months, whichever comes first. A request for an extension of the emergency license may be made to the board or its designee and may be extended until December 31<sup>st</sup> of the current year.

**B.** An emergency licensee may obtain permanent license status upon submission of a renewal application, all fees and CE's approved by the board as outlined in 16.21.7 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal.

**C.** The emergency license shall be terminated by the board for the following:

**(1)** the issuance of a permanent license under Subsection A of 16.21.5.15 NMAC;

(2) proof that the emergency license holder has engaged in fraud deceit or misrepresentation in procuring or attempting to procure an emergency license under this section;

(3) the results of the background check indicate negative findings.

[16.21.5.15 NMAC - Rp, 16.21.5.15 NMAC 5/3/2019]

## **PART 6: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS [REPEALED]**

### **16.21.6.1 ISSUING AGENCY [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.2 SCOPE [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.3 STATUTORY AUTHORITY [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.4 DURATION [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.5 EFFECTIVE DATE [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.6 OBJECTIVE [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.7 DEFINITIONS [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.8 APPLICATION REQUIREMENTS [REPEALED]:**

[This part was repealed January 31, 2023]

### **16.21.6.9 RENEWAL REQUIREMENTS [REPEALED]:**

[This part was repealed January 31, 2023]

## **PART 7: LICENSE EXPIRATION AND RENEWAL**

### **16.21.7.1 ISSUING AGENCY:**

Regulation and Licensing Department, NM Board of Podiatry.

[16.21.7.1 NMAC - N, 10-15-04]

### **16.21.7.2 SCOPE:**

All podiatrists with a license to practice in New Mexico.

[16.21.7.2 NMAC - N, 10-15-04]

### **16.21.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Podiatry Act, Sections 61-8-1 through 61-8-17 NMSA 1978.

[16.21.7.3 NMAC - N, 10/15/2004, A, 1/18/2023]

### **16.21.7.4 DURATION:**

Permanent.

[16.21.7.4 NMAC - N, 10-15-04]

### **16.21.7.5 EFFECTIVE DATE:**

October 15, 2004, unless a later date is cited at the end of a section.

[16.21.7.5 NMAC - N, 10-15-04]

### **16.21.7.6 OBJECTIVE:**

To establish procedures for license expiration and renewal.

[16.21.7.6 NMAC - N, 10-15-04]

### **16.21.7.7 DEFINITIONS:**

[RESERVED]

### **16.21.7.8 LICENSE EXPIRATION:**

Podiatry licenses expire on January 1 of each year. Initial licenses, including expedited licenses, may be issued for a period greater than 12 months but less than 24 months, in order to align the license expiration date with the board's renewal cycle.

[16.21.7.8 NMAC - Rp, Rule VI.A, 10/15/2004, A, 1/18/2023]

#### **16.21.7.9 RENEWAL DEADLINE:**

A completed renewal application accompanied by the required fees, documentation of 16 hours of continuing education as defined in 16.21.8.13 NMAC and must be post-marked, received electronically, or hand delivered on or before January 1 of each year. [Fourteen hours of CE is required for the renewal years before January 2, 2105. On or after January 2, 2015 the] The CE requirement is 16 hours of CE, including 2 hours of pain management.

[16.21.7.9 NMAC - Rp, Rule VI.A, 10/15/2004; A, 7/29/2011; A, 11/1/2013; A, 1/18/2023]

#### **16.21.7.10 LICENSEE RESPONSIBILITY:**

The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration.

[16.21.7.10 NMAC - Rp, Rule VI.A, 10-15-04]

#### **16.21.7.11 LATE RENEWAL:**

Renewal applications that are not postmarked, received electronically or hand-delivered to the board office by January 1 must be accompanied by the completed renewal application as defined in 16.21.7.9 NMAC and late fees defined in Subsection F of 16.21.2.8 NMAC.

[16.21.7.11 NMAC - Rp, Rule VI.B, 10-15-04; A, 07-29-11]

#### **16.21.7.12 SUMMARY SUSPENSION:**

A license that is not renewed by March 1 may be summarily suspended by the board.

[16.21.7.12 NMAC - Rp, Rule VI.B, 10-15-04]

### **PART 8: CONTINUING EDUCATION**

#### **16.21.8.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry.

[16.21.8.1 NMAC - Rp, 16.21.8.1 NMAC 5/3/2019]

**16.21.8.2 SCOPE:**

Individuals with a license to practice podiatry in the state of New Mexico.

[16.21.8.2 NMAC - Rp, 16.21.8.2 NMAC 5/3/2019]

**16.21.8.3 STATUTORY AUTHORITY:**

This rule is promulgated pursuant to the Podiatry Act, Subsection B of Section 61-8-10.1 NMSA 1978, which requires, as a condition of license renewal, evidence of completion of post-graduate study as required by board rule.

[16.21.8.3 NMAC - Rp, 16.21.8.3 NMAC 5/3/2019]

**16.21.8.4 DURATION:**

Permanent.

[16.21.8.4 NMAC - Rp, 16.21.8.4 NMAC 5/3/2019]

**16.21.8.5 EFFECTIVE DATE:**

May 3, 2019 unless a later date is cited at the end of a section.

[16.21.8.5 NMAC - Rp, 16.21.8.5 NMAC 5/3/2019]

**16.21.8.6 OBJECTIVE:**

To establish the criteria, standards, approval requirements, verification and waiver requirements, for post-graduate study required by the board for license renewal.

[16.21.8.6 NMAC - Rp, 16.21.8.6 NMAC 5/3/2019]

**16.21.8.7 DEFINITIONS:**

[RESERVED]

**16.21.8.8 HOURS REQUIRED:**

Sixteen hours of continuing education are required annually, with two hours specifically related to pain management as defined in 16.21.9.11 NMAC. Initial licenses issued for a period of less than six months do not require any continuing education for the initial licensing period. Licenses issued for more than six months but less than 12 months require eight hours of continuing education for the initial licensing period.

**A.** Continuing education coursework must contribute directly to the practice of podiatric medicine.

**B.** One hour of credit will be granted for every contact hour of instruction. This credit shall apply to either academic or clinical instruction.

[16.21.8.8 NMAC - Rp, 16.21.8.8 NMAC 5/3/2019]

#### **16.21.8.9 APPROVED COURSES:**

Continuing education courses offered or sponsored by the following organizations are automatically approved by the board:

**A.** a college of podiatric medicine which is accredited by the council podiatric medical education (CPME) of the American podiatric medical association;

**B.** constituent society of the American podiatric medical association;

**C.** an organization or sponsor approved by the "CPME" of the American podiatric medical association; or

**D.** hospital or other health care organizations sponsored in-service programs related to the practice of podiatry.

[16.21.8.9 NMAC - Rp, 16.21.8.9 NMAC 5/3/2019]

#### **16.21.8.10 APPROVAL REQUIREMENTS:**

Any course not sponsored by a recognized provider may be approved by the designee of the board. The application for approval must include the name of the course, the sponsor, course outline, date, location, hours, names and qualifications of presenters, and the method that will be used to certify attendance.

[16.21.8.10 NMAC - Rp, 16.21.8.10 NMAC 5/3/2019]

#### **16.21.8.11 ALLOWED COURSES AND PROVIDERS:**

The following courses and activities are acceptable for CME credit:

**A. Post Graduate Education:** This category includes internships, residencies and fellowships, 14 hours of credit allowed for full time participants.

**B. Specialty Training/Certifications:** Four hours of credit per certificate for specialty training with a maximum of 10 hours per year. A maximum of 10 hours of credit is allowed for certification with a CPME approved board initially obtained or renewed within the license renewal cycle.

**C. Teaching:** One credit hour is allowed for each hour of teaching medical students or physicians in a United States medical school, an approved residency/fellowship or for teaching in other programs approved by the board with maximum of 10 hours per reporting.

**D. Physician Preceptors/Mentors:** A maximum of five hours of credit during a year reporting period is acceptable for licensed podiatrists who are acting as preceptors/mentors for students enrolled in an accredited medical degree program or as preceptors/mentors for students enrolled in a combined bachelor of arts and medical degree program.

**E. Papers and Publications:** 10 hours of credit are allowed for each original scientific medical paper or publication written by a licensee. For acceptance, papers must have been presented to a recognized national, international, regional or state society or organization whose membership is primarily physicians; or must have been published in a recognized medical or medically related scientific journal.

**F. Advanced Life Support:** Two hours of credit may be claimed during reporting period for successful completion of advanced cardiac life support (ACLS), pediatric advanced life support (PALS), advanced trauma life support (ATLS) and neonatal advanced life support (NALS) courses.

[16.21.8.11 NMAC - Rp, 16.21.8.11 NMAC 5/3/2019]

#### **16.21.8.12 VERIFICATION OF COURSE ATTENDANCE:**

The following documents, or combination of documents, may be used to verify attendance in required continuing education.

- A.** Course certificate with the course title, content, presenter, sponsor and hours.
- B.** Course attendance sheet submitted by the sponsor.
- C.** Course code or statement of attendance from presenter or sponsor.

[16.21.8.12 NMAC - Rp, 16.21.8.12 NMAC 5/3/2019]

#### **16.21.8.13 VERIFICATION OF CONTINUING EDUCATION HOURS:**

Each podiatrist renewing a license shall attest that they have obtained the required hours of continuing medical education (CME). Documentation of CME is not required unless you are selected for the annual CME compliance audit. If you are selected for audit you will be notified and provided with instructions for compliance. The board may audit CME records at any time, so CME records must be maintained for at least one year following the renewal cycle in which they are earned.

[16.21.8.13 NMAC - Rp, 16.21.8.13 NMAC 5/3/2019]

**16.21.8.14 ACCEPTABLE DOCUMENTATION OF CME INCLUDES:**

**A.** Photocopies of original certificates or official letters from course sponsors or online providers.

**B.** Postgraduate CME hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**C.** Advanced degree studies must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**D.** Teaching hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**E.** Preceptor hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**F.** Papers or publications must be documented with a copy.

[16.21.8.14 NMAC - Rp, 16.21.8.14 NMAC 5/3/2019]

**16.21.8.15 WAIVER OF REQUIREMENTS:**

Waivers of the continuing education requirement may be considered for the following situations for licensees.

**A.** During periods of prolonged illness or physical incapacity.

**(1)** For the purposes of this rule, the duration of a prolonged illness or physical incapacity period will be defined as longer than six months.

**(2)** Any licensee who wishes to apply for this type of waiver of continuing education must submit in writing a letter detailing the nature of the illness or incapacity and its probable duration. The board will review this waiver request and allow the licensee or the licensee's representative to attend board meeting to present evidence of support of this waiver request and to speak to the board concerning the petition for waiver. The burden shall be on the licensee to prove to the board the necessity of the waiver. The decision of the board on the waiver shall be final.

**B.** Any licensee who believes that the licensee is entitled to a waiver of a continuing education requirement for reasons of prolonged illness or physical incapacity shall request such a waiver by sending the board a letter from his or her physician setting out

in detail the nature of the illness or incapacity and its probable duration. The board shall notify the licensee in writing of the date on which the application will be considered by the board. The licensee or the licensee's representative may attend the meeting, present evidence on behalf of a petition for waiver, and to speak to the board concerning the petition. The burden shall be on the licensee to satisfy the board of the necessity of the waiver. The decision of the board on the waiver shall be final.

**C.** Licensee in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

**(1)** The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

**(2)** Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply in writing to the board detailing reason for deferral of this requirement.

**D.** Applications for waiver under this section must be filed as soon as the licensee has reason to believe that grounds for the waiver exist.

[16.21.8.15 NMAC - Rp, 16.21.8.15 NMAC 5/3/2019]

#### **16.21.8.16 EXTENSION TO MEET REQUIREMENTS:**

The board may extend the time in which a licensee may meet the required continuing education requirements.

**A.** A licensee unable to fulfill the continuing education requirements may apply to the board for an extension of time in which to meet educational requirements. Extensions of up to three months may be granted by the board or its designee. Licensees granted an extension must pay the late fee defined in Subsection F of 16.21.2.8 NMAC to cover the cost of additional processing requirements.

**B.** A licensee who is unable to fulfill the requirements within the three month extension must apply to the board for an additional extension.

[16.21.8.16 NMAC - Rp, 16.21.8.16 NMAC 5/3/2019]

### **PART 9: MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES**

#### **16.21.9.1 ISSUING AGENCY:**

Regulation and Licensing Department, NM Board of Podiatry.

[16.21.9.1 NMAC - N, 11/1/2013]

#### **16.21.9.2 SCOPE:**

This part applies to all New Mexico licensed podiatrists who hold a federal drug enforcement administration registration.

[16.21.9.2 NMAC - N, 11/1/2013]

#### **16.21.9.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Podiatry Act, Sections 61-8-1 through 61-8-17 NMSA 1978 and the Pain Relief Act, Sections 24-2D-1 NMSA through 24-2D-6.

[16.21.9.3 NMAC - N, 11/1/2013]

#### **16.21.9.4 DURATION:**

Permanent.

[16.21.9.4 NMAC - N, 11/1/2013]

#### **16.21.9.5 EFFECTIVE DATE:**

November 1, 2013, unless a later date is cited at the end of a section.

[16.21.9.5 NMAC - N, 11/1/2013]

#### **16.21.9.6 OBJECTIVE:**

It is the position of the board that practitioners have an obligation to treat chronic pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that purpose. When such medicines and drugs are used, they should be prescribed in adequate doses and for appropriate lengths of time after a thorough medical evaluation has been completed.

[16.21.9.6 NMAC - N, 11/1/2013]

#### **16.21.9.7 DEFINITIONS:**

**A.** "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

**B.** "Acute pain" means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

**C.** "Chronic pain" means pain that persists after reasonable medical efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. "Chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

**D.** "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**E.** "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

**F.** "Pain" means acute or chronic pain or both.

**G.** "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**H.** "Prescription monitoring program" means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

**I.** "Therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

**J.** "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[16.21.9.7 NMAC - N, 11/1/2013]

#### **16.21.9.8 HEALTH CARE PRACTITIONER'S PRESCRIPTIVE PRACTICES:**

The following regulations shall be used by the board to determine whether a health care practitioner's prescriptive practices are consistent with the appropriate treatment of pain.

**A.** The treatment of pain with various medicines or controlled substances is a legitimate medical practice when accomplished in the usual course of professional

practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

**B.** The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

**(1)** A practitioner shall complete a physical examination and include an evaluation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

**(2)** A practitioner shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The practitioner shall consider an integrative approach to pain management.

**(3)** A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

**(4)** The practitioner shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

**(5)** Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for opioids shall include indications for use. For chronic pain patients treated with controlled substance analgesic(s), the prescribing practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. As part of a written agreement, chronic pain patients shall receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible.

**(6)** The management of patients needing chronic pain control requires monitoring by the attending or the consulting practitioner. The practitioner shall periodically review the course of treatment for chronic pain, the patient's state of health, and any new information about the etiology of the chronic pain at least every six months. In addition, a practitioner shall consult, when indicated by the patient's

condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(7) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. Pain management for patients with substance use disorders shall include:

- (1) a contractual agreement;
- (2) appropriate consultation;
- (3) drug screening when other factors suggest an elevated risk of misuse or diversion; and
- (4) a schedule for re-evaluation at appropriate time intervals at least every six months.

D. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

E. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

F. A practitioner who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Podiatry Act or board rules.

[16.21.9.8 NMAC - N, 11/1/2013]

#### **16.21.9.9 PODIATRIC PHYSICIAN TREATED WITH OPIATES:**

Podiatric physicians who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by an MD or DO pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain

under the care of a physician for as long as they remain on opiates while continuing to practice.

[16.21.9.9 NMAC - N, 11/1/2013]

#### **16.21.9.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

The intent of the New Mexico board of podiatry in requiring participation in the PMP is to assist practitioners in balancing the promotion of the safe use of controlled substances for the provision of medical care and services with the need to impede illegal and harmful activities involving these pharmaceuticals.

**A.** A podiatrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A podiatrist may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

**C.** Before a practitioner prescribes or dispenses for the first time, a controlled substance in schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in schedule II, III, IV or V:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or

(3) to a patient in hospice care.

**F.** Upon review of a prescription monitoring report for a patient, the practitioner shall identify and be aware of a patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than twelve consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Subparagraph F of 16.21.9 NMAC, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose including reporting of health care providers to their licensing board if prevailing prescribing standards are being deviated from. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

[16.21.9.10 NMAC - N, 11/01/13; A, 12/30/2016]

#### **16.21.9.11 PAIN MANAGEMENT CONTINUING EDUCATION:**

This section applies to all New Mexico board of podiatry licensees.

**A. Immediate requirements effective January 2, 2014.** Beginning January 2, 2014 and then for each annual renewal cycle, all New Mexico board of podiatry licensees shall complete no less than two continuing medical education hours in appropriate courses:

- (1) an understanding of the pharmacology and risks on controlled substances;
- (2) a basic awareness of the problems of abuse, addiction and diversion;

(3) awareness of state and federal regulations for the prescription of controlled substances;

(4) management of the treatment of pain; and

(5) courses may also include a review of this rule (16.21.9 NMAC); the applicability of such courses toward fulfillment of the continuing medical education requirement is subject to New Mexico board of podiatry approval; podiatrists who have taken CME in these educational elements between January 1, 2013 and December 31, 2014 may apply those hours toward the required two CME described in this section.

**B. Requirements for new licensees.** All New Mexico board of podiatry licensees, whether or not the New Mexico license is their first license shall complete two continuing medical education hours in pain management during the first year of licensure and then for each annual renewal cycle.

**C.** The continuing education requirements of this section are included in the sixteen hours needed for renewal.

[16.21.9.11 NMAC - N, 11/1/2013]

#### **16.21.9.12 NOTIFICATION:**

In addition to the notice of procedures set forth in the State Rules Act, Section 14-4-1 et seq NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and the New Mexico podiatry board rule, 16.21.9 NMAC:

**A.** health care practitioners under its jurisdiction; and

**B.** a health care practitioner being investigated by the board in relation to the practitioner's pain management services.

[16.21.9.12 NMAC - N, 11/1/2013]

### **PART 10: LAPSE OF LICENSE AND REINSTATEMENT**

#### **16.21.10.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry.

[16.21.10.1 NMAC - Rp, 16.21.10.1 NMAC 5/3/2019]

#### **16.21.10.2 SCOPE:**

Podiatrists licensed in New Mexico who do not submit an application for license renewal within 60 days of the expiration date.

[16.21.10.2 NMAC - Rp, 16.21.10.2 NMAC 5/3/2019]

**16.21.10.3 STATUTORY AUTHORITY:**

This rule is promulgated pursuant to the Podiatry Act, 61-8-10 and 61-8-10.1 NMSA 1978.

[16.21.10.3 NMAC - Rp, 16.21.10.3 NMAC 5/3/2019]

**16.21.10.4 DURATION:**

Permanent.

[16.21.10.4 NMAC - Rp, 16.21.10.4 NMAC 5/3/2019]

**16.21.10.5 EFFECTIVE DATE:**

May 3, 2019 unless a later date is cited at the end of a section.

[16.21.10.5 NMAC - Rp, 16.21.10.5 NMAC 5/3/2019]

**16.21.10.6 OBJECTIVE:**

To establish the procedures and policies for podiatry licenses that are not renewed within 60 days of the date of expiration.

[16.21.10.6 NMAC - Rp, 16.21.10.6 NMAC 5/3/2019]

**16.21.10.7 DEFINITIONS:**

[RESERVED]

**16.21.10.8 LICENSE SUSPENSION FOR NON-RENEWAL:**

Unless an application for license renewal is received by the board office, or post-marked, before March 1, the license may be summarily suspended.

[16.21.10.8 NMAC - Rp, 16.21.10.8 NMAC 5/3/2019]

**16.21.10.9 REINSTATEMENT OF SUSPENDED LICENSE:**

A podiatrist may request reinstatement of a lapsed license within three years from the date the license expired by notifying the board in writing. Upon receipt of the request for reinstatement, board staff will send a reinstatement application. The board may designate a professional background information service, which compiles background

information regarding an applicant from multiple sources. The following information is required for the request to be considered:

**A.** a completed application, payment of the reinstatement fee, any delinquent renewal fees, and proof of sixteen hours of continuing education per the year of renewal and each full year the license was allowed to lapse;

**B.** the application may be approved by the designee of the board if the application is complete and all requirements have been fulfilled;

**C.** verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office from the other state(s) and must attest to the status, issue date, license number, and other information contained in the form;

**D.** the board required reports from the national practitioners data bank, or other national reporting organization, and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed, or has previously been licensed as a podiatrist in another state;

**E.** no podiatrist shall reactivate or resume their podiatric practice until his or her lapsed license is reinstated and a new license is issued;

**F.** upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

[16.21.10.9 NMAC - Rp, 16.21.10.9 NMAC 5/3/2019]

#### **16.21.10.10 REINSTATEMENT FOR LICENSEES WHO PRACTICE AS MEDICAL OFFICERS IN THE UNITED STATES SERVICE:**

Licensed podiatrists who practice podiatry in the uniformed services may reinstate their expired New Mexico license within three months after the termination of such service without payment of any renewal, late or reinstatement fees as per the Podiatry Act, Subsection C of Section 61-8-10 NMSA 1978. Individuals using this option must notify the board prior to the expiration date of their license that they will not renew until the time they terminate their uniformed service practice.

[16.21.10.10 NMAC - Rp, 16.21.10.10 NMAC 5/3/2019]

### **PART 11: DISCIPLINARY PROCEEDINGS**

#### **16.21.11.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry.

[16.21.11.1 NMAC - Rp, 16.21.11.1 NMAC 5/3/2019]

**16.21.11.2 SCOPE:**

The provisions of Part 11 apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a podiatrist licensed by the board.

[16.21.11.2 NMAC - Rp, 16.21.11.2 NMAC 5/3/2019]

**16.21.11.3 STATUTORY AUTHORITY:**

This rule is promulgated pursuant to the Podiatry Act, 61-8-6 NMSA 1978, 61-8-11 NMSA 1978, and 61-8-13 NMSA 1978.

[16.21.11.3 NMAC - Rp, 16.21.11.3 NMAC 5/3/2019]

**16.21.11.4 DURATION:**

Permanent.

[16.21.11.4 NMAC - Rp, 16.21.11.4 NMAC 5/3/2019]

**16.21.11.5 EFFECTIVE DATE:**

May 3, 2019, unless a different date is cited at the end of a section.

[16.21.11.5 NMAC - Rp, 16.21.11.5 NMAC 5/3/2019]

**16.21.11.6 OBJECTIVE:**

To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to define conduct that constitutes incompetent or unprofessional practice.

[16.21.11.6 NMAC - Rp, 16.21.11.6 NMAC 5/3/2019]

**16.21.11.7 DEFINITIONS:**

[RESERVED]

**16.21.11.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board. The complaint will be reviewed by the board and any subsequent disciplinary action shall conform with the Uniform Licensing Act, Sections 61-1-1 *et. seq.*, NMSA 1978.

**A.** No member of the board or any investigators or representatives appointed by the board shall bear liability or be subject to civil damages or criminal prosecutions for any action undertaken or performed within the proper functions of the board.

**B.** No person or legal entity providing information to the board whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

**C.** All written and oral communications made by any person to the board or the committee relating to actual or potential disciplinary action, which includes complaints made to the board, shall be confidential communications and are not public records for the purposes of the Public Records Act.

**D.** Information contained in compliance files is public information and subject to disclosure following formal disciplinary proceedings.

[16.21.11.8 NMAC - Rp, 16.21.11.8 NMAC 5/3/2019]

#### **16.21.11.9 ACTIONS:**

The board may take any action authorized by the Podiatry Act, Section 61-8-1 *et. seq.*, NMSA 1978 and the Uniform Licensing Act, 61-1-1 *et. seq.* NMSA 1978 if the board determines that a licensee has violated any of the provisions of the Podiatry Act, the rules, or the Impaired Health Care Provider Act, 61-7-1 NMSA 1978.

[16.21.11.9 NMAC - Rp, 16.21.11.9 NMAC 5/3/2019]

#### **16.21.11.10 SUSPENSION, REVOCATION OR REFUSAL OF A LICENSE:**

For the purpose of the Podiatry Act, Section 61.8.11.10 NMSA 1978 of, the following may apply.

**A.** "Gross negligence" or "gross incompetency" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence on the part of the podiatrist as to render the podiatrist unfit to hold himself out to the public as a licensed podiatrist.

**B.** "Unprofessional conduct" means, but is not limited to:

**(1)** performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as

established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the profession;

**(2)** practicing beyond the scope of practice of a podiatrist as defined by the Podiatry Act, Section 61-8-1 NMSA 1978, or board rule;

**(3)** failure of a podiatrist to comply with the following advertising guidelines:

**(a)** shall not advertise in a false, fraudulent or misleading manner;

**(b)** shall include in the advertisement the podiatrist's name or medical group name, address and telephone number;

**(4)** the making of false or misleading statement in communication with patients or potential patients;

**(5)** the use of misleading or deceptive titles or designations in a name or title of a podiatric practice, including the unauthorized advertisement of a specialty designation;

**(6)** failure to release to a patient copies of that patient's records and x-rays;

**(7)** conviction of a felony; a certified copy of the record of the court of conviction shall be proof of such conviction;

**(8)** impersonating another person licensed to practice podiatry or permitting or allowing any person to use his license or certificate of registration;

**(9)** deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another podiatrist licensed or applying for licensure by the board;

**(10)** accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a professional partnership, association, HMO, or similar association shall not be construed as fee-splitting;

**(11)** injudicious prescribing, administration, or dispensing of any drug or medicine;

**(12)** sexual misconduct;

**(13)** the use of a false, fraudulent or deceptive statement in any document connected with the practice of podiatry;

- (14) the falsifying of medical records, whether or not for personal gain;
- (15) any intentional conduct or practice which is harmful or dangerous to the health of the patient;
- (16) fraud, deceit or misrepresentation in any renewal or reinstatement application;
- (17) obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;
- (18) cheating on an examination for licensure;
- (19) violation of any order of the board, including any probation order;
- (20) treating patients when the podiatrist is under the influence of alcohol, illegal drugs, or injudicious use of prescription medications; or
- (21) failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;
- (22) willful abandonment of a patient;
- (23) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation;
- (24) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American podiatric medical association.

[16.21.11.10 NMAC - Rp, 16.21.11.10 NMAC 5/3/2019]

#### **16.21.11.11 COMPLAINT COMMITTEE:**

The chair of the board shall appoint at least one member of the board to serve on the complaint committee along with the board's compliance liaison. A complaint committee shall review each complaint charging a licensed podiatrist with unprofessional conduct or other violations under the Podiatry Act.

**A.** The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

**B.** Upon completion of an investigation, the complaint committee shall submit its recommendations to the board

**C.** The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with an investigative subpoena may result in the board seeking an order from the district court directing the subject of the investigative subpoena to comply.

[16.21.11.11 NMAC - N, 5/3/2019]

#### **16.21.11.12 INVESTIGATIVE SUBPOENAS:**

The board designee of the board is authorized to issue investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations.

[16.21.11.12 NMAC - Rp, 16.21.11.11 NMAC 5/3/2019]

#### **16.21.11.13 DELEGATION OF AUTHORITY:**

The authority of the New Mexico board of podiatry to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in Sections 40-5A-1 to -13 NMSA 1978, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall be not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.21.11.13 NMAC - Rp, 16.21.11.12 NMAC 5/3/2019]

### **PART 12: MANAGEMENT OF MEDICAL RECORDS**

#### **16.21.12.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Podiatry hereafter called the board.

[16.21.12.1 NMAC - Rp, 16.21.12.1 NMAC 5/3/2019]

#### **16.21.12.2 SCOPE:**

This part governs the use management of medical records that are created and maintained as part of the practice of a podiatrist who has physical possession or ownership of the records.

[16.21.12.2 NMAC - Rp, 16.21.12.2 NMAC 5/3/2019]

#### **16.21.12.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Podiatry Act, Section 61-8-9 NMSA 1978.

[16.21.12.3 NMAC - Rp, 16.21.12.3 NMAC 5/3/2019]

**16.21.12.4 DURATION:**

Permanent.

[16.21.12.4 NMAC - Rp, 16.21.12.4 NMAC 5/3/2019]

**16.21.12.5 EFFECTIVE DATE:**

May 3, 2019 unless a later date is cited at the end of a section.

[16.21.12.5 NMAC - Rp, 16.21.12.5 NMAC 5/3/2019]

**16.21.12.6 OBJECTIVE:**

This part establishes requirements and procedures for management of medical records.

[16.21.12.6 NMAC - Rp, 16.21.12.6 NMAC 5/3/2019]

**16.21.12.7 DEFINITIONS:**

**"Medical record"** means all information maintained by a podiatrist relating to the past, present or future physical health or condition of a patient, and for the provision of health care to a patient. This information includes, but is not limited to, the podiatrist's notes, reports, summaries, x-rays, laboratory and other diagnostic test results. A patient's complete medical record includes information generated and maintained by the podiatrist, as well as information provided to the podiatrist by the patient, by any other podiatrist who has consulted with or treated the patient, and other information acquired by the health care provider about the patient in connection with the provision of health care to the patient.

[16.21.12.7 NMAC - Rp, 16.21.12.7 5/3/2019]

**16.21.12.8 RELEASE OF MEDICAL RECORDS:**

Podiatrists must provide copies of medical records to a patient or to another podiatrist when legally requested to do so. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the podiatrist should act as the patient's advocate and work to facilitate the patient's request for records.

**A.** Medical records may not be withheld because an account is overdue or a bill for treatment, medical records, or other services is owed.

**B.** A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is \$1.00 per page for the first 25 pages, and \$0.10 per page thereafter. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Podiatrists charging for the cost of reproduction of medical records shall give consideration to the ethical and professional duties owed to other podiatrists and their patients.

[16.21.12.8 NMAC - Rp, 16.21.12.8 NMAC 5/3/2019]

### **16.21.12.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:**

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current podiatrist to the new treating podiatrist. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating podiatrist.

**A.** Active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice.

**B.** Whenever possible, patients should be notified within at least 30 days after the death of their podiatrist.

**C.** Notification may be satisfied using any of the following methods:

**(1)** by placing a notice in at least one newspaper in the local practice area; notice should

advise patients where their medical records will be stored; notice should include any pertinent information the patient may need for obtaining or transferring the records, including the name, mailing address and telephone number of a contact person with access to the stored records; notification should run a minimum of two times per month for three months to reach a maximum number of patients; or

**(2)** by written or electronic mail; or

**(3)** by individual correspondence to the patient's last known physical or electronic mail

address.

**D.** Notification should include:

- (1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;
- (2) how the records can be obtained or transferred;
- (3) how long the records will be maintained before they are destroyed; and
- (4) cost of recovering/transferring records.

**E.** A podiatrist or podiatrist group should not withhold patient lists or other information from a departing podiatrist that is necessary for notification of patients.

**F.** Patients of a podiatrist who leaves a group practice must be notified the podiatrist is leaving, notified of the podiatrist's new address and offered the opportunity to have their medical records transferred to the departing podiatrist at their new practice.

**G.** When a practice is sold, all active patients must be notified that the podiatrist is transferring the practice to another podiatrist or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another podiatrist or entity of their choice.

[16.21.12.9 NMAC - Rp, 16.21.12.9 NMAC 5/3/2019]

#### **16.21.12.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS:**

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes unprofessional conduct under the board's rules adopted pursuant to Subsection H of 61-8-11 NMSA 1978. Podiatric physicians must maintain and make available upon request a written copy of their policy or their employer's policy for medical record retention, maintenance and destruction.

**B.** Written medical record policy shall include:

- (1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;
- (2) how the records can be obtained or transferred;
- (3) how long the records will be maintained before they are destroyed; and
- (4) cost of obtaining copies of records, and of recovering records/transferring records.

**C.** Electronic medical record policy shall include:

- (1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;
- (2) how the records can be obtained or transferred;
- (3) how long the records will be maintained before destroyed;
- (4) a data backup plan, disaster recovery plan and storage which ensures retrievability into reasonably usable form on a timely basis upon any request; and
- (5) transfer of data via electronic file with appropriate safeguards to ensure patient confidentiality.

**D.** Podiatric physicians must retain medical records that they own for at least seven years. Medical records for patients who are minors must be retained for at least two years beyond the date that the patient is 18 years old.

**E.** Podiatric physicians shall retain medical billing information for at least two years after the date of last treatment.

**F.** A log must be kept of all charts destroyed, including the patient's name and date of record destruction.

**G.** If conversion of hard copies of medical records occurs to electronic format, the hard copy shall be retained by the physician for a minimum of 30 days after electronic transfer has occurred.

**H.** Destruction of medical records must be such that confidentiality is maintained. Records must be destroyed by shredding, incinerating (where permitted) or by other method of permanent destruction, including purging of medical records from a computer hard drive, server hard drive or other computer media or disk in accordance with existing practices for data deletion then available.

[16.21.12.10 NMAC - Rp, 16.21.12.10 NMAC 5/3/2019]

## **CHAPTER 22: PSYCHOLOGISTS AND PSYCHOLOGIST ASSOCIATES**

### **PART 1: GENERAL PROVISIONS**

#### **16.22.1.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners

[16.22.1.1 NMAC - Rp, 16.22.1.1 NMAC, 11/15/2006]

#### **16.22.1.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure, and the general public.

[16.22.1.2 NMAC - Rp, 16.22.1.2 NMAC, 11/15/2006]

#### **16.22.1.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-6, 61-9-8, 61-9-16. Section 1 of Part 1 is authorized by NMSA 1978 Section 10-15-1.C (1993 Repl.)

[16.22.1.3 NMAC - Rp, 16.22.1.3 NMAC, 11/15/2006]

#### **16.22.1.4 DURATION:**

Permanent.

[16.22.1.4 NMAC - Rp, 16.22.1.4 NMAC, 11/15/2006]

#### **16.22.1.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of a section.

[16.22.1.5 NMAC - Rp, 16.22.1.5 NMAC, 11/15/2006]

#### **16.22.1.6 OBJECTIVE:**

The objective of Part 1 is to set forth the provisions, which apply to all of Chapter 22, and to all persons affected or regulated by Chapter 22 of Title 16.

[16.22.1.6 NMAC - Rp, 16.22.1.6 NMAC, 11/15/2006]

#### **16.22.1.7 DEFINITIONS:**

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

**A. "Accredited by a nationally recognized accreditation body"** means accredited by an organization that is listed as a programmatic accrediting organization for doctoral psychology in the most recent Directory of CHEA-Recognized Organizations promulgated by the council for higher education accreditation.

**B. "Act"** means the Professional Psychologist Act, Section 61-9-1 through 61-9-19 NMSA 1978.

**C. "Administrator" or "board administrator"** means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

**D. "Adult"** means all persons 18 years of age or older.

**E. "Applicant"** means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of his or her application by the board to advance him or her to candidacy for licensure.

**F. "Approved supervision program"** means a formal internship or program of postdoctoral supervised experience in New Mexico that is designed to prepare an applicant for licensure and that has been accredited by a nationally recognized accreditation body, or a program of training for licensure in New Mexico that has been formally approved in advance and in writing by the board as meeting the requirements for internship or postdoctoral supervised experience.

**G. "Board administrator" or "administrator"** means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the act.

**H. "Board certified psychiatrist"** means a physician licensed in New Mexico who has been certified by the American board of psychiatry and neurology in the specialty of psychiatry or the subspecialty of child and adolescent psychiatry.

**I. "Board regulations" or "regulations"** means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

**J. "Candidate"** is an applicant whose application has been approved by the board and is eligible to take the online jurisprudence examination.

**K. "Children/adolescents"** mean all persons through 17 years of age (children two-12 years; adolescents 13-17 years).

**L. "Client"** means a person, corporate entity, patient or organization that is a recipient of psychological services. A corporate entity or other organization is a client when the purpose of the professional contract is to provide services of benefit primarily to the organization rather than to the individuals. In the case of individuals with legal guardians, including minors and legally incompetent adults, the legal guardian shall be the client for decision-making purposes, except that the individual receiving services shall be the client for:

(1) issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitative dual relationships; and

(2) issues specifically reserved to the individual, and agreed to by the guardian prior to rendering of services, such as confidential communication in a therapy relationship;

(3) all matters specifically designated to individuals in the Mental Health Code and Children's Code, NMSA 1978.

**M. "Confidential information"** means information revealed by a patient or clients or otherwise obtained by a psychologist, as a result of a confidential relationship where there is reasonable expectation that the information is not to be disclosed by the psychologist without the informed written consent of the patient or client in accordance with the Public Health Act, Section 24-1-20 NMSA 1978. A confidential relationship, as used here, results from:

(1) the relationship between the patient(s) or client(s) and the psychologist, or

(2) the circumstances under which the information was revealed or obtained; when such information is revealed or obtained through the psychologist's interaction with an individual from within a client corporation or organization, and that interaction is the result of the professional contract between the psychologist and the client corporation or organization, the confidential relationship is between the psychologist and that client corporation or organization, not between the psychologist and a patient or other individual within the corporation or organization; in this instance, information obtained by the psychologist from a patient or other individual shall be available to the organization unless such information was obtained in a separate professional relationship with that individual and is therefore subject to confidentiality requirements in itself.

**N. "Conditional prescribing psychologist"** means a licensed psychologist who holds a valid conditional prescription certificate.

**O. "Conflict of interest"** means any situation or relationship that compromises or impairs, or appears to compromise or impair, the neutrality, independence or objectivity of a psychologist, psychologist associate, supervising physician, or board member, including relationships or situations that arise from past or present familial, social, fiduciary, business, financial, health care provider-patient relationship, agency, or other personal relationship. Paying or receiving an appropriate fee for supervisory services is not a conflict of interest. Conflict of interest includes dual relationships as provided herein at 16.22.2.9 NMAC.

**P. "Consultant"** means a licensed psychologist who provides professional advice or opinion to another licensed psychologist and who has no professional relationship with the patient or client, has no authority over the case, or has no responsibility for the services performed for the patient or client or the welfare of the patient or client.

**Q. "Continuing professional education"** means educational opportunities beyond doctoral education and initial entry level training as a psychologist or psychologist associate for which hourly credit is earned. It is the process through which professional licensees review psychological concepts and techniques, acquire new knowledge or skills relevant to their work, and improve their competence in current skills. These activities are intended to supplement what has already been attained in training and practice. It is an ongoing process consisting of formal learning activities at the postgraduate level that are:

- (1) relevant to psychological practice, education, and science;
- (2) enable psychologists to keep pace with emerging issues and technologies; and
- (3) allow psychologists to maintain, develop and increase competencies in order to improve services to the public and enhance contributions to the profession.

**R. "Controlled substance"** means any drug, substance or immediate precursor enumerated in schedules I through V of the U.S. Drug Enforcement Administration, Controlled Substance Act and in Sections 30-31-6 thru 30-31-10 NMSA 1978, of the act.

**S. "Court order"** means the written communication of a member of the judiciary, or other court magistrate or administrator, if such authority has been lawfully delegated to such magistrate or administrator that is under the authority of law.

**T. "Criminal Offender Employment Act"**, Sections 28-2-1 thru 28-2-6 NMSA 1978 is the statutory provision regulating the relevance and weight to be given an applicant, candidate, or licensee's criminal record, by the board, during the licensure or renewal process.

**U. "Cultural competence"** means the ability and the will to respond to the unique needs of an individual patient that arise from the patient's culture, and the ability to use aspects of the person's culture as a resource or tool to assist with the intervention. Cultural competence includes being able to:

- (1) recognize and respond to health related beliefs and cultural values;
- (2) incorporate research about disease incidence and prevalence, and treatment efficacy; and
- (3) know when to seek consultation about the patient's culture.

**V. "Currently enrolled"** means enrolled as a student in a college or university.

**W. "Custodian"** means the board administrator.

**X. "Designated as a doctoral program in psychology by a nationally recognized designation system"** means listed as an approved doctoral program by the Association of State and Provincial Psychology Boards/National Register Designation Project prior to the termination of that project on June 1, 2018.

**Y. "Disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978;

**Z. "Drug or substance"** means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories.

**AA. "Electronic signatures"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**BB. "Electronic transmission"** means the sending of information through the telephone lines, cable or internet, as in e-mail or facsimile (fax).

**CC. "Ethno-pharmacology"** means the basic and clinical sciences of treatment of specific mental illness with ethnically or culturally appropriate drugs.

**DD. "Filed with the board"** means electronic submission through the board's online portal.

**EE. "Geriatric"** means all persons 65 years of age and over.

**FF. "Good cause"** means the inability to comply because of illness, undue hardship, or extenuating circumstances that are not willful and are beyond the control of the person asserting good cause. The person asserting good cause shall have the burden to demonstrate good cause.

**GG. "Governmental Conduct Act"** 10-16-1 thru 10-16-18 NMSA 1978 is the statutory provision which sets forth standards of conduct and ethical principles for public service.

**HH. "Inactive status"** means a procedure of the board to affirm that a licensee is not engaged in active practice.

**II. "Independently licensed prescribing clinician"** means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner, or clinical nurse specialist.

**JJ. "Initial application"** means the initial application for licensure filed with the board by an applicant not previously or currently licensed in any jurisdiction.

**KK. "In-person supervision"** is supervision of psychological services where the supervisor is physically present in the same room as the trainee.

**LL. "Inspection of Public Records Act"**, Sections 14-2-1 thru 14-2-12 NMSA 1978 is the statutory provision acknowledging the fundamental right of access to public records afforded citizens and media in a democracy, and governing the administration of that right.

**MM. "Licensed"** means licensed or certified, registered, or any other term including temporary, provisional, emergency, unrestricted, active or inactive license or licensure, when such term identifies a person whose professional behavior is subject to regulation by the board by authority of the act.

**NN. "Licensee"** means a psychologist licensed pursuant to the provisions of the act and board regulations.

**OO. "Licensee in good standing"** means a licensed psychologist who is not the subject of a pending investigation, adjudicatory proceeding, or petition on appeal or review, or whose license is not restricted, suspended, or revoked in New Mexico or any other state or licensing jurisdiction.

**PP. "Medical supervision"** means direct oversight of the psychologist trainee's psychopharmacological practice by a qualified supervising physician approved by the board. Supervision may be on-site or off-site as specified in the rule.

**QQ. "Medical supervisor"** means a qualified supervising physician approved by the board.

**RR. "Member of the family"** means a parent, spouse, child, stepchild, grandchild, grandparent, sibling, uncle, aunt, niece or nephew, or other relative by blood, marriage, or legal process with whom the supervisor or physician supervisor has or has had a close familial relationship.

**SS. "Member of the household"** means residing within the same dwelling unit, either continuously or intermittently, regardless of whether fee or rent is paid or received.

**TT. "Military service member"** means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

**UU. "National certification exam"** means an examination that evaluates the psychopharmacological knowledge base of the applicant, is developed with the intention to administer it to psychologists seeking certificates or licenses to prescribe psychotropic medication in any state with prescriptive authority for psychologists, and meets standards acceptable to the board and the medical board.

**VV. "Nationwide criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states."

**WW. "Nationwide criminal history screening"** means a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant."

**XX. "New Mexico administrative code"** or "NMAC", Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

**YY. "New Mexico statutes annotated 1978 or NMSA 1978"** is the official compilation of state laws.

**ZZ. "Non-licensed person"** means a student, an applicant or postdoctoral person working under supervision in order to satisfy licensure requirements in psychology, and employees or staff of a licensed psychologist

**AAA. "Open Meetings Act"**, 10-15 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

**BBB. "Outdated test"** means a test for which a revision has been available for three or more years.

**CCC. "Out-of-state psychologist"** means a psychologist licensed in another state, a territorial possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or a Canadian province who is in good standing in his or her licensing jurisdiction(s).

**DDD. "Patient"** means a person who is treated, examined, assessed, or interviewed by a licensed psychologist or licensed psychologist associate or a non-licensed person working under supervision as provided in these regulations. In the case of minor patients or adult patients who are legally incompetent, the legal guardian shall represent the patient for decision-making purposes, except that the patient shall be directly consulted by the psychologist or psychologist associate for:

(1) issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitative dual relationships;

(2) issues specifically reserved to the individual, and agreed to by the guardian prior to rendering of services, such as confidential communication in a therapy relationship, and

(3) all matters specifically designated to individuals in the Mental Health and Developmental Disabilities Code (MHDDC), Section 43-1-19 NMSA 1978, and the Children's Code, Section 32A-1-1 thru 32A-1-20 NMSA 1978.

**EEE.** "Physician" means an allopathic or osteopathic physician.

**FFF.** "Practicum" means a period of supervised clinical training and practice in which specific scientific and clinical techniques and diagnoses are learned.

**GGG.** "Prescribing applicant" means a licensed psychologist who has made application to the board for a conditional prescribing or prescribing certificate.

**HHH.** "Prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a prescriber shall prescribe or write a prescription.

**III.** "Primary treating health care practitioner" means the health care practitioner who is directly responsible for treating a specific illness or condition of a patient. The primary treating health care practitioner may be a primary care practitioner, or may be a medical specialist.

**JJJ.** "Professional relationship" means a mutually agreed-upon relationship between a psychologist and a patient(s) or client(s) for the purpose of the patient(s) or client(s) obtaining the psychologist's professional services.

**KKK.** "Professional service" means all actions of the psychologist in the context of a professional relationship with a client or patient.

**LLL.** "Properly made application" means a completed form for a psychologist or psychologist associate license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment, and other requirements except examination requirements for licensure as required by the act and these regulations.

**MMM.** "Psychopharmacology" means the basic and clinical science of drugs used to treat mental illnesses.

**NNN.** "**Psychopharmacotherapy**" means the application of pharmacotherapeutics to psychological problems.

**OOO.** "**Recent Veteran**" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

**PPP.** "**Reciprocity**" means facilitation of licensure for individuals holding a license as a psychologist in another jurisdiction; reciprocity does not mean that other states accept New Mexico licensees on an equal basis but is an invitation that they do so.

**QQQ.** "**Public Health Act**", Sections 24-1-1 thru 24-1-30 NMSA 1978, governs the confidentiality of patient or client record.

**RRR.** "**Restricted license**" means a psychologist who holds a temporary, provisional, emergency or inactive license.

**SSS.** "**Rule**" means board regulations.

**TTT.** "**Socio-cultural**" means aspects of mental illness related to social and cultural mores and traditions of varied social and cultural groups.

**UUU.** "**State Rules Act**", Sections 14-4-1 thru 14-4-5 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

**VVV.** "**Statute**" means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

**WWW.** "**Supervisee**" means any person who functions under the authority of a licensed psychologist to provide psychological services as provided in the act or board regulations.

**XXX.** "**Supervisor**" means a licensed psychologist who agrees to provide adequate supervision over a student, applicant, employee, staff, or other non-licensed person and who remains ultimately responsible for the professional conduct of the non-licensed person and the welfare of the patient.

**YYY.** "**Supervisory plan**" means a written document signed by an applicant for psychology license or a conditional prescribing certificate and the supervisor of the applicant that describes the nature of the supervisory relationship including but not limited to the number of hours of supervision, population served, and credentials of supervisor, and is presented to the board for approval.

**ZZZ. "Telephonic supervision"** means the supervision of psychological services through telephone or other audio format where the supervisor is not in the same physical facility as the trainee.

**AAAA. "Telesupervision"** means the supervision of psychological services through synchronous audio and video format where the supervisor is not in the same physical facility as the trainee.

**BBBB. "Unrestricted license"** means a license in psychology with full privileges and responsibilities as described in these regulations but is renewed annually or biennially. It does not have a limitation of a provisional license, temporary license, emergency license or inactive license as described herein.

**CCCC. "Year of supervised experience"** means 1500 hours of psychological work conducted under supervision satisfactory to the board. The 1500 hours may be accumulated in one or two consecutive calendar years in the case of an internship, three consecutive years in the case of postdoctoral experience, or over the course of graduate training in the case of doctoral experience.

**DDDD. "Doctoral training program"** means the program from which the applicant received his or her doctoral degree to fulfill the educational requirements for licensure (NMAC)

[16.22.1.7 NMAC - Rp, 16.22.1.7 NMAC, 11/15/2006; A, 03/21/2009; A, 9/16/2010; A, 4/11/2012; A, 04/30/2015; A, 7/1/2018; A, 02/10/2022]

**16.22.1.8 [RESERVED]**

[16.22.1.8 NMAC - N, 11/15/06; Repealed 7/1/2018]

**16.22.1.9 [RESERVED]**

[16.22.1.9 NMAC - Rp, 16.22.1.8 NMAC, 11/15/06; Repealed 7/1/2018]

**16.22.1.10 BOARD OPERATIONS:**

**A. Elections.** At its annual meeting in July, the board shall elect a chair, vice chair, and secretary treasurer.

**B. Duties of officers.** All board officers shall exercise authority subject to the act, board regulations, and specific directions of the board.

**(1)** The chair shall preside at board meetings and adjudicatory hearings unless another presiding officer is named by the board. At the direction of the board, the chair shall respond to inquiries and correspondence, execute orders of the board in any pending adjudicatory proceeding unless a hearing officer is appointed, sign, or

designate another board member to sign decisions of the board, appoint board members to formal committees, and provide direction to the board administrator on routine matters to facilitate the efficient operation of board functions between meetings.

(2) The vice chair shall preside at board meetings and adjudicatory hearings in the absence of the chair. If the office of chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.

(3) The secretary-treasurer shall preside at board meetings and adjudicatory proceedings in the absence of the chair and vice chair.

**C. Vacancy.** If the office of board chair becomes vacant, the board shall elect a chair at the next meeting or any subsequent meeting. If the office of vice chair or secretary-treasurer becomes vacant, the board may hold elections as it deems necessary and advisable.

**D. Duties of board administrator.** The board administrator shall at all times perform those tasks directed by the board pursuant to and those duties prescribed by the act, board regulations, the ULA, Sections 61-1-1 thru 61-1-33 NMSA 1978, and other applicable state laws. In addition, the board administrator shall supervise other personnel, to ensure the responsiveness and efficiency of board operations, and assume the role of custodian of records.

**E. Board office.** The board office is located in Santa Fe, New Mexico.

**F. Board meetings.** The board shall conduct meetings in accordance with the Open Meetings Act (OMA), Sections 10-15-1 thru 10-15-4 NMSA 1978.

**G. Annual meeting.** The board shall hold an annual meeting in July and shall hold other meetings as it deems necessary and advisable.

**H. Conduct of meetings.** The board shall conduct its meetings in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, Revised, when necessary and advisable.

**I. Agenda.** The board administrator shall prepare the meeting agenda in accordance with the OMA and board regulations, except that the board may change the order of agenda items during the meeting.

**J. Quorum.** The board shall transact official business only at a legally constituted meeting with a quorum present. A quorum shall consist of five members. The board is in no way bound by any opinion, statement, or action of any board member, the board administrator, or other staff except when such action is pursuant to a lawful instruction or direction of the board.

**K. Addressing the board.** Except for proceedings to adopt, amend, or repeal regulations in accordance with the ULA, Section 61-1-29 NMSA 1978, the board, at its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not delay or disrupt the board's meeting. No person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or simplification of the issues. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person.

**L. Telephonic attendance.** Pursuant to the OMA, Subsection C of Section 10-15-1 NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, and shall give advance notice to the board administrator in ample time to arrange such accommodation.

**M. Conflict of interest, recusal.** Any board member who cannot be impartial in the determination of a matter before the board and who cannot judge a particular matter or controversy fairly on the basis of its own merits shall not participate in the any board deliberation or vote on the matter. A board member with a personal, social, family, financial, business, or pecuniary interest in a matter shall recuse himself or herself and shall not participate in a hearing, consideration, deliberation, or vote on the matter, except as provided by law.

**N. Confidentiality.** Board members shall not disclose to any non-member the content of any executive session discussion or deliberation, or any other confidential matters that may be the subject of an executive session or attorney-client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure. Nothing herein shall preclude the board from including in executive session discussions or confidential committee meetings the board administrator or other persons the board deems necessary to assist the board in carrying out its operations. Such other persons shall be bound by the same rules of executive session as board members.

**O. Code of conduct.** Board members shall adhere to the standards set forth in the GCA, Chapter 10, Article 16 NMSA 1978, and shall sign a code of conduct agreement as provided by the regulation and licensing department or its designee adopting provisions in the GCA.

[16.22.1.10 NMAC - Rp, 16.22.1.9 NMAC, 11/15/2006]

#### **16.22.1.11 BOARD RECORDS:**

**A. Inspection of Public Records Act (IPRA).** Public records shall be available for inspection in accordance with the provisions of the IPRA, Section 14-2-1 through 14-2-12 NMSA 1978 and Section 61-9-5.1 NMSA 1978.

**B. Copying charges.** The custodian shall charge a copying charge of \$.25 per page or the regulation and licensing department standard IPRA fee, whichever is higher.

**C. Creating records.** The board shall not be required to create any document or compile data for an individual or private entity.

**D. Reasonable access.** Consistent with the IPRA and taking into account the available staff, space, and the needs of other legitimate public business, the custodian may determine the reasonable time, place, and conditions for access to public records.

**E. Removal.** Public records shall not be removed from the board office except by board members, board staff, or agents of the board for official public business.

[16.22.1.11 NMAC - Rp, 16.22.1.10 NMAC, 11/15/2006; A, 03/21/2009]

#### **16.22.1.12 BOARD RULES AND REGULATIONS 2000 (as revised):**

Board regulations may be adopted, amended, repealed, or superseded by rulemaking proceedings pursuant to applicable provisions of the act, the ULA, and the State Rules Act.

[16.22.1.12 NMAC - Rp, 16.22.1.11 NMAC, 11/15/2006]

#### **16.22.1.13 ELECTRONIC SIGNATURES:**

The board will accept electronic signatures on all applications and renewals submitted for professional licensure.

[16.22.1.13 NMAC - N, 04/30/2015]

### **PART 2: CODE OF CONDUCT**

#### **16.22.2.1 ISSUING AGENCY:**

Regulation and Licensing Department, New Mexico State Board of Psychologist Examiners.

[16.22.2.1 NMAC - Rp, 16.22.2.1 NMAC, 11/15/2006]

#### **16.22.2.2 SCOPE:**

The psychologist shall be governed by this code of conduct while providing psychological services in any context or whenever he is functioning in a professional capacity as a psychologist. This code shall not supersede state, federal, or provincial statutes. This code shall apply to the conduct of all licensees and applicants, including the applicant's conduct during the period of education, supervision, training, and employment, which is required for licensure. This conduct includes, but is not limited to the list of disqualifying criminal convictions referenced in 16.22.2.20 NMAC. The term "psychologist," as used within this code, shall apply to both licensee and applicant.

[16.22.2.2 NMAC - Rp, 16.22.2.2 NMAC, 11/15/2006; A, 02/10/2022]

### **16.22.2.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologists Act, Section 61-9-6.

[16.22.2.3 NMAC - Rp, 16.22.2.3 NMAC, 11/15/2006]

### **16.22.2.4 DURATION:**

Permanent.

[16.22.2.4 NMAC - Rp, 16.22.2.4 NMAC, 11/15/2006]

### **16.22.2.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of a section.

[16.22.2.5 NMAC - Rp, 16.22.2.5 NMAC, 11/15/2006]

### **16.22.2.6 OBJECTIVE:**

This part establishes the standards against which the required professional conduct of a psychologist is measured. Each licensee and applicant will be governed by this part whenever providing psychological services. A violation of this part is sufficient reason for disciplinary action pursuant to the Act.

[16.22.2.6 NMAC - Rp, 16.22.2.6 NMAC, 11/15/2006]

### **16.22.2.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

### **16.22.2.8 RULES OF COMPETENCE:**

**A. Limits on practice.** The psychologist shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

**B. Maintaining competency.** The psychologist shall maintain current competency in the areas in which he practices, through continuing professional education, consultation, and/or other procedures, in conformance with current standards of scientific and professional knowledge.

**C. Cultural competency.** Psychologists with restricted and unrestricted licenses and psychologist associates shall complete eight hours of cultural competence coursework promulgated by the board during the first year of licensure; and also shall take four additional hours in cultural competence, as deemed satisfactory to the board, every two years as detailed in 16.22.9 NMAC.

**D. Adding new services and techniques.** The psychologist, when developing competency in a service or technique that is either new to the psychologist or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals, and shall seek appropriate education and training in the new area. The psychologist shall inform clients or patients of the innovative nature and the known risks and benefits associated with the services, so that the client or patient can exercise freedom of choice concerning such services.

**E. Referral.** The psychologist shall make or recommend referral to professional, technical, or administrative, or public resources when such referral is clearly in the best interest of the clients or patient(s).

**F. Bases for Assessments.** Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings except when:

(1) psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions;

(2) despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of their conclusions or recommendations; or

(3) psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

## **G. Maintenance and retention of records.**

(1) The psychologist rendering professional services to a client or patient shall maintain professional records that include:

(a) the presenting problem(s) or the reason the client(s) or patient(s) sought the psychologist's services;

(b) diagnosis and clinical formulation;

(c) the fee arrangement;

(d) the date and substance of each billed contact or service;

(e) any test results or other evaluative results obtained and any basic test data from which they were derived;

(f) notation and results of formal consultations with other providers;

(g) a copy of all test or other evaluative reports prepared as part of the professional relationship;

(h) the date of termination of services.

(2) The psychologist shall ensure that all data entries in the professional records are maintained for a period of not less than five years after the last date that service was rendered. The psychologist shall comply with other legal requirements for record retention, even if longer periods of retention are required for other purposes.

(3) The psychologist shall store and dispose of written, electronic, and other records in a manner that protects confidentiality.

(4) For each person professionally supervised, the psychologist shall maintain for a period of not less than five years after the last date of supervision a record of the supervisory session that shall include, among other information, the type, place, and general content of the session.

(5) Upon request by the client, patient, or legal representative of the client or patient, the psychologist shall release records under his control, except as otherwise provided in these rules and regulations or state law. Lack of payment for services does not constitute grounds for refusing to release client or patient records.

[16.22.2.8 NMAC - Rp, 16.22.2.8 NMAC, 11/15/2006; A, 9/16/2010; A, 7/1/2018; A, 1/8/2023]

### **16.22.2.9 DUAL RELATIONSHIPS:**

**A.** The psychologist shall not undertake or continue a professional relationship with a client or patient when the objectivity or competency of the psychologist is compromised because of the psychologist's present or previous familial, social, sexual, emotional, or legal relationship with the client or a relevant person associated with or related to the client.

**B.** The psychologist, in interacting with a current or former client or patient to whom the psychologist has at any time within the previous 12 months rendered counseling, psychotherapeutic, or other professional psychological services for treatment or amelioration of emotional distress or behavioral inadequacy, shall not:

(1) engage in any verbal or physical behavior toward the client or patient which is sexually seductive, demeaning, or harassing; or

(2) engage in sexual intercourse, or sexual contact or other sexual intimacies with the client or patient; or

(3) enter into a business or financial (other than fees for professional services) or other potentially exploitative relationship with the client or patient.

**C.** The prohibitions set out in Paragraph (2) of Subsection B of 16.22.2.9 NMAC shall not be limited to the 12-month period but shall extend longer unless the psychologist can demonstrate that the client or patient is not vulnerable to exploitative influence by the psychologist. The psychologist who engages in such sexual or financial relationship after the 12 months following cessation or termination of treatment bears the burden of proving that there has been no exploitation, in light of all relevant factors, including:

(1) the amount of time that has passed since the therapy terminated;

(2) the nature and duration of the therapy;

(3) the circumstances of termination;

(4) the client or patient's personal history;

(5) the client or patient's mental status;

(6) the likelihood of adverse impact on the client or patient and others; and

(7) any statements or actions made by the psychologist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or other potentially exploitative relationship with the patient or client.

**D.** The psychologist shall not serve in varied capacities that confuse the role of the psychologist. Such confusion is most likely when the psychologist changes from one

role to another and fails to make clear who is the client or patient. The psychologist is responsible for taking appropriate precautions to avoid harmful dual relationships and is responsible for informing all affected individuals, preferably in writing, when such a change is necessary. Examples of situations requiring extra caution include:

(1) treating a person who is the family member of a current or former patient or client;

(2) treating a family as a unit after treating a family member or, conversely, treating a family member after treating the family as a unit;

(3) moving from a confidential role to a non-confidential one, such as from therapist or mediator to evaluator, arbitrator, or "wise-person"; and

(4) moving from a position of authority into a confidential role, such as from court-appointed evaluator to the role of therapist.

**E.** If one family member is a minor, the psychologist shall ensure that the child understands how the role of the psychologist is changing (for example, moving from therapist for the child to therapist for the family) and shall explain the limits of confidentiality that result from this changed role.

**F.** When a psychologist agrees to provide services to several persons who have a relationship (such as husband and wife or parents and children), the psychologist shall clarify at the outset:

(1) which of the individuals are patients or clients and

(2) the relationship the psychologist will have with each person; this clarification includes the role of the psychologist and the possible uses of services provided or information obtained.

**G.** As soon as it becomes apparent that the psychologist may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife and then witness for one party in a divorce proceeding), the psychologist shall clarify and withdraw from or adjust roles, as appropriate.

[16.22.2.9 NMAC - Rp, 16.22.2.9 NMAC, 11/15/2006; A, 3/21/2009; A, 7/1/2018]

#### **16.22.2.10 PATIENT WELFARE:**

##### **A. Informed consent for therapy and evaluation.**

(1) The psychologist shall appropriately document and obtain appropriate informed consent for therapy or related procedures or evaluation. Informed consent means that the person:

(a) has the capacity to consent;

(b) has been informed of significant information concerning the therapy or evaluation in language that is understandable; and

(c) has freely and without undue influence expressed consent.

(2) When persons are legally incapable of giving informed consent, the psychologist shall obtain informed consent from a legally authorized person, if such substitute consent is permitted by law.

(3) In addition, the psychologist shall:

(a) inform those persons who are legally incapable of giving informed consent about the proposed interventions or evaluations in a manner commensurate with the persons' psychological capacities;

(b) seek or obtain their assent to those interventions or evaluations; and

(c) consider such person's preferences and best interests.

#### **B. Limits of confidentiality in forensic, court-ordered, or child custody evaluations.**

(1) The psychologist shall explain the limits of confidentiality to parties at the outset, before the evaluation begins, and the explanation should be documented. The psychologist shall also clarify how the information will be used and which parties or entities will have access to the evaluation. The procedures of the evaluation and their purpose should be described to the parties.

(2) In the case of child custody evaluations, the limits of confidentiality shall be explained at the initial meeting with each parent and the children.

#### **C. Terminating the professional relationship.**

(1) The psychologist shall not abandon his clients or patients.

(2) The psychologist shall terminate a professional relationship when it becomes clear that the patient no longer needs the service, is not benefiting from the service, is being harmed by continued service, or if the psychologist is acting outside of his or her area of competence.

(3) Prior to termination, for whatever reason, except where precluded by circumstances outside of the control of the psychologist including the patient's conduct, or changes in administrative or financial arrangements, if possible, the psychologist shall discuss the patient's views and needs, provide appropriate pre-termination

counseling, suggest alternative service providers as appropriate, and take other reasonable steps to facilitate transfer of responsibility to another provider, if the patient needs one immediately.

**D. Impaired psychologist.** The psychologist shall not undertake or continue a professional relationship with a client when the psychologist is impaired due to mental, emotional, physiologic, pharmacologic, or substance abuse conditions.

**E. Continuity of care.** The psychologist shall make arrangements for another appropriate professional or professionals to deal with emergency needs of his clients, as appropriate, during periods of his foreseeable absences from professional availability. The psychologist shall also make advance arrangements for managing the transfer of care for his clients or the closure of his clients' cases upon his illness, incapacity or death.

**F. Exploitative relationships.**

(1) The psychologist shall not exploit persons over whom the psychologist has supervisory, evaluative, or other authority such as applicants, supervisees, employees, research participants, and clients or patients.

(2) The psychologist shall not engage in sexual relationships with applicants, supervisees in training over whom the psychologist has evaluative or direct authority.

**G. Solicitation of business by patients.** The psychologist shall not induce the patient to solicit business on behalf of the psychologist.

**H. Referrals.** The psychologist providing services to a client or patient shall make an appropriate referral of the client or patient to another professional when requested to do so by the client or patient, when such a referral is in the best interest of the client or patient or when the client or patient presents symptoms or behaviors that are outside the psychologist's area of practice.

**I. Consultations.** When consulting with colleagues, the psychologist:

(1) shall not share confidential information that could lead to the identification of a patient, client, research participant, or other person or organization without prior written consent; and

(2) shall share information only to the extent necessary to achieve the purposes of the consultation.

**J. Avoiding harm.** Psychologists take reasonable steps to avoid harming their patients, research participants, applicants and others with whom they work, and minimize harm where it is foreseeable and unavoidable.

[16.22.2.10 NMAC - Rp, 16.22.2.10 NMAC, 11/15/2006; A, 7/1/2018]

#### **16.22.2.11 WELFARE OF SUPERVISEE AND RESEARCH SUBJECTS:**

**A. Welfare of supervisees.** The psychologist shall not exploit a supervisee in any way sexually, financially, or otherwise.

**B. Welfare of research subjects.** The psychologist shall respect the dignity and protect the welfare of his research subjects, and shall comply with all relevant statutes and the board's regulations concerning treatment of research subjects.

[16.22.2.11 NMAC - Rp, 16.22.2.11 NMAC, 11/15/2006]

#### **16.22.2.12 PROTECTING CONFIDENTIALITY:**

**A. Safeguarding confidential information.** The psychologist shall safeguard confidential information obtained in the course of practice, teaching, research, or other professional services. The psychologist shall disclose confidential information to others only with the written informed consent of the patient or client in accordance with the Public Health Act, Section 24-1-20 NMSA 1978, except as provided in these regulations.

##### **B. Discussing the limits of confidentiality.**

**(1)** The psychologist shall discuss with persons and organizations with whom the psychologist establishes a professional or scientific relationship (including, to the extent feasible, minors and their legal representatives):

**(a)** the relevant limitations on confidentiality, including limitations where applicable in group, marital, and family therapy or in organizational consulting; and

**(b)** the foreseeable uses of the information generated through his services.

**(2)** Unless it is not feasible or is contraindicated, the psychologist shall discuss confidentiality at the outset of the relationship and thereafter as new circumstances warrant.

**C. Disclosure without informed written consent.** Except as otherwise permitted under the provisions of the MHDDC, Section 43-1-19 NMSA, 1978, and the CMHDDA, Sections 32A-6-1 thru 32A-6-22 NMSA 1978 and as amended, a psychologist may disclose confidential information without the informed written consent of the patient/client when the psychologist judges that disclosure is necessary to protect against a substantial and imminent risk of serious harm being inflicted by the patient on the patient or another person. In such case, the psychologist shall limit disclosure of the otherwise confidential information to only those persons and only that content necessary to address the imminent risk of harm. When the client is an organization,

disclosure shall be made only after the psychologist has made a reasonable and unsuccessful attempt to have the problems corrected within the organization.

**D. Services involving more than one interested party.** In a situation in which more than one party has an appropriate interest in the professional services rendered by the psychologist to a patient(s) and client(s), the psychologist shall, to the extent possible, clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services. The relevant limitations on confidentiality shall be clarified, including limitations where applicable in group, marital, or family therapy or in organizational consulting. Such clarification is specifically indicated, among other circumstances, when the patient or client is an organization. The psychologist shall also communicate the foreseeable uses of the information generated through his services.

**E. Legally dependent patients.** At the beginning of a professional relationship, to the extent that the patient or client can understand, the psychologist shall inform a patient or client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality with respect to the patient or client's communications with the psychologist.

**F. Limited access to client records.** The psychologist shall limit access to patient or client records to preserve the patient or client's confidentiality and shall make effort to ensure that all persons working under the psychologist's authority comply with the requirements for confidentiality of patient or client material.

**G. Release of confidential information.** The psychologist may release confidential information upon court order, or to conform to state or federal law, rules or regulations. The psychologist shall consult with others and take appropriate action if a court order appears to violate confidentiality rights under state or federal law, rules or regulations.

**H. Reporting of abuse of children and vulnerable adults.** The psychologist shall be familiar with the Child Abuse and Neglect Act (CANNA), Sections 32A-4-1 thru 32A-4-34 NMSA 1978, Resident Abuse and Neglect Act (RANA), Sections 30-47-1 thru 30-47-10 NMSA 1978, and any other relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with the mandatory requirements of such laws.

**I. Discussion of client information among professionals.** When rendering professional services as part of a team or when interacting with other appropriate professionals concerning the welfare of the client, the psychologist may share confidential information about the client provided the psychologist ensures that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.

**J. Disguising confidential information.** When a case report or other confidential information is used as the basis of teaching, research, or other published reports, the

psychologist shall exercise reasonable care to ensure that the case report or information is appropriately disguised to prevent client identification.

**K. Observation and electronic recording.** The psychologist shall ensure that diagnostic interviews or therapeutic sessions with a patient are observed or electronically recorded only with the informed written consent of the patient or his legal guardian, if any. The patient may withdraw consent at any time verbally or in writing unless otherwise required by law.

**L. Confidentiality after termination of a professional relationship.** The psychologist shall continue to treat information regarding a patient as confidential after the professional relationship between the psychologist and the patient has ceased.

**M. Confidentiality of electronic transmission.** The psychologist shall ensure that confidential information is not transmitted in any way that compromises confidentiality.

[16.22.2.12 NMAC - Rp, 16.22.2.12 NMAC, 11/15/2006]

#### **16.22.2.13 DISCLOSURE AND MISREPRESENTATION OF SERVICES:**

**A. Definition of public statements.** Public statements include but are not limited to paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curriculum vitae, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations.

**B. Display of license.** The psychologist shall display his current New Mexico license to practice psychology, on the premises of his primary professional office.

**C. Misrepresentation of qualifications.** The psychologist shall not misrepresent directly or by implication his professional qualifications such as type of licensure, education, experience, and areas of competence.

**D. Misrepresentation of affiliations.** The psychologist shall neither misrepresent nor permit the misrepresentation of his professional qualifications, affiliations, or purposes, or those of the institutions, organizations, products, and/or services with which he is associated.

**E. False or misleading information regarding professional services.** The psychologist shall not include false or misleading information in public statements concerning professional services offered.

**(1)** When announcing or advertising professional services and/or describing his professional qualifications, the psychologist may list the following:

**(a)** degrees obtained (Ph.D. or Psy.D.) and the area in which the degree is obtained (clinical, counseling, or school);

- (b)** the institutions from which the degrees were obtained;
- (c)** date, type, and level of certification or licensure;
- (d)** diploma status; membership status in professional organizations;
- (e)** address; telephone number; office hours;
- (f)** a brief listing of the type of psychological services offered;
- (g)** an appropriate presentation of fee information;
- (h)** foreign languages spoken; and
- (i)** policy with regard to third-party payments.

**(2)** Additional relevant or important consumer information may be included if not prohibited by other sections of the code. The psychologist must disclose and list whether his New Mexico license is regular, provisional, temporary, emergency or inactive, and include its expiration date.

**(3)** When announcing or advertising the availability of psychological products, publications, or services, the psychologist shall not display any affiliation with an organization in a manner that falsely implies the sponsorship or certification of that organization. In particular, the psychologist shall not offer professional organization or fellowship status in a way that implies specialized professional competence or qualifications. Public statements shall not contain:

**(a)** any statement likely to mislead or deceive because it makes only a partial disclosure of relevant facts;

**(b)** a statement of a patient's laudatory statements about the psychologist or his services or products;

**(c)** a statement intended or likely to create false or unjustified expectations of favorable results;

**(d)** a statement implying unusual, unique, or one-of-a-kind abilities;

**(e)** a statement intended or likely to appeal to a prospective patient's fears, anxieties; or emotions concerning the possible consequences of the prospective client's failure to obtain the offered services;

**(f)** a statement concerning the comparative desirability of offered service;

**(g)** a statement of direct solicitation of individual clients.

**F. Promotion of psychological services and products.** Psychologists associated with the development or promotion of psychological devices, books, or other products offered for sale must ensure that announcements and advertisements are presented in an accurate and truthful manner.

(1) The psychologist shall offer his/ her services, products, and publications in an accurate and truthful manner, avoiding statements or claims likely to deceive or mislead such as misrepresentation through sensationalism, exaggeration, or superficiality. The psychologist shall be guided by the primary obligation to aid the public in forming their own informed judgments, opinions, and choices.

(2) The psychologist shall make efforts to ensure that statements in catalogues, workshops, and seminar outlines are not false, misleading, or inaccurate. Announcements, brochures, or advertisements describing workshops, seminars, or other programs shall accurately represent the intended audience, eligibility requirements, educational objectives, and nature of the material to be covered, as well as the education, training, and experience of the persons presenting the programs. The psychologist shall make clear the nature of the services, costs, and other obligations to be accepted by research participants whenever fees or clinical or other professional services are offered as inducement.

**G. Misrepresentation of services or products.** The psychologist shall not associate with or permit his name to be used in connection with any services or products in such a way as to misrepresent:

- (1) the services or products;
- (2) the degree of his responsibility for the services or products; or
- (3) the nature of his association with the services or products.

**H. In-person solicitation.** The psychologist shall not engage, directly or through agents, uninvited, in-person solicitation of business from actual or potential psychotherapy patients, or other persons who, because of their particular circumstances, are vulnerable to undue influence.

[16.22.2.13 NMAC - Rp, 16.22.2.13 NMAC, 11/15/2006]

#### **16.22.2.14 FEES AND STATEMENTS:**

**A. Disclosure of charges for services.** The psychologist shall provide complete and accurate information about the charge of professional services to the client or patient, a prospective client or patient, or third-party payor.

**B. Accuracy in reports to payors and funding sources.** In reports to payors for services or sources of research funding, the psychologist shall accurately state the

nature of the research or services provided, the fees or charges, and, where applicable, the identity of the provider, the findings, and the diagnosis.

**C. Referrals and fees.** When a psychologist pays, receives payment from, or divides fees with another professional other than in an employer-employee relationship, the payment to each shall be based on the services (clinical, consultative, administrative, or other) provided and shall not be based on the referral itself. Referral fees are prohibited.

**D. Fees and financial arrangements.** As early as is feasible in a professional or scientific relationship, the psychologist and the patient, or client, should reach an agreement specifying the compensation and the billing arrangements.

(1) The psychologist shall not misrepresent his fees.

(2) If limitations to services can be anticipated because of the client or patient's finances, the psychologist should discuss such anticipated limitations with the patient or client.

(3) If the patient or client does not pay for services as agreed, and if the psychologist wishes to use collection agencies or legal measures to collect the fees, the psychologist shall first inform the patient or client that such measures will be taken and provide an opportunity for the patient or client to make prompt payment.

(4) Prior to conducting a custody evaluation, the psychologist shall clarify to the parties involved the charges, or estimation of costs, and the manner in which fees will be collected. A specific written fee agreement shall be signed by all parties.

[16.22.2.14 NMAC - Rp, 16.22.2.14 NMAC, 11/15/2006; A, 7/1/2018]

#### **16.22.2.15 ASSESSMENT PROCEDURES:**

**A. Confidential information.** The psychologist shall treat the results of a psychological assessment as confidential information subject to the same rules and regulations as other patient information.

**B. Use of assessment in general and with special populations.** Psychologists who administer, score, interpret, or use assessment techniques shall be familiar with reliability, validity, standardization, comparative, and outcome studies of the techniques they use and with the proper application and use of those techniques.

(1) The psychologist shall recognize limits of the confidence with which diagnoses, judgments, or predictions can be made about individuals.

(2) The psychologist shall identify situations in which particular assessment techniques or norms may not be applicable or may require adjustment in administration

or interpretation because of factors such as an individual's gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

**C. Communication of results.** The psychologist shall communicate results of the assessment to the client or patient, parents, legal guardians, or other agents of the client or patient in as clear and understandable a manner as reasonably possible and with respect for the client or patient.

**D. Reservations concerning results.** The psychologist shall include in the assessment report the results of any limitations of the assessment procedures as may apply to the reliability or validity of the assessment techniques or the interpretation of results.

(1) Issues of individual differences, such as language, ethnicity, culture, socioeconomic, religion, disability, and lifestyle differences, should be carefully considered and addressed whenever relevant.

(2) Any limitations of results derived from the factors in Paragraph (1) of Subsection D of 16.22.2.15 NMAC should be clearly stated in the psychological report. The psychological report of an individual on whom psychological tests are not normed or adequately normed should clearly indicate the limitations of the assessment and the need for caution in interpreting test results.

**E. Information for professional users.**

(1) The psychologist offering an assessment procedure or automated interpretation service to non-psychologist professionals shall accompany this offering with information that fully describes:

(a) the development of the assessment procedure or service;

(b) evidence of validity and reliability; and

(c) characteristics of the normative population.

(2) The psychologist shall explicitly state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The psychologist shall ensure that advertisements for the assessment procedure or interpretive service are factual and accurately descriptive.

**F. Assessing quality of parenting in child custody evaluations.** There may be situations in which one parent is unavailable for direct evaluation due to geographic distance, severe pathology, or refusal to participate. While the psychologist can assess the quality of parenting of the available parent, no comparison can be made in terms of

which parent is better; nor can conclusions be derived about the fitness or level of psychological functioning of the unavailable parent.

**G. Collateral contacts in child custody evaluations.** The identification, extent, and purpose of collateral contacts made in the course of an evaluation shall be clearly explained early, even within the referral process. Collateral contacts include people who represent a major presence in the children and parents' environment.

**H. Test settings.** Clients or patients should take standardized tests in a setting that will preserve the integrity of the tests and the information. When possible, all assessment procedures and techniques should be administered in a clinical setting.

**I. Single-test assessments.** A single-test assessment should not be the sole basis for major opinions or decisions.

**J. Outdated tests.** The psychologist shall not base assessments, decisions, or recommendations on outdated tests or test data as defined in Paragraph (49) of Subsection A of 16.22.1.7 NMAC.

[16.22.2.15 NMAC - Rp, 16.22.2.15 NMAC, 11/15/2006; A, 7/1/2018]

#### **16.22.2.16 TEST SECURITY:**

**A. Limits of reproduction and description of test materials.** The psychologist shall not reproduce or describe in public or in publications subject to general distribution any psychological tests or other assessment devices, the value of which depends in whole or in part on the naiveté of the subject, in ways that might invalidate the techniques. The psychologist shall limit access to such tests or devices to persons with professional interests who will safeguard their use.

**B. Safeguarding test materials.** The psychologist shall safeguard testing materials in accordance with the necessity to maintain test security. The psychologist should take reasonable measures to protect test manuals, testing stimuli, and raw test data from disclosure to those who are not qualified to properly appraise those materials. Appropriate measures to safeguard test materials include educating non-psychologists about the professional duties of psychologists and the importance of safeguarding the tests, and asking that the materials be released only to qualified persons.

[16.22.2.16 NMAC - Rp, 16.22.2.16 NMAC, 11/15/2006; A, 7/1/2018]

#### **16.22.2.17 VIOLATIONS OF LAW:**

**A.** The psychologist shall not use fraud, misrepresentation, or deception in applying for or obtaining a psychologist license.

**B.** The psychologist shall not use fraud in:

- (1) assisting another to obtain a psychologist license;
- (2) billing clients or third-party payors;
- (3) providing psychological service;
- (4) reporting the results of psychological evaluations or services; or
- (5) conducting any other activity related to the practice of psychology.

[16.22.2.17 NMAC - Rp, 16.22.2.17 NMAC, 11/15/2006]

#### **16.22.2.18 AIDING ILLEGAL PRACTICE:**

**A. Aiding unauthorized practice.** The psychologist shall not aid or abet another person in misrepresenting his professional credentials or illegally engaging in the practice of psychology.

**B. Delegating professional responsibility.** The psychologist shall not delegate responsibilities:

- (1) to persons who are not appropriately licensed, credentialed, or otherwise qualified to provide assessment, diagnosis, or treatment; or
- (2) to persons who are not psychology predoctoral or postdoctoral trainees.

**C. Providing supervision.** The psychologist shall exercise appropriate supervision over supervisees, as set forth in the board regulations.

[16.22.2.18 NMAC - Rp, 16.22.2.18 NMAC, 11/15/2006]

#### **16.22.2.19 RESOLVING ETHICAL ISSUES:**

**A. Improper complaints.** The psychologist shall not file or encourage the filing of ethics complaints to the board that are frivolous.

**B. Familiarity with this code.** The psychologist has an obligation to be familiar with the code, other applicable ethics codes, and their application to psychologists' work. Lack of awareness or misunderstanding of the code is not a defense to a charge of unethical conduct.

**C. Confronting ethical issues.** When a psychologist is uncertain whether a particular situation or course of action would violate this code, the psychologist shall consult with other psychologists knowledgeable about ethical issues, with state or national psychology ethics committees, or with other appropriate authorities in order to

choose a proper course of action. Such consultation is not a defense to a charge of unethical conduct.

**D. Mandatory reporting.** If a psychologist has reason to believe that another psychologist is engaged in a prohibited dual relationship with a client or patient, exhibits habitual or excessive use of drugs and alcohol that adversely affect professional practice or commits fraud or gross incompetence, the psychologist must report the suspected violation to the board. The psychologist shall not violate patient confidentiality in order to make a report to the board regarding another psychologist's behavior. The psychologist may disclose such information without the patient's consent in urgent situations as described in Subsection C of 16.22.2.12 NMAC.

**E. Cooperating with complaint and ethics committees.** The psychologist shall cooperate in investigations, proceedings, and requirements of this code, the ethical principles of psychologists and code of conduct of the American psychologist association, or any affiliated state psychological association to which he belongs. In doing so, the psychologist shall make reasonable efforts to resolve any issues of confidentiality. Failure to cooperate is a separate violation of the code.

[16.22.2.19 NMAC - Rp, 16.22.2.19 NMAC, 11/15/2006; A, 1/8/2023]

#### **16.22.2.20 DISQUALIFYING FELONY CRIMINAL CONVICTIONS:**

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

(1) homicide, voluntary manslaughter, involuntary manslaughter, vehicular homicide;

(2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances, possession of controlled substances;

(3) human trafficking, kidnapping, false imprisonment, assault or battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses, failure to register or report as a sex offender;

(5) crimes involving abuse, neglect; or exploitation of an incapacitated adult, abuse or neglect of a care facility resident;

(6) crimes involving child abuse or neglect, child endangerment, child solicitation; sexual exploitation of children, delivering of drug paraphernalia to minors, selling or giving alcohol to minors, contributing to the delinquency of a minor;

**(7)** crimes involving robbery, larceny, extortion, burglary, unlawful or dangerous use of explosives, arson, making a bomb scare, tampering with evidence or receiving stolen property.

**(8)** financial crimes involving fraud, forgery, embezzlement, or credit card fraud. Fraud involving governmental or private insurance;

**(9)** aggravated driving while under the influence of intoxicating liquor or drugs, 2nd or subsequent DWI offense;

**(10)** crimes involving perjury, fraudulent misrepresentation, deceit or collusion.

**(a)** This includes a felony conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.

**(b)** The term "felony conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon, or an appeal of the conviction has been sought.

**B.** The board shall not consider the fact of a felony criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A. of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a felony criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Professional Psychologist Act or the rules of the board, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying felony criminal convictions listed in subsection A of this rule.

**E.** In connection with an application for licensure for licensure renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal record of any of the following;

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

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

**(3)** a juvenile adjudication; or

**(4)** a felony conviction for any crime other than the disqualifying criminal convictions listed in subsection a of this rule

**F.** If the board defers a decision regarding a specific applicant based on a disqualifying felony criminal conviction, that applicant is entitled to notice of the board's decision and an opportunity for a hearing.

[16.22.2.20 NMAC – N, 02/10/2022]

### **PART 3: NON-LICENSED PSYCHOLOGIST/APPLICANT WITH AN INDEPENDENT MENTAL HEALTH LICENSE**

#### **16.22.3.1 ISSUING AGENCY:**

Regulation and Licensing Department, New Mexico State Board of Psychologist Examiners.

[16.22.3.1 NMAC - Rp, 16.22.3.1 NMAC, 11/15/2006]

#### **16.22.3.2 SCOPE:**

This part applies to the board, licensees, doctoral students in psychology, psychology interns, unlicensed individuals acquiring post-doctoral experience under supervision, applicants for licensure, non-licensed employees or agents of licensees, and the general public.

[16.22.3.2 NMAC - Rp, 16.22.3.2 NMAC, 11/15/2006; A, 7/1/2018]

#### **16.22.3.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist act, Section 61-9-6, 61-9-8, 61-9-16 NMSA 1978. Part 3 is authorized by Section 10-15-1.C NMSA 1978 (1993 Repl.)

[16.22.3.3 NMAC - Rp, 16.22.3.3 NMAC, 11/15/2006]

#### **16.22.3.4 DURATION:**

Permanent.

[16.22.3.4 NMAC - Rp, 16.22.3.4 NMAC, 11/15/2006]

#### **16.22.3.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of a section.

[16.22.3.5 NMAC - Rp, 16.22.3.5 NMAC, 11/15/2006]

#### **16.22.3.6 OBJECTIVE:**

The objectives of this part are to:

**A.** set forth the limitations and conditions on the practice of psychology that apply to students while supervised in a course of study at a school or college, non-licensed persons who practice under supervision in order to satisfy the requirements for licensure, and non-licensed staff or employees of licensees; and

**B.** establish the extent that licensees who supervise or sponsor non-licensed persons are responsible for the conduct of the non-licensed person.

[16.22.3.6 NMAC - Rp, 16.22.3.6 NMAC, 11/15/2006; A, 7/1/2018]

#### **16.22.3.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

#### **16.22.3.8 NON-LICENSED PERSONS:**

**A. Limits of practice.** Unless licensed by the board or exempted from licensure as provided in the act, no non-licensed person shall render, perform, or offer to render or perform psychological services except as provided under this part. The provisions of this part shall be strictly construed to ensure that the public is adequately protected from the practice of psychology by unqualified persons.

**B. Required consent by patient or client.** Except for normal office management, administrative, and secretarial support roles and functions, the patient or client shall be fully informed of the tasks and assignments performed by non-licensed persons. The supervisor shall obtain informed consent as appropriate when non-licensed persons will have access to confidential patient or client information or if other non-licensed persons are or will be performing or rendering psychological services under supervision.

#### **C. Non-licensed employees or staff.**

**(1)** A licensed psychologist may employ office staff or agents to perform nonprofessional office management, administrative, and secretarial duties and functions. The licensee shall make every effort to ensure that the office staff is trained in a protect patient or client confidential information. The psychologist shall be responsible for any breach of confidentiality by his employees or staff.

**(2)** A licensed psychologist may employ qualified non-licensed persons to administer and score psychological tests or gather historical data from patients or clients. The employee shall work under the psychologist's direct supervision. The psychologist is ultimately responsible for the accuracy and competent administration, scoring and interpretation of tests and data.

[16.22.3.8 NMAC - Rp, 16.22.3.8 NMAC, 11/15/2006]

### **16.22.3.9 SUPERVISION OF NON LICENSED PERSONS:**

**A. Responsibility of supervisors and violations.** The supervisor shall not assist a non-licensed person in the performance of any activity that constitutes the practice of psychology except as allowed by this part. A supervisor shall have functional authority over and professional responsibility for the work of the non-licensed person. A supervisor who assists a non-licensed person in the practice of psychology in violation of this part, by acts of omission or commission, or who provides inadequate supervision over a non-licensed person is subject to disciplinary action. The grounds for disciplinary action may include, without limitation, aiding and abetting the practice of psychology by a non-licensed person; incompetent practice of psychology; willful or negligent violation of the act; allowing the supervisor's name or license to be used in connection with a non-licensed person who performs psychological services outside of the area of the non-licensed person's training, experience, or competency; or abandonment of the patient or client.

**B. Qualifications of supervisors.** The supervisor shall be a licensed psychologist. The supervisor shall have training or experience in the specific area of practice being supervised. The supervisor may assign non-licensed persons to other qualified specialists under the supervisor's authority for specific skill training. The other specialist shall have a clearly established practice and shall possess demonstrable teaching skills. The supervisor shall limit the number of non-licensed persons under supervision, taking into account the requirements of the supervisor's principal work or practice and clinical responsibilities, to ensure that the supervision provided and the practice are consistent with professional standards. The supervisor shall not supervise an applicant who is a member of the supervisor's immediate or extended family, who has a financial interest in the supervisor's business or practice, or with whom the supervisor has a dual relationship.

**C. Duties of the supervisor.** The supervisor has the following duties to his patients or clients, the non-licensed person, and the public.

**(1)** The supervisor has ultimate responsibility to the patient or client for all professional psychological services rendered, whether rendered by the supervisor or the non-licensed person.

**(a)** The supervisor shall ensure that the patient or client knows the supervisory status of the non-licensed person and that consent is obtained.

**(b)** The supervisor shall ensure that the patient or client understands the possibility that a third-party payor may not reimburse for services rendered by the non-licensed person.

**(c)** The supervisor shall ensure that the patient or client is aware of the non-licensed person's qualifications and functions.

**(d)** The supervisor shall be available to patients or clients, shall be available to the non-licensed person for professional guidance and direction and intervention as needed, and shall be responsible for proper record-keeping and proper documentation in the patient's or client's case file, progress notes, or medical record.

**(2)** Unless the applicant holds an independent mental health license issued by the New Mexico counseling and therapy practice board or is an independent social worker licensed by the New Mexico board of social work examiners, the supervisor shall be responsible for billing for services and receipt or collection of payment. Bills, statements, invoices, or requests for payment in any form shall accurately and clearly identify the work performed and by whom.

**(3)** The supervisor maintains ultimate responsibility for and has an ongoing duty to actively supervise the non-licensed person's work performance and conduct to ensure adherence to the act and to board regulations.

**(4)** The supervisor shall ensure that a non-licensed person for whose work the supervisor is responsible does not engage in any activity, which, if engaged in by the supervisor, would constitute a violation of the act or the board regulations. The supervisor shall ensure, for example, that the non-licensed person:

**(a)** does not engage in a dual relationship;

**(b)** preserves the confidentiality of patient or client information;

**(c)** does not misrepresent his status, credentials, or qualifications to the patient or client or to others;

**(d)** does not mislead others or misrepresent his status to collect fees for services; and

**(e)** does not abuse drugs, substances, or alcohol to an extent or manner that endangers himself or another or impairs his ability to perform the duties required.

**(5)** The supervisor shall ensure that the non-licensed person works within his area of training, education, and competence.

**(6)** The supervisor shall adequately monitor the work of the non-licensed person to the extent necessary to protect the welfare of the patient or client. The

supervisor shall ensure that the patient or client is properly evaluated and treated. The supervisor shall assess the skills and functioning of the non-licensed person on an ongoing basis to ensure that the non-licensed person is acting within his area of training, education, and competence. The supervisor shall prepare and document the plan of supervision, if applicable.

**D. Doctoral students under supervision.** Students enrolled in a graduate-level clinical counseling or school psychology training program who are rendering services under supervision and who have not applied for licensure are exempt from the act as specified under Section 61-9-16 NMSA 1978. Students shall not directly charge a patient or third-party payor a fee for the services performed. The supervisor shall accept supervisory responsibility only over students currently enrolled in a graduate-level program, who are under the auspices of a bona fide practicum or externship program with a designated faculty advisor who shall be responsible for coordinating students' services and training. Students shall not render any psychological services that are not supervised by a qualified supervisor as defined in this part.

**E. Registered psychologist interns and post-doctoral psychology trainees.**

(1) Psychology interns and post-doctoral psychology trainees doing their training in New Mexico and who are enrolled in an approved supervision program as defined in Subsection F of 16.22.1.7 NMAC must register with the board.

(2) Registered psychology interns and post-doctoral psychology trainees working under approved supervision are allowed to practice psychology as specified under Section 61-9-16 NMSA 1978.

(3) Individuals who are enrolled in a formal internship or program or a postdoctoral supervised experience that has been accredited by a nationally recognized accreditation body will be registered based on documentation, in a manner satisfactory to the board, of enrollment in that approved training program.

(4) Psychology interns and post-doctoral trainees doing their training in New Mexico must apply for and receive formal approval of their training program unless they are in a formal internship program as described in Paragraph (3) of Subsection E of 16.22.3.9 NMAC and must register with the board.

(5) Interns and post-doctoral trainees shall not directly charge a patient or third-party payor a fee for the services performed.

(6) Registration as a psychology intern or post-doctoral trainee shall be for the term of the formal internship or traineeship not to exceed two years total or as approved by the board.

[16.22.3.9 NMAC - Rp, 16.22.3.8 NMAC, 11/15/2006; A, 7/1/2018]

**16.22.3.10 [RESERVED]**

[16.22.3.10 NMAC - Rp, 16.22.3.8 NMAC, 11/15/06; Repealed 7/1/2018]

**PART 4: PSYCHOLOGISTS: EDUCATION REQUIREMENTS**

**16.22.4.1 ISSUING AGENCY:**

Regulation and Licensing Department, New Mexico State Board of Psychologist Examiners.

[16.22.4.1 NMAC - Rp, 16.22.4.1 NMAC, 11/15/2006]

**16.22.4.2 SCOPE:**

The provisions of Part 4 apply to all applicants for licensure except applicants applying for reciprocity (16.22.5.10 and 16.22.5.11 NMAC) and foreign trained individuals (16.22.5.15 NMAC).

[16.22.4.2 NMAC - Rp, 16.22.4.2 NMAC, 11/15/2006; A, 7/1/2018]

**16.22.4.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, Sections 61-9-4.1, 61-9-6, 61-9-10 61-9-11, 61-9-11.1 NMSA 1978.

[16.22.4.3 NMAC - Rp, 16.22.4.3 NMAC, 11/15/2006]

**16.22.4.4 DURATION:**

Permanent.

[16.22.4.4 NMAC - Rp, 16.22.4.4 NMAC, 11/15/2006]

**16.22.4.5 EFFECTIVE DATE:**

November 15, 2006 unless a later date is cited at the end of a section.

[16.22.4.5 NMAC - Rp, 16.22.4.5 NMAC, 11/15/2006]

**16.22.4.6 OBJECTIVE:**

This part establishes the minimum educational requirements for applicants applying for licensure.

[16.22.4.6 NMAC - Rp, 16.22.4.6 NMAC, 11/15/2006]

#### **16.22.4.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

#### **16.22.4.8 EDUCATIONAL REQUIREMENTS:**

**A.** The board shall issue a license as a psychologist to an applicant, otherwise qualified, who furnishes evidence satisfactory to the board that the applicant is a graduate of a doctoral program that is designated as a doctoral program in psychology by a nationally recognized designation system or that is accredited by a nationally recognized accreditation body and hold a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology.

**B.** It is the responsibility of the prospective applicant to provide evidence, at the time of application that the program from which he or she graduated meets the requirements of the Professional Psychology Act.

[16.22.4.8 NMAC - Rp, 16.22.4.8 NMAC, 11/15/2006; A, 3/21/2009; A, 9/16/2010; A, 7/1/2018]

### **PART 5: PSYCHOLOGISTS: APPLICATION REQUIREMENTS; PROCEDURES**

#### **16.22.5.1 ISSUING AGENCY:**

Regulation and Licensing Department, New Mexico State Board of Psychologist Examiners.

[16.22.5.1 NMAC - Rp, 16.22.5.1 NMAC, 11/15/2006]

#### **16.22.5.2 SCOPE:**

The provisions of Part 5 apply to all applicants for licensure.

[16.22.5.2 NMAC - Rp, 16.22.5.2 NMAC, 11/15/2006]

#### **16.22.5.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist act, Section NMSA 61-9-4.1, 61-9-6, 61-9-10 61-9-11, 61-9-11.1.

[16.22.5.3 NMAC - Rp, 16.22.5.3 NMAC, 11/15/2006]

#### **16.22.5.4 DURATION:**

Permanent.

[16.22.5.4 NMAC - Rp, 16.22.5.4 NMAC, 11/15/2006]

**16.22.5.5 EFFECTIVE DATE:**

November 15, 2006 unless a later date is cited at the end of a section.

[16.22.5.5 NMAC - Rp, 16.22.5.5 NMAC, 11/15/2006]

**16.22.5.6 OBJECTIVE:**

This part establishes procedures for applying for licensure as a psychologist and demonstrating to the board one's qualifications for licensure.

[16.22.5.6 NMAC - Rp, 16.22.5.6 NMAC, 11/15/2006; A, 7/1/2018]

**16.22.5.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.22.1.7 NMAC]

**16.22.5.8 APPLICATION; EXAMINATION; PROCESS:**

**A.** A non-refundable application fee set by the board is due at the time of each initial application. Additional fees may be charged and will be collected by the board, as necessary, for the administration of examinations.

**B.** The applicant may be considered for licensure if the applicant fulfills conditions of 16.22.4 NMAC, 16.22.6 NMAC, and 16.22.7 NMAC. The board will develop, approve, maintain and post on its website a list of American and Canadian jurisdictions whose requirements of education, supervised experience and EPPP passing score do not meet those of 16.22.4 NMAC, 16.22.6 NMAC and Paragraph (1) of Subsection A of 16.22.7.8 NMAC. The board shall include a statement of the specific licensure requirement not met for each jurisdiction on the list. 16.22.14 NMAC. The only exceptions to these requirements apply to applicants who are graduates from programs outside the United States and Canada as defined in 16.22.5.15 NMAC.

**C.** Nationwide criminal history screening: All applicants for initial licensure in any category in New Mexico are subject to a national criminal history screening at their expense. All applicants must register with the New Mexico Department of public safety's fingerprinting vendor, pay the fingerprint processing fee and submit fingerprints in accordance with the vendor's established process. Background check results will be sent directly to the board office electronically.

(1) Applications for licensure will not be approved without submission of fingerprints criminal background screening and fee.

(2) Applications will be processed pending the completion of the nationwide criminal background screening.

(3) If the criminal background screening reveals a disqualifying criminal conviction, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

(4) Applications not completed and approved within 24 months from the date application is received in the board office shall become null and void and the applicant shall submit a new application.

[16.22.5.8 NMAC - Rp, 16.22.5.9 NMAC, 11/15/06; A, 9/16/10; A, 4/11/2012; A, 7/1/2018; A, 1/8/2023]

#### **16.22.5.9 APPLICATION FOR LICENSURE:**

**A.** All applicants shall submit the following to the satisfaction of the board or an agency designated by the board:

(1) a completed and signed application;

(2) the application fee as required by the board;

(3) verification of educational requirements as described in 16.22.4 NMAC by official transcripts directly from the institution's office of the registrar;

(4) verification of pre-doctoral and post-doctoral supervision as defined in 16.22.6 NMAC.

(5) three letters of reference; dated within the last two years and two of the letters must be from a licensed practicing psychologist familiar with their clinical work, and can attest to their competency;

(6) completion of application to complete examination requirements; either

(a) for applicants licensed in another jurisdiction, verification of a passing score on the Examination for Professional Practice in Psychology (EPPP) as defined in 16.22.7 NMAC; or

(b) for applicants who have not passed the EPPP, a request to be permitted to take the EPPP.

(7) for individuals holding a certificate of professional qualification or national register health service provider in psychology credential, a verified or certified copy of the applicant's CPQ or national register HSPP credential as defined in 16.22.5.11 NMAC.

(8) for applicants who are licensed in another jurisdiction, verification of license issued by the appropriate examining board. The applicant shall have no pending disciplinary actions, no formal disciplinary actions issued against the license in the last two years and no past suspensions or revocations.

B. Applicants who have not taken and passed the EPPP must complete all requirements of Paragraphs (1) through (6) of Subsection A of 16.22.5.10 NMAC at least 60 days prior to taking the EPPP.

C. Complete applications will be reviewed by the board or its designee and a notification of approval, denial or need for additional information will be issued to the applicant.

D. The applicant shall take and pass a jurisprudence examination as defined in 16.22.7 NMAC.

E. During the first year of licensure an applicant shall furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

F. When the applicant fulfills all the requirements of this section, a license will be issued.

[16.22.5.9 NMAC - Rp, 16.22.5.10 NMAC, 11/15/2006; A, 3/21/2009; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018; A, 02/10/2022]

**16.22.5.10 APPLICANTS HOLDING A VALID LICENSE IN ANOTHER STATE FOR TWO YEARS OR MORE SEEKING LICENSURE UNDER SECTION 61-9-10 NMSA 1978:**

A. An applicant seeking licensure under this section may obtain a license pursuant to Section 61-9-10 of the act if the applicant fulfills the following conditions.

(1) At the time of application, the applicant shall possess a current license to practice psychology in another state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canadian Province whose requirements of education, supervised experience and EPPP passing score meet or exceed those of 16.22.4 NMAC, 16.22.6 NMAC and Paragraph (1) of Subsection A of 16.22.7.8 NMAC.

(2) The applicant shall possess a doctoral degree in psychology or a degree that is substantially equivalent and is acceptable by the board.

(3) The applicant shall have no pending disciplinary actions, no formal disciplinary actions issued against the license in the last two years and no past suspensions or revocations.

(4) The applicant shall have been licensed for two years.

(5) The applicant shall have obtained a passing score on the EPPP as defined in 16.22.7 NMAC.

**B.** Application under this board regulation shall be made on a form approved by the board. The applicant shall apply as specified in 16.22.5.9 NMAC.

[16.22.5.10 NMAC - Rp, 16.22.5.11 NMAC, 11/15/2006, A, 3/21/2009; A, 4/11/2012; A, 2/22/2013; A, 7/1/2018; A, 02/10/2022]

**16.22.5.11 APPLICANTS HOLDING AN ASPPB CERTIFICATION OF PROFESSIONAL QUALIFICATION, A NATIONAL REGISTER HEALTH SERVICE PROVIDER IN PSYCHOLOGY CREDENTIAL OR AMERICAN BOARD OF PROFESSIONAL PSYCHOLOGY:**

**A. Eligibility.** A licensee in good standing for two years in another jurisdiction is eligible for licensure pursuant to Section 61-9-10 NMSA 1978, of the act if the applicant holds current certification of professional qualification (CPQ), holds a current national register (HSPP) credential at the doctoral level or holds a current American board of professional psychology (ABPP) credential at the doctoral level pursuant to Subsection A of 16.22.4.8 NMAC. In addition, the applicant shall have passed the EPPP with a minimum score required for licensure as set forth in Paragraph (6) of Subsection A of Section 61-9-11 NMSA 1978, of the act, have no disciplinary actions within two years immediately preceding the date of application, and shall have no prior license suspensions or revocations in any jurisdiction in which the applicant is or has been licensed.

**B. Application procedure.** The applicant shall apply as specified in 16.22.5.9 NMAC.

[16.22.5.11 NMAC - Rp, 16.22.5.13 NMAC, 11/15/06; A, 3/21/09; A, 4/11/12; A, 7/1/2018; A, 02/10/2022]

**16.22.5.12 [RESERVED]**

[16.22.5.12 NMAC - Rp, 16.22.5.12 NMAC, 11/15/06; A, 3/21/09; A, 9/16/10; A, 4/11/12; Repealed 7/1/2018]

**16.22.5.13 APPLICANTS SEEKING A TEMPORARY LICENSE:**

**A.** A temporary six month license may be issued to a psychologist who meets the following conditions:

(1) the applicant is licensed as a psychologist in another jurisdiction and is in good standing;

(2) the applicant completes a form approved by the board that includes required information and states the reason for seeking a temporary license, including court-ordered evaluation or providing services during a federally declared natural disaster;

(3) the board will set the appropriate fees for obtaining a temporary license;

(4) the temporary license will expire in six months; and

(5) the board shall expedite the licensure process for obtaining a temporary license under this section but may not waive the specific licensing requirements.

**B.** Nothing in this section should be construed to prevent an applicant with a temporary license from applying for an unrestricted license. The applicant may apply for an unrestricted license by completing a form approved by the board, remitting appropriate fees, and taking and passing the online jurisprudence examination.

[16.22.5.13 NMAC - N, 11/15/2006; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018; A, 02/10/2022]

#### **16.22.5.14 [RESERVED]**

[16.22.5.14 NMAC - N, 11/15/06; A, 3/21/09; Repealed 7/1/2018]

#### **16.22.5.15 APPLICANTS WHO ARE GRADUATES FROM PROGRAMS OUTSIDE THE UNITED STATES AND CANADA:**

**A.** Graduates of programs outside the United States and Canada shall be evaluated according to the following criteria for New Mexico licensure:

(1) applicants for licensure whose applications are based on graduation from universities outside the United States and Canada shall provide the board with such documents and evidence to establish that their formal education is a doctoral degree and is equivalent to a doctoral program that is designated as a doctoral program in psychology by a nationally recognized designation system or that is accredited by a nationally recognized accreditation body;

(2) equivalency will be reviewed by a board approved agency specializing in the credentialing of foreign graduates.

**B.** After evaluation and acceptance by the board, the applicant shall take and pass the EPPP and an online jurisprudence examination to obtain licensure.

[16.22.5.15 NMAC - N, 11/15/2006; A, 9/16/2010; A, 2/22/2013; A, 7/1/2018]

## **PART 6: PSYCHOLOGISTS: PREDOCTORAL AND POSTDOCTORAL SUPERVISED EXPERIENCE**

### **16.22.6.1 ISSUING AGENCY:**

Regulation and Licensing Department, New Mexico State Board of Psychologist Examiners

[16.22.6.1 NMAC - Rp, 16.22.6.1 NMAC, 11/15/2006]

### **16.22.6.2 SCOPE:**

The provisions of Part 6 apply to all applicants for licensure.

[16.22.6.2 NMAC - Rp, 16.22.6.2 NMAC, 11/15/2006]

### **16.22.6.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, Sections 61-9-4.1, 61-9-6, 61-9-10 61-9-11, 61-9-11.1 NMSA 1978.

[16.22.6.3 NMAC - Rp, 16.22.6.3 NMAC, 11/15/2006]

### **16.22.6.4 DURATION:**

Permanent.

[16.22.6.4 NMAC - Rp, 16.22.6.4 NMAC, 11/15/2006]

### **16.22.6.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of a section.

[16.22.6.5 NMAC - Rp, 16.22.6.5 NMAC, 11/15/2006]

### **16.22.6.6 OBJECTIVE:**

This part establishes supervisory requirements for applicants applying for licensure and establishes application procedures.

[16.22.6.6 NMAC - Rp, 16.22.6.6 NMAC, 11/15/2006]

#### **16.22.6.7 DEFINITIONS:**

**[RESERVED]**

[16.22.6.7 NMAC - N, 04/11/12; Repealed, 7/1/2018]

#### **16.22.6.8 PRACTICUM, DOCTORAL INTERNSHIP, AND POSTDOCTORAL SUPERVISED EXPERIENCE:**

##### **A. Supervised experience leading toward licensure:**

(1) two years (3,000 hours) of supervised experience are required for licensure;

(a) up to one year (1500 hours) of the supervised experience may be obtained in practicum hours overseen by the doctoral training program and consistent with the guidelines on practicum experience for licensure promulgated by the association of state and provincial psychology board; and

(b) up to one year (1500 hours) of the supervised experience may be obtained in a doctoral internship approved by the American psychological association; or

(c) up to one-half year (750 hours) of the supervised experience may be obtained in a doctoral internship not approved by the American psychological association; and

(d) after totaling approved doctoral practicum hours and allowed hours for doctoral internship, the remainder of the (3000 hours) supervised experience must be obtained in supervised postdoctoral psychological work.

(2) doctoral and postdoctoral experience from all supervisors shall be documented on forms provided by the board.

**B. Practicum experience.** Practicum training is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and partially meeting the requirements for licensure. Training experiences shall follow appropriate academic preparation and shall be overseen by the doctoral training program. Not all supervised experience accumulated during graduate training may count toward licensure. The board requires that all practicum experiences counting toward licensure be of high quality and carefully approved and monitored by the doctoral training program. In particular, these experiences should advance the doctoral student's role and identity as a psychologist. All experiences counting toward licensure must be supervised one hour per week by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state. The director of clinical training of the doctoral training program, or designee of that program's chair,

shall certify, in a form satisfactory to the board, that the hours meet the following specifications of type of clinical activity and supervision:

**(1)** The practicum setting was approved by, integrated with and monitored by the doctoral training program;

**(2)** The hours were obtained in the course of an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and partially meeting the requirements for licensure.

**(3)** Supervised practicum experience occurred in psychological service settings that had, as part of the organizational mission, a goal of training professional psychologists.

**(4)** Each practicum setting had an identified, licensed psychologist who was responsible for maintaining the integrity and quality of the experience for each trainee. The doctoral training program shall assign a licensed psychologist to serve in this role if none is available on site.

**(5)** All supervisors were qualified by education, licensure and experience to provide supervision of doctoral students.

**(6)** Where experiences counted for licensure were obtained in various settings, each setting was an appropriate experience in itself, the particular student was academically prepared for that experience and the combination of experiences was appropriate to the student's training needs.

**(7)** The following clinical experiences and supervision were present across settings:

**(a)** At least fifty percent of the total hours of supervised experience were in service-related activities, defined as treatment/intervention, assessment, interviews, report-writing, case presentations, and consultations.

**(b)** At least twenty-five percent of the total hours were face-to-face patient/client contact.

**(c)** Supervision by a licensed psychologist or clinical faculty member who is allowed to practice psychology under the laws of the state was at least one hour for each day (eight hours including the supervision; 12 and a half percent of total) of supervised experience for experienced students. Telesupervision is equivalent to face to face supervision. The doctoral training program shall assure that higher levels of supervision are provided for less experienced students. All supervision time, whether individual or group, including additional supervision beyond that may be counted as part of the total supervised experience.

**(8)** The board requires that all predoctoral practicum experiences counting toward licensure be of high quality and carefully approved and monitored by the doctoral training program. In particular, these experiences should advance the doctoral student's role and identity as a psychologist.

**(9)** The board may, at its discretion, require documentation that above system of training was in place for the applicant. Possible forms of documentation include but are not limited to:

**(a)** individual written training plans between the doctoral training program and each practicum training site;

**(b)** policies and procedures of the doctoral training program designating the expectations for practicum training sequences;

**(c)** program descriptions or self-study documents submitted for program approval to the American psychological association or the American association of state and provincial psychology boards.

**C. Internship or fellowship accredited by a nationally recognized accreditation body.** If the doctoral or postdoctoral experience is obtained in an internship or fellowship accredited by a nationally recognized accreditation body, a board form completed by the director of training will satisfy the requirement of certifying all supervision received during the internship or fellowship.

**D. Internship not accredited by a nationally recognized accreditation body.** If the predoctoral experience is obtained in an internship that is not accredited by a nationally recognized accreditation body, it will be counted for 750 hours of the required 3,000 hours if it meets the following criteria:

**(1)** the agency or institution offers internship education and training in psychology, one goal of which is to prepare applicants for the practice of professional psychology;

**(2)** the internship program is sponsored by an institution or agency, which has among its primary functions the provision of service to a population of recipients sufficient in number and variability to provide interns with adequate experiential exposure to meet its training purposes, goals, and objectives;

**(3)** the internship is completed within 24 consecutive months at a minimum of 20 hours per week:

**(a)** an internship that involves more than one agency, organization, or institution will be accepted if the primary supervisor and the applicant can demonstrate that the internship program is organized under a unifying or coordinating structure (e.g. a consortium with a core clinical faculty) and central leadership (e.g., one director of

training or central supervisor overseeing the entire internship program and the supervision of the intern);

(b) internships consisting of less than 20 hours per week will not be accepted;

(4) the director of clinical training of the applicant's doctoral training program certifies in a manner acceptable to the board that the internship was approved as part of the degree requirements for obtaining the doctoral degree.

#### **E. Postdoctoral supervised practice leading toward licensure.**

(1) The applicant may complete a doctoral supervised practicum up to 1500 hours and a doctoral internship up to 1500 hours before completing the doctorate. Depending on the number of hours of doctoral supervised experience, the applicant shall complete the remainder of the required 3,000 hours through postdoctoral supervision.

(2) If the applicant is completing postdoctoral hours in New Mexico, the applicant shall submit a postdoctoral supervisory plan to the board for review before beginning supervised practice. Once a plan for supervision is submitted to the board, the board or a designated board member will respond in writing to the acceptability of such a plan within 60 days. If the plan is found unacceptable, the board or a designated board member will specify the areas of deficiency based on the guidelines specified in Part 3. If the board approves the plan, the applicant will be assured that postdoctoral experience, if completed according to the plan, will meet the postdoctoral requirements and the applicant will be registered as participating in an approved supervision program.

(3) If the applicant is completing postdoctoral hours outside New Mexico, a supervisory plan is optional.

(4) If the applicant does not obtain a board-approved postdoctoral supervisory plan, the applicant shall submit documentation of the postdoctoral supervised practice after its completion. However, if the board does not approve this experience, part or all of the postdoctoral supervised experience shall be repeated. In this case, the board will require the applicant to submit a supervisory plan, and the supervisory plan must be approved by the board before the applicant's supervised practice begins.

[16.22.6.8 NMAC - Rp, 16.22.6.8 NMAC, 11/15/2006; A, 4/11/2012; A, 7/1/2018; A, 02/10/2022]

#### **16.22.6.9 CONDITIONS OF POSTDOCTORAL SUPERVISION:**

##### **A. Primary supervisors.**

(1) One licensed psychologist who serves as a primary supervisor shall be responsible for the overall supervision of the supervisee's professional growth. Specific

skill training may be assigned to other licensed specialists, under the authority of the supervising psychologist. The other licensed specialists shall have clearly established practice and teaching skills demonstrable to the satisfaction of both the primary supervisor and the supervisee.

(2) The primary supervisor shall limit the number of applicants supervised to the number that the supervisor's work position and clinical responsibilities reasonably permit, so as to maintain a level of supervision and practice consistent with professional standards and ensure the welfare of the supervisees and their clients or patients.

(3) The supervisor shall not be a member of the supervisee's immediate family or in a dual relationship that would compromise the supervisor's objectivity.

#### **B. Supervisory contact.**

At a minimum, supervision by the primary supervisor shall be provided on a one-to-one basis for one hour per week for a total at least 46 hours of one-to-one supervision per year. Telesupervision is equivalent to face to face supervision.

#### **C. Conduct of supervision.**

(1) The board recognizes that variability in preparation for practice of the applicant will require individually tailored supervision. The specific content of the supervision procedures shall be worked out between the primary supervisor and the applicant.

(2) The primary supervisor who provides supervision for the applicant for licensure shall have clinical and professional responsibility for the work of the applicant.

(3) A supervisor, either primary or designated, shall be available to the applicant whenever decisions about clients or patients are made.

(4) The primary supervisor shall be responsible for the delivery of services, the representation to the public of services, and the supervisor/applicant relationship. This responsibility includes, but is not limited to, the following requirements.

(a) All clients or patients shall be informed of the availability or possible necessity of meetings with the primary supervisor at the request of the client or patient, the applicant, or the psychologist. The supervisor shall be available for emergency consultation or intervention.

(b) All written communication shall clearly identify the primary supervisor as clinically and professionally responsible for all psychological services provided. Public announcement of services and fees and contact with the public or professional community shall be offered in the name of the primary supervisor, business, or agency. Both the primary supervisor and the applicant shall inform the client or patient, to

whatever extent is necessary for the client or patient to understand, of the supervisory status and other specific information as to the applicant's qualifications and functions.

(c) The primary supervisor shall oversee the maintenance of information and files relevant to the client or patient during the supervisory period.

(d) The primary supervisor shall not be a member of the applicant's extended or immediate family or be involved in a dual relationship.

(e) The supervision shall not be delivered in an agency or business in which the applicant has a financial interest.

**D. Inappropriate representation.** In the event applicants publicly represent themselves inappropriately, or supervision is not conducted according to Subsection C of 16.22.6.9 NMAC, conduct of supervision, any experience gained under such circumstances does not comply with these rules and regulations and will not be accepted as experience toward licensure. Any psychologist providing supervision under such circumstances is in violation of these rules and regulations and may be subject to disciplinary action.

[16.22.6.9 NMAC - Rp, 16.22.6.9 NMAC, 11/15/2006; A, 4/11/2012; A, 7/1/2018; A, 02/10/2022]

#### **16.22.6.10 POSTDOCTORAL SUPERVISORY PLAN:**

**A. Evaluation of the supervisory plan.** The supervisory plan shall include the following information and shall be signed by both the primary supervisor and the applicant:

- (1) name of applicant;
- (2) name of primary supervisor, address, license number, and state in which the license was granted; area of specialization;
- (3) names of additional licensed specialists, if applicable;
- (4) dates of practice covered by the plan;
- (5) number of practice hours during the period covered by the plan;
- (6) number of one-on-one supervisory hour per week;
- (7) amount of any telesupervision or telephonic supervision provided;
- (8) the setting(s) in which the applicant will practice and the hours per week worked at each setting;

- (9) the applicant's duties;
- (10) the clinical and professional responsibilities of the applicant;
- (11) the location where the supervision will take place;
- (12) the areas in which the primary supervisor has specialized skills to render competent supervision and, if applicable, whether specific training will be assigned to other specialists; if non-psychologist specialists are assigned, their practice and teaching skills as they pertain to supervision of the applicant and their degrees and licenses;
- (13) the number of applicants the primary supervisor will supervise during this time period;
- (14) the way in which the primary supervisor will demonstrate clinical and professional responsibility for the applicant's work;
- (15) the way in which the applicant will be represented to the public, and the way in which all written communications and public announcements will identify the primary supervisor as clinically and professionally responsible for all psychological services;
- (16) other information necessary to clarify the nature and scope of supervision.

**B.** As listed in this part, the board or a designated board member will respond in writing to the acceptability of such plan within 60 days.

[16.22.6.10 NMAC - Rp, 16.22.6.10 NMAC, 11/15/2006; A, 7/1/2018]

## **PART 7: EXAMINATION REQUIREMENTS**

### **16.22.7.1 ISSUING AGENCY:**

Regulation and Licensing Department, State Board of Psychologist Examiners.

[16.22.7.1 NMAC - Rp, 16.22.7.1 NMAC, 11/15/2006]

### **16.22.7.2 SCOPE:**

The provisions of Part 7 apply to all applicants for licensure.

[16.22.7.2 NMAC - Rp, 16.22.7.2 NMAC, 11/15/2006]

### **16.22.7.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, Sections 61-9-4.1, 61-9-6, 61-9-10 61-9-11, 61-9-11.1 NMSA 1978.

[16.22.7.3 NMAC - Rp, 16.22.7.3 NMAC, 11/15/2006]

**16.22.7.4 DURATION:**

Permanent.

[16.22.7.4 NMAC - Rp, 16.22.7.4 NMAC, 11/15/2006]

**16.22.7.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of a section.

[16.22.7.5 NMAC - Rp, 16.22.7.5 NMAC, 11/15/2006]

**16.22.7.6 OBJECTIVE:**

This part establishes the examination requirements for all licensure applicants.

[16.22.7.6 NMAC - Rp, 16.22.7.6 NMAC, 11/15/2006]

**16.22.7.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.22.1.7 NMAC]

**16.22.7.8 DEMONSTRATION OF COMPETENCE:**

**A. Examinations.**

(1) To qualify for licensure, an applicant must demonstrate professional competence by taking and passing the Examination for Professional Practice in Psychology (EPPP), promulgated by the Association of State and Provincial Psychology Boards (ASPPB). The passing score on the EPPP taken before January 1, 1993 is 140 (seventy percent) or taken after January 1, 1993 is the score equal to or greater than the passing score recommended by ASPPB.

(2) All persons applying for licensure shall take and pass an online jurisprudence examination on ethical standards, New Mexico laws, and board regulations as they apply to psychologists and their clients or patients. The passing score will be determined by the board.

**(3)** If the score of either the EPPP or jurisprudence examination meets the requirements for licensure as a psychologist but the other score does not, the examination passed will not have to be retaken.

**(4)** Re-examination. An applicant may retake the EPPP or jurisprudence examination and pay the appropriate examination fee as required by the board. Such fee is nonrefundable and due at the time of the request.

**B.** An applicant shall furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

[16.22.7.8 NMAC - Rp, 16.22.7.8 NMAC, 11/15/2006; A, 3/21/2009; A, 7/1/2018]

## **PART 8: LICENSE EXPIRATION AND RENEWAL**

### **16.22.8.1 ISSUING AGENCY:**

Regulation and Licensing Department, State Board of Psychologists Examiners.

[16.22.8.1 NMAC - Rp, 16.22.8.1 NMAC, 11/15/2006]

### **16.22.8.2 SCOPE:**

The provisions of Part 8 apply to all psychologists and psychologist associates with a license to practice in New Mexico.

[16.22.8.2 NMAC - Rp, 16.22.8.2 NMAC, 11/15/2006]

### **16.22.8.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act Section 61-9-6, 61-9-7.

[16.22.8.3 NMAC - Rp, 16.22.8.3 NMAC, 11/15/2006]

### **16.22.8.4 DURATION:**

Permanent.

[16.22.8.4 NMAC - Rp, 16.22.8.4 NMAC, 11/15/2006]

### **16.22.8.5 EFFECTIVE DATE:**

November 15, 2006 unless a later date is cited at the end of a section.

[16.22.8.5 NMAC - Rp, 16.22.8.5 NMAC, 11/15/2006]

#### **16.22.8.6 OBJECTIVE:**

This part establishes the procedures for license expiration and license renewal.

[16.22.8.6 NMAC - Rp, 16.22.8.6 NMAC, 11/15/2006]

#### **16.22.8.7 DEFINITIONS:**

**A. "Nationwide criminal history record"** means information concerning a person's arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

**B. "Nationwide criminal history screening"** means a criminal history background investigation of a licensee applying for licensure renewal through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

[16.22.8.7 NMAC - N, 9/16/2010; A, 4/11/2012]

#### **16.22.8.8 LICENSE RENEWAL:**

Licensees shall renew their licenses to practice psychology biennially on or before July 1 of alternate years by remitting to the board office the biennial renewal active status fee specified in Paragraph 2 of Subsection C of 16.22.13.8 NMAC with the renewal application form provided by the board. Continuing education hours shall be documented every two years at the time of license renewal as described in Part 9.

[16.22.8.8 NMAC - Rp, 16.22.8.8 NMAC, 11/15/2006; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018; A, 02/10/2022]

#### **16.22.8.9 LICENSE RENEWAL DEADLINE:**

Licenses shall be renewed biennially before July 1 and must be submitted through the online renewal system, post-marked or hand-delivered.

[16.22.8.9 NMAC - Rp, 16.22.8.9 NMAC, 11/15/2006; A, 9/16/2010]

#### **16.22.8.10 LICENSE RENEWAL NOTICES:**

Renewal notification will be given to each current licensee prior to the expiration date of the license.

[16.22.8.10 NMAC - Rp, 16.22.8.10 NMAC, 11/15/2006; A, 9/16/2010; A, 7/1/2018]

**16.22.8.11 LICENSEE RESPONSIBILITY:**

Renewal application notices will be delivered to the last known electronic mail address on file with the board. It is the responsibility of the licensee to keep the board informed of any changes in electronic address, mailing address and phone numbers. Failure to receive the renewal application notice shall not relieve the licensee of the responsibility of renewing his license before the expiration date.

[16.22.8.11 NMAC - Rp, 16.22.8.11 NMAC, 11/15/2006; A, 7/1/2018; A, 02/10/2022]

**16.22.8.12 RENEWAL AFTER JULY 1:**

**A.** The board shall initiate license suspension proceedings and thereafter shall suspend a license for failure to renew if the licensee failed to renew his license by July 1 of the appropriate year. Any person who renders or offers to render psychological services while his license is suspended is subject to disciplinary action. A licensee who chooses to permanently retire from practice shall inform the board in writing previous to the expiration date of the license and will be considered honorary retired as a non-disciplinary revocation.

**B.** A license suspended for failure to renew may be renewed within a period of one year after the suspension upon payment of the renewal fee plus a late fee and proof of continuing education satisfactory to the board.

**C.** The license shall be revoked if the license has not renewed within one year of the suspension for failure to renew. Any licensee whose license is revoked for failure to renew shall be required to make a new application and shall satisfy all requirements for licensure in effect at the time the application is filed.

**D.** Unless currently licensed to practice psychology under the act, no person shall:

- (1) engage in the practice of psychology;
- (2) use the title or represent himself as a psychologist or psychologist associate; or
- (3) use any other title, abbreviation, letters, signs or devices that indicate the person is a psychologist or psychologists associate.

**E.** It is a misdemeanor:

- (1) for any person not licensed under the act to practice psychology or represent himself as a psychologist or a psychologist associate;

**(2)** for any person to practice psychology during the time that his license as a psychologist or psychologist associate is suspended, revoked, or lapsed.

[16.22.8.12 NMAC - Rp, 16.22.8.12 NMAC, 11/15/2006; A, 9/16/2010]

**16.22.8.13 APPROVAL OF RENEWAL APPLICATION:**

Upon approval of the licensee's renewal application, the board will issue a renewal to the licensee.

[16.22.8.13 NMAC - Rp, 16.22.8.13 NMAC, 11/15/2006]

**PART 9: CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS**

**16.22.9.1 ISSUING AGENCY:**

Regulation and Licensing Department, State Board of Psychologist Examiners

[16.22.9.1 NMAC - Rp, 16.22.9.1 NMAC, 09/16/10]

**16.22.9.2 SCOPE:**

The provisions of Part 9 apply to psychologists and psychologist associates licensed to practice in New Mexico.

[16.22.9.2 NMAC - Rp, 16.22.9.2 NMAC, 09/16/10]

**16.22.9.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Examiners Act, Section 61-9-6, 61-9-7.

[16.22.9.3 NMAC - Rp, 16.22.9.3 NMAC, 09/16/10]

**16.22.9.4 DURATION:**

Permanent.

[16.22.9.4 NMAC - Rp, 16.22.9.4 NMAC, 09/16/10]

**16.22.9.5 EFFECTIVE DATE:**

September 16, 2010, unless a later date is cited at the end of a section.

[16.22.9.5 NMAC - Rp, 16.22.9.5 NMAC, 09/16/10]

#### **16.22.9.6 OBJECTIVE:**

This part establishes criteria for continuing professional education for psychologists and psychologist associates licensed in New Mexico.

[16.22.9.6 NMAC - Rp, 16.22.9.6 NMAC, 09/16/10]

#### **16.22.9.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

#### **16.22.9.8 REQUIRED HOURS:**

**A. Purpose.** The purpose of continuing professional education (CPE) requirements for psychologists is to ensure that licensees update and advance their skills such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, all psychologists are required to fulfill a portion of their CPE in the areas of ethics and cultural diversity as related to the profession of psychology.

**B. Required hours.** The board requires 40 hours of CPE for licensed psychologists and psychologist associates during every two years. For conditional prescribing and unrestricted prescribing psychologists the board requires 60 hours of CPE every two years.

**C. Program types.** CPE credits are divided into two categories depending on the design and approval process for the experience and on the monitoring of the psychologist. Psychologists must obtain at least 15 of their 40 hours every two years in category I, which is the most stringent in terms of presentation standards and monitoring. Any additional hours to complete the 40 hour requirement may be from category I or category II.

**(1)** Cultural Diversity: a minimum of two hours every two years from either category must be in the area of cultural diversity or health disparities as described in 16.22.9.9 NMAC.

**(2)** Equity and inclusion: a minimum of four hours every two years from either category I or II must be on the topic of race, ethnicity, systemic racism, structural inequality, poverty or the intersection of variables that impact marginalized communities as described in 16.22.9.9 NMAC.

**(3)** Ethics: a minimum of four hours every two years from either category must be in the area of ethics as described in 16.22.9.9 NMAC.

**(4)** Psychopharmacology or psychopharmacotherapy: for conditional prescribing or unrestricted prescribing psychologists, 40 hours every two years out of the 60 hour CPE requirement must be in the area of psychopharmacology or psychopharmacotherapy.

**D. Criteria.** The board accepts the criteria of the national professional organizations listed in 16.22.9.9 NMAC in accrediting continuing education hours. The following criteria adapted from *Standards and Criteria for Approval of Sponsors of Continuing Education for Psychologists* (American Psychological Association, 2009) shall apply to New Mexico accrediting organizations when approving continuing education requests.

**(1)** Sponsors must be prepared to demonstrate that information and programs presented are based on methodical, theoretical, research, or practice knowledge base. This requirement must be met by at least one of the following:

**(a)** Program content has obtained credibility, as demonstrated by the involvement of the broader psychological practice, education, and science communities in studying or applying the findings, procedures, practices, or theoretical concepts.

**(b)** Program content has been supported using established research procedures and scientific scrutiny.

**(c)** Program content has peer reviewed, published support beyond those publications and other types of communications devoted primarily to the promotion of the approach.

**(d)** Program content is related to ethical, legal, statutory or regulatory policies, guidelines, and standards that impact psychology.

**(2)** Sponsors must select instructors with expertise in the program content and who are competent to teach this program content at a level that builds upon a completed doctoral program in psychology.

**(3)** Sponsors are required to ensure that instructors, during each CE presentation, include statements that describe the accuracy and utility of the materials presented, the basis of such statements, the limitations of the content being taught and the severe and the most common risks.

**(4)** Sponsors must offer program content that builds upon the foundation of a completed doctoral program in psychology.

**(5)** Sponsors must be prepared to demonstrate that content is relevant to psychological practice, education, or science.

**(6)** Sponsors must clearly describe any commercial support for the CE program, presentation. Or instructor to program participants at the time the CE program begins. Any other relationship that could be reasonably construed as a conflict of interest also must be disclosed.

[16.22.9.8 NMAC - Rp, 16.22.9.9 NMAC, 9/16/2010; A, 04/30/2015; A, 02/10/2022]

#### **16.22.9.9 CPE PROGRAM CATEGORIES:**

**A.** Category I shall consist of formally designed programs presented in a group setting with monitored attendance. The following types of programs qualify as category I:

**(1)** Formally organized workshops, seminars, grand rounds or classes aimed at the graduate or professional level which maintain an attendance roster and are approved by or under the auspices of an accredited institution of higher education offering graduate instruction.

**(2)** Workshops, seminars, or classes which maintain an attendance roster and are certified or recognized by one of the following organizations:

- (a)** the American psychological association;
- (b)** the American psychiatric association;
- (c)** the American medical association;
- (d)** the American association for marriage and family therapy;
- (e)** the American counseling association;
- (f)** the international congress of psychology;
- (g)** the national association of social workers;
- (h)** the New Mexico psychological association;
- (i)** the national association of school psychologists; or
- (j)** the New Mexico state board of psychologist examiners.

**(3)** Formal graduate level college or university courses relevant to scientific or professional psychological activities, including but not limited to neuropsychology, forensic psychology, development, language skills, statistics, and cultural knowledge, as deemed satisfactory to the board. Five CPE credits will be granted for each university semester credit listed for the course. Documentation may be provided by college

transcript showing credit obtained or letter from the instructor documenting hours of attendance for audited courses.

**(4)** Participation in the board will be granted hour-for-hour CPE credit up to 20 hours. These hours satisfy the ethics CPE requirement.

**(5)** Achieving advanced certification, diplomate status or specialization in a field of psychology or psychopharmacology may be granted up to 15 CPE credits if approved by one of the organizations designated in Paragraph (2) of Subsection A of 16.22.9.9 NMAC using their own criteria or the criteria of Paragraph (2) of Subsection D of 16.22.9.8 NMAC.

**(6)** Online education qualifies as category I if:

**(a)** it meets the above criteria;

**(b)** attendance is verified by the instructor's organization, e.g., electronically monitoring when the learner is online.

**B.** Category II shall consist of high quality and relevant experiences outside the format of formal presentations and classes. The following types of programs qualify as category II:

**(1)** Non-supervised independent study or home study programs, including online programs, conducted by accrediting agencies listed in Paragraph (2) of Subsection A of 16.22.9.9 NMAC will be granted hour-for-hour CPE credit.

**(2)** Symposia or presentations at annual conventions of national or regional professional organizations in psychology (for example, American psychological association, and Rocky Mountain psychological association) or a closely related discipline may be claimed for CPE credit. Four hours may be claimed for the first time each scientific or professional presentation was made; two hours may be claimed for a poster session.

**(3)** Publications related to the practice of psychology: CPE hours may be claimed for each publication of an article in a professional journal or book chapter authored by the licensee according to author listing:

**(a)** eight hours for the first author;

**(b)** six hours for the second author;

**(c)** four hours for the third author; and

**(d)** two hours for any subsequent author.

**(4)** Books related to the practice of psychology: Authoring or editing a book may be claimed for fifteen hours.

**(5)** A presenter providing continuing education or teacher of a graduate course that qualifies as a category I program may claim hour per hour credit up to eight CPE credit hours for the first time the presentation is made or the course is taught. New material in an existing course or program may be claimed hour per hour up to eight hours the first time it is presented.

**(6)** Participation in the New Mexico psychological association executive board, or formal offices or committees established by the board, the New Mexico psychological association, the American psychological association, or other professional organizations, if the tasks are clearly related to issues of ethics, professional standards, or practice-related skills shall be granted CPE credit of one hour for every two hours of participation up to 20 hours.

**C.** Cultural diversity shall consist of the following types of programs: A course containing attention to cultural diversity or health disparities, as specifically noted in the title, description of objectives, or curriculum of the presentation, symposium, workshop, seminar, or course. A course in cultural diversity focuses on increasing scientific understanding and training in regard to those aspects that pertain to but are not limited to culture, class, race/ethnicity, gender, sexual orientation, aging and disability. The aim of such courses is the promotion of culturally responsive/competent models for the delivery of psychological services. The topic of the presentation, symposium, workshop, seminar, or course need not be on cultural diversity; however one of the objectives or the description of topics covered must clearly indicate attention to health disparities, race, ethnicity, systemic racism, structural inequality, poverty or cultural diversity, as deemed satisfactory to the board. Two hours of cultural diversity CPE from either category I or II are required for each two year reporting period.

**D.** Equity and Inclusion shall consist of the following types of programs: A course containing attention to the topic of race, ethnicity, systemic racism, structural inequality, poverty, or the intersection with other variables that impact marginalized communities. A course on these topics must be more than a history course, and should focus on increasing scientific understanding and training that improves clinical understanding of those aspects that pertain to but are not limited to systemic racism, structural inequality, poverty or the intersection with variables that impact marginalized communities. The aim of such courses is the promotion of culturally responsive/competent models for the delivery of psychological services. In recognition of the unique racial/ethnic demographic composition of the population of New Mexico, four hours of equity and inclusion CPE from either category I or II are required each two year reporting period.

**E.** Ethics shall consist of the following types of programs: A course containing attention to the ethics of practice related to psychology. The topic of the presentation, symposium, workshop, seminar, or course need be on ethics and the objectives or the description of topics covered must clearly indicate attention to ethics, as deemed

satisfactory to the board. Four hours of ethics CPE from either category I or II are required for each two year period.

**F.** Health disparities are preventable differences in the burden of disease, injury, violence, or opportunities to achieve optimal health that are experienced by socially disadvantaged populations. Populations can be defined by factors such as race or ethnicity, gender, education or income, disability, geographic location (e.g., rural or urban), or sexual orientation. Health disparities are inequitable and are directly related to the historical and current unequal distribution of social, political, economic, and environmental resources.

[16.22.9.9 NMAC - Rp, 16.22.9.8 NMAC, 9/16/2010; A, 4/30/2015; A, 02/10/2022]

#### **16.22.9.10 CARRY-OVER HOURS; EXEMPTIONS; TIME EXTENSIONS:**

**A. Carry-over hours.** No hours shall be carried over from one compliance-reporting period to another compliance reporting period.

#### **B. Exemptions and extensions of time.**

**(1)** Licenses on retirement or inactive status as provided in Part 10 are not exempt from CPE requirements of this Part 9.

**(2)** Extensions of time for completing and reporting CPE requirements shall be granted for good cause only upon a written request filed with the board by the licensee prior to the date for compliance. Unless extenuating circumstances beyond the control of the licensee cause extraordinary hardship, the extension of time for completing and reporting CPE requirements shall not exceed one (1) year. The board may grant one extension of time of up to sixty (60) calendar days for filing a request for the extension of time upon a finding of good cause

[16.22.9.10 NMAC - Rp, 16.22.9.10 NMAC, 09/16/10]

#### **16.22.9.11 COMPLIANCE: FAILURE TO COMPLY AND LICENSE RENEWAL:**

**A. Compliance reporting requirements.** Every two (2) years during the designated annual renewal period, each licensee shall submit an attestation that he has completed the CPE requirements. The board reserves the right to audit any licensee to submit evidence or documentation of the CPE credits (e.g. course or program certificate of training, transcript, course or workshop brochures or published descriptions, copies of registration forms, payment invoices or receipts, specific evidence of attendance, etc.). Therefore, it is the responsibility of each licensee to establish and maintain detailed records of CPE compliance for two (2) years after the reporting period. The board shall not allow continuing education credit for personal psychotherapy, workshops for personal growth, the provision of paid or volunteer services to professional associations

other than APA or statewide associations of licensed psychologists in New Mexico, foreign language courses, computer training, office management, or practice building.

**B. Failure to comply.** Failure to complete or report continuing professional education requirements as provided in this part is grounds for withholding renewal of a license or for suspension or revocation of a license as provided in the act. Fraud or deception in reporting CPE credit is a separate violation of the code and is grounds for withholding renewal of a license or for suspension or revocation of a license as provided in the act.

[16.22.9.11 NMAC - Rp, 16.22.9.11 NMAC, 09/16/10]

#### **16.22.9.12 REQUIREMENTS FOR NEWLY LICENSED INDIVIDUALS:**

**A.** No CPE requirements until first renewal. Individuals licensed for the first time in New Mexico as psychologists or psychologist associates shall renew their license for two (2) years at the first renewal period following the issuing of their license. They shall have no CPE requirement during this initial licensing period from issuance to renewal, but shall complete cultural awareness coursework prior to their first renewal.

**B.** Cultural awareness coursework. Newly licensed psychologists and psychologist associates with restricted and unrestricted licenses shall complete eight (8) hours of cultural awareness coursework approved by the board prior to their first license renewal. Cultural awareness coursework shall be courses designed to provide knowledge and awareness of the cultures of New Mexico. Course titles and descriptions must make clear a breadth of cultural awareness training and the specific content of New Mexico cultures.

[16.22.9.12 NMAC - N, 04/30/15]

### **PART 10: INACTIVE STATUS AND REINSTATEMENT**

#### **16.22.10.1 ISSUING AGENCY:**

Regulation and Licensing Department, State Board of Psychologist Examiners

[16.22.10.1 NMAC - Rp, 16.22.10.1 NMAC, 11/15/06]

#### **16.22.10.2 SCOPE:**

The provisions of Part 10 apply to all licensed psychologists who plan to place their license on inactive status, or reinstate their inactive license to active status.

[16.22.10.2 NMAC - Rp, 16.22.10.2 NMAC, 11/15/06]

#### **16.22.10.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-6.

[16.22.10.3 NMAC - Rp, 16.22.10.3 NMAC, 11/15/06]

**16.22.10.4 DURATION:**

Permanent.

[16.22.10.4 NMAC - Rp, 16.22.10.4 NMAC, 11/15/06]

**16.22.10.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of a section.

[16.22.10.5 NMAC - Rp, 16.22.10.5 NMAC, 11/15/06]

**16.22.10.6 OBJECTIVE:**

This part establishes the requirements and procedures to place an active license in inactive status or to reinstate the license to active status.

[16.22.10.6 NMAC - Rp, 16.22.10.6 NMAC, 11/15/06]

**16.22.10.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

**16.22.10.8 INACTIVE STATUS**

**A.** The following criteria must be met for inactive status eligibility:

- (1) the licensee must be in good standing; and
- (2) his license must be current; a licensee who failed to renew a license by July 1 of any year shall renew the licensee in accordance with Part 8 before the licensee can be considered for inactive status.

**B.** A licensee who wishes to be placed on inactive status shall:

- (1) notify the board administrator in writing before his current license expires and the board administrator will acknowledge receipt of the notification; and
- (2) pay the fees established by the board to be placed on inactive status.

**C.** A licensee on inactive status shall not practice psychology in New Mexico as defined in the act.

**D.** Rendering or offering to render psychological services or engaging in the practice of psychology while on inactive status shall be considered sufficient grounds for disciplinary action by the board.

**E.** When a psychologist holds an inactive license and represents himself in public statements that include but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations, he must disclose that with an inactive license, he shall not provide psychotherapy.

**F.** A licensee on inactive status shall at all times comply with the provisions of Part 2, including, without limitation, Subsection B of 16.22.2.10 NMAC and 16.22.2.12 NMAC.

[16.22.10.8 NMAC - Rp, 16.22.10.8 NMAC, 11/15/06]

#### **16.22.10.9 REINSTATEMENT FROM INACTIVE STATUS:**

**A.** If the inactive licensee requests reinstatement to active status within three years, he shall:

- (1)** complete an application for reinstatement form provided by the board;
- (2)** provide satisfactory proof of completion of the continuing education requirements described in Part 9;
- (3)** not have violated any rule of the Professional Psychologist Act or the rules and regulations of the board;
- (4)** pay the appropriate reinstatement fee established by the board.

**B.** If the inactive licensee requests reinstatement to active status after three years, he shall:

- (1)** complete an application for reinstatement form provided by the board;
- (2)** provide satisfactory proof of completion of the continuing education requirements described in Part 9;
- (3)** take and pass the online jurisprudence examination;

(4) not have violated any rule of the Professional Psychologist Act or the rules and regulations of the board;

(5) pay the appropriate reinstatement fee established by the board.

C. A licensee on inactive status shall not render or offer to render psychological services or otherwise engage in the practice of psychology until he receives a new license issued by the board.

[16.22.10.9 NMAC - Rp, 16.22.10.9 NMAC, 11/15/2006; A, 03/21/09; A, 02/10/2022]

## **PART 11: COMPLAINT PROCEDURES; ADJUDICATORY PROCEEDINGS [REPEALED]**

### **16.22.11.1 ISSUING AGENCY [REPEALED]:**

[This part was repealed January 8, 2023.]

### **16.22.11.2 SCOPE [REPEALED]:**

[This part was repealed January 8, 2023.]

### **16.22.11.3 STATUTORY AUTHORITY [REPEALED]:**

[This part was repealed January 8, 2023.]

### **16.22.11.4 DURATION [REPEALED]:**

[This part was repealed January 8, 2023.]

### **16.22.11.5 EFFECTIVE DATE [REPEALED]:**

[This part was repealed January 8, 2023.]

### **16.22.11.6 OBJECTIVE [REPEALED]:**

[This part was repealed January 8, 2023.]

### **16.22.11.7 DEFINITIONS [REPEALED]:**

[This part was repealed January 8, 2023.]

### **16.22.11.8 COMPLAINT PROCEDURES [REPEALED]:**

[This part was repealed January 8, 2023.]

**16.22.11.9 ADJUDICATORY PROCEEDINGS [REPEALED]:**

[This part was repealed January 8, 2023.]

**16.22.11.10 SURRENDER OF LICENSE [REPEALED]:**

[This part was repealed January 8, 2023.]

**PART 12: PSYCHOLOGIST ASSOCIATES: EDUCATION REQUIREMENTS AND CONDITIONS OF PRACTICE**

**16.22.12.1 ISSUING AGENCY:**

Regulation and Licensing Department, State Board of Psychologist Examiners.

[16.22.12.1 NMAC - Rp, 16.22.12.1 NMAC, 11/15/2006]

**16.22.12.2 SCOPE:**

The provisions of Part 12 apply to all applicants and licensees who apply or are licensed as psychologist associates in New Mexico.

[16.22.12.2 NMAC - Rp, 16.22.12.2 NMAC, 11/15/2006]

**16.22.12.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act Sections 61-9-6, 61-9-11-1 NMSA 1978.

[16.22.12.3 NMAC - Rp, 16.22.12.3 NMAC, 11/15/2006]

**16.22.12.4 DURATION:**

Permanent.

[16.22.12.4 NMAC - Rp, 16.22.12.4 NMAC, 11/15/2006]

**16.22.12.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of a section.

[16.22.12.5 NMAC - Rp, 16.22.12.5 NMAC, 11/15/2006]

**16.22.12.6 OBJECTIVE:**

This part sets forth the conditions of practice for psychologist associates and defines the professional relationship with doctoral-level supervision.

[16.22.12.6 NMAC - Rp, 16.22.12.6 NMAC, 11/15/2006]

#### **16.22.12.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

#### **16.22.12.8 CONDITIONS OF PRACTICE FOR PSYCHOLOGIST ASSOCIATES:**

##### **A. Supervision by a licensed psychologist or board-certified psychiatrist.**

(1) Psychologist associates who engage in the practice of psychology shall be supervised by a licensed psychologist or a board-certified psychiatrist, except in the area of psychological or cognitive testing. The supervising psychologist must be licensed in New Mexico as a psychologist with the New Mexico board of psychologist examiners, be in good standing and have no history of rule violations. If the psychologist associate conducts psychological, cognitive testing, the psychologist associate shall be supervised in this area of practice by a licensed psychologist. The psychologist shall explicitly agree to supervise the psychologist associate.

(2) The supervisor shall assume professional and ethical responsibility for the work of the psychologist associate performed in the course of their professional relationship.

(3) The supervisor shall provide supervision only in those areas of practice in which the supervisor is qualified to render services.

(4) The supervisor shall not provide supervision to one who is their administrative superior(s) or is a member of his or her family.

(5) The supervisor shall keep records of supervision. Such records shall be kept separately from the client's records and shall include dates of supervision, without reference to the client's name. Such records shall be submitted to the board on an biennial basis as a condition of the renewal process.

(6) The supervisor shall not exploit the psychologist associate for financial gain or with excessive work demands. The supervisor shall make every effort to avoid exploitation of the psychologist associate by an agency with which the supervisor and psychologist associate are affiliated.

(7) Financial arrangements between the supervisor and the psychologist associate shall be clear and shall not interfere with or compromise the ethical,

professional, and legal responsibilities each party has to the client or patient and to each other. Psychologist associates may bill clients or patients independently from the supervisor, provided that this arrangement does not interfere with or compromise those responsibilities.

#### **B. Nature of supervision from licensed supervisor.**

(1) Supervision of a psychologist associate shall cover all aspects of the psychologist associate's work and shall include at least two hours a month of one-to-one supervision between the psychologist associate and the supervisor. If the psychologist associate who is supervised by a board-certified psychiatrist also conducts psychological or cognitive testing in his practice, the psychologist associate must be supervised by a licensed psychologist at least two additional hours per month in this area of practice.

(2) The client or patient shall always be informed about the nature of the professional relationship that exists between the supervisor and the psychologist associate. The client shall be informed of his/her right to meet with the supervisor upon request and that the supervision of the psychologist associate by the supervisor may involve a review of the content of the evaluation documents and intervention plans.

#### **C. Supervisory agreement with licensed supervision.**

(1) The psychologist associate and his supervisor shall file a letter of agreement signed by all parties setting forth the terms of the supervisory arrangements. This agreement shall be updated and provided to the board as a condition of the biennial renewal of the psychologist associate's license. If there is no change in the agreement, a letter informing the board that there is no change, signed by both parties, shall accompany the biennial renewal of the psychologist associate's license.

(2) Both the supervisor and the psychologist associate shall notify the board in writing within 30 days of termination if the supervisory agreement is terminated or the supervisory relationship ends for any reason. Most importantly, termination of the supervisory relationship shall be accomplished in a context of primary concern for the clients receiving care.

#### **D. Ethical responsibilities of psychologist associates.**

(1) The psychologist associate shall assume legal, ethical, and professional responsibility for the welfare of the client or patient, including client or patient diagnosis, intervention, and outcome of intervention.

(2) The psychologist associate shall provide services only in those areas of practice for which he is qualified.

**E. Disclosure requirements.** Any person licensed as a psychologist associate who advertises or solicits services to the general public shall specifically state: "Licensed psychologist associate - supervised practice."

[16.22.12.8 NMAC - Rp, 16.22.12.8 NMAC, 11/15/2006; A, 7/1/2018; A, 02/10/2022]

#### **16.22.12.9 EDUCATION REQUIREMENTS:**

**A.** An applicant who received a master's degree prior to July 1, 1985, shall hold a master's degree from a department of psychology in a school or college as defined in the Professional Psychologist Act or a master's degree which is primarily psychological in nature from a school or college whose program had substantially equivalent requirements as those set forth in this rule.

**B.** An applicant who received a master's degree after July 1, 1985, shall hold a master's degree from a department of psychology, counseling psychology, or school psychology in a school or college as defined in the Professional Psychologist Act.

**C.** The applicant shall show that his program of graduate studies included a minimum of three graduate semester hours (six graduate quarter hours) directly related to psychological theory in three of the nine following content areas (no course may be counted for more than two areas):

(1) biological aspects of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology, biological bases of development;

(2) cognitive and affective aspects of behavior: learning, thinking, motivation, emotion, and cognitive development;

(3) social aspects of behavior: social psychology, group processes, community psychology, social development, organizational and systems theory;

(4) human development: developmental psychology, human development, lifespan development, and developmental psychopathology;

(5) individual differences: personality theory, human development, and abnormal psychology;

(6) professional and scientific ethics and standards: professional and ethical problems in clinical, counseling, or school psychology, legal, ethical, and professional issues in psychotherapy or counseling;

(7) research design, methodology, statistics, and data analysis: research methods in clinical, counseling, or school psychology; research design in psychology; statistical analysis in psychology; multivariate statistical methods;

(8) cultural competence, as deemed satisfactory to the board, multicultural counseling, counseling the culturally different, feminist psychology, counseling gay and lesbian populations, treating persons with disabilities;

(9) methods of assessment and diagnosis: psychological assessment, clinical diagnosis, and intellectual and personality assessment.

D. The applicant shall have completed at least two semesters (or four quarter hours) of clinical, counseling, or school psychology practicum.

[16.22.12.9 NMAC - Rp, 16.22.12.9 NMAC, 11/15/2006]

#### **16.22.12.10 [RESERVED]**

[16.22.12.10 NMAC - Rp, 16.22.12.10 NMAC, 11/15/2006]

#### **16.22.12.11 DEMONSTRATION OF COMPETENCE:**

A. **Description of examination and general information.** All persons applying for licensure shall be examined by the board. The examination consists of two parts:

(1) a written examination, called the EPPP, that demonstrates professional competence;

(2) an online jurisprudence examination constructed, administered, and graded by the board and its designees, which assesses knowledge, ethical standards, New Mexico laws, and the board regulations as they apply to psychologists and their clients or patients.

#### **B. Passing scores.**

(1) The passing score on the EPPP taken before January 1, 1993 is 140 (seventy percent) or taken after January 1, 1993 is the score equal to or greater than the passing score recommended by ASPPB.

(2) The passing score for the jurisprudence examination will be as determined by the board. Applicants will be notified within 30 days following the jurisprudence examination of their test results.

(3) If the score of either the EPPP or the jurisprudence examination meets the requirement for licensure as a psychologist associate but the other score does not, the examination passed will not have to be retaken.

[16.22.12.11 NMAC - Rp, 16.22.8.11 NMAC, 11/15/2006]

#### **16.22.12.12 APPLICATION PROCESS:**

**A.** Initial application procedure. To open an initial application file, the applicant shall submit the following:

- (1)** a completed and signed application;
- (2)** the application fee as required by the board;
- (3)** official transcripts directly from the institution's office of the registrar; and
- (4)** three letters of reference.

**B.** If the application is not complete, the applicant will be notified of all deficiencies within thirty 30 days of the board's receipt. The application process shall be completed within 30 days of the receipt at the board office of all materials listed in Subsection A of 16.22.12.12 NMAC. The applicant must have all documents in the board office at least 60 days prior to taking the examination for professional practice in psychology (EPPP).

**C.** Complete applications will be reviewed by the board and a notification of approval, denial or need for additional information will be issued to the applicant within 30 days.

**D.** The written examination for licensure is the EPPP, developed by the association of state and provincial psychology boards (ASPPB) and administered by the professional examination service (PES). An applicant shall be eligible to take the EPPP three times within the 18 months following the date the applicant was notified of the board's approval of their application.

**(1)** If the applicant does not pass the EPPP any of the three times it is administered within eighteen 18 months, the applicant shall submit a new initial application.

**(2)** Upon the submission of the new application, the rules and regulations in effect at the time the new initial application is received will be used to determine whether an applicant meets the requirements for licensure.

**E.** The applicant shall take and pass an online jurisprudence examination after the board has received his EPPP score from the ASPPB reporting service, indicating that the applicant received a passing score pursuant to the act.

**F.** During the first year of licensure, an applicant shall furnish evidence to the board that demonstrates an awareness and knowledge of New Mexico cultures.

[16.22.12.12 NMAC - N, 03/21/2009]

## **PART 13: FEES**

**16.22.13.1 ISSUING AGENCY:**

Regulation and Licensing Department, State Board of Psychologist Examiners.

[16.22.13.1 NMAC - Rp, 16.22.13.1 NMAC, 11/15/2006]

**16.22.13.2 SCOPE:**

The provisions of Part 13 apply to all applicants for licensure and the general public.

[16.22.13.2 NMAC - Rp, 16.22.13.2 NMAC, 11/15/2006]

**16.22.13.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologists Act, Sections 61-9-7, 61-9-10, 61-9-11 and Paragraph (1) of Section 61-9-11 NMSA 1978, and the Inspection of Public Records Act, Subsection B of Section 14-2-9 NMSA 1978.

[16.22.13.3 NMAC - Rp, 16.22.13.3 NMAC, 11/15/2006]

**16.22.13.4 DURATION:**

Permanent.

[16.22.13.4 NMAC - Rp, 16.22.13.4 NMAC, 11/15/2006]

**16.22.13.5 EFFECTIVE DATE:**

November 15, 2006 unless a later date is cited at the end of a section.

[16.22.13.5 NMAC - Rp, 16.22.13.5 NMAC, 11/15/2006]

**16.22.13.6 OBJECTIVE:**

To establish fees within statutory limitations to generate revenue adequate to fund the cost of program administration.

[16.22.13.6 NMAC - Rp, 16.22.13.6 NMAC, 11/15/2006]

**16.22.13.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.22.1.7 NMAC]

**16.22.13.8 FEE SCHEDULE:**

**A.** All fees payable to the board are non-refundable. The fees for the (EPPP), and the (PEP) are in addition to the fees described below, and determined by the professional examination service offering the examination on behalf of the board. Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.

**B.** Application fees. (psychologists, psychologist associates, conditional prescribing and prescribing psychologists):

(1) initial application fee- (initial application fee expires 24 months from the date application is received in the board office) \$125.

(2) jurisprudence examination: \$75.

(3) re-examination fee for jurisprudence exam: \$75.

(4) conditional prescription certificate: \$150.

(5) 60 day extension of conditional prescription: \$100.

(6) prescription certificate: \$75.

(7) temporary license fee: \$300.

**C.** Biennial/annual renewal fees psychologists, psychologist associates, conditional prescribing and prescribing psychologists:

(1) one-time annual renewal by psychologists and psychologist associates meeting first-year New Mexico licensure requirements: \$250.

(2) biennial renewal active status psychologists and psychologist associates: \$500.

(3) biennial renewal active status (prescribing psychologists): \$125.

(4) annual renewal inactive status psychologists, psychologist associates and prescription certificate: \$50.

(5) late fee (received after July 1 and within 1 year of suspension): active status (psychologists, psychologist associates, prescribing psychologist): \$100.

(6) reinstatement fee from inactive to active status psychologists and psychologist associates: \$300.

(7) reinstatement fee from inactive to active status prescription certificate: \$100.

**D. Other miscellaneous charges**

- (1) duplicate/replacement wall certificate: \$25.
- (2) licensee lists: \$100.
- (3) licensee labels: \$150.
- (4) per page copy fee for public information request: \$ .25 cents.
- (5) license verification fee: \$15.

[16.22.13.8 NMAC - Rp, 16.22.13.8 NMAC, 11/15/2006; A, 3/21/2009; A, 9/16/2010; A, 4/11/2012; A, 7/1/2018; A, 02/10/2022]

**PART 14: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

**16.22.14.1 ISSUING AGENCY:**

Regulation and Licensing Department Psychologist Examiners Board.

[16.22.14.1 NMAC – Rp, 16.22.14.1 NMAC, 1/8/2023]

**16.22.14.2 SCOPE:**

The provisions in Part 14 of Chapter 22 apply to all applicants for expedited licensure.

[16.22.14.2 NMAC – Rp, 16.22.14.2 NMAC, 1/08/2023]

**16.22.14.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Professional Psychologists Act, NMSA 1978.

[16.22.14.3 NMAC – Rp, 16.22.14.3 NMAC, 1/8/2023]

**16.22.14.4 DURATION:**

Permanent.

[16.22.14.4 NMAC – Rp, 16.22.14.4 NMAC, 1/8/2023]

**16.22.14.5 EFFECTIVE DATE:**

January 8, 2023, unless a later date is cited at the end of a section.

[16.22.14.5 NMAC – Rp, 16.22.14.5 NMAC, 1/8/2023]

**16.22.14.6 OBJECTIVE:**

The objective of Part 14 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.22.14.6 NMAC – Rp, 16.22.14.6 NMAC, 1/8/2023]

**16.22.14.7 DEFINITIONS:**

**A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.22.14.8 NMAC; and

(2) any foreign country included in 16.22.15.9 NMAC.

**B. "Expedited license" means** a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board. license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**C. "Good standing" means** a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction" has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.**

**E. "Licensing fee" has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.**

**F. "Military service member" has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978,**

**G. "Qualified applicant" means** an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined the board's rules, and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements of the Professional Psychology Act, NMSA 1978.

**I. "Veteran"** has the same meaning as defined in Paragraph (3) or Subsection E of Section 61-1-34 NMSA 1978.

[16.22.14.7 NMAC – Rp, 16.22.14.7 NMAC, 1/08/2023]

**16.22.14.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

**A.** Applicants for licensure as a doctoral level psychologist licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-9-10 NMSA 1978.

**B.** Applicants for expedited licensure are required to have been licensed in a previous jurisdiction for two years, be in good standing, have no pending or active complaints, and are otherwise in compliance with all psychology licensure requirements in New Mexico as referenced in 16.22.14.7 NMAC.

(1) The following jurisdictions, on the grounds that they do not require accreditation by a nationally recognized accreditation body as defined in Subsection A of 16.22.1.7 NMAC are not consistent with New Mexico's requirements:

- (a) Alaska;
- (b) Arizona;
- (c) Arkansas;
- (d) California;
- (e) Colorado;
- (f) Florida;
- (g) Hawaii;
- (h) Idaho;
- (i) Indiana;
- (j) Kansas;

- (k) Kentucky;
- (l) Massachusetts;
- (m) Minnesota;
- (n) Missouri;
- (o) Nebraska;
- (p) Nevada;
- (q) North Carolina;
- (r) Ohio;
- (s) Oregon;
- (t) South Dakota;
- (u) Texas;
- (v) Utah;
- (w) Vermont;
- (x) Virginia;
- (y) Washington;
- (z) West Virginia;
- (aa) Wisconsin;
- (bb) Wyoming;
- (cc) Connecticut;
- (dd) Delaware;
- (ee) Illinois;
- (ff) Louisiana;
- (gg) Maine;

- (hh) New Hampshire;
- (ii) New Jersey;
- (jj) Rhode Island

(2) It is important to note that requirements for licensure are based on the individual applicant's qualifications, educational training, clinical supervision and other requirements as consistent with the New Mexico Board of Psychologists Examiners statute and rules, rather than the jurisdiction in which the applicant was last licensed.

(3) The following jurisdictions, on the grounds that they do not specify the type of practicum, doctoral internship, and postdoctoral supervised experience required, consistent with 16.22.6.8 NMAC, are not consistent with New Mexico's requirements:

- (a) Alaska;
- (b) Arizona;
- (c) Colorado;
- (d) Georgia;
- (e) Kentucky;
- (f) Maine;
- (g) Massachusetts;
- (h) Michigan;
- (i) Mississippi;
- (j) Missouri;
- (k) Nevada;
- (l) New Hampshire;
- (m) North Dakota;
- (n) Ohio;
- (o) Pennsylvania;
- (p) South Dakota;

- (q) Utah;
- (r) Virginia;
- (s) Washington;
- (t) West Virginia;
- (u) Wisconsin;
- (v) Wyoming;

(4) The following jurisdictions, on the grounds that they do not require the EPPP or passing the EPPP at the specified level 16.22.7.8 NMAC;

- (a) Guam;
- (b) Puerto Rico.

**C.** Applicants for certification as prescribing psychologist licensed or certified in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-9-10 NMSA 1978:

(1) The following jurisdictions on the grounds that licensure or certification for prescribing is not allowed:

- (a) Alabama;
- (b) Alaska;
- (c) Arizona;
- (d) Arkansas;
- (e) California;
- (f) Colorado;
- (g) Connecticut;
- (h) Delaware;
- (i) District of Columbia;
- (j) Florida;

- (k) Georgia;
- (l) Hawaii;
- (m) Indiana;
- (n) Kansas;
- (o) Kentucky;
- (p) Maine;
- (q) Maryland;
- (r) Massachusetts;
- (s) Michigan;
- (t) Minnesota;
- (u) Mississippi;
- (v) Missouri;
- (w) Montana;
- (x) Nebraska;
- (y) Nevada;
- (z) New Hampshire;
- (aa) New Jersey;
- (bb) New York;
- (cc) North Carolina;
- (dd) North Dakota;
- (ee) Ohio;
- (ff) Oklahoma;
- (gg) Oregon;

- (hh) Pennsylvania;
- (ii) Rhode Island;
- (jj) South Carolina;
- (kk) South Dakota;
- (ll) Tennessee;
- (mm) Texas;
- (nn) Utah;
- (oo) Vermont;
- (pp) Virginia;
- (qq) Washington;
- (rr) West Virginia;
- (ss) Wisconsin;
- (tt) Wyoming;
- (uu) American Samoa;
- (vv) Guam;
- (ww) Northern Mariana Islands; and
- (xx) U.S. Virgin Islands.

(2) The following jurisdiction on the grounds that the *Psychopharmacology Examination for Psychologists* (PEP) is not required:

- (a) Guam;
- (b) Puerto Rico.

(3) The following jurisdictions on the ground that required psychopharmacology training, supervision or experience is not equivalent to that required by New Mexico (16.22.23 NMAC):

- (a) Guam

- (b) Idaho
- (c) Illinois
- (d) Iowa
- (e) Louisiana
- (f) Puerto Rico

[16.22.14.8 NMAC – Rp, 16.22.14.8 NMAC, 1/8/2023]

**16.22.14.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

No applicants licensed in countries outside of the United States are eligible for expedited licensure under Section 61-9-10 NMSA 1978.

[16.22.14.9 NMAC - N, 1/8/2023]

**16.22.14.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) proof of a current license in good standing in an eligible jurisdiction as defined in these rules;
- (3) payment of the required application fee;
- (4) two years of practice as a licensed psychologist or prescribing psychologist; and
- (5) proof of national criminal history screening Subsection C of 16.22.5.8 NMAC.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-9-13 NMSA 1978 and 16.22.2.20 NMAC:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.22.14.10 NMAC – Rp, 16.22.14.10 NMAC, 1/8/2023]

**16.22.14.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61.1.34 NMSA 1978 must submit to the board a complete application containing all of the following:

(1) A completed and signed application form;

(2) proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and

(3) submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-9-13 NMSA 1978 and 16.22.12.20 NMAC:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.22.14.11 NMAC – N, 1/8/2023]

#### **16.22.14.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass exams pursuant to Professional Psychology Act, the licensee shall be required to pass the examination prior to renewing the license.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.22.14.12 NMAC – N, 1/08/2023]

#### **PART 15-19: [RESERVED]**

#### **PART 20: CONDITIONAL PRESCRIPTION CERTIFICATE; PRESCRIPTION CERTIFICATE: HEALTH CARE PRACTITIONER COLLABORATION GUIDELINES**

**16.22.20.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.20.1 NMAC - Rp, 16.22.20.1 NMAC, 11/15/06]

**16.22.20.2 SCOPE:**

This part applies to psychologists with conditional prescription certificate, and the general public.

[16.22.20.2 NMAC - Rp, 16.22.20.2 NMAC, 11/15/06]

**16.22.20.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.2

[16.22.20.3 NMAC - Rp, 16.22.20.3 NMAC, 11/15/06]

**16.22.20.4 DURATION:**

Permanent.

[16.22.20.4 NMAC - Rp, 16.22.20.4 NMAC, 11/15/06]

**16.22.20.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.20.5 NMAC - Rp, 16.22.20.5 NMAC, 11/15/06]

**16.22.20.6 OBJECTIVE:**

The objective of Part 20 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.20.6 NMAC - Rp, 16.22.20.6 NMAC, 11/15/06]

**16.22.20.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.22.1.7 NMAC]

#### **16.22.20.8 CONDITIONAL PRESCRIPTION CERTIFICATE OR PRESCRIPTION CERTIFICATE HEALTH CARE PRACTITIONER COLLABORATION GUIDELINES:**

**A.** A conditional prescribing or prescribing psychologist shall obtain a release of information from the patient or the patient's legal guardian authorizing the psychologist to contact the patient's primary treating health care practitioner, as required by law.

**B.** If a patient or the patient's legal guardian refuses to sign a release of information for the patient's primary treating health care practitioner, the conditional prescribing or prescribing psychologist shall inform the patient or the patient's legal guardian that the psychologist cannot treat the patient pharmacologically without an ongoing collaborative relationship with the primary treating health care practitioner. The psychologist shall refer the patient to another mental health care provider who is not required to maintain an ongoing collaborative relationship with a health care practitioner.

**C.** A conditional prescribing or prescribing psychologist must provide written notice to the primary treating health care practitioner within 24 hours of issuance of a prescription to the patient. If a conditional prescribing psychologist or prescribing psychologist is working in a declared emergency/disaster area, the on-site medical staff can serve as the evaluating primary care physician.

**D.** If a patient does not have a primary treating health care practitioner, the conditional prescribing or prescribing psychologist shall refer the patient to a health care practitioner prior to psychopharmacological treatment. The psychologist must receive the results of the health care practitioner's assessment and shall contact the health care practitioner as required herein prior to prescribing.

**E.** Once the collaborative relationship is established with the primary treating health care practitioner, the conditional prescribing or prescribing psychologist shall maintain and document the collaborative relationship to ensure that relevant information is exchanged accurately and in a timely manner. The ongoing collaborative relationship shall be maintained pursuant to the following guidelines.

**(1)** A conditional prescribing or prescribing psychologist shall notify the primary treating health care practitioner if and when the patient experiences adverse effects from medications prescribed by the psychologist that may be related to the patient's medical condition for which he or she is being treated by a health care practitioner.

**(2)** A conditional prescribing or prescribing psychologist shall notify the primary treating health care practitioner regarding results of laboratory tests related to the medical care of the patient that have been ordered by the psychologist in conjunction with psychopharmacological treatment.

**(3)** A conditional prescribing or prescribing psychologist shall notify a treating health care practitioner as soon as possible of any change in the patient's psychological

condition that may affect the medical treatment being provided by the health care practitioner.

[16.22.20.8 NMAC - Rp, 16.22.20.8 NMAC, 11/15/2006; A, 02/10/2022]

## **PART 21: CONDITIONAL PRESCRIBING OR PRESCRIBING PSYCHOLOGISTS: LIMITS OF PRACTICE**

### **16.22.21.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.21.1 NMAC - Rp, 16.22.21.1 NMAC, 11/15/06]

### **16.22.21.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure seeking licenses under prescriptive authority, and the general public.

[16.22.21.2 NMAC - Rp, 16.22.21.2 NMAC, 11/15/06]

### **16.22.21.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.2

[16.22.21.3 NMAC - Rp, 16.22.21.3 NMAC, 11/15/06]

### **16.22.21.4 DURATION:**

Permanent.

[16.22.21.4 NMAC - Rp, 16.22.21.4 NMAC, 11/15/06]

### **16.22.21.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.21.5 NMAC - Rp, 16.22.21.5 NMAC, 11/15/06]

### **16.22.21.6 OBJECTIVE:**

The objective of Part 21 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.21.6 NMAC - Rp, 16.22.21.6 NMAC, 11/15/06]

#### **16.22.21.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

#### **16.22.21.8 LIMITS OF PRACTICE:**

**A.** A conditional prescribing/prescribing psychologist shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training and experience.

**B.** A conditional prescribing or prescribing psychologist shall not prescribe a drug, substance or controlled substance that is not contained in the formulary described in 16.22.27 NMAC, of these regulations.

**C.** A conditional prescribing or prescribing psychologist may order and review laboratory tests that are necessary to maximize the psychopharmacological effectiveness and to minimize the potential untoward effects of medications that are prescribed. In consultation with the PCP, the psychologist may also order neurovascular imaging procedures that use contrast media; neuro imaging that require the use of radioactive material; roentgenological procedures (x-rays) or other appropriate tests. The psychologist shall not:

**(1)** perform medical procedures such as spinal taps, intramuscular or intravenous administration of medication, or phlebotomy; or

**(2)** perform amytal interviews.

**D.** A conditional prescribing or prescribing psychologist shall not self-prescribe medication and shall not prescribe medication to any person who is a member of the psychologist's family or household, or with whom the psychologist has a conflict of interest, including a prohibited dual relationship, as defined in 16.22.1 NMAC, of these regulations and the code of conduct adopted by the board.

**E.** A conditional prescribing or prescribing psychologist is subject to provisions of the Professional Psychologist Act and board regulations. A psychologist who violates the Professional Psychologist Act or board regulations is subject to disciplinary action by the board, which may include denial, suspension, or revocation of a conditional prescription certificate or prescription certificate or suspension or revocation of a license to practice psychology.

**F.** A conditional prescribing or prescribing psychologist must comply with all other state and federal laws regulating the administering and prescribing of controlled substances.

[16.22.21.8 NMAC - Rp, 16.22.21.8 NMAC, 11/15/2006; A, 02/10/2022]

## **PART 22: CONDITIONAL PRESCRIBING OR PRESCRIBING PSYCHOLOGISTS: APPLICATION COMMITTEE**

### **16.22.22.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.22.1 NMAC - Rp, 16.22.22.1 NMAC, 11/15/06]

### **16.22.22.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure, and the general public.

[16.22.22.2 NMAC - Rp, 16.22.22.2 NMAC, 11/15/06]

### **16.22.22.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.1

[16.22.22.3 NMAC - Rp, 16.22.22.3 NMAC, 11/15/06]

### **16.22.22.4 DURATION:**

Permanent.

[16.22.22.4 NMAC - Rp, 16.22.22.4 NMAC, 11/15/06]

### **16.22.22.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.22.5 NMAC - Rp, 16.22.22.5 NMAC, 11/15/06]

### **16.22.22.6 OBJECTIVE:**

The objective of Part 22 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.22.6 NMAC - Rp, 16.22.22.6 NMAC, 11/15/06]

### **16.22.22.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

**16.22.22.8 PSYCHOPHARMACOLOGY (RxP) APPLICATION COMMITTEE:**

**A.** The chair of the board may appoint one or more RxP application committee(s) to review application(s) for conditional prescription and prescription certificates and to make recommendations to the board.

**B.** The RxP application committee will consist of a minimum of three (3) members who shall reside in New Mexico and who shall hold active, unrestricted New Mexico licenses in their respective profession. The committee shall consist of:

(1) one person appointed by the chair of the board who is experienced in psychopharmacology;

(2) one person appointed by the chair of the board, in collaboration with the New Mexico medical board, who is an allopathic or osteopathic physician or a nurse practitioner or physicians assistant with clinical experience in mental health or psychopharmacology; and

(3) a public member appointed by the chair of the board.

**C.** The professional members appointed by the chair of the board to the committee may include:

(1) a psychologist with a conditional prescribing certificate or a prescription certificate;

(2) a physician or osteopathic physician with clinical experience in mental health or psychopharmacology;

(3) a pharmacist clinician, or certified, or certified nurse practitioner, RNCS or physician's assistant with specialized training in psychopharmacology; or

(4) a licensed psychologist.

**D.** Members of the RxP application committee shall not be in a psychopharmacology training program, and shall not be seeking licensure as a psychologist.

**E.** Members of the RxP application committee shall not participate in the review, deliberation, or decision of an application if the applicant is a member of the member's family or household or if the member has a conflict of interest as defined in 16.22.25 NMAC, of these regulations.

**F.** The New Mexico medical board or its designee shall be available upon request to consult with the RxP application committee or the board regarding the applicability of the regulations adopted pursuant to Section 61-9-17.1 NMSA 1978 of the act to a particular application.

**G.** The RxP application committee shall provide the board a recommendation to accept or reject an application for a conditional prescription or prescription certificate. A recommendation to reject an application shall state the reasons for the recommendation.

[16.22.22.8 NMAC - Rp, 16.22.22.8 NMAC, 11/15/06]

## **PART 23: REQUIREMENTS FOR EDUCATION AND CONDITIONAL PRESCRIPTION CERTIFICATE**

### **16.22.23.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.23.1 NMAC - Rp, 16.22.23.1 NMAC, 11/15/06]

### **16.22.23.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure seeking licenses under prescriptive authority, and the general public.

[16.22.23.2 NMAC - Rp, 16.22.23.2 NMAC, 11/15/06]

### **16.22.23.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.1

[16.22.23.3 NMAC - Rp, 16.22.23.3 NMAC, 11/15/06]

### **16.22.23.4 DURATION:**

Permanent.

[16.22.23.4 NMAC - Rp, 16.22.23.4 NMAC, 11/15/06]

### **16.22.23.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.23.5 NMAC - Rp, 16.22.23.5 NMAC, 11/15/06]

#### **16.22.23.6 OBJECTIVE:**

The objective of Part 23 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.23.6 NMAC - Rp, 16.22.23.6 NMAC, 11/15/06]

#### **16.22.23.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

#### **16.22.23.8 QUALIFICATIONS AND EDUCATION REQUIREMENTS FOR CONDITIONAL PRESCRIPTIVE CERTIFICATE:**

**A. Qualifications of applicant.** The board shall issue a conditional prescription certificate pursuant to 16.22.24.8 NMAC, of these regulations to each applicant who submits evidence satisfactory to the board that the applicant:

(1) has completed a doctoral program in psychology from an accredited institution of higher education or professional school or, if the program was not accredited at the time of the applicant graduation, that the program meets professional standards determined acceptable by the board;

(2) holds an active unrestricted license to practice psychology in New Mexico;

(3) has successfully completed psychopharmacological training that meets the standards set forth in Subsection B below from either:

(a) an institution of higher education that has a postdoctoral program of psychopharmacology education for psychologists and that is accredited by a regional body recognized by the U.S. department of education or the council for higher education accreditation; or

(b) a continuing education provider approved by the American psychological association that offers a program of psychopharmacology education for psychologists; or

(c) a continuing education program of professional development in psychopharmacology for psychologists that is administered in collaboration with a school and that is a formal and organized program of study leading to a credential in psychopharmacology from that school; or

(d) a continuing education program of professional development in psychopharmacology for psychologists that is administered in collaboration with a

school if the applicant successfully completed the 450 classroom hours of didactic study referred to in 16.22.23.8 NMAC, of these regulations below prior to January 1, 2004.

**B. RxP training program.** The psychopharmacology training program referred in Subparagraph (c) above, shall meet the following criteria.

- (1) The program shall be an integrated and organized program of study.
- (2) The program shall have an identifiable body of students at different levels of matriculation.
- (3) The program shall be clearly identified and labeled as a psychopharmacology program and shall specify in pertinent institutional catalogues and brochures its intent to educate and train psychologists to prescribe psychotropic medication.
- (4) The program shall have a formally designated training director who is a psychiatrist or a doctoral psychologist, trained in the area of psychopharmacology, and licensed to practice in the jurisdiction in which the program resides.
- (5) The training director shall be primarily responsible for directing the training program and shall have administrative authority commensurate with those responsibilities.
- (6) The training director's credentials and expertise shall be consistent with the program's mission and goals to train psychologists to prescribe psychotropic medication.
- (7) The program shall provide information regarding the minimal level of achievement required for postdoctoral trainees to satisfactorily progress through and complete the psychopharmacological training program, as well as evidence that it adheres to the minimum levels of achievement.
- (8) The program shall have formally designated instructors and supervisors in sufficient number to accomplish the program's education and training.
- (9) Supervisors shall hold an active, unrestricted license in their field of practice in the jurisdiction in which the program resides or where the supervision is being provided.
- (10) The program instructors and supervisors shall have sufficient expertise, competence, and credentials in the areas in which they teach or supervise.
- (11) The program instructors and supervisors shall participate actively in the program's planning, implementation and evaluation.

**(12)** The program, with appropriate involvement from its training supervisors, instructors, and trainees, shall engage in a self-study process that addresses:

**(a)** expectations for the quality and quantity of the trainees' preparation and performance in the program;

**(b)** training goals and objectives for the trainees and the trainees' views regarding the quality of the training experiences and the program;

**(c)** procedures to maintain current achievements or to make changes as necessary; and

**(d)** goals, objectives, and outcomes in relation to local, regional, and national changes in the knowledge base of psychopharmacology training.

**(13)** The program shall follow the guidelines for psychopharmacology training of post-doctoral psychologists established by the American psychological association.

**(14)** As part of the admission and training process, the training program shall evaluate and assure that every student completes necessary prerequisite training in basic science (e.g. physiology, chemistry, and biochemistry), the biological bases of behavior, and psychopharmacology.

**(15)** When students are not in residence, the program provides on-line access to a library of sufficient diversity and level to support the advanced study of the psychopharmacological treatment of mental disorders from wherever the student resides. This access shall remain available throughout all didactic and clinical phases of the training program. Frequent face-to-face evaluation and discussions shall be included in the didactic training.

**(16)** The program provides formal, written measurement of the mastery of course content.

**(17)** The program demonstrates in its written materials or course syllabi that it integrates into the training the following areas; socio-cultural issues in psychopharmacological treatment, ethno-pharmacology, use of translators, the cultural context of compliance and noncompliance with prescribed medication, creating a culturally appropriate environment to meet patient care treatment and language needs, and working collaboratively with traditional healers.

### **C. Didactic instruction.**

**(1)** Within the five years immediately preceding the date of application for a conditional prescription certificate, the applicant shall have successfully completed didactic instruction of no fewer than 450 classroom hours in at least the following core areas of instruction:

- (a) neuroscience;
- (b) pharmacology;
- (c) psychopharmacology;
- (d) physiology;
- (e) pathophysiology;
- (f) appropriate and relevant physical and laboratory assessment;
- (g) clinical pharmaco-therapeutics; and
- (h) cultural competence.

(2) At least three-fourths of the 450 classroom hours of didactic instruction shall be awarded by one certification or degree-granting institution or continuing education program.

**D. Eighty hour practicum in clinical assessment and pathophysiology.**

(1) The 80 hour practicum shall be part of the psychopharmacology training program from which the applicant obtains the certification or degree.

(2) The 80 hour practicum shall provide the opportunity for the applicant to observe and demonstrate competence in physical and health assessment techniques within a medical setting under the supervision of a physician.

(3) The 80 hour practicum shall be completed in a timeframe of full-time over two weeks to 30 weeks.

(4) If the applicant cannot complete the 80 hour practicum within the time frame designated in Paragraph (3) of Subsection D of 16.22.20.8 NMAC, because of illness or other extenuating circumstances, the applicant may request an extension from the board explaining in writing the extenuating circumstances and the additional time requested.

(5) The supervising physician and the training director of the psychopharmacology training program shall certify in writing that the applicant:

- (a) assessed a diverse and significantly medically ill patient population;
- (b) observed the progression of illness and continuity of care of individual patients;

- (c) adequately assessed vital signs;
- (d) demonstrated competent laboratory assessment; and
- (e) successfully completed the 80-hour practicum.

**E. Four-hundred hour practicum.** Requirements for the general 400 hour practicum treating a minimum of 100 patients with mental disorders include:

(1) The 400 hour practicum shall be part of the psychopharmacology training program from which the applicant obtains the certification, degree or certification of completion.

(2) One-hundred patients shall mean 100 separate patients.

(3) The four-hundred hours shall refer to 400 face-to-face hours. The 400 face-to-face hours shall include only time spent with patients to provide evaluation and treatment for medical psychopharmacotherapy of patients and time spent in collaboration with the patient's treating health care practitioner(s).

(4) The applicant must have supervised experience in the evaluation and treatment of 100 patients, representing as diverse a patient population as possible, including diversity in the patients:

(a) gender;

(b) different ages throughout the life cycle, including adults, children/adolescents, and geriatrics; as possible and appropriate;

(c) range of disorders listed in the most recent diagnostic and statistical manual of mental disorders published by the American psychiatric association and acute and chronic disorders;

(d) ethnicity;

(e) socio-cultural background; and

(f) economic background.

(5) The applicant and the training program shall maintain a log on patient seen, which shall include: a coded identification number for the patient, patient's age, gender, diagnosis, date and time seen, amount of time seen for psychopharmacotherapy. The log shall be available to the RxP application committee or the board upon request. The log shall contain the name and signature of the supervisor.

**(6)** The applicant and the training program shall keep records of the time spent during this practicum. The records shall be available to the psychopharmacology application committee or the board upon request. The records shall not contain patient identifying information.

**(7)** A psychiatrist or other appropriately trained physician, licensed in good standing in the jurisdiction in which the psychiatrist or other physician rendered supervision shall be the primary supervising physician of the practicum. The primary supervising physician shall be responsible for the overall supervision of the applicant; however, training may be assigned to other licensed physicians, i.e., secondary supervisors, as designated by the primary supervising physician and the training director of the program.

**(8)** One to one supervision will be provided either face to face or by video conference. The applicant shall consult with the primary or secondary supervising physician, before a decision is made regarding the psychopharmacological treatment of the patient.

**(9)** The primary or secondary supervising physician shall review the charts and records of any patient seen by the applicant during the practicum while under the supervision of the primary or secondary supervising physician.

**(10)** The practicum shall be completed in a period of time of not less than six months and not more than three years.

**(11)** If the applicant cannot complete the 400 hour practicum within the timeframe designated in Subsection E of 16.22.23.8 because of illness or other extenuating circumstances, the applicant may request an extension from the board explaining in writing the extenuating circumstances and the additional time requested. The applicant shall receive a minimum of one hour of supervision for every eight hours of patient time. The applicant is responsible to keep a log of the dates and time of supervision. The supervisor may meet with the applicant for additional education at his or her discretion.

**(12)** The practicum shall be completed within the five years immediately preceding the date of application for a conditional prescription certificate.

**(13)** Upon request of the RxP application committee or the board, the primary supervising physician shall provide an affidavit stating that:

**(a)** the supervisor does not have conflict of interest and is not a member of the applicant's family or household as defined in 16.22.26 NMAC, of these regulations;

**(b)** the supervisor or a designated secondary supervisor reviewed and discussed with the applicant the charts and records of patients seen by the applicant during the practicum;

(c) the practicum included a diverse group of patients, as defined in these regulations; and

(d) the applicant did not write any prescriptions without the primary or secondary supervisor's supervision and signature or authorization.

(14) The primary supervising physician shall conduct a formal, written evaluation on at least two occasions, at the midpoint and at the end of the practicum. The evaluation shall assess the applicant's progress and competencies and shall describe any deficiencies or areas where competency has not been achieved. The primary supervisor shall submit copies of the evaluations to the applicant and the training director.

(15) In the event of documented deficiencies the training director of the psychopharmacology program shall specify in writing:

(a) the areas in need of remediation;

(b) the process and procedures by which these areas are to be re-mediated;  
and

(c) the method by which the training director and supervisor shall determine that the applicant has achieved the competencies necessary to successfully complete the practicum.

(16) The psychologist in practicum training or the conditional prescribing psychologist is responsible for informing the patient or the patient's legal guardian, when appropriate, or explain to the patient through the recommendation system at an institution if the institution itself generally handles such informed consent. The name and role of the supervisor and sufficient information of the expectation and requirements of the practicum shall be provided to the patient or the patient's legal guardian at the initial contact necessary to obtain informed consent and appropriate releases. The applicant shall provide additional information requested by the patient or the patient's legal guardian concerning the applicant's education, training and experience.

(17) The primary supervising physician and the training director of the psychopharmacology program from which the applicant obtained a certification of successful completion or a degree in psychopharmacology shall certify to the board in writing that the applicant has successfully completed the practicum.

**F. National examination.** To qualify for a conditional prescription or prescription certificate, the applicant must demonstrate competency by passing a national examination.

(1) Applicant must pass the Psychopharmacology Examination for Psychologists (PEP), administered and maintained by the Association of State and Provincial Psychology Boards (ASPPB).

(2) Applicant must be eligible to take the PEP after the applicant successfully completes the didactic portion of the postdoctoral program of education in psychopharmacology.

(3) The passing score shall be the passing score recommended by the association of state and provincial psychology boards (ASPPB).

(4) If the applicant fails the examination, the applicant may take the examination a second time after a mandatory 90-day waiting period.

(5) If the applicant fails the examination on the second attempt, the applicant will be required to wait one year before repeating the examination.

(6) If the applicant fails the examination on the third attempt, the applicant is required to take the remedial didactic program recommended by the psychopharmacology application committee and approved by the board before the applicant is allowed to repeat the examination.

**G.** An applicant who has successfully completed a psychopharmacology educational program, an 80 hour practicum in clinical assessment and pathophysiology, a 400 hour/100 patient practicum treating patients with mental disorders or the national certification examination prior to the effective date of these regulations may include the completed portion(s) of the training in the application for a conditional prescription certificate. The applicant who has completed the 400 hour practicum shall include certification in writing from the primary supervising physician that the applicant has successfully completed the practicum and is trained to competently treat a diverse patient population as defined in these regulations. The board shall approve the prior training program(s) that satisfy the requirements as listed in 16.22.23 NMAC, of these regulations.

[16.22.23.8 NMAC - Rp, 16.22.23.8 NMAC, 11/15/2006; A, 3/21/2009; A, 02/10/2022]

## **PART 24: APPLICATION PROCEDURES: TWO-YEAR SUPERVISED PRACTICE**

### **16.22.24.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.24.1 NMAC - Rp, 16.22.24.1 NMAC, 11/15/06]

### **16.22.24.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure seeking licenses under prescriptive authority, and the general public.

[16.22.24.2 NMAC - Rp, 16.22.24.2 NMAC, 11/15/06]

**16.22.24.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.1

[16.22.24.3 NMAC - Rp, 16.22.24.3 NMAC, 11/15/06]

**16.22.24.4 DURATION:**

Permanent.

[16.22.24.4 NMAC - Rp, 16.22.24.4 NMAC, 11/15/06]

**16.22.24.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.24.5 NMAC - Rp, 16.22.24.5 NMAC, 11/15/06]

**16.22.24.6 OBJECTIVE:**

The objective of Part 24 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.24.6 NMAC - Rp, 16.22.24.6 NMAC, 11/15/06]

**16.22.24.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

**16.22.24.8 APPLICATION PROCEDURES AND PRESCRIBING PRACTICES FOR CONDITIONAL PRESCRIPTION CERTIFICATE; TWO-YEAR SUPERVISED PRACTICE:**

**A.** An applicant for a conditional prescription certificate shall submit a completed application on the form provided by the board. The applicant is responsible to ensure that the application is complete and that all application fees are paid.

**B.** Application procedure, the applicant shall submit the following:

- (1) a copy of the degree, certificate or certification of completion of a post-doctoral psychopharmacology training program;
- (2) certification by the supervising independently licensed prescribing clinician and program training director of successful completion of the 80 hour practicum in clinical assessment and pathophysiology;
- (3) certification by the primary supervising independently licensed prescribing clinician and the program-training director of successful completion of the general 400 hour practicum treating a minimum of 100 patients with mental disorders;
- (4) evidence of passing the psychopharmacology examination for psychologists (PEP);
- (5) a proposed supervisory plan; on a form provided by the board that is signed by the applicant and the supervising independently licensed prescribing clinician;
- (6) evidence of proof of insurance or insurance binder as described in 16.22.24.9 NMAC, of these regulations; and
- (7) a non-refundable application fee;
- (8) evidence of completion of a 3-hour training in New Mexico rules and laws applicable to prescribing psychologists, as offered by the State Psychologist Association of New Mexico (SPA), or the New Mexico Psychological Association (NMPA).

**C.** Only a complete application will be considered. The board may request additional information from the applicant to verify or confirm the information contained in the application.

**D.** The applicant will be notified in writing within 60 days whether the application, including the supervisory plan, is accepted or rejected. If the application is rejected, the notice shall state the reason for rejection.

[16.22.24.8 NMAC - Rp, 16.22.24.8 NMAC, 11/15/2006; A, 02/10/2022]

#### **16.22.24.9 CONDITIONS OF PRACTICE; MALPRACTICE INSURANCE:**

**A.** The conditional prescribing psychologist shall maintain malpractice insurance covering claims for personal injury arising out of his or her performance of professional services and claims arising out of his or her act, errors or omissions in providing professional services, including prescribing psychotropic medication. Such malpractice insurance coverage shall be no less than one (1) million dollars per occurrence with an aggregate limit of three (3) million dollars.

**B.** The conditional prescribing psychologist shall submit to the board the declaration page of his or her malpractice insurance policy, when instituted, and thereafter on the policy renewal date, as proof of this required insurance upon making application for the conditional prescription certificate, and proof that the policy covers the prescribing of psychotropic drugs.

[16.22.24.9 NMAC - Rp, 16.22.24.8 NMAC, 11/15/06; A, 03/21/09]

#### **16.22.24.10 TWO YEAR SUPERVISED PRACTICE:**

**A.** The conditional prescribing psychologist shall be supervised by an independently licensed prescribing clinician knowledgeable of the administration of psychotropic medication. If more than one supervisor is selected, one supervisor shall be designated the primary supervising independently licensed prescribing clinician.

**B.** The board shall approve the supervisory plan before the conditional prescription certificate is issued. The proposed supervisory plan shall include the information contained in 16.22.24 NMAC, and shall be signed by the primary supervising independently licensed prescribing clinician.

**C.** After the board approves the supervisory plan, the conditional prescribing psychologist shall within 30 days submit to the New Mexico medical board the name, address and phone number of the conditional prescribing psychologist and the name(s), address(s) and phone number(s) of the primary supervising independently licensed prescribing clinician and secondary supervising independently licensed prescribing clinician, if any. During the period of supervised practice, the conditional prescribing psychologist shall provide to the New Mexico medical board the name(s), address(s) and phone number(s) of any supervising independently licensed prescribing clinician or independently licensed prescribing clinician serving as a substitute or replacement for primary or secondary supervisor(s).

**D.** Each supervisor shall have clinical expertise or training with the patient population that the psychologist with a conditional prescription certificate is evaluating and treating.

**E.** During the initial contact between the patient or the patient's legal guardian, if any, and the conditional prescribing psychologist, the patient or the patient's legal guardian shall be informed that the psychologist has received specialized training in the prescription of psychotropic medication, that the psychologist is transitioning to independent psychopharmacological practice, and that the psychologist is practicing under supervision with respect to the prescribing of psychotropic medication. The name and role of the supervisor shall be provided to the patient or the patient's legal guardian and informed consent and appropriate releases shall be obtained. The conditional prescribing psychologist shall provide additional information requested by the patient or the patient's legal guardian concerning the psychologist's education, training, and experience.

**F.** Supervision by the primary supervising independently licensed prescribing clinician shall be provided on a one-to-one basis for at least four hours a month and should total at least 46 hours of one-to-one supervision per year, unless altered, in accordance with Subsection K of 16.22.24.10 NMAC of these regulations.

**G.** Each supervising independently licensed prescribing clinician is responsible to review only the cases he or she is supervising. The supervising independently licensed prescribing clinician at all times shall have access to and shall review records relating to the treatment of patients under his or her supervision. The supervising independently licensed prescribing clinician may require face-to-face consultation(s) with the conditional prescribing psychologist.

**H.** If there is more than one supervisor, each supervisor shall inform the other supervisor of any concerns about a conditional prescribing psychologist whom he or she is supervising.

**I.** The primary supervising independently licensed prescribing clinician shall contact any secondary supervisor(s) at least every six months to obtain written or verbal progress reports concerning how the conditional prescribing psychologist is performing.

**J.** One-to-one supervision must be provided either face-to-face, telephonically, or by tele-video live communication.

**K.** At any time during the two-year conditional prescribing periods the supervising independently licensed prescribing clinician, after consultation with the conditional prescribing psychologist, may amend the supervisory plan, to increase or decrease the hours of supervision. The board shall approve amendments to the supervisory plan set forth in Subsection M below.

**L.** At any time during the two-year conditional prescribing period a primary supervising independently licensed prescribing clinician shall not supervise more than three conditional prescribing psychologists.

**M.** The supervisory plan described in Paragraph (5) of Subsection B of 16.22.24.8 NMAC shall include the following information and shall be signed by the primary supervising independently licensed prescribing clinician:

- (1)** name of the applicant;
- (2)** name, address, license number, and area of specialization of the primary supervising independently licensed prescribing clinician and the secondary supervisor(s), if any;
- (3)** beginning and ending dates of the two-year supervised practice covered by the plan;

- (4) number of one-on-one supervisory hours per month and by whom;
- (5) setting(s) where supervision will occur and with whom;
- (6) duties and clinical responsibilities of the conditional prescribing psychologist;
- (7) location(s) where supervision will occur and with whom;
- (8) areas in which the primary and secondary supervisor(s), if any, have specialized skills to render competent supervision;
- (9) number of psychologists with conditional prescription certificates that the primary supervising independently licensed prescribing clinician will supervise during this time period;
- (10) the manner in which the conditional prescribing psychologist will be represented to the public including, all written communications and public announcements;
- (11) any direct or indirect financial agreements between or among the conditional prescribing psychologist and the primary and secondary supervisor(s), if any;
- (12) other information necessary to clarify the nature and scope of supervision;  
and
- (13) a statement specifying the manner in which supervision and clinical and professional responsibility will be provided during the supervisor's absence (during vacations or unexpected events that require the supervisor to be absent for any period of time),

**N.** The board or its designee shall notify the applicant in writing within 60 days of application date, whether the application and the proposed supervisory plan are accepted or rejected. The board or its designee shall notify a conditional prescribing psychologist within 30 days whether a proposed amendment to an approved supervisory plan is accepted or rejected. If rejected, the notice shall state the reasons for rejection.

**O.** Each supervising independently licensed prescribing clinician shall maintain a supervision log containing the dates, duration, and place or method of supervision, the same identification code for patients as used by the psychologist with a conditional prescribing certificate in the summary reports, and a brief description of the content of supervision. The log shall be submitted to the board upon request.

**P.** The primary supervising independently licensed prescribing clinician shall also maintain a log of the contacts with the secondary supervisor(s) that includes the dates of contact, and a brief description of the outcome of this contact, including a statement stating whether the conditional prescribing psychologist is progressing satisfactorily.

**Q.** The supervisor shall review the results of laboratory tests as appropriate and shall be skilled and experienced in such interpretation.

**R.** The supervising independently licensed prescribing clinician(s) shall hold an active unrestricted license in good standing and appropriate drug enforcement administration certificate and shall be experienced and skilled in the prescription of psychopharmacological drugs.

**S.** The conditional prescribing psychologist shall see a minimum of 50 separate patients within the two-year period who are seen for the purpose of evaluation and treatment with psychotropic medication. The duration of the two-year supervisory period shall not be accelerated or reduced.

**T.** At the end of the two-year period, the primary supervising independently licensed prescribing clinician shall provide an affidavit on a form provided by the board certifying that:

**(1)** the supervising independently licensed prescribing clinician has not received any financial payments from the applicant except appropriate fees for supervisory services, the supervising independently licensed prescribing clinician is not a member of the applicant's family or household, the supervising independently licensed prescribing clinician is not in a prohibited dual relationship with the applicant or a member of the applicant's family or household, and that the supervising independently licensed prescribing clinician has not had an interest that conflicts with the supervising independently licensed prescribing clinician's duties as supervisor;

**(2)** each supervising independently licensed prescribing clinician discussed with the psychologist the charts and records of patients seen by the psychologist under that independently licensed prescribing clinician's supervision during the two-year period or any extension; and

**(3)** the psychologist has successfully completed two years of evaluating for or prescribing psychotropic medication to at least 50 patients.

**U.** The primary supervising independently licensed prescribing clinician in consultation with any secondary supervisor shall evaluate and describe any deficiencies at the end of the two-year period. In the event of documented deficiencies, the primary supervising independently licensed prescribing clinician(s) shall specify in writing the areas in need of remediation and the process and procedures by which these areas are to be remediated.

**V.** The supervisory period and the conditional prescriptive certificate may be extended with approval of the board if the conditional prescribing psychologist does not successfully complete the two-year conditional period of supervision. A supervisory plan shall be submitted to the board for the proposed extended period of practice under supervision. The conditional prescribing psychologist shall continue to maintain malpractice insurance.

**W.** At the end of the extended two-year period, the primary supervising independently licensed prescribing clinician shall provide to the board an affidavit on a form provided by the board certifying: the method by which the supervisor(s) determined that the conditional prescribing psychologist obtained the competencies necessary to prescribe psychotropic medication, supported by a written evaluation addressing areas of remediation.

[16.22.24.10 NMAC - Rp, 16.22.24.8 NMAC, 11/15/2006; A, 3/21/2009; A, 02/10/2022]

#### **16.22.24.11 EXPIRED PRACTICE OR CERTIFICATE:**

**A.** The conditional prescribing psychologist shall notify the board in writing if a supervising independently licensed prescribing clinician fails to meet any of the supervisory requirements as set forth in this section and the supervisory plan approved by the board. The notification shall include a clear and detailed description of the supervisor's failure(s) to perform.

**B.** The conditional prescribing psychologist shall notify the board within 14 days of discovery of any event or circumstance that requires the psychologist to interrupt or cease prescribing practices for any period of time that exceeds 60 days. In no event shall the conditional prescribing psychologist continue prescribing psychotropic medications without an active, responsible supervising independently licensed prescribing clinician and valid malpractice insurance.

**C.** The conditional prescribing certificate shall expire two years after issuance, unless extended in writing as provided in 16.22.24.8 NMAC. A psychologist shall not administer or prescribe drugs or medicines unless the psychologist holds a valid conditional prescription certificate or prescription certificate issued by the board. The board may extend the conditional prescribing certificate up to 60 days pending peer review if the board has received at the board office a complete application for a prescription certificate no later than 10 days before the expiration of the conditional prescription certificate.

**D.** The psychologist shall not administer or prescribe drugs or medicines after the expiration of the conditional prescription certificate. The psychologist shall notify the board in writing if the psychologist decides not to immediately apply for a prescription certificate upon expiration of the conditional prescription certificate. A psychologist who successfully completes all of the requirements of conditional prescription certificate may apply for a prescription certificate after the expiration of the conditional prescription

certificate, so long as the psychologist satisfies all the education, training, and supervision criteria within the time limits established by Section 61-9-17.1 NMSA 1978 and 16.22.23.8 NMAC, of these regulations. The psychologist is solely responsible to obtain patient records for peer review and all other evidence of satisfactory completion of practice under supervision, including supervising independently licensed prescribing clinician affidavit(s).

[16.22.24.11 NMAC - Rp, 16.22.24.8 NMAC 11/15/2006; A, 02/10/2022]

## **PART 25: PRESCRIPTION CERTIFICATE: APPLICATION; PEER REVIEW; EVALUATION OUTCOME**

### **16.22.25.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.25.1 NMAC - Rp, 16.22.25.1 NMAC, 11/15/06]

### **16.22.25.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure seeking licenses under prescriptive authority, and the general public.

[16.22.25.2 NMAC - Rp, 16.22.25.2 NMAC, 11/15/06]

### **16.22.25.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.1

[16.22.25.3 NMAC - Rp, 16.22.25.3 NMAC, 11/15/06]

### **16.22.25.4 DURATION:**

Permanent.

[16.22.25.4 NMAC - Rp, 16.22.25.4 NMAC, 11/15/06]

### **16.22.25.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.25.5 NMAC - Rp, 16.22.25.5 NMAC, 11/15/06]

### **16.22.25.6 OBJECTIVE:**

The objective of Part 25 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.25.6 NMAC - Rp, 16.22.25.6 NMAC, 11/15/06]

#### **16.22.25.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

#### **16.22.25.8 APPLICATION FOR PRESCRIPTION CERTIFICATE:**

**A.** An applicant for a prescription certificate shall submit a complete application on a form approved by the board. The applicant is responsible to ensure that the application is complete and timely and that all application fees are paid.

**B.** The application procedure, shall commence no sooner than 60 days and no later than 10 days prior to expiration of the conditional prescription certificate, whereby the applicant shall submit a non-refundable fee (see fee schedule at 16.22.13.8 of these regulations) established by the board and shall submit evidence satisfactory to the board that the applicant:

**(1)** has been issued a conditional prescription certificate and has successfully completed or anticipates successfully completing two years of prescribing psychotropic medication, as certified by the primary supervising independently licensed prescribing clinician pursuant to 16.22.24 NMAC of these regulations;

**(2)** holds an active and unrestricted license to practice psychology in New Mexico;

**(3)** has malpractice insurance as required in 16.22.24 NMAC, of these regulations; the psychologist shall submit to the board a copy of the declaration page of his malpractice insurance policy with the application.

**C.** Only a complete application will be considered. The board may request additional information from the applicant to verify or confirm the information in the application.

[16.22.25.8 NMAC - Rp, 16.22.25.8 NMAC, 11/15/2006; A, 02/10/2022]

#### **16.22.25.9 PEER REVIEW:**

**A.** Panel membership. The applicant for a prescription certificate shall successfully complete a process of independent peer review that meets the requirements set forth below before the board shall issue a prescription certificate.

(1) One or more peer review panel(s) shall be appointed by the chair of the board. Peer review panels shall consist of three (3) members from at least two (2) of the following professions and categories:

(a) conditional prescribing psychologists, prescribing psychologists or licensed psychologists with specialized training and experience in psychopharmacology;

(b) licensed, board-certified psychiatrists, other physicians, nurse practitioners or physician assistants with specialized training and experience in psychopharmacology;

(c) doctoral level licensed pharmacists or pharmacist clinicians with specialized training and experience in psychopharmacology.

(2) A panel member shall not be a member of the applicant's family or household, shall not be in a prohibited dual relationship with the applicant or a member of the applicant's family or household, shall not have supervised the applicant, and shall not have a conflict of interest as defined in 16.22.1 NMAC, of these regulations.

(3) No panel member may be a psychologist enrolled in a psychopharmacology training program.

#### **B. Review process.**

(1) A panel shall examine at least ten (10) randomly selected charts of patients treated by the conditional prescribing psychologist during the two-year supervised period and any approved extensions. The applicant shall be solely responsible for obtaining the patient charts for peer review. The charts shall be reviewed to determine whether the following information is timely, accurately, and properly recorded:

(a) a full medical history and family history;

(b) a mental status examination and complete differential diagnosis of the patient by the conditional prescribing psychologist;

(c) risk factors for the diagnostic condition were identified, including absence of drug, alcohol, suicide and homicide;

(d) drug and food allergies;

(e) patient medications;

(f) patient education on prescription, including evidence of informed consent to treatment;

- (g) appropriate laboratory tests ordered and reviewed;
- (h) the patient's diagnosis;
- (i) adequate dosing requirements for prescription;
- (j) treatment, including psychopharmacotherapy and psychotherapy, adverse affects from prescriptions, documentation of outcome measures for prescriptions;
- (k) progress notes;
- (l) a follow-up plan, including a discharge plan, and
- (m) documentation of collaboration with the patient's treating health care practitioner as required pursuant to 16.22.20 NMAC, of these regulations;

(2) The peer review panel shall complete an evaluation form approved by the psychopharmacology application committee, which shall certify whether the charts reviewed are in compliance and are satisfactory, and shall forward the evaluation form to the board.

[16.22.25.9 NMAC - Rp, 16.22.25.8 NMAC, 11/15/06]

#### **16.22.25.10 EVALUATION OUTCOME:**

**A.** Board action. Within sixty (60) days, the board shall issue an unrestricted prescription certificate to the applicant or inform the applicant of deficiencies.

**B.** Remedial period. If the peer review panel documents deficiencies in the patient charts or the applicant otherwise does not demonstrate competency to prescribe independently, the panel shall specify in writing:

- (1) the areas in need of remediation;
- (2) the process and procedures by which these areas are to be remediated;  
and
- (3) the time period, not to exceed six (6) months, allowed for remediation of deficiencies or demonstration of competency before the applicant can undergo another peer review.

**C.** Additional peer review(s).

(1) Another peer review shall be conducted at the end of the remedial period. The applicant may have a total of three (3) peer reviews, after which the applicant shall re-enroll in psychopharmacology program meeting all criteria in 16.22.23.8 NMAC, and

apply for another conditional prescription certificate prior to applying for a prescription certificate.

(2) The evaluation or results of any deficient peer review shall be forwarded to the board and the New Mexico medical board. The board, in consultation with the medical board or its designee, shall have the discretion to extend a conditional prescription certificate pursuant to Subsection V of 16.22.24.10 NMAC, pending the outcome of the second or subsequent peer review process.

[16.22.25.10 NMAC - Rp, 16.22.25.8 NMAC, 11/15/06]

#### **16.22.25.11 APPLICATION FOR CONDITIONAL PRESCRIPTION CERTIFICATE BY APPLICANTS LICENSED TO PRESCRIBE IN OTHER AREAS:**

A person who has been licensed or certified as a prescribing psychologist by another state, territorial possession of the United States, District of Columbia, or another country, for a minimum of 2 years, may apply for a conditional prescription certificate and shall meet these requirements:

**A.** Psychology licensure. Applicant shall hold an active, unrestricted New Mexico license as a psychologist.

**B.** Psychopharmacology education. The applicant shall demonstrate completion of the required academic coursework to the satisfaction of the board.

**C.** New Mexico jurisprudence examination. The applicant shall demonstrate evidence of completion of a 3-hour training in New Mexico rules and laws applicable to prescribing psychologists, as offered by the state psychologist association of New Mexico (SPA), or the New Mexico psychological association (NMPA).

**D.** Additional supervision training. The RxP application committee shall make recommendations to the board concerning additional supervision and training that may be required. The board shall review the committee recommendations and determine the additional supervision and training required of the applicant in order to qualify for a conditional prescription certificate.

**E.** Supervision plan. The period of conditional supervised practice shall be determined by the board based on the applicant's education, training, and experience and shall not be less than three months or more than two years. The applicant shall submit to the psychopharmacology application committee a supervisory plan as outlined in Subsection H of 16.22.24.10 NMAC, of these regulations. The same requirements set forth in 16.22.24.10 NMAC, shall apply to the supervisory period.

**F.** Issuance of prescription certificate. The RxP application committee shall recommend to the board issuance of a conditional prescription certificate to the applicant who qualifies in accordance with these regulations.

[16.22.25.11 NMAC – N, 02/10/2022]

## **PART 26: GRADUATES OF THE DEPARTMENT OF DEFENSE PSYCHOPHARMACOLOGY DEMONSTRATION PROJECT**

### **16.22.26.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.26.1 NMAC - Rp, 16.22.26.1 NMAC, 11/15/06]

### **16.22.26.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure seeking licenses under prescriptive authority, and the general public.

[16.22.26.2 NMAC - Rp, 16.22.26.2 NMAC, 11/15/06]

### **16.22.26.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.1 and 61-9-10

[16.22.26.3 NMAC - Rp, 16.22.26.3 NMAC, 11/15/06]

### **16.22.26.4 DURATION:**

Permanent.

[16.22.26.4 NMAC - Rp, 16.22.26.4 NMAC, 11/15/06]

### **16.22.26.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.26.5 NMAC - Rp, 16.22.26.5 NMAC, 11/15/06]

### **16.22.26.6 OBJECTIVE:**

The objective of Part 26 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.26.6 NMAC - Rp, 16.22.26.6 NMAC, 11/15/06]

### **16.22.26.7 DEFINITIONS:**

**[RESERVED]**

[Refer 16.22.1.7 NMAC]

**16.22.26.8 GRADUATES OF THE DEPARTMENT OF DEFENSE  
PSYCHOPHARMACOLOGY DEMONSTRATION PROJECT - REQUIREMENTS:**

**A. Conditional prescription certificate.** Graduates of the department of defense psychopharmacology demonstration project who have been actively engaged in prescribing psychotropic medication for at least two of the last five years immediately preceding the date of application may apply for a conditional prescription certificate and shall meet these requirements:

(1) Additional supervision training. The RxP application committee shall make recommendations to the board concerning additional supervision and training that may be required. The board shall review the committee recommendations and determine the additional supervision and training required of the applicant in order to qualify for a prescription certificate.

(2) Supervision plan. The period of supervised practice shall be determined by the board based on the applicant's education, training, and experience and shall not be less than three months or more than two years. The applicant shall submit to the psychopharmacology application committee a supervisory plan as outlined in Subsection H of 16.22.24.10 NMAC, of these regulations. The same requirements set forth in 16.22.24.10 NMAC, shall apply to the supervisory period.

(3) Evidence of completion of a 3-hour training in New Mexico rules and laws applicable to prescribing psychologists, as offered by the State Psychologist Association of New Mexico (SPA), or the New Mexico Psychological Association (NMPA).

(4) Issuance of prescription certificate. The RxP application committee shall recommend to the board issuance of a prescription certificate to a graduate of the department of defense psychopharmacology demonstration project who qualifies in accordance with these regulations.

**B. Prescription certificate.** Graduates of the department of defense psychopharmacology demonstration project shall be issued a prescription certificate if they hold an active unrestricted New Mexico license as a psychologist and present to the board evidence that they hold a valid certificate as a department of defense prescribing psychologist.

[16.22.26.8 NMAC - Rp, 16.22.26.8 NMAC, 11/15/2006; A, 02/10/2022]

**PART 27: CONDITIONAL PRESCRIBING OR PRESCRIBING  
PSYCHOLOGISTS: FORMULARY**

**16.22.27.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.27.1 NMAC - Rp, 16.22.27.1 NMAC, 11/15/06]

**16.22.27.2 SCOPE:**

This part applies to the board, licensees, applicants for licensure seeking licenses under prescriptive authority, and the general public.

[16.22.27.2 NMAC - Rp, 16.22.27.2 NMAC, 11/15/06]

**16.22.27.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.2 and 61-9-3

[16.22.27.3 NMAC - Rp, 16.22.27.3 NMAC, 11/15/06]

**16.22.27.4 DURATION:**

Permanent.

[16.22.27.4 NMAC - Rp, 16.22.27.4 NMAC, 11/15/06]

**16.22.27.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.27.5 NMAC - Rp, 16.22.27.5 NMAC, 11/15/06]

**16.22.27.6 OBJECTIVE:**

The objective of Part 27 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.27.6 NMAC - Rp, 16.22.27.6 NMAC, 11/15/06]

**16.22.27.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.22.1.7 NMAC]

**16.22.27.8 FORMULARY:**

**A.** Conditional prescribing or prescribing psychologists shall exercise prescriptive authority using psychotropic medications, as defined in Section 61-9-3 NMSA 1978, within the recognized scope of practice for the treatment of mental disorders and for which the psychologist has been properly educated and trained.

**B.** As provided by Section 61-9-3 NMSA 1978, of the Act when prescribing psychotropic medication for a patient, a conditional prescribing psychologist or a psychologist with a conditional prescription certificate shall maintain an ongoing collaborative relationship with a health care practitioner who oversees the patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition and significant changes in the patient's medical or psychological condition are discussed. The collaborative relationship shall be utilized to coordinate the patient's ongoing care, including, determining whether non-psychotropic medications should be prescribed to provide the patient with optimized care. In such cases, all non-psychotropic medications shall be prescribed by the health care practitioner who oversees the patient's general medical care, or by other health care practitioners involved in the patient's care who are authorized by law to prescribe such medications.

**C.** A conditional prescribing or prescribing psychologist shall not prescribe psychotropic medication to treat patients for the following conditions:

- (1)** chronic pain;
- (2)** endocrine, cardiovascular, orthopedic, neurological, and gynecological illness or disorders;
- (3)** allergies; or
- (4)** other non-psychiatric illnesses, disorders, or illnesses causing mental disorders.

**D.** A conditional prescribing or prescribing psychologist shall treat psychopharmacologically only mental disorders listed in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American psychiatric association.

**E.** A conditional prescribing psychologist or prescribing psychologist who prescribes outside the scope of practice specified in the act and these regulations is subject to disciplinary action by the board.

[16.22.27.8 NMAC - Rp, 16.22.27.8 NMAC, 11/15/2006; A, 02/22/2013; A, 02/10/2022]

## **PART 28: CONDITIONAL PRESCRIBING OR PRESCRIBING PSYCHOLOGISTS: COMPLAINT PROCEDURES**

**16.22.28.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.28.1 NMAC - Rp, 16.22.28.1 NMAC, 11/15/06]

**16.22.28.2 SCOPE:**

The provisions of Part 28 shall apply to all licensees and applicants for licensure, and the general public.

[16.22.28.2 NMAC - Rp, 16.22.28.2 NMAC, 11/15/06]

**16.22.28.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.1

[16.22.28.3 NMAC - Rp, 16.22.28.3 NMAC, 11/15/06]

**16.22.28.4 DURATION:**

Permanent.

[16.22.28.4 NMAC - Rp, 16.22.28.4 NMAC, 11/15/06]

**16.22.28.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.28.5 NMAC - Rp, 16.22.28.5 NMAC, 11/15/06]

**16.22.28.6 OBJECTIVE:**

The objective of Part 28 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.28.6 NMAC - Rp, 16.22.28.6 NMAC, 11/15/06]

**16.22.28.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.22.1.7 NMAC]

**16.22.28.8 COMPLAINT PROCEDURES:**

**A.** Any complaint against a conditional prescribing or prescribing psychologist shall be made according to the complaint procedures described in 16.22.11 NMAC of these board regulations.

**B.** The board shall notify the New Mexico medical board, the board of osteopathic medical examiners, or the board of nursing in writing upon receipt of any complaint that implicates the collaborative relationship between a conditional prescribing or prescribing psychologist and a physician, an osteopathic physician, a nurse practitioner, or a physician's assistant respectively.

**C.** A joint board complaint committee shall be appointed to evaluate any complaint arising out of the collaboration between a conditional prescribing or prescribing psychologist and a health care practitioner. The committee shall evaluate compliance with provisions of the collaboration guidelines as set forth in 16.22.20.8 NMAC. If the committee determines that the complaint does not involve the collaboration guidelines, the committee shall return the complaint to the board for appropriate action.

**D.** A joint board complaint committee will consist at a minimum of the following members, appointed as follows:

(1) one person appointed by the board who has experience in the field of psychopharmacology;

(2) one person appointed by the appropriate board of the health care practitioner having a collaborative relationship with the conditional prescribing or prescribing psychologist; and

(3) a public member appointed by the board.

**E.** Members of a joint board complaint committee shall not be in a pharmacological training program or seeking a prescription certificate, shall not be seeking licensure as a psychologist, physician, or nurse, and shall be a licensee in good standing in his or her respective profession.

**F.** Members of a joint board complaint committee shall not participate in any complaint review involving the member's family, household or a conflict of interest as defined in 16.22.1.7 NMAC, of these regulations.

**G.** The professional members of a joint board complaint committee may include:

(1) a psychologist with specialized training and experience in psychopharmacology;

(2) a licensed physician or osteopathic physician with clinical experience in mental health or psychopharmacology;

(3) a licensed pharmacist or pharmacist clinician with specialized training and experience in psychopharmacology;

(4) a licensed psychologist with a prescription certificate;

(5) a nurse practitioner, or physicians assistant with specialized training and experience in psychopharmacology; or

(6) a licensed psychologist.

H. Upon receipt and review of a complaint, a joint board complaint committee shall attempt an informal resolution of a complaint between a treating health care practitioner and a conditional prescribing or prescribing psychologist, consistent with the collaboration guidelines, in order to optimize patient care.

I. If an informal resolution cannot be achieved, a joint board complaint committee shall report its findings to the board and to the health care practitioner's licensing board. The report shall specify the area of alleged non-compliance with the collaboration guidelines and shall provide recommendations to each board for each board's appropriate action.

[16.22.28.8 NMAC - Rp, 16.22.28.8 NMAC, 11/15/06]

## **PART 29: CONDITIONAL PRESCRIBING OR PRESCRIBING PSYCHOLOGISTS: CONTINUING PROFESSIONAL EDUCATION AND CERTIFICATE RENEWAL**

### **16.22.29.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners.

[16.22.29.1 NMAC - Rp, 16.22.29.1 NMAC, 11/15/06]

### **16.22.29.2 SCOPE:**

This part applies to the board, conditional prescribing and prescribing psychologists.

[16.22.29.2 NMAC - Rp, 16.22.29.2 NMAC, 11/15/06]

### **16.22.29.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, NMSA 1978 Section 61-9-17.1

[16.22.29.3 NMAC - Rp, 16.22.29.3 NMAC, 11/15/06]

**16.22.29.4 DURATION:**

Permanent.

[16.22.29.4 NMAC - Rp, 16.22.29.4 NMAC, 11/15/06]

**16.22.29.5 EFFECTIVE DATE:**

November 15, 2006, unless a later date is cited at the end of the section.

[16.22.29.5 NMAC - Rp, 16.22.29.5 NMAC, 11/15/06]

**16.22.29.6 OBJECTIVE:**

The objective of Part 29 is to set forth the provisions, which apply to all of Chapter 22, and all persons affected or regulated by Chapter 22 of Title 16.

[16.22.29.6 NMAC - Rp, 16.22.29.6 NMAC, 11/15/06]

**16.22.29.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.22.1.7 NMAC]

**16.22.29.8 REQUIREMENTS:**

Prescribing psychologists shall complete CPE requirements as specified in 16.22.9 NMAC.

[16.22.29.8 NMAC - Rp, 16.22.29.8 NMAC, 11/15/2006; A, 04/30/15; A, 02/10/2022]

**16.22.29.9 CERTIFICATE RENEWAL:**

**A.** Concurrent renewal of certificate and license. The prescription certificate shall be renewed concurrently with the active unrestricted psychologist license. The prescribing psychologist shall submit the certificate renewal application on forms approved by the board. The prescribing psychologist shall provide evidence of malpractice insurance and additional CPE required by the board, and shall pay a certificate renewal fee established by the board.

**(1)** The prescription certificate shall be suspended for failure to renew if the prescribing psychologist fails to renew the prescription certificate by July 1 of the appropriate year. A prescribing psychologist who chooses to permanently retire from practice may inform the board in writing previous to the expiration date of the prescription certificate and will be considered retired.

**(2)** A prescription certificate suspended for failure to renew may be renewed within a period of one year after the suspension upon payment of the renewal fee plus a late fee and evidence of malpractice insurance and additional CPE required by the board.

**(3)** The prescription certificate shall be revoked if the prescribing psychologist has not renewed within one year of the suspension for failure to renew. Any licensee whose license is revoked for failure to renew shall be required to make a new application and shall satisfy all requirements for prescription certificate in effect at the time the application is filed.

**B.** Concurrent inactive status certificate and license. The prescription certificate may be renewed concurrently to inactive status with the inactive psychologist license in accordance with the provisions of 16.22.10 NMAC.

**C.** Voluntary surrender. A licensee in good standing may voluntarily surrender a prescription certificate.

[16.22.29.9 NMAC - Rp, 16.22.29.8 NMAC, 11/15/2006; A, 02/10/2022]

## **PART 30: PRESCRIPTION MONITORING PROGRAM REQUIREMENTS**

### **16.22.30.1 ISSUING AGENCY:**

Regulation and Licensing Department Board of Psychologist Examiners

[16.22.30.1 NMAC - N, 7/1/2018]

### **16.22.30.2 SCOPE:**

This part applies to conditional prescribing and prescribing psychologists.

[16.22.30.2 NMAC – N, 7/1/2018]

### **16.22.30.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Professional Psychologist Act, Section 61-9-6 NMSA 1978; the Health Care Provider Act, Sections 61-7-1 through 61-7-12 NMSA 1978; and the Pain Relief Act, Sections 24-2D-1 through 24-2D-6 NMSA 1978.

[16.22.30.3 NMAC - N, 7/1/2018]

### **16.22.30.4 DURATION:**

Permanent.

[16.22.30.4 NMAC - N, 7/1/2018]

**16.22.30.5 EFFECTIVE DATE:**

July 1, 2018, unless a later date is cited at the end of a section.

[16.22.30.5 NMAC - N, 7/1/2018]

**16.22.30.6 OBJECTIVE:**

The objective of Part 30 is to ensure that prescribing psychologists protect the public from unsafe use of controlled substances and harmful and illegal activities involving these substances.

[16.22.30.6 NMAC - N, 7/1/2018]

**16.22.30.7 DEFINITIONS:**

[RESERVED]

**16.22.30.8 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

**A.** Any conditional prescribing or prescribing psychologist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall become a participant in the state's prescription monitoring program. Such participation requires registering with the board of pharmacy.

**B.** A conditional prescribing or prescribing psychologist may authorize non-licensed individuals under the psychologist's supervision to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. Individuals so authorized may obtain a report from the state's prescription monitoring program, with the requirement that the conditional prescribing or prescribing psychologist is solely responsible for reviewing the prescription monitoring report, and for documenting the receipt and review of such report in the patient's medical record.

**C.** A conditional prescribing or prescribing psychologist shall obtain a prescription monitoring report, before prescribing a controlled substance for the first time or when the patient has been prescribed an opiate by the patient's physician. If there is a gap in prescribing the controlled substance for 30 days or more, the conditional prescribing or prescribing psychologist shall review a prescription monitoring report for the patient for the preceding 12 months. When made available, the conditional prescribing or prescribing psychologist shall review similar reports from other states. The conditional prescribing or prescribing psychologist shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during a patient's continuous use of a controlled substance. The conditional prescribing or prescribing psychologist shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a conditional prescribing or prescribing psychologist from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** A conditional prescribing or prescribing psychologist does not have to obtain and review a prescription monitoring report before prescribing,

- (1) for a patient in a nursing facility;
- (2) for a patient in hospice care;
- (3) for a patient in a licensed treatment facility; or
- (4) for a patient under 14 years of age.

**F.** Upon review of a prescription monitoring report for a patient, the conditional prescribing or prescribing psychologist shall identify, document, and attempt to remain current with regard to all prescriptions for any a patient known to be:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving more than one controlled substance analgesic;
- (4) receiving opioids totaling more than 90 morphine milligram equivalents per day; or

(5) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as:

- (a) over-utilization;
- (b) requests to fill early;
- (c) requests for specific opioids;
- (d) requests to pay cash when insurance is available; or
- (e) receives opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Subsection F, the conditional prescribing or prescribing psychologist, using professional judgment based

on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve consultation with the primary prescribing physician, and utilization of the prescription monitoring program. The conditional prescribing or prescribing psychologist shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

H. The board will review over-prescription of schedule drugs by licensees, through review of the PMP, reference to currently accepted standards of care, and using the standard of patient protection.

[16.22.30.8 NMAC - N, 7/1/2018; A, 02/10/2022]

## **CHAPTER 23: RESPIRATORY CARE PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.23.1.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.1.1 NMAC - Rp, 16.23.1.1 NMAC, 6/27/2023]

#### **16.23.1.2 SCOPE:**

The provisions of Part 1 of Chapter 23 apply to all Parts of Chapter 23 and provide relevant information to anyone affected or interested in the licensing and regulation of the practice of respiratory care as set forth in Chapter 23.

[16.23.1.2 NMAC - Rp, 16.23.1.2 NMAC, 6/27/2023]

#### **16.23.1.3 STATUTORY AUTHORITY:**

Part 1 of Chapter 23 is promulgated pursuant to the Respiratory Care Act Section 61-12B-6 NMSA 1978.

[16.23.1.3 NMAC - Rp, 16.23.1.3 NMAC, 6/27/2023]

#### **16.23.1.4 DURATION:**

Permanent.

[16.23.1.4 NMAC - Rp, 16.23.1.4 NMAC, 6/27/2023]

#### **16.23.1.5 EFFECTIVE DATE:**

June 27, 2023, unless a later date is cited at the end of a section.

[16.23.1.5 NMAC - Rp, 16.23.1.5 NMAC, 6/27/2023]

#### **16.23.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 23 is to set forth the provisions which apply to all of Title 16, Chapter 23 NMAC of the New Mexico Administrative Code and to all persons and entities affected by Title 16, Chapter 23 NMAC.

[16.23.1.6 NMAC - Rp, 16.23.1.6 NMAC, 6/27/2023]

#### **16.23.1.7 DEFINITIONS:**

Unless otherwise defined below, terms used in Title 16, Chapter 23 NMAC, have the same meanings as set forth in the Respiratory Care Act or in other cited New Mexico statutes:

##### **A. Definitions beginning with "A":**

(1) **"Applicant"** means a person who has applied to the department for a temporary permit or a respiratory care practitioner's license.

(2) **"Approval"** means the review and acceptance of a specific activity.

(3) **"Approval body"** means the agency, institution, or organization with the authorization to award continuing education credit.

(4) **"Approved training and education program"** means a program supported by the commission accreditation for respiratory care (COARC), or its predecessor the joint review committee for respiratory therapy education (JRCRTE), or accredited by the commission on accreditation of allied health education programs (CAAHEP), or its successor approval body.

(5) **"Audit"** means an examination and verification of continuing education documents by the department.

**B. Definitions beginning with "B":** **"Board"** has the same meaning as defined in Subsection A of Section 61-12B-3 NMSA 1978.

##### **C. Definitions beginning with "C":**

(1) **"Clock hour"** means a unit of measurement to describe a continuing education offering which equals a 60-minute clock hour.

(2) **"Complaint"** means a complaint, which has been filed with the department or the board, against a temporary permittee, respiratory care practitioner licensee, or applicant for either permit or license.

(3) **"Complainant"** means the party who files a complaint against a temporary permittee, a respiratory care practitioner licensee, or an applicant for either a permit or a license governed by the Respiratory Care Act.

(4) **"Continuing education" or "CE"** means a learning experience intended to enhance professional development and includes continuing education units (CEUs) and continuing medical education (CME).

(5) **"Controlled Substances Act"** refers to Section 30-31-1 through Section 30-31-41 NMSA 1978.

(6) **"CRT"** means certified respiratory therapist. This is the entry level of respiratory care.

(7) **"CRTT"** means a certified respiratory therapy technician. This is the entry level of respiratory care.

#### **D. Definitions beginning with "D":**

(1) **"Department"** has the same meaning as defined in Subsection B of Section 61-12B-3 NMSA 1978.

(2) **"Direct supervision"** means direction and control by a training supervisor over a student extern temporary permittee or a graduate temporary permittee while the permittee is providing respiratory care procedures under the authority of the training supervisor's license.

(3) **"DME or DME company"** refers to durable medical equipment or companies that provide durable medical equipment in the health care industry.

#### **E. Definitions beginning with "E":**

(1) **"Electronic signature"** has the same meaning as defined in Subsection 7 of Section 14-16-2 NMSA 1978.

(2) **"Expired license"** means a license that has not been renewed on or before the end of the license renewal period.

(3) **"Expanded practice"** has the same meaning as the definition in Subsection E of Section 61-12B-3 NMSA 1978.

**F. Definitions beginning with "F": "Facility"** means the employer of a licensed respiratory care practitioner or temporary permit holder.

**G. Definitions beginning with "G":**

(1) **"Graduate"** means a non-licensed person who has completed an approved respiratory care training program and is employed by a supervisory facility to provide respiratory care for remuneration and in accordance with the provisions for a temporary permit issued under these regulations.

(2) **"Gratuitous"** means to receive no form of payment or remuneration.

**H. Definitions beginning with "H": "Home care setting"** as it applies to respiratory care, means any facility, including a patient's home that would usually not employ respiratory care practitioners, specifically those facilities visited by a person from outside the facility to provide respiratory care services.

**I. Definitions beginning with "I":**

(1) **"Impaired Health Care Provider Act"** refers to Section 61-7-1 through Section 61-7-12 NMSA 1978.

(2) **"Initial licensure"** means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other licensing requirements.

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L":**

(1) **"Lapsed license"** means an expired license which has not been reactivated within the time limitations set forth in Section 17 in 16.23.1 NMAC.

(2) **"License"** means a document identifying the legal privilege and authorization to practice within a professional category. In the context of military and veterans applications submitted pursuant to 16.23.5 NMAC, "license" has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

(3) **"License reactivation"** means the process of making current a license that has expired as a result of failure to comply with the necessary renewal requirements.

(4) **"Licensing period for extern permits"** means a one year period from the date of issuance to the last day of the same month, one year later.

(5) **"Licensing period for graduate permits"** means six months from the date of application and is not renewable; or until receipt of failing national board of respiratory care (NBRC) registered respiratory therapist (RRT) exam results. Initial applicants who do not become licensed within one year of becoming (NBRC) credentialed are issued a one year graduate permit from the date of application.

**M. Definitions beginning with "M":**

(1) **"Medical board"** as it applies to respiratory care, means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.

(2) **"Medical direction"** as it applies to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.

(3) **"Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**N. Definitions beginning with "N":**

(1) **"NBRC"** means the national board for respiratory care, inc.

(2) **"National licensing exam"** means the national examination for respiratory care practitioners administered by the national board for respiratory care resulting in obtaining CRTT, CRT, or RRT credentials.

(3) **"Non-traditional training program"** refers to a respiratory care training program in which a person receives on-the-job training in respiratory care from a supervising medical director, a supervising physician, or a licensed respiratory care practitioner, and in which the trainee may receive compensation while in such a training program.

(4) **"Notice of contemplated action" or "NCA"** means the administrative action provided for by the Uniform Licensing Act, whereby the respondent is given notice of a pending disciplinary action against his or her application, permit or license, based upon violations of the department's rules and regulations governing the practice of respiratory care or the Respiratory Care Act, which have been alleged in a complaint filed with the department or the board. The respondent is afforded an opportunity for a formal hearing before the department, in consultation with the board.

**O. Definitions beginning with "O": [RESERVED]**

**P. Definitions beginning with "P":**

(1) **"Prescription"** means an order given individually for the person for whom prescribed, either directly from the prescriber to the person licensed to fill the prescription or indirectly by means of a written order signed by the prescriber.

(2) **"Parental Responsibility Act" or "PRA"** refers to Section 40-5A-1 through Section 40-5A-13, NMSA 1978 (1995 Supp.) herein referred to as the Parental Responsibility Act or PRA.

(3) **"Permittee"** means a person who has been granted a temporary permit by the department, in consultation with the board.

(4) **"Public health emergency"** is an emergency declared pursuant to the All Hazards Emergency Management Act, Sections 12-10-1 to 12-10-21 NMSA 1978, and the Public Health Emergency Response Act, Sections 12-10A-1 to 12-10A-19 NMSA 1978.

(5) **"Public Records Act"** refers to Section 14-3-1 through Section 14-3-25, NMSA 1978.

#### **Q. Definitions beginning with "Q": [RESERVED]**

#### **R. Definitions beginning with "R":**

(1) **"Redacted"** means the act or process of editing or revising the complaint so that the parties, which are the subject of the complaint, are unknown to the board.

(2) **"Reinstatement"** means the process whereby a license that has been subject to revocation or suspension is returned to former status.

(3) **"Respiratory Care Act"** refers to Section 61-12B-1 through Section 61-12B-16, NMSA 1978.

(4) **"Respiratory Care Practitioner" or "RCP"** means a person who is licensed to practice respiratory care in New Mexico.

(5) **"Respiratory Therapy Training Program"** means a program approved by the commission on accreditation of allied health education programs (CAHEP), or its successor approval body.

(6) **"Respondent"** means the permit or license applicant or the temporary permittee or licensed practitioner who is the subject of the complaint.

(7) **"RRT"** means a registered respiratory therapist. This is the advanced level of respiratory care.

#### **S. Definitions beginning with "S":**

(1) **"Student"** means a person enrolled in an approved respiratory care training and education program and who receives *no remuneration* for respiratory care services performed in a supervisory facility as part of an approved respiratory care training program.

(2) **"Student extern"** means a person who is engaged by a supervisory facility to provide respiratory care for remuneration while enrolled in an approved respiratory care training and education program, and in accordance with the provisions for a temporary permit issued under these regulations.

(3) **"Superintendent"** has the same meaning as defined in Subsection I of Section 61-12B-3 NMSA 1978.

(4) **"Supervisory facility"** means the employer of a temporary permit holder.

#### **T. Definitions beginning with "T":**

(1) **"Telemedicine"** means the use of telephonic or electronic communications to provide clinical services to patients without an in-person visit.

(2) **"Traditional training program"** refers to a respiratory care training program that provides classroom instruction and clinical experience only to students or student externs under direct supervision of a licensed and responsible professional.

(3) **"Training supervisor"** means a New Mexico licensed respiratory care practitioner or a New Mexico licensed physician who agrees to be responsible for the respiratory care administered by student externs and graduates while these individuals are employed by a supervisory facility and are being trained there.

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.23.1.7 NMAC - Rp, 16.23.1.7 NMAC, 6/27/2023]

**16.23.1.8 SEVERABILITY:**

Should any part or application of Title 16, Chapter 23 NMAC be declared invalid, the remainder shall remain in full force and effect.

[16.23.1.8 NMAC - Rp, 16.23.1.8 NMAC, 6/27/2023]

#### **16.23.1.9 EXCEPTIONS:**

Title 16, Chapter 23 NMAC does not apply to the following:

**A.** Other persons and health care providers licensed by appropriate agencies of New Mexico.

**B.** Persons providing self-care to themselves.

**C.** Persons who do not represent themselves or hold themselves out to be a respiratory care practitioner who are providing gratuitous care to a friend or family member.

**D.** Persons who provide respiratory care services in a case of emergency.

**E.** Title 16 Chapter 23 NMAC does not prohibit the following from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified.

(1) qualified clinical laboratory personnel working in facilities licensed by the federal Clinical Laboratories Improvement Act of 1967, as amended, or any subsequent act;

(2) persons accredited by the college of American pathologists; or

(3) qualified clinical laboratory personnel who work in facilities accredited by the joint commission on accreditation of health care organizations.

[16.23.1.9 NMAC - Rp, 16.23.1.9 NMAC, 6/27/2023]

#### **16.23.1.10 INSPECTION OF PUBLIC RECORDS:**

The board operates in compliance with the Inspection of Public Records Act, Section 14-2-1 through Section 14-2-12, NMSA 1978. The board administrator is the custodian of the board's records.

[16.23.1.10 NMAC - Rp, 16.23.1.10 NMAC, 6/27/2023]

#### **16.23.1.11 TELEPHONE CONFERENCES:**

When it is difficult or impossible for a board member to attend a board meeting in person, the member may participate by means of a conference telephone or similar

communications equipment as authorized by the Open Meetings Act, Section 61-15-1, NMSA 1978.

**A.** Participation by such means shall constitute presence in person at the meeting.

**B.** Each member participating by conference telephone must be identified when speaking.

**C.** All participants must be able to hear each other at the same time.

**D.** Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.23.1.11 NMAC - Rp, 16.23.1.11 NMAC, 6/27/2023]

**16.23.1.12 INCOMPLETE APPLICATIONS PURGED:**

Incomplete applications for licensure will be purged from board files two years from the date the file is closed.

[16.23.1.12 NMAC - Rp, 16.23.1.12 NMAC, 6/27/2023]

**16.23.1.13 LEGAL NAME CHANGE:**

If a licensee or permit holder requests a new license or permit, as the result of a legal name change, the department will issue a new license upon receipt of the following:

**A.** the old license(s) or permit(s);

**B.** legal proof of the name change;

**C.** a written request for name change to be made on licensing or permit records;  
and

**D.** any applicable fee.

[16.23.1.13 NMAC - Rp, 16.23.1.13 NMAC, 6/27/2023]

**16.23.1.14 ADDRESS OR EMPLOYMENT CHANGES:**

It is the licensee's or permittee's responsibility to keep the department informed immediately of any changes in contact information.

[16.23.1.14 NMAC - N, 6/27/2023]

**16.23.1.15 DUPLICATE LICENSE:**

In the event a license or permit is lost or destroyed, the department will issue a duplicate license or permit upon receipt of the following.

- A.** Notice to the department of the loss by the licensee or permittee.
- B.** A request for a duplicate.
- C.** Any applicable fee.

[16.23.1.15 NMAC - Rp, 16.23.1.15 NMAC, 6/27/2023]

#### **16.23.1.16 INACTIVE STATUS REQUIREMENTS:**

Currently licensed practitioners who are not currently practicing in New Mexico under the terms and provisions authorized by the Respiratory Care Act, or who are working for the federal government, may place their licenses on inactive status at the time of renewal rather than let their licenses expire.

A practitioner's license will be placed on inactive status by the department after the licensee has provided the following:

**A.** A practitioner's license will be placed on inactive status by the department after the licensee has provided the following:

(1) a completed renewal application signed by the applicant under penalty of perjury, on which the "inactive status requested" box has been checked;

(2) documentation verifying that the continuing education requirements were met as set forth 16.23.12 NMAC; and

(3) the applicable fee for inactive status set forth in 16.23.2.8 NMAC.

**B.** the practitioner must submit the completed renewal application form marked for inactive status with a postmark dated on or before September 30 in order to be processed for inactive status.

**C.** Upon approval of the inactive status application request, the department will send the licensee notice that the license has been placed on inactive status.

**D.** Until the inactive status license has been reactivated, the respiratory care practitioner may not practice respiratory care in New Mexico unless employed by the federal government.

**E.** Inactive status reactivation: The individual who has placed his or her license on inactive status may reactivate the license before September 30 of the next odd-numbered year by completing the following procedure.

(1) complete, sign, and submit the reactivation application provided by the department; and

(2) payment of any applicable fee for reactivation from inactive status.

**F.** Upon approval of the reactivation application, the department will issue a reactivated license to the licensee. The license number will remain the same.

**G. Continuing education requirements for reactivation:** For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

(1) **Twenty clock hours per renewal cycle.** If the completed reactivation application is received by the department postmarked *on or before* September 30 of the *even*-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be 20.

(2) **Ten clock hours per renewal cycle.** If the completed reactivation application is received by the department postmarked on or after October 1 of the *even*-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be 10.

(3) **Zero clock hours.** If the completed reactivation application is approved by the department postmarked on or after June 1 of the *odd*-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be zero.

[16.23.1.16 NMAC - Rp, 16.23.1.16 NMAC, 6/27/2023]

#### **16.23.1.17 LICENSE EXPIRATION AND LAPSE DUE TO NON-RENEWAL:**

Respiratory care practitioner licenses not renewed or which have not been placed on inactive status by the end of the renewal cycle will be deemed expired and invalid.

**A.** The individual who has allowed license expiration, must reactivate the expired license before the next scheduled renewal expiration date for licensed respiratory care practitioners on September 30 of the next odd-numbered year. The applicant must complete the following process in order to reactivate the license.

(1) Complete, sign and submit a reactivation application provided by the department.

(2) Payment of any applicable renewal and reactivate fee.

(3) Proof of 20 clock hours of continuing education required from the renewal cycle.

**B. License lapse:** An expired license that has not been reactivated before the next scheduled license expiration date of September 30 of the next odd-numbered year, will lapse and become null and void.

(1) Re-licensure required. Before resuming the practice of respiratory care in New Mexico, the individual whose license has lapsed must be approved for licensure by the department.

(2) Application required. The applicant with a lapsed license must repeat the entire initial licensure application process as set forth in 16.23.3 and 16.23.4 NMAC.

[16.23.1.17 NMAC - Rp, 16.23.1.17 NMAC, 6/27/2023]

#### **16.23.1.18 PARENTAL RESPONSIBILITY ACT COMPLIANCE:**

Disciplinary action related to compliance with the provisions in the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, are regulated pursuant to 16.1.1 NMAC, Parental Responsibility Act Compliance.

[16.23.1.18 NMAC - Rp, 16.23.1.18 NMAC, 6/27/2023]

### **PART 2: FEES**

#### **16.23.2.1 ISSUING AGENCY:**

Disciplinary action related to compliance with the provisions in the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, are regulated pursuant to 16.1.1 NMAC, Parental Responsibility Act Compliance.

[16.23.1.18 NMAC - Rp, 16.23.1.18 NMAC, 6/27/2023]

#### **16.23.2.2 SCOPE:**

The provisions in Part 2 of Chapter 23 apply to all license applicants; and to active, expired, and lapsed licensees; to anyone wishing to purchase licensee lists or labels; and to anyone who requests written verification of licensure from the board.

[16.23.2.2 NMAC - Rp, 16.23.2.2 NMAC, 7/15/2017]

#### **16.23.2.3 STATUTORY AUTHORITY:**

Part 2 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.

[16.23.2.3 NMAC - Rp, 16.23.2.3 NMAC, 7/15/2017; A, 04/21/2022]

**16.23.2.4 DURATION:**

Permanent.

[16.23.2.4 NMAC - Rp, 16.23.2.4 NMAC, 7/15/2017]

**16.23.2.5 EFFECTIVE DATE:**

July 15, 2017, unless a later date is cited at the end of a section.

[16.23.2.5 NMAC - Rp, 16.23.2.5 NMAC, 7/15/2017]

**16.23.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 23 is to establish fees for licenses, temporary permits, and for renewal of licenses and temporary permits, and other related administrative processes.

[16.23.2.6 NMAC - Rp, 16.23.2.6 NMAC, 7/15/2017; A, 04/21/2022]

**16.23.2.7 DEFINITIONS:**

**[RESERVED]** All definitions related to this section are in 16.23.1.7 NMAC.

[16.23.2.7 NMAC - Rp, 16.23.2.7 NMAC, 7/15/2017; A, 04/21/2022]

**16.23.2.8 ADMINISTRATIVE FEES:**

In accordance with Subsection A of Section 61-12B-11 NMSA 1978, of the New Mexico Respiratory Care Act, the board establishes the following nonrefundable fees.

**A. Application fees:**

- (1) initial application and practitioner license \$150.00;
- (2) initial application temporary student extern permit \$50.00;
- (3) initial application and graduate permit \$100.00;
- (4) practitioner reactivation from inactive status \$15.00;
- (5) practitioner reactivation from expired status \$250.00;
- (6) credential upgrade from certified respiratory therapist (CRT) to registered respiratory therapist (RRT) \$25.00.

**B. Renewal fees:**

- (1) active respiratory care practitioner license \$150.00;
- (2) inactive respiratory care practitioner license \$30.00;
- (3) temporary student extern permit \$50.00.

**C. Miscellaneous fees:**

- (1) photocopying \$0.25;
- (2) written license verifications \$15.00;
- (3) list of licensees \$50.00;
- (4) duplicate licenses/permit \$25.00.

[16.23.2.8 NMAC - Rp, 16.23.2.8 NMAC, 7/15/2017; A, 04/21/2022; A, 6/27/2023]

**16.23.2.9-16.23.2.20 [RESERVED]**

**PART 3: PRACTITIONER LICENSE QUALIFICATIONS, APPLICATION, RENEWAL, AND EXPIRATION**

**16.23.3.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.3.1 NMAC - Rp, 16.23.3.1 NMAC, 6/27/2023]

**16.23.3.2 SCOPE:**

The provisions of Part 3 of Chapter 23 apply to all persons applying to the board for a license to practice respiratory care in New Mexico.

[16.23.3.2 NMAC - Rp, 16.23.3.2 NMAC, 6/27/2023]

**16.23.3.3 STATUTORY AUTHORITY:**

Part 3 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.

[16.23.3.3 NMAC - Rp, 16.23.3.3 NMAC, 6/27/2023]

#### **16.23.3.4 DURATION:**

Permanent.

[16.23.3.4 NMAC - Rp, 16.23.3.4 NMAC, 6/27/2023]

#### **16.23.3.5 EFFECTIVE DATE:**

June 27, 2023 unless a later date is cited at the end of a section.

[16.23.3.5 NMAC - Rp, 16.23.3.5 NMAC, 6/27/2023]

#### **16.23.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 23 is to establish the required qualifications necessary for licensure as a respiratory care practitioner.

[16.23.3.6 NMAC - Rp, 16.23.3.6 NMAC, 6/27/2023]

#### **16.23.3.7 DEFINITIONS:**

All definitions related to this section are in 16.23.1.7 NMAC.

[16.23.3.7 NMAC - Rp, 16.23.3.7 NMAC, 6/27/2023]

#### **16.23.3.8 LICENSE REQUIRED TO PRACTICE:**

The applicant may not engage in the practice of respiratory care in New Mexico until approval for licensure has been given, and the department has issued an initial license. The applicant may not represent or hold him or herself out to be a respiratory care practitioner or RCP without a valid license.

[16.23.3.8 NMAC - Rp, 16.23.3.8 NMAC, 6/27/2023]

#### **16.23.3.9 LICENSURE REQUIREMENTS:**

The board only recognizes accreditation by the commission on accreditation for respiratory care (CoARC) or its successor approval body. All references to the national board examinations in this part are to the national board for respiratory care, inc (NBRC) examination. In accordance with Section 61-12B-7 and Section 61-12B-8, NMSA 1978, and the qualifications set forth therein, the applicant must provide verification of the following:

- A.** successful completion of an accredited respiratory care education program;
- B.** proof of passing the NBRC examination resulting in credentialing as a registered respiratory therapist RRT and maintaining a current RRT credential; or

**C.** Applicants for licensure must provide the following items of documentation to the department:

(1) A complete application on forms provided by the board.

(2) An acceptable form of identification, including the following:

(a) a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license that contains the name, date of birth and photo of the person;

(b) a valid identification card issued to a member of the Armed Forces that includes the person's name, date of birth, and photo of the person; or

(c) a valid passport issued by the United States or by a foreign government.

(3) A copy of an official transcript, certificate or diploma showing completion of an approved respiratory care program or a letter sent directly from the program director prior to matriculation.

(4) A copy of one of the following documents from the NBRC:

(a) identification card from the NBRC confirming that the applicant holds a current RRT credential; or

(b) the examination results showing successful passing of the NBRC, RRT examination if the applicant has not yet received the NBRC certificate;

(c) a verification letter from the NBRC showing CRT (prior to January 1, of 2018 in New Mexico or another United States jurisdiction), or RRT credential;

(5) Payment applicable.

(6) Verification of licensure, to include any disciplinary history, by all jurisdictions where the applicant is or has ever been licensed.

**D.** If applicable, those returning to the field and are applying for new licensure shall meet the requirements set in this rule.

**E.** After the above listed documentation has been reviewed and approved by the department, in consultation with the board, the applicant will be issued a respiratory care practitioner's license valid until September 30 of the next odd numbered year.

[16.23.3.9 NMAC - Rp, 16.23.3.9 NMAC, 6/27/2023]

**16.23.3.10 INITIAL LICENSE TERM AND EXPIRATION DATE:**

**A.** Initial regular licenses, including initial licenses issued to applicants for expedited licensure, shall be issued for an initial term until September 30 of the next odd numbered year.

**B.** No initial license, except for provisional license, shall be issued for less than 12 months.

[16.23.3.10 NMAC - N, 6/27/2023]

**16.23.3.11 REQUIREMENTS FOR UPGRADING LICENSE TYPE:**

Respiratory therapists wanting to upgrade their license type from CRT to RRT must complete an application and submit the required fee.

[16.23.3.11 NMAC - Rp, 16.23.3.11 NMAC, 6/27/2023]

**16.23.3.12 ELECTRONIC SIGNATURES:**

Electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through 14-16-21 NMSA 1978.

[16.23.3.12 NMAC - Rp, 16.23.3.12 NMAC, 6/27/2023]

**16.23.3.13 [RESERVED]:**

[16.23.3.13 NMAC - Repealed, 6/27/2023]

**16.23.3.14 VERIFICATION OF LICENSURE TO EMPLOYER:**

A copy of the initial license and any subsequent renewal licenses must be kept on file with the licensee's employer.

[16.23.3.14 NMAC - Rp 16.23.3.14 NMAC, 6/27/2023]

**16.23.3.15 PRACTITIONER LICENSE EXPIRATION DATE:**

Respiratory care practitioner licenses expire on September 30 of each odd-numbered year.

[16.23.3.15 NMAC - Rp, 16.23.3.15 NMAC, 6/27/2023]

**16.23.3.16 RENEWAL OF PRACTITIONER LICENSE, NOTIFICATION:**

No less than 45 days prior to the license expiration date, notices and renewal applications will be mailed to the licensee at the address on file with the department.

**A.** Failure to receive the renewal application notice will not relieve the licensee of the responsibility of renewing the license by the expiration date.

**B.** It is the licensee's responsibility to request a renewal application if one has not been received.

**C.** Practitioner licenses shall be renewed by the department, in consultation with the board, only upon receipt of the following:

- (1) a completed renewal application;
- (2) certification of continuing education requirements; and
- (3) proof of current national board of respiratory care (NBRC) credential;
- (4) payment of any applicable fee.

**D.** Expedited license renewals and fees are issued pursuant to 16.23.5.NMAC.

[16.23.3.16 NMAC - Rp, 16.23.3.16 NMAC, 6/27/2023]

#### **16.23.3.17 RENEWAL DEADLINE:**

The deadline for renewal of current respiratory care practitioner licenses is September 30 of each odd-numbered year.

**A. September 30 postmark requirement.** Completed renewal applications must be postmarked or completed on-line on or before September 30 of the renewal year.

**B. Application rejected.** Incomplete renewal applications will be rejected by the board.

**C. Late renewal.** Any renewal application received after September 30 of the renewal year, is expired and must be accompanied by the fee required for reactivation.

[16.23.3.17 NMAC - Rp, 16.23.3.17 NMAC, 6/27/2023]

#### **16.23.3.18 LICENSE EXPIRATION:**

**A.** Respiratory care licenses not renewed by the end of the renewal year will be expired and invalid.

**B.** Official notification of license expiration may be sent via electronic mail to the last address on file with the department.

**C.** A person continuing to practice without a valid license is in violation of Section 61-12B-4 NMSA of the Respiratory Care Act, and may be guilty of a misdemeanor. The department may seek civil action against the violator in accordance with Section 61-12B-15 NMSA 1978.

[16.23.3.18 NMAC - Rp, 16.23.3.18 NMAC, 6/27/2023]

## **PART 4: APPLICATION PROCEDURES FOR PRACTITIONER LICENSE**

### **16.23.4.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.4.1 NMAC - Rp, 16.23.4.1 NMAC, 7/15/2017]

### **16.23.4.2 SCOPE:**

The provisions of Part 4 of Chapter 23 apply to all persons applying to the department for a license to practice respiratory care in New Mexico.

[16.23.4.2 NMAC - Rp, 16.23.4.2 NMAC, 7/15/2017]

### **16.23.4.3 STATUTORY AUTHORITY:**

Part 4 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-4, Section 61-12B-6, Section 61-12B-7, and Section 61-12B-9 NMSA 1978.

[16.23.4.3 NMAC - Rp, 16.23.4.3 NMAC, 7/15/2017]

### **16.23.4.4 DURATION:**

Permanent.

[16.23.4.4 NMAC - Rp, 16.23.4.4 NMAC, 7/15/2017]

### **16.23.4.5 EFFECTIVE DATE:**

July 15, 2017, unless a later date is cited at the end of a section.

[16.23.4.5 NMAC - Rp, 16.23.4.5 NMAC, 7/15/2017]

### **16.23.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 23 is to establish the application procedures for respiratory care practitioner licensure.

[16.23.4.6 NMAC - Rp, 16.23.4.6 NMAC, 7/15/2017]

**16.23.4.7 DEFINITIONS:**

**[RESERVED]**

**16.23.4.8 DOCUMENTATION REQUIREMENTS FOR PRACTITIONERS:**

Applicants for licensure must provide the following items of documentation to the department;

- A.** A completed and signed application on a form approved by the department.
- B.** A color passport-type photograph of the applicant taken within the last year.
- C.** A copy of an official transcript, certificate or diploma showing completion of an approved respiratory care program or a letter sent directly from the program director prior to matriculation as provided in 16.23.3.9. NMAC.
- D.** A copy of one of the following documents from the national board for respiratory care (NBRC):
  - (1)** certificate for certified respiratory therapist (CRT), or registered respiratory therapist (RRT); or
  - (2)** identification card from the national board of respiratory care (NBRC) certified respiratory therapist (CRT), or registered respiratory therapist (RRT); or
  - (3)** the exam results showing successful passing of the national board of respiratory care (NBRC) certified respiratory therapist (CRT), or registered respiratory therapist (RRT) examination if the applicant has not yet received the national board of respiratory care (NBRC) certificate;
  - (4)** a verification letter from the national board of respiratory care (NBRC) showing certified respiratory therapist (CRT), or registered respiratory therapist (RRT) credential;
  - (5)** upon being credentialed by the National board of respiratory care (NBRC), an applicant has one year to apply to the board for licensure;
  - (6)** an initial applicant may also successfully complete a one year graduate respiratory license in lieu of being credentialed by the national board.
- E.** Payment to the board of the applicable fee as provided in 16.23.2 NMAC.

**F.** If applicable, verification of licensure status sent directly to the department by all state licensing boards where the applicant is or has ever been licensed.

**G.** A resume' with employment information encompassing at least five years prior to the application for licensure in New Mexico.

**H.** If applicable, those returning to the field and are applying for new licensure shall meet the requirements set in 16.23.3.10 NMAC.

[16.23.4.8 NMAC - Rp, 16.23.4.8 NMAC, 7/15/2017]

**16.23.4.9 EXPEDITED LICENSURE BY RECIPROCITY:**

The board will issue a license by reciprocity to an applicant who holds a current license in good standing in another United States jurisdiction that meets or exceeds the licensing requirements set out in Section 61-12B-7 NMSA 1978, provided the applicant submits a completed application on a form approved by the board with the required fee, and meets all the other requirements set forth in 16.23.4.8 NMAC.

[16.23.4.9 NMAC - N, 7/15/2017]

**16.23.4.10 INITIAL LICENSE ISSUANCE:**

After the above listed documentation has been reviewed and approved by the department, in consultation with the board, the applicant will be issued a respiratory care practitioner's license valid until September 30 of the next odd numbered year, except as provided in 16.23.4.10 NMAC of this rule.

[16.23.4.10 NMAC - Rp, 16.23.4.9 NMAC, 7/15/2017]

**16.23.4.11 LICENSES ISSUED AFTER JUNE 1 OF THE ODD-NUMBERED YEAR:**

Respiratory care practitioner licenses initially issued after June 1 of the odd-numbered (renewal) year will not expire until September 30 of the NEXT renewal period (see 16.23.8.12 NMAC).

[16.23.4.11 NMAC - Rp, 16.23.4.10 NMAC, 7/15/2017]

**16.23.4.12 VERIFICATION OF LICENSURE TO EMPLOYER:**

A copy of the initial license and any subsequent renewal licenses must be kept on file with the licensee's employer.

[16.23.4.12 NMAC - Rp, 16.23.4.11 NMAC, 7/15/2017]

**16.23.4.13 ADDRESS OR EMPLOYMENT CHANGES:**

It is the licensee's responsibility to keep the department informed immediately of any changes in residential and employment addresses and phone numbers so that renewal notices and correspondence from the department will be received by the licensee.

[16.23.4.13 NMAC - Rp, 16.23.4.12 NMAC, 7/15/2017]

#### **16.23.4.14 DUPLICATE LICENSE:**

In the event a license is lost or destroyed, the department will issue a duplicate license upon receipt of the following.

- A. Notice to the department of the loss by the licensee.
- B. A request for a duplicate wall license or a duplicate renewal license.
- C. Administrative fee(s) in an amount as provided in 16.23.2.8 NMAC.

[16.23.4.14 NMAC - Rp, 16.23.4.13 NMAC, 7/15/2017]

#### **16.23.4.15 LEGAL NAME CHANGE:**

If a licensee requests a new license, wall or renewal, to be compatible with a legal name change, the department will issue a new license upon receipt of the following:

- A. the old license(s);
- B. legal proof of the name change;
- C. a written request for name change to be made on licensing records; and
- D. fee(s) in an amount provided in 16.23.2.8 NMAC.

[16.23.4.15 NMAC - Rp, 16.23.4.14 NMAC, 7/15/2017]

#### **16.23.4.16 INCOMPLETE APPLICATIONS PURGED:**

Incomplete applications for licensure will be purged from board files two years from the date the first item of documentation was received.

[16.23.4.16 NMAC - Rp, 16.23.4.15 NMAC, 7/15/2017]

## **PART 5: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

### **16.23.5.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.5.1 NMAC - Rp, 16.23.5.1 NMAC, 6/27/2023]

**16.23.5.2 SCOPE:**

The provisions in Part 5 of Chapter 23 apply to all applicants for expedited licensure.

[16.23.5.2 NMAC - Rp, 16.23.5.2 NMAC, 6/27/2023]

**16.23.5.3 STATUTORY AUTHORITY:**

Part 5 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.

[16.23.5.3 NMAC - Rp, 16.23.5.3 NMAC, 6/27/2023]

**16.23.5.4 DURATION:**

Part 5 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.

[16.23.5.3 NMAC - Rp, 16.23.5.3 NMAC, 6/27/2023]

**16.23.5.5 EFFECTIVE DATE:**

June 27, 2023, unless a later date is cited at the end of a section.

[16.23.5.5 NMAC - Rp, 16.23.5.5 NMAC, 6/27/2023]

**16.23.5.6 OBJECTIVE:**

The objective of Part 5 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.23.5.6 NMAC - Rp, 16.23.5.6 NMAC, 6/27/2023]

**16.23.5.7 DEFINITIONS:**

**A. "Eligible jurisdiction"** means any state or territory of the United States except those included in the list of disapproved licensing jurisdictions under Paragraph (1) of Subsection A of 16.23.5.8 NMAC of this rule.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board/commission.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, as defined by Subsection D of this rule;

(2) does not have a disqualifying criminal conviction, as defined in Subsection A of 16.23.17.10 NMAC of the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.23.5.7 NMAC - Rp, 16.23.5.7 NMAC, 6/27/2023]

#### **16.23.5.8 APPLICATION REQUIREMENTS:**

**A.** Applicants for licensure as a respiratory care practitioners licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-12B-8 NMSA 1978 of the Respiratory Care Act:

(1) The following jurisdictions on that grounds that the profession is not licensed or otherwise regulated:

(a) Alaska;

(b) American Samoa;

(c) Northern Mariana Islands; and

(d) U.S. Virgin Islands.

(2) The following jurisdictions, unless the applicant holds a respiratory care practitioner license with NBRC Registered Respiratory Therapist (RRT) credentials, on the grounds that RRT credentials is a minimal qualification for licensure in New Mexico:

- (a) Alabama;
- (b) Arizona;
- (c) Arkansas;
- (d) California;
- (e) Colorado;
- (f) Connecticut;
- (g) Delaware;
- (h) District of Columbia;
- (i) Florida;
- (j) Georgia;
- (k) Hawaii;
- (l) Idaho;
- (m) Illinois;
- (n) Indiana;
- (o) Iowa;
- (p) Kansas
- (q) Kentucky;
- (r) Louisiana;
- (s) Maine;
- (t) Maryland;
- (u) Massachusetts;

(v) Michigan;  
(w) Minnesota;  
(x) Mississippi;  
(y) Missouri;  
(z) Montana;  
(aa) Nebraska;  
(bb) Nevada;  
(cc) New Hampshire;  
(dd) New Jersey;  
(ee) New York;  
(ff) North Carolina;  
(gg) North Dakota;  
(hh) Ohio;  
(ii) Oklahoma;  
(jj) Oregon;  
(kk) Pennsylvania;  
(ll) Rhode Island;  
(mm) South Carolina;  
(nn) South Dakota;  
(oo) Tennessee;  
(pp) Texas;  
(qq) Utah;  
(rr) Vermont;

- (ss) Virginia;
- (tt) Washington;
- (uu) West Virginia;
- (vv) Wisconsin;
- (ww) Wyoming;
- (xx) Puerto Rico; and
- (yy) Guam.

[16.2.5.8 NMAC - N, 6/27/2023]

**16.23.5.9 [RESERVED]:**

[16.23.5.9 NMAC - Repealed, 6/27/2023]

**16.23.5.10 EXPEDITED LICENSE APPLICATION:**

**A.** A candidate for expedited licensure must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form.
- (2) Proof of current unrestricted licensure in good standing held by the applicant in an eligible jurisdiction(s).
- (3) Payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all of the materials, including documentation from third parties, required by subsection A.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board or superintendent may have other cause to deny the application pursuant to 61-12B-12 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting and then provided to the superintendent for final action;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the superintendent may grant the application or refer the matter to an administrative prosecutor for denial of the application as provided by the board's rules.

[16.23.5.10 NMAC – N, 6/27/2023]

**16.23.5.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS:**

**A.** A candidate for expedited licensure must submit to the board a complete application containing all of the following:

(1) a completed and signed application form;

(2) proof of current license in good standing in another jurisdiction, including a branch of the United States armed forces; and

(3) submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e) for veterans (retired or separated), proof of honorable discharge, such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted and the board's staff is in receipt of all of the materials, including documentation from third parties, required by Subsection A.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board or superintendent may have other cause to deny the application pursuant to Section 61-12B-12 NMSA 1978.

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting and then provided to the superintendent for final action;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the superintendent may grant the application or refer the matter to an administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged any initial licensing fees or renewal fees for the first three years of licensure with the board.

[16.23.5.11 NMAC - N, 6/27/2023]

#### **16.23.5.12 EXPEDITED LICENSE BY ENDORSEMENT; DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular license issued by the board.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.23.5.12 NMAC N, 6/27/2023]

### **PART 6: TEMPORARY PERMITS**

#### **16.23.6.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.6.1 NMAC - Rp, 16.23.6.1 NMAC, 04/21/2022]

#### **16.23.6.2 SCOPE:**

The provisions of Part 6 of Chapter 23 apply to respiratory care program student externs or graduates applying for temporary permits to work for remuneration under the training, direction, and supervision of a New Mexico licensed respiratory care practitioner or New Mexico licensed physician who has agreed to be the applicant's training supervisor in a supervisory facility.

[16.23.6.2 NMAC - Rp, 16.23.6.2 NMAC, 04/21/2022]

#### **16.23.6.3 STATUTORY AUTHORITY:**

Part 6 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978.

[16.23.6.3 NMAC - Rp, 16.23.6.3 NMAC, 04/21/2022]

#### **16.23.6.4 DURATION:**

Permanent.

[16.23.6.4 NMAC - Rp, 16.23.6.4 NMAC, 04/21/2022]

#### **16.23.6.5 EFFECTIVE DATE:**

April 21, 2022 unless a later date is cited at the end of a section.

[16.23.6.5 NMAC - Rp, 16.23.6.5 NMAC, 04/21/2022]

#### **16.23.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 23 is to establish the qualification requirements and application procedures for a student extern or graduate of a respiratory care program to obtain a temporary permit under the provisions of the Respiratory Care Act in order to become employed in the furnishing of respiratory care under the limitations described herein.

[16.23.6.6 NMAC - Rp, 16.23.6.6 NMAC, 04/21/2022]

#### **16.23.6.7 DEFINITIONS:**

All definitions related to this section are in 16.23.1.7 NMAC.

[16.23.6.7 NMAC - Rp, 16.23.6.7 NMAC, 04/21/2022]

#### **16.23.6.8 APPLICATION REQUIREMENTS FOR STUDENTS:**

Persons enrolled in an approved respiratory care training program who are performing respiratory care services in a supervisory facility as part of the training, but receiving no remuneration for those services, are not required to have a temporary permit issued by the department.

[16.23.6.8 NMAC - Rp, 16.23.6.8 NMAC, 04/21/2022]

#### **16.23.6.9 APPLICATION REQUIREMENTS FOR STUDENT EXTERNS:**

The department, in consultation with the board, will issue temporary permits to respiratory care student externs enrolled in a traditional or non-traditional respiratory care training program approved as set forth in Paragraph (4) of Subsection A and Paragraph (5) of Subsection R of 16.23.1 NMAC, or by the board and who provide satisfactory evidence of the following:

**A.** Verification of current respiratory care program enrollment sent directly by the educational institution to the department.

**B.** A color passport-type photograph taken within the past year.

**C.** A notarized statement or letter sent by the applicant's direct supervisor confirming the location and status of the applicant's employment.

**D.** An agreement signed by the proposed training supervisor made under penalty of perjury, which certifies that the supervisor will provide training and direct supervision which meets the requirements of these regulations.

**E.** A temporary permit application form approved and provided by the department, completed by the applicant, and signed by the applicant attesting that the information on the application is complete under penalty of perjury.

**F.** Payment to the board in the amount set forth in Subsection A of 16.23.2.8 NMAC.

[16.23.6.9 NMAC - Rp, 16.23.6.9 NMAC, 04/21/2022]

#### **16.23.6.10 APPLICATION REQUIREMENTS FOR GRADUATES:**

The department, in consultation with the board, will issue non-renewable temporary permits to non-licensed graduates from an approved respiratory care training and education program (see Subsections E and GG of 16.23.6.1 NMAC), and who provide the following:

**A.** the required items listed in of Subsections B, C, D and E of 16.23.6.9 NMAC;

**B.** a copy of the applicant's graduation certificate or diploma from an approved respiratory care training and educational program; or

**C.** the applicant's graduate transcript sent directly to the department by the educational institution; or an official copy of the transcripts sent directly from the program; or a letter sent directly from the program director prior to matriculation; and

**D.** proof of good faith attempts and reasonable progress in pursuing the NBRC credentialing as a RRT, by providing a copy of the letter scheduling the applicant for the NBRC, or RRT credentialing examination if the applicant has not taken the credentialing examination previously but, is scheduled to sit for it.

[16.23.6.10 NMAC - Rp, 16.23.6.10 NMAC, 04/21/2022]

#### **16.23.6.11 INITIAL TEMPORARY PERMIT ISSUANCE UPON APPROVAL:**

After the applicant has met all the requirements for a temporary permit, and the application has received approval by the department, in consultation with the board, the applicant will be issued a temporary permit for one year.

**A.** The temporary permit is only valid if the conditions of the permit remain unchanged.

**B.** A temporary permit will be sent by the department to the person on record as the permittee's training supervisor.

[16.23.6.11 NMAC - Rp, 16.23.6.11 NMAC, 04/21/2022]

#### **16.23.6.12 [RESERVED]**

[16.23.6.12 NMAC - Rp, 16.23.6.12 NMAC, 04/21/2022]

#### **16.23.6.13 LIMITATIONS ON STUDENT EXTERN TEMPORARY PERMITS:**

Student externs and graduates with temporary permits will be limited in the performance of respiratory care to those competence levels that have written verification and in accordance with the safe practice and patient care safety regulations of the facility.

**A.** Temporary permits are only valid for the performance of respiratory care under the direct supervision of the training supervisor who signed the supervisor's agreement portion of the applicant's application for the temporary permit.

**B.** Any change in supervision or in employment by either the permittee or the training supervisor invalidates the permit and must be reported to the department. Since the training supervisor is responsible for the respiratory care administered by the

permittee, it is advisable for the training supervisor in this circumstance to document to the department that he or she is no longer professionally responsible for the permittee.

**C.** A temporary permit issued to a respiratory care student extern is immediately invalid upon the student extern's withdrawal from the respiratory care training and education program.

**D.** A student extern temporary permit may not be renewed more than two times.

[16.23.6.13 NMAC - Rp, 16.23.6.13 NMAC, 04/21/2022]

**16.23.6.14 [RESERVED]**

[16.23.6.14 NMAC - Rp, 16.23.6.14 NMAC, 04/21/2022]

**16.23.6.15 RE-ENROLLMENT IN NEW PROGRAM:**

If an applicant has failed or withdrawn from a program and at a later date enrolls in a *new* approved respiratory care program, he or she may apply for a new permit under the new program.

A. With the application, the applicant must provide a letter to the department explaining the circumstances of withdrawal from the previous program and of enrollment in the new program.

B. The applicant must meet all the application requirements set forth in 16.23.6.9 NMAC.

C. The previous temporary permit number will be reissued.

D. All applicable provisions in 16.23.6 NMAC and 16.23.7 NMAC will apply to the new temporary permit.

[16.23.6.15 NMAC - Rp, 16.23.6.15 NMAC, 04/21/2022]

**16.23.6.16 LICENSE REQUIRED UPON CREDENTIALING:**

Any respiratory care training program graduate who holds a temporary permit and has successfully passed the NBRC, RRT credentialing examination must apply for and receive a respiratory care practitioner's license before he or she may be recognized as a RCP, and may practice as such, independent of training supervision in New Mexico.

[16.23.6.16 NMAC - Rp, 16.23.6.16 NMAC, 04/21/2022]

**16.23.6.17 [RESERVED]**

[16.23.6.17 NMAC - Rp, 16.23.6.17 NMAC, 04/21/2022]

**16.23.6.18 [RESERVED]**

[16.23.6.18 NMAC - Rp, 16.23.6.18 NMAC, 04/21/2022]

**16.23.6.19 DIRECT SUPERVISION IN PRACTICE:**

The training supervisor must hold a current license as a RCP in New Mexico, and shall train the temporary permittee in the performance of respiratory care functions until the training supervisor determines that the permittee is competent to perform those functions independently. The degree of independence extended to the permittee is contingent upon the supervised training received by the permittee from the training supervisor who is ultimately medically and legally liable for the actions of the permittee.

**A.** The training supervisor is the agent of the facility and trains the trainee permittee in accordance with the safe practice and patient care safety standards of the facility.

**B.** Before the permittee is allowed to perform respiratory care functions independently, the provisions of 16.23.6.13 NMAC require that the training supervisor file with the facility a written verification that the permittee is competent to perform respiratory care functions.

**C.** When the facility allows the permittee to perform the approved respiratory care functions on patients, the facility assumes responsibility as well.

[16.23.6.19 NMAC - Rp, 16.23.6.19 NMAC, 04/21/2022]

**16.23.6.20 BACK-UP FOR TRAINING SUPERVISOR:**

**A.** The training supervisor shall have a written back-up system to ensure that there is a licensed RCP on site who is privileged to perform all of the duties the institution assigns to a licensed RCP.

**B.** The training supervisor is ultimately responsible for the actions of the permittee.

[16.23.6.20 NMAC - Rp, 16.23.6.20 NMAC, 04/21/2022]

**16.23.6.21 [RESERVED]**

[16.23.6.21 NMAC - Rp, 16.23.6.21 NMAC, 04/21/2022]

**16.23.6.22 TEMPORARY STUDENT PERMIT EXPIRATION:**

**A.** Temporary permits are issued for a period of one year, and will expire on the last day of the month in which the initial permit was issued.

**B.** Renewed temporary permits will also expire on the last day of the same month in which the permit was initially issued.

**C.** The number of permits possible will be a total of three maximum regardless of the period of unemployment while the permittee is enrolled in the respiratory care training program.

[16.23.6.22 NMAC - Rp, 16.23.6.22 NMAC, 04/21/2022]

**16.23.6.23 RENEWAL REQUIREMENTS AND PROCESS FOR STUDENT TEMPORARY PERMITS:**

**A.** At least 45 days before the temporary permit expiration date, the department will mail the permittee a temporary permit renewal notice and an application form to apply for permit renewal.

**B.** Renewal application notices will be mailed to the last residential address on file with the department. It is the permittee's responsibility to request a renewal form if one has not been received 30 days prior to the permit expiration date.

**C.** The department will send the permittee's training supervisor a copy of the renewal notice, which was sent to the permittee.

**D.** All applicants for temporary permit renewal must meet the following requirements:

(1) Complete and sign a renewal application form approved by the department.

(2) Submit a check or money order payable to the board for the required fee as provided in 16.23.4.8 NMAC, whichever is applicable.

[16.23.6.23 NMAC - Rp, 16.23.6.23 NMAC, 04/21/2022]

**16.23.6.24 APPROVAL REQUIRED:**

All temporary permit renewal requests are subject to individual review and approval by the department, in consultation with the board. If a temporary permit renewal application is approved, a renewal temporary permit will be mailed to the permittee.

[16.23.6.24 NMAC - Rp, 16.23.6.24 NMAC, 04/21/2022]

**16.23.6.25 VERIFICATION OF RENEWAL TO EMPLOYER:**

A copy of the renewed temporary permit must be kept on file with the temporary permittee's employer. The department will mail a temporary permit to the training supervisor.

[16.23.6.25 NMAC - Rp, 16.23.6.25 NMAC, 04/21/2022]

#### **16.23.6.26 FINAL PERMIT - NO RENEWAL:**

Forty-five days prior to the expiration date of the third and final permit (initial permit plus two renewals), the permittee and the permittee's training supervisor will be notified that the permittee's permit lapse is imminent, and that the privileges allowed by the permit will no longer be authorized.

**A.** In order to continue practicing in the profession, the permittee must complete the process for practitioner license application as set forth in 16.23.3 NMAC.

**B.** Any licensed practitioner who aids and abets the continued practice of a person whose permit privileges have lapsed shall be subject to disciplinary action by the department for violation of the Respiratory Care Act and Subsection H of 16.23.17.8 NMAC.

[16.23.6.26 NMAC - Rp, 16.23.6.26 NMAC, 04/21/2022]

### **PART 7: TEMPORARY STUDENT PERMIT RENEWAL**

#### **16.23.7.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.7.1 NMAC - Rp, 16.23.7.1 NMAC, 7/15/2017]

#### **16.23.7.2 SCOPE:**

The provisions of Part 7 of Chapter 23 apply to persons who hold a current temporary permit under the provisions of the Respiratory Care Act and 16.23.6 NMAC.

[16.23.7.2 NMAC - Rp, 16.23.7.2 NMAC, 7/15/2017]

#### **16.23.7.3 STATUTORY AUTHORITY:**

Part 7 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Subsection A of Section 61-12B-4, Subsection A of Section 61-12B-6, Section 61-12B-7, and Subsection C and D of Section 61-12B-9 NMSA 1978.

[16.23.7.3 NMAC - Rp, 16.23.7.3 NMAC, 7/15/2017]

**16.23.7.4 DURATION:**

Permanent.

[16.23.7.4 NMAC - Rp, 16.23.7.4 NMAC, 7/15/2017]

**16.23.7.5 EFFECTIVE DATE:**

July 15, 2017, unless a later date is cited at the end of a section or paragraph.

[16.23.7.5 NMAC - Rp, 16.23.7.5 NMAC, 7/15/2017]

**16.23.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 23 is to make set forth provisions for the renewal of current temporary permits.

[16.23.7.6 NMAC - Rp, 16.23.7.6 NMAC, 7/15/2017]

**16.23.7.7 DEFINITIONS:**

[RESERVED]

**16.23.7.8 TEMPORARY STUDENT PERMIT EXPIRATION:**

**A.** Temporary permits are issued for a period of one year, and will expire on the last day of the month in which the initial permit was issued.

**B.** Renewed temporary permits will also expire on the last day of the same month in which the permit was initially issued.

**C.** The number of permits possible will be a total of three maximum regardless of the period of unemployment while the permittee is enrolled in the respiratory care training program.

[16.23.7.8 NMAC - Rp, 16.23.7.8 NMAC, 7/15/2017]

**16.23.7.9 RENEWAL PROCESS FOR STUDENT TEMPORARY PERMITS:**

**A.** At least 45 days before the temporary permit expiration date, the department will mail the permittee a temporary permit renewal notice and an application form to apply for permit renewal.

**B.** Renewal application notices will be mailed to the last residential address on file with the department. It is the permittee's responsibility to request a renewal form if one has not been received 30 days prior to the permit expiration date.

C. The department will send the permittee's training supervisor a copy of the renewal notice, which was sent to the permittee.

[16.23.7.9 NMAC - Rp, 16.23.7.9 NMAC, 7/15/2017]

**16.23.7.10 REQUIREMENTS FOR STUDENT TEMPORARY PERMIT RENEWAL:**

All applicants for temporary permit renewal must meet the following requirements:

A. Complete and sign a renewal application form approved by the department.

B. Submit a check or money order payable to the board for the required fee as provided in 16.23.4.8 NMAC, whichever is applicable.

[16.23.7.10 NMAC - Rp, 16.23.7.10 NMAC, 7/15/2017]

**16.23.7.11 APPROVAL REQUIRED:**

All temporary permit renewal requests are subject to individual review and approval by the department, in consultation with the board. If a temporary permit renewal application is approved, a renewal temporary permit will be mailed to the permittee.

[16.23.7.11 NMAC - Rp, 16.23.7.11 NMAC, 7/15/2017]

**16.23.7.12 VERIFICATION OF RENEWAL TO EMPLOYER:**

A copy of the renewed temporary permit must be kept on file with the temporary permittee's employer. The department will mail a temporary permit to the training supervisor.

[16.23.7.12 NMAC - Rp, 16.23.7.12 NMAC, 7/15/2017]

**16.23.7.13 FINAL PERMIT - NO RENEWAL:**

Forty-five days prior to the expiration date of the third and final permit (initial permit plus two renewals), the permittee and the permittee's training supervisor will be notified that the permittee's permit lapse is imminent, and that the privileges allowed by the permit will no longer be authorized.

A. In order to continue practicing in the profession, the permittee must complete the process for practitioner license application as set forth in 16.23.3 NMAC.

B. Any licensed practitioner who aids and abets the continued practice of a person whose permit privileges have lapsed shall be subject to disciplinary action by the department for violation of the Respiratory Care Act and Subsection H of 16.23.17.8 NMAC.

[16.23.7.13 NMAC - Rp, 16.23.7.13 NMAC, 7/15/2017]

## **PART 8: RENEWAL AND EXPIRATION OF PRACTITIONER LICENSE**

### **16.23.8.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.8.1 NMAC - Rp, 16.23.8.1 NMAC, 7/15/2017]

### **16.23.8.2 SCOPE:**

The provisions of Part 8 of Chapter 23 apply to all respiratory care practitioners currently licensed in New Mexico.

[16.23.8.2 NMAC - Rp, 16.23.8.2 NMAC, 7/15/2017]

### **16.23.8.3 STATUTORY AUTHORITY:**

Part 8 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Subsection A of Section 61-12B-9, NMSA 1978.

[16.23.8.3 NMAC - Rp, 16.23.8.3 NMAC, 7/15/2017]

### **16.23.8.4 DURATION:**

Permanent.

[16.23.8.4 NMAC - Rp, 16.23.8.4 NMAC, 7/15/2017]

### **16.23.8.5 EFFECTIVE DATE:**

July 15, 2017, unless a later date is cited at the end of the section.

[16.23.8.5 NMAC - Rp, 16.23.8.5 NMAC, 7/15/2017]

### **16.23.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 23 is to set forth requirements and procedures for renewal of New Mexico respiratory care practitioner licenses.

[16.23.8.6 NMAC - Rp, 16.23.8.6 NMAC, 7/15/2017]

### **16.23.8.7 DEFINITIONS:**

**[RESERVED]**

#### **16.23.8.8 PRACTITIONER LICENSE EXPIRATION DATE:**

Respiratory care practitioner licenses expire on September 30 of each odd-numbered year except as provided in 16.23.8.12 NMAC.

[16.23.8.9 NMAC - Rp, 16.23.8.9 NMAC, 7/15/2017]

#### **16.23.8.9 NOTIFICATION:**

No less than 45 days prior to the license expiration date, notices and renewal applications will be mailed to the licensee at the last official address on file with the department.

**A.** Failure to receive the renewal application notice will not relieve the licensee of the responsibility of renewing the license by the expiration date.

**B.** It is the licensee's responsibility to request a renewal application if one has not been received at least thirty days prior to the license expiration date.

[16.23.8.9 NMAC - Rp, 16.23.8.9 NMAC, 7/15/2017]

#### **16.23.8.10 APPLICATION REQUIRED:**

Practitioner licenses shall be renewed by the department, in consultation with the board, only upon receipt of the following:

**A.** a completed renewal application;

**B.** certification that the continuing education requirements were met as set forth in 16.23.12 NMAC; and

**C.** proof of current national board of respiratory care (NBRC) credential;

**D.** payment in the amount of the required fee as provided in 16.23.2.8 NMAC.

[16.23.8.10 NMAC - Rp, 16.23.8.10 NMAC, 7/15/2017]

#### **16.23.8.11 RENEWAL DEADLINE:**

The deadline for renewal of current respiratory care practitioner licenses is September 30th of the odd-numbered year, except as provided in 16.23.8.12 NMAC.

**A. September 30 postmark requirement.** Completed renewal applications must be postmarked or completed on-line on or before September 30 of the renewal year.

**B. Application rejected.** Incomplete renewal applications will be rejected by the board.

**C. Late renewal.** Any renewal application, corrected or otherwise returned to the department postmarked after September 30, of the odd-numbered year, is expired and must be accompanied by the penalty fee required for reactivation (see 16.23.2.8 NMAC).

[16.23.8.11 NMAC - Rp, 16.23.8.11 NMAC, 7/15/2017]

**16.23.8.12 RENEWAL DEADLINE FOR PRACTITIONER LICENSES ISSUED AFTER JUNE 1 OF THE RENEWAL YEAR:**

Practitioners' licenses issued after June 1 of the renewal (odd-numbered) year will not expire until September 30 of the renewal cycle following the current renewal cycle.

[16.23.8.12 NMAC - Rp, 16.23.8.12 NMAC, 7/15/2017]

**16.23.8.13 LICENSE EXPIRATION:**

**A.** Respiratory care licenses not renewed by the end of the renewal cycle will be expired and invalid.

**B.** Official notification of license expiration will be mailed to the last residential address on file with the department.

[16.23.8.13 NMAC - Rp, 16.23.8.13 NMAC, 7/15/2017]

**16.23.8.14 PRACTICE PROHIBITED:**

A person continuing to practice without a valid license is in violation of Section 61-12B-4 of the Respiratory Care Act, and is guilty of a misdemeanor. The department will seek civil action against the violator in accordance with Section 61-12B-15.

[16.23.8.14 NMAC - Rp, 16.23.8.14 NMAC, 7/15/2017]

**PART 9: INACTIVE STATUS FOR PRACTITIONER LICENSE**

**16.23.9.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.9.1 NMAC - Rp, 16.23.9.1 NMAC, 7/15/2017]

**16.23.9.2 SCOPE:**

The provisions of Part 9 of Chapter 23 apply to all respiratory care practitioners who are currently licensed in New Mexico.

[16.23.9.2 NMAC - Rp, 16.23.9.2 NMAC, 7/15/2017]

**16.23.9.3 STATUTORY AUTHORITY:**

Part 9 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Subsection A of Section 61-12B-9 NMSA 1978.

[16.23.9.3 NMAC - Rp, 16.23.9.3 NMAC, 7/15/2017]

**16.23.9.4 DURATION:**

Permanent.

[16.23.9.4 NMAC - Rp, 16.23.9.4 NMAC, 7/15/2017]

**16.23.9.5 EFFECTIVE DATE:**

July 15, 2017 unless a later date is cited at the end of the section.

[16.23.9.5 NMAC - Rp, 16.23.9.5 NMAC, 7/15/2017]

**16.23.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 23 is to set forth requirements and procedures for placing a current practitioners license on inactive status.

[16.23.9.6 NMAC - Rp, 16.23.9.6 NMAC, 7/15/2017]

**16.23.9.7 DEFINITIONS:**

**[RESERVED]**

**16.23.9.8 INACTIVE STATUS:**

Currently licensed practitioners who are not currently practicing in New Mexico under the terms and provisions authorized by the Respiratory Care Act, or who are working for the federal government, may place their licenses on inactive status at the time of renewal rather than let their licenses expire.

[16.23.9.8 NMAC - Rp, 16.23.9.8 NMAC, 7/15/2017]

**16.23.9.9 INACTIVE STATUS REQUIREMENTS:**

A practitioners license will be placed on inactive status by the department after the licensee has provided the following:

**A.** a completed, signed, and notarized renewal application on which the "inactive status requested" box has been checked;

**B.** documentation verifying that the continuing education requirements were met as set forth 16.23.12 NMAC; and

**C.** the applicable fee for inactive status set forth in 16.23.2.8 NMAC.

[16.23.9.9 NMAC - Rp, 16.23.9.9 NMAC, 7/15/2017]

**16.23.9.10 SEPTEMBER 30 POSTMARK REQUIREMENT:**

The practitioner must submit the completed renewal application form marked for inactive status with a postmark dated on or before September 30 in order to be processed for inactive status.

[16.23.9.10 NMAC - Rp, 16.23.9.10 NMAC, 7/15/2017]

**16.23.9.11 INCOMPLETE APPLICATION:**

Unsigned, incorrect, or otherwise incomplete applications will be rejected and returned to the licensee for correction or completion.

[16.23.9.11 NMAC - Rp, 16.23.9.11 NMAC, 7/15/2017]

**16.23.9.12 APPLICATION REJECTED:**

Any inactive status application, corrected or otherwise returned to the department, postmarked *after* September 30, of the odd-numbered (renewal) year, will *not* be processed for inactive status. The rejected application will be returned to the applicant, and the status of the license will be expired and invalid and the late penalty fee will apply if reactivation is sought within the time limitations set forth in 16.23.11 NMAC.

[16.23.9.12 NMAC - Rp, 16.23.9.12 NMAC, 7/15/2017]

**16.23.9.13 WRITTEN APPROVAL NOTIFICATION OF INACTIVE STATUS:**

Upon approval of the inactive status application request, the department will send the licensee notice that the license has been placed on inactive status.

[16.23.9.13 NMAC - Rp, 16.23.9.13 NMAC, 7/15/2017]

**16.23.9.14 TIME LIMITATION ON INACTIVE STATUS LICENSE:**

A license on inactive status must be reactivated before September 30 of the *next* odd-numbered year, or the license shall lapse and become null and void (see 16.23.11.11 NMAC).

[16.23.9.14 NMAC - Rp, 16.23.9.14 NMAC, 7/15/2017]

**16.23.9.15 PRACTICE PROHIBITED:**

Until the inactive status license has been reactivated, the respiratory care practitioner may not practice respiratory care in New Mexico unless employed by the federal government.

[16.23.9.15 NMAC - Rp, 16.23.9.15 NMAC, 7/15/2017]

**16.23.9.16 INACTIVE STATUS REACTIVATION:**

The individual who has placed his or her license on inactive status may reactivate the license before September 30 of the next odd-numbered year by completing the following procedure.

**A.** Request a reactivation application form from the department or download it from the board's website.

**B.** Complete, sign, and return the reactivation application form with a postmark dated on or before September 30 of the odd-numbered year and within the time limitation set forth in 16.23.9.14 NMAC.

**C.** Remit the applicable fee for reactivation from inactive status set forth in 16.23.2.8 NMAC.

[16.23.9.16 NMAC - Rp, 16.23.9.16 NMAC, 7/15/2017]

**16.23.9.17 REACTIVATION APPROVED:**

Upon review and approval of the reactivation application, the department will issue a reactivated license to the licensee. The license number will remain the same.

[16.23.9.17 NMAC - Rp, 16.23.9.17 NMAC, 7/15/2017]

**16.23.9.18 RESUMPTION OF PRACTICE ALLOWED:**

Upon receipt of the reactivated license, the licensee may resume the practice of respiratory care in New Mexico.

[16.23.9.18 NMAC - Rp, 16.23.9.18 NMAC, 7/15/2017]

### **16.23.9.19 CONTINUING EDUCATION REQUIREMENTS FOR REACTIVATION:**

For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

**A. Twenty hours.** If the completed reactivation application is received by the department postmarked *on or before* September 30 of the *even*-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be 20.

**B. Ten hours.** If the completed reactivation application is received by the department postmarked *on or after* October 1 of the *even*-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be 10.

**C. Zero hours.** If the completed reactivation application is approved by the department postmarked *on or after* June 1 of the *odd*-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be zero.

[16.23.9.19 NMAC - Rp, 16.23.9.19 NMAC, 7/15/2017]

## **PART 10: [RESERVED]**

## **PART 11: LICENSE REACTIVATION; LICENSE LAPSE**

### **16.23.11.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
P.O. Box 25101 Santa Fe, New Mexico 87504.

[16.23.11.1 NMAC - Rp, 16.23.11.1 NMAC, 7/15/2017]

### **16.23.11.2 SCOPE:**

The provisions of Part 11 of Chapter 23 apply to all respiratory care practitioners who have ever been licensed in New Mexico.

[16.23.11.2 NMAC - Rp, 16.23.11.2 NMAC, 7/15/2017]

### **16.23.11.3 STATUTORY AUTHORITY:**

Part 11 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-9.A NMSA 1978.

[16.23.11.3 NMAC - Rp, 16.23.11.3 NMAC, 7/15/2017]

**16.23.11.4 DURATION:**

Permanent.

[16.23.11.4 NMAC - Rp, 16.23.11.4 NMAC, 7/15/2017]

**16.23.11.5 EFFECTIVE DATE:**

July 15, 2017, unless a later date is cited at the end of the section.

[16.23.11.5 NMAC - Rp, 16.23.11.5 NMAC, 7/15/2017]

**16.23.11.6 OBJECTIVE:**

The objective of Part 11 of Chapter 23 is to set forth requirements and procedures for reactivation of a New Mexico respiratory care practitioner license from expired status. Part 11 also states the requirements the person with a lapsed license must meet to be able to practice respiratory care in New Mexico again.

[16.23.11.6 NMAC - Rp, 16.23.11.6 NMAC, 7/15/2017]

**16.23.11.7 DEFINITIONS:**

[RESERVED]

**16.23.11.8 LICENSE EXPIRATION DUE TO NON-RENEWAL:**

Respiratory care practitioner licenses not renewed or which have not been placed on inactive status by the end of the renewal cycle will be expired and invalid.

[16.23.11.8 NMAC - Rp, 16.23.11.8 NMAC, 7/15/2017]

**16.23.11.9 PRACTICE PROHIBITED:**

A person continuing to practice without a valid license is in violation of Section 61-12B-4 of the Respiratory Care Act, and is guilty of a misdemeanor. The department will seek civil action against the violator in accordance with Section 61-12B-15 NMSA 1978.

[16.23.11.9 NMAC - Rp, 16.23.11.9 NMAC, 7/15/2017]

**16.23.11.10 LICENSE REACTIVATION FROM EXPIRED STATUS:**

The individual who has allowed his or her license to expire, must reactivate the expired license before the next scheduled renewal expiration date for licensed respiratory care practitioners September 30 of the next odd-numbered year. The applicant must complete the following process in order to reactivate his or her license.

**A.** Contact the department to request a reactivation application form or download it from the board's website.

**B.** Complete and return to the department, the reactivation application form with the necessary continuing education documentation required in 16.23.12 NMAC.

**C.** Submit to the department a check or money order payable to the board in the amount of the renewal and penalty fee (See 16.23.2.8 NMAC).

[16.23.11.10 NMAC - Rp, 16.23.11.10 NMAC, 7/15/2017]

#### **16.23.11.11 LICENSE LAPSE:**

An expired license which has not been reactivated before the next scheduled license expiration date September 30 of the next odd-numbered year, will lapse and become null and void.

**A. Re-licensure required.** Before resuming the practice of respiratory care in New Mexico, the individual whose license has lapsed must be approved for licensure by the department.

**B. Application required.** The applicant with a lapsed license must repeat the entire initial licensure application process as set forth in 16.23.3 and 16.23.4 NMAC.

[16.23.11.11 NMAC - Rp, 16.23.11.11 NMAC, 7/15/2017]

## **PART 12: CONTINUING EDUCATION**

### **16.23.12.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.12.1 NMAC - Rp, 16.23.12.1 NMAC, 04/21/2022]

### **16.23.12.2 SCOPE:**

The provisions of Part 12 of Chapter 23 applies to all respiratory care practitioners intending to renew or reactivate their New Mexico license.

[16.23.12.2 NMAC - Rp, 16.23.12.2 NMAC, 04/21/2022]

### **16.23.12.3 STATUTORY AUTHORITY:**

Part 12 of Chapter 23 is promulgated pursuant to Section 61-12B-6 NMSA 1978.

[16.23.12.3 NMAC - Rp, 16.23.12.3 NMAC, 04/21/2022]

**16.23.12.4 DURATION:**

Permanent.

[16.23.12.4 NMAC - Rp, 16.23.12.4 NMAC, 04/21/2022]

**16.23.12.5 EFFECTIVE DATE:**

April 21, 2022, unless a later date is cited at the end of a section.

[16.23.12.5 NMAC - Rp, 16.23.12.5 NMAC, 04/21/2022]

**16.23.12.6 OBJECTIVE:**

The objective of Part 12 of Chapter 23 is to set forth the requirements and procedures for the New Mexico licensed respiratory care practitioner to meet the continuing education requirements for license renewal or reactivation.

[16.23.12.6 NMAC - Rp, 16.23.12.6 NMAC, 04/21/2022]

**16.23.12.7 DEFINITIONS:**

All definitions related to this section are in 16.23.1.7 NMAC.

[16.23.12.7 NMAC - Rp, 16.23.12.7 NMAC, 04/21/2022]

**16.23.12.8 CONTINUING EDUCATION REQUIREMENTS:**

The completion of 20 clock hours of continuing education is a requirement for biennial license renewal or license reactivation.

**A.** Continuing education hours must be directly related to respiratory therapy, pulmonary function technology, or related inter-disciplinary areas of health care.

**B.** All licensees must complete at least one hour of ethics related continuing education in the license renewal cycle.

**C.** The department may consult with the board to resolve questions as to appropriate continuing education hours.

(1) The department shall be the final authority on acceptance of any educational activity submitted by a licensee or a sponsor for approval.

(2) Each respiratory care practitioner must participate in at least 20 clock hours of continuing education activities every renewal cycle, or as provided by 16.23.12.12 NMAC and 16.23.12.13 NMAC.

**D.** A minimum of twelve clock hours of the twenty clock hours of continuing education must be consistent with American Medical Association Category I, which includes any of the following types of educational offerings:

(1) lecture - a discourse given for instruction before an audience or through teleconference;

(2) panel - a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution;

(3) workshop - a series of meetings for intensive, hands on, study or discussion, in a specific area of interest;

(4) seminar - a directed advanced study or discussion in a specific field of interest;

(5) symposium - conference of more than a single session organized for the purpose of discussion of a specific subject from various viewpoints and by various presenters;

(6) distance education - includes such enduring materials as text, internet or CD, provided the provider has included an independently scored test as part of the learning package; and

(7) NBRC-awarded continuing education credit for successful completion of re-credentialing examination(s) for renewal of credential as a CRT (if the CRT was issued prior to January 1, 2018) or RRT.

[16.23.12.8 NMAC - Rp, 16.23.12.8 NMAC, 04/21/2022]

#### **16.23.12.9 APPROVED CONTINUING EDUCATION PROGRAMS:**

**A.** The department will approve, on a clock hour basis, continuing education activities which meet the criteria in Subsection A of 16.23.12.8 NMAC, and which are sponsored or approved for respiratory care practitioners. Below is the list of approved continuing education providers:

(1) AAP, American academy of pediatrics;

(2) ACCP, American college of chest physicians;

(3) ATS, American thoracic society;

- (4) AOA, American osteopathic association;
- (5) AMA, American medical association;
- (6) ASA, American society of anesthesiologists;
- (7) ABIM, American board of internal medicine;
- (8) ALA, American lung association;
- (9) ACC. American college of cardiologists;
- (10) AAST American association of sleep technologists;
- (11) NMSRC New Mexico society for respiratory care;
- (12) AARC American association for respiratory care;
- (13) any AARC state affiliate; and
- (14) AASM, American academy of sleep medicine.

**B.** The department will approve, on a clock hour basis, a maximum of eight clock hours per renewal cycle of the following type of educational activities listed within Subsection B of 16.23.12.9 NMAC for licensees:

- (1) any hospital or healthcare organization respiratory care-related continuing education in-service;
- (2) respiratory care-related science courses taken in an academic setting and received toward RRT credentialing;
- (3) infection control certification or re-certification courses;
- (4) hazardous materials certification or re-certification courses;
- (5) advanced life support courses. This includes training offered by the American heart Association, American safety and health institute, American Academy of Pediatrics, Sugar/Safe Care, Temperature, Airway, Blood Pressure, Lab & Emotional Support (STABLE) program, Neonatal Resuscitation program (NRP), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), or other courses as deemed acceptable by the board; and
- (6) Any non-Category 1 CRCE credits granted by the American Association for Respiratory Care or continuing education units granted by the New Mexico Society for Respiratory Care.

**C.** The department will approve respiratory care-related education taken in an academic setting. One semester hour or its equivalent converts to 15 clock hours.

**D.** The department will automatically approve for licensed respiratory care practitioners a maximum of six clock hours of continuing education credit for each renewal period for teaching approved respiratory care-related continuing education offerings as provided in 16.23.12 NMAC. Credits will be granted one time only for each course taught no matter how many times or how many years the course is repeated.

[16.23.12.9 NMAC - Rp, 16.23.12.9 NMAC, 04/21/2022]

#### **16.23.12.10 DOCUMENTATION:**

Licensees shall be responsible for maintaining documentation of their continuing education activities and shall be required to submit copies of proofs of attendance at the time of license renewal if requested by the department.

**A.** Proofs of attendance. Proofs of attendance, including those for in-services, must clearly state the following:

- (1) name, address, and phone number of the sponsor or in-service provider;
- (2) date the educational offering or in-service was completed;
- (3) location where the educational offering was presented;
- (4) complete name of the seminar, course, or in-service (acronyms are not sufficient);
- (5) number of clock hours credited;
- (6) name of the attendee receiving credit for the continuing education offering or in-service;
- (7) signature of the person authorized by the sponsoring agency to verify licensee attendance; and
- (8) name of the instructor.

**B.** Academic credit courses. A copy of the transcript of completed, approved academic credit hour courses as provided in Subsection C of 16.23.12.9 NMAC, must be submitted with the renewal documentation.

**C.** Teaching activities. A licensed respiratory care practitioner seeking credit for teaching respiratory care related courses must submit documentation of the teaching activity which clearly states the following:

- (1) name, address, and phone number of the sponsor or in-service provider;
- (2) complete name of the seminar, course, or in-service (acronyms are not sufficient);
- (3) date the educational offering or in-service was presented;
- (4) location where the educational offering was presented;
- (5) name of the licensee instructor;
- (6) number of clock hours credited; and
- (7) signature of the person authorized by the sponsoring agency to verify the licensee's teaching activity.

[16.23.12.10 NMAC - Rp, 16.23.12.10 NMAC, 04/21/2022]

#### **16.23.12.11 OTHER EDUCATIONAL OFFERINGS:**

The department, in consultation with the board, has an informal arrangement with the New Mexico Society for Respiratory Care (NMSRC) in which the NMSRC will review for approval other continuing education offerings, for individual licensees or continuing education sponsors.

**A.** Any continuing education activity that is not covered by 16.23.12.8 NMAC through 16.23.12.10 NMAC must be submitted to the NMSRC for review and approval.

(1) Approval must be granted by the NMSRC before the CE may be considered applicable toward meeting the continuing education renewal requirement for respiratory care practitioners licensed in New Mexico. Any deadlines for submission of these requests to the NMSRC will be established by the NMSRC as needed.

(2) Approval must be granted by the NMSRC before the continuing education can be submitted to the department and the board to meet the licensee's continuing education renewal requirement.

**B.** The request for approval of an educational seminar or course must include the following, at a minimum. The NMSRC may require additional information to process the request.

- (1) Name of the seminar or course.
- (2) Sponsoring party.
- (3) Objective of the seminar.

- (4) Format and subjects of seminar or course.
- (5) Number of clock hours credited for the offering.
- (6) Sample "proof of attendance" certificate.
- (7) Name and qualifications of the instructor.
- (8) Evaluation mechanism to be used.

**C.** Any processing fee established by the NMSRC for the continuing education review service must be payable to the NMSRC and must accompany the request to the NMSRC for approval of an educational offering.

**D.** The NMSRC will give written notification to the sponsor or licensee of the approval or denial of the educational program or seminar.

[16.23.12.11 NMAC - Rp, 16.23.12.11 NMAC, 04/21/2022]

#### **16.23.12.12 CONTINUING EDUCATION REQUIREMENT PRORATED:**

Any applicant whose initial licensure application is postmarked on or after October 1 of the even numbered year, through May 31 of the odd-numbered renewal year, shall be required to meet one half (10 clock hours) of the continuing education requirements for renewal at the time of renewal.

[16.23.12.12 NMAC - Rp, 16.23.12.12 NMAC, 04/21/2022]

#### **16.23.12.13 CONTINUING EDUCATION REQUIREMENT WAIVED:**

Any applicant whose initial licensure application is postmarked on or after June 1 of the odd-numbered (renewal) year through July 31 of the same year shall have the continuing education requirement waived for that renewal cycle.

[16.23.12.13 NMAC - Rp, 16.23.12.13 NMAC, 04/21/2022]

#### **16.23.12.14 CONTINUING EDUCATION AUDIT:**

The department, in consultation with the board, may elect to use an audit system for verifying continuing educational activities at the time of renewal.

**A.** In this case, the department will randomly select a minimum of ten percent of the currently licensed respiratory care practitioners to provide, with their renewal applications, hard-copy proof of having met the continuing education requirement.

**B.** Audit requests will be included in the renewal notice.

**C.** Licensees not selected for audit will be required only to list the continuing education activities completed on their renewal applications. The department shall still have the option to audit these individuals' continuing education records at any time before the next scheduled license renewal.

[16.23.12.14 NMAC - Rp, 16.23.12.14 NMAC, 04/21/2022]

**16.23.12.15 [RESERVED]**

[16.23.12.15 NMAC - Rp, 16.23.12.15 NMAC, 04/21/2022]

**16.23.12.16 [RESERVED]**

[16.23.12.16 NMAC - Rp, 16.23.12.16 NMAC, 04/21/2022]

**16.23.12.17 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER OF CONTINUING EDUCATION REQUIREMENT:**

**A.** Licensees generally have 24 months to complete the continuing education requirement for renewal, which is sufficient time to meet the continuing education requirement.

**B.** In the event a licensee experiences an extenuating circumstance such as a prolonged debilitating personal illness; or a prolonged debilitating illness of an immediate family member; or being mobilized to active duty by the national guard or other branch of service in the United States armed forces, which makes it impossible to meet the continuing education requirement for license renewal, the individual may request an emergency deferral or a waiver of the continuing education requirement by submitting one of the following items to the board before the license expiration date.

(1) A written request for deferral or waiver explaining the circumstances that made it impossible for the licensee to meet the requirement in the 24 months prior to the expiration date of the license.

(2) Documentation accompanying the request for deferral or waiver that verifies the extenuating circumstances, such as a signed affidavit from a physician or medical provider, or a copy of the mobilization orders from the branch of government calling the person to active duty; etc.

**C.** A licensee mobilized for active military duty, but who is still in training when the license renewal comes due, is required to renew his/her license and meet the continuing education requirements, but the license renewal fee will not be assessed.

**D.** A licensee mobilized into active military duty, and who is in military action at the time the license renewal comes due, is not required to renew his/her license or meet the

continuing education requirements. However, upon return to civilian status, the licensee shall renew the license without having to pay the renewal or late penalty fee.

**E.** The license of a respiratory therapist who does not earn the required continuing education for renewal due to his/her call to active military duty will not lapse for failure to earn continuing education hours provided the licensee submits a copy of the mobilization orders to the department prior to the expiration of the license.

**F.** The license renewal extension authorized by this regulation shall end one month after deployment is concluded.

**G.** Upon return to civilian status, the licensee shall resume earning continuing education prorated as follows after the deployment ends.

(1) If the deployment ends in October of the odd-numbered year through March of the even-numbered year, the licensee will accrue 20 hours of continuing education for the next renewal cycle.

(2) If the deployment ends in April of the even-numbered year through September of the even-numbered year, the licensee will accrue 15 hours of continuing education for the next renewal cycle.

(3) If the deployment ends in October of the even-numbered year through March of the odd-numbered year, the licensee will accrue 10 hours of continuing education for the next renewal cycle.

(4) If the deployment ends in April of the odd-numbered year through July of the odd-numbered year, the licensee will accrue zero hours of continuing education for the year's renewal cycle.

[16.23.12.17 NMAC - Rp, 16.23.12.17 NMAC, 04/21/2022]

## **PART 13: EXPANDED PRACTICE**

### **16.23.13.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board

[11-29-97; 7-30-99; 16.23.13.1 NMAC - Rn, 16 NMAC 23.13.1, 01-30-2003; A, 06-24-2004]

### **16.23.13.2 SCOPE:**

The provisions of Part 13 of Chapter 23 apply to all respiratory care practitioners who intend to practice an expanded scope procedure in a facility; and to the facility that

intends to employ a licensed respiratory care practitioner to perform expanded scope procedures.

[11-29-97; 16.23.13.2 NMAC - Rn, 16 NMAC 23.13.2, 01-30-2003]

**16.23.13.3 STATUTORY AUTHORITY:**

Part 13 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-3.E and Section 61-12B-7(B) NMSA 1978.

[11-29-97; 16.23.13.3 NMAC - Rn, 16 NMAC 23.13.3, 01-30-2003]

**16.23.13.4 DURATION:**

Permanent.

[11-29-97; 16.23.13.4 NMAC - Rn, 16 NMAC 23.13.4, 01-30-2003]

**16.23.13.5 EFFECTIVE DATE:**

November 29, 1997, unless a later date is cited at the end of a section.

[11-29-97; 16.23.13.5 NMAC - Rn, 16 NMAC 23.13.5, 01-30-2003; A, 06-24-2004]

**16.23.13.6 OBJECTIVE:**

The objective of Part 13 of Chapter 23 is to describe the procedure for gaining department approval for qualified respiratory care practitioners to practice expanded scope procedures.

[11-29-97; 16.23.13.6 NMAC - Rn, 16 NMAC 23.13.6, 01-30-2003]

**16.23.13.7 DEFINITIONS:**

**A. "Expanded practice"** means any practice performed by a respiratory care practitioner that is not described in Section 61-12B-3.D. (1) through (7) of "Definitions" in the New Mexico Respiratory Care Act, NMSA 1978 (1993 Repl. Pamp.), or as amended.

**B. "Facility"** means the employer of a licensed respiratory care practitioner.

**C. Repealed.**

**D. Repealed.**

**E. "Medical board"** means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; R 7-30-99; 16.23.13.7 NMAC - Rn, 16 NMAC 23.13.7, 01-30-2003]

#### **16.23.13.8 REQUIREMENTS FOR EXPANDED PRACTICE RECOGNITION:**

Expanded practice procedures must have the approval of the facility's medical board, and the outcome of initiating the performance of specific expanded practice procedures by respiratory care practitioners should be measured by the facility. Furthermore, the expanded practice must meet the standard of care in the health care community. In order for a licensed respiratory care practitioner to be permitted to perform expanded practice procedures, the practitioner must meet the following requirements:

**A.** complete a training program in the expanded practice procedure as defined in Subsection A of 16.23.13.7 NMAC (this rule), and approved by the facility's medical board;

**B.** obtain authorization from the facility to perform, under appropriate medical direction, those expanded practice functions;

**C.** file notice with the Board when he or she is approved by the facility to perform procedures that are expanded practice procedures for him or herself; and

**D.** follow the initial training with ongoing competency verification.

[4-21-95; 11-29-97; 7-30-99; 16.23.13.8 NMAC - Rn, 16 NMAC 23.13.8, 01-30-2003]

#### **16.23.13.9 [REPEALED]**

[4-21-95; 11-29-97; R -30-99; 16.23.13.9 NMAC - Rn, 16 NMAC 23.13.9, 01-30-2003]

#### **16.23.13.10 TRAINING STANDARDS:**

**A.** The level of training and skill verification for the respiratory care practitioner performing in an area of expanded practice will be consistent with the respiratory care practitioner's facility's risk management guidelines and professional accreditation and licensing requirements.

**B.** The level of training and skill verification for a respiratory care practitioner performing in an area of expanded practice will be consistent with professional credentialing standards.

[4-21-95; 11-29-97; 16.23.13.10 NMAC - Rn, 16 NMAC 23.13.10, 01-30-2003]

**16.23.13.11 DEVELOPMENT OF AN EXPANDED PRACTICE PROCEDURE:**

**This entire Section is Repealed.**

[4-21-95; 11-29-97; R 7-30-99; 16.23.13.11 NMAC - Rn, 16 NMAC 23.13.11, 01-30-2003]

**16.23.13.12 DEVELOPMENT OF AN APPROVED TRAINING PROGRAM:**

**This entire Section is Repealed.**

[4-21-95; 11-29-97; R 7-30-99; 16.23.13.12 NMAC - Rn, 16 NMAC 23.13.12, 01-30-2003]

**16.23.13.13 APPROVAL OF TRAINING PROGRAM:**

**This entire Section is Repealed.**

[4-21-95; 11-29-97; R 7-30-99; 16.23.13.13 NMAC - Rn, 16 NMAC 23.13.13, 01-30-2003]

**16.23.13.14 CONTINUING EDUCATION:**

**A.** Continuing education of expanded practice skills should be consistent with the facility's accreditation requirements.

**B.** Respiratory care practitioners who do not perform the expanded practice approved for them frequently enough to maintain performance at a competent and proficient level will take refresher training courses consistent with the training standards outlined in 16.23.13.10 NMAC.

[4-21-95; 11-29-97; 7-30-99; 16.23.13.14 NMAC - Rn, 16 NMAC 23.13.14, 01-30-2003]

**16.23.13.15 PENALTIES:**

**A.** Effective July 1, 1998, any respiratory care practitioner who performs expanded practice procedures without valid approval will be subject to penalties as set forth in the Respiratory Care Act and in accordance with those provisions contained in the Uniform Licensing Act.

**B.** Any respiratory care practitioner who intentionally falsifies information to the department or allows false information to be submitted on his or her behalf with regards to expanded practice, will be subject to penalties as set forth in the Respiratory Care Act and in accordance with those provisions contained in the Uniform Licensing Act.

[4-21-95; 11-29-97; 16.23.13.15 NMAC - Rn, 16 NMAC 23.13.15, 01-30-2003]

## **PART 14: SCOPE OF PRACTICE GUIDELINES FOR NON-LICENSED, NON-EXEMPTED PERSONS**

### **16.23.14.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Respiratory Care Advisory Board

[16.23.14.1 NMAC - N, 7-10-00]

### **16.23.14.2 SCOPE:**

The provisions in Part 14 of Chapter 23 apply to licensees and non-licensees.

[16.23.14.2 NMAC - N, 7-10-00]

### **16.23.14.3 STATUTORY AUTHORITY:**

Part 14 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-11 NMSA 1978. Specifically, Sections 61-12B-2; 61-12B-3; 61-12B-4; 61-12B-7; 61-12B-9.C, D, and E; 61-12B-12.A.7; and 61-12B-15.

[16.23.14.3 NMAC - N, 7-10-00]

### **16.23.14.4 DURATION:**

Permanent.

[16.23.14.4 NMAC - N, 7-10-00]

### **16.23.14.5 EFFECTIVE DATE:**

July 10, 2000, unless a later date is cited at the end of a section.

[16.23.14.5 NMAC - N, 7-10-00]

### **16.23.14.6 OBJECTIVE:**

The objective of Part 14 of Chapter 23 is to clarify who can perform respiratory care-related functions and procedures. Its objective is also to clarify for non-licensed persons what respiratory care-related function, procedures, or services that they can legally perform, for instance, in the delivery of medical equipment in the home care setting, in accordance with the Respiratory Care Act, NMSA 1978, Sections 61-13-1 through 61-13-17.

[16.23.14.6 NMAC - N, 7-10-00]

#### **16.23.14.7 DEFINITIONS:**

**A. "Department"** means the New Mexico regulation and licensing department.

**B. "DME or DME company"** refers to durable medical equipment or companies that provide durable medical equipment in the health care industry.

**C. [RESERVED]**

**D. "Gratuitous"** means to receive no form of payment or remuneration.

**E. "Home care setting"** as it applies to respiratory care, means any facility, including a patient's home that would usually not employ respiratory care practitioners, specifically those facilities visited by a person from outside the facility to provide respiratory care services.

**F. [RESERVED]**

**G. "License"** means the legal privilege and authorization to practice within a professional category.

**H. [RESERVED]**

**I. "Prescription"** means an order given individually for the person for whom prescribed, either directly from the prescriber to the person licensed to fill the prescription or indirectly by means of a written order signed by the prescriber

**J. "Medical direction"** as applied to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.

[16.23.14.7 NMAC - N, 7-10-00; A, 02-04-2005]

#### **16.23.14.8 RESPIRATORY CARE SCOPE OF PRACTICE:**

The scope of practice for respiratory care practitioners is clearly defined in NMSA 1978, Section 61-12B-3.C and the respiratory care functions and procedures within the scope of practice of respiratory care practitioners are outlined in Section 61-12B-3.D. In order to perform these functions and procedures in New Mexico, a person must be licensed by the State under the Respiratory Care Act.

[16.23.14.8 NMAC - N, 7-10-00]

#### **16.23.14.9 EXCEPTIONS TO LICENSURE:**

The following individuals are exempted from licensure under the Respiratory Care Act.

**A.** Persons licensed by other appropriate State agencies may perform the respiratory care functions and procedures provided in NMSA 1978, Section 61-12B-3, so long as they are authorized to do so by their profession's licensing body.

**(1)** The licensing body establishes and regulates the professional standards of the licensed profession; and

**(2)** The licensing body is obligated to enforce the provisions of its statutory mandate and the rules and regulations of that profession.

**B.** Persons who provide respiratory care-related self-care.

**C.** Persons, who do not represent themselves to be respiratory care practitioners, but who provide gratuitous care to friends or family members, or who provide respiratory care services in a case of emergency.

**D.** Persons who have demonstrated competency in one or more areas covered by the Respiratory Care Act may perform only those functions that they are qualified by examination to perform, as long as the testing body offering the examination is certified by the national commission for health certifying agencies.

[16.23.14.9 NMAC - N, 7-10-00]

#### **16.23.14.10 VIOLATION OF THE RESPIRATORY CARE ACT SCOPE OF PRACTICE:**

It is a misdemeanor violation for anyone to perform respiratory care procedures that are regulated under the Respiratory Care Act unless licensed by the Board; or unless exempted from licensure by the provisions in the Respiratory Care Act; or unless authorized under another licensed professional's license to perform respiratory care-related functions, procedures, or services.

**A.** The department may seek an immediate injunction to stop the illegal practice of respiratory care; and/or

**B.** The department may initiate civil action proceedings in any district court to enforce any of the provisions of the Respiratory Care Act.

[16.23.14.10 NMAC - N, 7-10-00]

#### **16.23.14.11 UNLICENSED PERSONS NOT EXEMPTED BY THE RESPIRATORY CARE ACT:**

Persons who are not licensed in New Mexico to practice respiratory care, and who are not exempted from licensure by the Respiratory Care Act, particularly those persons employed by durable medical equipment companies, home care delivery, or other

similar service companies may perform only the functions listed below. If a procedure, service, or function is not listed below, the non-licensed person may not legally perform it.

[16.23.14.11 NMAC - N, 7-10-00]

**16.23.14.12 CPAP, BI-LEVEL WITHOUT BACK-UP RATE:**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.12 NMAC - N, 7-10-00]

**16.23.14.13 ORAL SUCTIONING:**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies
- C. Instruct the patient/family on who and/or where to call in case of emergency

[16.23.14.13 NMAC - N, 7-10-00]

**16.23.14.14 OXYGEN DELIVERY, SET UP, CARE, MONITORING, AND INSTRUCTION:**

- A. Deliver oxygen equipment and supplies.
- B. Instruct the patient/family on how to order supplies
- C. Connect the oxygen tubing and/or cannula to the oxygen equipment.
- D. Instruct the patient/family on the use of the cannula.
- E. Instruct the patient/family on how to turn the oxygen unit on.
- F. Demonstrate to patient/family how to set the liter flow.
- G. Instruct the patient/family on how to connect and clean the humidifier bottle.
- H. Instruct the patient/family on oxygen safety.
- I. Instruct the patient/family on how to deal with equipment malfunction.

J. Instruct the patient/family regarding the back-up oxygen cylinder.

K. Instruct the patient/family on who and/or where to call in case of emergency

[16.23.14.14 NMAC - N, 7-10-00]

**16.23.14.15 VENTILATOR/LIFE SUPPORT:**

A. Deliver ventilator and supplies.

B. Instruct the patient/family on how to order supplies.

C. Instruct the patient/family on who and/or where to call in case of emergency

[16.23.14.15 NMAC - N, 7-10-00]

**16.23.14.16 BRONCHIAL PULMONARY HYGIENE:**

A. Deliver equipment and supplies.

B. Instruct the patient/family on how to order supplies.

C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.16 NMAC - N, 7-10-00]

**16.23.14.17 NASOTRACHEAL SUCTIONING:**

A. Deliver equipment and supplies.

B. Instruct the patient/family on how to order supplies.

C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.17 NMAC - N, 7-10-00]

**16.23.14.18 IPPB, NEBULIZER SET UP AND TREATMENT:**

A. Deliver equipment and supplies.

B. Instruct the patient/family on how to order supplies.

C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.18 NMAC - N, 7-10-00]

**16.23.14.19 APNEA MONITOR:**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.19 NMAC - N, 7-10-00]

**16.23.14.20 DIAGNOSTIC TESTING:**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.20 NMAC - N, 7-10-00]

**16.23.14.21 TRACHEOSTOMY CARE:**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.21 NMAC - N, 7-10-00]

**16.23.14.22 [RESERVED]**

**16.23.14.23 [RESERVED]**

**16.23.14.24 UNLICENSED PRACTICE OF RESPIRATORY CARE - DISCIPLINARY GUIDELINES:**

In accordance with the provisions contained within the Uniform Licensing Act, the department may take disciplinary action as provided in Section 61-1-3.2, NMSA 1978, (2003 Repl. Pamp.) if the department, in consultation with the board, determines that the respondent has violated the Respiratory Care Act or the department's rules and regulations governing respiratory care (16.23 NMAC) by practicing respiratory care in New Mexico without a valid New Mexico license.

**A.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of respiratory care.

**B.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a company or other business entity that requires an unlicensed person to engage in the practice of respiratory care without a license. The penalty shall be imposed in the amount of one thousand dollars (\$1,000) for each individual that the company or business entity employs and who is performing respiratory care scope of practice procedures and/or protocols without benefit of a valid New Mexico respiratory care license or permit.

**C.** In addition, the department, in consultation with the board may assess the person, company, or other business entity for administrative costs, including investigative costs and the cost of conducting a hearing.

[16.23.14.23 NMAC - N, 02-04-2005]

## **PART 15: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

### **16.23.15.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
725 St. Michael's Drive P.O. Box 25101 Santa Fe, New Mexico 87504

[11-29-97; 16.23.15.1 NMAC - Rn, 16 NMAC 23.15.1, 01-30-2003]

### **16.23.15.2 SCOPE:**

The provisions of PART 15 of Chapter 23 apply to all license applicants and licensees.

[11-29-97; 16.23.15.2 NMAC - Rn, 16 NMAC 23.15.2, 01-30-2003]

### **16.23.15.3 STATUTORY AUTHORITY:**

PART 15 of Chapter 23 is promulgated pursuant to the Parental Responsibility Act (Chapter 25, Laws of 1995).

[11-29-97; 16.23.15.3 NMAC - Rn, 16 NMAC 23.15.3, 01-30-2003]

### **16.23.15.4 DURATION:**

Permanent.

[11-29-97; 16.23.15.4 NMAC - Rn, 16 NMAC 23.15.4, 01-30-2003]

**16.23.15.5 EFFECTIVE DATE:**

November 29, 1997, unless a later date is cited at the end of a Section or Paragraph.

[11-29-97; 16.23.15.5 NMAC - Rn, 16 NMAC 23.15.5, 01-30-2003]

**16.23.15.6 OBJECTIVE:**

The objective of PART 15 of Chapter 23 is to set forth the regulations for enforcing the provisions of the Parental Responsibility Act.

[11-29-97; 16.23.15.6 NMAC - Rn, 16 NMAC 23.15.6, 01-30-2003]

**16.23.15.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this section. As used in this section:

**A. "HSD"** means the New Mexico Human Services Department.

**B. "Statement of Compliance"** means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment order for support.

**C. "Statement of Non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment order for support.

[11-29-97; 16.23.15.7 NMAC - Rn, 16 NMAC 23.15.7, 01-30-2003]

**16.23.15.8 DISCIPLINARY ACTION:**

If a temporary permit or respiratory care practitioner license applicant, or a temporary permittee or respiratory care practitioner licensee is not in compliance with a judgment order for support, the Department, in consultation with the Board:

**A.** shall deny an application for a temporary permit or respiratory care practitioner license;

**B.** shall deny the renewal of the temporary permit or respiratory care practitioner license; and

**C.** has grounds for suspension or revocation of the temporary permit or respiratory care practitioner license.

[11-29-97; 16.23.15.8 NMAC - Rn, 16 NMAC 23.15.8, 01-30-2003]

**16.23.15.9 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the Department shall match the certified list against the current list of respiratory care temporary permit or practitioner license applicants or current temporary permittees and licensees.

**A.** Upon the later receipt of an application for temporary permit, license, or renewal of either, the Department shall match the applicant against the current certified list.

**B.** By the end of the month in which the certified list is received, the Department shall report to HSD the names of applicants, temporary permittees, and licensees who are on the certified list; and the action the Department has taken in connection with such applicants, temporary permittees, and licensees.

[11-29-97; 16.23.15.9 NMAC - Rn, 16 NMAC 23.15.9, 01-30-2003]

#### **16.23.15.10 INITIAL ACTION:**

Upon determination that an applicant for temporary permit or practitioner license, or a temporary permittee or a respiratory care practitioner licensee appears on the certified list, the Department, in consultation with the Board, shall:

**A.** commence a formal proceeding under 16.23.15.11 NMAC to take the appropriate action under 16.23.15.8 NMAC, **(or**

**B.** for current temporary permittees and licensees only, informally notify the permittee or licensee that the permittee's or licensee's name is on the certified list, and that the permittee or licensee must provide the Department with a subsequent Statement of Compliance from HSD by the earlier of the application for permit or license renewal or by a specified date not to exceed thirty (30) days. If the permittee or licensee fails to provide this statement, the Department, in consultation with the Board, shall commence a formal proceeding under 16.23.15.11 NMAC.

[11-29-97; 16.23.15.10 NMAC - Rn, 16 NMAC 23.15.10, 01-30-2003]

#### **16.23.15.11 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in 16.23.15.8 NMAC, the Department shall serve upon the applicant, temporary permittee, or licensee a written notice stating that:

**A.** the Department has grounds to take such action, and that the Department shall take such action unless the temporary permittee, licensee or applicant for either:

**(1)** mails a letter to the Department, by certified mail return receipt requested, within twenty (20) days after service of the notice requesting a hearing; or

**(2)** provides the Department, within thirty (30) days of the date of the notice, with a Statement of Compliance from HSD; and

**B.** if the temporary permittee, respiratory care practitioner licensee or applicant for either, disagrees with the determination of non-compliance, or wishes to come into compliance, he or she should contact the HSD Child Support Enforcement Division.

[11-29-97; 16.23.15.11 NMAC - Rn, 16 NMAC 23.15.11, 01-30-2003]

#### **16.23.15.12 EVIDENCE AND PROOF:**

In any hearing under this rule, relevant evidence is limited to the following:

**A.** A Statement of Non-compliance is conclusive evidence that requires the Department to take the appropriate action under 16.23.15.8 NMAC, unless:

**B.** The applicant or licensee provides the Department with a subsequent Statement of Compliance, which shall preclude the Department from taking any action under this rule.

[11-29-97; 16.23.15.12 NMAC - Rn, 16 NMAC 23.15.12, 01-30-2003]

#### **16.23.15.13 ORDER:**

When a disciplinary action is taken under this section solely because the temporary permittee, respiratory care practitioner licensee, or applicant for either, is not in compliance with a judgment and order for support, the order shall state that the application, permit, or license shall be reinstated upon presentation of a subsequent Statement of Compliance. The Department may also include any other conditions necessary to comply with Department requirements for reapplication or reinstatement of lapsed licenses or temporary permits.

[11-29-97; 16.23.15.13 NMAC - Rn, 16 NMAC 23.15.13, 01-30-2003]

#### **16.23.15.14 PROCEDURES:**

Proceedings under this rule shall be governed by the Uniform Licensing Act.

[11-29-97; 16.23.15.14 NMAC - Rn, 16 NMAC 23.15.14, 01-30-2003]

### **PART 16: DISCIPLINARY PROCEEDINGS**

#### **16.23.16.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board

[11-29-97; 16.23.16.1 NMAC - Rn, 16 NMAC 23.16.1, 01-30-2003; A, 07-10-03]

**16.23.16.2 SCOPE:**

PART 16 of Chapter 23 applies to all license applicants or New Mexico licensed respiratory care practitioners.

[11-29-97; 16.23.16.2 NMAC - Rn, 16 NMAC 23.16.2, 01-30-2003]

**16.23.16.3 STATUTORY AUTHORITY:**

Authority for PART 16 of Chapter 23 is the Respiratory Care Act, Section 61-12B-12 NMSA 1978 (1996 Repl. Pamp.), and the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pamp.).

[11-29-97; 16.23.16.3 NMAC - Rn, 16 NMAC 23.16.3, 01-30-2003]

**16.23.16.4 DURATION:**

Permanent.

[11-29-97; 16.23.16.4 NMAC - Rn, 16 NMAC 23.16.4, 01-30-2003]

**16.23.16.5 EFFECTIVE DATE:**

November 29, 1997, unless a later date is cited at the end of a Section.

[11-29-97; 16.23.16.5 NMAC - Rn, 16 NMAC 23.16.5, 01-30-2003; A, 07-10-03]

**16.23.16.6 OBJECTIVE:**

The objective of PART 16 of Chapter 23 is to set forth the policies and procedures for processing complaints submitted to the department and/or the board against temporary permittees and respiratory care practitioner licensees, and for instituting disciplinary actions against temporary permittees, licensees, or applicants for either.

[11-29-97; 16.23.16.6 NMAC - Rn, 16 NMAC 23.16.6, 01-30-2003]

**16.23.16.7 DEFINITIONS:**

For the purposes of this rule and for 16.23.17 NMAC:

**A. "Complaint"** means a complaint, which has been filed with the department and/or the board, against a temporary permittee, respiratory care practitioner licensee, or applicant for either permit or license.

**B. "Complainant"** means the party who files a complaint against a temporary permittee, a respiratory care practitioner licensee, or an applicant for either a permit or a license governed by the Respiratory Care Act.

**C. "Respondent"** means the permit or license applicant or the temporary permittee or licensed practitioner who is the subject of the complaint.

**D. "Notice of contemplated action" or "NCA"** means the administrative action provided for by the Uniform Licensing Act, whereby the respondent is given notice of a pending disciplinary action against his or her application, permit or license, based upon violations of the department's rules and regulations governing the practice of respiratory care or the Respiratory Care Act, which have been alleged in a complaint filed with the department and/or the board. The respondent is afforded an opportunity for a formal hearing before the department, in consultation with the board.

**E. "Formal hearing"** means a formal hearing setting before a hearing officer, or a presiding officer and the board, whereby a respondent has the opportunity to be heard and to present evidence under the Uniform Licensing Act repudiating the allegations in the subject complaint. An administrative prosecutor also presents to the department, in consultation with the board, evidence of the alleged violations. The department, in consultation with the board, has the authority to take any action, which would have the effect of denying, revoking, or suspending a license or an application for licensure in accordance with the Uniform Licensing Act.

**F. "Hearing officer" or "presiding officer"** means the person appointed by the department, in consultation with the board, to conduct hearings under the Uniform Licensing Act.

**G. "Redacted"** means the act or process of editing or revising the complaint so that the parties, which are the subject of the complaint, are unknown to the board.

[11-29-97; 16.23.16.7 NMAC - Rn, 16 NMAC 23.16.7, 01-30-2003]

#### **16.23.16.8 DISCIPLINARY PROCEEDINGS:**

An investigation may be instituted by the department, in consultation with the board, upon the receipt of a written, notarized complaint filed by any person, including any member of the board.

**A.** A complaint filed, with the department, will be received by the board administrator who will process the complaint and will determine how the complaint will be handled.

**B.** In cases where it is clearly evident that the complaint does not fall within the board's statutory authority or jurisdiction, the board administrator will not process the complaint and will inform the complainant of the reasons.

**C.** If the complaint appears to contain violations of the board's statute or its rules and regulations (16.23 NMAC), the board administrator will process the complaint.

**D.** If the complaint is not lengthy, the board administrator may elect to present the processed complaint to the entire board in a redacted form.

**E.** If the complaint is lengthy or complicated, the board administrator shall refer it to the board's standards of practice committee for review, consideration, and possible investigation.

**F.** The department may provide the respondent with a copy of the complaint and allow a reasonable time for a response to the allegations in the complaint.

**G.** The foregoing notwithstanding, the department will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action if it determines that disclosure may impair, impede, or compromise the efficacy or integrity of an investigation into the matter.

[11-29-97; 16.23.16.8 NMAC - Rn, 16 NMAC 23.16.8, 01-30-2003]

#### **16.23.16.9 STANDARDS OF PRACTICE COMMITTEE:**

On an annual basis, the board chair shall appoint a member or members of the board to a standards of practice committee. The board may also appoint the board administrator and/or a complaint manager to the standards of practice committee.

**A.** The standards of practice committee will review all documentation provided to it in reference to the subject complaint.

**B.** The standards of practice committee may be authorized by the board to employ, without prior board approval, the services of an investigator or other persons determined by the committee to be necessary in order to expedite the investigation of a complaint. In such cases, the board administrator will contract for any such required services once budgetary availability is determined.

**C.** Upon completion of its investigation, the standards of practice committee shall present a summary of the complaint to the board, in a redacted form, for the purpose of enabling the board to act upon the standards of practice committee's recommendations concerning the disposition of the subject complaint.

**D.** The standards of practice committee may be authorized by the board to discuss a settlement agreement or mediation agreement with the respondent as a means of resolving the complaint.

(1) The settlement or mediation agreement shall be presented to the board for consideration and approval.

(2) Depending on the board's decision and action on any settlement or mediation agreement presented, the Board may make recommendation for further action to the department superintendent.

[11-29-97; 16.23.16.9 NMAC - Rn, 16 NMAC 23.16.9, 01-30-2003; A, 07-10-03]

#### **16.23.16.10 STANDARDS OF PRACTICE COMMITTEE RECUSED:**

Members of the standards of practice committee who participate in the preparation of recommendations on complaints shall not participate further in any actions initiated by the department or the board against the permittee, licensee, or applicant who is the subject of the complaint.

[11-29-97; 16.23.16.10 NMAC - Rn, 16 NMAC 23.16.10, 01-30-2003]

#### **16.23.16.11 BOARD ACTION CONCERNING COMPLAINT DISPOSITION:**

After consideration, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee's recommendations.

**A.** If the board determines that the department lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to recommend to the department that the complaint be dismissed and closed.

**B.** If the board determines that there is sufficient evidence or cause for the department to issue a notice of contemplated action, it may vote to recommend to the department that the complaint be referred to the attorney general's office for possible prosecution in accordance with the provisions contained within the Uniform Licensing Act.

**C.** The board may recommend that the department take any other action with regard to a complaint which is within the department's authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings; or referring it to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

[11-29-97; 16.23.16.11 NMAC - Rn, 16 NMAC 23.16.11, 01-30-2003]

#### **16.23.16.12 PREHEARING MOTIONS:**

The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing.

[11-29-97; 16.23.16.12 NMAC - Rn, 16 NMAC 23.16.12, 01-30-2003]

#### **16.23.16.13 DISCIPLINARY ACTION:**

In accordance with those provisions contained in the Uniform Licensing Act, the department, in consultation with the board, may refuse to issue, suspend, or revoke any license upon finding, after a hearing, that the licensee or applicant for licensure has violated those provisions set forth in Section 61-12B-12 of the Respiratory Care Act or those provisions found to constitute grounds for disciplinary action in Part 17 of the boards regulations (16.23 NMAC). The Uniform Licensing Act allows discipline in many forms in addition to suspension or revocation, including but not limited to, fines, letters of reprimand, or corrective action plans.

**A. Formal letters of reprimand.** The department, in consultation with the board, shall have discretionary authority to issue formal letters of reprimand or warning instead of license revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be a matter of public record.

**B. Settlement agreements.** Following the issuance of a notice of contemplated action, the department, in consultation with the board, may enter into a settlement agreement with the respondent as a means of resolving a complaint.

[11-29-97; 16.23.16.13 NMAC - Rn, 16 NMAC 23.16.13, 01-30-2003]

#### **16.23.16.14 LICENSE/PERMIT RETURNED TO THE DEPARTMENT:**

Any temporary permit, wall license and renewal license issued by the department must be returned to the department subsequent to revocation or suspension. The permit or license(s) must be returned in person or by registered mail no later than twenty (20) days after the suspension or revocation order by the department.

[11-29-97; 16.23.16.14 NMAC - Rn, 16 NMAC 23.16.14, 01-30-2003]

#### **16.23.16.15 COSTS OF DISCIPLINARY PROCEEDINGS:**

The respondent shall bear all costs of disciplinary proceedings unless the respondent is excused by the department from paying all or part of the fees, or if the respondent prevails at the hearing and an action specified in § 61-1-3 of the Uniform Licensing Act is not taken by the department.

[11-29-97; 16.23.16.15 NMAC - Rn, 16 NMAC 23.16.15, 01-30-2003]

#### **16.23.16.16 PRIVATE CAUSE OF ACTION:**

Neither the action nor inaction of the department or board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[11-29-97; 16.23.16.16 NMAC - Rn, 16 NMAC 23.16.16, 01-30-2003]

**16.23.16.17 FEDERAL FRAUD AND ABUSE DATA BANK:**

**A.** In accordance with federal requirements imposed by the enactment of the Health Insurance Portability and Accountability Act (HIPAC) of 1996, also known as the Kassebaum-Kennedy bill, the department, in consultation with the board, shall report any final adverse actions taken against a licensee or applicant, which contain an admission or finding of guilt or liability, to the federal fraud and abuse data bank established under HIPAC.

**B.** The department, in consultation with the board, has the discretion not to report any final adverse action taken against a licensee or applicant, which does not contain an admission or finding of guilt or liability, to the federal fraud and abuse databank established under HIPAC.

[11-29-97; 16.23.16.17 NMAC - Rn, 16 NMAC 23.16.17, 01-30-2003; A, 07-10-03]

**16.23.16.18 NATIONAL RESPIRATORY CARE DISCIPLINARY DATABASE:**

All final adverse actions shall also be reported by the department, in consultation with the board, to the national respiratory care disciplinary database established by the national board for respiratory care, inc. (NBRC) and the American association for respiratory care, inc. (AARC) in accordance with the provisions contained in 16.23.16.18 NMAC.

[11-29-97; 16.23.16.18 NMAC - Rn, 16 NMAC 23.16.18, 01-30-2003; A, 07-10-03]

**16.23.16.19 UNLICENSED PRACTICE OF RESPIRATORY CARE - DISCIPLINARY GUIDELINES:**

In accordance with the provisions contained within the Uniform Licensing Act, the department may take disciplinary action as provided in Section 61-1-3.2, NMSA 1978, (2003 Repl. Pamp.) if the department, in consultation with the board, determines that the respondent has violated the Respiratory Care Act or the department's rules and regulations governing respiratory care (16.23 NMAC) by practicing respiratory care in New Mexico without a valid New Mexico license.

**A.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of respiratory care.

**B.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a company or other business entity that requires an unlicensed person to engage in the practice of respiratory care without a license. The penalty shall be imposed in the amount of one thousand dollars (\$1,000) for each individual that the company or business entity employs and who is performing respiratory care scope of practice procedures and/or protocols without benefit of a valid New Mexico respiratory care license or permit.

**C.** In addition, the department, in consultation with the board may assess the person, company, or other business entity for administrative costs, including investigative costs and the cost of conducting a hearing.

[16.23.16.19 NMAC - N, 02-04-2005]

## **PART 17: GROUNDS FOR DISCIPLINARY ACTION**

### **16.23.17.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department Respiratory Care Advisory Board

[11-29-97; 16.23.17.1 NMAC - Rn, 16 NMAC 23.17.1, 01-30-2003; A, 07-10-03]

### **16.23.17.2 SCOPE:**

The provisions in PART 17 of Chapter 23 apply to any person found to be in violation of the Respiratory Care Act, NMSA 1978, Section 61-12B-1 through 61-12B-16 or the Department's Regulations governing the practice of respiratory care, 16.23 NMAC.

[11-29-97; 16.23.17.2 NMAC - Rn, 16 NMAC 23.17.2, 01-30-2003]

### **16.23.17.3 STATUTORY AUTHORITY:**

PART 17 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-1 through Section 61-12B-16 NMSA 1978 (1995 Repl. Pamp.) the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pamp.).

[11-29-97; 16.23.17.3 NMAC - Rn, 16 NMAC 23.17.3, 01-30-2003]

### **16.23.17.4 DURATION:**

Permanent.

[11-29-97; 16.23.17.4 NMAC - Rn, 16 NMAC 23.17.4, 01-30-2003]

### **16.23.17.5 EFFECTIVE DATE:**

November 29, 1997, unless a later date is cited at the end of a Section.

[11-29-97; 16.23.17.5 NMAC - Rn, 16 NMAC 23.17.5, 01-30-2003; A, 07-10-03]

#### **16.23.17.6 OBJECTIVE:**

The objective of PART 17 of Chapter 23 is to set forth the grounds which subject the applicant to disciplinary action such as permit or license denial, suspension or revocation, or to any other penalty provided by the Uniform Licensing Act.

[11-29-97; 16.23.17.6 NMAC - Rn, 16 NMAC 23.17.6, 01-30-2003]

#### **16.23.17.7 DEFINITIONS:**

For the purposes of this rule:

**A. "Assault"** means an action that places someone in fear of personal injury, such as a threat, accompanied by a physical manifestation to do bodily harm to someone.

**B. "Battery"** means carrying out bodily harm.

**C. "Negligence"** is the incompetent performance of an act, or the omission or failure to perform an act, the competent performance of which would be the acceptable and prevailing standard of the profession, and which would be considered reasonable and ordinary under the circumstance.

[11-29-97; 16.23.17.7 NMAC - Rn, 16 NMAC 23.17.7, 01-30-2003]

#### **16.23.17.8 DISCIPLINARY GUIDELINES:**

In accordance with the provisions contained within the Uniform Licensing Act, the Department may take disciplinary action as provided in Section 61-1-3, if the Department, in consultation with the Board, determines that a respiratory care licensee or temporary permittee has violated the Respiratory Care Act or the Department's Rules and Regulations governing respiratory care 16.23 NMAC. The Superintendent of the Department may refuse to issue or may suspend or revoke any permit or license for any cause listed below:

**A.** Making fraudulent representations to any respiratory care licensing board in any jurisdiction in the procurement of an initial or a renewal temporary permit or practitioner's license.

**B.** Having had a temporary permit or practitioner's license denied, suspended or revoked by a respiratory care board in another licensing jurisdiction for any cause listed in 16.23.17 NMAC (this rule). However, the disciplinary action imposed by the

Department shall not exceed the length of time or severity of the action imposed by the other licensing jurisdiction.

**C.** Having been convicted of a crime, which substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or the certified copy of the record of conviction shall be conclusive evidence of the conviction.

**D.** Engaging in the habitual or excessive use of alcohol or controlled substances.

**E.** Using or being under the influence of alcohol, controlled substances, or drugs that impair judgment, while on duty in any facility of employment.

**F.** Obtaining, possessing, administering, or using any narcotic or controlled substance in violation of any Federal or State criminal law.

**G.** Being responsible for gross negligence in the performance and delivery of health care while engaged in the practice of respiratory care.

**H.** Violating any provision of the Respiratory Care Act or the rules and regulations governing respiratory care adopted by the Department, or aiding or abetting any other person in violating these laws.

**I.** Engaging in acts of unprofessional conduct such as, but not limited to, the following:

**(1)** Failing to maintain minimum acceptable and prevailing standards of respiratory care practice;

**(2)** Performing procedures and functions beyond which the respondent is individually competent to perform or which are outside the scope of accepted and responsible practice of respiratory care;

**(3)** Failing to respect and protect the legal and personal rights of the patient, including the right to informed consent and refusal of treatment;

**(4)** Intentionally or negligently causing physical or emotional injury to a patient;

**(5)** Assaulting or committing battery on a patient;

**(6)** Abandoning or neglecting a patient requiring immediate respiratory care without making reasonable arrangements for continuation of such care;

**(7)** Failing to maintain for each patient a record which accurately reflects the respiratory care treatment of the patient;

(8) Failing to take appropriate action to safeguard the patient's welfare or to follow policies and procedures established by the respiratory care practitioner's employer;

(9) Divulging confidential information regarding any patient or family unless disclosure is required for responsible performance of duty, or as required by law;

(10) Failing or refusing to provide health care to a patient for reasons of discrimination;

(11) Failing to protect the health, safety, and welfare of the patient by abiding by and practicing established policies of disease prevention;

(12) Failing to take appropriate action in the health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice including, but not limited, to reporting such practice to employment and licensing authorities;

(13) As a supervisor, failing to supervise persons under one's direction or assigning the performance of functions governed by the Respiratory Care Act to persons who are untrained and unqualified to perform those functions;

(14) Removing narcotics, drugs, supplies, or equipment from any health care facility or other work place location without authorization;

**J.** Committing any fraudulent, dishonest, or unscrupulous act which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. Such acts shall include, but not be limited to:

(1) Engaging in fraud, misrepresentation, or deceit in writing the national licensing exam.

(2) Impersonating an examination candidate in order to write a certification or licensing examination for him or her.

(3) Impersonating another licensed practitioner.

(4) Practicing respiratory care without a current license.

(5) Permitting or allowing another person to use his or her license for any purpose.

[11-29-97; 16.23.17.8 NMAC - Rn, 16 NMAC 23.17.8, 01-30-2003; A, 07-10-03]

**16.23.17.9 GROSS NEGLIGENCE:**

In performing respiratory care functions, a temporary permittee or licensed practitioner is under the legal duty to possess and to apply the knowledge, skill, and care that is ordinarily possessed and exercised by other temporary permittees and licensed practitioners and required by the generally accepted standards of the profession. The failure to possess or to apply to a substantial degree such knowledge, skill, and care constitutes gross negligence.

**A.** Charges of gross negligence may be based upon a single act of gross negligence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate gross negligence.

**B.** It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the patient or to the public from the act or omission or series of acts or omissions.

**C.** Proof of intent will not be necessary to establish gross negligence.

**D.** The following shall be deemed prime examples of activities which demonstrate that the temporary permittee or licensed practitioner has engaged in an act or acts of gross negligence. The Department, in consultation with the Board, shall not be limited to this list in determining whether an act or acts constitute gross negligence.

(1) Acting in a manner inconsistent with the care for the welfare, health, or safety of patients set forth by the facility in which the temporary permittee or licensed practitioner is employed.

(2) Performance or conduct that substantially departs from, or fails to conform to, the minimal reasonable standards of acceptable and prevailing practice of respiratory care.

(3) Failure to adhere to the facility's quality assurance standards and risk management recommendations.]

(4) Failure to maintain an appropriate standard of care.

(5) Failure to follow established policies and procedures.

(6) Performing procedures beyond the scope of one's training and education.

(7) Attempting to treat too many patients simultaneously, resulting in harm to one or more patients.

[11-29-97; 16.23.17.9 NMAC - Rn, 16 NMAC 23.17.9, 01-30-2003]

**16.23.17.10 [RESERVED]**

#### **16.23.17.11 REQUEST FOR REINSTATEMENT:**

**A.** One year from the date of the revocation of a temporary permit or practitioner license, the permittee or licensee may apply to the Superintendent of the Department for reinstatement, restoration, or modification of the terms of the judgment order.

**B.** The Superintendent, in consultation with the Board, shall have the discretion to accept or reject the application for reinstatement, restoration, or modification when it is deemed appropriate.

[11-29-97; 16.23.17.11 NMAC - Rn, 16 NMAC 23.17.11, 01-30-2003]

### **PART 18: DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER**

#### **16.23.18.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.

[16.23.18.1 NMAC - Rp, 16.23.18.1 NMAC, 04/21/2022]

#### **16.23.18.2 SCOPE:**

The provisions in Part 18 of Chapter 23 apply to any temporary permittee or licensee governed by the Respiratory Care Act who may be subject to investigation and disciplinary action for violations of the Impaired Health Care Provider Act.

[16.23.18.2 NMAC - Rp, 16.23.18.1 NMAC, 04/21/2022]

#### **16.23.18.3 STATUTORY AUTHORITY:**

Part 18 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978; the Uniform Licensing Act, Section 61-1-1 through Section 61-1-36 NMSA 1978; and the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978.

[16.23.18.3 NMAC - Rp, 16.23.18.3 NMAC, 04/21/2022]

#### **16.23.18.4 DURATION:**

Permanent.

[16.23.18.4 NMAC - Rp, 16.23.18.4 NMAC, 04/21/2022]

#### **16.23.18.5 EFFECTIVE DATE:**

April 21, 2022 unless a later date is cited at the end of a section.

[16.23.18.5 NMAC - Rp, 16.23.18.5 NMAC, 04/21/2022]

**16.23.18.6 OBJECTIVE:**

The objective of Part 18 of Chapter 23 is to set forth policies and guidelines for disciplinary action when evidence or allegations of violation of the Impaired Health Care Provider Act a temporary permittee or licensed practitioner have been presented to the department or to the board.

[16.23.18.6 NMAC - Rp, 16.23.18.6 NMAC, 04/21/2022]

**16.23.18.7 DEFINITIONS:**

All definitions related to this section are in 16.23.1.7 NMAC.

[16.23.18.7 NMAC - Rp, 16.23.18.7 NMAC, 04/21/2022]

**16.23.18.8 EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS:**

In cases where the department or the board has reasonable cause to believe that a temporary permittee or a licensed practitioner is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the permittee's or licensee's ability to practice respiratory care with reasonable skill and safety to patients, the department, in consultation with the board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.

[16.23.18.8 NMAC - Rp, 16.23.8 NMAC, 04/21/2022]

**16.23.18.9 EXAMINING COMMITTEE DESIGNATED:**

The department, in consultation with the board, shall designate three licensed health care providers as members of an "examining committee" to examine the temporary permittee or licensed practitioner believed to be impaired by the excessive or habitual use or abuse of intoxicants or drugs.

[16.23.18.9 NMAC - Rp, 16.23.18.9 NMAC, 04/21/2022]

**16.23.18.10 EXAMINATION CONDUCTED BY EXAMINING COMMITTEE:**

In accordance with the provisions in the Impaired Health Care Provider Act, the examining committee shall order and conduct an examination and may require a physical examination or drug test of the permittee or licensee, to determine fitness to

practice respiratory care with reasonable skill or safety to patients, either on a restricted or unrestricted basis.

[16.23.18.10 NMAC - Rp, 16.23.18.10 NMAC, 04/21/2022]

**16.23.18.11 PHYSICAL EXAM OR DRUG TEST ORDERED:**

The physical examination and drug test ordered by the examination committee shall be performed by a licensed professional designated by the department. The cost of said examination or test shall be borne by the temporary permittee or licensed practitioner.

[16.23.18.11 NMAC - Rp, 16.23.18.11 NMAC, 04/21/2022]

**16.23.18.12 EXAMINING COMMITTEE REPORT:**

A. The examining committee shall report its findings on the examination and make recommendation to the board and the department.

B. Recommendations made to the board and the department by the examining committee shall be advisory only and shall not be binding on the board or the department.

[16.23.18.12 NMAC - Rp, 16.23.18.12 NMAC, 04/21/2022]

**16.23.18.13 RESULTS ADMISSIBLE:**

The results of the examining committee's findings and the physical exam and drug test shall be admissible in any subsequent review by the board or hearing before the department, notwithstanding any claim of privilege under a contrary rule or law or statute.

[16.23.18.13 NMAC - Rp, 16.23.18.13 NMAC, 04/21/2022]

**16.23.18.14 [RESERVED]**

**16.23.18.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION:**

Failure or refusal by the temporary permittee or licensed practitioner to comply with an examining committee order to appear before it for examination, or to submit to a physical examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the temporary permit or license by the department until further order by the department.

[16.23.18.15 NMAC - Rp, 16.23.18.15 NMAC, 04/21/2022]

**16.23.18.16 ACTION ON EXAMINATION COMMITTEE REPORT:**

The department, in consultation with the board, may accept or reject any finding, determination, or recommendation made by the examining committee to the board regarding the temporary permittee's or licensee's ability to continue to practice with or without restriction on the temporary permit or the license, or it may refer the matter back to the board or the examination committee for further examination and report, or it may decide that formal disciplinary action is immediately warranted.

[16.23.18.16 NMAC - Rp, 16.23.18.16 NMAC, 04/21/2022]

#### **16.23.18.17 [RESERVED]**

#### **16.23.18.18 ENTITLEMENT TO HEARING:**

Before the department, in consultation with the board, can take action to restrict, suspend, or revoke the temporary permittee's permit or practitioner's license on the evidence reported by the examining committee, the temporary permittee or licensed practitioner shall be entitled to a hearing under, and in accordance with, the procedures contained in the Impaired Health Care Provider Act and the Uniform Licensing Act.

[16.23.18.18 NMAC - Rp, 16.23.18.18 NMAC, 04/21/2022]

#### **16.23.18.19 [RESERVED]**

#### **16.23.18.20 REQUEST FOR VOLUNTARY RESTRICTION OF THE PERMIT OR LICENSE:**

In lieu of a formal hearing, the temporary permittee or licensed practitioner may voluntarily request, in writing to the department, a restriction of the temporary permit or the license to practice respiratory care.

**A.** The department, in consultation with the board, may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the temporary permit or practitioner's license to practice within specified limitations.

**B.** Upon imposition of voluntary restrictions on the temporary permit or the practitioner's license, the department, in consultation with the board, shall have the authority, if it deems appropriate, to waive the commencement of any further disciplinary proceedings conducted in accordance with the Uniform Licensing Act.

[16.23.18.20 NMAC - Rp, 16.23.18.20 NMAC, 04/21/2022]

#### **16.23.18.21 PETITION FOR REMOVAL OF VOLUNTARY RESTRICTION:**

The temporary permittee or licensed practitioner shall have a right, at reasonable intervals after a year, to petition the department in writing, for the removal of the

voluntary restriction and to demonstrate that he or she is capable of resuming the competent practice of respiratory care with reasonable skill and safety to patients.

**A.** The department, in consultation with the board, shall act on the petition by referring it to the examining committee, who shall conduct the necessary examination of the temporary permittee or the licensed practitioner, and make written recommendation to the board.

**B.** Upon consideration of the examining committee's recommendation, the department, in consultation with the board may, in its discretion, remove the voluntary restriction on the temporary permit or practitioner's license.

[16.23.18.21 NMAC - Rp, 16.23.18.21 NMAC, 04/21/2022]

#### **16.23.18.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION:**

In the absence of a request by the temporary permittee or licensed practitioner for voluntary restriction of their temporary permit or practitioner's license as provided in 16.23.18.20 NMAC (this rule), the department may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the temporary permit or practitioner's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.

[16.23.18.22 NMAC - Rp, 16.23.18.22 NMAC, 04/21/2022]

#### **16.23.18.23 TEMPORARY SUSPENSION:**

The department may temporarily suspend the temporary permit or license without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the respondent's continuation in practice would constitute an imminent danger to the health and safety of the public. The respondent shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

[16.23.18.23 NMAC - Rp, 16.23.8.23 NMAC, 04/21/2022]

#### **16.23.18.24 PETITION FOR REINSTATEMENT, RESTORATION, OR MODIFICATION OF DISCIPLINARY ORDER:**

Subsequent to formal proceedings under the Impaired Health Care Provider Act and the Uniform Licensing Act, any temporary permittee or licensed practitioner who is prohibited from practicing respiratory care may, after a year from the date of suspension or revocation of the temporary permit or practitioner's license, petition the department for reinstatement or restoration of his or her temporary permit or license to practice, or for modification of the final disciplinary orders.

**A.** The application for reinstatement or restoration of the temporary permit or practitioner's license, or for the modification of the disciplinary orders shall be made in writing to the department by the temporary permittee or licensed practitioner.

**B.** The temporary permittee or licensed practitioner shall be afforded an opportunity to demonstrate that he or she can resume the practice of respiratory care with reasonable skill, competence, and safety to patients and shall be required to provide verifiable proof of compliance with any stipulations in the disciplinary order.

(1) The department may require an examination by the examining committee for such reinstatement, restoration, or modification of the temporary permit or practitioner's license.

(2) The department may require verification that the temporary permittee or licensed practitioner has completed a treatment program for alcohol or chemical dependency.

(3) The department may require verifiable proof that the temporary permittee or licensed practitioner has remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least one year.

(4) The department may require verifiable proof that the temporary permittee or licensed practitioner has maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and alcohol screening of urine or blood.

(5) The department shall have the discretion to accept or reject the petition for reinstatement or restoration of the temporary permit or practitioner's license, or for modification of the disciplinary orders.

[16.23.18.24 NMAC - Rp, 16.23.18.24 NMAC, 04/21/2022]

## **CHAPTER 24: ANIMAL SHELTERING PROVIDERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.24.1.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.24.1.1 NMAC - N, 7/1/18]

#### **16.24.1.2 SCOPE:**

This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.

[16.24.1.2 NMAC - N, 7/1/18]

**16.24.1.3 STATUTORY AUTHORITY:**

Section 61-14-5 NMSA 1978.

[16.24.1.3 NMAC - N, 7/1/18]

**16.24.1.4 DURATION:**

Permanent.

[16.24.1.4 NMAC - N, 7/1/18]

**16.24.1.5 EFFECTIVE DATE:**

July 1, 2018 unless a later date is cited at the end of a section.

[16.24.1.5 NMAC - N, 7/1/18]

**16.24.1.6 OBJECTIVE:**

To define terms relevant to animal sheltering, euthanasia, circumstances under which a license is required, persons exempted from licensing, custody and alteration of a license, transferability, display of license, notification of changes, local regulations, and professional ethical standards, and to set forth standards for the operation, meeting and record keeping requirements of the board.

[16.24.1.6 NMAC - N, 7/1/18]

**16.24.1.7 DEFINITIONS:**

**A. Words starting with the letter A:**

(1) **"Act"** means the Veterinary Practice Act, Subsections B of Sections 77-1-1 through 77-1-12 NMSA 1978.

(2) **"Animal"** means any animal, except humans, not defined as "livestock" in Subsection T of this section.

(3) **"Animal shelter"** means:

(a) a county or municipal facility that provides shelter to animals on a regular basis; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(c) does not include a municipal zoological park.

**B. Words starting with the letter B: "Board"** means the board of veterinary medicine.

**C. Words starting with the letter C:**

(1) **"Companion animal"** means any vertebrates commonly kept as domestic pets, excluding man, and those under the jurisdiction of the New Mexico department of game and fish and those under the jurisdiction of the New Mexico livestock board.

(2) **"Consulting pharmacist"** means a pharmacist whose services are engaged on a routine basis by a euthanasia agency and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations.

**D. Words starting with the letter D:**

(1) **"Dangerous drug"** means a drug, other than a controlled substance enumerated in schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe, except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. 'Adequate directions for use' means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended.

(2) **"DEA"** means United States drug enforcement administration.

(3) **"Disposition"** means the adoption of an animal; return of an animal to the owner; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal.

**E. Words starting with E:**

(1) **"Emergency field euthanasia"** means the process defined by rule of the board to cause the death of an animal in an emergency situation when the safe and humane transport of the animal is not possible.

(2) **"Euthanasia"** means to produce the humane death of an animal by standards deemed acceptable to the board as set forth in its rules.

(3) **"Euthanasia agency"** means a facility licensed by the board that provides shelter to animals on a regular basis, including a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia.

(4) **"Euthanasia drugs"** means non-narcotic schedule II or schedule III substances and chemicals as set forth in the Controlled Substances Act, Section 30-31-1 et. seq. NMSA 1978, that are used for the purposes of euthanasia and pre-euthanasia of animals.

(5) **"Euthanasia instructor"** means a euthanasia technician or a veterinarian certified by the board to instruct other individuals in euthanasia techniques.

(6) **"Euthanasia technician"** means a person licensed by the board to euthanize animals for a euthanasia agency.

(7) **"Exotic"** means any vertebrate animals, excluding man, wild animals, livestock and companion animals.

**F. Words starting with F: "FDA"** means United States food and drug administration.

**G. Words starting with G: [RESERVED]**

**H. Words starting with H: "Humanely"** means actions marked by compassion, sympathy or consideration, especially for the prevention of the suffering of the animal.

**I. Words starting with I: [RESERVED]**

**J. Words starting with J: [RESERVED]**

**K. Words starting with K: [RESERVED]**

**L. Words starting with L: "Livestock"** means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

**M. Words starting with M: [RESERVED]**

**N. Words starting with N: "Non-livestock"** means any animal not covered under the definition of livestock in Subsection L of Section 77-1B-2 NMSA 1978.

**O. Words starting with O: [RESERVED]**

**P. Words starting with P: [RESERVED]**

**Q. Words starting with Q: [RESERVED]**

**R. Words starting with R: "Rescue organization"** means an organization that rescues animals and is not involved in the breeding of animals.

**S. Words starting with S:**

(1) **"Sharps"** means any discarded article that may cause punctures or cuts. Such wastes may include, but are not limited to needles, scalpel blades, glass slides, glassware, suture needles and trocars.

(2) **"Supervising veterinarian"** means a person who is a New Mexico-licensed veterinarian, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals at a euthanasia agency.

**T. Words starting with T: [RESERVED]**

**U. Words starting with U: [RESERVED]**

**V. Words starting with V:**

(1) **"Veterinarian"** means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act, Section 61-14-1 et. seq. NMSA 1978.

(2) **"Veterinary facility"** means any building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided.

**W. Words starting with W: "Wild animal"** means any vertebrate animals under the jurisdiction of the New Mexico game and fish department.

**X. Words starting with X: [RESERVED]**

**Y. Words starting with Y: [RESERVED]**

**Z. Words starting with Z: [RESERVED]**

[16.24.1.7 NMAC - N, 7/1/18]

**16.24.1.8 NON-PUBLIC RECORDS:**

The following records are considered confidential and are not subject to public inspection:

- A. letters of reference;
- B. medical reports or records of chemical dependency, physical or mental examinations or treatment;
- C. the contents of any examination used to test for an individual's knowledge or competence;
- D. investigative files if disclosure would impede the investigation;
- E. written communication relating to actual or potential disciplinary action, including complaints, until the board acts or declines to act; and
- F. matters of opinion in personnel files.

[16.24.1.8 NMAC - N, 7/1/18]

**16.24.1.9 SAVINGS CLAUSE:**

If any provision of these rules or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.

[16.24.1.9 NMAC - N, 7/1/18]

**PART 2: LICENSURE AND CERTIFICATION**

**16.24.2.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.24.2.1 NMAC - N, 7/1/18]

**16.24.2.2 SCOPE:**

This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.

[16.24.2.2. NMAC - N, 7/1/18]

**16.24.2.3 STATUTORY AUTHORITY:**

Section 61-14-5; Section 61-14-8; Section 61-14-9; Section 61-14-10; Section 61-14-12; Section 61-14-13; Section 61-14-14 and Section 61-14-15 NMSA 1978.

[16.24.2.3 NMAC - N, 7/1/18]

**16.24.2.4 DURATION:**

Permanent.

[16.24.2.4 NMAC - N, 7/1/18]

**16.24.2.5 EFFECTIVE DATE:**

July 1, 2018 unless a later date is cited at the end of a section.

[16.24.2.5 NMAC - N, 7/1/18]

**16.24.2.6 OBJECTIVE:**

To provide for the most humane restraint, in-facility capture, and death possible for animals when euthanasia is required.

[16.24.2.6 NMAC - N, 7/1/18]

**16.24.2.7 DEFINITIONS:**

[RESERVED]

**16.24.2.8 PRACTICING WITHOUT A LICENSE OR CERTIFICATE:**

**A.** It is a violation of the act for a person, other than a veterinarian licensed to practice in New Mexico, to perform euthanasia for a euthanasia agency in this state unless the individual is licensed by the board pursuant to Subsection B of Section 77-1-6 NMSA 1978.

**B.** It is a violation of the act for an entity other than a veterinary facility to perform euthanasia unless the agency is licensed by the board pursuant to Subsection B of Section 77-1-8 NMSA 1978.

[16.24.2.8 NMAC - N, 7/1/18]

**16.24.2.9 LICENSURE OR CERTIFICATION EXEMPTIONS:**

**A.** The act does not apply to veterinarians licensed in New Mexico.

**B.** The act does not apply to wildlife rehabilitators working under the auspices of the department of game and fish.

**C.** A for profit veterinary facility serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of the act; provided that the veterinary facility is subject to licensure and rules adopted pursuant to the Veterinary Practice Act, Section 61-14-1 et. seq. NMSA 1978.

**D.** A municipal facility that is a zoological park is exempt from the provisions of the act.

**E.** A commissioned law enforcement officer is exempt from the act when conducting emergency field euthanasia or in situations where the public's health or safety is at risk or the animal is irremediably suffering.

**F.** The board may exempt a euthanasia instructor from the required euthanasia technician testing based upon review of the applicant's credentials and practical experience in shelter euthanasia. The applicant shall be required to obtain a euthanasia instructor certificate and is subject to the required certified euthanasia instructor duties.

[16.24.2.9 NMAC - N, 7/1/18]

#### **16.24.2.10 CUSTODY AND ALTERATION OF LICENSE OR CERTIFICATE:**

**A.** Licenses and certificates issued by the board are at all times the property of the board, and may remain in the custody of the licensee or certificate holder only as long as the licensee or certificate holder complies with the act and board rules.

**B.** Licenses and certificates shall not be altered or duplicated in any way.

**C.** Inspectors or board designees shall retrieve any license or certificate that is suspended, revoked, expired, or left by a licensee or certificate holder who is no longer employed at an establishment.

[16.24.2.10 NMAC - N, 7/1/18]

#### **16.24.2.11 LICENSE OR CERTIFICATE NOT TRANSFERABLE:**

A license or certificate issued by the board pursuant to the act shall not be transferred or assigned.

[16.24.2.11 NMAC - N, 7/1/18]

#### **16.24.2.12 DISPLAY OF LICENSE OR CERTIFICATE AND NOTIFICATION OF CHANGES:**

**A.** A euthanasia technician license or a euthanasia agency license shall at all times be posted in the euthanasia room of the euthanasia agency, unless the euthanasia technician is working at a location other than the euthanasia agency. If the euthanasia technician is performing euthanasia offsite, the licensee shall have the license in his or her possession. Euthanasia instructor certificate holders shall have the certificate in his or her possession when teaching any board approved euthanasia technician training course.

**B.** Licensees and certificate holders shall notify the board of any change of address, phone or other contact information within 30 days. If a euthanasia agency has a change of address, its current license will be invalidated on the date the change in address is effective and the agency shall reapply to the board for a valid license in order to perform euthanasia.

[16.24.2.12 NMAC - N, 7/1/18]

### **16.24.2.13 APPLICATION FOR LICENSURE AS A EUTHANASIA TECHNICIAN:**

**A.** In order to obtain a license as a licensed euthanasia technician, the applicant shall submit the following documentation and a completed application on a form provided by the board which may available online, accompanied by the required fees:

- (1)** proof of age indicating the applicant is at least 18 years of age, such as a copy of a driver's license or a copy of a state issued identification card (do not submit a copy of a birth certificate);
- (2)** two, two inch by two inch original photographs taken within the past six months;
- (3)** a notarized authorization for release of information form;
- (4)** state criminal history background check as specified in 16.24.2.17 NMAC;
- (5)** verification that the applicant holds a high school diploma or its equivalent;
- (6)** verification that the applicant holds a certificate of completion, or similar document, of a board approved euthanasia technician training course within three years preceding the date the application for licensure is submitted, which course shall be approved as described in 16.24.2.18 NMAC;
- (7)** verification of passing a board approved examination administered by a certified euthanasia instructor at a board approved euthanasia training course with a grade of at least eighty percent;
- (8)** passing an examination, administered by the board, with a grade of at least eighty percent;

(9) any other information or verifications the board may request.

**B. Sixty-day temporary euthanasia technician license.**

(1) A temporary license may be issued at the discretion of the board. The temporary license is intended to assist a licensed euthanasia agency to hire trained personnel in the event the agency's only licensed euthanasia technician leaves the agency or is no longer able to perform euthanasia for any reason. The temporary license is valid for a period of no more than 60 calendar days. The temporary license cannot be renewed by the euthanasia technician. No more than one temporary license may be granted to an individual unless approved by the board in consideration of extenuating circumstances.

(2) To qualify for a temporary license, an applicant shall submit all items required in Paragraphs (1) through (6) of Subsection A of 16.25.11.12 NMAC.

[16.24.2.13 NMAC - N, 7/1/18]

**16.24.2.14 APPLICATION FOR CERTIFICATION AS A EUTHANASIA INSTRUCTOR:**

**A.** In order to obtain a certificate as a certified euthanasia instructor the applicant shall submit the following documentation and a completed application on a form provided by the board, which may be available online, accompanied by the required fees:

(1) proof of age indicating the applicant is at least 21 years of age such as a copy of a driver's license or a copy of a state issued identification card (do not submit a copy of a birth certificate);

(2) two, two inch by two inch original photographs taken within the past six months;

(3) a notarized authorization for release of information form;

(4) state criminal history background check as specified in 16.24.2.17 NMAC;

(5) verification that the applicant holds a high school diploma or its equivalent;

(6) verification that the applicant holds a certificate of completion of a board approved euthanasia technician training course, completed within one year preceding the date the application for certification is submitted;

(7) verification of passing a board approved examination for a board approved euthanasia technician training course with a grade of at least ninety percent;

**(8)** verification of at least one year of practical experience in the euthanasia of shelter animals preceding the date of application;

**(9)** any other information or verifications the board may request.

**B.** The board may exempt a euthanasia instructor from taking a required board approved euthanasia technician training course and test based upon review of the applicant's credentials and practical experience in shelter euthanasia. The applicant shall be required to obtain a euthanasia instructor certificate and is subject to the required certified instructor duties.

[16.24.2.14 NMAC - N, 7/1/18]

#### **16.24.2.15 APPLICATION FOR LICENSURE AS A EUTHANASIA AGENCY:**

All agencies that will provide euthanasia services on or after January 1, 2010, shall be licensed by the board by January 1, 2010, or before performing euthanasia services if the agency does not begin performing euthanasia services until a later date. In order to obtain a license as a euthanasia agency, the applicant shall submit the following documentation and a completed application on a form provided by the board, which may be online, accompanied by the required fee:

**A.** the agency shall have at least one licensed euthanasia technician on staff who shall at all times be assisted by a trained assistant;

**B.** the agency shall provide the names of their current licensed euthanasia technicians at the time of application or renewal for licensure and shall notify the board when there is a change in licensed euthanasia technicians at the agency within 30 days;

**C.** the agency shall have a written contingency plan for providing euthanasia in the event the agency is without a licensed euthanasia technician;

**D.** the agency shall notify the board in the event it no longer has a licensed euthanasia technician on staff within 72 hours;

**E.** the agency shall keep accurate controlled substance and dangerous drug logs, in compliance with applicable state controlled substances laws, which shall be inspected quarterly according to the guidelines of the New Mexico pharmacy board and shall be made available to the board approved euthanasia agency inspector;

**F.** the agency shall identify and describe any contracts with a supervising veterinarian, a consulting pharmacist and any holder of DEA licenses;

**G.** the agency shall comply with board inspections;

**H.** the agency shall pay the license fee established by the board; and

I. the agency shall provide any other information or verifications the board may request.

[16.24.2.15 NMAC - N, 7/1/18]

**16.24.2.16 APPLICATION FOR LICENSE OR CERTIFICATE RENEWALS:**

**A.** Licenses and certificates shall be valid for one year from the date the license or certificate is issued. Each licensee or certificate holder shall, on or before the expiration date of the license or certificate submit a renewal form provided by the board and pay a renewal fee as established by the board. Holders of a license or certificate who fail to renew on or before the expiration date may not practice past the expiration date and may be considered to be practicing without a license. Any person may reinstate an expired license or certificate within three years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees and late fees. After three years have elapsed since the date of expiration, a license or certificate may not be renewed and the holder shall apply for a new license or certificate and take the required examination. The board may assess a late fee on the applicant as established by the board. License or certificate holders shall also comply with Subsections B through D to renew a license or certificate, as applicable.

**B.** For each renewal, a euthanasia technician shall also:

(1) provide proof of having taken four hours of board-approved continuing education courses or in-service training during the prior year, which may include, but are not limited to, animal handling, euthanasia, recording and handling of controlled substances and dangerous drugs, shelter operations and teacher training courses. Credit for non-contact forms of instruction including online training is accepted. A maximum of four credit hours may be accrued as excess and carried forward to the subsequent licensing year.

(2) complete any continuing education course specifically required by the board within the preceding twelve months;

(3) be responsible for proving the validity of the reported continuing education hours by submitting photocopies of seminar registrations or completion certificates, or similar documentation; and

(4) submit a request for course approval including a course description with course outline, the number of course hours, and agency teaching the course, in writing to the board if there is a question about whether a particular course, class, or seminar will be approved for credit.

**C.** For each renewal, a euthanasia instructor shall also:

(1) provide proof of having taken eight hours of board approved continuing education courses during the prior 12 months, which may include, but are not limited to, animal handling, euthanasia, recording and handling of controlled substances and dangerous drugs, shelter operations and teacher training courses. Credit for non-contact forms of instruction including online training is accepted. A maximum of eight credit hours may be accrued as excess and carried forward to the subsequent licensing year.

(2) complete any continuing education course specifically required by the board within the preceding twelve months;

(3) be responsible for proving the validity of the reported continuing education hours by submitting photocopies of seminar registrations or completion certificates, or similar documentation; and

(4) submit a request for course approval including a course description with course outline, the number of course hours, and agency teaching the course, in writing to the board if there is a question about whether a particular course, class, or seminar will be approved for credit.

D. For each renewal, a euthanasia agency shall also:

(1) submit to an inspection every other calendar year and correct any deficiencies found during its inspection;

(2) submit a current list of its licensed euthanasia technicians.

[16.24.2.16 NMAC - N, 7/1/18]

#### **16.24.2.17 APPLICANT BACKGROUND CHECK PROCEDURE:**

A. Pursuant to Subsection B of Section 77-1-5(N) NMSA 1978 all applicants for initial issuance or reinstatement of a license or certificate in New Mexico shall be required to establish positive identification for a state criminal history background check, except commissioned law enforcement officers.

B. Department of public safety authorization for release of information form shall be submitted to the department of public safety with a money order or cashier's check made out to the department of public safety, for the prescribed fee for the amount established by the department of public safety for the processing of state criminal history background checks.

[16.24.2.17 NMAC - N, 7/1/18]

#### **16.24.2.18 CURRICULUM FOR BOARD APPROVED EUTHANASIA TECHNICIAN TRAINING COURSES:**

In order to receive board approval for a euthanasia technician training course that will be taught on or after July 1, 2009, the euthanasia instructor shall submit a written request for approval to the board along with 12 copies of the instructor's manual, the course curriculum and a description of the test administered by the instructor. Courses will be approved until such time as the board revokes the approval. Approved courses will be subject to annual review. The curriculum shall include the following.

- A.** animal anatomy and physiology as related to euthanasia;
- B.** euthanasia: the history, current standards, stages of euthanasia, best practices;
- C.** euthanasia by injection: acceptable sites (advantages, disadvantages, criteria for selecting which site), restraint for each type of injection, injection techniques and mechanics of each technique, acceptable euthanasia drugs, best practices;
- D.** pre-euthanasia anesthesia: uses, stages of anesthesia, criteria for judging depth of anesthesia, drugs for this use, administration sites and methods, best practices;
- E.** verification of death: proper and accurate methods of verification of death;
- F.** pharmaceuticals: controlled and non-controlled substances (types, method of actions, uses), dosage calculations, security and storage of both types of drugs, record keeping, drug logs, controlled substance logs, labeling of drug mixtures, material safety data sheets (MSDS sheets), inventory management;
- G.** proper disposal techniques: euthanized animals, drug waste, expired drugs, sharps, biohazardous or infectious waste;
- H.** euthanasia by non-injection method: criteria for choosing case for non-injection method;
- I.** emergency field euthanasia: methods and best practices for emergency field euthanasia;
- J.** animal handling: humane handling techniques, techniques to reduce animal stress, restraint of wild or unsocialized animals, humane capture techniques for in-facility escapes;
- K.** species other than dogs and cats: restraint techniques, acceptable and best euthanasia techniques for each species, public health concerns, rabies (description of disease, signs, submission procedures);
- L.** euthanasia room: equipment and supplies (use and location), backup equipment, setup, lighting, safety measures; and

**M.** staff health and safety concerns: zoonotic disease, emergency equipment (use, location), sharps handling and disposal, work place safety, safety equipment and apparel, eye wash station; compassion fatigue and euthanasia-related stress (recognition, reduction techniques, professional services).

[16.24.2.18 NMAC - N, 7/1/18]

## **PART 3: DUTIES OF LICENSEES AND CERTIFICATE HOLDERS**

### **16.24.3.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.24.3.1 NMAC - N, 7/1/18]

### **16.24.3.2 SCOPE:**

This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.

[16.24.3.2 NMAC - N, 7/1/18]

### **16.24.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Veterinary Practice Act, Subsections B of Sections 77-1-5, 77-1-6, 77-1-7 NMSA 1978.

[16.24.3.3 NMAC - N, 7/1/18]

### **16.24.3.4 DURATION:**

Permanent.

[16.24.3.4 NMAC - N, 7/1/18]

### **16.24.3.5 EFFECTIVE DATE:**

July 1, 2018 unless a later date is cited at the end of a section.

[16.24.3.5 NMAC - N, 7/1/18]

### **16.24.3.6 OBJECTIVE:**

To establish board approved procedures for humane euthanasia of common shelter animals in New Mexico that include duties of euthanasia agencies, euthanasia

technicians, and euthanasia instructors in order to ensure approved humane restraint and euthanasia techniques are consistently practiced.

[16.24.3.6 NMAC - N, 7/1/18]

#### **16.24.3.7 DEFINITIONS:**

[RESERVED]

#### **16.24.3.8 GENERAL REQUIREMENTS FOR LICENSED EUTHANASIA TECHNICIANS AND AGENCIES:**

**A.** Euthanasia shall be performed by a licensed euthanasia technician employed or under contract with a licensed euthanasia agency, by a licensed veterinarian, or in the case of emergency field euthanasia, may be performed by a commissioned law enforcement officer by means of gunshot.

**B.** Euthanasia technicians shall scan all companion animals for a microchip and look for a license or other identification tag directly prior to performing euthanasia. Every microchip, license or identification tag located shall be recorded. If a microchip, license or identification tag is found at the time of euthanasia, the licensed euthanasia technician shall verify that all reasonable attempts to contact the owner have been made and only after verification may the euthanasia proceed. If the verification is not possible, then the euthanasia shall be postponed until verification is completed, except in situations in which the animal is in severe, acute distress or is irremediably suffering.

**C.** Euthanasia technicians shall euthanize dogs and cats only by the use of an FDA approved sodium pentobarbital euthanasia solution, or any other board approved euthanasia solutions, with the exception of emergency field euthanasia as provided for in 16.24.3.15 NMAC.

**D.** Euthanasia agencies using controlled substances shall have under contract a consulting pharmacist as defined in the New Mexico Pharmacy Act.

**E.** Euthanasia agencies shall be inspected at least every other calendar year.

**F.** Euthanasia technicians shall euthanize all other non-livestock animals in accordance with Section 61-11-1 Pharmacy Act. et. seq. NMSA 1978 and the applicable methods, recommendations and procedures set forth in 16.24.3.9 NMAC and 16.24.3.12 through 16.24.3.15 NMAC.

**G.** Euthanasia technicians and euthanasia agencies shall maintain storage, security, recordkeeping and disposal methods of controlled substances used for euthanasia as set forth in the board approved euthanasia technician training courses in accordance with the New Mexico pharmacy board and DEA regulations. Euthanasia technicians and euthanasia agencies shall adhere to all existing state and federal laws and protocols.

**H.** Euthanasia agencies shall display material safety data sheets for all drugs used in the euthanasia process in the euthanasia area or shall make such material available and accessible to all employees on the premises.

**I.** Euthanasia technicians may use a sedative or anesthetic as set forth in the board approved euthanasia technician training courses.

**J.** Euthanasia technicians and their assistants shall handle animals humanely as detailed in board approved euthanasia instruction from the commencement of and throughout the euthanasia process. Remains shall be disposed of promptly in compliance with local ordinance.

**K.** A euthanasia agency shall handle, treat and dispose of infectious waste, including but not limited to remains, anatomical body parts, excretions, blood soiled articles and bedding, that are generated from an animal that the agency knows or has reason to suspect has a disease that is capable of being transmitted to humans as follows.

**(1)** All infectious waste will be sterilized or disinfected by heat, steam, chemical disinfection, radiation, or desiccation.

**(2)** Infectious waste held for disposal shall be collected in sanitary leak resistant bags clearly labeled for biohazard disposal. The bag shall contain the gloves worn while collecting the waste and those used in treatment and post mortem examinations of suspect animals.

**(3)** All sharps shall be disposed of in labeled sharps containers. Such containers shall be rigid-sided, solidly sealed containers that are highly resistant to puncture. These containers shall be incinerated or disposed of in an environmentally safe manner by a duly licensed disposer or an approved medical sharps incineration facility or shall be disposed of in such a way as to render the sharps harmless. This disposal shall not apply to infectious waste sharps, which, contained in a puncture resistant container, should be disposed of as described in infectious waste disposal. Due to the small volume of sharps generated in a euthanasia agency, transportation of the filled, sealed containers shall not be mandated by nor limited to commercial haulers.

**L.** A euthanasia agency shall dispose of drugs as follows.

**(1)** The removal and disposal of outdated or unwanted dangerous drugs shall be the responsibility of the consultant pharmacist.

**(2)** Outdated or unwanted controlled substances shall be disposed of through a DEA-registered reverse distributor or pursuant to the requirements of Title 21, Code of Federal Regulations, Part 1307.

**(3)** The transfer of any dangerous drug inventory to another registrant shall be pursuant to the rules of the board of pharmacy and be the responsibility of the consultant pharmacist in compliance with state and federal laws and regulations for the transfer of such drugs.

**M.** A euthanasia agency shall handle waste materials that are generated from an animal that does not have a disease transmissible to humans and is not suspected of being contaminated with an agent capable of infecting humans as provided under this section.

**(1)** Animal remains.

**(a)** A euthanasia technician shall dispose of an animal's remains promptly by release to owner, burial, cremation, incineration, commercial rendering or, if permitted by local ordinance, placement in a public landfill.

**(b)** If prompt disposal of an animal's remains is not possible, the euthanasia technician shall contain the animal's remains in a freezer or store them in a sanitary, non-offensive manner until such time as they can be disposed of as provided above.

**(2)** A euthanasia technician shall dispose of tissues, specimens, bedding, animal waste and extraneous materials, not suspected of harboring pathogens infectious to humans, by approved municipality or county disposal methods.

**N.** In the event of the occurrence of a suspect foreign animal disease or disease of potential concern to state or national security, the euthanasia agency will immediately contact the state veterinarian, the U. S. department of agriculture, and other applicable departments. The euthanasia technician and euthanasia agency shall handle all tissues, laboratory samples, and biomedical waste associated with such cases in accordance with the recommendations made by the state veterinarian, and other departments and agencies, which are deemed necessary and appropriate in such cases.

**O.** It shall be a violation of the act for euthanasia technicians and euthanasia agencies to end an animal's life using the following methods:

- (1)** decompression;
- (2)** nitrous oxide;
- (3)** drowning;
- (4)** decapitation;
- (5)** cervical dislocation;
- (6)** pithing;

- (7) exsanguination;
- (8) electrocution;
- (9) gunshot, excluding properly performed field euthanasia in an emergency situation as defined in 16.24.3.13 NMAC below;
- (10) air embolism;
- (11) nitrogen flushing;
- (12) strychnine;
- (13) acetone or any other industrial solvent;
- (14) any other chemical agent;
- (15) intrahepatic injection (IH); and
- (16) any method not specifically approved by the board.

[16.24.3.8 NMAC - N, 7/1/18]

#### **16.24.3.9 DUTIES OF A LICENSED EUTHANASIA TECHNICIAN:**

The duties of a euthanasia technician shall include but are not limited to:

**A.** performing euthanasia on a sufficient number and variety of animals under the direct supervision of a veterinarian or a skilled, knowledgeable licensed euthanasia technician to demonstrate proficiency in the performance of humane euthanasia before performing euthanasia without supervision, and, verifying in writing to the board (for example, by a letter written by the supervising veterinarian or euthanasia technician) within 60 days that the technician has demonstrated proficiency and maintains that documentation at the euthanasia agency, provided that this requirement does not apply to euthanasia technicians who have performed euthanasia for a period of at least six months;

**B.** preparing animals for euthanasia, including scanning for the presence of a microchip in companion animals;

**C.** carefully and accurately recording the dosage and drug waste for each euthanasia performed pursuant to the rules of the New Mexico board of pharmacy;

**D.** maintaining the security of all controlled substances and dangerous drugs, including records relating to controlled substances and dangerous drugs, at the euthanasia agency in accordance with applicable state and federal laws;

**E.** reporting to the board and the department of health any infraction of the act or rules adopted pursuant to the act, or any misuse of drugs;

**F.** humanely capturing, restraining, and euthanizing animals as taught in board approved euthanasia technician training courses;

**G.** disposing of remains in accordance with law;

**H.** maintaining license in an active status;

**I.** reporting any change of name, address, telephone or other contact information to the board within 30 days;

**J.** providing to the board or authorized board representative a reply to a request for information allowed under the act or these rules within ten working days;

**K.** a euthanasia technician shall prepare a report of any euthanasia performed that deviates from board approved rules, and the euthanasia agency shall keep these records on file for four years.

[16.24.3.9 NMAC - N, 7/1/18]

#### **16.24.3.10 DUTIES OF A CERTIFIED EUTHANASIA INSTRUCTOR:**

The duties of a certified euthanasia instructor shall include but are not limited to:

**A.** reporting any change of name, address, phone or other contact information to the board within 30 days;

**B.** maintaining current knowledge of New Mexico board of pharmacy rules and the New Mexico board of veterinary medicine rules, as they apply to euthanasia and controlled substances used in the practice of euthanasia;

**C.** providing reports on a form provided to the board within 30 days of the completion of the courses;

**D.** providing to the board or authorized board representative, a reply to a request for additional information allowed under the act or these rules within ten working days.

[16.24.3.10 NMAC - N, 7/1/18]

#### **16.24.3.11 DUTIES OF A LICENSED EUTHANASIA AGENCY:**

The duties of a licensed euthanasia agency include, but are not limited to:

**A.** keeping records for a period of four years showing:

**(1)** those individuals who are authorized in writing, in accordance with these rules, by the euthanasia agency to administer an FDA approved sodium pentobarbital euthanasia solution or other board approved euthanasia solution;

**(2)** logs with respect to controlled substances used to carry out humane euthanasia in accordance with the New Mexico pharmacy board rules;

**B.** having at least one licensed euthanasia technician on staff or having a contract with a veterinary facility for the purposes of performing euthanasia; in the event the agency falls below this minimum requirement, the agency shall immediately apply to the board to license additional individual(s) or forfeit its license;

**C.** accurately reporting no later than January 31 annually on board provided forms, impound, disposition and reason for euthanasia of all animals for the prior year; the board may suspend or revoke the agency's license in the event the agency fails to report to the board by February 28 of each year;

**D.** expediting the euthanasia procedure for any animal accepted by a euthanasia agency that is critically ill or severely injured and that in the determination of the euthanasia agency requires euthanasia; in these cases, the euthanasia agency shall place the animal in a quiet environment and give the animal treatment to reduce pain and suffering until a euthanasia technician or veterinarian is able to euthanize the animal;

**E.** having a current euthanasia policy and procedures manual; the manual shall include but is not limited to the following:

**(1)** a copy of the act;

**(2)** a copy of the euthanasia training manuals provided by the board approved euthanasia technician training courses attended by the euthanasia technicians working at the euthanasia agency;

**(3)** a list of methods of euthanasia allowed at the euthanasia agency and the policy and procedures for each method;

**(4)** a list of licensed euthanasia technicians, the methods they have been trained in, the date of training and the date of expiration of their license;

**(5)** the name, address and contact information for the veterinarian or euthanasia technician responsible for the euthanasia agency facility license;

**(6)** the name, address and contact information for the veterinarian responsible for veterinary medical care of the animals; the contact information shall include telephone numbers for working hours, weekends, nights and holidays;

**(7)** a protocol for euthanasia procedures to use in emergencies, after hours, holidays and weekends;

**(8)** procedures to follow if no licensed euthanasia technician is present and euthanasia of an animal is necessary;

**(9)** a list of methods of verifying death of an animal after a euthanasia process is performed;

**(10)** the name and contact information of the manufacturer and supplier of all materials used in euthanasia procedures at the euthanasia agency, including such materials as:

**(a)** bottled gas (if applicable);

**(b)** the chamber used to euthanize animals by inhalant gas (if applicable);

**(c)** injectable FDA approved sodium pentobarbital euthanasia solution or other board approved euthanasia solution; and,

**(d)** sedative or anesthetic solution;

**(11)** a copy of the original DEA certification permitting the use of controlled substances;

**(12)** a material safety data sheet for any chemical or gas used for euthanasia in that agency;

**(13)** a material safety data sheet for any anesthetic or tranquilizer used in that agency;

**(14)** notice of the signs and symptoms associated with human exposure to the agents used for euthanasia at that agency;

**F.** providing for the observation or inspection of the euthanasia process and euthanasia agency as requested by the board; observations or inspections may be done by any means including through a board approved instructor, inspector, or appointed designee;

**G.** a euthanasia technician shall prepare a report of any euthanasia performed that deviates from board approved rules, and the euthanasia agency shall keep these records on file for four years;

**H.** the agency shall ensure that any assistants to the euthanasia technician have received, at a minimum, documented in-service training as to the proper handling and

restraint of animals for the purposes of euthanasia; this training can be provided by the agency's own licensed euthanasia technician.

[16.24.3.11 NMAC - N, 7/1/18]

**16.24.3.12 EUTHANASIA BY INJECTION OF FDA APPROVED SODIUM PENTOBARBITAL EUTHANASIA SOLUTION OR BOARD APPROVED EUTHANASIA SOLUTIONS:**

**A.** The approved routes of injections of an FDA approved sodium pentobarbital euthanasia solution or board approved euthanasia solutions, listed in order of preference, are:

**(1)** intravenous injection as taught in board approved euthanasia technician training courses;

**(2)** intraperitoneal injection, but only if used as taught in a board approved euthanasia technician training course and as set forth below; or

**(3)** intracardiac injection, but only if used in accordance with Section 30-18-15 NMSA 1978 and as set forth below; it is unlawful for a euthanasia technician to use intracardiac injections to administer euthanasia to a conscious animal.

**B.** Intracardiac injection shall be acceptable only when performed on anesthetized or comatose animals. If a euthanasia technician uses intracardiac injection, the euthanasia technician shall administer the appropriate pre-euthanasia drugs as set forth in the board approved euthanasia technician training courses and shall ascertain that the animal is not conscious before administering the intracardiac injection.

**C.** Only veterinarians or euthanasia technicians shall administer the injections set forth in the board approved euthanasia technician training.

**D.** The euthanasia agency shall equip the designated area used for injection to ensure accuracy in the procedure and safety for the euthanasia technician, which should include but is not limited to sufficient lighting, useable animal restraint devices, and an eye wash station.

**E.** Euthanasia technicians shall administer injectable euthanasia agents to animals with at least the minimum dosage, as set forth in the board approved euthanasia technician training courses.

**F.** Euthanasia technicians shall place animals given an FDA approved sodium pentobarbital euthanasia solution or board approved euthanasia solutions by intraperitoneal injection in a quiet area, separated from physical contact with other animals during the dying process except that newborns and infants may be held.

**G.** Euthanasia technicians shall monitor the animals from the time euthanasia is performed until verification of the death of each animal.

**H.** Euthanasia technicians shall verify death by a combination of ascertaining the absence of ocular reflexes as well as the cessation of heartbeat or by observing the onset of rigor mortis, or other methods established by the board approved euthanasia technician training courses prior to remains storage and disposal.

[16.24.3.12 NMAC - N, 7/1/18]

**16.24.3.13 EUTHANASIA BY CARBON MONOXIDE GAS:**

**A.** Carbon monoxide is illegal for the euthanasia of dogs and cats.

**B.** Carbon monoxide may be used for the euthanasia of animals (excluding dogs or cats) that may present a zoonotic hazard.

**C.** Operations shall be in compliance with all applicable state and federal regulations under the occupational safety and health administration (OSHA) and an annual inspection of such equipment and operations shall be required. The following guidelines shall be observed:

**(1)** a euthanasia agency shall not operate a carbon monoxide chamber unless a euthanasia technician or New Mexico licensed veterinarian and one other adult are present at the time of operation;

**(2)** acceptable gas is limited to commercially compressed carbon monoxide gas and never gas piped from a motor;

**(3)** the ambient temperature inside the chamber shall not exceed 85 degrees fahrenheit (29.4 degrees celsius) when it contains live animals;

**(4)** if the chamber is commercially manufactured to euthanize only one animal at a time, no more than one animal at a time may be euthanized;

**(5)** if the chamber is commercially designed to euthanize more than one animal at a time, there shall be independent sections or cages to separate individual animals; if separation partitions are not used under specific circumstances, the specific circumstances shall be noted on the animal's disposition card; only animals of the same species shall be placed in the chamber simultaneously, with no more than the maximum number recommended by the manufacturer placed in the chamber;

**(6)** no live animal shall be placed in the chamber with a dead animal;

**(7)** prior to storage and disposal of remains, the euthanasia technician shall verify death by a combination of ascertaining the absence of ocular reflexes as well as

the cessation of heartbeat or by observing the onset of rigor mortis or other methods established by the board approved euthanasia technician training courses prior to remains storage and disposal;

**(8)** euthanasia of this type shall be performed in a commercially manufactured carbon monoxide chamber and the manufacturer's operating and servicing instructions shall be strictly followed;

**(9)** the chamber shall be located outdoors or in a properly ventilated room, though if it is located indoors it shall not be located in the same room as kennels housing other animals;

**(10)** to avoid risk of death or injury to personnel operating the chamber, as well as personnel working in the vicinity of the chamber, the chamber shall be airtight and equipped with the following in working order:

**(a)** an exhaust fan that is capable of evacuating all gas from the chamber prior to the chamber being opened, is connected by a gas-type duct to the outdoors, and the chamber shall be thoroughly vented prior to removing any remains to avoid risk of death to the euthanasia technician or other personnel in the vicinity of the chamber;

**(b)** a gas flow regulator and flow meter for the canister;

**(c)** a gas concentration gauge to indicate that gas concentrations are at proper levels and that the gas concentration process shall achieve at least a six percent carbon monoxide gas concentration, but not to exceed ten percent, within 5 minutes after the introduction of carbon monoxide into the chamber is initiated;

**(d)** an accurate temperature gauge for monitoring the interior of the chamber;

**(e)** a carbon monoxide monitor, which if located on the exterior of the chamber shall be connected to an audible alarm system that will sound in the room containing the chamber;

**(f)** explosion-proof electrical equipment, if equipment is exposed to carbon monoxide; and

**(g)** a view-port with either internal lighting or external lighting sufficient to allow visual surveillance of all animals within the chamber;

**(11)** all chamber equipment shall be in proper working order and used according to manufacturer's specifications during the operation of the chamber;

**(12)** the chamber shall be thoroughly cleaned after the completion of each cycle; chamber surfaces shall be constructed and maintained so they are impervious to moisture and can be readily sanitized; and,

**(13)** the euthanasia agency shall prominently display the operation, maintenance, and safety instructions in the area containing the chamber.

[16.24.3.13 NMAC - N, 7/1/18]

**16.24.3.14 EUTHANASIA BY CARBON DIOXIDE GAS:**

- A.** Euthanasia by carbon dioxide gas is illegal for use on dogs and cats.
- B.** Carbon dioxide may be used for the euthanasia of animals, excluding dogs and cats, that may present a zoonotic hazard.
- C.** Operations and equipment shall be in compliance with any applicable state and federal regulations and may be inspected annually or as required by the board. Inspections must be performed by board trained inspectors.
- D.** Acceptable gas is limited to commercially compressed carbon dioxide gas.
- E.** If the chamber is manufactured to euthanize only one animal at a time, no more than one animal at a time may be euthanized in that chamber.
- F.** If the chamber is designed to euthanize more than one animal at a time there shall be independent sections or cages to separate individual animals. If separation partitions are not used under specific circumstances approved by the board, the specific circumstances shall be noted on the animal's disposition card. Only animals of the same species shall be placed in the chamber simultaneously with no more than the maximum recommended by the manufacturer.
- G.** Carbon dioxide should enter the chamber at a rate that displaces twenty percent of the oxygen each minute.
- H.** The optimal carbon dioxide flow for the chamber must be calculated.
- I.** No live animal shall be placed in the chamber with a dead animal.
- J.** Euthanasia of this type shall be performed in a commercially manufactured carbon dioxide chamber or one manufactured to commercial standards and the manufacturer's operating and services instructions shall be strictly followed.
- K.** The chamber shall be located outdoors or in a well-ventilated room to minimize exposure to the carbon dioxide.
- L.** The chamber must not be airtight. Air must be able to escape to leave room for the carbon dioxide. A vent hole near the top of the chamber or a loosely-fitted lid will let out the air but not the carbon dioxide. The vent hole will also prevent pressure buildup.

**M.** The carbon dioxide chamber shall have a view-port to allow visual surveillance of the animals within the chamber.

**N.** All chamber equipment shall be in proper working order and used according to the manufacturer's specifications during the operation of the chamber.

**O.** The chamber shall be thoroughly cleaned and aired out between uses. Chamber surfaces shall be constructed and maintained so they are impervious to moisture and can be readily sanitized.

**P.** The euthanasia agency shall prominently display the operation, maintenance, and safety instructions for the carbon dioxide chamber in the area containing the chamber.

**Q.** Euthanasia technicians shall verify death by a combination of ascertaining the absence of ocular reflexes as well as the cessation of heartbeat or by observing the onset of rigor mortis or other methods established by the board approved euthanasia technician training courses, prior to remains storage and disposal.

[16.24.3.14 NMAC - N, 7/1/18]

#### **16.24.3.15 EMERGENCY FIELD EUTHANASIA:**

**A.** From time to time, there will be cases when emergency field euthanasia will be required. Cases shall be limited to:

**(1)** situations in which the animal is in severe, acute distress or is irremediably suffering in which delay or movement of the animal will cause severe pain and suffering;

**(2)** situations in which movement of the animal poses immediate and significant risk to the animal, human, or public health or safety.

**B.** If possible or practical, euthanasia by injection is the preferred method of field euthanasia. If practical, pre-euthanasia drugs shall be given to the animal prior to the euthanasia drugs.

**C.** If gunshot is used, it shall be performed by a euthanasia technician only if the euthanasia technician is properly certified in the use of firearms permitted by the employing agency of the euthanasia technician, or by a commissioned law enforcement officer. The gunshot shall be placed according to species as taught in board approved euthanasia technician training courses, whenever possible.

**D.** All instances of emergency field euthanasia shall be documented and shall include the following:

- (1) a description of the incident that resulted in the need to conduct emergency field euthanasia;
- (2) the date of the incident;
- (3) the time of the incident;
- (4) a description of the animal including species, gender, estimated age;
- (5) the name and contact information of the euthanasia technician or law enforcement officer;
- (6) the technique used; and,
- (7) the reason why the animal could not be transported to a shelter or euthanasia agency.

**E.** Emergency field euthanasia incidents shall be reported to the board within 30 days. All documentation and records relating to the incident shall be kept on file by the euthanasia agency for four years and be available for review by the board.

**F.** The euthanasia technician or commissioned law enforcement officer shall verify death by pupil dilation and cessation of respiration or other methods established by the board approved euthanasia technician training courses prior to remains storage and disposal.

[16.24.3.15 NMAC - N, 7/1/18]

## **PART 4: FEES**

### **16.24.4.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.24.4.1 NMAC - N, 7/1/18]

### **16.24.4.2 SCOPE:**

This part applies to applicants, licensees, certificate holders and persons or agencies within the jurisdiction of the board.

[16.24.4.2 NMAC - N, 7/1/18]

### **16.24.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Veterinary Practice Act.

[16.24.4.3 NMAC - N, 7/1/18]

**16.24.4.4 DURATION:**

Permanent.

[16.24.4.4 NMAC - N, 7/1/18]

**16.24.4.5 EFFECTIVE DATE:**

July 1, 2018 unless a later date is cited at the end of a section.

[16.24.4.5 NMAC - N, 7/1/18]

**16.24.4.6 OBJECTIVE:**

To establish fees for application, licensure, certification, renewal and board provided services.

[16.24.4.6 NMAC - N, 7/1/18]

**16.24.4.7 DEFINITIONS:**

**[RESERVED]**

**16.24.4.8 FEES:**

All fees are payable to the board and are non-refundable. No individual fee shall exceed \$150.00 annually. Fees are as follows.

<b>A.</b> Application for euthanasia technician license	\$ 100.00
<b>B.</b> Renewal for euthanasia technician license	\$ 100.00
<b>C.</b> Application for 60-day temporary license	\$ 75.00
<b>D.</b> Application for euthanasia instructor certification	\$ 150.00
<b>E.</b> Renewal for euthanasia instructor certification	\$ 150.00
<b>F.</b> Application for euthanasia agency license	\$ 150.00
<b>G.</b> Renewal for euthanasia agency license	\$ 150.00
<b>H.</b> Late renewal fee (includes technician, instructor and agency)	\$ 100.00
<b>I.</b> Verification of licensure or certification	\$ 25.00
<b>J.</b> Listing of licensees (paper or electronic)	\$ 75.00
<b>K.</b> Charge for insufficient funds	\$ 50.00
<b>L.</b> Duplicate licenses	\$ 25.00

[16.24.4.8 NMAC - N, 7/1/18]

**PART 5: FEES [REPEALED]**

[This part was repealed on June 30, 2018.]

## **PART 6: FORMULARY FOR EUTHANASIA TECHNICIANS [REPEALED]**

[This part was repealed on June 30, 2018.]

## **PART 7: MINIMUM STANDARDS - ANIMAL SHELTERS**

### **16.24.7.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.24.7.1 NMAC – N, 5/25/2021]

### **16.24.7.2 SCOPE:**

This part applies to all county or municipal facilities and private humane societies or private animal shelters operating in the state of New Mexico.

[16.24.7.2 NMAC - N, 5/25/2021]

### **16.24.7.3 STATUTORY AUTHORITY:**

Veterinary Practice Act, Section 61-14-5 NMSA 1978.

[16.24.7.3 NMAC - N, 5/25/2021]

### **16.24.7.4 DURATION:**

Permanent.

[16.24.7.4 NMAC - N, 5/25/2021]

### **16.24.7.5 EFFECTIVE DATE:**

April 1, 2020 unless a later date is cited at the end of a section.

[16.24.7.5 NMAC - N, 5/25/2021]

### **16.24.7.6 OBJECTIVE:**

To establish minimum standards for animal sheltering providers.

[16.24.7.6 NMAC - N, 5/25/2021]

### **16.24.7.7 DEFINITIONS:**

**A. Words starting with the letter A:**

(1) **"Act"** means the Veterinary Practice Act, Section 77-1-1 through 77-1-12 NMSA 1978.

(2) **"Animal"** means any animal, except humans, not defined as "livestock" in Subsection L of this section.

(3) **"Animal shelter"** means:

(a) a county or municipal facility that provides shelter to animals on a regular basis; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(c) does not include a municipal zoological park.

**B. Words starting with the letter B:** **"Board"** means the board of veterinary medicine.

**C. Words starting with the letter C:**

(1) **"Capacity for Care"** means the overall ability of an animal shelter to provide humane care of animals.

(2) **"Colony housing"** means housing two or more animals in the same primary enclosure or playgroups.

(3) **"Companion animal"** means any vertebrates commonly kept as domestic pets, excluding man, and those under the jurisdiction of the New Mexico department of game and fish and those under the jurisdiction of the New Mexico livestock board.

(4) **"Consulting pharmacist"** means a pharmacist whose services are engaged on a routine basis by a euthanasia agency and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations.

**D. Words starting with the letter D:**

(1) **"Dangerous drug"** means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe, except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use

cannot be prepared. "Adequate directions for use" means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended.

(2) **"DEA"** means United States drug enforcement administration.

(3) **"Disposition"** means the adoption of an animal; return of an animal to the owner; return to field; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal.

#### **E. Words starting with E:**

(1) **"Emergency field euthanasia"** means the process defined by rule of the board to cause the death of an animal in an emergency situation when the safe and humane transport of the animal is not possible.

(2) **"Enrichment"** means improving the environment and behavioral care for confined animals.

(3) **"Euthanasia"** means to produce the humane death of an animal by standards deemed acceptable to the board as set forth in its rules.

(4) **"Euthanasia agency"** means a facility licensed by the board that provides shelter to animals on a regular basis, including a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia.

(5) **"Euthanasia drugs"** means non-narcotic schedule II or schedule III substances and chemicals as set forth in the Controlled Substances Act, Section 30-31-1 NMSA 1978, that are used for the purposes of euthanasia and pre-euthanasia of animals.

(6) **"Euthanasia instructor"** means a euthanasia technician or a veterinarian certified by the board to instruct other individuals in euthanasia techniques.

(7) **"Euthanasia technician"** means a person licensed by the board to euthanize animals for a euthanasia agency.

(8) **"Exotic"** means any vertebrate animals, excluding man, wild animals, livestock and companion animals.

**F. Words starting with F:** **"FDA"** means United States food and drug administration.

**G. Words starting with G:** **"Group Housing"** means housing two or more animals in the same primary enclosure or playgroups.

**H. Words starting with H: "Humanely"** means actions marked by compassion, sympathy or consideration, especially for the prevention of the suffering of the animal.

**I. Words starting with I: "Isolation"** means to separate apart from others.

**J. Words starting with J: [Reserved]**

**K. Words starting with K: [Reserved]**

**L. Words starting with L: "Livestock"** means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

**M. Words starting with M: "May"** means permissive and a possible means to best practices.

**N. Words starting with N: "Non-livestock"** means any animal not covered under the definition of livestock in Subsection L of Section 77-1B-2 NMSA 1978.

**O. Words starting with O: [Reserved]**

**P. Words starting with P:**

(1) **"Personal protective equipment"** means items such as gloves, eye protection, gowns, and boots that protect a person from exposure to chemical or biological agents.

(2) **"Population management"** means a proactive process of planning, ongoing daily evaluations and responses to changing conditions as an organization cares for multiple animals, based on that organization's capacity for care and statistical data.

(3) **"Potable water"** means clean, fresh water that is suitable for drinking.

(4) **"Primary enclosure"** means an animal enclosure in which the animal normally eats, eliminates, rests, and sleeps.

**Q. Words starting with Q: "Quarantine"** means restriction of activity, enforced isolation. As defined by Subsection Q of Section 7.4.2.7 NMAC quarantine means the strict containment of all animals specified in the order of the district health officer upon the private premises of the owner, or under restraint by leash, or within a closed cage or paddock and shall include other measures ordered by the district health officer to control the spread of rabies.

**R. Words starting with R: "Rescue organization"** means an organization that rescues animals and is not involved in the breeding of animals.

**S. Words starting with S:**

(1) "Sharps" means any discarded article that may cause punctures or cuts. Such wastes may include, but are not limited to needles, scalpel blades, glass slides, glassware, suture needles and trocars.

(2) "**Spot-cleaning**" means using cleaning solution and a paper towel or rag to remove any smudges or contaminants in lieu of total disinfection.

(3) "**Supervising veterinarian**" means a person who is a New Mexico-licensed veterinarian, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals at a euthanasia agency.

**T. Words starting with T: [Reserved]**

**U. Words starting with U: [Reserved]**

**V. Words starting with V:**

(1) "**Ventilation**" means the circulation of air; a system or means of providing fresh air.

(2) "**Veterinarian**" means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act, Section 61-14-1 et. seq. NMSA 1978.

(3) "**Veterinary facility**" means any building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided.

**W. Words starting with W: "Wild animal"** means any vertebrate animals under the jurisdiction of the New Mexico game and fish department.

**X. Words starting with X: [Reserved]**

**Y. Words starting with Y: [Reserved]**

**Z. Words starting with Z: [Reserved]**

[16.24.7.7 NMAC - N, 5/25/2021; A, 11/1/2021]

**16.24.7.8 SHELTERING CAPACITY STANDARDS:**

**A.** The delivery of sheltering services shall be provided in a competent and humane matter.

**B.** Sheltering services shall be performed in a manner ensuring the health and well-being of animals while in the care of sheltering providers. The recommended standard of care is 15 minutes per animal per day.

**C.** Sheltering providers shall practice active population management within the balance of decisions and practices that support the overall population of the shelter.

[16.24.7.8 NMAC - N, 5/25/2021; A, 11/1/2021]

#### **16.24.7.9 PREMISES - STRUCTURAL:**

All exterior structures and fencing may:

**A.** be constructed of building materials that will ensure a sound physical structure;

**B.** be maintained in good repair;

**C.** protect animals from injury and ensure containment within shelter;

**D.** prevent the entry of outside animals and unauthorized persons;

**E.** include four solid walls for animal weather protection

**F.** include fencing sufficiently constructed to prevent animals from jumping, climbing or digging to escape.

[16.24.7.9 NMAC - N, 5/25/2021]

#### **16.24.7.10 FACILITY STANDARDS:**

**A.** Animal housing areas may be physically apart from areas where food and drink for human consumption are prepared, served or stored.

**B.** Interior building surfaces may be constructed and maintained to be water resistant to moisture and easily cleaned.

**C.** Animal food storage and equipment cleaning areas may be physically apart from animal housing.

**D.** Reliable, adequate electric power or gas may be provided for lighting, air circulation, heating, and cooling.

**E.** Reliable and adequate potable water shall be provided. Back flow preventers may be installed on any threaded faucets with attached hoses for the purpose of cleaning the facility, or on the main water line serving the facility.

**F.** Noise control may be considered for the well being of animals as well as visitors, volunteers and staff. Noise mitigation may include:

- (1) Housing cats away from the sound of dogs.
- (2) Facility modifications to minimize or contain barking.
- (3) Training staff to minimize slamming doors.
- (4) Using music to reduce animal stress.

**G.** Readily accessible washrooms or sinks may be provided to maintain personal hygiene of animal caretakers.

(1) A two-compartment sink in good repair may be provided for washing and sanitizing equipment used for animal care and feeding.

(2) A tub or low-pressure hose may be available to wash any animal that becomes soiled to avoid the use of high-pressure hoses for cleaning animals.

**H.** Indoor housing for animals shall be sufficiently heated or cooled to protect animals from extreme temperatures. The ambient temperature shall be consistent with the requirements of the specific species.

**I.** Indoor housing for animals may be adequately ventilated with fresh air to minimize odors and moisture and to provide for the health of the animals.

**J.** Water supply may allow for hose hook up to readily reach all parts of animal housing. Water pressure shall be adequate for cleaning of animal housing areas.

**K.** A suitable method to rapidly eliminate excess water from animal housing areas may be provided. Drains shall be properly constructed and maintained in good repair. If closed drainage systems are used, wastewater shall be disposed of by connection to a sanitary sewer or approved sewage disposal system.

[16.24.7.10 NMAC - N, 5/25/2021]

#### **16.24.7.11 ANIMAL ENCLOSURE AND HOUSING STANDARDS:**

**A.** General indoor enclosures.

**(1)** Primary enclosures shall provide sufficient space to allow each animal to make normal postural adjustments to:

- (a)** Turn freely.
- (b)** Easily stand.
- (c)** Sit.
- (d)** Stretch.
- (e)** Move their head without touching the top or sides of the enclosure.
- (f)** Lie in a comfortable position with limbs extended.
- (g)** Move about and assume a comfortable posture for feeding, drinking, urinating, and defecating.
- (h)** Dogs and cats shall be able to hold their tails erect when in a normal standing position.

**(2)** Primary enclosures may allow animals to be able to see out while avoiding visual contact with other animals.

**(3)** Animals housed shall be confined to a primary enclosure at all times unless under the direct supervision of shelter personnel or a designee.

**(4)** Primary enclosures shall be structurally sound and maintained in good repair and sanitary condition to protect the animals from injury and disease.

**(a)** Primary enclosures shall be constructed and maintained to enable the animals to remain dry and clean and to provide convenient access to food and clean water.

**(b)** Latches shall be secure and in good working order so that animals cannot escape.

**(5)** Floors of primary enclosures shall be constructed to prevent injury to animals, ensure adequate draining and prevent pooling of fluids. Wire mesh or slatted floors in cages shall not be used.

**(6)** Guillotine or doors separating two enclosure section shall be in working order.

**(7)** Animals shall not be able to escape from their primary enclosure.

**(8)** When housing aggressive, under quarantine or protective custody animals, condition of all enclosures shall be monitored daily with various types of locks considered.

**(9)** Primary enclosures may house one animal; if compatible, two altered animals per enclosure with the exceptions of litters housed with their dams or colony housing. Animals shall not be randomly housed in groups. Animals that fight shall not be grouped with other animals.

**(10)** Isolation areas shall be provided for animals with infectious diseases. Ten percent of the total housing may be designated for this purpose. The isolation housing may be double-sided to facilitate cleaning without removing the animal. Handwashing stations may be available at all isolation areas. Isolation areas may have separate cleaning tools and personal protective equipment.

**(11)** Dogs shall not be tethered except in the short term to facilitate cleaning primary enclosure or in the event of a fire or flood emergency. In emergency situations, short term tethering of dogs shall be used only until transport to another facility can be made. The safety of the dog shall be ensured while tethered. Cats shall not be tethered.

**(12)** Animals placed in crates or carriers, even for a short time, shall have ample space to stand up, turn around and lie down. Crates and carriers shall be disinfected and dried after each use and before another animal is placed in the crate or carrier. Crates and carriers may not be used as primary enclosures.

**B.** Outdoor primary enclosures. It is not recommended that primary enclosures be exclusively outdoors and not for very young, old, sick, or injured animals.

**(1)** Structurally sound, weatherproof enclosures may be made accessible to animals housed exclusively outdoors. Water resistant and windproof structure of suitable size shall be provided so animals stay warm and dry during cold weather; shaded and cool during hot weather. The structure may have a water-resistant door covering or offset doorway to minimize drafts, provide proper ventilation and made of durable materials with the floor raised off the ground to prevent water entry.

**(2)** A shaded area may be provided to all animals housed in an outdoor primary enclosure. An animal shall be able to rest in the shade, outside of the interior structure, but within the fencing or run.

**(3)** Sufficient clean, absorbent bedding material in addition to other means of protection from weather may be provided for the health and safety of the animals and may prevent strong [odors] from forming if replaced regularly.

**(4)** Floors of outdoor enclosures may be constructed of gravel, sand or soil; a solid material such as concrete is preferable. It is not possible to sanitize or disinfect gravel, sand or soil.

### **C. Enclosure Requirements for Cats**

**(1)** Cats shall be able to assume normal postures in primary enclosures. Space may be large enough to accommodate bedding, food and water dishes and a litter box. When there is more than one cat occupying a cage, additional floor and vertical space may be provided.

**(2)** Primary enclosures may be made of stainless steel, fiberglass, or other impervious material that is water-resistant and can be cleaned and sanitized. Chicken wire, barbed wire and wood shall not be used.

**(3)** Feral cat boxes, which allow for hiding places within the cage, reduce stress for all cats.

**(4)** Cats may be housed in a separate building or in a separate room far removed from rooms containing dog runs.

**D. Enclosure requirements for dogs.** Dogs shall be able to assume normal postures and engage in normal behaviors playing and moving freely without encountering another dog. Space may be large enough to accommodate bedding, food and water bowls.

**(1)** Enclosure height may be a minimum of one and one-half times the height of the dog at the shoulder.

**(2)** Floors in dog runs may slope to drain liquid out of runs to prevent pooling or puddling in runs or walkways. Slope may be one-quarter to one-half inch per linear foot.

**(3)** To prevent water and waste material from flowing from run to run, there may be solid walls between dog runs. Height of walls may be sufficient to prevent nose-to-nose contact of dogs between runs.

**(4)** Fencing or other materials that allow for airflow may be used, horizontally and vertically, above the solid walls providing a protective barrier at least six feet high between runs to prevent dogs from jumping over.

**(5)** All solid surfaces of dog runs may be constructed of water-resistant concrete, stone, cement block, brick, metal, or non-porous synthetic material which can be cleaned and sanitized. Sealed floors can be cleaned and disinfected most effectively. Fencing materials may be water resistant which can be easily cleaned and

sanitized. Fencing materials shall be gauged and spaced to avoid escape by or injury to dogs. Chicken wire, barbed wire and wood shall not be used.

**(6)** If more than one dog occupies the same primary enclosure, additional floor and vertical space may be provided.

**E.** Enclosure requirements for other species. Species other than dogs and cats shall have special requirements for housing and care.

**(1)** Stray livestock. The New Mexico livestock board shall be contacted to help facilitate the identification and ownership.

**(2)** Exotic animals. A veterinarian or someone with expertise in handling and caring for the species may be contacted for guidance.

**(3)** Wild animals. The appropriate agency shall be contacted to take possession of the animal.

**(a)** Wild birds. The U.S. fish and wildlife service shall be contacted.

**(b)** For any other wild animals, N.M. department of game and fish shall be contacted.

**F.** Foster housing standards.

**(1)** Potential foster homes may go through an application process with background checks and home inspections.

**(2)** Guidelines addressing the following may be established:

**(a)** Vaccination and altered status of foster home animals.

**(b)** Maximum number of animals allowed.

**(c)** Housing and care standards.

**(d)** Maximum length of foster stay.

**(3)** Foster parents may be trained or educated on standards of care and potential health and wellness issues; emergency contact information may be provided.

**(4)** Care capacity within foster home may be considered before sending animals into the homes.

**(5)** Foster animals may be altered and have current vaccinations unless under the care of a veterinarian.

**(6)** Tag or microchip identification for foster animals may be provided to foster homes.

**G.** Colony/group housing standards - Dogs. Dogs housed in the same primary enclosure may be maintained in compatible groups with the following restrictions:

**(1)** Primary enclosures may house one, or two, altered compatible dogs per enclosure. Litters may be housed with their dams.

**(2)** A female dog in season shall not be housed in the same primary enclosure with a male dog.

**(3)** An unaltered male dog shall not be housed in the same primary enclosure with an unaltered female other than under breeding age litter mates.

**(4)** An aggressive dog shall be housed individually in a primary enclosure; for protection of shelter personnel the enclosure shall be marked accordingly.

**(5)** Nursing mothers and their puppies may be removed from other animals. Removal will allow privacy, protection from unwanted intrusion and noise, alleviates fear/aggression, and to promote general well-being.

**(6)** Dogs shall not be housed in the same primary enclosure as cats.

**(7)** Dogs shall not be housed in the same primary enclosure with any other species of animals.

**H.** Colony/group housing standards – Cats. When housing cats in colony rooms, the following guidelines may be followed:

**(1)** Cats may have at least 18 square feet of floor space per cat to maintain a distance of three to ten feet between cats; non-inclusive of perches or walkways. In temperate climates, can include outdoor access with 24-hour access to indoors.

**(2)** Cats with unknown vaccination history may be evaluated for health and behavior, vaccinated, isolated, and observed for at least 24 hours before being placed in cat colony rooms.

**(3)** Unsterilized males shall be separated from females. A female in season shall not be housed in the same primary enclosure as a male.

**(4)** Nursing mothers and their kittens may not be housed with other cats.

**(5)** One 12 inch by eight inch cat litter pan for every three cats or five kittens may be provided.

- (6) Water and dry food may be available at all times.
- (7) Colony rooms may be equipped with shelves, resting boxes and hiding boxes.
- (8) Stainless steel, fiberglass or other materials that are water resistant and can be cleaned and sanitized may be used. Wood shall not be used.
- (9) Any cat exhibiting aggressive behavior shall be housed individually in its primary enclosure; for the protection of shelter personnel the enclosure shall be marked accordingly.

[16.24.7.11 NMAC - N, 5/25/2021; A, 11/1/2021]

#### **16.24.7.12 SANITATION STANDARDS:**

- A.** Written sanitation protocols shall be developed to provide consistent and thorough sanitation of the facilities. Protocols may be reviewed periodically in consultation with a veterinarian. Protocols may be updated for best practices. During an outbreak, sanitation protocols may be revised as needed to address specific pathogens.
- B.** Animal housing units or kennels shall be cleaned once daily at minimum and shall be thoroughly cleaned and disinfected once an animal no longer occupies the unit or kennel.
- C.** Animal waste shall be removed from primary enclosures daily or more often to prevent contamination of animals and to reduce disease hazards and odors. Waste shall be disposed of in accordance with local ordinance.
- D.** Cages, kennels, containers, equipment, and other items shall be cleaned at least once daily to maintain sanitary conditions.
- E.** Kennels and cages shall not be hosed down while animals are inside the kennels and cages.
- F.** To minimize stress for an animal remaining in an enclosure, spot cleaning may be used as appropriate. The enclosure shall be thoroughly cleaned and disinfected once an animal leaves an enclosure.
- G.** Cleaning may be carried out in the following order: from first to last to minimize the spread of disease.
  - (1) Healthy puppies and kittens; healthy, nursing bitches and queens.
  - (2) Healthy adult or quarantined animals.

**(3) Unhealthy isolated animals.**

**H.** To minimize the spread of disease, water and food containers and all other utensils shall be cleaned and sanitized using generally accepted methods such as the use of heat and chemical sanitizing solution. Containers shall be cleaned and sanitized as often as necessary to maintain sanitary conditions; food pans and bowls shall be cleaned between each use. If sinks are the method for cleaning, water and food pans or bowls shall be soaked and washed separately from litter pans with water and disinfectant changed between water and food pans or bowls and litter pans.

**I.** Product manufacturer instructions shall be followed precisely when cleaning, sanitizing and disinfecting. Chemicals shall not be mixed. Pine products and fumes are extremely toxic to cats and birds and shall not be used near them or to clean cat enclosures, pans, bowls etc.

**J.** Mopping may be avoided to reduce the spread of pathogens. If hosing is not possible and mopping must be used, disinfectant solution shall not be used from one housing area to another.

**K.** Water and food pans or bowls may be made of metal or be disposable. Plastic should not be used because it may be chewed and ingested and may retain contaminants.

**L.** Litter boxes shall be provided for cats in their primary enclosures with soiled litter disposed of on an as needed basis, a minimum of once a day. Litter boxes may be disposable or reusable if they are cleaned daily and sanitized before use by another cat. The use of plastic litter boxes is not recommended because they cannot be sufficiently disinfected and may be a source of disease.

**M.** Animal and food waste, soiled bedding, debris, and other organic waste may be stored in closed containers and disposed of on an as needed basis to avoid vermin infestation, odors, disease, and nuisances. Waste may be removed at least weekly from the facility. All reusable trash containers may be regularly sanitized and disinfected. All clothing and bedding shall be laundered and thoroughly dried before reuse.

**N.** To maintain sanitary conditions, pens and runs with absorbent or loose flooring i.e., sand, gravel or soil soiled with urine and/or fecal matter shall have such materials replaced as necessary. These types of organic materials cannot be sanitized or disinfected when the surface is muddy, water puddled or when odors and vermin are present.

**O.** Buildings and grounds shall be kept clean, in good repair and free of trash.

**P.** Weeds may be mowed or cut down where animals are kept or exercised.

**Q.** An effective program shall be maintained for the control of insects, fleas, avian, and mammalian pests.

**R.** Opened food supplies may be stored separately in closed waterproof containers. Unopened supplies of food may be stored off of the floor and adequately protected against contamination or infestation by vermin.

**S.** Animal bedding may be stored off of the floor and adequately protected against contamination or infestation.

**T.** Dead animals shall be stored and disposed of in strict compliance with state laws and local ordinances to avoid disease hazard or nuisance.

[16.24.7.12 NMAC - N, 5/25/2021]

### **16.24.7.13 ANIMAL CARE AND HANDLING STANDARDS:**

#### **A. Food and water**

**(1)** Animals may be fed twice daily except in cases of veterinary treatment or malnutrition. The food shall be free of contamination, palatable and of sufficient quality and nutritive value to meet normal daily requirements for the condition, size and age of the animal. Refrigeration may be provided for perishable food.

**(2)** Uneaten food shall be discarded after 24 hours. Food offered to an animal remaining uneaten shall not be fed to other animals.

**(3)** Care shall be taken not to underfeed or overfeed animals.

**(4)** Special consideration regarding types of food and frequency of feeding shall be given to puppies, kittens, older animals, and nursing dams.

**(5)** Malnourished or emaciated animals may need an increased food intake; introduction of food shall be regulated and increased gradually preferably with veterinary guidance.

**(6)** Animals shall be provided potable water at all times.

**(7)** Food and water containers shall be accessible and located to minimize contamination by excrement or other material. Food and water containers shall be cleaned daily; disposable food containers may be used only if discarded after each use.

**(8)** Food and water containers may be of a size to ensure accessibility based on the size of the animal.

**(9)** Spoiled, moldy food or food contaminated with feces, droppings or insects shall never be used. Food left in food bowls from the previous day shall be disposed of, disposable bowls discarded and non-disposable bowls cleaned.

#### **B. Enrichment**

**(1)** Enrichment means improving the environment and behavioral care for confined animals. Enrichment reduces stress and improves well-being by providing physical and mental stimulation and encouraging species-typical behaviors. Enrichment shall not be considered optional.

**(2)** If the recommended space requirements for dogs cannot be met due to shelter configuration, dogs may be exercised twice daily. For dogs requiring an opportunity to exercise, a written plan may be on file with each exercise session noted.

**(3)** Behavioral health and care of each animal as well as the conditions experienced by the entire population shall be a consideration of the shelter.

#### **C. Quarantine and isolation**

**(1)** Animals that have bitten a human shall be quarantined pursuant to New Mexico state law, local municipal or county ordinances.

**(2)** A veterinarian may be consulted.

**(3)** Animals under quarantine for observation of rabies symptoms after a bite incident shall be physically separated from all other animals and shall never be housed with animals under treatment for a communicable disease.

**(4)** Quarantine areas may have a separate ventilation system and may only be accessible to shelter personnel or owners accompanied by shelter personnel.

**(5)** Animals diagnosed and/or under treatment for a communicable disease may be isolated from healthy animals to minimize spread of disease. If isolation is impossible or inadequate to control the spread of pathogens, the shelter shall weigh consequences of exposure to general population and the alternatives of euthanasia or transfer to an appropriate separate facility.

#### **D. Other care considerations**

**(1)** Shelter animals shall always be handled safely and humanely to prevent injury, distress and spread of disease both to animals and personnel.

**(2)** Adequate animal handling equipment such as transfer cages, nets, catch poles, syringe poles shall be available, kept clean and in good repair to ensure the safety of personnel and animals.

**(3)** Shelter personnel may be trained in current humane and sanitary animal handling techniques.

**(4)** Long term confinement, including feral and aggressive animals, who cannot be provided with basic care, daily enrichment and exercise without inducing stress shall be euthanized or transferred to a separate facility.

**(5)** The minimal amount of physical restraint needed without injury to people or animals shall be used.

**(6)** The use of catch poles for routine restraint of cats, including carrying or lifting, is inhumane and poses significant risk of injury to the animal and shall not be used. Humane traps, boxes or nets designed for restraint shall be used for handling fractious cats or cats who appear to be unaccustomed to handling.

**(7)** When cats are moved from one location to another, it is recommended to cover the carrier with a towel or sheet to reduce stress and susceptibility to disease.

**(8)** Cats may be provided with clean bedding in each cage. Bedding shall be replaced when soiled or wet and when a new animal is introduced to the enclosure.

**(9)** Bedding or platforms may be provided to dogs on an as needed basis. Clean bedding may be provided to old, young, ill, or injured dogs. Bedding shall be replaced when soiled or wet and when a new animal is introduced to the enclosure. Only single layer bedding may be used for puppies and kittens to prevent accidental suffocation. Bedding may be withheld if it poses a danger to the animal.

**(10)** Nursing dams may be provided with a whelping box. If a shelter is unable to provide a whelping box, the shelter shall ensure nursing dams have adequate bedding, warmth and cleanliness. Bedding shall be provided in the whelping box and replaced when soiled or wet.

**(11)** Nursing mothers and their babies may be removed from other animals to allow for privacy, protect them from unwanted intrusion and noise, to alleviate fear/aggression, and to promote their general well-being.

**(12)** Animals may be cleaned and groomed on an as needed basis.

**(13)** Medical issues may be treated; matted coats can cause pain, skin or eye irritation, or trap fecal matter. Bathing may be necessary to prevent or treat parasites and/or insects.

**(14)** No animal shall be allowed to suffer while in the care of the shelter.

**(15)** Care shall be taken to ensure that animals are not squirted or hosed with water, not put in contact with chemicals and not placed back in a wet or damp enclosures.

[16.24.7.13 NMAC - N, 5/25/2021]

**16.24.7.14 DISEASE CONTROL, HEALTH AND VETERINARY CARE STANDARDS:**

**A.** No animal shall be allowed to suffer due to lack of veterinary care.

**B.** Shelters shall not fail to provide treatment for pain.

**C.** Shelters shall ensure compliance with all federal, state and local laws concerning reportable diseases.

**D.** Animals may be examined for injury and signs of disease at the time of impound under the guidance of a veterinarian, if possible, and treated immediately if animal is in pain or distress. If injured or sick animals cannot be provided veterinary care in a timely manner to stop their pain and suffering, the animal shall be humanely euthanized or immediately transferred to another facility where veterinary care can be timely provided.

**E.** Common signs of illness, injury or parasitic infestation in dogs and cats that warrant veterinary care:

- (1)** Eyes are watery, appear swollen or show discharge.
- (2)** Ears are red or inflamed, show discharge or have a foul odor.
- (3)** Nose shows mucous, blood or pus discharge, or is crusty, congested or blocked.
- (4)** Gums are swollen or inflamed, teeth are loose or brown, or mouth has a foul odor.
- (5)** Animal is sneezing, coughing or wheezing.
- (6)** Animal has fleas or ticks, skin shows swelling or lesions.
- (7)** Animal limps or does not place weight on a limb.
- (8)** Animal is thin or obese.
- (9)** Animal has wounds, abscesses, cuts, or abrasions.
- (10)** Body temperature is abnormal.

**(11)** Animal is vomiting or has diarrhea.

**F.** Shelter may have a trained and experienced staff member, a veterinary technician or a veterinarian available to check animals and to provide care. Symptoms of possible illness shall be noted, recorded and brought to a supervisor's attention immediately.

**G.** Animals may be observed daily for signs of disease or distress. An animal suspected of having an infectious disease may be physically separated from other susceptible animals until the animal is determined to be non-infectious.

**H.** A system may be in place to care for injured and sick animals brought to the shelter after normal working hours. Shelters may enter into a written contract with a local veterinarian to be available on call for treatment after hours.

**I.** Animals with obvious signs of serious disease, injury or distress that cannot be addressed shall be humanely euthanized or be immediately transferred to another facility where veterinary care can be timely provided shall be humanely euthanized.

**J.** For humane reasons, it may be necessary to euthanize an animal despite the holding time requirements not having been met. An animal shall not be allowed to suffer while in the shelter's care.

**K.** Dogs and cats may be dipped or sprayed, top spotted or given oral treatment for fleas, ticks or internal parasites, as necessary. Methods shall be used according to the season, region of state and according to manufacturer's instructions concerning treatment strengths depending on size, age or health of animal.

[16.24.7.14 NMAC - N, 5/25/2021; A, 11/1/2021]

#### **16.24.7.15 VACCINATIONS STANDARDS:**

**A.** All dogs and cats may be vaccinated upon initial impound. A veterinarian or trained staff member may administer the following core vaccines:

**(1)** Dogs:

**(a)** DA2PP or DHPP vaccine to provide protection against distemper, adenovirus-2, parvovirus, parainfluenza. Adult dogs may be vaccinated upon intake. Puppies may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 16-18 weeks of age.

**(b)** Bordetella bronchiseptica vaccine to protect against kennel cough for puppies and adult dogs.

**(2)** Cats: FVRCP vaccine to provide protection against feline herpesvirus, feline viral rhinotracheitis, feline calicivirus, and feline panleukopenia. Adult cats may be vaccinated once upon intake. Kittens may be vaccinated starting at 4-6 weeks of age and re-vaccinated every 2-4 weeks until 18 weeks of age. A modified live vaccine is recommended.

**B.** All animals shall be considered unvaccinated unless a documented medical record exists. Special consideration shall be given to animals with medical conditions, pregnant animals and animals less than 4 weeks old.

**C.** Core vaccines may be administered at the time of intake for optimum disease control.

**D.** Rabies vaccinations may be given at the time of adoption or by the adopter's veterinarian depending on local municipal or county ordinance.

**E.** Rabies vaccinations shall be administered pursuant to Section 77-1-3 NMSA 1978.

[16.24.7.15 NMAC - N, 5/25/2021]

#### **16.24.7.16 RECORD KEEPING STANDARDS:**

**A.** Records shall be kept for each animal impounded, for each animal accepted as an owner-surrender, for each animal brought to the shelter by a member of the public as a stray, and for each animal that is otherwise acquired.

**B.** Records shall include:

**(1)** Date of acquisition and manner of acquisition: animal control officer, public intake, owner surrender etc.

**(2)** Description and identifying characteristics including: species, breed, color, age, weight, gender, and any background information.

**(3)** Tag and/or microchip information.

**(4)** Reason for impoundment or relinquishment.

**(5)** Veterinary care.

**(6)** Disposition of the animal.

**(7)** Date of redemption of adoption, transfer of ownership or euthanasia.

**(8)** Name, address and telephone number of receiving person or entity.

**C.** Statistics may include monthly intake and outcomes by type for each species.

**D.** Collars, tags or other potential identification may be kept on the animal or in the animal's file during the impound time.

**E.** Each animal shall be identifiable by use of cage/run cards and/or identifying collars.

**F.** Photographs may be taken of each animal, maintained with the animal's records and posted on its cage to minimize the possibility of a mistaken euthanasia.

**G.** Shelters shall maintain records for a minimum of two years from the date of an animal's final disposition.

[16.24.7.16 NMAC - N, 5/25/2021]

#### **16.24.7.17 COMMUNITY ACCESS AND SERVICE STANDARDS:**

**A.** Shelters may be accessible to the public seeking to reclaim their animal or adopt an animal.

**(1)** Hours open to the public shall be clearly marked on the facility.

**(2)** The shelter's telephone number and address shall be listed in local telephone directories.

**(3)** The shelter may have internet presence with all pertinent information as well as listings of lost or found animals and animals available for adoption.

**(4)** Shelters may be open to the public at least one weekend day or two days until 6:00 p.m.

**B.** Shelters may have provisions for animals dropped off after hours. Care shall be taken so that animals are protected from injury, theft and the elements. Unattended drop boxes are not recommended. Provisions may be made for after hours entry, impoundment and treatment procedures for animal control officers to follow. Sick or injured animals shall be attended to by trained personnel immediately due to potential for unalleviated suffering of the animal as well as liability to the shelter.

**C.** When an animal has visible identification or a microchip upon impound, shelter personnel shall make every attempt to contact the owner. Each animal shall be scanned for a microchip and the number entered into the animal's record. If the owner surrenders a microchipped animal, the shelter shall determine if the surrendering owner matches the name on the microchip to ensure the animal is not stolen. In the case of stray animals, the shelter shall promptly attempt to contact the owner to whom the microchip is registered by telephone. In the event no contact can be made via

telephone, then the shelter may send a letter to the address listed on the microchip registration. Attempts to trace microchip information and contact attempts with the registered owner shall be documented.

**D.** In addition to being scanned at intake, animals shall be re-scanned prior to final disposition. If the final disposition is by euthanasia, scanning shall be done pursuant to board of veterinary medicine rule Subsection B of Section 16.24.3.8 NMAC, Duties of Licensee and Certificate Holders.

**E.** Shelters shall refer to local, municipal or county ordinance which address the minimum stray holding time. Stray animals without identification should be held long enough to give owner sufficient time to reclaim the animal. Stray animals with identification i.e. tag, tattoo, and/or microchip may be held long enough to allow the shelter sufficient time for notification and owner reclaim.

**F.** Animals in law enforcement protective custody shall be in locked areas with appropriate signage that meet standards and are inaccessible to the public. Depending on the case type, owner may be allowed to visit the animal or animals.

[16.24.7.17 NMAC - N, 5/25/2021]

#### **16.24.7.18 SHELTER PERSONNEL STANDARDS:**

**A.** The shelter shall maintain compliance with federal and state occupational safety regulations for chemical, biological and physical hazards in the workplace.

**B.** All shelter personnel may be trained in all aspects of their responsibilities. Training topics may be, at minimum:

- (1) Animal health and disease control.
- (2) Humane care and treatment of animals.
- (3) Control of animals in an animal shelter.
- (4) Transportation of animals.
- (5) Disease recognition.
- (6) Animal breed identification and behavior.
- (7) Pre-adoption evaluation and temperament testing.
- (8) Adoption policies and procedures.
- (9) Handling, capture and restraint techniques.

(10) Personnel safety and use of equipment.

(11) Euthanasia.

(12) Compassion fatigue and self-care.

**C.** A shelter shall create and maintain a comprehensive procedures manual (SOP). Shelter personnel may be provided with a comprehensive standard operating procedures (SOP) manual. The SOP may outline all shelter policies and procedures and the duties for each position.

**D.** Shelter personnel shall adhere to New Mexico's anti-cruelty law at all times. See Section 30-18-1 *et seq.* NMSA 1978.

**E.** Personal protective equipment and appropriate animal handling equipment shall be readily available to personnel.

**F.** Shelter personnel may wash their hands frequently to protect themselves and the animals. Hand sanitizers, first aid kits and eye wash stations may be made available to all employees, volunteers and visitors.

[16.24.7.18 NMAC - N, 5/25/2021]

#### **16.24.7.19 ADOPTION STANDARDS:**

**A.** Shelters may establish adoption fees. An adoption program may be developed and implemented. If the shelter waives specific adoption fees, the shelter guidelines shall not be waived.

**B.** Shelters may develop criteria for potential adopters and unsuitable adopters. Adopters may sign a contract under which they agree to provide a specified level of care.

**C.** Shelters may learn temperament testing procedures to ensure that animals are fit for adoption and to facilitate the best possible match between adopters and animals.

**D.** An adoption screening program may include discussion of a suitable match between an adopter and animal.

**E.** When adopting out a known sick animal or animal that is receiving medical treatment, full disclosure shall be made to the person or organization receiving the animal.

**F.** In the event shelters offer animals for adoption that have not been sterilized, the shelter shall comply with Subsection A through F of Section 77-1-20 NMSA 1978.

**G.** Policies may be developed to avoid adopting out or releasing unaltered animals.

**H.** Shelters may consider a program to microchip all adopted animals.

**I.** Reasonable care shall be taken to adopt out or transfer only those animals free of disease and untreatable injury.

**J.** Animals believed to be dangerous, potentially dangerous in accordance with Section 77-1A-1 NMSA 1978 or have caused a serious injury resulting in same species or human death shall not be re-homed.

**K.** Shelters, in their due diligence, shall make every effort to place animals with recognized rescue organizations and responsible sanctuaries. Shelters may thoroughly research rescue organizations and sanctuaries prior to placement to avoid possible hoarding situations.

[16.24.7.19 NMAC - N, 5/25/2021]

**16.24.7.20 SHELTER TRANSPORT STANDARD:**

**A.** Transport vehicles and equipment shall be cleaned and sanitized prior to transport.

**B.** Animals shall not to be transported unrestrained in open beds of trucks.

**C.** Temperature extremes, below 45 degrees and above 80 degrees, during transport shall be avoided.

**D.** Compliance with state and local laws shall be followed for source and destination shelters.

**E.** Health certificates shall accompany animals crossing state lines as required.

**F.** Unfamiliar animals shall not be transported together in same enclosure.

**G.** Animals may be vaccinated and treated for internal and external parasites prior to transport.

**H.** Transport space may be adequate to allow the animal to turn around and lie down.

**I.** Transports anticipated longer than eight hours in duration may accommodate safe animal exercise and relief.

[16.24.7.20 NMAC - N, 5/25/2021]

# **CHAPTER 25: VETERINARY MEDICINE PRACTITIONERS**

## **PART 1: GENERAL PROVISIONS**

### **16.25.1.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.25.1.1 NMAC - Rp, 16.25.1.1 NMAC, 01-17-2014]

### **16.25.1.2 SCOPE:**

These rules apply to all veterinarians, veterinary technicians, bovine artificial insemination technicians, bovine pregnancy diagnosis technicians, and veterinary facilities.

[16.25.1.2 NMAC - Rp, 16.25.1.2 NMAC, 01-17-2014]

### **16.25.1.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 61-14-5 (F), directs the board of veterinary medicine to adopt, regularly review and revise rules necessary to carry out the provisions of the Veterinary Practice Act after a hearing open to the public.

[16.25.1.3 NMAC - Rp, 16.25.1.3 NMAC, 01-17-2014]

### **16.25.1.4 DURATION:**

Permanent.

[16.25.1.4 NMAC - Rp, 16.25.1.4 NMAC, 01-17-2014]

### **16.25.1.5 EFFECTIVE DATE:**

01-17, 2014 unless a later date is cited at the end of a section.

[16.25.1.5 NMAC - Rp, 16.25.1.5 NMAC, 01-17-2014]

### **16.25.1.6 OBJECTIVE:**

To promote, preserve and protect the public health, safety and welfare by regulating the practice of veterinarians, veterinary technicians, bovine artificial insemination technicians, and bovine pregnancy diagnosis technicians; to establish the authority to take action against any licensee or permittee for failure to meet set minimum standards

for licensure or permit certification as promulgated by the board; and to inspect and regulate veterinary facilities to further protect the public.

[16.25.1.6 NMAC - Rp, 16.25.1.6 NMAC, 01-17-2014]

#### **16.25.1.7 DEFINITIONS:**

A. "Aseptic surgery" means procedures performed under conditions free of pathogenic micro-organisms.

B. "Board" means the New Mexico board of veterinary medicine.

C. "Bovine AI/PD examiner" means the individual the board has designated to prepare and administer the bovine AI and bovine PD examinations and who recommends to the board those individuals who qualify for bovine AI and bovine PD permits.

D. "Bovine artificial insemination (AI) technician" means an individual who has met the requirements for and has been granted by the New Mexico board of veterinary medicine a permit to perform artificial insemination on cattle.

E. "Bovine pregnancy diagnosis (PD) technician" means an individual who has met the requirements for and has been granted by the New Mexico board of veterinary medicine a permit to perform pregnancy diagnosis on cattle.

F. "Clean surgery" means the performance of a surgical operation for the treatment of a condition and under circumstances which, consistent with the standards of good veterinary medicine, do not warrant the use of aseptic surgical procedures.

G. "Disinfection" means the destruction of pathogenic microorganisms.

H. "Facility" means a building, kennel, mobile practice unit vehicle, animal shelter, pet shop, animal supply store, fixed facility, fixed mobile facility, mobile facility, and vaccination clinic where "the practice of veterinary medicine" including aseptic surgery regularly occurs as defined in NMSA 1978, Section 61-14-2.B (1), (2), and (3), to include regularly scheduled vaccination clinics or any other veterinary services.

(1) "Animal shelter" means a state, city, county, or private facility where a veterinary clinic operates.

(2) "Pet shop" means a store that sells animals and has an operating veterinary clinic.

(3) "Animal supply store" means a store that sells animal supplies and has an operating veterinary clinic.

(4) "Fixed facility" means a building where the practice of veterinary medicine regularly occurs.

(5) "Fixed mobile facility" means the primary place of operation is a fixed building from where mobile services are directed.

(6) "Mobile veterinary practice" means providing a wide range of medical or surgical services in a movable trailer, pickup truck, motor home, or other vehicle designed or modified to function as a veterinary practice facility.

(7) "Vaccination clinic" means vaccinations are administered outside of a house call setting and do not use a mobile vehicle.

I. "Graduate of a non-AVMA accredited school" or "foreign veterinary graduate" means a person who has graduated from a school of veterinary medicine which is not accredited by the American veterinary medical association (AVMA).

J. "Graduate veterinarian" means a person who has a degree of doctor of veterinary medicine or its equivalent.

K. "Infectious waste" means those solid wastes contaminated with organisms which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms or may pose a threat or potential hazard to human health. In terms of veterinary medicine, this includes but is not limited to the following: animal tissue, bedding and other wastes from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or other waste may act as a vehicle of transmission to humans.

L. "Practice of veterinary medicine" means the diagnosis and treatment of animal diseases by traditional methods which include but are not limited to prescribing drugs and medication, administering techniques and procedures including surgical procedures, and other methods which include but are not limited to chiropractic, physical therapy, acupuncture, acupressure, homeopathy, therapeutic massage, dentistry, and embryo transfer.

M. "Sharps" means any discarded article that may cause punctures or cuts. Such wastes may include but are not limited to needles, scalpel blades, glass slides, glassware, suture needles, and trocars.

N. "Small animal mobile facility" means a trailer or mobile unit established to function as a veterinary site which concentrates in providing veterinary services to common domestic household pets.

O. "Sterilization" means the complete destruction of microorganisms by heat, bactericidal chemical compound, radiation or desiccation.

[16.25.1.7 NMAC - Rp, 16.25.1.7 NMAC, 01-17-2014]

**16.25.1.8 MEETINGS:**

A. The chairman of the board shall preside at all meetings, preserve order, appoint committees and decide all questions of order subject to appeal to the board. In the absence of the chairman, the vice-chairman or a member of the board shall preside.

B. Examinations shall be administered at a location specified by the board.

[16.25.1.8 NMAC - Rp, 16.25.1.8 NMAC, 01-17-2014]

**16.25.1.9 BOARD MEETING TELEPHONIC ATTENDANCE:**

A. Pursuant to the provisions of the Open Meetings Act, NMSA 1978, Section 10-15-1(C), as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment. Telephonic participation may occur only when it is difficult or impossible for the board member to be physically present; that is, when there are circumstances which make attendance in person extremely burdensome.

B. Each board member participating telephonically must be identified when speaking and all participants must be able to hear all other participants.

C. Members of the public attending the meeting must be able to hear all members of the board and members of the public who speak during the meeting.

[16.25.1.9 NMAC - Rp, 16.25.1.9 NMAC, 01-17-2014]

**16.25.1.10 EXECUTIVE DIRECTOR:**

A. The executive director may be a "licensed veterinarian" or any other person deemed by the board qualified to perform the required duties and responsibilities.

B. The duties and responsibilities of the executive director are those detailed in the job description filed in the personnel files of the New Mexico board of veterinary medicine.

C. The position of executive director is an exempt position.

[16.25.1.10 NMAC - Rp, 16.25.1.10 NMAC, 01-17-2014]

**16.25.1.11 INVESTIGATORS AND INSPECTORS:**

A. The board hires licensed veterinarians to conduct its investigations of complaints filed with the board and to conduct inspections of veterinary facilities.

B. The duties and responsibilities of the investigator(s) and inspector(s) shall be those detailed in the contracts entered into with the board. The contracts will be maintained in the board office.

[16.25.1.11 NMAC - Rp, 16.25.1.11 NMAC, 01-17-2014]

**16.25.1.12 CLASSIFIED EMPLOYEE(S):**

The duties of the classified employee(s) of this board are those which are detailed in the job description(s) filed with the state personnel office.

[16.25.1.12 NMAC - Rp, 16.25.1.12 NMAC, 01-17-2014]

**16.25.1.13 ELECTIONS OF BOARD OFFICERS:**

The board of veterinary medicine elects a chairman, vice-chairman, and secretary. Elections are held annually. Officers may be re-elected. Any member of the board may serve as an officer.

[16.25.1.13 NMAC - Rp, 16.25.1.13 NMAC, 01-17-2014]

**PART 2: EXAMINATION AND LICENSURE - VETERINARIANS**

**16.25.2.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine

[16.25.2.1 NMAC - Rp, 16.25.2.1 NMAC, 01-17-2014]

**16.25.2.2 SCOPE:**

Applies to all veterinarians licensed to practice in the state of New Mexico and individuals applying for a license to practice veterinary medicine in the state of New Mexico.

[16.25.2.2 NMAC - Rp, 16.25.2.2 NMAC, 01-17-2014]

**16.25.2.3 STATUTORY AUTHORITY:**

Section 61-14-4; Section 61-14-5; Section 61-14-8; Section 61-14-9; Section 61-14-10; Section 61-14-12; Section 61-14-13; Section 61-14-14 and Section 61-14-15 NMSA 1978.

[16.25.2.3 NMAC - Rp, 16.25.2.3 NMAC, 01-17-2014]

**16.25.2.4 DURATION:**

Permanent.

[16.25.2.4 NMAC - Rp, 16.25.2.4 NMAC, 01-17-2014]

**16.25.2.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.2.5 NMAC - Rp, 16.25.2.5 NMAC, 01-17-2014]

**16.25.2.6 OBJECTIVE:**

To set out the requirements for obtaining a license to practice veterinary medicine in the state of New Mexico as defined in Subsection B of Section 61-14-2 NMSA 1978.

[16.25.2.6 NMAC - Rp, 16.25.2.6 NMAC, 01-17-2014]

**16.25.2.7 DEFINITIONS:**

[RESERVED]

[16.25.2.7 NMAC - Rp, 16.25.2.7 NMAC, 01-17-2014]

**16.25.2.8 GENERAL ELIGIBILITY FOR LICENSURE:**

A license to practice veterinary medicine in the state of New Mexico is granted only to an applicant who fulfills all of the requirements specified in this part. The mere filing of an application shall not entitle the applicant to a license to practice veterinary medicine. Each applicant shall have the burden of demonstrating, to the satisfaction of the board of veterinary medicine, that he:

- A. has reached the age of majority as recognized by the state of New Mexico;
- B. is a person of good moral character, physically and mentally fit to practice veterinary medicine;
- C. is in good standing in any other state(s) in which he is, or has been, licensed to practice veterinary medicine. If the applicant has had disciplinary proceedings instituted against him which have resulted in suspension or revocation of a license on any grounds other than nonpayment of a licensee fee, or he has voluntarily surrendered a license to practice veterinary medicine, the board will review the prior action(s) on a case by case basis prior to licensure;
- D. is professionally qualified for a license to practice veterinary medicine in the state of New Mexico by taking and passing the written examinations as defined in these rules, except as provided in Section 61-14-10 NMSA 1978;

E. is a graduate veterinarian as defined by Subsection B of Section 61-14-2 NMSA 1978;

F. has not had a United States drug enforcement administration (DEA) license, a state level controlled substances registration, or federal accreditation privileges through the United States department of agriculture (USDA) animal and plant health inspection service (APHIS) restricted or revoked, or surrendered such license or privilege while under investigation or in connection with any disciplinary action or pending disciplinary action. If applicant has had any of these actions taken against him, the board will review such actions on a case by case basis prior to licensure; and

G. understands with regard to any of the above provisions, the final authority to grant a license rests with the board. Determinations will be made on a case by case basis.

[16.25.2.8 NMAC - Rp, 16.25.2.8 NMAC, 01-17-2014]

#### **16.25.2.9 REQUIREMENT THAT A PRACTICING VETERINARIAN BE LICENSED:**

A. With only those exemptions specified in Section 61-14-14 NMSA 1978, a graduate veterinarian must be licensed by the board to lawfully practice veterinary medicine in New Mexico as defined in Subsection B of Section 61-14-2 NMSA 1978.

B. Only veterinarians licensed by the state of New Mexico may practice veterinary medicine in New Mexico; working under the supervision of a licensed veterinarian does not waive the requirement to hold a license.

C. The requirement for direct supervision of non-veterinarians who treat animals is described in 16.25.9.20 NMAC.

[16.25.2.9 NMAC - Rp, 16.25.2.9 NMAC, 01-17-2014]

#### **16.25.2.10 BASIC LICENSURE REQUIREMENTS:**

Except as noted, an applicant for a regular license to practice veterinary medicine in New Mexico must:

A. Submit a completed, signed, and notarized *application for licensure-DVM*. The application must:

(1) be submitted 30 days before the applicant's selected date to take the state examination;

(2) include the application/examination fee; and

(3) have attached a color passport-type head and shoulders photograph of the applicant.

B. Take and pass with a minimum score of seventy-five percent, the New Mexico veterinary licensing examination. Exceptions for endorsement applicants are set out in 16.25.2.10 NMAC.

C. Submit all of the following documents within 12 months after passing the state examination. An applicant who fails to provide required documents within 12 months must reapply for licensure.

(1) notarized copy of the applicant's diploma from a veterinary school accredited by the American veterinary medical association (AVMA). Exception for new graduates is set out in 16.25.2.12 NMAC;

(2) official veterinary school transcript bearing the seal of the institution;

(3) verifications of licensure from any and all state(s) in which the applicant is or has been licensed to practice veterinary medicine;

(4) one personal and one professional recommendation; and

(5) the applicant's scores on the national licensing examination for veterinarians.

(a) New Mexico's national examination score requirements are set out in 16.25. 2.16 NMAC.

(b) Exceptions for endorsement applicants are set out in Subsection B of 16.25.2.11 NMAC

(c) Applicants for a temporary permit shall comply with requirements of Subsection A of 16.25.2.10 NMAC only.

[16.25.2.10 NMAC - Rp, 16.25.2.10 NMAC, 01-17-2014]

#### **16.25.2.11 LICENSURE BY ENDORSEMENT:**

A veterinarian who has been licensed in another state and has performed at least five years of clinical veterinary practice with at least 6,000 hours immediately preceding application for a New Mexico license, may qualify for licensure by endorsement. A qualified endorsement applicant:

A. Does not need to provide his score from the national licensing examination.

B. May take the jurisprudence examination for the standard endorsement fee at a special time, arranged through the executive director, rather than at one of the board set regularly scheduled examination times.

C. Applicant must report criminal convictions and disciplinary actions taken in all jurisdictions.

[16.25.2.11 NMAC – Rp, 16.25.2.11 NMAC, 01-17-2014; A, 07/01/18]

#### **16.25.2.12 SENIOR STUDENTS AND NEW GRADUATES:**

If a senior student or new graduate's veterinary school has not yet provided the diploma by the applicant's examination date, a properly authenticated document such as a letter from the veterinary school dean evidencing graduation or impending graduation may temporarily substitute for the diploma. This provision is only for the purpose of taking the examination; the notarized diploma must be provided the soonest time it becomes available. The applicant cannot become licensed until all required documents, including the notarized copy of the diploma and the official transcript are received by the board.

[16.25.2.12 NMAC - Rp, 16.25.2.12 NMAC, 01-17-2014]

#### **16.25.2.13 GRADUATES OF NON-AVMA ACCREDITED VETERINARY SCHOOLS:**

A graduate of a veterinary school not accredited by the American veterinary medical association (AVMA) must furnish certification of completion of the educational commission for foreign veterinary graduates (ECFVG) program. This certification is in addition to all other licensing requirements as specified in 16.25.2.10 NMAC. Requirements for graduates of non-AVMA accredited schools are also set out in 16.25.5 NMAC.

[16.25.2.13 NMAC - Rp, 16.25.2.13 NMAC, 01-17-2014]

#### **16.25.2.14 60-DAY TEMPORARY PERMIT:**

A. Purpose. The temporary permit, good for a period of no more than 60-calendar days, is intended for experienced, licensed veterinarians who wish to practice in New Mexico for a brief period. The temporary permit is not granted to a new graduate or experienced veterinarian who has not yet taken the state licensing examination or met all other licensing requirements.

B. To qualify for a temporary permit, an applicant must:

(1) be currently licensed in and currently practice in another state, territory, or district of the United States;

(2) be in good standing in all jurisdictions in which he is or has been licensed;

(3) submit the completed, signed, and notarized *application for licensure-DVM* form along with a color passport-type, head and shoulders photograph and the temporary permit fee; and

(4) provide a verification of licensure from the state where the applicant currently practices veterinary medicine and holds licensure.

C. An applicant for a temporary permit does not need to take the state examination or provide national examination scores.

D. A temporary permit may not be renewed within a 12 month period from issuance without approval from the board.

[16.25.2.14 NMAC - Rp, 16.25.2.14 NMAC, 01-17-2014]

#### **16.25.2.15 STATE EXAMINATION:**

A. The board sets the state licensing examination for veterinarians on a regularly scheduled basis twice annually at a reduced fee. Applicants who wish to obtain their licenses sooner than the board set examination dates can take the examination at the higher fee of \$500. The examination is administered at the board office; arrangements for this type of examination are made with the executive director.

B. The state examination may be taken by senior year veterinary school students as well as graduate veterinarians.

C. The state examination is graded by individuals selected by the board of veterinary medicine. The minimum passing grade for the state examination is seventy-five percent.

D. Applicants will be notified by mail within two weeks after the examination of the results. Grades will be provided to applicants upon request.

E. An applicant who fails the examination can review the examination and his answer sheet at the board office 20 days from receipt of notification of examination results. Prior arrangement will be made with the executive director to designate a time for the review. Only the applicant and a member of the board or executive director may be present. Copying or removing examination questions or answers will result in license denial.

F. An applicant who has failed the state examination must retake it within 30 days. Applicant must pay an additional examination fee of \$500 to retake the examination.

G. Limitations. Once the application/examination fee has been submitted to the board it cannot be refunded. The state examination must be taken within one year from date of application submittal.

(1) If an applicant has applied to take the examination on a board set date and is unable to do so, the examination may be rescheduled on one of the subsequent board set dates within one year without reapplication or the payment of an additional fee.

(2) If an applicant has applied to take the examination on a specific date and is unable to do so, the examination may be rescheduled within one year without reapplication or payment of an additional fee.

[16.25.2.15 NMAC - Rp, 16.25.2.16 NMAC, 01-17-2014]

#### **16.25.2.16 NATIONAL EXAMINATION SCORES:**

The board accepts, as sufficient to meet state requirements, the minimum passing grade for the national examination for veterinarians. This applies whether the applicant has taken the national board examination (NBE) or the North American veterinary licensing examination (NAVLE). In accordance with the national board of veterinary medical examiners (NBVME), candidates shall not be approved to take the North American veterinary licensing examination (NAVLE) more than five times and shall not be allowed to sit for the examination at a date that is later than five years after the initial attempt. Each of the final two attempts must be at least one year from the previous attempt.

[16.25.2.16 NMAC - Rp, 16.25.2.17 NMAC, 01-17-2014; A, 05-08-2016]

#### **16.25.2.17 LICENSE RENEWAL:**

A. A veterinarian's license expires and is due for renewal each year on the last day of his birth month.

B. A license is lapsed if the license renewal is not postal postmarked on or before the expiration date. Practicing veterinary medicine with a lapsed license is the same as practicing without a license. Anyone practicing veterinary medicine in New Mexico on a lapsed license is subject to penalties and disciplinary action as provided in Section 61-14-18 NMSA 1978.

C. Licensee shall display at the business location in full view of the public, his original license certificate signed by the board and the current year renewal license. If licensee is providing veterinary services in a relief capacity, current year license renewal must be easily accessible.

[16.25.2.17 NMAC - Rp, 16.25.2.18 NMAC, 01-17-2014]

#### **16.25.2.18 LICENSE REINSTATEMENT:**

The board has no additional policies beyond what is stated in Section 61-14-12 NMSA 1978.

[16.25.2.18 NMAC - Rp, 16.25.2.19 NMAC, 01-17-2014]

#### **16.25.2.19 EXAMINATION AND LICENSURE FEES:**

The list of all fees relating to examination, licensure and permit fees is as follows and is posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

##### A. State jurisprudence examination.

- (1) bi-annual board set dates, January and May - \$300;
- (2) applicant selected date - \$500; and
- (3) licensure by endorsement - \$500.

##### B. License and permit fees.

- (1) initial license fee is prorated from date of license issue to last day of licensee's birth month;
- (2) annual DVM license renewal - \$200;
- (3) 60-day temporary permit - \$250;
- (4) inactive status - \$100. Annual continuing education requirement must be fulfilled and reported; and
- (5) license reactivation - \$150 along with completed application for reactivation and verification of required annual 15 continuing education hours while license in inactive status.

##### C. Late renewal penalties.

- (1) postal postmarked no later than 30 days past expiration date - \$100; or
- (2) postal postmarked more than 30 days after expiration date - \$100 plus \$10 per day not to exceed \$3000.

D. The board may waive payment of a renewal fee and annual continuing education requirement of a licensee while on active duty with the armed services of the United States. Renewal fee and continuing education requirement will be waived for the duration of licensee's overseas deployment or a declared national emergency.

Requests for waivers will be addressed to the executive director of the board of veterinary medicine.

[16.25.2.19 NMAC - Rp, 16.25.2.20 NMAC, 01-17-2014; A, 05-08-2016]

**16.25.2.20 ADDRESS CHANGE NOTIFICATION:**

Throughout his period of licensure, every licensee must notify the board in writing within 30 days of a change of address. *Notice of change of address-DVM, RVT* form is available at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

[16.25.2.20 NMAC - Rp, 16.25.2.21 NMAC, 01-17-2014]

**PART 3: PROFESSIONAL CONDUCT**

**16.25.3.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine

[16.25.3.1 NMAC - Rp, 16.25.3.1 NMAC, 01-17-2014]

**16.25.3.2 SCOPE:**

Applies to all persons licensed to practice veterinary medicine in the state of New Mexico.

[16.25.3.2 NMAC - Rp, 16.25.3.2 NMAC, 01-17-2014]

**16.25.3.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 61-14-13 and Section 61-14-19.

[16.25.3.3 NMAC - Rp, 16.25.3.3 NMAC, 01-17-2014]

**16.25.3.4 DURATION:**

Permanent.

[16.25.3.4 NMAC - Rp, 16.25.3.4 NMAC, 01-17-2014]

**16.25.3.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.3.5 NMAC - Rp, 16.25.3.5 NMAC, 01-17-2014]

#### **16.25.3.6 OBJECTIVE:**

To govern the professional conduct of any person licensed or permitted by the board to engage in the veterinary profession in the state of New Mexico. Violations of any of these rules are grounds for action against a licensee.

[16.25.3.6 NMAC - Rp, 16.25.3.6 NMAC, 01-17-2014]

#### **16.25.3.7 DEFINITIONS:**

**[RESERVED]**

[16.25.3.7 NMAC - Rp, 16.25.3.7 NMAC, 01-17-2014]

#### **16.25.3.8 CONDUCT:**

All professionals licensed by the board of veterinary medicine are subject to the Veterinary Practice Act and rules promulgated by the board.

A. Violations of the Veterinary Practice Act or rules promulgated by the board are subject to the complaint process as governed by the Uniform Licensing Act. Failure to comply with a board request for records or information pertinent to a complaint investigation will be considered a violation of this rule.

B. Complaints are reviewed by the board on a case by case basis to determine if disciplinary action is necessary. Unprofessional conduct by a licensee in a complaint determined by the board includes but is not limited to noncompliance with terms of a settlement agreement entered into with the board by a licensee to resolve a complaint.

C. A licensee shall not represent conflicting interests except by express consent of all concerned subsequent to a full disclosure of the facts.

D. It is the right of any licensee, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful services.

E. A licensee shall expose, without fear or favor, before the proper tribunal or the New Mexico board of veterinary medicine, corrupt or dishonest conduct in the profession.

F. A veterinarian must decide what professional employment will be accepted and what course of treatment will be followed once employed. The responsibility for advising questionable or unusual treatment rests upon the veterinarian. If a licensee is asked to perform a treatment that is questionable or unusual, the licensee must use his own professional judgment about whether he will perform this treatment.

G. No licensee shall render any service or advice contrary to the law. A veterinarian must also observe and advise clients to observe applicable laws and regulations.

H. A licensee shall not render any service or advice directed toward the corruption of any person or persons exercising a public office or private trust; or the deception or betrayal of the public.

I. In the formation of partnerships, professional associations or any other association for the practice of veterinary medicine, no person shall be held out as a practitioner of veterinary medicine or as a veterinary technician unless licensed to practice in this state. In selection and use of a firm name, no false or misleading name shall be used.

J. The professional services of a veterinarian shall not be controlled or exploited by any lay, personal or corporate agency which intervenes between the client and the veterinarian. A veterinarian's responsibilities and qualifications are individual. A veterinarian's responsibilities for medical judgments shall be directly to the client or authorized agent.

K. Each veterinarian shall display at the business location, in full view of the public, his original license certificate signed by the board along with the current year renewal license. If licensee is providing veterinary services in a relief capacity, the current year renewal license must be easily accessible.

L. Veterinarians shall exercise the same degree of care, skill and diligence in treating patients as are ordinarily used in the same or similar circumstances by reasonably prudent members of the veterinary medical profession in good standing in the state of New Mexico.

M. A licensed veterinarian shall not use or display any unearned certificate, college degree, or title.

N. A licensed veterinarian shall not promote, aid, or abet any illegal or unethical act on the part of any veterinarian or in the practice of veterinary medicine by an unlicensed person except as permitted by the Veterinary Practice Act.

O. A licensed veterinarian in this state shall not issue a certificate of health for an animal unless aware by way of actual inspection and appropriate tests, that said animal meets the requirements for the issuance of such certificate.

P. A licensed veterinarian shall not guarantee a cure. A licensed veterinarian must avoid bold and confident assurances to clients especially where employment may depend upon such assurances.

Q. A licensed veterinarian shall treat all animals entrusted by clients in keeping with the professional standard of humane treatment and care.

R. A licensed veterinarian shall conduct the practice of veterinary medicine on the highest plane of honesty, integrity and fair dealing with clients in time and services rendered, and in the amount charged for service, facilities, appliances and drugs.

S. A licensed veterinarian shall not violate the confidential relationship with his client.

T. The reporting of cruelty or illegal action is not a violation of confidentiality.

U. A licensed veterinarian or veterinary technician shall not use or participate in the use of any form of representation, advertising or solicitation which contains false, deceptive or misleading statement(s) or claim(s). False, deceptive or misleading statements or claims are those which:

(1) advertise or represent that a service or product is free, or similar language, coupled with any required service or product for which a fee is charged;

(2) contains a prediction of future success or guarantee that satisfaction or cure will result from the performance of a professional service;

(3) refer to secret methods of treatment or special services;

(4) concern illegal transactions;

(5) imply that a licensed veterinarian is a specialist unless the veterinarian is a diplomate of an AVMA board certified specialty.

(6) imply that a licensed veterinarian is certified unless he is certified in a nationally recognized specialty whose certification process has been evaluated and approved by the board. The following complementary, alternative or integrative therapies may be considered, but are not limited to:

(a) acupuncture;

(b) acutherapy;

(c) acupressure;

(d) homeopathy;

(e) manual or manipulative therapy i.e, therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy;

(f) massage;

(g) naturopathy;

- (h) physical rehabilitation;
  - (i) nutraceutical therapy;
  - (j) phytotherapy.
- (7) are intended or are likely to create an inflated or unjustified expectation;
  - (8) contains an expressed or implied material misrepresentation of the fact;
  - (9) fail to state any material fact necessary to make the statement or claim not misleading in the circumstances under which it is made;
  - (10) would result in the violation of any law or regulation or a contractual or other obligation of any person with whom the licensed veterinarian seeks to communicate;
  - (11) contain a representation or implication that is likely to cause an ordinary prudent layperson to misunderstand or be deceived, or fail to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;
  - (12) relate to professional fees other than:
    - (a) the fixed fee charged for a specific professional service provided that the description of such service would not be deceptive and that the statement indicates whether additional fees may be required in individual cases; or
    - (b) the range of fees for specifically described professional services provided there is reasonable disclosure of all relevant and variable considerations affecting the fees, so that the statement would not be misunderstood or be deceptive including without limitation, an indication whether additional fees may be incurred for related professional services which may be required in individual cases.

V. A licensed veterinarian or veterinary technician shall not use or display any college degree, certificate or title granted by any institution not approved by the New Mexico board of veterinary medicine.

W. A licensed veterinarian shall not use present or past position(s) or office(s) of trust deliberately to create any individual professional advantage, or to coerce or deceive the public.

X. All licensed professionals are subject to the Veterinary Practice Act and rules promulgated by the board.

Y. Violations of the Veterinary Practice Act or rules promulgated by the board are subject to the complaint process as governed by the Uniform Licensing Act.

Z. The licensee is required to abide by all statutes and rules of any board, commission, and agency including county or city ordinances governing any aspect of the practice of veterinary medicine.

AA. Dishonesty in the practice of veterinary medicine is prohibited.

BB. Habitual or excessive use of intoxicants or drugs is prohibited.

CC. The use of any controlled or legend drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event is prohibited.

DD. Failure to maintain required radiological records 20.3.1.108 NMAC or controlled substance logs and medical records is prohibited.

EE. Failure to report as required by law or making a false report of any contagious or infectious disease is prohibited.

FF. Unfair or deceptive practices in the conduct of the profession are prohibited.

GG. Violation of the Veterinary Practice Act or of any rule adopted by the board is prohibited. See Uniform Licensing Act.

HH. Failure of a licensed veterinarian or facility to refer a client, upon the client's request, to another licensed veterinarian is prohibited.

[16.25.3.8 NMAC - Rp, 16.25.3.8 NMAC, 01-17-2014; A, 05-08-2016]

## **PART 4: CONTINUED EDUCATION REQUIREMENTS - VETERINARIANS**

### **16.25.4.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine

[16.25.4.1 NMAC - Rp, 16.25.4.1 NMAC, 01-17-2014]

### **16.25.4.2 SCOPE:**

Applies to all veterinarians licensed to practice in the [State] state of New Mexico.

[16.25.4.2 NMAC - Rp, 16.25.4.2 NMAC, 01-17-2014]

### **16.25.4.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 61-14-5(F) and (I) and 61-14-12.

[16.25.4.3 NMAC - Rp, 16.25.4.3 NMAC, 01-17-2014]

**16.25.4.4 DURATION:**

Permanent.

[16.25.4.4 NMAC - Rp, 16.25.4.4 NMAC, 01-17-2014]

**16.25.4.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.4.5 NMAC - Rp, 16.25.4.5 NMAC, 01-17-2014]

**16.25.4.6 OBJECTIVE:**

To establish requirements for continuing education (CE) necessary for veterinary license annual renewal.

[16.25.4.6 NMAC - Rp, 16.25.4.6 NMAC, 01-17-2014]

**16.25.4.7 DEFINITIONS:**

**[RESERVED]**

[16.25.4.7 NMAC - Rp, 16.25.4.7 NMAC, 01-17-2014]

**16.25.4.8 GENERAL REQUIREMENTS:**

A. Each veterinarian licensed to practice in New Mexico must obtain, each year of licensure, a total of 15 instructional hours derived from seminars, short courses, or scientific programs approved by the registry of approved CE (RACE), AVMA, or by the board; or sponsored by a veterinary medical association, organization, or university.

(1) In general, CE must be in the form of contact hours. Credit for non-contact forms of instruction, including online training or articles in printed professional periodicals, is accepted. Non-contact hours may comprise no more than half of the annual requirement of 15 CE hours.

(2) Instruction in aspects of facility management, records management or the complaint process may count for credit. These hours may comprise no more than five CE credit hours per year.

(3) Instruction in alternative, non-western medicine must be specifically applicable to veterinary medicine and approved by RACE, AVMA, or sponsored by a veterinary organization or university, or by the board. CE credit cannot exceed 75% or 11.25 of the 15.00 instructional hours required annually.

B. There are no exceptions for age, retirees or other non-practicing veterinarians who want to maintain their New Mexico license. Pursuant to NMSA 1978, Section 61-14-12(E) the board may provide a waiver of the CE requirement to a licensed veterinarian during any period when he is on active duty with any branch of the armed services of the United States or for the duration of a national emergency.

C. CE hours are accumulated on an annual basis for the 12 months preceding individual veterinarian's license expiration date.

D. A new licensee must comply with the continuing education requirement beginning the next full licensing year after the licensee receives his initial New Mexico license.

E. A maximum of 15 credit hours may be accrued as excess and carried forward to the next licensing year.

F. The month before a veterinarian's annual license renewal is due, a license renewal form will be provided on which the veterinarian must record the CE taken during the previous licensing year.

G. The burden of proving the validity of the reported CE hours lies solely with the licensed veterinarian reporting. The board may conduct audits on CE reporting; photocopies of seminar registrations or completion certificates shall be submitted by the licensee upon request.

H. Beginning with the effective date of this part, each licensee should retain proof of his CE completion for a minimum of four years.

[16.25.4.8 NMAC - Rp, 16.25.4.8 NMAC, 01-17-2014]

#### **16.25.4.9 CONTINUING EDUCATION REQUESTS:**

A licensee in doubt about whether a particular course, class, or seminar will be approved for credit may submit to the board, in writing, a course description with course outline and the number of contact hours. The *approval request* form is available at the board's web site or by calling the board office. The board will make a determination at its next meeting.

[16.25.4.9 NMAC - Rp, 16.25.4.9 NMAC, 01-17-2014]

#### **16.25.4.10 CONTINUING EDUCATION EXTENSIONS:**

A. The board may grant an extension of time to complete the annual CE requirement for a given licensing year upon licensee's written request.

(1) A licensee who is granted a CE extension must obtain the CE hours lacking within six months following the licensee's birth month to avoid being placed on suspended status. During the suspension period, the licensee may not lawfully practice veterinary medicine in New Mexico.

(2) A licensee may be granted only two consecutive CE extensions i.e. for two separate licensing years and a maximum of four extensions during his entire career practicing veterinary medicine in New Mexico.

B. The board does not automatically grant requests for CE extensions.

(1) The licensee's request must be in the form of a letter stating the reason the required CE cannot be completed for the year.

(2) A licensee's first request for a CE extension may be approved administratively by the executive director, assuming the licensee is in good standing with the board.

(3) All CE extension requests are presented at the next board meeting for the board's determination. CE extension requests approved by the executive director, as described in (2) above, are presented for board confirmation at the next board meeting.

(4) Should a licensee fail to meet the CE requirement when applying for license renewal and does not request an extension, his name shall be presented at the next board meeting for the board's determination of possible disciplinary action.

C. In cases of extreme hardship involving physical health or family crisis concerns, special consideration for CE may be granted by the board on the merits of the individual case.

[16.25.4.10 NMAC - Rp, 16.25.4.10 NMAC, 01-17-2014]

## **PART 5: GRADUATES OF NON-AVMA ACCREDITED VETERINARY SCHOOLS AND GRADUATES OF FOREIGN VETERINARY SCHOOLS**

### **16.25.5.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.25.5.1 NMAC - Rp, 16.25.5.1 NMAC, 01-17-2014]

### **16.25.5.2 SCOPE:**

All veterinarians licensed to practice in the state of New Mexico and all graduates of non-AVMA accredited schools who are applying for a license to practice veterinary medicine in the state of New Mexico.

[16.25.5.2 NMAC - Rp, 16.25.5.2 NMAC, 01-17-2014]

**16.25.5.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 61-14-5.

[16.25.5.3 NMAC - Rp, 16.25.5.3 NMAC, 01-17-2014]

**16.25.5.4 DURATION:**

Permanent.

[16.25.5.4 NMAC - Rp, 16.25.5.4 NMAC, 01-17-2014]

**16.25.5.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.5.5 NMAC - Rp, 16.25.5.5 NMAC, 01-17-2014]

**16.25.5.6 OBJECTIVE:**

To outline requirements in addition to 16.25.2 NMAC for the graduate of a veterinary school not accredited by the American veterinary medical association (AVMA).

[16.25.5.6 NMAC - Rp, 16.25.5.6 NMAC, 01-17-2014]

**16.25.5.7 DEFINITIONS:**

**[RESERVED]**

[16.25.5.7 NMAC - Rp, 16.25.5.7 NMAC, 01-17-2014]

**16.25.5.8 REQUIREMENTS FOR LICENSURE:**

A. To obtain a license to practice veterinary medicine in the state of New Mexico, a graduate of a non-AVMA accredited veterinary school must complete certification by the educational commission for foreign veterinary graduates (ECFVG) program administered by the American veterinary medical association prior to examination by the New Mexico board of veterinary medicine.

B. A foreign veterinary graduate must meet all other requirements for licensure in New Mexico, as specified in 16.25.2 NMAC.

[16.25.5.8 NMAC - Rp, 16.25.5.8 NMAC, 01-17-2014]

## **PART 6: VETERINARY TECHNICIANS**

### **16.25.6.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.25.6.1 NMAC - Rp, 16.25.6.1 NMAC, 01-17-2014]

### **16.25.6.2 SCOPE:**

These rules apply to all registered veterinary technicians licensed in the state of New Mexico.

[16.25.6.2 NMAC - Rp, 16.25.6.2 NMAC, 01-17-2014]

### **16.25.6.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 61-14-5, Section 61-14-6, Section 61-14-7, Section 61-14-12, and Section 61-14-16.

[16.25.6.3 NMAC - Rp, 16.25.6.3 NMAC, 01-17-2014]

### **16.25.6.4 DURATION:**

Permanent.

[16.25.6.4 NMAC - Rp, 16.25.6.4 NMAC, 01-17-2014]

### **16.25.6.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.6.5 NMAC - Rp, 16.25.6.5 NMAC, 01-17-2014]

### **16.25.6.6 OBJECTIVE:**

To establish requirements for registered veterinary technicians.

[16.25.6.6 NMAC - Rp, 16.25.6.6 NMAC, 01-17-2014]

### **16.25.6.7 DEFINITIONS:**

**[RESERVED]**

[16.25.6.7 NMAC - Rp, 16.25.6.7 NMAC, 01-17-2014]

**16.25.6.8 RULES GOVERNING REGISTERED VETERINARY TECHNICIANS:**

A. To perform the duties of a registered veterinary technician in New Mexico and receive a license issued by the board of veterinary medicine, an applicant must meet all the requirements set forth in these rules. The following documents are required:

- (1) a completed, signed and notarized *application for licensure-RVT* form;
- (2) the examination fee; and
- (3) a color passport-type head and shoulders photograph of the applicant.

B. Prior to the applicant taking the required examinations, the application will be reviewed to determine if the applicant has satisfactorily met the board's requirements.

(1) The applicant's file must be complete before a license will be issued. If the required documents and information are not provided within one year of board examination, the applicant must reapply for licensure. In addition to (1), (2) and (3) above, the following documents are required:

- (a) notarized copy of diploma;
- (b) final transcripts from an accredited veterinary technician program; and
- (c) verifications of licensure from another state(s) or country(ies) in which applicant is or has been licensed;

- (2) pass all examinations required by the board;
- (3) meet one of the following requirements:

(a) the applicant is a graduate veterinary technician or a senior student of a two year or longer program accredited by the American veterinary medical association;  
or

(b) the applicant has a current valid permit or license from another state(s) or country(ies) with similar requirements to New Mexico, as approved by the board.

[16.25.6.8 NMAC - Rp, 16.25.6.8 NMAC, 01-17-2014]

**16.25.6.9 EXAMINATIONS:**

A. Examinations shall be held as specified by the board of veterinary medicine.

(1) Applicants must pass the American association of state veterinary boards (AAVSB) veterinary technician national examination (VTNE) administered by the professional examination service (PES) with the passing grade established by PES.

(2) Prior to taking the VTNE, applicant must apply for sponsorship by the board. The list of all fees relating to examinations is set out at Subsection C of 16.25.6.9 NMAC and is posted at the board's web site at [www.nmbvm.org](http://www.nmbvm.org). In addition, the applicant must take and pass with a minimum score of 75%, the New Mexico veterinary technician licensing examination.

B. No application shall be acted upon until the examination fee is received by the executive director of the board of veterinary medicine. If the board deems an applicant ineligible for examination, fees will not be refunded.

C. The list of fees relating to examinations is as follows and is posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

(1) state jurisprudence examination:

(a) board set dates, January and May - \$75; or

(b) date selected by applicant - \$100;

(2) VTNE: board sponsorship - \$50.

D. Limitations:

(1) Once the fees have been submitted to the board, the fees cannot be refunded.

(2) An applicant has a one year time limit within which to take the state examination.

E. Any applicant requesting an examination or re-examination by the board, other than board-set examinations, shall submit the application for review by the board. If the board determines that there is sufficient justification for administering a special examination, the expense of such special examination shall be borne by the applicant requesting the examination.

F. An applicant failing the examination may retake the entire examination at a scheduled time and will be charged the full examination fee.

G. The executive director will notify candidates of the examination results within 30 days of the date of the examination.

[16.25.6.9 NMAC - Rp, 16.25.6.9 NMAC, 01-17-2014]

#### **16.25.6.10 RENEWAL OF LICENSE:**

A list of all fees relating to renewal of a registered veterinary technician license is listed at Subsection D of 16.25.6.10 NMAC and at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

A. A veterinary technician's license expires and is due for renewal each year on the last day of December. If a registered veterinary technician's license lapses and is not renewed within five years, they must reapply, retake and pass the examination before they can obtain licensure, NMSA 1978, Section 61-14-12.

B. A registered veterinary technician license is lapsed if the license renewal is not postal postmarked on or before the December 31 expiration date.

C. Registered veterinary technicians shall display at the business location, in full view of the public, the current year license renewal certificate.

D. License fees:

(1) initial license fee is prorated from date of license issue to last day of December;

(2) annual renewal fee - \$75;

(3) inactive status - \$37.50. Annual continuing education requirement must be fulfilled and reported;

(4) license reactivation - \$50 along with completed application for reactivation and verification of required annual 8.00 continuing education hours while license in inactive status; and

(5) late renewal penalties:

(a) postal postmarked no later than 30 days after December 31 expiration date - \$25; or

(b) postal postmarked more than 30 days after December 31 expiration date - \$25 plus \$5 per day not to exceed \$300.

E. Continuing education.

(1) Each registered veterinary technician licensed to practice in New Mexico must certify that he has completed at least eight hours of approved continuing education during the preceding year. The hours will be derived from seminars, short courses, or scientific programs approved by RACE, AVMA, NAVTA, or sponsored by a veterinary

medical association, veterinary organization, university, or by the board. There will be no exemptions for age or retirement.

(2) A waiver of delinquent hours may be granted by the board if a request is made in writing. The hours must be made up in the next calendar year and is in addition to the current year annual CE requirement.

(3) Continuing education hours will be accumulated on an annual basis from January through December.

(4) A maximum of eight credit hours may be accrued as excess and carried forward to the subsequent licensing year.

(5) A form to be completed by the registered veterinary technician at the time of annual renewal will be provided by the board of veterinary medicine.

(6) The burden of proving the validity of the reported hours lies solely with the registered veterinary technician.

(7) A new licensee must comply with the continuing education requirement beginning the next full licensure year after graduation.

(8) In general, CE must be in the form of contact hours. Credit for non-contact forms of instruction including online training or articles in printed periodicals is accepted, if the instruction:

(a) is designed for veterinary technicians; and

(b) non-contact hours do not comprise more than half of the annual requirement of eight CE hours.

[16.25.6.10 NMAC - Rp, 16.25.6.10 NMAC, 01-17-2014; A, 05-08-2016]

#### **16.25.6.11 ADDRESS CHANGE NOTIFICATION:**

Throughout his period of licensure, every board licensee must notify the board in writing within 30 days of any change of address. A *change of address* form is available at the board's web site. All correspondence will be addressed to the executive director of the New Mexico board of veterinary medicine.

[16.25.6.11 NMAC - N, 01-17-2014]

#### **16.25.6.12 SUPERVISION OF REGISTERED VETERINARY TECHNICIANS:**

A. A registered veterinary technician's professional activities must be under the supervision and direction of a licensed or license-exempt veterinarian.

(1) Direct supervision: Treatment of animals at the direction, order or prescription of a licensed veterinarian who is available on the premises and has established a valid veterinarian-client-patient relationship. NMSA 1978, Section 61-14-2(l).

(2) Indirect supervision: Treatment of animals when a licensed veterinarian is not physically present at the location but has given written or oral instructions for treatment of the animal; the animal has been examined by veterinarian at such times as good veterinary medical practice requires consistent with the particular delegated veterinary care task; and the animal is not anesthetized.

(3) The following life-saving aid and procedures a registered veterinary technician may perform under prior approval of the licensed veterinarian in the absence of direct supervision includes:

- (a) application of tourniquet or pressure bandages to control hemorrhages;
- (b) administration of pharmacological agents to prevent or control shock, including parenteral fluids, and shall only be continued after direct communication with a licensed or license exempt veterinarian.
- (c) resuscitative oxygen procedures;
- (d) establishing open airways including intubations but excluding surgery;
- (e) external cardiac resuscitation;
- (f) application of temporary splints or bandages to prevent further injury to bones or soft tissues;
- (g) application of wound dressings and external supportive treatment in severe burn cases; and
- (h) external supportive treatment in heat prostration or hypothermal cases.

[16.25.6.12 NMAC - Rp, 16.25.6.11 NMAC, 01-17-2014]

## **PART 7: FACILITY LICENSES**

### **16.25.7.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.25.7.1 NMAC - Rp, 16.25.7.1 NMAC, 01-17-2014]

### **16.25.7.2 SCOPE:**

Applies to all veterinary facilities in the state of New Mexico where, or out of which, veterinary medicine, dentistry, and surgery are practiced.

[16.25.7.2 NMAC - Rp, 16.25.7.2 NMAC, 01-17-2014]

**16.25.7.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 61-14-5(F) and (J).

[16.25.7.3 NMAC - Rp, 16 25.7.3 NMAC, 01-17-2014]

**16.25.7.4 DURATION:**

Permanent.

[16.25.7.4 NMAC - Rp, 16.25.7.4 NMAC, 01-17-2014]

**16.25.7.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.7.5 NMAC - Rp, 16.25.7.5 NMAC, 01-17-2014]

**16.25.7.6 OBJECTIVE:**

To establish requirements for the licensing of veterinary facilities.

[16.25.7.6 NMAC - Rp, 16.25.7.6 NMAC, 01-17-2014]

**16.25.7.7 DEFINITIONS:**

**[RESERVED]**

[16.25.7.7 NMAC - Rp, 16.25.7.7 NMAC, 01-17-2014]

**16.25.7.8 FACILITY LICENSE REQUIREMENTS:**

A. General Requirements.

Every facility in New Mexico where the practice of veterinary medicine as defined in NMSA 1978, Section 61-14-2, regularly occurs must possess a facility license issued by the board of veterinary medicine.

(1) Failure to comply with this section may result in disciplinary action by the board.

(2) All facility licenses expire, and renewals are due, September 30 of each year.

(3) A facility license cannot be issued without a physical facility.

(4) Licensee manager must maintain New Mexico board of veterinary medicine minimum standards.

(5) A consulting veterinarian who provides consulting services only, (with no hands on practice whatsoever) does not need a facility license.

(6) A licensed veterinarian practicing in New Mexico under a 60-day temporary permit issued by the board does not need a facility license.

(7) A veterinarian working under the jurisdiction of another DVM or licensee manager is not required to hold a facility license.

B. One facility license independent of type of facility must be maintained for medical records and drug storage.

C. Licensee manager or responsible DVM. Each application for a facility license shall name the facility, facility owner, and licensee manager or responsible DVM and shall include the licensee manager's original signature.

(1) A facility owned by anyone other than a veterinarian currently licensed to practice in New Mexico must have a New Mexico licensed veterinarian as the licensee manager or responsible DVM who will take full responsibility for maintaining minimum standards as stated in board promulgated rules. The responsibility shall include record keeping, controlled substances, and quality of care at the facility.

(2) The licensee manager or responsible DVM is the official holder of the facility's license.

(3) A facility's licensee manager or responsible DVM must be:

(a) the individual who oversees veterinary services at a facility currently in operation; and

(b) present at the facility often enough to have knowledge of and control over the facility's methods for complying with minimum standards and the degree to which the minimum standards are being met.

D. When it is determined that the owner, licensee manager or responsible DVM, or facility has violated any provisions of the Veterinary Practice Act or is in violation of the rules promulgated by the board, the board may take disciplinary action as provided by the Veterinary Practice Act.

[16.25.7.8 NMAC - Rp, 16.25.7.8 NMAC, 01-17-2014]

#### **16.25.7.9 LICENSE FEES:**

A current list of fees relating to licensure of facilities is also posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

A. Fees shall include but may not be limited to the following:

(1) initial facility license - \$125;

(2) annual license renewal - \$125; and

(3) late renewal penalties:

(a) postal postmarked after September 30 but no later than October 30 - \$50;

(b) postal postmarked after October 30 - \$125; and

(c) administrative penalties as may be determined by the board.

B. The names of facilities with license renewals more than 30 days overdue are presented to the board at the next regular board meeting for possible disciplinary action by the board.

[16.25.7.9 NMAC - Rp, 16.25.7.9 NMAC, 01-17-2014]

#### **16.25.7.10 FACILITY INSPECTIONS:**

A. Regular facility inspections. Each licensed veterinary facility is inspected by the facility inspector every other calendar year or at a frequency determined by the board. The board conducts regular facility inspections to:

(1) ensure that every licensed veterinary facility in New Mexico is operating according to the minimum standards promulgated by the board of veterinary medicine;

(2) assist facilities in achieving and maintaining minimum standards and to encourage the continuous improvement of quality of services;

B. Corrective actions.

(1) Plan of correction. When the facility inspector determines that a licensed facility must make corrections to comply with minimum standards, the facility inspector has authority from the board to:

(a) request the facility's licensee manager or responsible DVM submit a written plan of correction to facility inspector within a specified time frame; and

(b) follow up to ensure that an appropriate plan of correction is submitted and that minimum standards are maintained.

(c) the board will begin the procedures set out in the Uniform Licensing Act to issue a notice of contemplated action if a facility remains non-compliant after two notifications from the facility inspector. Such board action may result in revocation or suspension of licensure to practice in the state.

(2) Re-inspections and consultation. For very serious and chronic violations of the minimum standards, the facility inspector shall present those facilities to the board to determine a formal plan of action which may require mandatory re-inspections.

(a) For each mandatory re-inspection, the board may charge an administrative fee of \$500.

(b) For mandatory, individualized training other than initial training provided at the time of the inspection when violations are found, the board may charge the facility a consulting fee of \$50 per hour for additional consultation not to exceed \$500. On a case by case basis, the board may grant credit hours toward the regular annual continuing education (CE) requirement to the licensee manager and any other licensed associates for these types of consultations.

(3) The board mandates re-inspections and individualized training, with corresponding fees, only in cases of very serious or continued violations not for new facilities undergoing their initial inspections.

#### C. Voluntary consultation.

(1) Upon request, the facility inspector provides an initial professional courtesy inspection to assist a new facility or new licensee manager in setting up a clinic.

(2) A facility's licensee manager may arrange for longer term, more intensive training, consultation, or assistance by the facility inspector relating to specific areas of clinic operations, record keeping or handling of controlled substances, etc., for a fee of \$50 per hour not to exceed \$500. Arrangements shall be approved by the board and coordinated through the board's executive director; and

(3) On a case by case basis, the board may grant credit hours toward the regular annual CE requirement to the clinic's licensee manager and any other licensed associates for voluntary consultations.

## **PART 8: BOVINE ARTIFICIAL INSEMINATION AND PREGNANCY DIAGNOSIS TECHNICIANS**

### **16.25.8.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.25.8.1 NMAC - Rp, 16.25.8.1 NMAC, 01-17-2014]

### **16.25.8.2 SCOPE:**

Applies to all bovine artificial insemination and pregnancy diagnosis technicians.

[16.25.8.2 NMAC - Rp, 16.25.8.2 NMAC, 01-17-2014]

### **16.25.8.3 STATUTORY AUTHORITY:**

Section 61-14-5 NMSA 1978.

[16.25.8.3 NMAC - Rp, 16.25.8.3 NMAC, 01-17-2014]

### **16.25.8.4 DURATION:**

Permanent.

[16.25.8.4 NMAC - Rp, 16.25.8.4 NMAC, 01-17-2014]

### **16.25.8.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.8.5 NMAC - Rp, 16.25.8.5 NMAC, 01-17-2014]

### **16.25.8.6 OBJECTIVE:**

To govern instruction, examinations and issuing of permits for bovine artificial insemination and pregnancy diagnosis.

[16.25.8.6 NMAC - Rp, 16.25.8.6 NMAC, 01-17-2014]

### **16.25.8.7 DEFINITIONS:**

**[RESERVED]**

[16.25.8.7 NMAC - Rp, 16.25.8.7 NMAC, 01-17-2014]

### **16.25.8.8 PERMIT REQUIREMENT:**

Any person who provides bovine artificial insemination (AI) and bovine pregnancy diagnosis (PD) services for compensation must possess a permit from the board for each type of service.

A. Bovine AI and bovine PD permits are separate. An applicant may obtain a bovine AI permit, a bovine PD permit, or both.

B. The bovine AI and PD permit year is January 1 through December 31 and renewals are issued annually expiring on December 31 of each year.

[16.25.8.8 NMAC - Rp, 16.25.8.8 NMAC, 01-17-2014]

### **16.25.8.9 INSTRUCTION, EXAMINATIONS, AND LICENSING:**

A. To obtain a bovine AI and bovine PD permit, an applicant must:

(1) Complete bovine AI and bovine PD instruction given by the bovine AI and PD examiner or through another institution approved by the board. To request board approval for a particular bovine AI and PD course of instruction, an applicant must provide to the board a course outline or description, including number of instructional contact hours and sponsoring group or organization. At its next meeting, the board will make its determination whether the instruction or course is adequate and if approval will be granted.

(2) Pass bovine AI and PD written and proficiency examinations prepared and administered by the board or its appointed agent(s). The purpose of the examination(s) is to determine the knowledge and proficiency of each applicant.

(3) Be recommended by the board appointed examiner as qualified for the bovine AI and PD permit(s).

B. Upon the examiner's recommendation, the board may issue a bovine AI and bovine PD permit.

C. Each bovine AI and PD permit applicant has one year in which to apply to the board for a permit after passing the proficiency examination(s). If the applicant does not apply for a permit within one year, applicant must retake the appropriate examination(s).

D. Fees:

(1) Fees for instruction are paid directly to the instructor or institution that provides the instruction.

(2) Fees for the proficiency examinations are paid directly to the board appointed examiner.

(3) Fees for initial bovine AI and PD permits and annual renewals are paid to the board. A current list of fees relating to bovine artificial insemination and bovine pregnancy diagnosis permits is also posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

(a) Initial permit: each permit, bovine AI or bovine PD - \$75.

(b) Annual permit renewal: each permit, bovine AI or bovine PD - \$75.

(c) Late-renewal penalty fees:

(i) postal postmarked after December 31 but no later than January 31 - \$50; or

(ii) postal postmarked after January 31 - \$75.

[16.25.8.9 NMAC - A, 16.25.8.9 NMAC; A, 07-01-2018]

#### **16.25.8.10 PERMIT RENEWAL:**

A. To renew a Bovine AI and PD permit, a technician must submit letters of recommendation from two clients who have used the applicant's services within the last 12 months. The letters of recommendation shall attest to applicant's proficiency and endorse applicant's application for renewal. If two client endorsements are not available, taking and passing the board administered proficiency examination will be sufficient.

B. Bovine AI and PD technicians are not required to accrue continuing education hours.

C. Before the December 31 renewal date, the board office provides bovine AI and PD technicians a renewal form to be completed and returned with the renewal fee.

D. If a bovine AI and PD technician permit lapses and is not renewed within one year, the applicant must re-take and pass the examination(s) before the technician can obtain a new permit.

[16.25.8.10 NMAC - Rp, 16.25.8.10 NMAC, 01-17-2014; A, 07-01-2018]

#### **16.25.8.11 DISPLAY OF PERMIT:**

A bovine AI and PD technician shall have displayed at locations where bovine AI and bovine PD services are performed, the original New Mexico bovine AI and bovine PD certificate(s) and the current year permit renewal certificate(s).

[16.25.8.11 NMAC - Rp, 16.25.8.11 NMAC, 01-17-2014]

## **PART 9: MINIMUM STANDARDS**

### **16.25.9.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine.

[16.25.9.1 NMAC - Rp 16.25.9.1 NMAC, 01-17-2014]

### **16.25.9.2 SCOPE:**

Applies to all veterinary facilities operating in the state of New Mexico where the practice of veterinary medicine regularly occurs. NMSA 1978, Section 61-14-2(B).

[16.25.9.2 NMAC - Rp 16.25.9.2 NMAC, 01-17-2014]

### **16.25.9.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 61-14-5(F) and (J); Section 61-14-13.

[16.25.9.3 NMAC - Rp 16.25.9.3 NMAC, 01-17-2014]

### **16.25.9.4 DURATION:**

Permanent.

[16.25.9.4 NMAC - Rp 16.25.9.4 NMAC, 01-17-2014]

### **16.25.9.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.9.5 NMAC - Rp 16.25.9.5 NMAC, 01-17-2014]

### **16.25.9.6 OBJECTIVE:**

To govern minimum standards for the practice of veterinary medicine.

[16.25.9.6 NMAC - Rp 16.25.9.6 NMAC, 01-17-2014]

### **16.25.9.7 DEFINITIONS:**

**[RESERVED]**

[16.25.9.7 NMAC - Rp 16.25.9.7 NMAC, 01-17-2014]

#### **16.25.9.8 GENERAL STANDARDS:**

A. The delivery of veterinary care shall be provided in a competent and humane manner.

B. Veterinary medicine shall be performed in a manner compatible with current veterinary medical practice.

C. A valid veterinarian-client-patient relationship (VCPR) must be established when delivering veterinary care. See VCPR as defined by the New Mexico Veterinary Practice Act 61-14-2-J (1), (2), (3), and (4).

(1) A VCPR cannot be established by telephonic, computer, internet or other electronic communications; however, a New Mexico-licensed veterinarian may provide or arrange for consulting services for their clients using the described electronic communication methods.

(2) The veterinarian writing a veterinary food directive (VFD) order for premises in New Mexico must be a New Mexico-licensed veterinarian and present on the premises within the six (6) months preceding the issuance of the order. All elements of the federal rules to issue a VFD order must be met and the issuing veterinarian must provide supporting documentation of the visit to the premises including medical records within fourteen (14) days of a request from the board to provide such documentation.

D. The board of veterinary medicine shall require periodic inspections of all veterinary facilities to monitor compliance with these standards.

(1) Standards depend upon the nature, scope, and limitations of the practice as defined by the practice manager and approved by the board. However, in no case shall standards of cleanliness, hygiene, and sanitation be violated.

(2) Inspections shall be conducted by the facility inspector designated by the board.

(3) Facilities are subject to inspection at any time during the facility's normal hours of business.

[16.25.9.8 NMAC - Rp 16.25.9.8 NMAC, 01-17-2014; A, 05-08-2016]

#### **16.25.9.9 PREMISES - GENERAL REQUIREMENTS:**

A. All premises where veterinary medicine including its various branches is being practiced and all instruments, equipment, apparatus, and apparel used in connection with those practices, shall be kept clean and sanitary and shall conform to the standards specified for different types of facilities.

B. Emergency service either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance shall be provided at all times. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians.

C. Every veterinary facility shall maintain the following:

(1) A sanitary environment to include the proper routine disposal of waste material, proper sterilization or sanitation of all equipment used in diagnosis or treatment, and adequate storage to provide a neat and orderly appearance;

(2) An adequate library of textbooks, journals or other current veterinary reference materials, readily available on the premises or available through electronic access;

(3) Proper storage and environmental control for all medicines and biologics based on the manufacturer's recommendations;

(4) Properly maintained records; and

(5) Legally accessible methods for the disposal of deceased animals and infectious waste.

[16.25.9.9 NMAC - Rp 16.25.9.9 NMAC, 01-17-2014]

#### **16.25.9.10 PREMISES - FIXED VETERINARY FACILITIES:**

A. When premises are closed, an answering machine or answering service shall be used to notify the public when the veterinary premises will re-open and where pre-arranged after hours veterinary care is available.

B. All fixed premises shall conform to or possess the following:

(1) Exterior:

(a) a legible sign;

(b) facility clean and in good repair; and

(c) grounds clean and maintained.

(2) Interior:

(a) indoor lighting for halls, wards, reception areas, examination, treatment, and surgery rooms that is adequate for the intended purposes;

(b) a reception room and office, or a combination of the two;

(c) an examination room separate from other areas of the facility and of sufficient size to accommodate the appropriate hospital personnel;

(d) table tops, counter tops, and floors made of materials suitable for regular disinfection and cleaning;

(e) facility license conspicuously displayed; and

(f) veterinarians' licenses and veterinary technicians' licenses conspicuously displayed.

C. A veterinary facility where animals are housed or retained for treatment shall additionally contain the following:

(1) compartments of sufficient size and construction to maintain animals in a comfortable, safe, and sanitary manner;

(2) exercise runs or a means for providing exercise of sufficient construction to maintain animals in a safe, clean and sanitary manner;

(3) effective separation of known or suspected contagious animals;

(4) maintenance of temperature and ventilation to ensure the comfort of patients;

(5) an animal identification system;

(6) fire precautions that meet the requirements of local and state fire prevention codes; and

(7) if there are no personnel on the premises during any time an animal is left at the veterinary facility, prior written or verbal notice must be given to the client.

D. Full service veterinary facilities shall additionally conform to or possess the following:

(1) a surgery room separate and distinct from all other rooms and reserved for aseptic surgical procedures requiring aseptic preparation;

(2) the capability to render diagnostic radiological services, either the premises or through outside sources; and

(3) the capability to provide clinical pathology and histopathology diagnostic laboratory services, either on the premises or through outside sources.

[16.25.9.10 NMAC - Rp, 16.25.9.10 NMAC, 01-17-2014]

**16.25.9.11 PREMISES - MOBILE VETERINARY FACILITIES:**

A. Small animals. A small animal mobile veterinary facility shall conform to or possess the following:

- (1) hot and cold water;
- (2) a 110-volt power source for diagnostic equipment;
- (3) a collection receptacle for proper disposal of waste material;
- (4) lighting adequate for the procedures to be performed;
- (5) table tops and counter tops which can be cleaned and disinfected;
- (6) floor coverings which can be cleaned and disinfected;
- (7) compartments to transport or hold animals;
- (8) indoor lighting for halls, wards, reception areas, examination and surgery rooms that is adequate for the intended purposes;
- (9) An examination room separate from other areas of the facility which shall be of sufficient size to accommodate appropriate hospital personnel unless only one client is in the mobile unit at one time;
- (10) fire precautions that meet the requirements of local and state fire prevention codes;
- (11) temperature and ventilation controls adequate to ensure the comfort of patients;
- (12) if surgical services are offered, a room separate and distinct from other rooms reserved for aseptic surgical procedures;
- (13) the capability to render diagnostic radiological services either in the mobile veterinary unit or through other outside services;
- (14) the capability to provide clinical pathology and histopathology diagnostic laboratory services, either in the mobile veterinary unit or through other outside services;
- (15) ability and equipment to provide immediate emergency care at a level commensurate with the specific veterinary medical services provided;

(16) provide after-hours emergency service, either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians;

(17) in all types of mobile veterinary practice adherence to minimum standards of practice and the existence of a veterinarian-client-patient relationship; and

(18) proper instrumentation and sterilization maintained in the vehicle to accommodate those services which the veterinarian maintains he is capable of providing.

B. Large animals. A large animal mobile veterinary facility shall conform to or provide the following:

(1) maintenance of facility in a clean and sanitary fashion; and

(2) items of equipment necessary for the veterinarian to perform physical examinations, surgical procedures and medical treatments consistent with the standards of the profession and the type of veterinary services being rendered. Standard items equipping the unit should include but not be limited to the following:

(a) if aseptic surgery is to be performed: sterile surgical instruments, suturing materials, syringes, and needles;

(b) protective clothing, rubber or disposable boots and a means to clean them between each visit to each premises;

(c) current and properly stored pharmaceuticals and biologics as per manufacturer's label; and

(d) a means of cold sterilization.

(3) The capability to render diagnostic radiological services, either through the mobile veterinary unit or through other outside services.

(4) The capability to provide clinical pathology and histopathology diagnostic laboratory services, either through the mobile veterinary unit or through other outside services.

C. In all types of mobile veterinary practice, minimum standards of practice must be adhered to and a veterinarian-client-patient relationship must exist.

[16.25.9.11 NMAC - Rp 16.25.9.11 NMAC, 01-17-2014]

**16.25.9.12 PREMISES - EMERGENCY CLINICS:**

A. Emergency clinics are facilities which advertise or otherwise purport to provide veterinary medical services when these services are not normally available through other facilities. Nothing contained in this rule is intended to prohibit any licensed facility from providing services of an emergency nature.

B. The minimum staffing requirements for an emergency facility shall include a licensed veterinarian on the premises at all times during the posted hours of operation.

C. Advertisements shall clearly state:

- (1) a licensed veterinarian is on the premises during the posted emergency hours;
- (2) the hours the facility will provide emergency services; and
- (3) the address and telephone number of the facility.

D. In addition to the equipment for veterinary hospitals and clinics, all emergency facilities shall have the equipment necessary to perform standard emergency medical procedures including but not limited to:

- (1) the capability to render timely diagnostic radiological services on premises;
- (2) the capacity to render timely laboratory services on premises; and
- (3) the ability to provide diagnostic cardiac monitoring.

E. Emergency clinics shall meet the same standards as fixed veterinary premises.

[16.25.9.12 NMAC - Rp 16.25.9.12 NMAC, 01-17-2014]

#### **16.25.9.13 PREMISES - NON-FULL SERVICE FACILITIES:**

A. Referral, specialty and other facilities in which the services provided are limited in scope shall:

- (1) identify the name of the primary veterinarian on each patient's medical record; and
- (2) possess all necessary instruments, equipment and apparatus essential to the services rendered.

B. Non-full service facilities shall meet the same standards as fixed veterinary premises.

[16.25.9.13 NMAC - Rp, 16.25.9.13 NMAC, 01-17-2014]

**16.25.9.14 PREMISES - FOOD ANIMAL FACILITIES:**

Veterinary premises where food animal medicine is practiced shall have a reception room and office or a combination of the two. The premises shall contain the following:

- A. facilities for cleaning and sterilizing instruments and equipment;
- B. telephone and answering services;
- C. record keeping system;
- D. facilities for proper storage of pharmaceuticals and biologics;
- E. holding pens;
- F. capability for providing restraint; and
- G. a sanitizable area for clean surgery.

[16.25.9.14 NMAC - Rp 16.25.9.14 NMAC, 01-17-2014]

**16.25.9.15 RADIOLOGICAL SERVICES:**

A. Full service veterinary practices must have the capacity to render adequate diagnostic radiological services either in the facility or through an agreement to provide these services through another facility.

B. All exposed radiographs shall be the property of the veterinary facility that originally ordered them to be prepared and shall be stored where easily maintained and accessible by that facility for a period of three years.

C. All radiographs shall have a permanent, legible identification and shall include the following information:

- (1) the hospital, clinic or veterinarian name;
- (2) the location, city and state of the facility;
- (3) client identification;
- (4) patient identification;
- (5) the date the radiograph was taken; and

(6) anatomical orientation, left or right, as indicated.

D. Radiographs shall be temporarily released in a timely manner to another veterinarian who has the authorization of the owner or agent or directly to the owner or agent. Return of said radiographs to the originating veterinarian shall also be accomplished in a timely manner. Transfer of radiographs shall be documented in the medical record.

E. If radiographs are transferred permanently, the transfer shall be documented in the medical record.

F. Radiographs originating at an emergency hospital shall become the property of the next attending veterinary facility upon receipt of the radiographs. Transfer of radiographs shall be documented in the medical record.

G. Pursuant to the state of New Mexico Environmental Protection Act, 20.3.6 NMAC, each facility shall maintain an x-ray log containing the examinations and the dates the examinations were performed. The log shall indicate when techniques for procedures vary from those specified in Subparagraph (c), Paragraph (1), Subsection A of 20.3.6.602 NMAC.

[16.25.9.15 NMAC - Rp 16.25.9.15 NMAC, 01-17-2014]

#### **16.25.9.16 LABORATORY SERVICES AND EQUIPMENT:**

A. Clinical pathology and histopathology diagnostic laboratory services must be readily available within the veterinary facility or through outside services.

B. Laboratory data is the property of the veterinary facility that originally ordered it to be prepared.

C. A copy of laboratory data shall be released in a timely manner to another veterinarian who has the authorization of the owner or agent or directly to the owner or agent.

D. A laboratory must be equipped with a microscope and a centrifuge.

[16.25.9.16 NMAC - Rp 16.25.9.16 NMAC, 01-17-2014]

#### **16.25.9.17 PHARMACEUTICAL SERVICES:**

A. No legend or controlled drug shall be prescribed, dispensed or administered without the establishment of a veterinarian-client-patient relationship.

B. All legend drugs shall be stored in a secure manner limiting public accessibility.

C. No expired drug or biologic shall be administered or dispensed.

D. All expired drugs or biologics shall be stored away from the working pharmacy while awaiting disposal.

E. All drugs and biologics shall be maintained, administered, dispensed and prescribed in compliance with state and federal laws.

F. Unless otherwise requested by the owner, and noted in the medical record, all repackaged legend and dangerous drugs shall be dispensed in safety closure containers.

G. All drugs shall be labeled with:

- (1) name, address, and phone number of the facility;
- (2) client's name;
- (3) patient's name;
- (4) date dispensed;
- (5) name and strength of drug;
- (6) directions for use;
- (7) quantity dispensed;
- (8) expiration date of drug;
- (9) name of prescribing veterinarian; and
- (10) the words "for veterinary use only" and "keep out of reach of children."

H. Veterinarians shall honor client requests to dispense a drug(s) or provide a written prescription for a drug(s) that has been determined by the veterinarian to be appropriate for the patient.

[16.25.9.17 NMAC - Rp 16.25.9.17 NMAC, 01-17-2014]

#### **16.25.9.18 SURGICAL SERVICES:**

A. Aseptic surgery means a procedure that is performed under sterile conditions.

(1) Sterile surgery shall be defined as procedures in which aseptic technique is practiced in patient preparation, instrumentation and surgical attire.

(2) Clean surgery means the performance of a surgical operation for the treatment of a condition and under circumstances which, consistent with the standards of good veterinary medicine, do not warrant the use of aseptic surgical procedures.

B. The surgeon is responsible for the surgical case until it is completed and there is adequate recovery of the patient from anesthesia.

C. Surgery room.

(1) A room shall be designated for aseptic procedures only, in which no other uses are permitted;

(2) The room shall be well lighted and have available an operational viewing device for reviewing radiographs;

(3) The floors, tabletops, and countertops of the surgery room shall be of a material suitable for disinfection and cleaning and shall be cleaned and disinfected regularly;

(4) Storage in the surgery room is limited to surgically related items only; and

(5) Nothing in this section shall preclude the performance of emergency aseptic surgical procedures in another room when the room designated for that purpose is occupied.

D. Instruments and equipment.

(1) Instruments and equipment shall be:

(a) adequate for the type of surgical service provided; and

(b) sterilized by a method acceptable for the type of surgery for which they shall be used.

(2) In any sterile surgical procedure, a separate sterile pack and gloves shall be used for each animal;

(3) All instruments, packs and equipment that have been sterilized shall have an indicator that reacts to and verifies sterilization within one year; and

(4) Suture material shall not be used beyond the manufacturer's expiration date.

E. Surgical attire.

(1) Each member of the surgical team shall wear an appropriate sanitary cap and sanitary mask which covers his hair, mouth, nose and any facial hair, except for eyebrows and eyelashes;

(2) All members of the surgical team who will be handling sterile instruments or touching the surgical site shall wear sterilized surgical gowns with long sleeves and sterilized gloves;

(3) Ancillary personnel in the surgery room shall wear clean clothing;

(4) Ancillary personnel in immediate proximity to the sterile field shall wear sanitary cap and mask; and

(5) When performing "clean surgery", the instruments used to perform such surgery shall have been properly sterilized or disinfected and the surgeon and ancillary personnel shall wear clean clothing as appropriate.

#### F. Anesthesia.

(1) General anesthesia is a condition caused by the administration of a drug or combination of drugs sufficient to produce a state of unconsciousness or dissociation and blocked response to a given pain or alarming stimulus.

(2) Administration of appropriate and humane methods of anesthesia, analgesia and sedation to minimize pain and distress during any procedures and shall comply with the following standards:

(a) with the exception of feral or dangerous animals, every animal shall be given a physical examination within two weeks prior to the administration of an anesthetic;

(b) the animal under general anesthesia shall be under continuous observation until, at minimum, the swallowing reflex has returned and shall not be released to the client until the animal demonstrates a righting reflex. This shall not preclude direct transfer of an animal under anesthesia to a suitable facility for referred observation;

(c) provide a method of respiratory monitoring that may include observation of the animal's chest movement or observing the rebreathing bag or respirometer;

(d) provide a method of cardiac monitoring that may include the use of stethoscope or electrocardiographic monitor;

(e) clean endotracheal tubes of assorted sizes shall be readily available;

(f) oxygen equipment shall be available at all times;

(g) anesthetic equipment will be maintained in proper working condition; and

(h) effective means shall be provided for exhausting waste gasses from hospital areas in which inhalation anesthesia is used.

[16.25.9.18 NMAC - Rp 16.25.9.18 NMAC, 01-17-2014; A, 05-08-2016]

#### **16.25.9.19 DENTAL SERVICES:**

A. Dental operation or procedure is the application or use of any instrument or device to any portion of an animal's tooth, gum or related tissue for the prevention, cure or relief of any wound, fracture, injury, disease or other condition of an animal's tooth, gum or related tissue. Dental operations or procedures shall be performed only by licensed veterinarians except for those preventive veterinary dental procedures as specified below.

B. Preventive veterinary dental procedures including but not limited to the removal of calculus, soft deposits, plaque and stains; the smoothing, filing, polishing of tooth surfaces, or floating or dressing of equine teeth, shall be performed only by licensed veterinarians or under the direct supervision of a licensed veterinarian.

C. Preventive veterinary dental procedures including but not limited to the removal of calculus by either manual or ultrasonic rescaling shall be done in a location specifically designated for such procedures or in a treatment area.

D. This rule does not prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, toothbrushes or similar items to clean an animal's teeth.

[16.25.9.19 NMAC - Rp 16.25.9.19 NMAC, 01-17-2014]

#### **16.25.9.20 DIRECT SUPERVISION OF NON-VETERINARIANS:**

Non-licensed individuals are prohibited from practicing veterinary medicine which includes but is not limited to chiropractic, physical therapy, acupuncture, acupressure, homeopathy, therapeutic massage, dentistry, embryo transfer or any other related services on animals as defined in NMSA 1978, Section 61-14-2(B)(1), except under the direct supervision of a New Mexico-licensed veterinarian. Direct supervision includes the following:

A. the licensed veterinarian must have established a valid veterinarian-client-patient relationship;

B. the treatment must be performed on the order of a licensed veterinarian;

C. the licensed veterinarian must be on the premises and readily available;

D. the licensed veterinarian must assume liability for the quality of any treatment performed; and

E. the fee for services rendered shall be paid to the licensed veterinarian or licensed facility.

[16.25.9.20 NMAC - Rp 16.25.9.20 NMAC, 01-17-2014]

#### **16.25.9.21 RECORD KEEPING:**

A. Every veterinarian involved in a veterinarian-client-patient relationship performing any service requiring a license to work on any animal or group of animals in his custody or in the custody of a veterinary facility, shall prepare a legible individual or group animal and client record concerning the animal(s) which shall contain the following information:

- (1) name, address, and phone number of the animal's owner or agent; and
- (2) name or identity of animal(s), including species, breed, age, sex, weight, and color where appropriate
- (3) The medical record shall contain:
  - (a) a history of pertinent information as it pertains to the animal's medical status;
  - (b) notation of the physical examination findings;
  - (c) treatment or intended treatment plans or both, including medications, medication strengths and amounts administered, dispensed or prescribed and frequency of use as well as method of administration including those medications used for sedation, induction and maintenance of anesthesia;
  - (d) data and interpretation(s) of diagnostic procedures including but not limited to radiographs, laboratory, ultrasound and ECG;
  - (e) a diagnosis or tentative diagnosis;
  - (f) when pertinent, a prognosis;
  - (g) progress notes and disposition of the case;
  - (h) beginning and ending dates of custody of the animal with daily notations;
  - (i) in the case of vaccination clinics, a certificate including the information required by Subsections (1) and (2) above may serve as the medical record;

(j) name or initials of the veterinarian responsible for entries; and

(k) name or initials of all ancillary and authorized individuals responsible for entries.

(4) Group records are acceptable for herds, flocks or litters of animals that lack individual identification by name or that include a number of individuals to which the same medical record applies. Records for surgical procedures that include a description of the procedure, surgical findings when pertinent and response to or recovery from anesthesia shall contain the requirements listed in Subsection (3) above.

#### B. Record storage.

(1) All records shall be the property of the veterinary facility or practice that created such records and shall be kept where easily accessible for a minimum of four years after the animal's last visit.

(2) Upon closure of a facility or practice, notice must be published twice in the local newspaper announcing where records can be obtained for 90 days.

(3) Copies of records and radiographs or a summary of records will be made available within 10 working days upon the client's written request.

#### C. Controlled substances.

(1) A separate log shall be maintained on each controlled substance and shall contain the following information:

(a) date and time of administering or date of dispensing;

(b) name of owner or agent;

(c) name or identification of animal;

(d) amount dispensed or administered;

(e) balance remaining; and

(f) authorizing veterinarian and identification of authorized individual dispensing or administering the controlled substance.

(2) For each controlled substance, there shall be an annual inventory that includes:

(a) the date of inventory, May 1 annually, unless prior written notice is submitted to the appropriate agency by the licensee manager;

(b) a physical count identifying the quantity of each controlled substance on hand on the date of inventory;

(c) the "balance remaining" from the individual controlled substance log;

(d) the discrepancy between (b) and (c); and

(e) the percent the annual use (d) represents.

(3) All New Mexico board of pharmacy, New Mexico Controlled Substances Act, federal drug enforcement administration (DEA) and federal food and drug administration requirements shall be complied with, including but not limited to the following:

(a) controlled substances must be kept securely locked in a closet, safe or fixed cabinet;

(b) access to the controlled substance storage area should be restricted to the absolute minimum number of employees;

(c) the recommendation that controlled substances stock is kept to a minimum. Should it be necessary to have a substantial quantity of controlled substances stored in the office or facility, the DEA encourages having security which exceeds the minimum requirements such as a safe and alarm system;

(d) the reporting of lost or stolen controlled substances to the appropriate agency;

(e) the disposal of controlled substances through a DEA licensed disposer; and

(f) the DEA and NMCS licenses shall be kept where easily accessible in the pharmacy area but not in public view.

#### D. Computer records.

(1) There shall be reasonable security of a facility's computer(s) with access limited to authorized individuals only.

(2) A daily and cumulative monthly back-up on a separate disk, magnetic tape or other acceptable device or method shall be made.

[16.25.9.21 NMAC - Rp 16.25.9.21 NMAC, 01-17-2014]

#### **16.25.9.22 MANAGEMENT OF WASTE:**

A. A licensed veterinarian shall oversee the handling, treatment and disposition of infectious waste including but not limited to carcasses, anatomical body parts, excretions, blood soiled articles or bedding that are generated from an animal that the licensed veterinarian knows or has reason to suspect has a disease that is capable of being transmitted to humans as provided under this section:

(1) all infectious waste will be sterilized or disinfected by heat, steam, chemical disinfection, radiation or desiccation; and

(2) infectious waste held for disposal shall be collected in sanitary leak resistant bags clearly labeled for biohazard disposal. The bag shall contain the gloves worn while collecting the waste and those used in treatment and post-mortem examinations of suspect animals.

B. All sharps shall be disposed of in appropriately labeled sharps containers. Such containers shall be rigid sided, solidly sealed containers that are highly resistant to puncture. These containers shall be incinerated or disposed of in an environmentally safe manner by a duly licensed disposer, an approved medical sharps incineration facility or shall be disposed of in such a way as to render the sharps harmless. This disposal shall not apply to infectious waste sharps contained in a puncture resistant container which should be disposed of as described in infectious waste disposal. Due to the small volume of sharps generated in a veterinary clinic, transportation of the filled, sealed containers shall not be mandated by nor limited to commercial haulers.

C. Drug disposal.

(1) When feasible, unused or outdated drugs shall be returned to the manufacturer for disposal in accordance with the policies and procedures of the manufacturer.

(2) All scheduled controlled substances which cannot be returned to the manufacturer shall be disposed of at one of the approved controlled drug disposers as approved by the board of pharmacy. A list of these disposers will be provided by the board of pharmacy.

(3) Drugs which do not pose a problem for environmental hazard or are not controlled drugs may be disposed of in a sanitary, non-offensive manner by means of regular solid waste disposal methods.

D. A licensed veterinarian shall oversee the handling of waste materials that are generated from an animal that does not have a disease transmissible to humans or suspected of being contaminated with an agent capable of infecting humans as provided under this section:

(1) Animal carcasses.

(a) An animal carcass shall be disposed of promptly by release to owner, burial, cremation, incineration, commercial rendering or if permitted by local ordinance, placed in a public landfill.

(b) If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed of as provided in (1)(a) above.

(c) All remains stored at a veterinary clinic shall be duly identified with the case number or the owner's name and the name of the animal to prevent improper final disposal.

(2) Tissues, specimens, bedding, animal waste and extraneous materials, not suspected of harboring pathogens infectious to humans shall be disposed of by approved city or county disposal methods.

E. In the event of the occurrence of a suspected foreign animal disease or disease of potential concern to state or national security, the licensed veterinarian will immediately contact the state department of agriculture, the U. S. department of agriculture and other departments that have jurisdiction over such an occurrence. The licensed veterinarian shall oversee the handling of all tissues, laboratory samples and biomedical waste associated with such cases in accordance with the recommendations made by the department of agriculture and other departments and agencies which are deemed necessary and appropriate in such cases.

[16.25.9.22 NMAC – Rp, 16.25.9.22 NMAC, 01-17-2014]

## **PART 10: [RESERVED]**

## **PART 11: PARENTAL RESPONSIBILITY COMPLIANCE**

### **16.25.11.1 ISSUING AGENCY:**

New Mexico Board of Veterinary Medicine

[16.25.11.1 NMAC - Rp, 16.25.11.1 NMAC, 01-17-2014]

### **16.25.11.2 SCOPE:**

Provisions of 16.25.11 NMAC shall apply to all those licensed by the New Mexico Board of Veterinary Medicine.

[16.25.11.2 NMAC – Rp, 16.25.11.2 NMAC, 01-17-2014]

### **16.25.11.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 61-14-5(F), directs the board of veterinary medicine to adopt, regularly review and revise rules necessary to carry out the provisions of the Veterinary Practice Act after a hearing open to the public. The board adopts this part pursuant to the Parental Responsibility, NMSA 1978, Section 40-5(A)(1) through (13), which requires all professional licensing boards to promulgate rules to implement the Parental Responsibility Act.

[16.25.11.3 NMAC - Rp, 16.25.11.3 NMAC, 01-17-2014]

**16.25.11.4 DURATION:**

Permanent.

[16.25.11.4 NMAC - Rp, 16.25.11.4 NMAC, 01-17-2014]

**16.25.11.5 EFFECTIVE DATE:**

01-17-2014 unless a later date is cited at the end of a section.

[16.25.11.5 NMAC - Rp, 16.25.11.5 NMAC, 01-17-2014]

**16.25.11.6 OBJECTIVE:**

To ensure that licensees and applicants for licensure from the board of veterinary medicine comply with the Parental Responsibility Act.

[16.25.11.6 NMAC - Rp, 16.25.11.6 NMAC, 01-17-2014]

**16.25.11.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this part. As used in this part:

A. HSD means the New Mexico human services department;

B. statement of compliance means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and

C. statement of non-compliance means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[16.25.11.7 NMAC - Rp, 16.25.11.7 NMAC, 01-17-2014]

**16.25.11.8 AUTHORITY:**

The board adopts this part pursuant to the Parental Responsibility Act, NMSA 1978, Section 40-5(A)(1) through (13).

[16.25.11.8 NMAC - Rp, 16.25.11.8 NMAC, 01-17-2014]

**16.25.11.9 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the board:

- A. shall deny an application for a license;
- B. shall deny the renewal of a license; and
- C. has grounds for suspension or revocation of the license.

[16.25.11.9 NMAC - Rp, 16.25.11.9 NMAC, 01-17-2014]

**16.25.11.10 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board licensees and applicants. Upon the subsequent receipt of an application for licensure or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

[16.25.11.10 NMAC - Rp, 16.25.11.10 NMAC, 01-17-2014]

**16.25.11.11 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the board shall:

A. commence a formal proceeding under 16.25.11.9 NMAC to take the appropriate action under 16.25.11.12 NMAC;

B. for current licensees only: informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD by the earlier of:

- (1) the application for license renewal; or
- (2) specified date not to exceed 30 days.

If the licensee fails to provide this statement, the board shall commence a formal proceeding under 16.25.11.14 NMAC.

[16.25.11.11 NMAC - Rp, 16.25.11.11 NMAC, 01-17-2014]

#### **16.25.11.12 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in 16.25.11.11 NMAC, the board shall serve written notice to the applicant or licensee setting forth the grounds, as determined by the board, to take such action and the board's intention to take such action unless the licensee or applicant:

A. mails a certified letter return receipt requested within 20 days after service of the notice requesting a hearing; or

B. provides the board, within 30 days of the date of the notice, a statement of compliance from HSD.

C. If the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee shall contact the HSD child support enforcement division.

[16.25.11.12 NMAC - Rp, 16.25.11.12 NMAC, 01-17-2014]

#### **16.25.11.13 EVIDENCE AND PROOF:**

In any hearing under this part, relevant evidence is limited to the following: A statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under 16.25.11.12 NMAC, unless the applicant or licensee provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this part.

[16.25.11.13 NMAC - Rp, 16.24.11.13 NMAC, 01-17-2014]

#### **16.25.11.14 ORDER:**

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

[16.25.11.14 NMAC - Rp, 16.25.11.14 NMAC, 01-17-2014]

#### **16.25.11.15 PROCEDURES:**

Proceedings under this part shall be governed by the Uniform Licensing Act, NMSA 1978, Section 61-1-1.

[16.25.11.15 NMAC - Rp, 16.25.11.15 NMAC, 01-17-2014]

## **CHAPTER 26: HEARING, SPEECH AND AUDIOLOGY PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.26.1.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/96; 16.26.1.1 NMAC - Rn, 16 NMAC 26.1.1, 2/3/06]

#### **16.26.1.2 SCOPE:**

All individuals wishing to practice as a speech-language pathologist, audiologist, hearing aid dispenser, paraprofessional apprentice, individuals working towards their clinical fellowship or university students who will be offering services in the speech-language pathology and/or audiology field and individuals under a training permit as hearing aid dispenser trainees.

[11/9/96; 16.26.1.2 NMAC - Rn, 16 NMAC 26.1.2, 2/3/06]

#### **16.26.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology and Audiology and Hearing Aid Dispensing Practices Act, (Sections 61-14B-1 to 61-14B-25 NMSA 1978) and the Uniform Licensing Act NMSA 1978 (Sections 61-1-1 to 61-1-33).

[12/21/71; 11/9/96; 16.26.1.3 NMAC - Rn, 16 NMAC 26.1.3, 2/3/06]

#### **16.26.1.4 DURATION:**

Permanent.

[11/9/96; 16.26.1.4 NMAC - Rn, 16 NMAC 26.1.4, 2/3/06]

#### **16.26.1.5 EFFECTIVE DATE:**

November 9, 1996, unless a later date is cited at the end of a section.

[11/9/96; 11/7/98; 16.26.1.5 NMAC - Rn & A, 16 NMAC 26.1.5, 2/3/06]

**16.26.1.6 OBJECTIVE:**

Pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Part 1 establishes definitions and defines the duties and makeup of the board.

[12/21/71; 11/9/96; 16.26.1.6 NMAC - Rn, 16 NMAC 26.1.6, 2/3/06]

**16.26.1.7 DEFINITIONS:**

**A. "AAA"** refers to the American academy of audiology, a national professional association of audiologists concerned with professional qualifications, standards of practice, ethics, scientific progress and continuing education.

**B. "ABA"** refers to the American board of audiology, which offers board certification in the discipline of audiology and is affiliated with the American academy of audiology.

**C. "Act"** means the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act (Sections 61-14B-1 to 61-14B-25 NMSA 1978) as it may be amended.

**D. "Apprentice"** means a person working towards full licensure in speech-language pathology and who meets the requirements for licensure as an apprentice in speech and language pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

**E. "ASHA"** refers to the American speech-language and hearing association, a national professional association of speech-language pathologists and audiologists recognized by the secretary of the United States (U.S.) department of education for the accrediting of university graduate degree programs in audiology and speech-language pathology. ASHA also maintains a professional membership of speech-language pathologists and audiologists concerned with professional qualifications, standards of practice, ethics, scientific progress and continuing education.

**F. "Audiologist"** means a person who engages in the practice of audiology, who may or may not dispense hearing aids, and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

**G. "Certified"** means a notarized statement of authenticity of a true copy.

**H. "Client/patient"** means an individual receiving services from an Audiologist, Speech Language Pathologist or Hearing Aid Dispenser.

**I. "CFY plan"** (clinical fellowship year plan) means a written plan submitted to the board outlining the duration of the CFY (up to a maximum of three years), the CFY plan must designate a CFY supervisor and outline the amount and type of supervision.

**J. "Direct supervision"** means on-site, in-view observation and guidance while a clinical activity is performed by the supervisee. This can include viewing and communicating with the supervisee via telecommunication technology so long as the supervisor or qualified sponsor is able to provide ongoing immediate feedback. Direct supervision does not include reviewing a taped session at a later time.

**K. "Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**L. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**M. "Facilitator"** means a person at the client site who facilitates telehealth service delivery at the direction of the audiologist, speech-language pathologist or hearing aid dispenser. For purposes of fulfilling their role, as defined, an individual may serve as a facilitator, at the direction of the audiologist or speech language pathologist, without becoming licensed.

**N. "IHS"** refers to the international hearing society, an international membership association that represents hearing healthcare professionals engaged in the practice of testing human hearing and selecting, fitting and dispensing hearing instruments and counseling patients. IHS conducts programs in competency accreditation, education and training and encourages specialty-level certification for its members.

**O. "ILE"** refers to the international licensing examination for hearing healthcare professionals administered by IHS on behalf of the board for the purposes of licensing hearing aid dispensers.

**P. "Indirect supervision"** means supervision that does not require the SLP to be physically present or available via telecommunication in real time while the supervisee is providing services. Indirect supervisory activities may include demonstration tapes, record review, review and evaluation of audio or videotaped sessions, or supervisory conferences that may be conducted by telephone or live, secure webcam via the internet.

**Q. "Jurisprudence examination"** means the evaluation of knowledge of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and these regulations, given as a requirement for licensure to all applicants.

**R. "License"** means a document identifying a legal privilege and authorization to practice within one of the categories established by the Speech-Language Pathology,

Audiology and Hearing Aid Dispensing Practices Act. A license under this act is not transferable.

**S. "Licensing year"** means the period from January 31, of any year through January 30 of the next year; initial, renewed and reinstated licenses may be issued at any time set herein but shall expire on January 30 of the following year except as otherwise provided in these rules.

**T. "NBC-HIS"** means national board for certification in hearing instruments sciences.

**U. "Qualified Sponsor"** means a person who currently holds an audiology or hearing aid dispenser license in good standing with the board and who voluntarily accepts the responsibility of supervising, training or overseeing an individual interested in obtaining an endorsement or license to fit and dispense hearing aids.

**V. "Referral"** means the process of directing or redirecting a customer or patient to a specialist, hearing aid dispenser, therapist or clinician for services or diagnosis.

**W. "Site"** means the client/patient location for receiving telehealth services.

**X. "Stored clinical data"** means video clips, sound/audio files, photo images, electronic records, and written records that may be available for transmission via telehealth communications.

**Y. "Student"** means any person who is a full or part time student enrolled in an accredited college or university program in speech-language pathology, audiology or communication disorders.

**Z. "Telecommunication technology"** includes but is not limited to a dedicated video system, computer or other similar device linked via hardwire or internet connection, equipment, connectivity, software, hardware and network-compatible devices.

**AA. "Telehealth"** means the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of Audiology, Speech-Language Pathology or Hearing Aid Dispensing services to an individual from a provider through hardwire or internet connection.

**BB. "Telepractice"** means the practice of telehealth.

**CC. "Temporary paraprofessional license"** means a license issued to a person working towards full licensure as a speech-language pathologist and who provides adjunct speech-language pathology services under the supervision of a speech-language pathologist who is licensed under this act.

**DD. "Temporary trainee permit"** means a permit issued by the board to a person authorized to fit and dispense hearing aids only under the supervision of a qualified sponsor as defined by these regulations. Temporary trainee permits will be issued for a one-year period and are non-renewable.

[12/21/71; 2/5/80; 8/1/81; 8/4/81; 3/18/82; 10/21/91; 11/09/96; 11/7/98; 11/27/99; 16.26.1.7 NMAC - Rn & A, 16 NMAC 26.1.7, 2/3/06; A, 1/29/15; A, 4/6/16; A, 2/14/2017; A, 1/8/2023]

## **PART 2: LICENSURE REQUIREMENTS**

### **16.26.2.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[16.26.2.1 NMAC - Rp, 16 NMAC 26.2.1, 2/3/2006]

### **16.26.2.2 SCOPE:**

The provisions of Part 2 of Chapter 26 apply to all individuals seeking licensure under the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act.

[16.26.2.2 NMAC - Rp, 16 NMAC 26.2.2, 2/3/2006; A, 1/15/2015]

### **16.26.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to 61-14B-25 NMSA 1978.

[16.26.2.3 NMAC - Rp, 16 NMAC 26.2.3, 2/3/2006]

### **16.26.2.4 DURATION:**

Permanent.

[16.26.2.4 NMAC - Rp, 16 NMAC 26.2.4, 2/3/2006]

### **16.26.2.5 EFFECTIVE DATE:**

February 3, 2006, unless a later date is cited at the end of a section.

[16.26.2.5 NMAC - Rp, 16 NMAC 26.2.5, 2/3/2006]

### **16.26.2.6 OBJECTIVE:**

The objective of Part 2 is to state and establish that licensure is mandated by statute to practice as a speech-language pathologist, audiologist, clinical fellow and hearing aid dispenser and to outline requirements. Persons and practices not affected are defined.

[16.26.2.6 NMAC - Rp, 16 NMAC 26.2.6, 2/3/2006]

#### **16.26.2.7 DEFINITIONS:**

**[RESERVED]**

#### **16.26.2.8 LICENSING REQUIRED TO PRACTICE:**

**A.** Section 61-14B-7 NMSA 1978 of the act provides that no person shall practice or hold him or herself out as being able to practice speech-language pathology, audiology, hearing aid dispensing in the state of New Mexico unless he or she is licensed in accordance with the provisions of this act.

**B.** All individuals licensed under this act must display their license in their primary location at their place of employment.

**C.** Separate licenses shall be granted in speech-language pathology, audiology, and hearing aid dispensing. An applicant may be granted a dual license for speech-language pathology and audiology upon successful completion of requirements for both of these licenses. A hearing aid dispensing license does not indicate that the person holding the license is an audiologist.

**D.** The board shall have 30 days from the receipt of a complete application to process and approve an application.

**E.** The board shall issue a license by reciprocity to an applicant from another state who holds a current license in good standing with no pending disciplinary action, provided the requirements for the current license held meet or exceed requirements for licensure for Speech Language Pathology, Audiology, or Hearing Aid Dispensing in the state of New Mexico.

[16.26.2.8 NMAC - Rp, 16 NMAC 26.2.8, 2/3/2006; A, 2/14/2017]

#### **16.26.2.9 PERSONS AND PRACTICES NOT AFFECTED:**

**A.** Recognized professional groups: The act does not prohibit members of recognized professional groups, other than speech-language pathologists, audiologists and hearing aid dispensers, from doing appropriate work in the area of communication disorders consistent with their professional qualifications and with the standards and ethics of their respective professions. Such professional groups include, but are not limited to the following:

- (1) physicians licensed to practice medicine in New Mexico;
- (2) orthodontists;
- (3) certified teachers of the deaf.

**B. Students:** The act does not restrict the supervised activities of a speech-language pathology or an audiology student which constitute a part of his or her supervised course of study wherein the student is designated as a speech-language pathology student, audiology student or other such title clearly indicating the training status appropriate to his or her level of training.

[16.26.2.9 NMAC - Rp, 16 NMAC 26.2.9, 2/3/2006; A, 2/10/2022]

#### **16.26.2.10 REQUIREMENTS FOR ALL APPLICANTS:**

An applicant for a license to practice under the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act must submit the following:

- A.** a complete and signed application on a form prescribed by the board;
- B.** a check or money order payable to the board for the applicable fee(s) outlined in 16.26.6.8 NMAC;
- C.** documentation relevant to the license sought under 16.26.2 NMAC;
- D.** certification that the applicant is not guilty of any activities listed in Section 61-14B-21 NMSA 1978; and
- E.** The certification that the applicant has not been convicted of felonies listed in Subsection E of 16.26.8 NMAC.

[16.26.2.10 NMAC - Rp, 16 NMAC 26.3.8, 2/3/2006; A, 11/29/2008; A, 4/6/2016; A, 2/14/2017; A, 2/10/2022]

#### **16.26.2.11 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST:**

An application for licensure as a speech-language pathologist must be accompanied by the following documents:

- A.** official transcripts verifying at least a master's degree in speech-language pathology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name; or

**B.** a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

**C.** proof of having earned a certificate in speech-language pathology from a board recognized national speech-language association or proof of completion of the clinical fellowship year or equivalent; and

**D.** proof of having passed a nationally recognized standard examination in speech-language pathology;

**E.** proof of having passed the jurisprudence examination with a grade of no less than seventy percent; and

**F.** if currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction.

[16.26.2.11 NMAC - Rp, 16 NMAC 26.2.11, 2/3/2006; A, 11/29/2008; A, 4/6/2016; A, 1/10/2020]

#### **16.26.2.12 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS AN AUDIOLOGIST:**

Application for licensure as a audiologist must be accompanied by the following documents:

**A.** official transcripts or certification from the registrar verifying the following:

**(1)** a master's degree in audiology, communication disorders or equivalent degree in audiology or communication disorders awarded prior to January 1, 2007; or

**(2)** a doctoral degree in audiology or equivalent degree regardless of degree name.

**B.** proof of having earned certification in audiology from the American speech-language and hearing association (ASHA) or the American board of audiology (ABA);

**C.** proof of having passed a nationally recognized standard examination in audiology;

**D.** proof of having passed the jurisprudence examination with a grade of no less than seventy percent;

**E.** if the applicant was awarded a master's degree in audiology or communication disorders or equivalent degree in audiology or communication disorders prior to January 1, 2007, the applicant must also provide proof of at least six months' experience in the

dispensing of hearing aids or other evidence as determined by the board in either a graduate training program or in a work training experience;

**F.** if currently or previously licensed in another state, a verification of the applicant's licensure must be sent directly to the board by the issuing jurisdiction.

[16.26.2.12 NMAC - Rp, 16 NMAC 26.3.9, 2/3/2006; A, 11/29/2008; A, 6/7/2010; A, 1/15/2015; A, 4/6/2016]

### **16.26.2.13 QUALIFICATIONS AND APPLICATION FOR ENDORSEMENT TO DISPENSE HEARING AIDS AS AN OTOLARYNGOLOGIST:**

The board shall grant an endorsement to dispense hearing aids to a physician certified, or eligible for certification, by the American board of otolaryngology, upon submission of the following:

**A.** verification that the applicant maintains or occupies a business location, hospital, clinical medical practice or other facility in New Mexico where hearing aids are regularly dispensed;

**B.** a license verification from the New Mexico medical board;

**C.** proof of six months' experience in the dispensing of hearing aids as evidenced by a notarized letter from an employer, a graduate training program supervisor or a clinical fellow supervisor, the 320 hours of which must be under the direct supervision of a person licensed to dispense hearing aids; and

**D.** proof of having passed the jurisprudence examination, with a grade of no less than seventy percent.

[16.26.2.13 NMAC - Rp, 16 NMAC 26.3.10, 2/3/2006; A, 11/29/2008; A, 4/6/2016]

### **16.26.2.14 QUALIFICATIONS AND APPLICATION FOR LICENSURE FOR A HEARING AID DISPENSER:**

**A.** Application for licensure as a hearing aid dispenser must be accompanied by documentation of the following:

- (1)** proof that the applicant is 18 years of age or older;
- (2)** proof that the applicant has a high school education or the equivalent;
- (3)** proof that the applicant has a business location in New Mexico;

(4) a notarized letter from the qualified sponsor verifying completion of all training requirements as outlined for the temporary hearing aid dispensing trainee permit;

(5) proof of having passed the current IHS administered ILE within the previous 24 months;

(6) passing the board administered practical exam with a score of no less than seventy percent;

(7) proof of having passed the jurisprudence examination with an overall score of no less than seventy percent; and

(8) have no disciplinary actions taken against any professional license they hold in any state or jurisdiction.

**B.** An applicant who is licensed as a hearing aid dispenser or hearing aid specialist in another state or jurisdiction may be issued a license as a hearing aid dispenser in New Mexico upon the board's acceptance of the following:

(1) proof that the applicant is 18 years of age or older;

(2) proof that the applicant has a high school education or the equivalent;

(3) proof that the applicant has a business location in New Mexico;

(4) the requirements for licensure in the issuing state or jurisdiction meet or exceed the standards for New Mexico; and

(5) the applicant has no disciplinary actions taken or pending against any professional license they hold in any state or jurisdiction

[16.26.2.14 NMAC - Rp, 16 NMAC 26.3.11, 2/3/2006; A, 6/7/2010; A, 1/15/2015; A, 4/6/2016; A, 2/14/2017]

#### **16.26.2.15 APPLICATION AND REQUIREMENTS FOR TEMPORARY HEARING AID DISPENSING TRAINEE PERMIT:**

Individuals who meet all requirements for a hearing aid dispenser's license but do not have the required practical experience in dispensing of hearing aids shall apply for a temporary hearing aid dispensing permit.

**A.** A trainee permit may be issued at any time and will be valid for one year.

**B.** The trainee must identify a qualified sponsor who has held a license under this act as an audiologist or hearing aid dispenser or a New Mexico licensed otolaryngologist for no fewer than three of the previous five calendar years.

(1) The qualified sponsor must have no disciplinary actions against them at the time of issuance of the training permit.

(2) The qualified sponsor must have no more than two temporary training permits associated with them at any single time.

(3) Trainee must receive a minimum of 320 logged and certified hours of direct supervision in hearing science and hearing aid fitting within three consecutive months.

(4) Upon completion of the 320 hours of direct supervision, the log of training must be submitted to the board for review.

**C.** Following completion of 320 hours, an additional five continuous months of full time work is required. All activities of the trainee during this time must be reviewed and approved by a qualified sponsor and may include dispensing hearing aids, making adjustments in fitting and modifying and repairing hearing aids and earmolds. All sales receipts must have some evidence of the sponsor's approval of the sale.

**D.** Another training permit may not be issued for one calendar year following expiration of the previous permit or if the applicant has failed the examination twice within a five year period.

**E.** The applicant shall submit proof of having passed the jurisprudence examination with a grade of no less than seventy percent.

[16.26.2.15 NMAC - Rp, 16 NMAC 26.3.12, 2/3/2006; A, 6/7/2010; A, 4/6/2016; A, 2/14/2017]

#### **16.26.2.16 HEARING AID DISPENSER TRAINEE EXAMINATION FOR COMPETENCE:**

Following the board's acceptance of the 320 hours of certified direct supervision in three months, persons with a temporary training permit are eligible to:

**A.** Take the IHS administered ILE;

**B.** Take the board-administered practical exam which evaluates proficiency in the following areas:

(1) Puretone audiometry including air conduction and bone conduction;

- (2) recorded voice speech audiometry;
- (3) masking when indicated;
- (4) recording and evaluation of audiograms and speech audiometry;
- (5) determining proper selection and adjustment of hearing aids;
- (6) verification of efficacy of hearing aids; and
- (7) taking earmold impressions

**C.** The board office will schedule practical examinations once each quarter; the schedule will be posted on the board website, and applicants must register for the examination a minimum of 30 days prior to the scheduled exam;

**D.** an applicant who fails the written or the practical portion of the examination must pay the application fee before being allowed to retake the examination;

**E.** applicants who cannot sit for the examinations due to circumstances beyond their control must submit a written request prior to the scheduled examination; extenuating circumstances include illness, death in the immediate family, military service, or other severe circumstances which do not allow an applicant to attend the scheduled examination; applicant must provide documentation of extenuating circumstances; and

**F.** applicants who fail to sit for scheduled examinations without prior notification must submit a new application, including the fee and all documentation.

[16.26.2.16 NMAC - Rp, 16 NMAC 26.3.13, 2/3/2006; A, 6/7/2010; A, 2/14/2017]

#### **16.26.2.17 QUALIFICATION FOR LICENSURE FOR CLINICAL FELLOWS:**

**A.** A clinical fellow (CF) must meet all academic course work and practicum requirements for a master's degree in speech-language pathology, speech pathology, communication disorders or audiology or both or equivalent degree(s) regardless of degree name that would enable the individual to successfully be granted certification from a nationally recognized speech-language and or hearing association after completion of the clinical fellowship if the individual chooses to apply national certification.

**B.** Procedure for applying for licensure as a clinical fellow.

(1) An individual will complete application including appropriate fee and clinical fellow plan and submit to the board office at the initiation of the clinical fellow period. The individual shall also submit:

**(a)** official transcripts verifying at least a master's degree in speech-language pathology, audiology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name; or

**(b)** a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

**(c)** certify that the individual has received no reprimands of unprofessional conduct or incompetency; and

**(d)** file a CFY plan that meets with board approval that designates a clinical fellow supervisor who is licensed in accordance of this act and is practicing in the same field as the clinical fellow.

**(e)** CFY means no less than nine months full time employment defined as a minimum of 32 clock hours of work per week. This requirement also may be fulfilled by part time employment as follows:

**(i)** work of 15 - 19 hours per week over 18 months;

**(ii)** work of 20 - 24 hours per week over 15 months; or

**(iii)** work of 25 - 31 hours per week over 12 months.

**(iv)** In the event that part time employment is used to fulfill a part of the CFY, one-hundred percent of the minimum hours of part time work per week requirements must be spent in direct professional experience as defined above. Professional employment of less than 15 hours per week will not fulfill any part of this requirement.

**(f)** a clinical fellow in audiology is not required to have a temporary hearing aid training permit.

**(g)** the clinical fellow must understand and abide by the code of ethics adopted by the board.

**(2)** Speech-language pathologist's supervision requirements for CFYs:

**(a)** Duties of clinical fellow supervisor: Clinical fellow supervision must be based on no less than 36 occasions of monitoring. These can include on site monitoring activities such as conferences with the clinical fellow, evaluation of written reports, evaluation by professional colleagues or may be executed by correspondence.

**(b)** Should the clinical fellow supervisor suspect at anytime during the clinical fellow plan that the clinical fellow under clinical fellow supervision will not meet

regulations, the clinical fellow supervisor must counsel the clinical fellow both orally and in writing and maintain careful written records of all contacts, contracts and conferences in the ensuing months.

(c) It is the responsibility of the clinical fellow to request feedback from their supervisor when the clinical fellow requires such feedback.

C. Completion of clinical fellowship: Upon completion of CFY, the CF is required to submit application for licensure as a speech-language pathologist or audiologist or both.

[16.26.2.17 NMAC - Rp, 16 NMAC 26.3.14, 2/3/2006; A, 1/15/2015; A, 2/10/2022]

### **16.26.2.18 TEMPORARY PARAPROFESSIONAL LICENSURE AS AN APPRENTICE IN SPEECH-LANGUAGE (ASL):**

#### **A. Prerequisite requirements:**

(1) Acceptance of a temporary paraprofessional licensee as an apprentice in speech-language is subject to board approval. Such licensees shall:

(a) be working towards a license pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(b) certify that they are not guilty of any activities listed in Section 61-14B-21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act; and

(c) provide proof of having met educational, supervision, and employment requirements.

(2) It is the responsibility of the apprentice in speech-language and the supervising speech-language pathologist to insure the distinction between the roles of the apprentice in speech-language and the graduate student.

#### **B. Educational requirements:**

(1) a baccalaureate degree in speech-language pathology or communication disorders or baccalaureate degree in another field with 30 semester hours of credit in speech-language pathology or communication disorders;

(2) enrolled in a master's degree program in speech-language pathology or communication disorders and completes a minimum rate of nine semester hours per year of graduate courses in communication disorders per year; or

(a) if not accepted into a master's degree program in speech-language pathology or communication disorders, the applicant must be currently enrolled in nine

semester hours of graduate courses per year with at least three hours in communication disorders, six hours may be taken in a related field; and

**(b)** acceptance in a master's degree program must take place within two years of initial license; and

**(3)** maintains a minimum of a 3.0 GPA in communication disorders course work or master's degree program.

**C.** Supervision requirements:

**(1)** Work of the apprentice in speech-language must be supervised by a speech-language pathologist licensed by this act and who has a minimum of two years experience in the field.

**(a)** Minimum of ten percent of contact time of the apprentice in speech-language must be direct supervision.

**(b)** Minimum of ten percent of contact time of the apprentice in speech-language must be indirect supervision.

**(2)** It is recommended that the speech-language pathologist's and audiologist's direct caseload size be limited to no more than 40 clients.

**(a)** A speech-language pathologist may supervise a maximum of three apprentices at one time.

**(b)** The supervising speech-language pathologist is expected to appropriately reduce their direct caseload for each apprentice they supervise, ensuring the maintenance of high professional standards as stated in the code of ethics.

**(c)** It is the responsibility of the supervising speech-language pathologist and the apprentice in speech-language to ensure the distinction between the roles of the apprentice in speech-language and the graduate student.

**D.** Employment requirements:

**(1)** Terms of employment must require at least a temporary paraprofessional license as an apprentice in speech-language. The role of the apprentice in speech-language shall be determined in collaboration with the supervising speech-language pathologist (SLP) and the employer.

**(2)** Employment duties must be limited to the following:

**(a)** conduct speech-language and hearing screenings;

**(b)** conduct treatment programs and procedures that are planned, selected and designed by the supervising SLP;

**(c)** prepare written daily plans based on the overall intervention plan designed by the supervising SLP;

**(d)** record, chart, graph, or otherwise display data relative to the client performance and report performance changes to the supervising SLP;

**(e)** maintain daily service/delivery treatment notes and complete daily charges as requested;

**(f)** report but not interpret data relative to client performance to teachers, family, or other professionals;

**(g)** assist the speech-language pathologists during assessment of clients, such as those who are difficult to test;

**(h)** perform clerical duties, including maintenance or therapy/diagnostic material/equipment, client files, as directed by the SLP supervisor;

**(i)** participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

**E.** Employment duties must not include any of the following:

**(1)** administer diagnostic tests;

**(2)** interpret data into diagnostic statements or clinical management strategies or procedures;

**(3)** select or discharge clients for services;

**(4)** interpret clinical information including data or impressions relative to client performance;

**(5)** treat clients without following the individualized treatment plan;

**(6)** independently compose clinical reports except for progress notes to be held in the client's file;

**(7)** refer a client to other professionals or agencies;

**(8)** provide client or family counseling;

- (9) develop or modify a client's individual treatment plan: IEP/IFSP/ clinical report or plan of care in anyway without the approval of the SLP supervisor;
- (10) disclose clinical or confidential information;
- (11) sign any formal documents without the supervising SLP co-signature;
- (12) represent themselves as a speech-language pathologist.

**F. Documentation required:** All applicants for temporary paraprofessional license as an apprentice in speech-language are required to provide the following documentation to the board each year:

- (1) a completed board approved license application form, signed in the presence of a notary public;
- (2) the required license application fee; and
- (3) a completed board approved verification of employment form verifying:
  - (a) applicant's employment;
  - (b) performance responsibilities of the apprentice in speech-language;
  - (c) limitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);
  - (d) provision for supervision by an SLP licensed according to this act;
- (4) a completed board approved verification of education form verifying:
  - (a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;
  - (b) current degree plan once the applicant is admitted to a master's degree program; and
  - (c) official copy of transcripts from college or university.

[16.26.2.18 NMAC - Rp, 16 NMAC 26.2.15, 2/3/2006; A, 11/29/2008; A, 6/7/2010; A, 1/15/2015; A, 2/10/2022]

#### **16.26.2.19 BILINGUAL MULTICULTURAL ENDORSEMENT:**

**A. Prerequisites for an endorsement:** Any person applying for bilingual-multicultural endorsement shall:

- (1) file a completed application;
- (2) pay the fees required under 16.26.6 NMAC;
- (3) submit required documentation as outlined in Subsections B through D below; and
- (4) certify that the applicant is not guilty of any of the any of the activities listed in Section 61-14B-21 NMSA 1978.

**B. Eligibility of non-licensed speech language pathology applicants:** A speech-language pathology applicant who applies for a bilingual-multicultural endorsement must submit the following documentation:

- (1) a copy of a board-approved application for a license to practice as a New Mexico speech language pathologist or license issued by another state or country as a SLP or bilingual SLP; and

- (2) proof of language(s) proficiency and experience as evidenced by:

- (a) an official transcript from a university's bilingual or multicultural speech-language pathology certificate program with a minimum eighty percent score in courses taken, and proof that the applicant has passed a board-approved language proficiency assessment; or

- (b) if a university transcript and a language proficiency assessment are not available, a letter of verification from a university, tribe or other recognized official entity documenting successful completion of a language proficiency rubric with a minimum of seventy percent in all domains/areas that apply to the specified language, and proof of five years of experience; or

- (c) in the event that an applicant cannot provide the documentation required in Subparagraphs (a) or (b) of Paragraph (2) of Subsection B of 16.26.2.19 NMAC, the board may consider other evidence of proficiency and experience on a case-by-case basis.

**C. Eligibility of currently licensed New Mexico speech-language pathology applicants:** A New Mexico licensed speech-language pathologist who applies for a bilingual-multicultural endorsement must submit the following documentation:

- (1) proof that the applicant has a New Mexico license to practice as a speech-language pathologist that is in good standing, or licensed by another state or country as a SLP or bilingual SLP that is in good standing; and

- (2) proof that the applicant is proficient in the specified language(s) as evidenced by:

**(a)** having passed a board-approved language proficiency assessment; or

**(b)** a letter of verification from a university, tribe or other recognized official entity documenting successful completion of a language proficiency rubric with a minimum of seventy percent in all domains/areas that apply to the specified language; or

**(c)** in the event that an applicant cannot provide the documentation required in Subparagraphs (a) or (b) of Paragraph (2) of Subsection C of 16.26.2.19 NMAC, the board may consider other evidence of proficiency on a case-by-case basis; and

**(3)** proof that the applicant has a minimum of five years practicing with clients who utilize a language other than English as evidenced by a sworn and notarized affidavit from the applicant.

**D. Eligibility of licensees from other jurisdictions:** A speech-language pathologist licensed by another jurisdiction who applies for a bilingual-multicultural endorsement must submit the following:

**(1)** proof that the applicant has a license to practice as a speech-language pathologist in good standing in another jurisdiction;

**(2)** a copy of a board-approved application for a license to practice as a New Mexico speech language pathologist;

**(3)** proof that the applicant is proficient in the specified language(s) as evidenced by:

**(a)** the applicant has a minimum of five years practicing with clients who utilize a language other than English as evidenced by a sworn and notarized affidavit from the applicant; or

**(b)** having passed a board-approved language proficiency assessment; or

**(c)** a letter of verification from a university, tribe or other recognized official entity documenting successful completion of a language proficiency rubric with a minimum of seventy percent in all domains/areas that apply to the specified language; or

**(d)** in the event that an applicant cannot provide the documentation required in Subparagraphs (a), (b) or (c) of Paragraph (4) of Subsection D of 16.26.2.19 NMAC, the board may consider other evidence of proficiency on a case-by-case basis.

[16.26.2.19 NMAC - N, 4/6/2016; A, 2/10/2022]

**16.26.2.20 REQUIREMENTS FOR ALL APPLICANTS WHO PRACTICE TELEHEALTH:**

**A.** An audiologist, speech-language pathologist or hearing aid dispenser licensed in New Mexico may use telecommunication technology to deliver services to a person residing in New Mexico who is physically present at a different location from the provider at the time services are received, so long as the services delivered through use of telecommunication technology meet or exceed the quality of services delivered face-to-face.

**B.** An audiologist, speech-language pathologist or hearing aid dispenser who resides outside the boundaries of the state of New Mexico and delivers services or products to residents of New Mexico shall be licensed by the board.

**C.** An audiologist, speech-language pathologist or hearing aid dispenser using telecommunication technology to deliver services shall have necessary knowledge and skills, obtained through education, training and experience to use such technology competently.

**D.** Telecommunication technology used to deliver services must be equivalent to that provided in person.

**E.** A licensed audiologist, speech-language pathologist or hearing aid dispenser must be physically present at all times at the hub site while interactive telecommunication technology is used to deliver services to a client physically present at a remote site.

**F.** A licensed audiologist, speech-language pathologist or hearing aid dispenser using telecommunication technology to deliver services to a client shall:

**(1)** assess the client's ability to participate meaningfully in the services delivered through telecommunications, including but not limited to the client's physical, cognitive and behavioral abilities;

**(2)** calibrate properly the clinical instruments used for delivery of services in accordance with standard operating procedures and manufacturer specifications;

**(3)** train properly the facilitator at the client-patient site if used;

**(4)** comply with all laws and rules governing maintenance of client records, including but not limited to client confidentiality requirements; and

**(5)** comply with all professional standards governing delivery of services including the applicable Code of Ethics

**G.** A licensed audiologist, speech-language pathologist or hearing aid dispenser using telecommunication technology to deliver services to a client shall provide notice to the client, guardian, caregiver and multi-disciplinary team as appropriate, including but not limited to the right to refuse telehealth services, options for service delivery and instruction on filing and resolving complaints.

**H.** An audiologist, speech-language pathologist or hearing aid dispenser shall not deliver services to a client solely through the use of regular mail, facsimile or electronic mail, although these methods of communication may be used to supplement the face-to-face delivery of services or through the use of telecommunication technology.

[16.26.2.20 NMAC - N, 2/14/2017]

### **PART 3: [RESERVED]**

## **PART 4: ANNUAL RENEWAL OF LICENSES**

### **16.26.4.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/1996; 16.26.4.1 NMAC - Rn & A, 16 NMAC 26.4.1, 2/3/2006]

### **16.26.4.2 SCOPE:**

All licensees complying with the renewal of licenses to practice speech-language pathology, audiology or hearing aid dispensing.

[11/9/1996; 16.26.4.2 NMAC - Rn, 16 NMAC 26.4.2, 2/3/2006; A, 1/29/2015]

### **16.26.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to -25 NMSA 1978, and the Uniform Licensing Act, Sections 61-1-1 to -33 NMSA 1978.

[11/09/1996; 11/07/1998; 16.26.4.3 NMAC - Rn, 16 NMAC 26.4.3, 2/3/06; A, 1/29/2015]

### **16.26.4.4 DURATION:**

Permanent.

[11/9/1996; 16.26.4.4 NMAC - Rn, 16 NMAC 26.4.4, 2/3/2006]

### **16.26.4.5 EFFECTIVE DATE:**

November 9, 1996, unless a later date is cited at the end of a section.

[11/9/1996; 11/7/1998; 16.26.4.5 NMAC - Rn & A, 16 NMAC 26.4.5, 2/3/2006]

**16.26.4.6 OBJECTIVE:**

The objective of Part 4 is to outline requirements, procedures, and criteria for renewal of licenses.

[12/21/1971; 11/09/1996; 16.26.4.6 NMAC - Rn, 16 NMAC 26.4.6, 2/3/2006; A, 1/29/2015]

**16.26.4.7 DEFINITIONS:**

**[RESERVED]**

**16.26.4.8 RENEWAL OF LICENSES:**

**A.** All licensees except clinical fellows and apprentices shall apply for license renewal biennially on or before January 30 of the renewal year, on the renewal forms supplied by the board office. The renewal requirements for clinical fellows and apprentices are set forth in Sections 9 and 10 of Part 4.

**B.** Licensees shall assume the total responsibility for:

(1) filing a current mailing address and electronic mail (email) with the board office;

(2) completing the renewal form and ensuring its delivery to the board office on or before January 30 of the renewal year;

(3) enclosing the appropriate fee; and

(a) initial licenses issued prior to the month of renewal will be granted a license term of the balance of the remainder of the current license year, plus one license year;

(b) no license shall be issued for longer than 24 months;

(4) enclosing documentation of meeting continuing education requirements.

**C.** To assist in the renewal process, the board office will:

(1) send renewal notices and the appropriate forms to the licensee's email address of record on or before December 15 prior to the expiration of the current license; and

(2) mail renewed and reinstated licenses no later than 30 days from day of receipt of application, fees and appropriate documentation.

**D. Expiration:** All speech-language pathology, audiology and hearing aid dispensing licenses expire on January 30 of the renewal year and renewal forms must be complete and postmarked, if submitted by mail no later than the expiration date or a late fee will be assessed without exception.

**E. Grace period:** There is a grace period permitting renewal of expired licenses which ends March 31 of the intended licensure year. However the license shall be considered expired during the grace period and the licensee must refrain from practicing.

**F. Renewal of license during the grace period ending March 31 of the intended license year will require payment of a late fee.**

**G.** If a licensee fails to renew within the grace period, the licensee must reapply as a new applicant, meet all applicable requirements, meet CEU requirements and pay the application fee and renewal fee.

**H.** Licensees shall be notified by the board office of all license expirations 10 days after the close of the grace period.

**I.** Timely renewal of license(s) is the full and complete responsibility of the licensee, Pursuant to Subsection C of 16.26.4.8 NMAC of these regulations. Non-receipt of the renewal notification by the licensee will not exempt licensure expiration or late penalty fees.

[12/21/1971; 2/5/1980; 4/5/1983; 11/9/1996; 11/7/1998; 11/27/1999; 16.26.4.8 NMAC - Rn & A, 16 NMAC 26.4.8, 2/3/2006; A, 11/29/2008; A, 6/7/2010; A, 1/29/2015; A, 11/28/2017; A, 1/10/2020]

#### **16.26.4.9 RENEWAL OF CLINICAL FELLOW LICENSE:**

The CFY must be completed within a maximum period of 36 consecutive months. Prior to or during the first 12 months of clinical fellow licensure, the clinical fellow must take and pass a nationally recognized examination in the clinical fellow's field. Proof of passing this exam is required for renewing the CFY license.

**A.** The clinical fellowship license shall be renewed annually on a form supplied by the board office and shall expire annually one year after the date of initial licensure. The renewal must be postmarked no later than the expiration date.

**B.** A late penalty fee will be assessed if the license is not renewed by the expiration date.

**C.** If a licensee fails to renew within 60 days of expiration of the license, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee.

[11/7/1998; 16.26.4.9 NMAC - Rn & A, 16 NMAC 26.4.9, 2/3/2006; A, 1/29/2015; A, 11/28/2017; A, 1/10/2020]

**16.26.4.10 RENEWAL OF TEMPORARY PARAPROFESSIONAL LICENSE (APPRENTICE IN SPEECH-LANGUAGE PATHOLOGY):**

**A.** All temporary paraprofessional licensees shall apply for license renewal annually on or before August 30th and are required to provide the following documentation to the board each year:

- (1)** a completed renewal form;
- (2)** the required license renewal fee; and
- (3)** a completed board approved verification of employment form verifying:
  - (a)** licensee's employment;
  - (b)** performance responsibilities of the apprentice in speech-language;
  - (c)** imitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);
  - (d)** provision for supervision by an SLP licensed according to this act;
- (4)** a completed board approved verification of education form verifying:
  - (a)** course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;
  - (b)** current degree plan once the licensee is admitted to a master's degree program; and
  - (c)** copy of transcripts from college or university.

**B.** Expiration: All temporary paraprofessional licenses expire on August 30th of each year and renewal of licenses must be postmarked no later than the expiration date of the license or a late fee will be assessed without exception.

**C.** A temporary paraprofessional license may not be renewed if the licensee has not been accepted into a master's degree program within two years of initial licensure.

**D.** If a licensee fails to renew within 60 days of expiration of the license, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee and renewal fee.

**E.** Temporary paraprofessional license as an apprentice in speech-language is a terminal license and as such may be renewed no more than four times total.

[11/7/1998; 11/27/1999; 16.26.4.10 NMAC - Rn & A, 16 NMAC 26.4.10, 2/3/2006; A, 11/29/2008; A, 11/28/2017; A, 1/10/2020]

## **PART 5: CONTINUING EDUCATION**

### **16.26.5.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/1996; 16.26.5.1 NMAC - Rn & A, 16 NMAC 26.5.1, 2/3/2006]

### **16.26.5.2 SCOPE:**

All licensed individuals wishing to renew their license must comply with the continuing education prerequisite of continuing education in order to retain and annually renew their speech-language pathology, audiology or hearing aid dispensing license.

[12/21/1971; 11/9/1996; 16.26.5.2 NMAC - Rn, 16 NMAC 26.5.2, 2/3/2006]

### **16.26.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to 61-14B-25 NMSA 1978 and Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[12/21/1971; 11/9/1996; 16.26.5.3 NMAC - Rn, 16 NMAC 26.5.3, 2/3/2006]

### **16.26.5.4 DURATION:**

Permanent.

[11/9/1996; 16.26.5.4 NMAC - Rn, 16 NMAC 26.5.4, 2/3/2006]

### **16.26.5.5 EFFECTIVE DATE:**

November 9, 1996, unless a later date is cited at the end of a section.

[11/9/1996; 16.26.5.5 NMAC - Rn & A, 16 NMAC 26.5.5, 2/3/2006]

#### **16.26.5.6 OBJECTIVE:**

The objective of Part 5 is to outline continuing education requirements, criteria and procedures.

[11/9/1996; 16.26.5.6 NMAC - Rn, 16 NMAC 26.5.6, 2/3/2006]

#### **16.26.5.7 DEFINITIONS:**

**[RESERVED]**

#### **16.26.5.8 CONTINUING EDUCATION PHILOSOPHY:**

Continuing education is one of the most important responsibilities of the speech-language pathologist, audiologist, and hearing aid dispenser. It is also a life-long process. A diversity of information related to speech-language pathology, audiology, and hearing aid dispensing regarding changing requirements, laws, and trends in the field is recommended to enhance the professional skills and development the speech-language pathologist, audiologist, and hearing aid dispenser. The responsibility of continuing education rests solely with the speech-language pathologist, audiologist, or hearing aid dispenser.

[11/9/1996; 16.26.5.8 NMAC - Rn & A, 16 NMAC 26.5.8, 2/3/2006]

#### **16.26.5.9 CONTINUING EDUCATION REQUIREMENTS OF LICENSEES:**

**A.** The board requires 20 hours of continuing education every two years. These may be distributed over the two year period, or they may all be obtained in one year. These continuing education hours must be in the field of licensure, or in a related field if justified to the board office. The board office will consult with the board to resolve questions as to appropriate continuing education hours. Renewal of a license shall be contingent upon the fulfillment of the continuing education standards and the supplying of evidence thereof by the licensee. The board shall be the final authority on acceptance of any educational activity submitted by a licensee to meet the continuing education requirement.

**B.** The number of continuing education hours required for renewal of a license may be prorated by the board office.

**(1)** A licensed individual whose next renewal date occurs less than 12 months after the license is issued will be required to earn continuing education hours equivalent to one hour per month each month the license is issued or reinstated to the last day of the renewal month up to a maximum of 10 clock hours.

**(2)** Any approved continuing education hours accrued prior to receiving a license during the year the license is issued can be applied toward the continuing education requirements.

**C.** Any person licensed as both a speech-language pathologist and an audiologist or hearing aid dispenser must fulfill the requirements of 20 clock hours of continuing education every two years in each field in which the licensee is licensed.

[2/5/1980; 8/4/1981; 11/9/1996; 16.26.5.9 NMAC - Rn & A, 16 NMAC 26.5.9, 2/3/2006; A, 11/29/2008; A, 11/28/2017]

#### **16.26.5.10 CRITERIA APPLYING TO OFFER CONTINUING EDUCATION OPPORTUNITY:**

**A.** The board or board office will approve professional education activities sponsored or approved by a national or state professional association of speech-language pathologists, audiologists and hearing aid dispensers.

**B.** All other proposed educational programs or seminars must be submitted to the board office prior to approval.

**C.** Requests must be submitted in writing with appropriate fees to the board office at least 60 days prior to the program. The board office shall give written notice of the approval or disapproval of the educational program or seminar within 30 days of receiving the application.

**D.** The individual/organization requesting approval of an educational seminar or course must provide the board office with the following material:

- (1)** name of the seminar or course;
  - (2)** sponsor;
  - (3)** objective of the seminar or course;
  - (4)** format and subjects of seminar or course;
  - (5)** number of clock hours of study or continuing education units;
  - (6)** method of verification of attendance or completion of self study program;
- and
- (7)** name and qualifications of faculty or institution material.

[4/5/1983; 11/9/1996; 16.26.5.10 NMAC - Rn & A, 16 NMAC 26.5.10, 2/3/2006; A, 11/28/2017]

#### **16.26.5.11 CONTINUING EDUCATION VERIFICATION:**

The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. The licensee should maintain a file that includes the continuing education course documentation up to two years.

**A.** If a NOTICE OF AUDIT letter is received with the annual renewal form, evidence of continuing education hours earned during the last two years must be submitted to the board as requested by this rule.

**B.** If the licensee is NOT AUDITED, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and all documentation of attendance and agendas should be retained by the licensee for a minimum of two years immediately preceding the current renewal.

**C.** The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

**D.** Beginning January 30, 2009 the board will no longer allow carry over hours.

[11/9/1996; 16.26.5.11 NMAC - Rn, 16 NMAC 26.5.11, 2/3/06; A, 11/29/2008]

#### **16.26.5.12 [RESERVED]**

[11/9/1996; 16.26.5.12 NMAC - Rn & A, 16 NMAC 26.5.12, 2/3/2006; Repealed, 11/29/2008]

### **PART 6: FEES**

#### **16.26.6.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/1996; 16.26.6.1 NMAC - Rn & A, 16 NMAC 26.6.1, 2/3/2006]

#### **16.26.6.2 SCOPE:**

All those individuals who wish to make application and practice speech-language pathology, audiology or hearing aid dispensing or individuals working towards their clinical fellowship, paraprofessionals as defined in these regulations, and hearing aid dispensing trainees who will be offering services in the speech-language pathology, audiology or hearing aid dispensing field in the state of New Mexico. All individuals or groups wishing to offer continuing education courses.

[11/9/1996; 16.26.6.2 NMAC - Rn & A, 16 NMAC 26.6.2, 2/3/2006]

**16.26.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B to 61-14B-25 NMSA 1978 and Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[11/9/1996; 11/7/1998; 16.26.6.3 NMAC - Rn & A, 16 NMAC 26.6.3, 2/3/2006]

**16.26.6.4 DURATION:**

Permanent

[11/9/1996; 16.26.6.4 NMAC - Rn, 16 NMAC 26.6.4, 2/3/2006]

**16.26.6.5 EFFECTIVE DATE:**

November 9, 1996, unless a later date is cited at the end of a section.

[11/9/1996; 11/7/1998; 16.26.6.5 NMAC - Rn & A, 16 NMAC 26.6.5, 2/3/2006]

**16.26.6.6 OBJECTIVE:**

Part 6 establishes fees for applications, licenses, license renewals, exams, penalties, and administrative fees, issued pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

[12/21/1971; 11/9/1996; 16.26.6.6 NMAC - Rn & A, 16 NMAC 26.6.6, 2/3/2006; A, 1/29/2015]

**16.26.6.7 DEFINITIONS:**

**[RESERVED]**

**16.26.6.8 FEES:**

All fees are payable to the board and are non-refundable. Fees are as follows:

	<b>Initial fee</b>	<b>Renewal fee</b>
<b>A.</b> Hearing aid dispenser trainee temporary permits	\$175.00	
<b>B.</b> Temporary paraprofessional license (apprentice)	\$50.00	\$50.00
<b>C.</b> Clinical fellow license	\$50.00	\$50.00

<b>D.</b> Speech-language pathologist or audiologist license	\$100.00	\$200.00
<b>E.</b> Hearing aid dispensers	\$175.00	\$360.00
<b>F.</b> Hearing aid practical exam	\$200.00	
<b>G.</b> Endorsement to dispense hearing aids	\$100.00	\$190.00
<b>H.</b> Processing continuing education offerings per offering	\$50.00	
<b>I.</b> Bilingual-Multicultural Endorsement	\$50.00	
<b>J.</b> Late renewal fee	\$75.00	
<b>K.</b> All application packet fees	\$10.00	
<b>L.</b> Verification of licensure	\$15.00	
<b>M.</b> Paper list	\$125.00	
<b>N.</b> Mailing labels	\$150.00	
<b>O.</b> Electronic list	\$175.00	
<b>P.</b> Duplicate license	\$10.00	
<b>Q.</b> Insufficient funds	\$25.00	

[10/25/1991; 11/09/1996; 11/7/1998; 11/27/1999; 16.26.6.8 NMAC - Rn & A, 16 NMAC 26.6.8, 2/3/2006; A, 6/7/2010; A, 1/29/2015; A, 11/28/2017; A, 1/10/2020]

## **PART 7: GROUNDS FOR DISCIPLINARY ACTION**

### **16.26.7.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/7/1998; 16.26.7.1 NMAC - Rn & A, 16 NMAC 26.7.1, 2/3/2006]

### **16.26.7.2 SCOPE:**

The provisions of Part 7 apply to applicants or licensees under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

[11/7/1998; 16.26.7.2 NMAC - Rn, 16 NMAC 26.7.2, 2/3/2006]

### **16.26.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to 61-14B-25 NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[11/7/1998; 16.26.7.3 NMAC - Rn, 16 NMAC 26.7.3, 2/3/2006]

### **16.26.7.4 DURATION:**

Permanent

[11/7/1998; 16.26.7.4 NMAC - Rn, 16 NMAC 26.7.4, 2/3/2006]

**16.26.7.5 EFFECTIVE DATE:**

November 7, 1998, unless a later date is cited at the end of a section.

[11/7/1998; 16.26.7.5 NMAC - Rn & A, 16 NMAC 26.7.5, 2/3/2006]

**16.26.7.6 OBJECTIVE:**

The objective of Part 7 is to set forth the grounds for disciplinary action which may subject an applicant or licensee to disciplinary action by the board.

[11/7/1998; 16.26.7.6 NMAC - Rn, 16 NMAC 26.7.6, 2/3/2006]

**16.26.7.7 DEFINITIONS:**

"Disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.26.7.7 – N, 2/10/2022]

**16.26.7.8 DISCIPLINARY GROUNDS AND DENIAL OF LICENSURE:**

In accordance with the provisions of the Uniform Licensing Act, the board may take disciplinary action if the board determines that the applicant or licensee has violated the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the board's rules. The following may subject the applicant or licensee to disciplinary action by the board.

**A.** Engaging in unprofessional conduct: Unprofessional conduct includes, but is not limited to, the following:

**(1)** violations of the principles of ethics or the ethical proscriptions as set forth in board regulations concerning its Code of Ethics (16.26.9 NMAC);

**(2)** for an audiologist or dispensing otorhinolaryngologist to accept a case referred from a hearing aid dispenser and not return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.

**B.** Engaging in acts that constitute incompetence: Incompetence includes, but is not limited to, the following:

(1) failure to possess the knowledge, apply the skill or provide the care required by generally accepted standards of the professions of speech-language pathology, audiology or hearing aid dispensing; or

(2) violation of the principles of ethics II or the ethical proscriptions thereunder as set forth in board regulations relating to professional competence (Subsections D and E of 16.26.9.8 NMAC);

(3) a finding of incompetence may be based upon a single act or omission of competence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence.

**C.** Aiding or abetting the practice by a person not licensed by the board. Aiding or abetting the practice of speech language pathology by a person not licensed by the board includes, but is not limited to, the following:

(1) A licensee shall not authorize or otherwise permit a speech language paraprofessional or assistant working under his or her supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.

(2) A licensee shall ensure that a speech language paraprofessional or assistant working under his or her supervision follows the plan of care.

(3) A licensee shall not authorize or otherwise permit an apprentice in speech-language pathology working under his or her supervision to conduct any of the duties set forth in Subsection E of 16.26.2.18 NMAC of the boards rules and shall ensure that the apprentice only engages in those duties authorized in Subsection D of 16.26.2.18 NMAC of the boards rules.

**D.** Failing to deliver to any person supplied with a hearing aid a receipt which contains the following information:

(1) licensee's license number and signature;

(2) the sponsor's/supervisor's signature approving of the fitting if the seller is a clinical fellow, graduate student or trainee;

(3) address of the licensee's regular place of business;

(4) make and model of the hearing aid;

(5) full financial terms of the sale;

(6) statement as to whether the hearing aid is new, used or reconditioned;

(7) statement that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser, audiologist, clinical fellow, trainee or graduate student and not as a medical diagnosis or prescription;

(8) terms of guarantee, if any.

(9) hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems.

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

(1) homicide or manslaughter;

(2) trafficking, or trafficking in controlled substances;

(3) human trafficking, kidnapping, false imprisonment, use of force or threats of force against school employees or healthcare workers, arson, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, failure to register as a sex offender, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect or financial exploitation;

(6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, tax fraud or evasion, forgery, embezzlement, credit card fraud, misuse of public funds or benefits, making false statements, offering or soliciting an illegal kickback or government action, tampering with public records, perjury;

(8) escape from a custody or possession of deadly weapons in custody;

(9) practicing healthcare without a license;

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

**F.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection E of this rule.

**G.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**H.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**I.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[11/7/98, 11/27/99, 12/5/99; 16.26.7.8 NMAC - Rn & A, 16 NMAC 26.7.8, 2/3/06; A, 11/28/2017; A, 2/10/2022]

## **PART 8: PROCEDURES FOR DISCIPLINARY ACTION**

### **16.26.8.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/7/1998; 16.26.8.1 NMAC - Rn & A, 16 NMAC 26.8.1, 2/3/2006]

### **16.26.8.2 SCOPE:**

The provisions in Part 8 may be of interest to anyone who may wish to file a complaint against a person licensed by the board. Disciplinary proceedings may be initiated against licensees or applicants.

[11/7/1998; 16.26.8.2 NMAC - Rn, 16 NMAC 26.8.2, 2/3/2006]

### **16.26.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to 61- 14B-25 NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[11/7/1998; 16.26.8.3 NMAC - Rn, 16 NMAC 26.8.3, 2/3/2006]

**16.26.8.4 DURATION:**

Permanent.

[11/7/1998; 16.26.8.4 NMAC - Rn, 16 NMAC 26.8.4, 2/3/2006]

**16.26.8.5 EFFECTIVE DATE:**

November 7, 1998, unless a later date is cited at the end of a section.

[11/7/1998; 16.26.8.5 NMAC - Rn & A, 16 NMAC 26.8.5, 2/3/2006]

**16.26.8.6 OBJECTIVE:**

The objective of Part 8 is to set forth procedures for filing complaints against applicants and licensees and the procedures for the board to follow in processing complaints.

[11/7/1998; 16.26.8.6 NMAC - Rn, 16 NMAC 26.8.6, 2/3/2006]

**16.26.8.7 DEFINITIONS:**

**A. "Complaint"** means a complaint filed with the board against an applicant for licensure or against a licensee.

**B. "Complainant"** means the party who files a complaint against a licensee or an applicant for licensure.

**C. "Respondent"** means the applicant for licensure or the licensee who is the subject of the complaint filed with the board.

**D. "Hearing"** means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in the disciplinary action against the respondent's application for licensure or license to practice speech-language pathology, audiology or hearing aid dispensing.

**E. "Violation"** means a violation of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the rules and regulations duly adopted by the board.

**F. "Notice of contemplated action" or "NCA"** means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the boards intent to take action based upon the alleged violations of practice and whereby the respondent is afforded the opportunity for a hearing before the board.

**G. "License revocation"** means to prohibit the conduct authorized by the license.

**H. "License suspension"** means to prohibit, for a stated period of time, the conduct authorized by the license.

**I. "License restricted subject to conditions"** means to allow the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.

[11/7/1998; 16.26.8.7 NMAC - Rn, 16 NMAC 26.8.7, 2/3/2006; A, 11/28/2017]

#### **16.26.8.8 COMPLAINTS:**

The disciplinary process may be instituted by a complaint on a board approved form by any person, including board members and board staff.

[11/7/1998; 16.26.8.8 NMAC - Rn, 16 NMAC 26.8.8, 2/3/2006]

#### **16.26.8.9 INVESTIGATION:**

Upon receipt of the complaint, the board will cause an investigation to be made into the subject complaint by the board's disciplinary committee.

[11/7/1998; 16.26.8.9 NMAC - Rn, 16 NMAC 26.8.9, 2/3/2006; A, 11/28/2017]

#### **16.26.8.10 DISCIPLINARY COMMITTEE:**

The disciplinary committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board to the disciplinary committee.

**A.** The disciplinary committee shall review all documentation provided to it in reference to the subject complaint.

**B.** The disciplinary committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

**C.** The foregoing notwithstanding, the disciplinary committee will not be required to provide the respondent with notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the

committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.

**D.** The disciplinary committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

**E.** Upon completion of its investigation, the disciplinary committee shall submit to the board its proposed recommendations concerning the proper disposition of the subject complaint.

**F.** Upon review the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the disciplinary committee recommendations.

**G.** Disciplinary committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or applicant who is the subject of the complaint.

**H.** If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

**I.** If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

**J.** The board may take any other action with regard to the complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

[11/7/1998; 16.26.8.10 NMAC - Rn, 16 NMAC 26.8.10, 2/3/2006; A, 1/29/2015; A, 11/28/2017]

#### **16.26.8.11 PRIVATE CAUSE OF ACTION:**

Neither the action nor inaction by the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[11/7/1998; 16.26.8.11 NMAC - Rn, 16 NMAC 26.8.11, 2/3/2006]

#### **16.26.8.12 DISCIPLINARY ACTION:**

In accordance with the Uniform Licensing Act, the board has authority to impose penalties in disciplinary matters and may deny, revoke, suspend or impose conditions on a license. The Uniform Licensing Act allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

**A. Formal letter of reprimand:** The board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be matters of public record.

**B. Notice of Contemplated Action:** The board may issue a notice of contemplated action (NCA) when appropriate.

**C. Prehearing motions:** The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing. Until such time as the board appoints a hearing officer, the chair of the board shall serve as hearing officer.

**D. Settlement agreements:** Following the issuance of a notice of contemplated action, the board may enter into a settlement agreement with the respondent as a means of resolving a complaint.

**E. Costs of disciplinary proceedings:** Licensees or applicants shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action in Section 61-1-3 NMSA 1978 of the Uniform Licensing Act is not taken by the board.

**F. Uniform licensing provisions:** In accordance with Subsection G of Section 61-1-7 NMSA 1978 of the Uniform Licensing Act, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

**G. License returned to the board:** Any license, renewal license or temporary permit issued by the board must be returned to the board subsequent to revocation or suspension. Unless otherwise ordered by the board, a licensee or permit holder whose license has been suspended or revoked must return the license or permit to the board no later than 30 days from receipt of a final order of suspension or revocation.

**H. Federal fraud and abuse data bank:** As required by federal law, final adverse disciplinary actions taken by the board against applicants or licensees will be reported to the federal health care integrity and protection data bank (or its successor data bank), which was established by the enactment of the Federal Health Insurance Portability and Accountability Act of 1996.

[11/7/1998; 16.26.8.12 NMAC - Rn, 16 NMAC 26.8.12, 2/3/2006; A, 1/29/2015; A, 11/28/2017]

## **PART 9: CODE OF ETHICS**

### **16.26.9.1 ISSUING AGENCY:**

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/1996; 16.26.9.1 NMAC - Rn & A, 16 NMAC 26.9.1, 2/3/2006]

### **16.26.9.2 SCOPE:**

Any and all individuals licensed under the New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act shall abide under this Code of Ethics.

[11/9/1996; 16.26.9.2 NMAC - Rn, 16 NMAC 26.9.2, 2/3/2006]

### **16.26.9.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Practices Act, Sections 61-14B-1 to 61-14B-25 NMSA 1978.

[12/21/1971; 11/9/1996; 16.26.9.3 NMAC - Rn, 16 NMAC 26.9.3, 2/3/2006]

### **16.26.9.4 DURATION:**

Permanent.

[11/9/1996; 16.26.9.4 NMAC - Rn, 16 NMAC 26.9.4, 2/3/2006]

### **16.26.9.5 EFFECTIVE DATE:**

November 9, 1996, unless a later date is cited at the end of a section.

[11/9/1996; 11/7/98; 16.26.9.5 NMAC - Rn & A, 16 NMAC 26.9.5, 2/3/2006]

### **16.26.9.6 OBJECTIVE:**

The objective of Part 9 is to outline standards in order to preserve integrity and ethical principles of professionals serving the public in the speech-language pathology audiology and hearing aid dispensing fields.

[11/9/1996; 16.26.9.6 NMAC - Rn, 16 NMAC 26.9.6, 2/3/2006]

### **16.26.9.7 DEFINITIONS:**

**[RESERVED]**

**16.26.9.8 CODE OF ETHICS:**

**A.** The purpose of the Code of Ethics is to preserve high standards of integrity and ethical principles in the discharge of obligations to the public by the professions of speech-language pathologists, audiologists and hearing aid dispensers. Every individual who practices as a licensed speech-language pathologist, audiologist or hearing aid dispenser shall abide by the Code of Ethics. Any action that violates the Code of Ethics is to be considered unethical and subject to disciplinary action by the board. Failure of the code to specify any particular responsibility or practice is not to be construed as a denial of the existence of a responsibility or practice in that area. The rules of ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all licensed individuals. The fundamental rules of ethical conduct as they relate to responsibility to the public are described in three categories, principles of ethics, ethical proscriptions and matters of professional propriety.

**(1)** Principles of ethics: Six principles serve as a basis for the ethical evaluation of professional conduct and form the underlying moral basis for the Code of Ethics. Licensed individuals subscribing to this code shall observe these principles as affirmative obligations under all conditions of professional activity.

**(2)** Ethical proscriptions: Ethical proscriptions are formal statements of prohibitions that are derived from the principles of ethics.

**(3)** Matters of professional propriety: Matters of professional propriety represent guidelines of conduct designed to promote the public interest and thereby better inform the public and particularly the persons in need of service by the speech-language pathologist, audiologist and hearing aid dispenser as to the availability and the rules governing the delivery of these services.

**B.** Principles of ethics 1: Individuals shall honor their responsibility to hold paramount the welfare of the persons they serve professionally.

**(1)** Licensed individuals shall use every resource including referral to other specialists as needed, to ensure that high quality service is provided.

**(2)** Licensed individuals shall fully inform the persons they serve of the nature and possible effects of the services rendered and products dispensed.

**(3)** Licensed individuals shall fully inform subjects participating in research or teaching activities of the nature and possible effects of these activities.

**(4)** Licensed individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

**(5)** Licensed individuals shall maintain adequate records of professional services rendered and products dispensed and shall provide access to those records when appropriately authorized.

**(6)** Licensed individuals shall use persons in research or as subjects of teaching demonstrations only with their fully informed consent.

**(7)** Licensed individuals' fees shall be commensurate with services rendered.

**(8)** Licensed individuals shall take all reasonable precautions to avoid injury to persons in the delivery of professional services.

**(9)** Licensed individuals whose services are adversely affected by substance abuse or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected area of practice.

**C. Ethical proscriptions:**

**(1)** Licensed individuals shall not discriminate in the delivery of professional services on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

**(2)** Licensed individuals shall not guarantee the results of any treatment, procedure, or product, directly or by implication; however, they may make a reasonable statement of prognosis. Caution must be exercised not to mislead any person served professionally to expect results that cannot be predicted from sound evidence.

**(3)** Licensed individuals must not evaluate, treat, or dispense except in a professional relationship.

**(4)** Licensed individuals shall not evaluate, treat, or dispense solely by correspondence. This does not preclude follow-up correspondence with persons previously served, nor providing them with general information of an educational nature.

**(5)** Licensed individuals shall not reveal, without proper authorization any professional or personal information about the person served professionally, unless required to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

**(6)** Licensed individuals must not charge for services not rendered.

**(7)** Licensed individuals must not exploit any person in the delivery of professional services, including accepting persons for treatment when benefit cannot reasonably be expected or continuing treatment when it is no longer necessary.

**D. Principles of ethics II:** Licensed individuals shall maintain high standards of professional competence.

(1) Licensed individuals shall engage in those aspects of the professions that are within the scope of their licensed professional competence.

(2) Licensed individuals shall identify competent, dependable referral sources for persons served professionally.

(3) Licensed individuals shall insure that all equipment used in the provision of services is in proper working order and is properly calibrated.

(4) Licensed individuals shall continue their professional development.

(5) Licensed individuals shall possess appropriate qualifications for services provided.

**E. Ethical proscriptions:**

(1) Licensed individuals must not provide services by prescriptions from anyone who is not licensed pursuant to these regulations.

(2) Licensed individuals shall prohibit any of their staff from providing services that they are not licensed or qualified to perform.

(3) Licensed individuals must not require or delegate any service requiring professional competence and licensure of/to anyone who is not competent and licensed to engage in any practice that is a violation of the Code of Ethics.

(4) Licensed individuals must not offer clinical services by supportive personnel for whom they do not provide appropriate supervision and assume full responsibility.

(5) Licensed individuals shall not provide professional services without exercising independent professional judgement, regardless of referral source or prescription.

**F. Principles of ethics III:**

(1) Licensed individuals shall honor their responsibility to the public by providing accurate information in all communications involving any aspect of professional service rendered.

(2) Licensed individuals' statements to the public - advertising, announcing, and marketing their professional services and products - shall adhere to prevailing and acceptable professional standards.

**(3)** Licensed individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, the products dispensed thereof, about the professions and about professional services.

**G. Ethical proscriptions:**

**(1)** Licensed individuals shall not misrepresent their credentials, competence, education, training, title, or experience.

**(2)** Licensed individuals shall not misrepresent diagnostic information, services rendered, or products dispensed, or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

**(3)** Licensed individuals must not make public statements regarding professional services and products that contain representations or claims that are false, deceptive or misleading.

**(4)** Licensed individuals must not use professional or commercial affiliations in any way that would mislead or limit services to persons served professionally.

**H. Matters of professional propriety:** Licensed individuals should announce services in a manner consistent with highest professional standards in the community.

**I. Principles of ethics IV:**

**(1)** Licensed individuals shall maintain objectivity in all matters concerning the welfare of persons served professionally. Licensees who dispense products to the public shall observe the following standards.

**(a)** Products associated with professional practice must be dispensed as a part of a program of comprehensive habilitative care.

**(b)** Fees established for professional services must be independent of whether a product is dispensed.

**(c)** Persons served shall be provided freedom of choice for the source of services and products.

**(d)** Price information about professional services rendered and products dispensed must be disclosed by providing or posting a complete schedule of fees and charges in advance of rendering services, which differentiates between fees for professional services and charges for products dispensed.

**(e)** Products dispensed to the person served must be evaluated to determine effectiveness.

**(2)** Any person who practices the sale or fitting of hearing aids shall deliver to any person supplied with a hearing aid, a receipt that shall contain:

**(a)** the licensee's signature, address of the regular place of business and license number; it shall also show the make and model of the hearing aid furnished along with the full terms of the sale clearly stated; if the hearing aid is not new, the receipt must clearly show whether the hearing aid is used or reconditioned, whichever is applicable in terms of any guarantee; the receipt shall also show that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser or fitter and not as a medical diagnosis or prescription; the receipt shall also include language stating that each prospective purchaser was informed at the time of the initial examination for possible sale and fitting of a hearing aid about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems in accordance with the latest standards for accessible design adopted by the United States department of justice in accordance with the federal Americans with Disabilities Act of 1990, as amended. Each licensee and purchaser must initial acknowledging that counseling for the above-mentioned options took place and that the purchaser was informed concerning these options, and whether the hearing aid(s) contain(s) a tele-coil or t-switch;

**(b)** the information regarding the trial period which shall be a minimum of 45 consecutive days; if the 45th day falls on a holiday, weekend, or a day the business is not open, the effective date shall be the first day the business reopens; full disclosure of the conditions of any offer of a trial period with a money back guarantee or partial refund; a trial period shall not include any time that the hearing aid is in the possession of the dispenser or the manufacturer; any extension of the 45-day refund period must be in writing and submitted to the client;

**(c)** shall also include the name, address, and telephone number of the speech language pathology, audiology and hearing aid dispensing practices board in the event a complaint needs to be filed.

**(3)** Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the trial period. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

**J.** Ethical proscriptions:

**(1)** Licensed individuals must not participate in activities that constitute a conflict of interest.

**(2)** Licensed individuals must not directly or indirectly give or offer to give money or anything of value to any person who advises another person in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by the licensee, or to refrain from dealing in the products of competitors.

**K. Matters of professional propriety:**

**(1)** Licensed individuals should not accept compensation for supervision or sponsorship from a supervised or sponsored individual.

**(2)** Individuals should present products they have developed to their colleagues in a manner consonant with highest professional standards.

**L. Principles of ethics V: Licensed individuals shall honor their responsibilities to the professions and their relationships with members of allied professions.**

**M. Matters of professional propriety:**

**(1)** Licensed individuals should seek to provide and expand services to persons with speech, language and hearing handicaps as well as assist in establishing high professional standards for such programs.

**(2)** Licensed individuals should educate the public about speech, language and hearing processes and handicaps, and matters related to professional competence.

**(3)** Licensed individuals should strive to increase knowledge within the professions and share research with colleagues.

**(4)** Licensed individuals should establish harmonious relations with colleagues and members of other professions and endeavor to inform members of the related professions of services provided by speech-language pathologists, audiologists and hearing aid dispensers.

**(5)** Licensed individuals should assign credit to those who have contributed to a publication in proportion to their contribution.

**N. Principles of ethics VI:**

**(1)** Licensed individuals shall uphold the dignity of the professions and freely accept the professional self imposed standards.

**(2)** Licensed individuals who have reason to believe that the Code of Ethics has been violated shall inform the board.

**(3)** Licensed individuals shall cooperate fully with the board in any investigation and adjudication of matters of professional conduct related to this Code of Ethics.

**O.** Principles of Ethics VII: Licensed audiologists and hearing aid dispensers shall, at the time of the initial examination for possible sale and fitting of a hearing aid if a hearing loss is determined, inform each prospective purchaser about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems in accordance with the latest standards for accessible design adopted by the United States department of justice in accordance with the federal Americans with Disabilities Act of 1990, as amended.

[8/4/1981; 8/4/1996; 11/9/1996; 11/7/1998; 16.26.9.8 NMAC - Rn & A, 16 NMAC 26.9.8, 2/3/2006; A, 06/07/2010; A, 1/10/2020]

## **PART 10: EMERGENCY LICENSURE**

### **16.26.10.1 ISSUING AGENCY:**

16.26.10.1 ISSUING AGENCY:

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[16.26.10.1 NMAC - Rp, 16.26.10.1 NMAC, 1/8/2023]

### **16.26.10.2 SCOPE:**

The provisions in Part 10 of Chapter 26 apply to all applicants for expedited licensure.

[16.26.10.2 NMAC - Rp, 16.26.10.2 NMAC, 1/8/2023]

### **16.26.10.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Speech-Language Pathology and Audiology and Hearing Aid Dispensing Practices Act, (Sections 61-14B-1 to 61-14B-25 NMSA 1978) and the Uniform Licensing Act NMSA 1978 (Sections 61-1-1 to 61-1-37).

[16.26.10.3 NMAC - Rp, 16.26.10.3 NMAC, 1/8/2023]

### **16.26.10.4 DURATION:**

Permanent.

[16.26.10.4 NMAC - Rp, 16.26.10.4 NMAC, 1/8/2023]

#### **16.26.10.5 EFFECTIVE DATE:**

January 8, 2023, unless a later date is cited at the end of a section.

[16.26.10.5 NMAC - Rp, 16.26.10.5 NMAC, 1/8/2023]

#### **16.26.10.6 OBJECTIVE:**

The objective of Part 10 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.26.10.6 NMAC - Rp, 16.26.10.6 NMAC, 1/8/2023]

#### **16.26.10.7 DEFINITIONS:**

##### **A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved

licensing jurisdictions in 16.26.10.8 NMAC; and

(2) any foreign country included in 16.26.10.9 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

##### **G. "Qualified applicant" means an applicant who:**

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined by the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) Subsection E of Section 61-1-34 NMSA 1978.

[16.26.10.7 NMAC - Rp, 16.26.10.7 NMAC, 1/8/2023]

#### **16.26.10.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-14B-16.1 NMSA 1978, of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act:

**A. Speech-language pathologist:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-14B-16.1 NMSA 1978, of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act: American Samoa, Northern Mariana Islands, and the U.S. Virgin Islands, on that grounds that these jurisdictions do not regulate this profession.

**B. Audiologist:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-14B-16.1 NMSA 1978, of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act:

(1) Alaska, Arkansas, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New York, Puerto Rico, South Dakota, Vermont, Washington, West Virginia, on that grounds that these jurisdictions have multiple pathways to licensure that do not meet New Mexico's education and examination requirements.

(2) American Samoa, Northern Mariana Islands, and the U.S. Virgin Islands, on the grounds that these jurisdictions do not regulate this profession.

**C. Hearing aid dispenser:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure under Section 61-14B-16.1 NMSA 1978, of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act:

(1) Alaska, California, District of Columbia, and Idaho, on that grounds that these jurisdictions do not have training and/or examination requirements consistent with New Mexico.

(2) American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, on the grounds that these jurisdictions do not regulate this profession.

[16.26.10.8 NMAC - Rp, 16.26.10.8 NMAC, 1/8/2023]

**16.26.10.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

**[RESERVED]**

**16.26.10.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) proof of a current license in good standing in an eligible jurisdiction as defined in these rules; and
- (3) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-14B-21 NMSA 1978:

- (1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.26.10.10 NMAC – N, 1/8/2023]

**16.26.10.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and
- (3) submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or
  - (e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-14B-21 NMSA 1978:

- (1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.26.10.11 NMAC – N, 1/8/2023]

#### **16.26.10.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules provided that, upon renewal, the licensee must also satisfy the following examination requirements:

(1) The licensee shall be required to pass the New Mexico jurisprudence examination.

(2) For speech-language pathologists, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass a nationally recognized standard examination in speech-language pathology, the licensee shall be required to pass the examination prior to renewing the license.

(3) For audiologists, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass a nationally recognized standard examination in audiology, the licensee shall be required to pass the examination prior to renewing the license.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.26.10.12 NMAC – N, 1/8/2023]

### **PART 11: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, AND VETERANS**

#### **16.26.11.1 ISSUING AGENCY:**

New Mexico Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[16.26.11.1 NMAC - N, 1/29/2015]

#### **16.26.11.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.26.11.2 NMAC - N, 1/29/2015]

**16.26.11.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Section 61-1-34 of the Uniform Licensing Act NMSA 1978.

[16.26.11.3 NMAC - N, 1/29/2015]

**16.26.11.4 DURATION:**

Permanent.

[16.26.11.4 NMAC - N, 1/29/2015]

**16.26.11.5 EFFECTIVE DATE:**

January 29, 2015, unless a later date is cited at the end of a section.

[16.26.11.5 NMAC - N, 1/29/2015]

**16.26.11.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, spouses and veterans seeking licensure to practice under the provisions of Chapter 61, Articles 14B NMSA 1978.

[16.26.11.6 NMAC - N, 1/29/2015]

**16.26.11.7 DEFINITIONS:**

**A. "Military service member"** means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

**B. "Recent veteran"** means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

[16.26.11.7 NMAC - N, 1/29/2015]

**16.26.11.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the board.

**B.** The applicant shall provide a complete application that includes the following information:

- (1)** applicant's full name;
- (2)** current mailing address;
- (3)** current electronic mail address, if any;
- (4)** date of birth;
- (5)** certification that they have not been convicted of any disqualifying criminal convictions as outlined in Subsection E of 16.26.7.8 NMAC;
- (6)** proof as described in Subsection C below.

**C.** The applicant shall provide the following satisfactory evidence as follows:

- (1)** applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;
- (2)** applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and
- (3)** the following documentation:
  - (a)** for military service member: copy of military orders;
  - (b)** for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
  - (c)** for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;
  - (d)** for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
  - (e)** for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

**E.** Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**F.** A license issued pursuant to this section shall be valid for the time period that is specified in the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act.

[16.26.11.8 NMAC - N, 1/29/2015; A, 11/28/2017; A, 2/10/2022]

#### **16.26.11.9 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.26.4 NMAC pursuant to Chapter 61, Article 14B NMSA 1978.

**B.** As a courtesy, the board, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.26.11.9 NMAC - N, 1/29/2015; A, 2/10/2022]

## **CHAPTER 27: COUNSELORS AND THERAPISTS**

### **PART 1: GENERAL PROVISIONS**

#### **16.27.1.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.1.1 NMAC - Rp, 16.27.1.1 NMAC, 11/30/2021]

#### **16.27.1.2 SCOPE:**

All professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, and licensed mental health counselors, licensed associate marriage and family therapists, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse associates.

[16.27.1.2 NMAC – Rp, 16.27.1.2 NMAC, 11/30/2021]

**16.27.1.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Section 61-9A-1 through 61-9A-30 NMSA 1978.

[16.27.1.3 NMAC - Rp, 16.27.1.3 NMAC, 11/30/2021]

**16.27.1.4 DURATION:**

Permanent.

[16.27.1.4 NMAC - Rp, 16.27.1.4 NMAC, 11/30/2021]

**16.27.1.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.1.5 NMAC - Rp, 16.27.1.5 NMAC, 11/30/2021]

**16.27.1.6 OBJECTIVE:**

The objective of Part 1 is to define terms relevant to applications, licensing, administrations and enforcement of the Counseling and Therapy Practice Act.

[16.27.1.6 NMAC - Rp, 16.27.1.6 NMAC, 11/30/2021]

**16.27.1.7 DEFINITIONS:**

**A.** AATA means the American art therapy association.

**B.** AAMFT means the American association for marriage and family therapy.

**C.** Accredited institution means a university or college accredited by a regional accrediting agency of institutions of higher education such as those listed in subsection D of this section.

**D.** Accredited means a college or university that was accredited at the time of the applicant's graduation by one of the following:

- (1)** the New England association of schools and colleges;
- (2)** the middle states association of colleges and schools;
- (3)** the north central association of colleges and schools;

- (4) the northwest association of schools and colleges;
- (5) the southern association of schools and colleges; or
- (6) the western association of schools and colleges.

**E.** Counseling related field means a course of study equivalent to no less than 48 semester graduate hours or 72 quarter graduate hours of course work required to meet in the mental health clinical core curriculum and 9 semester hours or 12 quarter hours of practicum, and additional hours required for the professional clinical mental health counselor (LPCC) license.

**F.** Education and training for substance abuse counselors means formal classroom education, workshops, seminars, institutes, in-service training programs, professional continuing education and coursework from accredited and non-accredited institutions. Practicum as it relates to the substance abuse counselor includes 300 hours in the twelve core functions listed below.

- (1) screening
- (2) intake
- (3) orientation
- (4) assessment
- (5) treatment planning
- (6) counseling
- (7) case management
- (8) crisis intervention
- (9) client education
- (10) referral
- (11) reports and record keeping
- (12) consultation with professionals

**G.** Clinical client contact hours means the time spent with a client to appraise, diagnose and treat psychopathology as determined by the scope of practice.

**H.** Contact hour for professional training or client contact means sixty minutes equals an hour of training or contact.

**I.** DSM means current diagnostic and statistical manual of mental disorders.

**J.** Appropriate supervision, including electronic supervision, means either group or individual supervision where the supervisor is in the same physical location as the supervisee, or virtually supervising in the same location as the supervisee. The supervisor is responsible for the direction and oversight of the development of counseling skills. Supervised contact hours shall become invalid after two years following the expiration of the limited license for new applicants.

**K.** Group supervision means face-to-face or electronic supervision, which includes no more than six individuals in the group.

**L.** Guidance counseling means a degree in guidance counseling, guidance and counseling, or counseling.

**M.** Human and family studies means a degree in human services or family studies.

**N.** ICD means international classification of diseases.

**O.** Individual supervision means face-to-face or electronic case consultation between the supervisor with no more than two supervisees in the group.

**P.** Mental health-community counseling means a degree in mental health, community counseling, or rehabilitation counseling.

**Q.** Postgraduate means training or coursework received after all master's or doctorate requirements for the qualifying degree have been completed.

**R.** Practice of licensed alcohol and drug abuse counselors shall demonstrate specialized knowledge and skills as pertains to substance use disorders according to current DSM or ICD. The LADAC shall demonstrate skill and interventions directly related to individuals, couples, families, and groups. The LADAC shall employ practice theory and research findings in all aspects of the licensee's practice. The LADAC may supervise alcohol or drug counselors if approved under 16.27.13.8 NMAC.

**S.** Practice of alcohol abuse or drug abuse counseling is practicing under appropriate supervision with demonstrated specialized knowledge and skills as it pertains to alcohol use disorders according to current DSM or ICD. The counselor shall demonstrate skill and knowledge of interventions directly related to individuals, couples, families, and groups. The counselor shall employ practice theory and research findings in all aspects of the licensee's practice. The services may include screening, assessment, consultation, development of treatment plans, case management,

counseling, referral, appraisal, crisis intervention, education, reporting and record keeping as pertains specifically to alcohol abuse or drug abuse counseling.

**T.** Psychopathology means mental disorders that meet the diagnostic criteria contained in the current DSM of the American psychiatric association or the world health organization's international classification of diseases and the problems in living associated with these conditions that are created over time or etiology and life effects.

**U.** Registered independent mental health counselor means an individual who is certified to practice without supervision.

**V.** Supervision means face-to-face contact between the individual and the appropriate supervisor during which the supervisor monitors, guides and evaluates the ability to interact, diagnose and treat each client.

**W.** Co-occurring disorders: Concurrent substance-related and mental disorder; having co-existing mental health and substance use disorders; Co-occurring disorders may include any combination of two or more substance abuse disorders and mental disorders identified in the diagnostic and statistical manual of mental disorders - IV (DSM-IV).

**X.** Cultural competency: counselors and therapists shall recognize that culture has an effect on the way in which clients' problems are defined and experienced. A client's cultural background and experiences shall be respected, recognized, acknowledged and considered by counselors and therapists when diagnosing and treating clients from diverse backgrounds.

**Y.** "disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

**Z.** Telecommunication means distance, electronic, or virtual.

[16.27.1.7 NMAC - Rp, 16.27.1.7 NMAC, 11/30/2021]

#### **16.27.1.8 LICENSE DISPLAY:**

A valid license must be displayed and must be visible to the public in the primary place of employment or business of the counselor or therapist. The license number and license designation shall appear with the contact information on the counselor's or therapist's web page if a web page is maintained. A licensee must practice counseling or therapy under the name inscribed on the license.

[16.27.1.8 NMAC - Rp, 16.27.1.9 NMAC, 11/30/2021]

#### **16.27.1.9 BOARD ELECTIONS:**

The board shall annually elect, by majority vote of the members present, the following officers: Chairperson and vice chairperson. Officers will serve a one-year term of office. A vacancy that occurs in any office shall be filled by a majority vote of the board members present, at the first board meeting following the vacancy.

[16.27.1.9 NMAC - Rp, 16.27.1.9 NMAC, 11/30/2021]

#### **16.27.1.10 QUORUM:**

A quorum of the board is four members. A quorum is necessary to conduct official business.

[16.27.1.10 NMAC - Rp, 16.27.1.10 NMAC, 11/30/2021]

#### **16.27.1.11 TELEPHONE CONFERENCES:**

If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate virtually (e.g. via telephone, computer link or other electronic devices). Each member participating in this manner shall be identified before speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.27.1.11 NMAC - Rp, 16.27.1.11 NMAC, 11/30/2021]

#### **16.27.1.12 BOARD MEETINGS:**

The board shall meet at least once a year and as often as necessary. Meetings may be convened at the call of the chair, or upon written request of three board members.

[16.27.1.12 NMAC - Rp, 16.27.1.12 NMAC, 11/30/2021]

#### **16.27.1.13 STANDARDS COMMITTEES:**

The board chair may appoint at least one and no more than five additional members to the following standards committees: Clinical mental health counselors, professional mental health counselors, marriage and family therapy, art therapy, and substance abuse. The board member representing the licensed profession shall chair the committee and a public board member shall serve on each committee. Committee members who do not serve on the board shall be licensed in the same professional category as the committee or be an educator in that profession, and shall have practiced in New Mexico for at least one year. Committee members serve at the pleasure of the board. Individuals may only serve on one standards committee.

[16.27.1.13 NMAC - Rp, 16.27.1.13 NMAC, 11/30/2021]

#### **16.27.1.14 PUBLIC RECORDS:**

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record as of the time of filing with the board.

[16.27.1.14 NMAC - Rp, 16.27.1.14 NMAC, 11/30/2021]

#### **16.27.1.15 INSPECTION OF PUBLIC RECORDS:**

The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12, NMSA 1978. The board administrator is the custodian of the board's records. Individuals may make oral or written request to inspect the public records of the board. A request must include the name, address and telephone number of the individual seeking inspection. Requests will be processed in a timely manner. If the inspection is not permitted within three business days, the custodian will notify the requestor in writing when the records will be made available. The board may request payment of a reasonable copying fee. No person shall remove original board documents from the board office. The board maintains files for all applicants and records in an applicant's file are subject to inspection except as provided by the Inspection of public records act.

[16.27.1.15 NMAC - Rp, 16.27.1.15 NMAC, 11/30/2021]

#### **16.27.1.16 NON-PUBLIC RECORDS:**

All written and oral communication provided to the board or data and information acquired by the board, relating to actual or potential discipline shall be confidential and shall not be disclosed except:

- A.** as necessary to carry out the board's functions;
- B.** as needed for judicial review of the board's actions; or
- C.** pursuant to a court order issued by a court of competent jurisdiction.

However, at the conclusion of any actual disciplinary action taken by the board against a person subject to the provisions of the Counseling and Therapy Practice Act, all data, communication and information acquired by the board shall be public.

[16.27.1.16 NMAC - Rp, 16.27.1.16 NMAC, 11/30/2021]

#### **16.27.1.17 LICENSEE CHANGE INFORMATION:**

All name changes and address changes must be submitted to the board in writing or by e-mail.

[16.27.1.17 NMAC - Rp, 16.27.1.17 NMAC, 11/30/2021]

**16.27.1.18 CRIMINAL CONVICTIONS:**

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

- (1) physical harm to another;
- (2) sexual harm to another;
- (3) alcohol or drug related offenses;
- (4) white collar crimes;
- (5) financial crimes;
- (6) property crimes; or

(7) any conviction that could qualify as a violation under the New Mexico counseling and therapy Practice board's code of ethics outlined within 16.27.18 NMAC.

**B.** Having one of the above listed convictions may result in your application or license going before the board for review. The board may require a hearing before determining if the application or license should be denied, suspended, revoked, approved, or renewed.

**C.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this section.

**D.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this section.

**E.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Counseling and Therapy Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this section.

**F.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this section.

[16.27.1.18 NMAC - N, 11/30/2021]

## **PART 2: MENTAL HEALTH CORE CURRICULUM REQUIREMENTS**

### **16.27.2.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.2.1 NMAC - N, 6-15-01]

### **16.27.2.2 SCOPE:**

All individuals applying for licensure as professional clinical mental health counselors, professional mental health counselors, and licensed mental health counselors.

[16.27.2.2 NMAC - N, 6-15-01]

### **16.27.2.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5, 61-9A-9, 61-9A-11, and 61-9A-15, NMSA 1978.

[16.27.2.3 NMAC - N, 6/15/2001; A, 11/30/2021]

### **16.27.2.4 DURATION:**

Permanent.

[16.27.2.4 NMAC - N, 6-15-01]

### **16.27.2.5 EFFECTIVE DATE:**

June 15, 2001 unless a later date is cited at the end of a section.

[16.27.2.5 NMAC - N, 6-15-01]

### **16.27.2.6 OBJECTIVE:**

The objective of Part 2 is to define the mental health core curriculum.

[16.27.2.6 NMAC - N, 6-15-01]

#### **16.27.2.7 DEFINITIONS:**

Mental health clinical core curriculum as used in Parts 4, 8, and 9 means a curriculum for training counselors that includes graduate-level coursework within 10 core curriculum areas. Course work that makes up the 48 semester hours or 72 quarter hours needed to meet the statutory requirement includes – 45 clinical semester hours including nine semester hours of practicum, or 72 quarter hours including 12 quarter hours of practicum. The remaining course work needed to complete the 48 graduate semester hours or 72 graduate quarter hours is to be distributed as electives among the 10 core curriculum areas derived from program approved courses.

[16.27.2.7 NMAC - N, 6/15/2001; A, 7/1/2004; A, 11/30/2021]

#### **16.27.2.8 MENTAL HEALTH CLINICAL CORE CURRICULUM:**

The core curriculum must be met using only transcript courses dedicated to the required course area. Thesis or dissertation will not be accepted. Partitioning, dividing, or sectioning of courses into various core course areas will not be accepted. The 10 core curriculum graduate areas of study apply to applicants who hold a related-field degree and include the following:

**A. Human growth and development:** A minimum of three semester hours or four quarter hours of graduate coursework in studies that provide an understanding of the nature and needs of individuals at all developmental levels. Essential components include, the following:

- (1) theories of individual development and transitions across the life-span;
- (2) theories of learning and personality development;
- (3) human behavior including an understanding of developmental crises, disability, addictive behavior, psychopathology, and environmental factors as they affect both normal and abnormal behavior;
- (4) strategies for facilitating development over the life span.

**B. Social and cultural foundations:** A minimum of three semester hours or four quarter hours of graduate coursework in studies that provide an understanding of issues and trends with multicultural and diverse populations. Essential components include, the following.

- (1) theories of multicultural counseling;

**(2)** prejudicial attitudes and behavior based on such factors as age, race, religious preference, physical disability, sexual orientation, ethnicity and culture, family patterns, gender, socioeconomic status, and intellectual ability;

**(3)** individual, family, and group strategies with diverse populations.

**C.** Helping relationships: A minimum of three semester hours or four quarter hours of graduate coursework in studies that provide an understanding of counseling and consultation processes. Essential components include, the following:

**(1)** counseling and consultation theories including both individual and systems perspectives;

**(2)** counselor or consultant characteristics and behaviors that influence helping processes, including age, gender and ethnic differences, and personal characteristics;

**(3)** client or consultee characteristics and behaviors that influence helping processes, including age, gender and ethnic differences, verbal and nonverbal behaviors and personal characteristics, traits, capabilities, and life circumstances.

**D.** Group work: A minimum of three semester hours or four quarter hours of graduate coursework in studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches. Essential components include, the following:

**(1)** theories of group dynamics including group process, developmental stages, and group members roles and behaviors;

**(2)** group leadership styles and approaches including the various types of groups;

**(3)** staged appropriate group counseling techniques and methods of evaluating effectiveness.

**E.** Career and lifestyle development: A minimum of three semester hours or four quarter hours of graduate coursework in studies that provide an understanding of career development and related life factors. Essential components include, the following:

**(1)** career development theories and decision-making models;

**(2)** labor market information resources, and including accessing computer-based career information systems;

**(3)** career development program planning, organization, implementation, administration, and evaluation;

(4) interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as they relate to career development;

(5) assessment instruments and techniques relevant to career planning and decision-making.

**F. Appraisal:** A minimum of three semester hours or four quarter hours of graduate coursework in studies that provide an understanding of individual and group approaches to assessment and evaluation. Essential components include, the following:

(1) theoretical and historical bases for assessment;

(2) selection, administration and interpretation of psychological tests considering examinee characteristics such as age, gender and cultural background;

(3) validity and reliability of appraisal instruments;

(4) psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;

(5) age, gender, ethnicity, language, disability, and culture factors related to the assessment and evaluation of individuals and groups;

(6) strategies for selecting, administering, interpreting and using assessment and evaluation instruments and techniques in counseling.

**G. Research methods:** A minimum of three semester hours or four quarter hours of graduate coursework and studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research. Essential components include, the following:

(1) basic types of research methods to include qualitative and quantitative research designs;

(2) uses of statistics software programs.

**H. Professional orientation:** A minimum of three semester hours four quarter hours of graduate coursework in studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing. Essential components include the following:

(1) history of the helping professions;

(2) professional roles scope of practice, including similarities and differences with other types of professionals;

(3) professional organizations, primarily the American counseling association, its divisions, branches, and affiliates, including membership benefits, activities, services to members, and current emphases;

(4) ethical standards of the American counseling association and related entities, ethical and legal issues, and their applications to various professional activities;

(5) professional credentialing including certification, licensure and accreditation practices and standards.

I. Specialized clinical studies: A minimum of 12 semester hours or 18 quarter hours of graduate coursework in studies that provide an understanding of all aspects of diagnosis and treatment of mental disorders. Studies in this area to include but are not limited to, the following:

- (1) clinical case study
- (2) psychodynamics and psychotherapy
- (3) treatment planning
- (4) clinical supervision
- (5) psychopharmacology
- (6) advanced testing
- (7) addictions
- (8) psychopathology
- (9) clinical theory and practice

J. Supervised practicum: A minimum of nine semester or 12 quarter hours of graduate coursework in practicum or internship is required. The practicum or internship training shall focus on counseling services within a professional setting under the direction of a faculty member or on-site supervisor designated by the college or university.

[16.27.2.8 NMAC - Rp 16 NMAC 27.1.7.24, 6/15/2001; A, 7/1/2004; A, 11/19/2007; A, 11/30/2021]

## **PART 3: APPLICATION PROCEDURES, INITIAL LICENSES, AND LICENSE PERIOD**

### **16.27.3.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.3.1 NMAC – Rp, 16.27.3.1 NMAC, 11/30/2021]

**16.27.3.2 SCOPE:**

All professional clinical mental health counselors, marriage and family therapists, professional art therapists, licensed associate marriage and family therapist, licensed mental health counselors, alcohol and drug abuse counselors, and substance abuse associate.

[16.27.3.2 NMAC - Rp, 16.27.3.2 NMAC, 11/30/2021]

**16.27.3.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5, 61-9A-9, 61-9A-11, 61-9A-15, and 61-9A-24, NMSA 1978.

[16.27.3.3 NMAC - Rp, 16.27.3.3 NMAC, 11/30/2021]

**16.27.3.4 DURATION:**

Permanent.

[16.27.3.4 NMAC - Rp, 16.27.3.4 NMAC, 11/30/2021]

**16.27.3.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.3.5 NMAC - Rp, 16.27.3.5 NMAC, 11/30/2021]

**16.27.3.6 OBJECTIVE:**

The objective of Part 3 is to outline what constitutes a complete application for the initial licensing process and initial licensing period.

[16.27.3.6 NMAC - Rp, 16.27.3.6 NMAC, 11/30/2021]

**16.27.3.7 DEFINITIONS:**

[RESERVED]

**16.27.3.8 APPLICATIONS FOR LICENSURE BY EXAMINATION:**

**A.** All applicants for licensure by examination must submit the following documentation to the board:

- (1) a completed application, attested by the applicant;
- (2) an application fee of \$75;
- (3) an official transcript in their original and sealed envelope, uploaded directly into the online application, or electronically sent directly to the board's e-mail address from each institution where the applicant completed an appropriate degree for the license type sought;
- (4) if required, a statement from each supervisor on a form provided by the board verifying the applicant's supervised experience and setting forth the nature and extent of each supervision; the forms must be submitted in a sealed envelope to the board office, uploaded directly into the online application, or electronically sent directly to the board's email address from the applicant or the supervisor;
- (5) other documentation required in 16.27.4 NMAC through 16.27.8 NMAC, and 16.27.18 NMAC through 16.27.23 NMAC, to document supervision, any additional training or coursework, work experience and client contact hours.

**B.** Applications will be valid for a period not to exceed 12 months from the date it is received at the board's office. An applicant wishing to re-apply after 12 months must submit a new application, including the application fee and all documentation.

**C.** Applicants who are deemed ineligible because of experience or educational deficiencies may request licensure at a lower level. This request from the applicant shall be in writing and include a \$25 application re-review fee as provided for in 16.27.17 NMAC.

[16.27.3.8 NMAC - Rp, 16.27.3.8 NMAC, 11/30/2021; A, 1/18/2023; A, 7/30/2024]

#### **16.27.3.9 INITIAL LICENSE:**

The board shall inform an applicant who has been approved for licensure of the required fees. If the applicant fails to pay all required fees within 60 days of notification of approval, the application shall be deemed null and void. The applicant shall then be required to submit a new application to include all supplemental documentation and fees.

[16.27.3.9 NMAC - Rp, 16.27.3.9 NMAC, 11/30/2021]

#### **16.27.3.10 INITIAL LICENSE PERIOD:**

An initial license will be issued including an expedited license for a period not to exceed 24 months. The issue date of the license will be the date the initial license fee and all other requirements are received at the board office and shall expire on September 30 of the appropriate year to establish the license in a renewal cycle.

[16.27.3.10 NMAC - Rp, 16.27.3.10 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.3.11 RETIREMENT STATUS:**

**A.** A licensee may place their license into retirement status by notifying the board in writing before the expiration of their current New Mexico license.

**B.** A retired license may be restored to active status within five years of being placed into retirement status by notifying the board in writing.

**C.** Reinstatement of a retired license will be granted upon receipt of the reinstatement application with the renewal and reinstatement fees, and proof of the required continuing education courses

[16.27.3.11 NMAC - Rp, 16.27.3.11 NMAC, 11/30/2021]

#### **16.27.3.12 INACTIVE STATUS:**

**A.** A licensee may request inactive status by requesting the change in the online portal before the expiration of the active or retirement status of the license.

**B.** An inactive license must be renewed every two years and pay the requisite fee. No continuing education courses are required while the license remains inactive.

**C.** To be restored to active status, the licensee shall complete the renewal application and comply with current continuing education requirements pursuant to 16.27.16.8 NMAC.

[16.27.3.12 NMAC - Rp, 16.27.3.12 NMAC, 11/30/2021; A, 07/30/2024]

#### **16.27.3.13 RENEWAL REQUIREMENTS:**

**A.** All licenses must be renewed biennially by September 30 by completing the following requirements:

- (1) A completed renewal application provided by the board office;
- (2) submission of the renewal license fee;
- (3) completion of the mandatory University of New Mexico health professions survey;

(4) completion of 40 CEUs with 12 of those hours being in ethics related to counseling and therapy obtained between October 1 and September 30 of the current licensing period, or, if renewing for the first time, completion of 20 CEU's with six of those hours being in ethics related to counseling and therapy obtained from license issue date and September 30 of the current license period; and

(5) completion of nine CEUs specific to counseling and therapy supervision if providing supervision to licensees obtained between October 1 and September 30 of the current licensing period.

**B.** A grace period of 30 days ending October 31 of the renewal year will be available for late renewal and will require completion of all requirements outlined in Subsection A of 16.27.3.13 NMAC and the submission of an additional \$100 late penalty fee as required under 16.27.17.14 NMAC.

**C.** Failure to renew a license by the end of the grace period will result in the license expiring and will require submission of the following documentation in order to obtain licensure again, pursuant to Subsection D of Section 61-9A-23 NMSA 1978:

(1) Submission of a new and complete application packet, to include all required supplemental documentation;

(2) meeting the current requirements for licensure at the time of completion of the new application packet; and

(3) submission of the application fee and initial license fees as outlined under 16.27.17 NMAC.

[16.27.3.13 NMAC - N, 11/30/2021; A, 7/30/2024]

## **PART 4: REQUIREMENTS FOR LICENSURE AS A PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR (LPCC)**

### **16.27.4.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.4.1 NMAC – Rp, 16.27.4.1 NMAC, 11/30/2021]

### **16.27.4.2 SCOPE:**

All individuals applying for licensure by examination as professional clinical mental health counselors.

[16.27.4.2 NMAC - Rp, 16.27.4.2 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.4.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Section 61-9A-1, 3, 5, 11 and 15 NMSA 1978.

[16.27.4.3 NMAC - Rp, 16.27.4.3 NMAC, 11/30/2021]

#### **16.27.4.4 DURATION:**

Permanent.

[16.27.4.4 NMAC - Rp, 16.27.4.4 NMAC, 11/30/2021]

#### **16.27.4.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.4.5 NMAC - Rp, 16.27.4.5 NMAC, 11/30/2021]

#### **16.27.4.6 OBJECTIVE:**

The objective of Part 4 is to state the minimum requirements for licensure by examination as a professional clinical mental health counselor and to list the documentation required for application.

[16.27.4.6 NMAC - Rp, 16.27.4.6 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.4.7 DEFINITIONS:**

[RESERVED]

#### **16.27.4.8 SUPERVISION:**

No supervision is required to practice with a LPCC independent license. The board strongly recommends that all independently licensed counselors and therapists have an ongoing consultation or peer review process in place.

[16.27.4.8 NMAC - Rp, 16.27.4.8 NMAC, 11/30/2021]

#### **16.27.4.9 APPLICANTS FOR LICENSURE BY EXAMINATION:**

**AS A PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR (LPCC) MUST POSSESS THE FOLLOWING QUALIFICATIONS AND PROVIDE THE REQUIRED DOCUMENTATION WITH THE APPLICATION:**

A. Age requirement. Be at least 21 years of age.

**B.** Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

**C.** Education requirement. Hold a master's or doctoral degree in counseling or a counseling-related field from an accredited institution. Applicants who hold a degree in a related-field must complete attachment E. The board may request syllabi as needed to clarify course content.

**D.** Applicants must have a masters or doctoral degree in counseling or a counseling-related field and a total of no less than 48 graduate semester hours or 72 quarter graduate hours in the mental health clinical core curriculum as defined in 16.27.2 NMAC. The hours must be acquired as a part of a master's or doctoral degree, or acquired as additional graduate education to complete the required clinical core curriculum hours.

**E.** Experience requirements.

(1) A minimum of two years' postgraduate professional clinical counseling experience.

(2) Evidence of having participated in a total of 3,000 hours of postgraduate clinical client contact and 100 hours of appropriate face to face postgraduate supervision. Up to 1,000 clinical client contact hours may be from the applicant's internship or practicum. Credit is automatically awarded by board staff based on the number of semester or quarter hours in practicum and internship listed on official transcripts. This credit should not be included on the attachment B form used for verifying postgraduate experience.

**F.** Application fee of \$75.00 as provided for in Part 17.

[16.27.4.9 NMAC - Rp, 16.27.4.9 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.4.10 EXAMINATION:**

Applicants must demonstrate professional competency by passing the national counselor examination (NCE) and the national clinical mental health counseling examination (NCMHCE).

[16.27.4.10 NMAC - Rp, 16.27.4.10 NMAC, 11/30/2021]

#### **16.27.4.11 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** Proof of education and experience requirements:

(1) The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree, a total of no less than 48 graduate semester hours or 72 quarter graduate hours which includes the required clinical core curriculum. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

(a) A verification letter from a university official verifying

- (i) their degree program;
- (ii) that all courses have been completed and they have earned passing grades;
- (iii) their degrees will be conferred by the university; and

(b) A receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred.

(2) A statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application. The statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice. If a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of the supervision.

(3) Documentation of 3,000 hours of postgraduate direct clinical client contact and 100 hours of appropriate face to face postgraduate supervision.

(4) Attachment E, listing only specific graduate coursework. The board may request syllabi as needed to clarify course content.

(5) If submitting hours obtained in another jurisdiction, documentation of the applicant's licensure, registration or certification status must be submitted on attachment form A which must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified or registered.

[16.27.4.11 NMAC - Rp, 16.27.4.11 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.4.12 [RESERVED]**

[16.27.4.12 NMAC - Rp, 16.27.4.12 NMAC, 11/30/2021; Repealed, 1/18/2023]

## **PART 5: REQUIREMENTS FOR LICENSURE AS A PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR FOR CURRENT LICENSED LPC'S [REPEALED]**

[This part was repealed on November 19, 2007]

## **PART 6: REQUIREMENTS FOR LICENSURE AS A MARRIAGE AND FAMILY THERAPIST (LMFT)**

### **16.27.6.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board

[16.27.6.1 NMAC - Rp 16 NMAC 27.5.1, 6-15-01]

### **16.27.6.2 SCOPE:**

All individuals applying for licensure by examination as professional marriage and family therapists.

[16.27.6.2 NMAC - Rp 16 NMAC 27.5.2, 6/15/2001; A, 1/18/2023]

### **16.27.6.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-5, 61-9A-9, 61-9A-12, 61-9A-15, 61-9A-22, 61-9A-23, and 61-9A-24 NMSA 1978.

[16.27.6.3 NMAC - Rp 16 NMAC 27.5.3, 6/15/2001; A, 11/30/2021]

### **16.27.6.4 DURATION:**

Permanent.

[16.27.6.4 NMAC - Rp 16 NMAC 27.5.4, 6-15-01]

### **16.27.6.5 EFFECTIVE DATE:**

June 15, 2001 unless a later date is cited at the end of a section.

[16.27.6.5 NMAC - Rp 16 NMAC 27.5.5, 6-15-01]

### **16.27.6.6 OBJECTIVE:**

The objective of Part 6 is to state the minimum requirements for licensure by examination as a marriage and family therapist and to list the documentation required for application.

[16.27.6.6 NMAC - Rp 16 NMAC 27.5.6, 6/15/2001; A, 1/18/2023]

#### **16.27.6.7 DEFINITIONS:**

**[RESERVED]**

#### **16.27.6.8 SUPERVISION:**

**A.** Supervision. No supervision is required to practice with a LMFT independent license. The board strongly recommends that all independently licensed counselors and therapists have an ongoing consultation or peer review process in place.

**B.** Marriage and family therapy core curriculum, means a curriculum for training marriage and family therapists that includes 45 semester hours or 67.5 quarter hours of graduate level coursework that embraces a family systems perspective and consists of the following areas of graduate study:

**(1)** Marriage and family studies- a minimum of nine semester hours or 12 quarter-hours of graduate coursework. Course content in this area may include the study of the family life cycle, family development, family subsystems, family theories, blended families, gender issues and families, cultural issues and families, contemporary families, family and interpersonal relationships and family crisis. All courses in this area must come from a systems perspective where systems theory is a major focus of the course.

**(2)** Marriage and family therapy - a minimum of nine semester hours or 12 quarter hours of graduate coursework in family therapy assessment, treatment and intervention methods. Major theoretical approaches that may be studied include: strategic, structural, object relations family therapy, behavioral family therapy, communication family therapy, intergenerational family therapy and systemic sex therapy. Courses should have a major focus on family systems theory and systemic interventions.

**(3)** Human development - a minimum of nine semester hours or 12 quarter hours of graduate coursework. Courses in human development across the life span including special issues (e.g., culture, gender, human sexuality) would be appropriate. Topic areas may include human development, infant/child/adolescent development, psychopathology, personality theory, and human sexuality. Courses should have a systemic focus. Testing and measurement courses are NOT acceptable in this area.

(4) Multicultural studies - a minimum of three semester hours or four quarter hours of graduate coursework, includes a systemic orientation relevant to diverse racial ethnic populations.

(5) Professional studies- a minimum of three semester hours or four quarter hours of graduate coursework. Areas of study include legal issues and responsibilities, professional liabilities, and ethics related to the practice of marriage and family therapy. Religious ethics and moral theology courses are NOT acceptable in this area.

(6) Research a minimum of three semester hours or four quarter hours of graduate coursework. Courses in this area should assist the student in understanding and performing research. Topical areas may include: research design and methodology, quantitative methods and statistics. Personality and test and measurement courses are NOT accepted in this area.

(7) Supervised practicum - a minimum of six semester hours or eight quarter hours of graduate coursework. As part of the six semester hours or eight quarter hours of coursework, there must be a minimum of 300 hours of supervised direct client contact, for a period of at least 12 months. Practicum students may only count hours in which they work directly with individuals, couples, and families for the purpose of assessment, diagnosis and treatment in marriage and family related issues.

(8) Electives from any area listed above satisfy the 45 semester-hour or 67.5 quarter hour requirement. Remaining course work would be distributed as electives related to the areas listed above.

[16.27.6.8 NMAC - Rp 16 NMAC 27.1.7.5, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/30/2021]

#### **16.27.6.9 APPLICANTS FOR LICENSURE BY EXAMINATION:**

As a marriage and family therapist (LMFT) must possess the following qualifications and provide the required documentation with the application:

- A.** Age requirement. Be at least 21 years of age.
- B.** Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.
- C.** Hold a master's or doctoral degree from an accredited institution in marriage and family therapy, meets the requirements of the core curriculum in marriage and family therapy.
- D.** Experience requirements.

(1) A minimum of two years' postgraduate marriage and family therapy experience.

(2) Evidence of having participated in a total of at least 1,000 hours of postgraduate marriage and family clinical client contact.

(3) 200 hours of appropriate postgraduate marriage and family supervision, including at least 100 hours of individual supervision. The appropriate supervision must be received from an individual who has education, clinical experience and supervisory experience in the field of marriage and family therapy.

**E.** Application fee of \$75.00.

[16.27.6.9 NMAC - Rp 16 NMAC 27.5.8, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

#### **16.27.6.10 EXAMINATION:**

Applicants must demonstrate professional competency by passing the examination for marital and family therapy (PES).

[16.27.6.10 NMAC - Rp 16 NMAC 27.5.9, 6-15-01; A, 2-10-06]

#### **16.27.6.11 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** Proof of education and experience requirements:

(1) the applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree; the transcript must be submitted with the application; applicants educated in foreign institutions who are unable to submit certified official transcripts shall submit a statement explaining why such transcripts are not available and shall submit certified copies of the degree certificates granted, information on the curricula offered, and any other documentation requested by the board. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

(a) A verification letter from a university official verifying

(i) their degree program;

(ii) that all courses have been completed and they have earned passing grades;

(iii) their degrees will be conferred by the university; and

(b) A receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred;

(2) a statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice; if a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of the supervision;

(3) documentation of 1,000 hours of postgraduate direct client contact hours in marriage and family therapy and 200 hours of appropriate postgraduate supervision in marriage and family therapy;

(4) if an applicant has been previously licensed, registered or certified in another state, territory or foreign nation, documentation of the applicant's licensure, registration or certification status shall be submitted on form A of the application;

[16.27.6.11 NMAC - Rp 16 NMAC 27.5.10, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

#### **16.27.6.12 [RESERVED]**

[16.27.6.12 NMAC - Rp 16 NMAC 27.9.8&9, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 1/15/2007; A, 11/30/2021; Repealed, 1/18/2023]

## **PART 7: REQUIREMENTS FOR LICENSURE AS A PROFESSIONAL ART THERAPIST (LPAT)**

### **16.27.7.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.7.1 NMAC – Rp, 16.27.7.1 NMAC, 11/30/2021]

### **16.27.7.2 SCOPE:**

All individuals applying for licensure by examination as professional art therapists.

[16.27.7.2 NMAC - Rp, 16.27.7.2 NMAC, 11/30/2021; A, 1/18/2023]

### **16.27.7.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5, 61-9A-9, 61-9A-13, 61-9A-15, 61-9A-22, 61-9A-23, and 61-9A-24 NMSA 1978.

[16.27.7.3 NMAC - Rp, 16.27.7.3 NMAC, 11/30/2021]

**16.27.7.4 DURATION:**

Permanent.

[16.27.7.4 NMAC - Rp, 16.27.7.4 NMAC, 11/30/2021]

**16.27.7.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.7.5 NMAC - Rp, 16.27.7.5 NMAC, 11/30/2021]

**16.27.7.6 OBJECTIVE:**

The objective of Part 7 is to state the minimum requirements for licensure as a professional art therapist and to list the documentation required for application.

[16.27.7.6 NMAC - Rp, 16.27.7.6 NMAC, 11/30/2021]

**16.27.7.7 DEFINITIONS:**

**[RESERVED]**

**16.27.7.8 SUPERVISION:**

No supervision is required to practice with a LPAT independent license. The board strongly recommends that all independently licensed counselors and therapists have an ongoing consultation or peer review process in place.

[16.27.7.9 NMAC - Rp, 16.27.7.9 NMAC, 11/30/2021]

**16.27.7.9 [RESERVED]**

**16.27.7.10 APPLICANTS FOR LICENSURE BY EXAMINATION:**

**AS A PROFESSIONAL ART THERAPIST (LPAT) MUST POSSESS THE FOLLOWING QUALIFICATIONS AND PROVIDE THE REQUIRED DOCUMENTATION WITH THE APPLICATION:**

A licensed professional art therapist (LPAT) must possess the following qualifications and provide the required documentation with the application:

**A.** Age requirement. Be at least 21 years of age.

**B.** Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

**C.** Education requirements. Professional entry into art therapy requires a masters or doctoral degree in art therapy, counseling or counseling related field. Individuals holding a master's degree in a related field may enter the art therapy profession by completing 48 graduate semester hours or 72 quarter hours in the art therapy core curriculum.

**D.** Experience requirements:

(1) a minimum of two years postgraduate professional art therapy experience;

(2) evidence of having participated in a total of 3000 hours of postgraduate clinical client contact and 100 hours of appropriate face-to-face postgraduate supervision; 1000 clinical client contact hours may be from the applicant's internship or practicum.

**E.** Application fee of \$75.00 as provided for in 16.27.17 NMAC.

**F.** Is of good moral character with conduct consistent with the code of ethics.

[16.27.7.10 NMAC - Rp, 16.27.7.10 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.7.11 ART THERAPY CORE CURRICULUM:**

**A.** History and theory of art therapy: To include art therapy history and theory, events, practitioners and the development of art therapy as a distinct therapeutic practice. Overview of psychotherapy theories relevant to art therapy, theories of creativity, and theoretical foundations of art therapy.

**B.** Techniques of practice in art therapy: Direct experience of the therapeutic utility and psychological influence of art processes and materials. Identifying the therapeutic effect of art making leading to establishment of therapeutic goals and intervention strategies. Development of a framework for understanding symbolic language.

**C.** Application of art therapy with people in different treatment settings: Art therapy interventions for the treatment of children, adolescents, adults, couples and families in inpatient, outpatient, partial treatment programs, and aftercare. Critical thinking with regard to similarities and differences between art therapy intervention and counseling intervention. Exploration of several behavioral and artistic communication, assessment,

treatment planning, treatment approaches, relationship dynamics, and the role of the art therapist on the treatment team.

**D. Group work:** Theoretical and experiential understanding of group dynamics, therapeutic factors, member roles and behaviors, leadership styles and approaches, selection criteria, and short and long term group process.

**E. Art therapy assessment:** Fundamentals of art therapy assessment, statistical concepts including reliability and validity, selection of the assessment tool, and familiarity with a variety of specific art therapy instruments and procedures used in appraisal and evaluation. Ability to recognize indicators of functional and organic disorders in the artwork of clients. Understanding of development levels, cultural factors, symbolism and metaphor, psychopathology, psychological health manifested in artwork and art making. Administration and documentation of art therapy assessment, formulation of treatment goals, objectives and strategies related to assessment and evaluation.

**F. Ethical and legal issues of art therapy practice:** Professional identity, professional ethics, and the ethical practice of art therapy. Familiarity with the ethical standards of the American art therapy association and ATCB, as well as ACA and other related fields. The proper application of ethical and legal principles of art therapy practice.

**G. Standards of practice in art therapy:** Professional role as an art therapist with regard to function and relationships with other mental health providers. Knowledge of professional organization, credentialing and licensure, public policy, advocating for the profession, and client advocacy.

**H. Cultural and social diversity:** Foundation of knowledge in cultural diversity theory and competency models applied to an understanding of diversity of artistic language, symbolism and meaning in artwork and art making across culture and within a diverse society. Investigation of the role of the art therapist in social justice, advocacy, and conflict resolution.

**I. Thesis or culminating project:** The integration of knowledge with regard to the profession of art therapy, including the literature in the field through a culminating project. This may include, but is not limited to, thesis or extensive and in-depth; projects, use of structured methods and formats such as quantitative and qualitative research, formal case studies, and art-based research.

[16.27.7.11 NMAC - Rp, 16.27.7.11 NMAC, 11/30/2021]

#### **16.27.7.12 EXAMINATION:**

Applicants must demonstrate professional competency by passing the art therapy credentials board certification examination (ATCBE).

[16.27.7.12 NMAC - Rp, 16.27.7.12 NMAC, 11/30/2021]

**16.27.7.13 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** Proof of education and experience:

(1) The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree a total of no less than 48 semester hours or 72 quarter hours which includes the required clinical core curriculum. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

(a) A verification letter from a university official verifying

(i) their degree program;

(ii) that all courses have been completed and they have earned passing grades;

(iii) their degrees will be conferred by the university; and

(b) A receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred.

(2) A statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice; if a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of the supervision.

(3) Documentation of 3000 client contact hours and 100 hours of appropriate face-to-face supervision.

(4) Attachment F, listing only specific graduate coursework. The board may request syllabi as needed to clarify course content.

(5) Documentation of the applicant's licensure, registration or certification status must be submitted on application attachment form A, which must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified, or registered.

(6) Application fee of \$75.00 as provided for in 16.27.17 NMAC.

[16.27.7.13 NMAC - Rp, 16.27.7.13 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.7.14 [RESERVED]**

[16.27.7.14 NMAC - Rp, 16.27.7.14 NMAC, 11/30/2021; Repealed, 1/18/2023]

### **PART 8: REQUIREMENTS FOR LICENSURE AS A PROFESSIONAL MENTAL HEALTH COUNSELOR (LPC) [REPEALED]**

[This part was repealed on November 19, 2007]

### **PART 9: REQUIREMENTS FOR LICENSURE AS A MENTAL HEALTH COUNSELOR (LMHC)**

#### **16.27.9.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.9.1 NMAC - Rp 16 NMAC 27.8.1, 6-15-01]

#### **16.27.9.2 SCOPE:**

All individuals applying for licensure by examination as entry level licensed mental health counselors.

[16.27.9.2 NMAC - Rp 16 NMAC 27.8.2, 6/15/2001; A, 1/18/2023]

#### **16.27.9.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5, 61-9A-9, 61-9A-14, 61-9A-15, 61-9A-22, 61-9A-23, and 61-9A-24, NMSA 1978.

[16.27.9.3 NMAC - Rp 16 NMAC 27.8.3, 6/15/2001; A, 11/30/2021]

#### **16.27.9.4 DURATION:**

Permanent.

[16.27.9.4 NMAC - Rp 16 NMAC 27.8.1, 6-15-01]

**16.27.9.5 EFFECTIVE DATE:**

June 15, 2001 unless a different date is cited at the end of a section.

[16.27.9.5 NMAC - Rp 16 NMAC 27.8.1, 6-15-01]

**16.27.9.6 OBJECTIVE:**

The objective of Part 9 is to state the minimum requirements for entry-level licensure as a professional mental health counselor and list the documentation required for application.

[16.27.9.6 NMAC - Rp 16 NMAC 27.8.1, 6-15-01]

**16.27.9.7 DEFINITIONS:**

[RESERVED]

**16.27.9.8 SUPERVISION:**

**A.** Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, licensed clinical social worker (LCSW), or licensed independent social worker (LISW) who holds a supervision designation issued by the counseling and therapy practice board. The licensed mental health counselor (LMHC) or the licensed professional mental health counselor (LPC) must practice under supervision. Once the licensed mental health counselor or the licensed professional mental health counselor acquires the official LPCC or LPAT license then the licensee may practice independently without supervision.

**B.** It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.

**C.** Client contact and supervision hours prior to being licensed will not be acceptable for licensure.

**D.** Supervised contact hours will become invalid if obtained more than five years prior to submission for independent LPCC licensure. This requirement does not apply to license holders who have continuously maintained a license in good standing.

[16.27.9.8 NMAC - N, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/19/2007; A, 11/30/2021]

**16.27.9.9 LICENSED MENTAL HEALTH COUNSELOR (MENTAL HEALTH SPECIALTY OR ART THERAPY SPECIALTY):**

A. LMHC is intended as a transition between the required degree and the completion of supervised training required for licensure as a professional clinical mental health counselor or a professional art therapist. All work must be performed under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure they will seek upon completion of supervised training. There is no maximum time limit as a licensed mental health counselor, but all work at this level must be done under clinical supervision.

B. Qualifications for entry level licensure by examination. An applicant for licensure by examination as an entry-level mental health counselor (LMHC) must possess the following qualifications:

- (1) be at least 21 years of age;
- (2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics;
- (3) holds a masters or doctoral degree in a counseling or counseling related field with no less than 48 graduate hours or 72 quarter hours in the core curriculum and nine practicum hours; and
- (4) have arranged for appropriate clinical supervision, as required by their licensure track.

[16.27.9.9 NMAC - Rp 16 NMAC 27.8.8, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

**16.27.9.10 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

A. A completed application as specified in 16.27.3.8 NMAC.

B. The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree. The transcript must be submitted with the application. Applicants educated in foreign institutions who are unable to submit certified official transcripts shall submit a statement explaining why such transcripts are not available and shall submit certified copies of the degree certificates granted, information on the curricula offered, and any other documentation requested by the board.

C. A statement from each supervisor in a sealed envelope on a form provided by the board (attachment C) verifying the applicant's has arranged for appropriate

supervision supervised experience and setting forth the nature and extent of such supervision must be submitted with the application.

**D.** Applicant with the mental health specialty must complete attachment E and art therapy specialty must complete attachment F.

**E.** Application fee of \$75.00.

[16.27.9.10 NMAC - Rp 16 NMAC 27.8.9, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 1/18/2023]

#### **16.27.9.11 EXAMINATION:**

Applicants must demonstrate professional competency by passing the national counselors exam (NCE) or (NCC) and art therapy specialty must demonstrate professional competency by passing the art therapy credentialing board (ATCB) exam.

[16.27.9.11 NMAC - Rp 16 NMAC 27.8.10, 6-15-01; A, 7-1-04; A, 2-10-06]

#### **16.27.9.12 [RESERVED]**

[16.27.9.12 NMAC - N, 11/30/2021; Repealed, 1/18/2023]

### **PART 10: REQUIREMENTS FOR LICENSURE WITH EXAMINATION AS AN ALCOHOL AND DRUG ABUSE COUNSELOR EFFECTIVE JULY 1, 2003 [REPEALED]**

[This part was repealed on February 10, 2006.]

### **PART 11: REQUIREMENTS FOR LICENSURE WITH EXAMINATION AS AN ALCOHOL AND DRUG ABUSE COUNSELOR (LADAC)**

#### **16.27.11.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.11.1 NMAC – Rp, 16.27.11.1 NMAC, 11/30/2021]

#### **16.27.11.2 SCOPE:**

All individuals applying for licensure by examination as an alcohol and drug abuse counselor.

[16.27.11.2 NMAC - Rp, 16.27.11.2 NMAC, 11/30/2021]

#### **16.27.11.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5, 61-9A-9, 61-9A-14.2, 61-9A-15, 61-9A-23, and 61-9A-24 NMSA 1978 and the Uniform Licensing Act, Section 61-1-34 NMSA 1978.

[16.27.11.3 NMAC - Rp, 16.27.11.3 NMAC, 11/30/2021]

**16.27.11.4 DURATION:**

Permanent.

[16.27.11.4 NMAC - Rp, 16.27.11.4 NMAC, 11/30/2021]

**16.27.11.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.11.5 NMAC - Rp, 16.27.11.5 NMAC, 11/30/2021]

**16.27.11.6 OBJECTIVE:**

The objective of Part 11 is to state the minimum requirements for licensure with examination as an alcohol and drug abuse counselor and list the documentation required for application effective July 1, 2003.

[16.27.11.6 NMAC - Rp, 16.27.11.6 NMAC, 11/30/2021]

**16.27.11.7 DEFINITIONS:**

[RESERVED]

**16.27.11.8 SUPERVISION:**

**A.** No supervision is required to practice with a LADAC independent license. The board strongly recommends that all independently licensed counselors and therapists have an ongoing consultation or peer review process in place. Effective July 1, 2007, the independent alcohol and drug counselor may provide therapeutic services that may include treatment of clients with co-occurring disorders or dual diagnosis in an integrated behavioral health setting in which a multidisciplinary team has developed a multidisciplinary treatment plan that is co-authorized by an independently licensed counselor or therapist. The treatment of a mental health disorder must be supervised by an independently licensed counselor or therapist.

**B.** It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and

the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.

**C.** Client contact and supervision hours acquired prior to being licensed will not be acceptable for licensure.

[16.27.11.8 NMAC - Rp, 16.27.11.8 NMAC, 11/30/2021]

### **16.27.11.9 APPLICANTS FOR LICENSURE:**

An alcohol and drug abuse counselor (LADAC) must possess the following qualifications and provide the required documentation with the application.

**A.** Age requirement: Be at least 21 years of age.

**B.** Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

**C.** Applicant must demonstrate professional competency by passing the national certification examination for addiction counselors (NCAC level 1).

**D.** Education requirements

**(1)** Holds an associate degree in counseling, counseling related field or a substance abuse related field from an accredited institution. The board may approve, on a case-by-case basis, applicants whose education is not in a counseling or substance abuse related field. One semester credit hour is equal to 15 clock hours of education. Qualifying education shall include 276 clock hours in the following areas:

**(a)** 90 hours in the field of alcohol abuse

**(b)** 90 hours in the field of drug abuse

**(c)** 90 hours in the field of counseling

**(d)** six hours that pertain specifically to alcohol and drug counseling ethics training.

**(2)** Holds a baccalaureate degree in counseling, a counseling related field or a substance abuse related field from an accredited institution. The board may approve, on a case-by-case basis, applicants whose education is not in a counseling or substance abuse related field. One semester credit hour is equal to 15 clock hours of education. Qualifying education shall include 276 clock hours in the following areas:

**(a)** 90 hours in the field of alcohol abuse

**(b)** 90 hours in the field of drug abuse

**(c)** 90 hours in the field of counseling

**(d)** six hours that pertain specifically to alcohol and drug counseling ethics training, (must be acquired two years prior to submission of an application).

**(3)** Holds a masters or doctoral degree in counseling, a counseling related field or a substance abuse related field from an accredited institution. The board may approve, on a case-by-case basis, applicants whose education is not in a counseling or substance abuse related field. One semester credit hour is equal to 15 clock hours of education. Qualifying education shall include 276 clock hours in the following areas:

**(a)** 90 hours in the field of alcohol abuse

**(b)** 90 hours in the field of drug abuse

**(c)** 90 hours in the field of counseling

**(d)** six hours that pertain specifically to alcohol and drug counseling ethics training, (must be acquired two years prior to submission of an application).

**E.** Experience requirements.

**(1)** associate degree requires a minimum of three years and 3,000 client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and 200 hours of appropriate supervision; or

**(2)** a baccalaureate degree requires a minimum of two years and 2,000 client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and 100 hours of appropriate supervision; or

**(3)** a masters or doctoral degree requires a minimum of one year and 1,000 client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and 50 hours of appropriate supervision.

**F.** Documentation required for licensure:

**(1)** a completed application as specified in 16.27.3.8 NMAC, and

**(2)** proof of completed education and experience requirements:

**(a)** the applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's associate, baccalaureate, or masters degree; the official transcript must be submitted with the application; applicants educated in foreign institutions who are unable to submit certified official

transcripts shall submit a statement explaining why such transcripts are not available and shall submit certified copies of the degree certificates granted, information on the curricula offered, and any other documentation requested by the board, and

(b) documentation of required drug, alcohol, counseling and ethics training (attachment D) shall include:

(i) transcripts from the college or university, and

(ii) the date, course title, course description, number of hours attended and certificate of attendance, and

(c) a statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extend of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accordance with adequate counseling standards of alcohol and drug practice; if a supervisor' statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of supervision, and

(3) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics, and

(4) verification of the applicant's licensure, registration, or certification status must be submitted on attachment form A, which must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified or registered.

[16.27.11.9 NMAC - Rp, 16.27.11.9 NMAC, 11/30/2021]

#### **16.27.11.10 LICENSURE BY RECIPROCITY:**

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** Verification (attachment A) that the applicant holds a license or certification that is current and in good standing, issued by another jurisdiction, including a branch of the armed forces of the United States, that meets the minimal licensing requirements and is substantially equivalent to the licensing requirements for the LADAC license.

**C.** Verification directly from the national certification examination board (NCAC) that the applicant has taken and passed the national certification examination for addiction counselors (NCAC level 1) or the international certification and reciprocity consortium (ICRC).

[16.27.11.10 NMAC - Rp, 16.27.11.10 NMAC, 11/30/2021]

**16.27.11.11 [RESERVED]**

[16.27.11.11 NMAC – Repealed, 11/30/2021]

**PART 12: REQUIREMENTS FOR LICENSURE AS A SUBSTANCE ABUSE TRAINEE, EFFECTIVE JULY 1, 2003 [REPEALED]**

[This part was repealed on February 10, 2006.]

**PART 13: REQUIREMENTS FOR LICENSURE AS A SUBSTANCE ABUSE ASSOCIATE (LSAA) EFFECTIVE JULY 1, 2005**

**16.27.13.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.13.1 NMAC - Rp 16 NMAC 27.27.1, 6-15-01]

**16.27.13.2 SCOPE:**

All individuals applying for licensure as a substance abuse associate.

[16.27.13.2 NMAC - Rp 16 NMAC 27.27.2, 6-15-01; A, 7-1-04; A, 2-10-06]

**16.27.13.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5, 61-9A-9, 61-9A-14.1, 61-9A-15, 61-9A-23, and 61-9A-24 NMSA 1978 and the Uniform Licensing Act, Section 61-1-34 NMSA 1978.

[16.27.13.3 NMAC - Rp 16 NMAC 27.27.3, 6/15/2001; A, 11/30/2021]

**16.27.13.4 DURATION:**

Permanent.

**16.27.13.5 EFFECTIVE DATE:**

June 15, 2001 unless a later date is cited at the end of a section.

[16.27.13.5 NMAC - Rp 16 NMAC 27.27.5, 6-15-01]

**16.27.13.6 OBJECTIVE:**

The objective of Part 13 is to state the minimum requirements for licensure as a substance abuse associate and list the documentation required for application effective July 1, 2005.

[16.27.13.6 NMAC - Rp 16 NMAC 27.27.6, 6-15-01; A, 7-1-04; A, 2-10-06]

**16.27.13.7 DEFINITIONS:**

**[RESERVED]**

**16.27.13.8 SUPERVISION:**

**A.** Supervision received for substance abuse associate must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LFMT), licensed professional art therapist (LPAT), psychologist, psychiatrist, licensed alcohol and drug abuse counselor (LADAC) with three years of alcohol and drug abuse experience acquired after licensure, clinical nurse specialist in psychiatry or licensed independent or clinical social worker (LISW or LCSW). Supervisors must have experience in alcohol and drug abuse counseling. A licensed substance abuse associate must practice under supervision at all times. If the associate has completed the requirements for LADAC the associate must continue practicing under supervision until the associate has acquired the official LADAC license.

**B.** It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure.

[16.27.13.8 NMAC - Rp 16 NMAC 27.1.7.5.3&4, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/19/2007; A, 11/30/2021]

**16.27.13.9 APPLICANTS FOR LICENSURE:**

A substance abuse associate (LSAA) must possess the following qualifications and provide the required documentation with the application.

**A.** Age requirement: Be at least 21 years of age.

**B.** Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

**C.** Supervisory requirements: Applicant must have arranged for appropriate supervision, including an experience plan.

**D.** Holds at minimum an associate degree in counseling, counseling related field, or a substance abuse related field from an accredited institution and has a total of 90 clock hours of education and training in the areas of substance abuse counseling. The board

may approve, on a case-by-case basis, applicants whose education is not in counseling, a counseling related field, or a substance abuse related field.

**E. Documentation required for licensure:**

- (1) a completed application as specified in 16.27.3.8 NMAC, and
- (2) proof of completed education requirements: the applicant is required to submit an official transcript in a sealed envelope from each institution contributing to their associate, baccalaureate, masters or doctoral degree; the transcript must be sent directly to the board office from the institution and may be submitted electronically; and
- (3) verification on attachment D of 90 clock hours of education and training in substance abuse, and
- (4) verification on attachment C that an appropriate supervisor has been obtained and an experience plan has been established and a signed statement is provided by the supervisor indicating the associate shall only participate in alcohol and drug abuse counseling sessions.

[16.27.13.9 NMAC - Rp 16 NMAC 27.27.8, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/19/2007; A, 11/30/2021]

**16.27.13.10 [RESERVED]**

[16.27.13.9 NMAC - Rp 16 NMAC 27.9.8&9, 6-15-01; Repealed 7-1-04]

**PART 14: TEMPORARY LICENSE**

**16.27.14.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.14.1 NMAC - Rp 16 NMAC 27.15.1, 6-15-01]

**16.27.14.2 SCOPE:**

All individuals approved for examinations for licensure as professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, licensed mental health counselors, licensed associate marriage and family therapist and alcohol and drug abuse counselors.

[16.27.14.2 NMAC - Rp 16 NMAC 27.15.2, 6-15-01; A, 7-1-04; A, 2-10-06]

**16.27.14.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-9, and 61-9A-16 through 61-9A-30 NMSA 1978.

[16.27.14.3 NMAC – Rp, 16 NMAC 27.15.3, 6/15/2001; A, 11/30/2021]

**16.27.14.4 DURATION:**

Permanent.

[16.27.14.4 NMAC - Rp 16 NMAC 27.15.4, 6-15-01]

**16.27.14.5 EFFECTIVE DATE:**

June 15, 2001 unless a different date is cited at the end of a section.

[16.27.14.4 NMAC - Rp 16 NMAC 27.15.5, 6-15-01]

**16.27.14.6 OBJECTIVE:**

The objective of Part 14 is to outline who is eligible for a temporary license.

[16.27.14.1 NMAC - Rp 16 NMAC 27.15.6, 6-15-01]

**16.27.14.7 DEFINITIONS:**

[RESERVED]

**16.27.14.8 TEMPORARY LICENSES:**

Temporary mental health counselor licenses (LMHC) and associate marriage and family therapist licenses (LAMFT) shall be granted as follows:

**A.** Will be granted to individuals meeting all educational requirements for the license sought. The temporary license is intended to permit the licensee time to meet examination requirements for the license. The temporary license shall not be valid for more than 60 days after the results of the next examination become available and cannot be renewed. (The temporary license must be returned to the board office). Individuals practicing under a temporary license shall not provide supervision.

**B.** A temporary license will be granted for a period not to exceed six months or for a period of time necessary for the board to ensure that the applicant has met licensure requirements as set out in that act.

**C.** Effective July 1, 2006, the board will grant a temporary the applicant has met the educational requirements for licensure in the given field being sought. If the applicant fails the required exam, the board shall schedule the applicant to re-take the

examination and shall re-issue a second temporary license. If the applicant fails the second exam, the board may re-issue a third temporary license. The board shall not issue more than three temporary licenses. Should the applicant fail the required examination three times, the board shall not issue another temporary license for that application for licensing. Upon passing the requisite examination, the applicant holding the temporary LMHC or LAMFT shall be issued the LMHC or LAMFT license so that the applicant may continue to practice under supervision and acquire the requisite clinical hours and supervision for the independent license (LPCC, LMFT, LPAT, or LADAC).

**D.** The time and hours acquired under a temporary license shall not expire or become null and void upon a gap in licensure as long as the hours were obtained within the five years preceding the issuance of the LMHC or LAMFT license.

**E.** Upon the expiration of a temporary license, the individual must refrain from practicing until another temporary license or the full license is issued to them.

[16.27.14.8 NMAC – Rp, 16 NMAC 27.15.8, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 1/15/2007; A, 11/30/2021]

## **PART 15: EXAMINATIONS**

### **16.27.15.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board

[16.27.15.1 NMAC - Rp 16 NMAC 27.12.1, 6-15-01]

### **16.27.15.2 SCOPE:**

All examination candidates for licensure as professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, licensed mental health counselors, associate marriage and family therapist and alcohol and drug abuse.

[16.27.15.2 NMAC - Rp 16 NMAC 27.12.2, 6-15-01; A, 7-1-04; A, 2-10-06]

### **16.27.15.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-9, 61-9A-10, 61-9A-11, 61-9A-12, 61-9A-13, 61-9A-14, 61-9A-14.2, and 61-9A-15 NMSA 1978.

[16.27.15.3 NMAC - Rp 16 NMAC 27.12.3, 6/15/2001; A, 11/30/2021]

### **16.27.15.4 DURATION:**

Permanent.

[16.27.15.4 NMAC - Rp 16 NMAC 27.12.4, 6-15-01]

**16.27.15.5 EFFECTIVE DATE:**

June 15, 2001 unless a later date is cited at the end of a section.

[16.27.15.5 NMAC - Rp 16 NMAC 27.12.5, 6-15-01]

**16.27.15.6 OBJECTIVE:**

The objective of Part 15 is to outline the examination process.

[16.27.15.6 NMAC - Rp 16 NMAC 27.12.6, 6-15-01]

**16.27.15.7 DEFINITIONS:**

[RESERVED]

**16.27.15.8 EXAMINATION CANDIDATES:**

Each applicant who has completed the educational and supervision requirements for licensure as a professional clinical mental health counselor, professional marriage and family therapist, professional art therapist, professional mental health counselor, mental health counselor, and alcohol and drug abuse counselor, shall be required to pass the board approved examination(s) as part of the requirements for licensure in the given discipline.

[16.27.15.8 NMAC - Rp 16 NMAC 27.12.8, 6/15/2001; A, 7/1/2004; A, 11/30/2021]

**16.27.15.9 APPLICATION FOR EXAMINATION:**

Complete applications for licensure must be approved by the board no later than 90 days prior to the next available examination.

[16.27.15.9 NMAC - Rp 16 NMAC 27.12.9, 6-15-01; A, 7-1-04; A, 2-10-06]

**16.27.15.10 REGISTRATION FOR EXAMINATION:**

Upon approval to sit for examination the individual will be informed of requirements to register for the examination. The applicant must register for the examination for the exam 60 days prior to the examination date.

[16.27.15.10 NMAC - Rp 16 NMAC 27.12.10, 6-15-01; A, 7-1-04]

#### **16.27.15.11 EXAMINATION FEE:**

The examination fee is to be paid within a minimum of 30 days prior to examination date. An individual who fails the examination must pay the examination fee if he/she is to retake the examination.

[16.27.15.11 NMAC - Rp 16 NMAC 27.12.11, 6-15-01; A, 7-1-04]

#### **16.27.15.12 FREQUENCY:**

Prescribed examinations shall be given at least once a year. Examination information will be made available to qualified applicants.

[16.27.15.12 NMAC - Rp 16 NMAC 27.12.12, 6-15-01]

#### **16.27.15.13 EXAMINATION SPECIFICS:**

Individuals will be informed of examination specifics, such as location and time of the examination, upon registration.

**A.** Individuals who arrive late will be admitted. However, additional time will not be granted.

**B.** Individuals who have previously passed the approved examinations for licensure will not be required to re-test as long as the applicant currently holds a valid license from another state, territory, or foreign nation.

[16.27.15.13 NMAC - Rp 16 NMAC 27.12.13, 6/15/2001; A, 7/1/2004; A, 11/30/2021]

#### **16.27.15.14 REPEATED EXAMINATIONS:**

**A.** Qualified applicants who fail to obtain the minimum required passing score for an exam must surrender their temporary license immediately. An applicant may reapply for a temporary license and is eligible to sit for the next exam without incurring further application fees; however, applicant is responsible for all new exam related fees. Applicants must pay the examination fee for each scheduled examination.

**B.** Applicants who cannot sit for the examinations due to circumstances beyond their control shall submit a written request to the board at least 30 days prior to the scheduled examination explaining the extenuating circumstances. Extenuating circumstances include illness, death in immediate family, military service, or other severe circumstances which do not allow an applicant to attend the scheduled examination. Applicant must provide documentation of extenuating circumstances.

**C.** Applicants who fail to sit for scheduled examinations without prior notification or fail to register for the exam during their approval period must submit a new application, including the application fee, and all documentation.

[16.27.15.14 NMAC - Rp 16 NMAC 27.12.14, 6/15/2001; A, 7/1/2004; A, 11/30/2021]

**16.27.15.15 SPECIAL ACCOMMODATIONS:**

An American Disability Act (ADA) covered applicant who requests special accommodation (particularly when the request involves assistance in taking the examination) must make the request in writing; must support the request with a medical statement confirming the need for the accommodation and the basis of the need; and must state with specificity the nature of the requested accommodation. In its sole discretion, the board will either grant or deny the request. Requests must be submitted with the application. The board will consider each request on a case-by-case basis.

[16.27.15.15 NMAC - Rp 16 NMAC 27.12.15, 6-15-01; A, 2-10-06]

**16.27.15.16 NOTIFICATION:**

The board office will notify the applicant of the results of the examination in writing of their final score within 60 days of receipt of examination results from the examining organization. Score results will not be given orally.

[16.27.15.16 NMAC - Rp 16 NMAC 27.12.16, 6-15-01; A, 7-1-04]

**PART 16: CONTINUING EDUCATION**

**16.27.16.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.16.1 NMAC – Rp, 16.27.16.1 NMAC, 11/30/2021]

**16.27.16.2 SCOPE:**

All professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, registered independent counselors, licensed mental health counselors, licensed associate marriage and family therapists, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse associates.

[16.27.16.2 NMAC - Rp, 16.27.16.2 NMAC, 11/30/2021]

**16.27.16.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Section 61-9A-9 and 61-9A-24 NMSA 1978.

[16.27.16.3 NMAC - Rp, 16.27.16.3 NMAC, 11/30/2021]

**16.27.16.4 DURATION:**

Permanent.

[16.27.16.4 NMAC - Rp, 16.27.16.4 NMAC, 11/30/2021]

**16.27.16.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.16.5 NMAC - Rp, 16.27.16.5 NMAC, 11/30/2021]

**16.27.16.6 OBJECTIVE:**

The objective of Part 16 is to inform licensees of continuing education hours required for license renewal. Additionally, Part 16 established acceptable continuing education.

[16.27.16.6 NMAC - Rp, 16.27.16.6 NMAC, 11/30/2021]

**16.27.16.7 DEFINITIONS:**

[RESERVED]

**16.27.16.8 CONTINUING EDUCATION REQUIREMENT:**

Continuing education credit. Effective for the renewal period beginning October 1, 1997, 40 contact hours of continuing education approved by the New Mexico counseling and therapy practice board will be required to be documented during each two-year renewal period.

**A.** Continuing education must be obtained during the expiring licensing period.

**B.** One contact hour of continuing education is 60 minutes.

**C.** Specific continuing education which must be obtained and verified:

**(1)** 12 hours of ethics related to counseling/mental health for all licensees;

**(2)** nine hours in supervision related to counseling/mental health for all licensees who are supervisors.

**D.** Semester hour for the purpose of calculating continuing education units means that one semester credit hour of graduate coursework is equal to 15 continuing education units and one quarter hour of coursework is equal to 11.25 continuing education units.

[16.27.16.8 NMAC - Rp, 16.27.16.8 NMAC, 11/30/2021]

#### **16.27.16.9 ACCEPTABLE CONTINUING EDUCATION COURSES:**

**A.** approved by local, state, national, or international mental health related professional associations such as the national board for certified counselors, the American marriage and family therapy regulatory board, American art therapy association, art therapy credentials board, international certification reciprocity consortium, or the national association of alcohol and drug abuse council;

**B.** approved by other state regulatory boards of related mental health or substance abuse fields, including psychiatry, psychology and social work;

**C.** sponsored by international, national, regional or state mental health professional associations including psychiatry, psychology and social work, or state and federal divisions of substance abuse;

**D.** approved by the New Mexico counseling and therapy practice board;

**E.** college coursework will be accepted for continuing education as follows:

**(1)** Semester hour for the purpose of calculating continuing education units means that one semester credit hour of graduate coursework is equal to 15 continuing education units and one quarter hour of coursework is equal to 11.25 continuing education units;

**(2)** License types requiring a master's degree or higher may utilize only graduate or postgraduate-level coursework beyond their initial master's degree that is related to counseling and therapy. Undergraduate coursework is not acceptable toward continuing education requirements;

**(3)** License types requiring an associate's degree or higher can utilize undergraduate coursework taken as part of a bachelor's degree program that is related to counseling and therapy or substance use disorders. If the licensee possesses a bachelor's degree, the licensee can only utilize graduate and postgraduate-level coursework toward continuing education requirements for license renewal.

**F.** Pro Bono work shall be accepted for up to twenty continuing education credits during each renewal cycle. Such work shall be non-remunerated clinical in nature and performed only by independently licensed clinicians. To qualify for continuing education hours, work must be performed for a non-profit organization or government entity by

which the clinician is not currently employed, or otherwise associated. Service sites shall be engaged in provision of substantial service to their community and the people of New Mexico. Continuing education hours shall be awarded on the basis of one continuing education credit hour per four clock hours of service. Clinicians will be supervised by site-based administrative staff and documented on service hour continuing education work sheet and documentation form available from the New Mexico counseling and therapy practice board.

[16.27.16.9 NMAC - Rp, 16.27.16.9 NMAC, 11/30/2021]

#### **16.27.16.10 DOCUMENTATION OF PARTICIPATION:**

The licensee shall be responsible for submitting proof of attendance of all continuing education hours at the time of license renewal. All continuing education hours must be documented at the time the license is renewed. The board reserves the right to require additional documentation of participation. The board will notify the licensee of approval or disapproval of continuing education hours within 30 days after receiving documentation. The board shall notify licensees within 60 days after submission of the application for renewal if any continuing education units are not approved by the board. The licensee shall have 30 days from the board's notice of disapproval to obtain additional continuing education units in compliance with board standards.

[16.27.16.10 NMAC - Rp, 16.27.16.10 NMAC, 11/30/2021]

#### **16.27.16.11 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS:**

The board will refuse to renew the licensee's license in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-31 NMSA 1978. If continuing education units requirements are not completed within the licensing period and by the expiration date, the licensee or registrant will be considered expired and will refrain from practicing. Individuals unable to meet continuing education requirements due to circumstances beyond their control must submit a written request for a waiver 60 days prior to their renewal date. Extenuating circumstances include illness, death in immediate family, military service, or other severe circumstances, which do not allow an applicant to meet continuing education requirements. The applicant may request a one-time extension approved by the board and shall pay an additional non-refundable \$300.00 fee. The board will review each request on a case-by-case basis.

[16.27.16.11 NMAC - Rp, 16.27.16.11 NMAC, 11/30/2021]

#### **16.27.16.12 REGISTRATION AS A CONTINUING EDUCATION PROVIDER:**

A pre-approved continuing education provider shall possess the qualifications below:

- A.** age requirement of the presenter shall be a least 21 years of age.

**B.** Hold an active independent license to practice in New Mexico as a licensed alcohol and drug abuse counselor (LADAC), licensed professional art therapist (LPAT), licensed professional clinical mental health counselor (LPCC), licensed clinical social worker (LCSW), licensed marriage and family therapist (LMFT), or licensed psychologist, or if holding an out of state license, meet criteria for licensure for New Mexico by credential or reciprocity.

**C.** Education requirements:

**(1)** With the exception of licensed alcohol and drug abuse counselors, hold a masters or doctoral degree in counseling or a counseling related field from an accredited institution; or

**(2)** A licensed alcohol and drug abuse counselor (LADAC) shall have three years of experience in the field of alcohol and drug abuse counseling.

**D.** An application for Pre-Approved CEU Provider must include:

**(1)** Application fee of \$100.00

**(2)** a signed statement provided in the application indicating the presenter has read the code of ethics and agrees to be bound and governed by the code of ethics.

**(3)** At least one complete course description with objectives

**(4)** A copy of the presenter's current license. Presenters must hold a current license in one of the following licensed disciplines:

**(a)** professional clinical mental health counselor;

**(b)** marriage and family therapist;

**(c)** professional art therapist;

**(d)** psychologist;

**(e)** independent or clinical social worker; or

**(f)** alcohol and drug abuse counselor;

**(5)** A copy of the presenter's resume or curriculum vitae

**(6)** A mock CEU certificate for each course description presented with the application

**E.** Once an approved CEU Provider, additional courses do not need to be submitted for approval. All future coursework must promote growth and learning within the fields of counseling and therapy, and must abide by the code of ethics and the Counseling and Therapy Practice Act.

**F.** CEU Providers are responsible for maintaining course and attendance records for a period of no less than three years, and make copies of attendance certificates available to attendees upon request.

**G.** Failure to comply with the rules for CEU providers and the code of ethics may result in termination of the approval as a CEU provider or denial of renewal as a CEU provider and shall subject the provider to a \$25.00 administrative fee for each CEU credit awarded without proper registration with the board pursuant to 16.27.17 NMAC.

[16.27.16.12 NMAC - N, 11/30/2021]

## **PART 17: FEES**

### **16.27.17.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board

[16.27.17.1 NMAC – Rp, 16.27.17.1 NMAC, 7/30/2024]

### **16.27.17.2 SCOPE:**

All applicants applying for licensure as professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, licensed mental health counselors, associate marriage and family therapists, alcohol and drug abuse counselors, and substance abuse associates.

[16.27.17.2 NMAC- Rp, 16.27.17.2 NMAC, 7/30/2024]

### **16.27.17.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-9 and 61-9A-24 NMSA 1978.

[16.27.17.3 NMAC- Rp, 16.27.17.3 NMAC, 7/30/2024]

### **16.27.17.4 DURATION:**

Permanent

[16.27.17.4 NMAC - Rp, 16.27.17.4 NMAC, 7/30/2024]

**16.27.17.5 EFFECTIVE DATE:**

July 30, 2024 unless a later date is cited at the end of a section.

[16.27.17.5 NMAC - Rp, 16.27.17.5 NMAC, 7/30/2024]

**16.27.17.6 OBJECTIVE:**

The objective of Part 17 is to outline fees for application, licensure, license renewal and administrative fees.

[16.27.17.6 NMAC - Rp, 16.27.17.6 NMAC, 7/30/2024]

**16.27.17.7 DEFINITIONS:**

[RESERVED]

**16.27.17.8 APPLICATION FEE:**

Applicants for licensure or certification shall pay a \$75.00 application fee for each level of licensure, which is due at the time of initial application and is non-refundable. There is an additional re-review fee of \$25.00 for review of applications which have been denied at the initial level requested and as defined in Subsection D of 16.27.3.8 NMAC.

[16.27.17.8 NMAC - Rp, 16.27.17.8 NMAC, 7/30/2024]

**16.27.17.9 INITIAL LICENSE FEE:**

Individuals accepted for licensure shall pay an initial licensure fee. This fee is based on the biennial cost of the license and must be paid in full before a license can be issued and is non-refundable.

**A.** Fee for initial licensure as a mental health counselor and associate marriage and family therapist is \$75. This fee must be paid in full before a license can be issued and is non-refundable.

**B.** Fee for initial licensure as a professional mental health counselor is \$150. This fee must be paid in full before a license can be issued and is non-refundable.

**C.** Fee for initial licensure as a clinical mental health counselor, a marriage and family therapist or an art therapist is \$220. This fee must be paid in full before a license can be issued and is non-refundable.

**D.** Fee for initial licensure as an alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor is \$150. This fee must be paid in full before a license can be issued and is non-refundable.

**E.** Fee for initial licensure as a substance abuse associate is \$75. This fee must be paid in full before a license can be issued and is non-refundable.

**F.** Fee for initial licensure as a CEU Provider is \$100. This fee must be paid in full before a license can be issued and is non-refundable.

[16.27.17.9 NMAC - Rp, 16.27.17.9 NMAC, 7/30/2024]

#### **16.27.17.10 RENEWAL FEES:**

The fees are as listed below and are non-refundable:

- A.** Licensed mental health counselor, \$75.00.
- B.** Registered independent mental health counselor, \$150.00.
- C.** Professional mental health counselor, \$150.00.
- D.** Clinical mental health counselor, \$220.00.
- E.** Marriage and family therapist, \$220.00.
- F.** Professional art therapist, \$220.00.
- G.** Alcohol and drug abuse counselor, \$150.00.
- H.** Alcohol abuse counselor, \$150.00.
- I.** Drug abuse counselor, \$150.00.
- J.** Substance abuse associate, \$75.00.
- K.** Licensed associate marriage and family therapist, \$75.00.
- L.** Late continuing education unit (CEU) extension request fee, \$300.00.
- M.** CEU provider, \$100.
- N.** Inactive License, \$100.

[16.27.17.10 NMAC- Rp, 16.27.17.10 NMAC, 7/30/2024]

#### **16.27.17.11 [RESERVED]**

[16.27.17.11 NMAC- Rp, 16.27.17.11 NMAC, 7/30/2024]

#### **16.27.17.12 LICENSURE UPGRADE:**

Individuals who are currently licensed or registered by the board may, upon approval, upgrade the category of licensure or registration by submitting a new application and required documentation, accompanied by the application fee.

[16.27.17.12 NMAC- Rp, 16.27.17.12 NMAC, 7/30/2024]

#### **16.27.17.13 DUPLICATE OR REPLACEMENT LICENSE OR CERTIFICATE FEE:**

A duplicate or replacement fee of \$25.00 must be paid at the time of request and must include an affidavit of need and is non-refundable.

[16.27.17.13 NMAC - Rp, 16.27.17.13 NMAC, 7/30/2024]

#### **16.27.17.14 LATE FEE:**

Any renewal application, with the exception of CEU providers, including fee, not postmarked by the license expiration date is considered expired. Renewal after the expiration date, but during the 30-day period, is subject to a late fee of \$100.00 which is non-refundable. CEU provider renewals received after the expiration date, but during the 30-day period, is subject to a late fee of \$150.00 which is non-refundable.

[16.27.17.14 NMAC - Rp, 16.27.17.14 NMAC, 7/30/2024]

#### **16.27.17.15 [RESERVED]**

[16.27.17.15 NMAC - Rp, 16.27.17.15 NMAC, 7/30/2024]

#### **16.27.17.16 ADMINISTRATIVE FEES:**

The board will charge the following administrative fees, which are non-refundable:

- A. \$10.00 for file copies.
- B. \$10.00 for written license verification.
- C. \$300.00 for electronic list of New Mexico licensed counselors and therapists.
- D. \$25.00 charge for returned checks.
- E. \$100.00 for pre-approved continuing education provider number.
- F. \$25.00 administrative NCE, NCMHCE, marriage and family therapist, art therapist, and NCAC examinations fees.

**G.** \$25.00 (twenty-five dollars) per CEU credit hour fee for CEU credit hours incorrectly issued by the CEU provider.

[16.27.17.16 NMAC - Rp, 16.27.17.16 NMAC, 7/30/2024]

## **PART 18: CODE OF ETHICS**

### **16.27.18.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.18.1 NMAC- Rp, 16.27.18.1 NMAC, 11/30/2021]

### **16.27.18.2 SCOPE:**

All professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, registered independent mental health counselors, registered mental health counselors, licensed mental health counselors, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse trainees.

[16.27.18.2 NMAC- Rp 16.27.18.2 NMAC, 11/30/2021]

### **16.27.18.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Section 61-9A-1 through 61-9A-30 NMSA 1978.

[16.27.18.3 NMAC- Rp 16.27.18.3 NMAC, 11/30/2021]

### **16.27.18.4 DURATION:**

Permanent.

[16.27.18.4 NMAC- Rp 16.27.18.4 NMAC, 11/30/2021]

### **16.27.18.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.18.5 NMAC- Rp 16.27.18.5 NMAC, 11/30/2021]

### **16.27.18.6 OBJECTIVE:**

The objective of Part 18 is to outline the code of ethics all applicants and licensed professional clinical mental health counselors, marriage and family therapists,

professional art therapists, professional mental health counselors, registered independent mental health counselors, registered mental health counselors, licensed mental health counselors, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse trainees shall adhere to as licensed professionals. Failure to adhere to the code of ethics may result in disciplinary action by the board.

[16.27.18.6 NMAC- Rp 16.27.18.6 NMAC, 11/30/2021]

#### **16.27.18.7 DEFINITIONS:**

**[RESERVED]**

#### **16.27.18.8 WHO MUST ADHERE TO THE CODE OF ETHICS:**

The counseling & therapy practice board code of ethics is intended for the professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered mental health counselor, registered independent mental health counselor, licensed mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor, and substance abuse associate trainee. Licensure and registration is binding to all individuals holding a license or registration to practice professional mental health counseling, professional clinical mental health counseling, marriage and family therapy, professional art therapy, registered and licensed mental health counseling, registered independent mental health counseling, alcohol and drug abuse counseling, alcohol abuse counseling, drug abuse counseling, and substance abuse associate in the state of New Mexico, and approved supervisors.

[16.27.18.8 NMAC- Rp 16.27.18.8 NMAC, 11/30/2021]

#### **16.27.18.9 SCOPE:**

This code of ethics regulates the ethical and professional conduct of:

- A.** all licensed and registered individuals;
- B.** all applicants for licensure or registration;
- C.** registered and licensed mental health counselors, substance abuse trainees and supervisors during their education, practicum and post-graduate training; and
- D.** expert witnesses: it applies to all licensed or registered individuals, in direct contact with clients, as well as during education, training, testifying as an expert witness and research endeavors.

[16.27.18.9 NMAC- Rp 16.27.18.9 NMAC, 11/30/2021]

#### **16.27.18.10 PURPOSES:**

The purpose of this code of ethics is to provide clear guidelines for the New Mexico counseling and therapy practice board to assess the professional conduct of licensed or registered individuals. Standardization eliminates confusion and misinterpretation of ethical behavior within the profession and by the public.

[16.27.18.10 NMAC- Rp 16.27.18.10 NMAC, 11/30/2021]

#### **16.27.18.11 VIOLATIONS:**

**A.** A violation of a code of ethics is referred to as "unprofessional" or "unethical" conduct. It constitutes sufficient grounds for disciplinary action by the board.

**B.** Costs of disciplinary proceedings: Licensees, registrants or applicants shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if the licensee, registrant or applicant prevails at the hearing conducted pursuant to Section 61-1-3 NMSA 1978 of the Uniform Licensing Act ("ULA"), or after investigation, the board does not pursue a ULA action against the licensee, registrant or applicant.

[16.27.18.11 NMAC- Rp 16.27.18.11 NMAC, 11/30/2021]

#### **16.27.18.12 INTEGRITY:**

A licensed or registered individual is expected to behave according to the standards of professional integrity and competence as defined by rule or law. A licensed or registered individual must not condone, associate with, or participate in dishonest, fraudulent, or deceitful behavior and shall treat all clients, supervisees, students and research participants with respect and dignity at all times. A licensed or registered individual shall not misrepresent themselves, their training, or their services. It is the responsibility of licensees and registered mental health counselors to be completely informed about this code of ethics by which they are governed.

[16.27.18.12 NMAC- Rp 16.27.18.12 NMAC, 11/30/2021]

#### **16.27.18.13 INTERPRETATION:**

When construing the Code of ethics and standards for providers, the interpretation of the code shall be guided by rules promulgated by the American mental health counselors association (AMHCA), the American counseling association (ACA), the American association for marriage and family therapy (AAMFT), the American art therapy association (AATA), national association of alcoholism and drug abuse counselors (NAADAC) and other relevant professional groups to reconcile ambiguities which may arise in the interpretation of this code of ethics, except that this code of

ethics shall supersede any conflict existing between this code and any professional association standard.

[16.27.18.13 NMAC- Rp 16.27.18.13 NMAC, 11/30/2021]

#### **16.27.18.14 CLIENT:**

Means:

**A.** a recipient of counseling or therapy services.

**B.** a corporate entity or other organization can be a client when the professional contract is to provide services that primarily benefit the organization rather than individuals;

**C.** a legal guardians shall be the client for decision-making purposes for individuals receiving services who are under age of consent or legally incompetent adults except underage individuals and legally incompetent adults shall be the client when making decisions:

**(1)** directly affecting the physical or emotional safety of the individual, such a sexual or other exploitive dual relationships, and

**(2)** specifically reserved to the individual, and agreed to by the guardian prior to the rendering of services, such as confidential communication in a therapy relationship.

[16.27.18.14 NMAC- Rp 16.27.18.14 NMAC, 11/30/2021]

#### **16.27.18.15 CONFIDENTIAL INFORMATION:**

Means information revealed by a client(s) or otherwise obtained by a counselor or therapist, within the therapeutic context. The information shall not be disclosed by the counselor or therapist without the informed written consent of the client(s). Confidential information may be disclosed without written consent when the client is considered a harm to self or others, when there is evidence of physical or emotional abuse of minors or frail elderly or by court order, see Subsection B of 16.27.18.17 NMAC. When the client is a corporation or organization, the confidential relationship is between the counselor or therapist and the corporation or organization and not between the counselor or therapist and the employee or individual. Information obtained from the employee by the counselor or therapist shall be available to the organization unless such information was obtained in a separate therapeutic context which is subject to confidentiality requirements.

[16.27.18.15 NMAC- Rp 16.27.18.15 NMAC, 11/30/2021]

#### **16.27.18.16 PROFESSIONAL COMPETENCE, CONDUCT & INTEGRITY:**

**A.** Licensees or registrants shall not misrepresent his credentials, degrees, or competencies either through spoken word, written, or electronically transmitted material.

**B.** Licensees or registrants who has provided professional services to a client or former client within the previous 60 months shall not:

(1) engage in sexual intercourse, contact or other physical intimacies with the client;

(2) enter into a financial or other potentially exploitive relationship with the client; or

(3) seek to obtain client access to counselor or therapist personal information in social networking sites.

**C.** The prohibitions set out in Paragraphs (1), (2) and (3) of Subsection B of this section shall not be limited to the 60 month period but shall extend indefinitely if the client is proven to be clearly vulnerable, by reason of emotional or cognitive disorder, to exploitive influence by the counselor or therapist. The counselor or therapist who engages in such activity after the 60 month period following cessation or termination of treatment bears the burden of providing proof that there has been no exploitation, in light of all relevant factors, including:

(1) the amount of time that has passed since therapy terminated;

(2) the nature and duration of the therapy;

(3) the circumstances of termination;

(4) the patient's or client's personal history;

(5) the patient's or client's mental status;

(6) the likelihood of adverse impact on the patient or client and others; and

(7) any statements or actions made by the counselor or therapist during the course of therapy suggesting or inviting the possibility of a post termination relationship with the patient or client.

**D.** Licensees or registrants shall not undertake or continue a professional relationship with a client when the counselor or therapist is impaired due to mental, emotional, physiological, or substance abuse conditions.

**E.** Licensees or registrants violate the code and are subject to loss of licensure or other disciplinary action if:

(1) convicted of a felony or misdemeanor related to their qualifications or functions;

(2) disciplined by other state licensing boards for acts which would be a violation under this code of ethics, statutes or regulations;

(3) no longer competent to practice, or;

(4) they fail to cooperate with an investigation or disciplinary action taken by the state .

**F.** Licensees or registrants shall only perform counseling or therapy services within the scope of practice for their license. Licensees or registrants shall only perform testing and assessment services for which they are authorized under the act.

**G.** Licensees or registrants shall not use advertising, which is misleading, deceptive or false. All and any announcements of services shall include state designation, license number(s), and expiration date(s). Inactive and retired licensees or registrants shall not advertise using their license.

**H.** Licensees or registrants individual shall inform the client of the innovative nature and the known risks associated with the services, so that the client can exercise freedom of choice concerning the services when developing competency in a service or technique that is either new to the counselor or therapist, or new to the profession, shall engage in ongoing consultation with other relevant professionals and shall seek appropriate education and training in the new area.

**I.** Licensees or registrants shall make every effort to offer the client or former client the names of at least three referral sources, or refer the client to an organization that can provide referrals, upon request by a client or former client (e.g. physician, attorney, therapist, financial planner, etc.),.

**J.** Licensees or registrants shall not offer or accept kickbacks, rebates, bonuses or other remuneration of referrals; fee-for-service arrangements are not prohibited.

**K.** Bartering for professional services may be conducted only if:

(1) the supervisee or client requests it;

(2) the relationship is not exploitive; or

(3) the professional relationship is not distorted; and

- (4) a clear written contract is agreed upon and signed by both parties.

[16.27.18.16 NMAC- Rp 16.27.18.16 NMAC, 11/30/2021; A, 7/30/2024]

### **16.27.18.17 CONFIDENTIALITY AND DATA PRIVACY:**

**A.** The counselor or therapist shall safeguard confidential information obtained in the course of practice, teaching, research or other professional services. This includes a counselor or therapist's employees and professional associates as defined by law. The counselor or therapist shall disclose confidential information to others only with the informed written consent of the client or as outlined in Subsection B of this section.

**B.** Licensees or registrants shall inform a client of limitations of confidentiality. These limitations include, but are not limited to:

- (1) Limitations mandated by the law.
- (2) Disclosure when necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person(s).
- (3) Court orders in civil, criminal, or disciplinary actions arising from the therapy.
- (4) Written waiver. Disclosure is limited to the terms of the waiver. If there is more than one party involved in the therapy, the waiver must be signed by all members legally competent to execute such a waiver (e.g. couples, marital couples, family, or group). When release of information pertaining to a client under the age of consent is requested, it must be signed by a parent or legal guardian. The counselor or therapist, to the extent the client can understand, shall inform the minor client of the limit the law imposes on his right of confidentiality.
- (6) Reporting abuse of children and vulnerable adults, the counselor or therapist shall be familiar with any relevant law..
- (7) Restrictions mandated by employing agencies.

**C.** Licensees or registrants shall ensure that all reasonable security measures are taken to ensure records and written data are protected from access by unauthorized persons.

**D.** Licensees or registrants shall ensure that the content and disposition of all records is in compliance with relevant state laws.

**E.** Licensees or registrants shall treat client information as confidential after the professional relationship between the counselor or therapist and the client has ceased.

**F.** Licensees or registrants shall exercise reasonable care to ensure that confidential information is appropriately disguised to prevent client identification when used as a case study, basis of supervision, teaching, research or other published reports.

**G.** Licensees or registrants shall explain to the client the limitations and foreseeable uses of confidential information.

**H. Record retention**

(1) Licensees or registrants rendering professional services to a client or billed to a third party, shall maintain professional records that include:

(a) the presenting problem(s) or purpose or diagnosis;

(b) the fee arrangement;

(c) the date and substance of each billed service;

(d) any test results or other evaluative results obtained and any basis test data from which they were derived;

(e) notation and results of formal consultations with other providers; and

(f) a copy of all tests or other evaluative reports prepared as part of the professional relationship.

(2) Licensees, registrants or agencies that employ licensed or registered counselors or therapists shall assure that all client records are maintained and secured for a period of not less than six years after the last date that professional services was rendered.

(3) Licensees or registrants shall store and dispose of written or electronic data and other recorded information in such a manner as to ensure client confidentiality.

(4) Licensees or registrants shall not withhold records under their control that are requested for a client's treatment solely because payment has not been received or otherwise provided by law.

(5) Licensees or registrants shall maintain on file a written plan in place that arranges for the storage, transfer, or disposal of client records that ensure confidentiality and safeguards the welfare of clients in the event of licensee or registrant incapacitation or death.

(6) In the event of the incapacitation or death of a licensee or registrant, the counselor or therapist's personal representative shall adhere to the written plan on file to

assure that the deceased's clinical records are maintained and secured for a period of not less than six years after the last date that professional services were rendered. The decedent's personal representative shall store and eventually dispose of written or electronic data and other recorded information in such a manner as to ensure confidentiality and safeguards the welfare of the clients.

(7) Licensees or registrants shall provide clients with that client's summary of their clinical record upon receipt of a written request.

[16.27.18.17 NMAC- Rp 16.27.18.17 NMAC, 11/30/2021; A, 7/30/2024]

#### **16.27.18.18 RESPONSIBILITY TO CLIENTS:**

Licensees or registrants shall:

**A.** inform clients before or at the time of the initial counseling session with the licensee of the following:

- (1) professional education, training and experience of the licensee;
- (2) fees and arrangements for payment;
- (3) counseling purposes, goals, and techniques;
- (4) any restrictions placed on the license by the board;
- (5) the limits on confidentiality;
- (6) any intent of the licensee to use another individual to provide counseling services to the client;
- (7) supervision of the licensee by another licensed health care professional, including the name and qualifications of the supervisor; and
- (8) a licensee or registrant shall inform the client of any changes to the items above prior to initiating the change;

**B.** shall not discriminate against or refuse professional services to anyone on the basis of race, color, gender, religion, national origin, ancestry, disability, socioeconomic status, sexual orientation, or any basis proscribed by law;

**C.** shall not impose on the client any stereotypes of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual orientation, or diagnosis which would interfere with the objective provision of counseling or therapy services;

**D.** shall not enter into a sexual or other dual relationship with a client, as specified in Subsection D of 16.27.18.16 NMAC of this code of ethics;

**E.** shall continue therapeutic relationships only so long as it is reasonably clear that a therapeutic context exists;

**F.** shall give a truthful, understandable, and appropriate account of the nature of the client's condition to the client or to those responsible for the care of the client;

**G.** shall not mislead or withhold information about the cost of his professional services;

**H.** shall keep the client fully informed as to the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided;

**I.** shall make an appropriate referral of the client to another professional when requested to do so by the client or in the best interest of the client;

**J.** shall not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment; counselors or therapists shall assist persons in obtaining other therapeutic services if the counselor or therapist is unable or unwilling, for appropriate reasons, to provide professional help;

**K.** shall not induce clients to solicit business on behalf of the counselor or therapist;

**L.** when consulting with colleagues:

**(1)** refrain from sharing confidential information that reasonably could lead to the identification of a patient, client, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided; and

**(2)** share information only to the extent necessary to achieve the purposes of the consultation;

**M.** shall obtain written informed consent from clients before videotaping, audio recording, or permitting third party observation;

**N.** shall disclose to clients the area of education when using the designation of "doctor" in their title.

**O.** shall not knowingly offer or provide counseling or therapy to an individual concurrently receiving counseling from another mental health services provider except with that provider's knowledge; if a licensee or registrant learns of such concurrent

therapy, the licensee or registrant shall take immediate and reasonable action to resolve the situation;

**P.** shall not enter into a professional counseling or therapeutic relationship with immediate family members, personal friends, or business associates;

**Q.** shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement. The agreement shall include that:

(1) the actual provider of services be reflected on billing documents;

(2) upon written request of a client, or a client's legal guardian, a licensee or registrant shall provide, in plain language, a written explanation of the charges for counseling services previously made on a bill or statement for the client; this requirement applies even if the charges are to be paid by a third party;

(3) the licensee or registrant may not overcharge a client;

(4) the licensee or registrant may not submit to a client or third payer a bill for counseling or therapy that the licensee or registrant knows were not provided or knows were improper, unreasonable, or medically or clinically unnecessary;

**R.** refrain from giving to or receiving from clients:

(1) gifts of substantial value; or

(2) gifts that impair the integrity or efficacy of the counseling or therapeutic relationship; and

**S.** be permitted to treat minors or adults involved in custody or visitation actions but may not concurrently perform forensic evaluations of custody, residence, or visitation of the minor; the licensee or registrant who treats the minor may provide the court or mental health professional performing the evaluation with information about the minor from the licensee or registrant's perspective as a treating licensed or registered professional, so long as the licensee or registrant does not violate confidentiality.

[16.27.18.18 NMAC- Rp 16.27.18.18 NMAC, 11/30/2021]

#### **16.27.18.19 RESPONSIBILITY TO SUPERVISEES:**

Licensees or registrants shall:

**A.** be cognizant of their influence upon students and supervisees and shall avoid exploiting the trust and dependency of such persons; therefore, licensees or registrants shall try to avoid conditions and dual relationships that may impair professional

objectivity or increase the risk of exploitation; when the risk of impairment or exploitation exists due to conditions or dual roles, individuals shall take appropriate precautions;

**B.** refrain from providing therapy to current students or supervisees.

**C.** refrain from engaging in sexual intimacy with students or supervisees during the evaluation or training relationship between the licensee or registrant and student/supervisee.

**D.** prohibit students or supervisees from performing or holding themselves out as competent to perform professional services beyond their training, level of experience, and competence.

**E.** shall take reasonable precautions to ensure that services provided by trainees are professional.

**F.** shall not disclose supervisee confidences except by written authorization or waiver, or when mandated or permitted by law; in educational or training settings where there are multiple supervisors, disclosures are permitted only to other professional colleagues or administrators.

**G.** shall be required to sign for supervision and client contact hours provided to their supervisees on the appropriate Attachment B form prior to the termination of the supervisory relationship. If, in the supervisor's professional opinion, believes the supervisee is not yet ready for independent licensure, or has other concerns about the supervisee's professionalism, they may include an explanatory letter with the Attachment B form.

[16.27.18.19 NMAC- Rp 16.27.18.19 NMAC, 11/30/2021]

#### **16.27.18.20 RESPONSIBILITY TO COLLEAGUES:**

Licensees or registrants should:

**A.** treat colleagues with respect and should accurately represent the qualifications, views, and obligations of colleagues;

**B.** avoid unwarranted negative criticism of colleagues in communications with clients or with other professionals;

**C.** cooperate with colleagues and with colleagues of other professions when their cooperation serves the wellbeing of clients;

**D.** respect confidential information shared by colleagues in the course of their professional relationships and transactions; licensees or registrants should ensure that

their colleagues understand licensees or registrants' obligations to respect confidentiality and any exceptions related to it;

**E.** participate in and contribute to decisions that affect the wellbeing of clients by drawing on the perspectives, values, and experiences of the individual's profession with members of an interdisciplinary team; professional and ethical obligations of the interdisciplinary team as a whole and of its individual members should be clearly established;

**F.** attempt to resolve disagreements through appropriate channels for whom a team decision raises ethical concerns for the licensee or registrant; if the disagreement cannot be resolved, pursue other avenues to address license or registrant's concerns consistent with client wellbeing;

**G.** should not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the licensed or registered individual's own interests; and

**H.** should not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion with colleagues.

[16.27.18.20 NMAC- Rp 16.27.18.20 NMAC, 11/30/2021]

#### **16.27.18.21 RESPONSIBILITY TO THE PROFESSION:**

Licensees or registrants shall:

**A.** refraining from aiding or abetting another person in misrepresenting his/her professional credentials or illegally engaging in the practice of counseling or therapy;

**B.** refrain from delegating professional responsibilities to a person not appropriately qualified to provide such services;

**C.** exercise appropriate supervision over supervisees, as set forth in the Parts and regulations of the board;

**D.** inform the board in writing when the licensee or registrant has substantial reason to believe that there has been a violation of the statutes or parts of the rule which presents eminent danger to the licensee, registrant or client; or if this information is obtained in a professional relationship with a client, obtain prior written permission from the client before reporting it; counselors or therapists shall not file or encourage the filing of ethical complaints that are frivolous or are intended to harm the licensee rather than protect the public;

**E.** be familiar with this code of ethics, and its application to counselors or therapists' work. Lack of awareness or misunderstanding of the conduct standards is not a defense to a charge of unethical conduct;

**F.** consult with the board's ethics committee when uncertain whether a particular situation or course of action would violate this code of ethics; and

**G.** cooperate in ethics investigations, proceedings, and resulting requirements of this code. Release of confidential information in an investigation by the board does not constitute a violation of confidentiality. Failure to cooperate in an investigation is an ethics violation.

[16.27.18.21 NMAC- N, 11/30/2021]

#### **16.27.18.22 INVESTIGATIONS:**

If a licensee or registrant voluntarily surrenders their license or registration in anticipation of or during the course of an investigation, the complaint committee will proceed with its investigation and take any appropriate action. Any publication of action taken by the committee and the counseling and therapy practice board will include the fact that the licensee or registrant voluntarily surrendered their license or registration during the investigation.

[16.27.18.20 NMAC- N, 11/30/2021]

#### **16.27.18.23 ELECTRONIC THERAPY:**

**A.** Any licensee or registrant offering services online, or by any other electronic virtual means, shall adhere to the entire code of ethics as it appears in this Part. In addition, the licensee or registrant providing services shall inform the client, in the process of securing informed consent for services that:

**(1)** professional services are considered to be rendered in the state of New Mexico;

**(2)** complaints about professional services and should be directed to the New Mexico counseling and therapy practice board; and

**(3)** encryption and other technologies shall be used to insure confidentiality of the therapy session.

**B.** Licensees or registrants who provide professional services via electronic media (such as computer, telephone, radio, and television) should inform clients of the limitations and risks associated with such services.

C. Electronic and telephonic supervision, counseling and psychotherapy services provided under supervision are considered contact hours and subject to face-to-face supervision requirements.

[16.27.18.23 NMAC – N, 11/30/2021]

## **PART 19: APPROVED SUPERVISORS**

### **16.27.19.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.19.1 NMAC- Rp, 16.27.19.1 NMAC, 11/30/2021]

### **16.27.19.2 SCOPE:**

All professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, alcohol and drug abuse counselors, who are acting as supervisors.

[16.27.19.2 NMAC- Rp, 16.27.19.2 NMAC, 11/30/2021]

### **16.27.19.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5 and 61-9A-9 through 61-9A-30 NMSA 1978.

[16.27.19.3 NMAC- Rp, 16.27.19.3 NMAC, 11/30/2021]

### **16.27.19.4 DURATION:**

Permanent.

[16.27.19.4 NMAC- Rp, 16.27.19.4 NMAC, 11/30/2021]

### **16.27.19.5 EFFECTIVE DATE:**

November 28, 2021, unless a later date is cited at the end of a section.

[16.27.19.5 NMAC- Rp, 16.27.19.5 NMAC, 11/30/2021]

### **16.27.19.6 OBJECTIVE:**

The objective of Part 19 is to provide guidelines for a supervisor.

[16.27.19.6 NMAC- Rp, 16.27.19.6 NMAC, 11/30/2021]

### **16.27.19.7 DEFINITIONS:**

Approved supervisor definitions.

**A. "Administrative supervision"** means those supervisory activities, which increase the efficiency and management of the delivery of counseling services.

**B. "Clinical supervision"** means the supportive and educative activities of the supervisor designed to improve the application of counseling theory and technique directly to clients. Clinical supervision is the only supervision acceptable for licensure.

**C. "Applied counseling settings"** means public, state/federal agencies, or private organizations of counselors and therapists such as community mental health counselors, hospitals, schools, and group or individual private practice settings.

**D. "Supervisees"** means licensed mental health counselors, associate marriage and family therapist or substance abuse associates, or licensees who are working with clients in an applied counseling settings.

**E. "Supervisors"** means independently licensed alcohol and drug abuse counselors (LADAC), professional art therapists (LPAT), licensed professional clinical mental health counselors (LPCC), licensed clinical social workers (LCSW), licensed marriage and family therapists (LMFT), and licensed psychologists having completed the requisite nine continuing education units in supervision and having registered as supervisors with the New Mexico counseling and therapy practice board.

**F. "Electronic and telephonic supervision"** means supervision of counseling and psychotherapy services provided by supervisors either electronically or telephonically. Virtually supervised contact hours are subject to the supervision requirements required for services supervised in-person.

[16.27.19.7 NMAC- Rp, 16.27.19.7 NMAC, 11/30/2021]

### **16.27.19.8 SUPERVISEE'S WELFARE AND RIGHTS:**

**A.** Supervisors shall instruct supervisees to notify clients that they are being supervised and that observation or recordings of the session may be reviewed by the supervisor.

**B.** Supervisors who are licensed counselors and therapists and are conducting supervision to aid a supervisee to become licensed shall instruct the supervisee not to communicate or in anyway convey to the supervisee's clients or to other parties that the supervisee is licensed as independent practitioners.

**C.** Supervisors shall instruct supervisees of clients' rights, including protecting clients' right to privacy and confidentiality in the counseling and therapy relationship and

the information resulting from it, and to notify clients that their right to privacy and confidentiality will not be violated by the supervisory relationship.

**D.** Records of the counseling and therapy relationship, including interview notes, test data, correspondence, the electronic storage of these documents, and audio and videotape recordings are considered to be confidential professional information. Supervisors shall assure that these materials are used in counseling/therapy, research, and training and supervision of counselors and therapists with the full knowledge of the client and that permission to use these materials is granted by the applied counseling setting offering service to the client. This professional information is to be used for the full protection of the client.

**E.** Written consent from the client (or legal guardian, if a minor) shall be secured prior to the use of such information for instructional, supervisory, or research purposes. Policies of the applied counseling setting regarding client records also shall be followed.

**F.** Supervisors shall adhere to current professional and legal guidelines when conducting research with human participants.

**G.** Supervisors are responsible for making every effort to monitor both the professional actions, and failures to take action, of their supervisees.

**H.** Supervised clinical client contact hours shall not exceed 40 hours per week.

[16.27.19.8 NMAC- Rp, 16.27.19.8 NMAC, 11/30/2021]

#### **16.27.19.9 SUPERVISORY ROLE:**

**A.** The primary obligation of supervisors is to train counselors and therapists so that they respect the integrity and promote the welfare of the client. Inherent and integral to the role of supervisor are responsibilities for:

- (1)** monitoring client welfare;
- (2)** encouraging compliance with relevant legal, ethical, and professional standards for clinical practice;
- (3)** monitoring clinical performance, qualifications and professional development of supervisees;
- (4)** evaluating and certifying current performance and potential of supervisees for academic, screening, selection, placement, employment, and credentialing purposes;
- (5)** tracking supervisee's professionalism and ethical conduct; and

**(6)** documentation to include a supervisory agreement and a supervision log to include notes

**B.** Supervisors shall obtain and maintain the supervisor designation issued by the board prior to initiating their role as supervisors.

**C.** Supervisors shall inform their supervisees of professional and ethical standards and legal responsibilities of the counseling and therapy profession.

**D.** Supervisors of postgraduate counselors and therapists who are seeking state licensure should encourage these counselors and therapists to adhere to the standards for practice established by the state licensure board of the state in which they practice.

**E.** Procedures for contacting the supervisor, or an alternative supervisor, to assist in handling crisis situations shall be established and communicated to supervisees.

**F.** Actual work samples via session process notes, audio or video tape or live observation in addition to case notes shall be reviewed by the supervisor as a regular part of the ongoing supervisory process.

**G.** Supervisors shall meet regularly in face-to-face or virtual sessions with their supervisees.

**H.** Supervisors shall provide supervisees with ongoing feedback on their performance. This feedback should take a variety of forms, both formal and informal, and should include verbal and written evaluations. It should be formative during the supervisory experience and summative at the conclusion of the experience.

**I.** Supervisors who have multiple roles (e.g., teacher, clinical supervisor, administrative supervisor, etc.) with supervisees shall minimize potential conflicts. Where possible, the roles should be divided among several and it should be conveyed to the supervisee as to the expectations and responsibilities associated with each supervisory role.

**J.** Supervisors shall not participate in any form of sexual contact with supervisees. Dual relationships with supervisees that might impair the supervisor's objectivity and professional judgment should be avoided and the supervisory relationship terminated.

**K.** Supervisors shall not establish a psychotherapeutic relationship as a substitute for supervision. Personal issues should be addressed in supervision only in terms of the impact of these issues on clients and on professional functioning.

**L.** Supervisors, through ongoing supervisee assessment and evaluation, should be aware of any personal or professional limitations of supervisees which are likely to impede future professional performance. Supervisors have the responsibility of recommending remedial assistance to the supervisee and of screening from the training

program, applied counseling setting, or state licensure those supervisees who are unable to provide competent professional services. These recommendations should be clearly and professionally explained in writing to the supervisees who are so evaluated.

**M.** Supervisors shall not endorse a supervisee for certification, licensure, completion of an academic training program, or continued employment if the supervisor believes the supervisee is impaired in any way that would interfere with the performance of counseling and therapy duties. The presence of any such impairment should begin a process of feedback and remediation wherever possible so that the supervisee understands the nature of the impairment and has the opportunity to remedy the problem and continue with their professional development.

**N.** Supervisors shall supervise clinical work only in areas where they are fully competent, and experienced.

**O.** Supervisors shall inform supervisees of the goals, policies, theoretical orientations toward counseling/therapy, training, and supervision model or approach on which the supervision is based.

**P.** Supervisors shall use the following prioritized sequence in resolving conflicts among the needs of the client, the needs of the supervisee, and the needs of the program or agency. Insofar as the client must be protected, it shall be understood that client welfare is usually subsumed in federal and state laws such that these statutes should be the first point of reference. Where laws and ethical standards are not present or are unclear, the good judgment of the supervisor shall be guided by the following list:

- (1) relevant legal and ethical standards (e.g. duty to warn, state child abuse laws, etc.);
- (2) client welfare;
- (3) supervisee welfare;
- (4) supervisor welfare; and
- (5) program or agency service and administrative needs.

**Q.** Supervised contact hours shall not exceed 40 hours per week.

[16.27.19.9 NMAC- Rp, 16.27.19.9 NMAC, 11/30/2021]

#### **16.27.19.10 APPLICATION FOR SUPERVISOR DESIGNATION REQUIREMENTS:**

**A.** All applicants must submit the following documentation to the board:

- (1) a completed application, signed by the applicant

**(2)** a 2" x 2" photograph of the applicant taken within the preceding six months, affixed to the application;

**(3)** an application fee of \$75 as provided in Part 17;

**(4)** submit evidence of completing the following:

**(a)** three continuing education unit hours in counseling or therapy supervision,  
and

**(b)** six continuing education unit hours pertaining to ethics in supervision in addition to the ethics continuing education unit hours required for license renewal; or

**(c)** evidence of holding a current supervision credential through the applicable national professional association;

**(5)** a copy of a current New Mexico license as one of the following credentials:

**(a)** licensed professional clinical counselor;

**(b)** licensed marriage and family therapist;

**(c)** licensed professional art therapist;

**(d)** licensed alcohol and drug abuse counselor;

**(e)** licensed clinical social worker;

**(f)** licensed independent social worker;

**(g)** licensed psychiatrist; or

**(h)** licensed psychologist

**B.** Supervisor certification will be valid for a period not to exceed 24 months. All certifications shall expire on September 30 of the renewal year. CEUs submitted for initial supervisor designation certification will qualify toward the renewal requirements for the applicant's individual professional license. Initial certifications may be issued for a period of less than 24 months in order to establish the certification in a renewal cycle.

**C.** Renewal of supervision certification must be completed by September 30 of the renewal year by submitting the following documentation to the board office:

**(1)** a complete renewal application available for download on the board's website or by completing the renewal online; and

(2) evidence of completing at least three continuing education unit hours specific to counseling and therapy supervision and six continuing education unit hours specific to ethics in supervision in addition to the ethics continuing education unit hours required for license renewal obtained during the current licensing period.

[16.27.19.10 NMAC - N, 11/30/2021]

## **PART 20: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

### **16.27.20.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.20.1 NMAC - Rp 16 NMAC 27.17.1, 6-15-01]

### **16.27.20.2 SCOPE:**

All professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, registered independent mental health counselors, associate marriage and family therapists, licensed mental health counselors, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse associates.

[16.27.20.2 NMAC - Rp 16 NMAC 27.17.2, 6-15-01; A, 7-1-04; A, 2-10-06]

### **16.27.20.3 STATUTORY AUTHORITY:**

The board adopts this section pursuant to the Parental Responsibility Act (Ch. 25, Laws of 1995).

[16.27.20.3 NMAC - Rp 16 NMAC 27.17.3, 6-15-01]

### **16.27.20.4 DURATION:**

Permanent.

[16.27.20.4 NMAC - Rp 16 NMAC 27.17.4, 6-15-01]

### **16.27.20.5 EFFECTIVE DATE:**

June 15, 2001 unless a later date is cited at the end of a section.

[16.27.20.5 NMAC - Rp 16 NMAC 27.17.5, 6-15-01]

### **16.27.20.6 OBJECTIVE:**

The objective of Part 20 is to outline action to be taken by the board if applicants or licensees are in violation of the Parental Responsibility Act.

[16.27.20.6 NMAC - Rp 16 NMAC 27.17.6, 6-15-01]

#### **16.27.20.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this Section. As used in this section:

A. "HSD" means the New Mexico human services department;

B. "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and

C. "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and an order for support.

[16.27.20.7 NMAC - Rp 16 NMAC 27.17.7, 6-15-01]

#### **16.27.20.8 PARENTAL RESPONSIBILITY ACT; DELEGATION OF AUTHORITY:**

The authority of the New Mexico counseling and therapy practice board to issue a notice of contemplated action, to refer cases in which a notice of contemplated action has been issued for administrative prosecution, to hold hearings and issue decision and orders to any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in Section 40-5A-1 NMSA 1978 et seq., may be delegated to the New Mexico regulation and licensing department. This section shall not be construed to deprive the board of its authority to issue a notice of contemplated action for any violation of the Parental Responsibility Act, to refer a case for administrative prosecution, hold a hearing or issue a decision and order for any violation of the Parental Responsibility Act.

[16.27.20.8 NMAC - N, 11/30/2021]

#### **16.27.20.9 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the board:

A. shall deny an application for a license;

B. shall deny the renewal of a license; and

C. has grounds for suspension or revocation of the license.

[16.27.20.9 NMAC - Rn 16.27.17.8 NMAC, 11/30/2021]

**16.27.20.10 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board licensees and applicants. Upon the later receipt of an application for license or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

[16.27.20.10 NMAC - Rn 16.27.17.9, 11/30/2021]

**16.27.20.11 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the board shall:

**A.** commence a formal proceeding pursuant to 16.27.20.12 NMAC to take the appropriate action; or

**B.** For current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed 30 or 60 days. If the licensee fails to provide this statement, the board shall commence a formal proceeding pursuant to Section 12 of 16.27.20 NMAC.

[16.27.20.11 NMAC - Rn & A, 16.27.17.10, 11/30/2021]

**16.27.20.12 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in Part 20, the board shall serve upon the applicant or licensee a written notice stating that:

**A.** The board has grounds to take such action, and that the board shall take such action unless the licensee or applicant:

**(1)** mails a letter (certified mail return receipt requested) within 20 days after service of the notice requesting a hearing; or

**(2)** provides the board, within 30 days of the date of the notice, with a statement of compliance from HSD;

**B.** If the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

[16.27.20.12 NMAC - Rn 16.27.17.11, 11/30/2021]

**16.27.20.13 EVIDENCE AND PROOF:**

In any hearing under this Part 20, relevant evidence is limited to the following:

**A.** A statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under 16.27.20 NMAC, unless:

**B.** The applicant or licensee provides the board with a subsequent statement of compliance, which shall preclude the board from taking any action based solely on the prior statement of non-compliance.

[16.27.20.13 NMAC - Rn & A, 16.27.17.12, 11/30/2021]

**16.27.20.14 ORDER:**

When a disciplinary action is taken under this Part 20 solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for re-applications or reinstatement of lapsed licensees.

[16.27.20.14 NMAC - Rn 16.27.17.13, 11/30/2021]

**16.27.20.15 PROCEDURES:**

Proceedings under Part 20 shall be governed by the Uniform Licensing Act, Section 61-1-1, et seq. NMSA 1978.

[16.27.20.15 NMAC - Rn 16.27.17.14, 11/30/2021]

**PART 21: EMERGENCY LICENSURE**

**16.27.21.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.21.1 NMAC - N, 2-10-06]

**16.27.21.2 SCOPE:**

An individual wishing to practice as a professional mental health counselor (LPC), professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), alcohol and drug abuse counselor (LADAC) and licensed art therapist (LPAT) following a federally declared disaster.

[16.27.21.2 NMAC - N, 2-10-06]

**16.27.21.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, and 61-9A-7 through 61-9A-9 NMSA 1978 and the Uniform Licensing Act, Section 61-1-30 NMSA 1978.

[16.27.21.3 NMAC - N, 2/10/2006; A, 11/30/2021]

**16.27.21.4 DURATION:**

Permanent.

[16.27.21.4 NMAC - N, 2-10-06]

**16.27.21.5 EFFECTIVE DATE:**

February 10, 2006, unless a later date is cited at the end of a section.

[16.27.21.5 NMAC - N, 2-10-06]

**16.27.21.6 OBJECTIVE:**

The objective of Part 21 is to outline requirements, procedures, and criteria for issuance of an emergency license.

[16.27.21.6 NMAC - N, 2-10-06]

**16.27.21.7 DEFINITIONS:**

**[RESERVED]**

**16.27.21.8 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** An applicant affected in a federal disaster currently licensed as a counselor or therapist in another jurisdiction and is in good standing and otherwise meets the requirements for New Mexico licensure may be licensed in New Mexico during the four months following the declared federal disaster at no cost upon satisfying the following requirements:

- (1) be at least 21 years of age; and
- (2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics;
- (3) a completed application;
- (4) proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;
- (5) sworn affidavit statement that because of circumstance arising out of a declared area the applicant is unable to obtain proof documentation otherwise required by rules by the board;
- (6) refer to 16.27.4 NMAC, requirements for licensure as a professional clinical mental health counselor (LPCC);
- (7) refer to 16.27.6 NMAC, requirements for licensure as a marriage and family therapist (LMFT);
- (8) refer to 16.27.7 NMAC, requirements for licensure as a professional art therapist (LPAT);
- (9) refer to 16.27.8 NMAC, requirements for licensure as a professional mental health counselor (LPC);
- (10) refer to 16.27.10 NMAC, requirements for licensure as an alcohol and drug abuse counselor (LADAC); and
- (11) verification of current licensure or certification (no access to national database, board staff will verify).

**B.** The board may waive submission of the specific forms only if the applicant is unable to obtain the required document from an affected federally declared disaster area:

- (1) verification of supervised hours (attachment B);
- (2) official university transcripts;
- (3) attachment E (mental health clinical core curriculum), attachment D (marriage and family core curriculum), attachment F (art therapy core curriculum), attachment D (alcohol and drug education and training hours), and letters of reference for alcohol and drug abuse counselors.

**C.** Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.27.4 NMAC, 16.27.6 NMAC, 16.27.7 NMAC, 16.27.8 NMAC, and 16.27.10 NMAC.

**D.** Emergency licensure shall expire on September 30, unless renewed by the board. Application for renewal shall consist of the following:

- (1) completed application;
- (2) a 2"x 2" photograph of the applicant;
- (3) an application fee of \$75.00;
- (4) other documentation required in all parts of these rules, also to include but not limited to, documents regarding supervision, any additional training or coursework, work experience, and client contact hours;
- (5) official transcripts in a sealed envelope from each institution contributing to the applicant's master or doctoral degree; the transcript must be submitted with the application;
- (6) a statement from each supervisor in a sealed envelope on form attachment B, verifying the applicant's supervised experience and setting forth the nature and extend of such supervision must be submitted with the application;
- (7) completion of a core curriculum worksheet;
- (8) completion of training and education hours for alcohol and drug abuse counselors; and
- (9) letters of reference.

**E.** Examination: an applicant who has completed the educational and supervision requirements for licensure as a professional clinical mental health counselor (LPCC), professional marriage and family therapist (LMFT), professional art therapist (LPAT), professional mental health counselor (LPC), and alcohol and drug abuse counselor (LADAC), shall be required to pass the board approved examination(s).

[16.27.21.8 NMAC - N, 2/10/2006; A, 11/30/2021]

#### **16.27.21.9 EMERGENCY LICENSE TERMINATION:**

In accordance with the procedures established by the Uniform Licensing Act, 61-1-1 to 61-11-31 NMSA 1978, the board may deny, suspend or revoke a license held or applied for under the Counseling and Therapy Practice Act, and may fine or reprimand a

licensee or take any other action provided for in the Uniform Licensing Act, upon grounds that the licensee:

A. is guilty of fraud, deceit, or misrepresentation in procuring or attempting to procure any license provided for the counseling and therapy practice board;

B. failure to apply or renew for permanent licensure;

C. termination of an emergency license shall not preclude applicant from permanent licensure.

[16.27.21.9 NMAC - N, 2-10-06]

## **PART 22: REQUIREMENTS FOR LICENSURE AS AN ASSOCIATE MARRIAGE AND FAMILY THERAPIST (LAMFT)**

### **16.27.22.1 ISSUING AGENCY:**

Regulation and Licensing Department Counseling and Therapy Practice Board.

[16.27.22.1 NMAC - N, 2-10-06]

### **16.27.22.2 SCOPE:**

All individuals applying for licensure by examination as an associate marriage and family therapist.

[16.27.22.2 NMAC - N, 2/10/2006; A, 1/18/2023]

### **16.27.22.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-1, 61-9A-3, 61-9A-5 through 61-9A-7, 61-9A-9, 61-9A-12, 61-9A-23, and 61-9A-24 NMSA 1978.

[16.27.22.3 NMAC - N, 2/10/2006; A, 11/30/2021]

### **16.27.22.4 DURATION:**

Permanent.

[16.27.22.4 NMAC - N, 2-10-06]

### **16.27.22.5 EFFECTIVE DATE:**

February 10, 2006, unless a later date is cited at the end of a section.

[16.27.22.5 NMAC - N, 2-10-06]

**16.27.22.6 OBJECTIVE:**

The objective of Part 10 is to state the minimum requirements for licensure by examination as an associate marriage and family therapist and list the documentation required for application.

[16.27.22.6 NMAC - N, 2/10/2006; A, 1/18/2023]

**16.27.22.7 DEFINITIONS:**

[RESERVED]

**16.27.22.8 SUPERVISION:**

**A.** Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, licensed clinical social worker (LCSW), or licensed independent social worker (LISW) who holds a supervision designation issued by the Counseling and Therapy Practice Board.

**B.** It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.

**C.** Client contact and supervision hours prior to being licensed will not be accepted for licensure.

**D.** Supervised contact hours will become invalid if obtained more than five years prior to submission for independent LPCC licensure. This requirement does not apply to license holders who have continuously maintained a license in good standing.

[16.27.22.8 NMAC - N, 2/10/2006; A, 11/30/2021]

**16.27.22.9 LICENSED ASSOCIATE MARRIAGE AND FAMILY THERAPIST (LAMFT):**

**A.** LAMFT is intended as a transition between the required degree and the completion of supervised training required for licensure as a marriage and family therapist. Work must be under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure. There is no time limit as a licensed associate marriage and family therapist, but all work at this level must be done under clinical supervision.

**B.** Qualifications for entry-level licensure by examination. An applicant for licensure by examination as an entry-level licensed associate marriage and family therapist (LAMFT) must possess the following qualifications:

- (1) be at least 21 years of age; and
- (2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics; and
- (3) hold a masters or doctoral degree in a counseling related field from an accredited institution; and
- (4) have arranged for appropriate clinical supervision, including a postgraduate experience plan, which includes one hour of face-to-face supervision for every five hours of client contact; and
- (5) meet the marriage and family clinical core curriculum.

[16.27.22.9 NMAC - N, 2/10/2006; A, 1/18/2023]

**16.27.22.10 DOCUMENTATION REQUIRED:**

**A.** a completed application as specified in 16.27.3.8 NMAC; and

**B.** the applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree; the transcript may be submitted electronically directly by the issuing institution to the board's e-mail address, in their original and sealed envelope with the application, or mailed directly to the board office by the issuing institution. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

- (a)** A verification letter from a university official verifying
  - (i)** their degree program;
  - (ii)** that all courses have been completed and they have earned passing grades;
  - (iii)** their degrees will be conferred by the university; and
- (b)** a receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred; and

**C.** a statement from each supervisor in a sealed envelope on a form provided by the board (attachment C) verifying the applicant has arranged for appropriate clinical supervision, supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; and

**D.** applicant must complete and meet the marriage and family core curriculum (form D); and

**E.** application fee of \$75.00 as provided for in Part 17.

[16.27.22.10 NMAC - N, 2/10/2006; A, 11/30/2021]

#### **16.27.22.11 EXAMINATION:**

Applicants must demonstrate professional competency by passing the American marital and family therapy regulatory board (AMFTRB) examination. Should the applicant fail the required examination three times, the board shall not issue another temporary license for that application for license. No prior clinical supervision or clinical hours shall be applied toward the reapplication for license. Upon passing the requisite examination, the applicant holding the temporary LAMFT shall be issued the LAMFT license so that the applicant may continue to practice under supervision and acquire the requisite clinical hours and supervision for the independent LMFT license.

[16.27.22.11 NMAC - N, 2/10/2006; A, 11/30/2021]

### **PART 23: LICENSURE AS AN ALCOHOL AND DRUG ABUSE COUNSELOR (LADAC) FOR CURRENT CREDENTIAL ALCOHOL AND DRUG ABUSE COUNSELOR (CADAC) [REPEALED]**

[This part was repealed effective 11/30/2021.]

### **PART 24: EXPEDITED LICENSURE**

#### **16.27.24.1 ISSUING AGENCY:**

Regulation and Licensing Department-Counseling and Therapy Practice Board.

[16.27.24.1 NMAC - Rp, 16.27.24.1 NMAC, 1/18/2023]

#### **16.27.24.2 SCOPE:**

The provisions in Part 24 of Chapter 27 apply to all applicants for expedited licensure.

[16.27.24.2 NMAC - Rp, 16.27.24.2 NMAC, 1/18/2023]

#### **16.27.24.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Counseling and Therapy Practice Act, Sections 61-9A-1 through -30 NMSA 1978, specifically including Section 61-9A-9, and the Uniform Licensing Act, Sections 61-1-31.1 and -34 NMSA 1978.

[16.27.24.3 NMAC - Rp, 16.27.24.3 NMAC, 1/18/2023]

**16.27.24.4 DURATION:**

Permanent.

[16.27.24.4 NMAC - Rp, 16.27.24.4 NMAC, 1/18/2023]

**16.27.24.5 EFFECTIVE DATE:**

January 18, 2023, unless a later date is cited at the end of a section.

[16.27.24.5 NMAC - Rp, 16.27.24.5 NMAC, 1/18/2023]

**16.27.24.6 OBJECTIVE:**

The objective of Part 24 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.27.24.6 NMAC - Rp, 16.27.24.6 NMAC, 1/18/2023]

**16.27.24.7 DEFINITIONS:**

**A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.27.24.8 NMAC; and

(2) any foreign country included in 16.27.24.9 NMAC.

**B. "Expedited license" means** a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board, and also referred to as expedited licensure by credentials in Section 61-9A-22 NMSA 1978.

**C. "Good standing" means** a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction" has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.**

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) possesses a master's or doctoral degree in counseling or a counseling related field from an accredited institution;

(3) does not have a disqualifying criminal conviction, as defined in the board's rules;

(4) has practiced as a licensed professional for at least two consecutive years immediately prior to application; and

(5) is not, and has not been, subject to formal disciplinary action by a licensing board in New Mexico or any other jurisdiction within the past two years.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.27.24.7 NMAC - Rp, 16.27.24.7 NMAC, 1/18/2023]

#### **16.27.24.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

**A.** Licensed mental health counselor (LMHC).

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LMHC under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

(a) Alaska, Hawaii, Massachusetts, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, U.S. Virgin Islands, and Vermont, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this associate level practitioner;

(b) Arizona, California, Colorado, Connecticut, Florida, Georgia, Kentucky, Louisiana, Michigan, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Puerto Rico, South Carolina, Utah, Virginia, Washington, West Virginia, and Wyoming, on the

grounds that the education, training, and/or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

(c) American Samoa, on the grounds that education and examination requirements cannot be determined.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LMHC, and the approved license type from each approved jurisdiction, are as follows: Alabama – associate licensed counselor (ALC); Arkansas and New Jersey – licensed associate counselor (LAC); Delaware (licensed associate counselor of mental health (LACMH); Idaho, Illinois, Kansas, Minnesota, North Dakota, Ohio, South Dakota, – licensed professional counselor (LPC); Indiana – licensed mental health counselor associate (LMHCA); Iowa – temporary licensed mental health counselor (T-LMHC); Maine – licensed professional counselor (LPC), conditional LPC, and conditional licensed clinical professional counselor (conditional LCPC); Maryland – licensed graduate professional counselor (LGPC); Mississippi and Missouri – provisional licensed professional counselor (P-LPC); Texas – licensed professional counselor intern (LPC-Intern); Northern Mariana Islands – licensed mental health counselor (LMHC) and licensed mental health counselor associate (LMHCA); Guam – licensed mental health counselor (LMHC).

**B. Licensed professional clinical mental health counselor (LPCC).**

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LPCC under Section 61-9A-22 of the Counseling and Therapy Practice Act:

(a) Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Northern Mariana Islands, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, U.S. Virgin Islands, Washington, West Virginia, Wisconsin, and Wyoming, on the grounds that the education, training, or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

(b) American Samoa, on the grounds that education and examination requirements cannot be determined.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LPCC, and the approved license type from each jurisdiction include: Alaska, Arkansas, and Mississippi – licensed professional counselor (LPC); Idaho, Illinois, Kansas, and Maine – licensed clinical professional counselor (LCPC); Indiana – licensed mental health counselor (LMHC); Minnesota, North Dakota, and Ohio – licensed professional clinical counselor (LPCC); South Dakota – licensed professional counselor-mental health (LPC-MH); Vermont – licensed clinical mental health counselor (LCMHC).

**C. Licensed professional art therapist (LPAT).**

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LPAT under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

(a) Alabama, Alaska, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Pennsylvania, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Utah, U.S. Virgin Islands, Vermont, Washington, West Virginia, and Wyoming, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

(b) Colorado and Texas, on the grounds that the education, training, or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LPAT, and the approved license type from each jurisdiction include: Arkansas – LPC with specialization license in art therapy; Connecticut – clinical licensed art therapist (CLAT); Delaware, District of Columbia, Kentucky, Mississippi, New Jersey, and Tennessee – licensed professional art therapist (LPAT); Maryland – licensed clinical professional art therapist (LCPAT); New York and Oregon – licensed creative arts therapist (LCAT); Virginia – licensed art therapist (LAT); Wisconsin – registered art therapist with license to practice psychotherapy.

**D. Licensed associate marriage and family therapist (LAMFT).**

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LAMFT under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

(a) American Samoa, District of Columbia, Guam, Hawaii, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New York, Northern Mariana Islands, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, U.S. Virgin Islands, Vermont, and Virginia, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

(b) Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Louisiana, Montana, Nevada, New Jersey, Oregon, Tennessee, Utah, Washington, West Virginia, Wisconsin, and Wyoming, on the grounds that the education, training, or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LAMFT, and the approved license type from each jurisdiction include: Arizona, Arkansas, Delaware, Idaho, Minnesota, and North Dakota – licensed associate marriage and family therapist (LAMFT); Indiana, Kentucky, Mississippi, North Carolina, Ohio, South Carolina, and Texas – licensed marriage and family therapist associate (LMFTA); Kansas – licensed marriage and family therapist (LMFT); Maine – conditional marriage and family therapist license; Maryland – licensed graduate marriage and family therapist (LGMFT).

**E. Licensed marriage and family therapist (LMFT).**

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LMFT under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

(a) American Samoa and Puerto Rico, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

(b) California, on the grounds that the education, training, or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

(c) Northern Mariana Islands, on the grounds that education, training and examination requirements cannot be determined.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LMFT, and the approved license type from each jurisdiction include: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming – licensed marriage and family therapist (LMFT); Maryland – licensed clinical marriage and family therapist (LCMFT); Nebraska – licensed mental health practitioner – MFT certification; Ohio – licensed independent marriage and family therapist (LIMFT).

[16.27.24.8 NMAC - Rp, 16.27.24.8 NMAC, 1/28/2023]

**16.27.24.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

**[RESERVED]**

[16.27.24.9 NMAC - Rp, 16.27.24.9 NMAC, 1/18/2023]

**16.27.24.10 EXPEDITED LICENSURE APPLICATION:**

**A.** An applicant for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of a current license in good standing in an eligible jurisdiction as defined in these rules; and
- (3) Payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-1-36 NMSA 1978:

- (1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) The license may not be issued within 30 days of submission of the complete application; and
- (3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.27.24.10 NMAC - N, 1/18/2023]

**16.27.24.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) Proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and
- (3) Submission of the following documentation:
  - (a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-1-36 NMSA 1978:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.27.24.11 NMAC – N, 1/18/2023]

#### **16.27.24.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board. Initial licenses, including expedited licenses, may be issued for a period greater than twelve months, but less than 24 months, in order to align the license expiration date with the board's renewal cycle.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, if the licensee holding an expedited license was not required by the licensee's licensing jurisdiction outside of New Mexico to pass a national or state examination normally required for licensure in New Mexico, the licensee shall be required to pass the examination prior to renewing the license.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.27.24.12 NMAC - N, 1/18/2023]

## **CHAPTER 28: SIGNED LANGUAGE INTERPRETERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.28.1.1 ISSUING AGENCY:**

Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.1.1 NMAC - N, 07/21/09]

#### **16.28.1.2 SCOPE:**

Any person licensed to practice interpreting.

[16.28.1.2 NMAC - N, 07/21/09]

#### **16.28.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17

[16.28.1.3 NMAC - N, 07/21/09]

#### **16.28.1.4 DURATION:**

Permanent.

[16.28.1.4 NMAC - N, 07/21/09]

#### **16.28.1.5 EFFECTIVE DATE:**

July 21, 2009 unless a later date is cited at the end of this section.

[16.28.1.5 NMAC - N, 07/21/09]

#### **16.28.1.6 OBJECTIVE:**

The objective of Part 1 is to set forth the provisions, which apply to all of Chapter 28, and to all persons affected or regulated by Chapter 28 of Title 16.

[16.28.1.6 NMAC - N, 7/21/09]

#### **16.28.1.7 DEFINITIONS:**

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

##### **A. Definitions beginning with "A":**

(1) **"Accredited"** means approved by the:

- (a) New England association of schools and colleges;
- (b) middle states association of colleges and secondary schools;
- (c) north central association of colleges and schools;
- (d) northwest association of schools and colleges;
- (e) southern association of colleges and schools; or
- (f) western association of schools and colleges.

(2) **"ACET"** refers to the associate continuing education tracking system within registry of interpreters for the deaf (RID).

(3) **"Act"** means the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17 NMSA 1978.

(4) **"Administrator"** or "board administrator" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulations or as required to carry out the provisions of the Signed Language Interpreting Practices Act.

(5) **"Adult"** means all persons 18 years of age or older.

(6) **"Annual compliance review"** means an annual review conducted by the board ensuring that interpreters holding a provisional signed language interpreting license are in compliance with all requirements established by the statute and rules.

(7) **"Applicant"** means a person who has completed all educational requirements of the eligibility requirements for licensure and has submitted a complete application to the board. An applicant is seeking approval of their application by the board to advance them to candidacy for licensure.

**B. Definitions beginning with "B":**

(1) **"BEI"** means the board for evaluation of interpreters, which is a nationally-recognized testing and certifying body of signed language interpreters.

(2) **"Board"** means the signed language interpreting practices board.

(3) **"Board regulations"** or "regulations" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation.

**C. Definitions beginning with "C":**

(1) **"CEU"** refers to continuing education unit as is used by the registry of interpreters for the deaf.

(2) **"CMP"** means the certification maintenance program as is used by the registry of interpreters for the deaf.

(3) **"Community signed language interpreter"** means an interpreter holding one or more certifications recognized by RID with the exception of educational certificate: K-12 (ED: K-12) and holding a community signed language interpreter's license. A community signed language interpreter's license entitles its holder to provide signed language interpreting services in community, K-12 educational, and post-secondary educational settings as appropriate under the national association of the deaf - registry of interpreters for the deaf (NAD-RID) code of professional conduct.

(4) **"Consumer"** means a person using the services of a signed language interpreter.

(5) **"Confidential communication"** means a communication that is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.

(6) **"Copy signing"** means signing verbatim a comment or question for those who are not able to see the original signed message due to a visual obstruction.

**D. Definitions beginning with "D":**

(1) **"Deaf person"** means a person who has either no hearing or who has significant hearing loss.

(2) **"Deaf-blind person"** means a person who has either no hearing or who has significant hearing loss and a significant vision loss.

(3) **"Department"** means the New Mexico regulation and licensing department.

**E. Definitions beginning with "E":**

(1) **"Educational signed language interpreter"** means an interpreter holding the ED: K-12 credential from the registry of interpreters for the deaf or meeting the criteria in Subsection D of 16.28.3.11 NMAC and holding an educational signed language interpreter's license. An educational signed language interpreter's license entitles its holder to provide signed language interpreting services in K-12 educational settings as appropriate under the NAD-RID code of professional conduct and in post-secondary education settings only for consumers currently enrolled in a secondary program and not earning college credit.

(2) **"EIPA"** refers to the educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

**F. Definitions beginning with "F":** **"Filed with the board"** means hand delivered or postal mail received during normal business hours by the board office in Santa Fe, New Mexico.

**G. Definitions beginning with "G": [RESERVED]**

**H. Definitions beginning with "H":** **"Hard-of-hearing person"** means a person who has either no hearing or who has significant hearing loss.

**I. Definitions beginning with "I":**

(1) **"Intern"** means a student in training who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board, and actively supervised by an interpreter holding a community or educational signed language interpreter license or a consumer of interpreting services approved by the institution in which the intern is enrolled.

(2) **"Interpreter"** means a person who practices signed language interpreting.

(3) **"Interpreter education program"** or "interpreter preparation program" means a post-secondary degree program of at least two year's duration accredited by the state or similar accreditation by another state, district or territory; or a substantially equivalent education program approved by the board.

**(4) "Interpreting"** means the process of providing accessible communication between deaf, hard of hearing, or deaf-blind persons and hearing persons, including communication between signed language and spoken language and other modalities such as visual, gesture and tactile methods, not to include written communication. A person is interpreting if the person advertises, offers to practice, is employed in a position described as interpreting or holds out to the public or represents in any manner that the person is an interpreter in New Mexico

**J. Definitions beginning with "J": [RESERVED]**

**K. Definitions beginning with "K": [RESERVED]**

**L. Definitions beginning with "L":** "Licensee" means an interpreter who holds a current license issued under the act and these rules.

**M. Definitions beginning with "M": [RESERVED]**

**N. Definitions beginning with "N":**

**(1) "NAD"** means the national association of the deaf.

**(2) "New Mexico administrative code" or "NMAC",** Section 14-4-7.2 NMSA 1978 is the official compilation of current rules filed by state agencies in accordance with New Mexico statutes.

**(3) "New Mexico statutes annotated 1978 or NMSA 1978"** is the official compilation of state laws.

**O. Definitions beginning with "O": "Open Meetings Act" or "OMA",** 10-15-1 through 10-15-4 NMSA 1978 is the statutory provision requiring that public business be conducted in full public view; providing guidelines governing both public and closed meetings, and regulating the notice, agenda and minutes of such meetings.

**P. Definitions beginning with "P":**

**(1) "Properly made application"** means a completed application form for a signed language interpreter license filed with the board that is complete in all particulars and appears on its face to satisfy all minimum age, educational, supervision, payment and other requirements for licensure as required by the act and these regulations.

**(2) "Provisional signed language interpreter"** means an interpreter who holds a provisional signed language interpreter's license. A provisional signed language interpreter's license entitles its holder to provide signed language interpreting services in community and educational settings as appropriate under the NAD-RID code of professional conduct for a maximum of five years while working to satisfy the

requirements for a community signed language interpreter's license or an educational signed language interpreter's license.

**Q. Definitions beginning with "Q": [RESERVED]**

**R. Definitions beginning with "R":**

(1) "RID" refers to the registry of interpreters for the deaf, which is a national association of signed language interpreters.

(2) "Rule" means board regulations.

**S. Definitions beginning with "S":**

(1) "State Rules Act", Sections 14-4-1 through 14-4-11 NMSA 1978, is the statutory provision that ensures that state agencies file with the state records center and archives all rules and regulations including amendments or repeals.

(2) "Statute" means a law that governs conduct within its scope. A bill passed by the legislature becomes a statute; and "statutory authority" means the boundaries of the board's lawful responsibility as laid out by the statute that created it.

(3) "Substantial compliance" means sufficient compliance with the statutes or rules so as to carry out the intent for which the statutes or rules were adopted and in a manner that accomplished the reasonable objective of the statutes or rules.

(4) "Supervised interpreter intern or student" means a person who is currently enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning.

**T. Definitions beginning with "T": [RESERVED]**

**U. Definitions beginning with "U":** "Uniform Licensing Act" or "ULA", Section 61-1-1 through 61-1-3 NMSA 1978 is the statutory provision that governs the major duties of the board in area of:

(1) procedures which must be followed to accord due process to applicants for licensure and to licensees if the board takes action against the licensee for acts of misconduct that would adversely affect public health, safety and welfare, and

(2) rulemaking procedures that the board shall follow in adopting valid regulations affecting signed language interpreters.

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

**X. Definitions beginning with "X": [RESERVED]**

**Y. Definitions beginning with "Y": [RESERVED]**

**Z. Definitions beginning with "Z": [RESERVED]**

[16.28.1.7 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 12/16/15; A, 6/18/2017; A, 3/27/2021]

#### **16.28.1.8 BOARD OPERATIONS:**

**A. Elections.** At its annual meeting in July, the board shall elect a chair and vice-chair.

**B. Duties of officers.** All board officers shall exercise authority subject to the act, board regulations, and specific directions of the board.

**(1)** The chair shall preside at board meetings and adjudicatory hearings unless another presiding officer is named by the board. The chair may respond to inquiries and correspondence, execute orders of the board in any pending adjudicatory proceeding unless a hearing officer is appointed, or designate another board member to sign decisions of the board, appoint board members to formal committees, and provide direction to the board administrator on routine matters to facilitate the efficient operation of board functions between meetings.

**(2)** If the chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.

**C. Vacancy.** If the office of board chair becomes vacant, the board shall elect a chair at the next meeting or any subsequent meeting. If the office of vice chair becomes vacant, the board may hold elections as it deems necessary and advisable.

**D. Duties of board administrator.** The board administrator or designee shall at all times perform those tasks directed by the board pursuant to those duties prescribed by the act, board regulations, the ULA, Sections 61-1-1 through 61-1-33 NMSA 1978, and other applicable state laws. In addition, the board administrator shall assume the role of custodian of records.

**E. Board meetings.** The board shall conduct meeting in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, Revised, when necessary and advisable.

**F. Quorum.** The board shall transact official business only at a legally constituted meeting with a quorum present. A quorum shall consist of four (4) members.

**G. Standards of practice committee.** The board chair shall appoint a standards of practice committee consisting of at least one board member.

**H. Addressing the board.** Except for proceedings to adopt, amend, or repeal regulations in accordance with the ULA, Section 61-1-29 NMSA 1978, the board at its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not delay or disrupt the board's meeting. No person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or adjudicatory proceeding, or matter in litigation, except to confer the purpose of settlement or simplification of the issues. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person.

**I. Telephone attendance.** Pursuant to the OMA, Section 10-15-1 (C) NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, and shall give advance notice to the board administrator an ample time to arrange such accommodation.

**J. Conflict of interest, recusal.** Any board member who cannot be impartial in the determination of a matter before the board and who cannot judge a particular matter or controversy fairly on the basis of its own merits shall not participate in any board deliberation or vote on the matter.

**K. Confidentiality.** Board members shall not disclose to any non-member content of any executive session, or any other confidential matters that may be the subject of an executive session or attorney-client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure.

**L. Code of conduct.** Board members shall adhere to the standards set forth in the Governmental Conduct Act, Section 10-16-1 through 10-16-18 NMSA 1978.

[16.28.1.8 NMAC - N, 07/21/09; A, 08/18/11]

#### **16.28.1.9 BOARD RECORDS:**

**A. Inspection of Public Records Act IPRA.** Public records shall be available for inspection in accordance with the provisions of the IPRA, Section 14-2-1 through 14-2-12 NMSA 1978 and Section 61-9-5.1 NMSA 1978.

**B. Removal.** Public records shall not be removed from the board office except by board member, board staff, or agents of the board for official public business.

[16.28.1.9 NMAC - N, 07/21/09; A, 3/27/2021]

## **PART 2: EDUCATION AND CONTINUING EDUCATION REQUIREMENTS**

### **16.28.2.1 ISSUING AGENCY:**

Signed Language Interpreting Practices Board.

[16.28.2.1 NMAC - N, 7/21/2009; A, 2/27/2022]

### **16.28.2.2 SCOPE:**

Any person licensed to practice interpreting.

[16.28.2.2 NMAC - N, 07/21/09]

### **16.28.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Sections 61-34-1 through -17 NMSA 1978.

[16.28.2.3 NMAC - N, 7/21/2009; A, 2/27/2022]

### **16.28.2.4 DURATION:**

Permanent.

[16.28.2.4 NMAC - N, 07/21/09]

### **16.28.2.5 EFFECTIVE DATE:**

July 21, 2009 unless a later date is cited at the end of this section. [16.28.2.5 NMAC - N, 07/21/09]

### **16.28.2.6 OBJECTIVE:**

The objective of Part 2 is to establish the minimum education requirements for applicants applying for licensure and to establish the continuing education requirements for license renewal.

[16.28.2.6 NMAC - N, 07/21/09]

### **16.28.2.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.28.1.7 NMAC]

#### **16.28.2.8 EDUCATION REQUIREMENTS:**

**A.** The board shall issue a license as a signed language interpreter to an applicant, otherwise qualified, who furnishes evidence satisfactory to the board that the applicant has fulfilled the degree requirements for certification as established RID. Official or unofficial transcripts showing the degree awarded or documentation of educational equivalency approval from RID is acceptable evidence.

**B.** Applicants for provisional licenses must submit official or unofficial transcripts showing proof of completion of an interpreting education program or an interpreter preparation program from an accredited institution. If the degree is pending, applicants must also submit a letter of completion on letterhead from the director of the interpreting program.

[16.28.2.8 NMAC - N, 07/21/09; A, 12/16/15; A, 3/27/2021; A, 2/27/2022]

#### **16.28.2.9 CONTINUING EDUCATION REQUIREMENTS:**

**A.** RID certified interpreters shall submit proof of current RID certified member status documenting compliance with the requirements of the CMP which requires eight RID-approved continuing education units (CEUs) 80 contact hours per four-year CMP cycle. Should RID change its number of CEUs required an interpreter must comply with the new requirement in order to maintain licensure in New Mexico. BEI certified interpreters shall submit BEI transcripts showing four CEUs (40 hours) of continuing education at each biennial renewal. Educational signed language interpreters meeting the criteria in Subsection D of 16.28.3.11 NMAC but not holding the ED:K-12 credential must submit associate continuing education tracking (ACET) transcripts showing four CEUs (40 hours) of continuing education at each biennial renewal.

**B.** Provisional license: two CEUs (20 hours) of continuing education annually documented on the applicant's associate continuing education tracking (ACET) transcript from RID. Interpreting students should be aware that they need to become associate members of RID before the end of March in their year of graduation for CEU's earned prior to July 1st to be tracked on their ACET transcripts.

**C.** Provisional licensees who are within their first year may provide certificates of completion to the board office if the approved CEUs are not on ACET transcripts.

[16.28.2.9 NMAC - N, 07/21/2009; A, 08/18/2011; A, 01/15/2014; A, 12/16/2015; A, 6/18/2017; A, 3/27/2021; A, 2/26/2022; A, 7/31/2023]

### **PART 3: APPLICATION AND LICENSURE REQUIREMENTS**

#### **16.28.3.1 ISSUING AGENCY:**

Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.3.1 NMAC - N, 07/21/09]

**16.28.3.2 SCOPE:**

The provisions of Part 3 apply to all applicants for licensure.

[16.28.3.2 NMAC - N, 07/21/09]

**16.28.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

[16.28.3.3 NMAC - N, 07/21/09]

**16.28.3.4 DURATION:**

Permanent.

[16.28.3.4 NMAC - N, 07/21/09]

**16.28.3.5 EFFECTIVE DATE:**

July 21, 2009 unless a later date is cited at the end of this section.

[16.28.3.5 NMAC - N, 07/21/09]

**16.28.3.6 OBJECTIVE:**

The objective of Part 3 is to establish requirements and procedures to apply for licensure, to renew licenses, to place provisional licenses on inactive status, to establish grounds for license denial, suspension, or revocation, and to establish exemptions from licensure.

[16.28.3.6 NMAC - N, 07/21/09]

**16.28.3.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.28.1.7 NMAC]

**16.28.3.8 COMMUNITY SIGNED LANGUAGE INTERPRETER LICENSE:**

A community signed language interpreter's license entitles its holder to provide signed language interpreting services in community, K-12 educational, and post-secondary educational settings as appropriate under the NAD-RID code of professional conduct.

[16.28.3.8 NMAC - N, 07/21/09]

#### **16.28.3.9 EDUCATIONAL SIGNED LANGUAGE INTERPRETER LICENSE:**

An educational signed language interpreter's license entitles its holder to provide signed language interpreting services in K-12 educational settings as appropriate under the NAD-RID code of professional conduct, and in post-secondary education settings only for consumers currently enrolled in a secondary program and not earning college credit.

[16.28.3.9 NMAC - N, 07/21/09; A, 6/18/2017]

#### **16.28.3.10 PROVISIONAL SIGNED LANGUAGE INTERPRETER LICENSE:**

A provisional signed language interpreter's license entitles its holder to provide signed language interpreting services in community and educational settings as appropriate under the NAD-RID code of professional conduct for a maximum of five years while working to satisfy the requirements for a community signed language interpreter's license or an educational signed language interpreter's license. An interpreter may hold a provisional license and an educational license simultaneously, and is therefore permitted to provide interpreting services in both educational settings and appropriate community settings.

[16.28.3.10 NMAC - N, 07/21/09; A, 6/18/2017]

#### **16.28.3.11 APPLICATION FOR LICENSURE:**

**A.** An application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

**B.** All applications for licensure must include:

- (1) a completed and signed application;
- (2) applicant name;
- (3) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
- (4) mailing address;
- (5) business address;

- (6) phone number;
- (7) non-refundable application fee as required by the board;
- (8) photograph: applicants for original licensure shall attach a recent color photograph, front-view of face.

**C.** An application for a community signed language interpreter license must also include:

(1) proof of current RID certified status showing that the applicant holds one or more certifications recognized by RID at the time of application for licensure with the exception of education certificates: K-12 (ED K-12); or

(2) a copy of the applicant's current BEI card showing one of the following certifications:

- (a) BEI Advanced;
- (b) BEI Master;
- (c) BEI IV;
- (d) BEI V;
- (e) BEI Level IV Intermediary;
- (f) BEI Level V Intermediary and.

**D.** An applicant for educational signed language interpreter license must include:

(1) proof of educational interpreter performance assessment (EIPA) rating 4.0 - 5.0; and

(2) proof of current RID certified member status showing that applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or

(3) proof of current RID certified member status showing that applicant holds one or more certifications currently recognized by RID; or

(4) proof of an educational interpreter performance assessment (EIPA) rating 4.0 – 5.0, proof of passing the EIPA written test, proof of satisfying the RID educational requirements, and proof of current RID associate member status.

**E.** An application for a provisional signed language interpreters license must include:

(1) proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or

(2) proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of 18; and

(3) proof of current RID associate member status for the purpose of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC.

(4) in lieu of proof of completion of an interpreter training program, deaf applicants may submit proof of having completed at least 40 hours of training in topics such as fundamentals of interpreting, ethics and cultural responsiveness, and the NAD-RID Code of Professional Conduct.

(5) if the applicant provides proof of completion of an interpreter education program or interpreter preparation program more than three years prior to their application for a provisional license, they must also submit a resume and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

**F.** If an applicant submits an incomplete license application they will be requested to submit any missing documentation; failure to do so within six months of receipt of the original application will result in the application file being closed. After the file has been closed, the applicant will be required to submit a new application and application fee to apply again.

**G.** "Electronic Applications" In accordance with Section 14-16-1 thru 14-16-21 NMSA 1978 of the Uniform Electronic Transactions Act, the board or its designee will accept electronic applications.

(1) Any person seeking a New Mexico signed language interpreting license may do so by submitting an electronic application. Applicants are required to also submit all required information as stated in 16.28.3.11 NMAC.

(2) Any licensee may renew their license electronically through a designated website provided by the board. All license holders renewing their signed language interpreting license are also required to submit all documentation as stated in 16.28.3.17 NMAC.

(3) Any person whose license has been expired may apply electronically to the board for renewal of the license at any time within 60 days of the expiration. Any

persons seeking renewal are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

(4) Any person whose license has been lapsed may apply electronically to the board for reinstatement of the license at any time. Any persons seeking reinstatement are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

**H. "Electronic Signatures"** Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

**I. "Administrative Errors"** In the event that a community or educational license is issued due to an administrative error, and if the Interpreter is qualified for a provisional license, the permitted five years for the provisional license shall began at the time of the issuance of the erroneously issued license.

[16.28.3.11 NMAC - N, 07/21/2009; A, 08/18/2011; A, 01/15/2014; A, 12/16/2015; A, 6/18/2017; A, 3/27/2021; A, 7/31/2023]

#### **16.28.3.12 REQUIREMENTS FOR A LICENSE FOR A COMMUNITY SIGNED LANGUAGE INTERPRETER:**

A license for a community signed language interpreter shall be granted to a person who:

**A.** files a completed application that is accompanied by the required fees; and,

**B.** submits satisfactory evidence that the person:

(1) has reached the age of majority;

(2) is of good moral character;

(3) has completed all educational requirements established by the board;

(4) holds active certification as outlined in Subsection C of 16.28.3.11 NMAC;  
and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.12 NMAC - N, 07/21/09; A, 08/18/11; A, 3/27/2021]

#### **16.28.3.13 REQUIREMENTS FOR A LICENSE FOR AN EDUCATIONAL SIGNED LANGUAGE INTERPRETER:**

A license for an educational signed language interpreter shall be granted to a person who:

A. files a completed application that is accompanied by the required fees; and,

B. submits satisfactory evidence that the person:

(1) has reached the age of majority;

(2) is of good moral character;

(3) has completed all educational requirements established by the board;

(4) meets credential requirements outlined in Subsection C of 16.28.3.11 NMAC; and

(5) complies with the registry of interpreters for the deaf (RID) certification maintenance program (CMP).

[16.28.3.13 NMAC - N, 07/21/09; A, 08/18/11; A, 6/18/2017; A, 3/27/2021]

**16.28.3.14 REQUIREMENTS FOR A ONE-TIME, FIVE-YEAR PROVISIONAL LICENSE TO A PERSON NOT MEETING THE COMMUNITY SIGNED LANGUAGE INTERPRETER OR EDUCATIONAL SIGNED LANGUAGE INTERPRETER REQUIREMENTS FOR LICENSURE:**

A one-time, five-year provisional license shall be granted to a person who:

A. files a completed application that is accompanied by the required fees; and

B. has completed an interpreter education program or interpreter preparation program at an accredited institution; or

C. provides verifiable documentation that they were employed as a community signed language interpreter or an educational signed language interpreter at the time the act became effective on June 15, 2007 and that the applicant had reached the age of 18 at the time;

D. provides proof of associate membership in the registry of interpreters for the deaf (RID) (for purposes of meeting the CEU requirements outlined in Subsection B of 16.28.2.9 NMAC).

E. If the applicant provides proof of completion of an interpreter education program or interpreter preparation program more than one year prior to their application for a provisional license, they must also submit a résumé and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

[16.28.3.14 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 6/18/2017]

**16.28.3.15 [RESERVED]**

[16.28.3.15 NMAC - N, 07/21/09; A, 08/18/11; Repealed, 01/15/14]

**16.28.3.16 LICENSE EXPIRATION:**

**A.** Community signed language interpreter licenses expire two years from the last day of the month in which they were issued.

**B.** Educational signed language interpreter licenses expire two years from the last day of the month in which they were issued.

**C.** Provisional signed language interpreter licenses expire five years from the last day of the month in which they were issued, but are subject to an annual compliance review. Revocation proceedings may be initiated by the board if the holder of a provisional license fails to pass the annual compliance review—each year by the last day of the month in which the license was issued.

[16.28.3.16 NMAC - N, 07/21/09; A, 01/15/14; A, 3/27/2021]

**16.28.3.17 LICENSE RENEWAL:**

**A.** A licensee may renew a community signed language interpreter license or an educational signed language interpreter license every two years by:

**(1)** submitting a completed renewal application provided by the board that is accompanied by the required fees; and

**(2)** submitting the continuing education requirements as specified in 16.28.2.9 NMAC.

**B.** A licensee must complete the mandatory annual compliance review for a provisional interpreter license four consecutive times by:

**(1)** submitting a completed compliance review application provided by the board that is accompanied by the required fees; and

**(2)** submitting the continuing education requirements as specified in 16.28.2.9 NMAC.

**C.** If a community or educational license is not renewed by the expiration date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may renew within a sixty-day grace period, which begins the first day the license expires, by submitting payment of the renewal fee and late fee and complying

with all renewal requirements. Upon renewal of the license, the licensee may resume practice.

**D.** If a provisional license does not complete the annual compliance review by the due date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may complete the review within a 60-day grace period, which begins the first day the license expires, by submitting payment of the compliance review fee and late fee and complying with all compliance review requirements. Upon passing the compliance review, the licensee may resume practice.

**E.** Any person whose license has lapsed may apply to the board for reinstatement of the license.

**(1)** In making application for reinstatement of a provisional license, the applicant must state why the license should be reinstated and should specifically set forth an explanation of why the license lapsed and how changed circumstances would justify reinstatement. Documentation must be provided.

**(2)** Any licensed interpreter applying for reinstatement of a provisional license must submit an application fee as set forth in 16.28.6.8 NMAC and provide proof of attendance of continuing education hours as set forth in 16.28.2.9 NMAC for each year of lapse.

**(3)** Provisionally licensed interpreters will still be limited to a total of five years from the time the initial license was granted.

**(4)** Any licensed interpreters applying for reinstatement of a community or educational license who moved away from the state of New Mexico and maintained certification during the lapse shall be granted a license. Those who remained in the state of New Mexico must state why the license should be reinstates and should specifically set forth an explanation of why the license lapsed and how changed circumstances would justify reinstatement. Documentation must be provided.

**(5)** If the board approves the reinstatement application, the original license number will be issued to the applicant.

[16.28.3.17 NMAC - N, 07/21/09; A, 08/18/11; A, 01/15/14; A, 3/27/2021]

#### **16.28.3.18 INACTIVE STATUS FOR PROVISIONAL LICENSEES:**

**A.** A provisional licensee whose license is in good standing with the board may request their license to be placed on inactive status for the purpose of pursuing education or training that will assist the licensee in obtaining licensure as a community signed language interpreter or an educational signed language interpreter by meeting the following requirements.

(1) Complete, sign, and return the inactive status application form provided by the board, specifying the intent to be placed on inactive status.

(2) Submit verifications for the required number of continuing education hours.

(3) Return the application postmarked on or before the license expiration date.

**B.** Inactive status notification: Upon receipt of a duly and properly made application for inactive status, the board or its designee will review and approve the application and send the licensee written verification that the license has been placed on inactive status.

**C.** During the period of inactive status, the licensee is prohibited from practicing signed language interpreting in the state of New Mexico and must be actively working toward obtaining licensure as a community signed language interpreter or an educational signed language interpreter.

**D.** Reporting requirement: any licensee who has placed their license on inactive status must submit transcripts to the board by June 30 of every year as verification of the licensee's pursuit of education or training to obtain licensure.

**E.** Notification of intent to reactivate license: Any licensee who has placed their license on inactive status may, within five years from the official date their license was placed on inactive status, notify the board in writing of their desire to practice in New Mexico. The applicant shall provide the following information:

- (1) a New Mexico license number;
- (2) the applicants full name;
- (3) the applicants home address and phone number;
- (4) the date the applicant's license was originally issued;
- (5) the date the applicant's license was placed on inactive status;

**F.** Reactivation process: Upon receipt of the written request, the board shall place the licensee on active status once the licensee submits approved continuing education hours required for activation of their license.

[16.28.3.18 NMAC - N, 07/21/09; A, 6/18/2017]

#### **16.28.3.19 EXEMPTIONS:**

**A.** The Signed Language Interpreting Practices Act does not apply to:

- (1) nonresident interpreters working in New Mexico less than thirty calendar days per year;
- (2) interpreting in religious or spiritual settings;
- (3) interpreting in informal settings for friends, families or guests;
- (4) interpreting in emergency situations where the deaf, hard of hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;
- (5) the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board;
- (6) multilingual interpreting in order to accommodate the personal choice of the consumer.

**B.** Nonresident interpreters must contact the board administrator via email prior to providing interpreting services in New Mexico, regardless of the number of hours of service they provide each time.

(1) Interpreters must provide the following for the purpose of tracking the number of days services are provided in New Mexico:

- (a) Name.
  - (b) Address.
  - (c) Email Address.
  - (d) Credentials (a copy of their current RID card or other credential).
  - (e) Date(s) and city or cities in which services will be provided.
- (2) This exemption is for interpreters living outside of New Mexico and providing occasional services within the state. It is not for use by interpreters in the process of moving to New Mexico temporarily or permanently.

**C.** Interpreter interns must contact the board administrator via email at the beginning of their internship period and provide the following:

- (1) Name.
- (2) Address.

- (3) Email address.
- (4) Institution at which they are enrolled.
- (5) Name of program internship coordinator.
- (6) Anticipated date of graduation.

[16.28.3.19 NMAC - N, 07/21/09; A, 08/18/11; A, 12/16/15; A, 6/18/2017; A, 3/27/2021]

#### **16.28.3.20 LICENSE DENIAL, SUSPENSION, OR REVOCATION:**

**A.** In accordance with procedures contained in the Uniform Licensing Act, Section 61-1-1 NMSA 1978, the board may deny, revoke or suspend a license held or applied for under the Signed Language Interpreting Practices Act, upon grounds that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) is guilty of gross incompetence;
- (3) is guilty of unprofessional or unethical conduct as defined by rule of the board;
- (4) uses untruthful or misleading advertising;
- (5) is habitually or excessively using controlled substances or alcohol to such a degree the licensee or applicant is rendered unfit to practice as a signed language interpreter pursuant to the Signed Language Interpreting Practices Act;
- (6) has violated the Signed Language Interpreting Practices Act;
- (7) is guilty of aiding and abetting a person not licensed to practice signed language interpreting pursuant to the Signed Language Interpreting Practices Act; or
- (8) as evidenced by a certified copy of the record of jurisdiction, has had a license, certificate or registration to practice signed language interpreting revoked, suspended or denied in any state or territory of the United States for actions pursuant to this section.

**B.** Disciplinary proceedings may be initiated by a complaint of a person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

**C.** A person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

**D.** In the event that a community or educational license is issued in error and if the interpreter is qualified for a provisional license the permitted five years for the provisional license shall began at the time of the issuance of the improperly issued license.

**E.** In the event that an interpreter fails to maintain the certification qualifying them for the license they hold, they must inform the board immediately. Their license will automatically be revoked and must be relinquished until certification is restored.

**F.** An interpreter whose community of educational license has lapsed or has been revoked is not eligible for a provisional license.

[16.28.3.20 NMAC - N, 12/16/15; A, 2/29/16; A, 6/18/2017; A, 3/27/2021]

## **PART 4: COMPLAINT PROCEDURES; ADJUDICATORY PROCEEDINGS**

### **16.28.4.1 ISSUING AGENCY:**

Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.4.1 NMAC - N, 07/21/09]

### **16.28.4.2 SCOPE:**

The provisions of Part 4 shall apply to all licensees and applicants for license entitled to notice and hearing under the Uniform Licensing Act, ("ULA"), NMSA 1978 Sections 61-1-1 through -36 NMSA 1978 and to any interested person who may file a complaint against a licensee or applicant.

[16.28.4.2 NMAC - N, 7/21/2009; A, 2/27/2022]

### **16.28.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Sections 61-34-1 through -17 NMSA 1978.

[16.28.4.3 NMAC - N, 7/21/2009; A, 1/15/2014; A, A, 2/27/2022]

### **16.28.4.4 DURATION:**

Permanent.

[16.28.4.4 NMAC - N, 07/21/09]

### **16.28.4.5 EFFECTIVE DATE:**

July 21, 2009 unless a later date is cited at the end of this section.

[16.28.4.5 NMAC - N, 07/21/09]

#### **16.28.4.6 OBJECTIVE:**

The objective of Part 4 is to establish procedures for filing, processing, and investigating complaints against licensees and applicants and establishes procedures for the conduct of disciplinary proceedings.

[16.28.4.6 NMAC - N, 07/21/09]

#### **16.28.4.7 DEFINITIONS:**

**A. "Complaint"** means a complaint filed with the board against an applicant for licensure or against a licensee.

**B. "Complainant"** means the party who files a complaint against a licensee or an applicant for licensure.

**C. "Respondent"** means the applicant for licensure or the licensee who is the subject of the complaint filed with the board.

**D. "Hearing"** means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in the disciplinary action against the respondent's application for licensure or their license to practice signed language interpreting.

**E. "Violation"** means a violation of the Signed Language Interpreting Practices Act or the rules and regulations duly adopted by the board.

**F. "Notice of contemplated action" or "NCA"** means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board's intent to take action based upon the alleged violations of practice and whereby the respondent is afforded the opportunity for a hearing before the board.

**G. "License revocation"** means to prohibit the conduct authorized by the license.

**H. "License suspension"** means to prohibit, for a stated period of time, the conduct authorized by the license.

**I. "License restricted subject to conditions"** means to allow the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.

[16.28.4.7 NMAC - N, 08/18/11; A, 3/27/2021]

#### **16.28.4.8 COMPLAINTS:**

The disciplinary process may be instituted by a complaint on a board approved form by any person, including board members and board staff.

[16.28.4.8 NMAC - N, 07/21/09; 16.28.4.8 NMAC - N, 08/18/11]

#### **16.28.4.9 COMPLAINT PROCEDURES:**

##### **Inquiries regarding filing of complaints.**

**A.** Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

**B.** Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board's jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints should be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based, however, oral complaints may be received and investigated. An oral complaint submitted to the board administrator shall be in an audio, visual or audiovisual format. After the complaint committee reviews the complaint facts and determines there is cause for further investigation, the board will have the complaint translated into written English and entered onto the form provided by the board, then present the transcription to the complainant for clarification and approval. Once approved, the complainant shall resubmit the signed, notarized complaint to the board administrator. Anonymous complaints will not be investigated, unless the board determines an exception is valid due to unusual circumstances.

**C.** Once a complaint is made, it will come under the provisions of this section and cannot be withdrawn.

[16.28.4.9 NMAC - N, 07/21/09; 16.28.4.9 NMAC - Rn & A, 16.28.4.8 NMAC, 08/18/11]

#### **16.28.4.10 INVESTIGATION:**

Upon receipt of the complaint, the board will cause an investigation to be made into the subject complaint by the board's standards of practice committee.

[16.28.4.10 NMAC - N, 7/21/2009; Repealed, 8/18/2011; 16.28.4.10 NMAC - N, 8/18/2011; A, 2/27/2022]

#### **16.28.4.11 STANDARDS OF PRACTICE COMMITTEE:**

The standards of practice committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board to the standards of practice committee.

**A.** The standards of practice committee shall review all documentation provided to it in reference to the subject complaint.

**B.** The standards of practice committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

**C.** The foregoing notwithstanding, the standards of practice committee will not be required to provide the respondent with notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.

**D.** The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

**E.** The standards of practice committee will have independent authority to direct the board administrator to contract for the services of such persons without prior approval of the board after the board administrator has determined budgetary availability for such services.

**F.** Upon completion of its investigation, the standards of practice committee shall submit to the board its proposed recommendations concerning the proper disposition of the subject complaint.

**G.** Upon review the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee recommendations.

**H.** Standards of practice committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or applicant who is the subject of the complaint.

**I.** If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

**J.** If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

**K.** The board may take any other action with regard to the complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and the district attorney for prosecution of persons alleged to be practicing without a valid license.

[16.28.4.11 NMAC - N, 07/21/09; Repealed, 08/18/11; 16.28.4.11 NMAC - N, 08/18/11; A, 3/27/2021]

#### **16.28.4.12 PRIVATE CAUSE OF ACTION:**

Neither the action nor inaction by the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[16.28.4.12 NMAC - N, 08/18/11]

#### **16.28.4.13 DISCIPLINARY ACTION:**

In accordance with the ULA, the board has authority to impose penalties in disciplinary matters. The ULA allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

**A.** Formal letter of reprimand: The board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the ULA and shall be matters of public record.

**B.** Prehearing motions: The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing. Until such time as the board appoints a hearing officer, the chair of the board shall serve as hearing officer.

**C.** Settlement agreements: Following the issuance of a notice of contemplated action, the board may enter into a settlement agreement with the respondent as a means of resolving a complaint.

**D.** Costs of disciplinary proceedings: Licensees or applicants shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing held pursuant to Section 61-1-3 NMSA 1978 of the ULA.

**E.** Uniform licensing provisions: In accordance with Subsection G of Section 61-1-7 NMSA 1978 of the ULA, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

**F.** License returned to the board: Any license issued by the board must be returned to the board subsequent to revocation or suspension. The item(s) listed must be

returned in person or by certified mail no later than 30 days after the suspension or revocation order to the board.

**G. DISQUALIFYING CRIMINAL CONVICTIONS:** Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving a retaining a license or certificate by the board.

- (1) Physical harm to others:**
  - (a)** Section 30-2-1 NMSA 1978 "Murder";
  - (b)** Section 30-2-3 NMSA 1978 "Manslaughter";
  - (c)** Section 30-3-1 NMSA 1978 "Assault";
  - (d)** Section 30-3-4 NMSA 1978 "Battery";
  - (e)** Section 30-6-1 NMSA 1978 "Abandonment or abuse if a child";
  - (f)** Section 30-4-1 NMSA 1978 "Kidnapping";
  - (g)** Section 30-4-3 NMSA 1978 "False imprisonment";
  - (h)** Section 30-9-19 NMSA 1978 "Sexual assault".
- (2) Theft:**
  - (a)** Section 30-16-1 NMSA 1978 "Larceny";
  - (b)** Section 30-16-24.1 NMSA 1978 "Theft of identity";
  - (c)** Section 30-16-26 NMSA 1978 "Theft of a credit card".
- (3) Financial crimes:**
  - (a)** Section 30-16-8 NMSA 1978 "Embezzlement";
  - (b)** Section 30-16-9 NMSA 1978 "Extortion";
  - (c)** Section 30-16-10 NMSA 1978 "Forgery".
- (4) Drug offenses:**
  - (a)** Section 30-31-20 NMSA 1978 "Trafficking of controlled substances";

- (b) Section 30-31-23 NMSA 1978 "Possession of controlled substances";
- (c) Section 30-31-21 NMSA 1978 "Distribution to a minor";
- (d) Section 30-6-3 NMSA 1978 "Contributing to the delinquency of a minor".

**(5) Sex crimes:**

- (a) Section 30-52-1 NMSA 1978 "Human trafficking";
- (b) Section 30-9-11 NMSA 1978 "Criminal sexual penetration";
- (c) Section 30-9-12 NMSA 1978 "Criminal sexual contact";
- (d) Section 30-9-13 NMSA 1978 "Criminal sexual contact of a minor";
- (e) Section 30-6A-3 NMSA 1978 "Sexual exploitation of children";
- (f) Section 29-11A-4(P) NMSA 1978 "Failure to register as required by sex offender registration and notification act".

**(6) Miscellaneous:**

- (a) Section 30-7-16(B) NMSA 1978 "Felon in possession of a firearm";
- (b) Section 30-3A-3 NMSA 1978 "Stalking";
- (c) Section 30-20-12 NMSA 1978 "Use of telephone to terrify, intimidate, threaten, harass, annoy, or offend another".

**(7)** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.

**(8)** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.

**(9)** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Signed Language Interpreting Practices Act, NMSA 1978, Sections 61-34-1 to -17 and the ULA, NMSA 1978, Section 61-1-1 to-36 NMSA 1978, regardless of whether the individual was convicted of a crime for such conduct whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.

**(10)** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

**(c)** a juvenile adjudication; or

**(d)** a conviction for any crime other than the disqualifying criminal convictions listed in 16.28.4.13 NMAC.

[16.28.4.13 NMAC -N, 8/18/2011; A, 2/27/2022]

#### **16.28.4.14 DELEGATION OF AUTHORITY:**

The authority of the New Mexico signed language interpreting practices board to refer any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, for administrative prosecution is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.28.4.14 NMAC - N, 08/18/11]

### **PART 5: CODE OF PROFESSIONAL CONDUCT**

#### **16.28.5.1 ISSUING AGENCY:**

Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.5.1 NMAC - N, 07/21/09]

#### **16.28.5.2 SCOPE:**

Any and all individuals licensed under the New Mexico Signed Language Interpreting Practices Act shall abide by the NAD-RID code of professional conduct.

[16.28.5.2 NMAC - N, 07/21/09]

#### **16.28.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

[16.28.5.3 NMAC - N, 07/21/09]

**16.28.5.4 DURATION:**

Permanent.

[16.28.5.4 NMAC - N, 07/21/09]

**16.28.5.5 EFFECTIVE DATE:**

July 21, 2009, unless a later date is cited at the end of this section.

[16.28.5.5 NMAC - N, 07/21/09]

**16.28.5.6 OBJECTIVE:**

The objective of Part 5 is to outline standards in order to preserve integrity and ethical principles of professionals serving the public in the signed language interpreting practices field.

[16.28.5.6 NMAC - N, 07/21/09]

**16.28.5.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.28.1.7 NMAC]

**16.28.5.8 STANDARDS OF PRACTICE:**

**A. NON-DISCRIMINATION:** The licensee shall provide interpreting services with objectivity and with respect for the unique needs and values of an individual; the licensee shall avoid discrimination on the basis of factors that are irrelevant to the provision of interpreting services, including, but not limited to race, creed, sex, age or disability.

**B. CREDENTIALS:** The licensee shall accurately represent their professional qualifications and credentials;

**C. COMPLIANCE WITH LAW:** The licensee shall comply with all laws and regulations concerning the profession.

**D. PROFESSIONAL CONDUCT:**

**(1)** Interpreters adhere to standards of confidential communication.

(2) Interpreters possess the professional skills and knowledge required for the specific interpreting situation.

(3) Interpreters conduct themselves in a manner appropriate to the specific interpreting situation.

(4) Interpreters demonstrate respect for consumers.

(5) Interpreters demonstrate respect for colleagues, interns, and students of the profession.

(6) Interpreters maintain ethical business practices.

(7) Interpreters engage in professional development.

[16.28.5.8 NMAC - N, 07/21/09; A, 3/27/2021]

## **PART 6: FEES**

### **16.28.6.1 ISSUING AGENCY:**

Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.6.1 NMAC - N, 07/21/09]

### **16.28.6.2 SCOPE:**

Any person licensed to practice interpreting.

[16.28.6.2 NMAC - N, 07/21/09]

### **16.28.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 through 61-34-17.

[16.28.6.3 NMAC - N, 07/21/09]

### **16.28.6.4 DURATION:**

Permanent.

[16.28.6.4 NMAC - N, 07/21/09]

### **16.28.6.5 EFFECTIVE DATE:**

July 21, 2009 unless a later date is cited at the end of this section.

[16.28.6.5 NMAC - N, 07/21/09]

**16.28.6.6 OBJECTIVE:**

The objective of Part 6 is to establish fees for applications, renewal and late fee.

[16.28.6.6 NMAC - N, 07/21/09]

**16.28.6.7 DEFINITIONS:**

**[RESERVED]**

[Refer to 16.28.1.7 NMAC]

**16.28.6.8 INITIAL APPLICATION FEES:**

A non-refundable application fee is due at the time of each initial application, as outlined below.

**A.** A fee of \$65.00 is required for a community signed language interpreter license.

**B.** A fee of \$65.00 is required for an educational signed language interpreter license.

**C.** A fee of \$40.00 is required for a provisional signed language interpreter license.

[16.28.6.8 NMAC - N, 07/21/09; A, 01/15/14]

**16.28.6.9 LICENSE RENEWAL FEES:**

**A.** for community signed language interpreter licensure a nonrefundable biennial licensure fee of \$50.00;

**B.** for educational signed language interpreter licensure a nonrefundable biennial license renewal fee of \$50.00;

**C.** for provisional signed language interpreter licensure a nonrefundable annual compliance review fee of \$25.00, limited to four consecutive compliance review cycles.

[16.28.6.9 NMAC - N, 07/21/09; A, 01/15/14]

**16.28.6.10 OTHER FEES:**

**A.** Late license renewal or compliance review: \$20.00.

**B.** Replacement license: badge or license certificate is lost or destroyed: \$10.00.

[16.28.6.10 NMAC - N, 07/21/09; A, 01/15/14]

## **PART 7: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

### **16.28.7.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department, Signed Language Interpreting Practices Board.

[16.28.7.1 NMAC - N, 01/15/14]

### **16.28.7.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.28.7.2 NMAC - N, 01/15/14]

### **16.28.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to 61-1-34 NMSA 1978.

[16.28.7.3 NMAC - N, 01/15/14]

### **16.28.7.4 DURATION:**

Permanent.

[16.28.7.4 NMAC - N 01/15/14]

### **16.28.7.5 EFFECTIVE DATE:**

01/15/2014 unless a later date is cited at the end of a section.

[16.28.7.5 NMAC - N, 01/15/14]

### **16.28.7.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to 61-1-34 NMSA 1978.

[16.28.7.6 NMAC - N, 01/15/14]

#### **16.28.7.7 DEFINITIONS:**

**A. "License"** means a license, registration, certificate of registration, certificate, permit or certification.

**B. "Licensing fee"** means a fee charged at the time an application for a professional or occupational license is submitted to the state agency, board or commission and any fee for the processing of an application for such license; "licensing fee" does not include a fee for an annual inspection or examination of a licensee or a fee charged for copies of documents, replacement license or other expenses related to a professional or occupational license.

**C. "Military service member"**: means a person who is:

(1) serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States including the national guard, or surviving spouse of a member who at the time of the member's death was serving on active duty; or

(2) the spouse of a person who is serving in the armed forces of the United State or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(3) the child of a person who is serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard; provided that the child is also a dependent of that person for federal income tax purposes; and

**D. "Veteran"** means a person who has received an honorable discharge or separation from military service.

[16.28.7.7 NMAC - N, 1/15/2014; A, 3/2/2022; A, 7/31//2023]

#### **16.28.7.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the board.

**B.** The completed application shall include the following information:

- (1) applicant's full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;

- (4) date of birth;
- (5) background check if required; and
- (6) proof as described in subsection C below.

**C.** The applicant shall provide the following satisfactory evidence:

- (1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;
- (2) the following documentation:
  - (a) a copy of military orders for military service members;
  - (b) a copy of military service member's military orders and a copy of marriage license for spouses of military service members;
  - (c) for spouses of deceased military members: a copy of the decedent's DD 214 and a copy of marriage license;
  - (d) for dependent children of military service members: a copy of military service member's orders listing the dependent child, or a copy of military orders and one of the following: a copy of a birth certificate, military service member's federal income tax return or other governmental or judicial documentation establishing dependency;
  - (e) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

**D.** The license shall be issued by the board as soon as is practicable but no later than 30 days after a qualified military service member, spouse, dependent child, or veteran files a complete application and pays any required fees.

**E.** Military service members and veterans shall not pay, and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**F.** A license issued pursuant to this rule shall be valid for the time period that is specified in the Signed Language Interpreting Practices Act, Sections 61-34-1 to -17 NMSA 1978.

**G.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.28.7.11 NMAC , Section 61-34-10 NMSA 1978. As a courtesy, the board will send, via electronic mail, license renewal notifications to licensees or registrants before the license expiration date to the last known electronic mail address on file with the board. Failure to receive the renewal

notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

**H.** Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through -19 NMSA 1978.

[16.28.7.8 NMAC - N, 1/15/2014; A, 3/2/2022; A, 7/31//2023]

**16.28.7.9 FEES:**

**A.** The fee for renewal of community and educational license is \$50.00.

**B.** The fee for compliance review of provisional license is \$25.00.

[16.28.7.9 NMAC - N, 1/15/2014; A, 7/31//2023]

**16.28.7.10 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

**B.** A renewal application for a community signed language interpreter license must include:

(1) proof of current registry of interpreters for the deaf (RID) certified member status showing that the licensee holds one or more certifications recognized by the RID at the time of renewal with the exception of educational certification K-12 (ED: K-12); or

(2) a copy of the applicant's current BEI card showing one of the following certifications:

(a) BEI Advanced;

(b) BEI Master;

(c) BEI IV;

(d) BEI V;

(e) BEI Level IV Intermediary; or

(f) BEI Level V Intermediary.

**C.** A renewal application for an educational signed language interpreter license must include:

(1) proof of educational interpreters performance assessment (EIPA) rating 4.0-5.0; and

(2) Proof of current RID certified member status showing that the licensee holds the ED: K-12 certified member status by virtue of EIPA rating; or

(3) proof of current RID certified member status showing that the applicant hold one or more certifications currently recognized by the registry of interpreters for the deaf (RID); or

(4) proof of an educational interpreter performance assessment (EIPA) rating of 4.0 - 5.0, proof of passing the EIPA written test, proof of satisfying the RID educational requirements, and proof of current RID associate member status.

**D.** A renewal application for a provisional signed language interpreters include:

(1) proof of completion of an interpreter education program or interpreter preparation program in an accredited institution; or

(2) proof of employment as a community signed language interpreter or an educational signed language interpreter at the time of the act became effective (June 15, 2007) and after the applicant reached the age of 18; and

(3) proof of current registry of interpreters for the deaf (RID) associate member status for the purpose of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC;

(4) in lieu of completion of an interpreter training program deaf applicant may complete proof of having completed at least 40 hours of training in topics such as the fundamentals of interpreting, ethics and cultural responsiveness, and the NAD-RID Code of Professional Conduct;

(5) if the applicant provides proof of completion of an interpreter education program or an interpreters preparation program more than three years prior to their application for provisional license, they must also submit a resume and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

**E.** Original and renewed community and educational license shall be valid for a period of two years.

**F.** Original and completed compliance reviewed provisional license shall be valid for a period of one year, not to exceed four consecutive annual compliance review cycles.

**G.** Prior to the expiration of the license, all licensed interpreters shall apply for license renewal and shall pay the renewal fee as set forth in 16.28.6.9 NMAC.

[16.28.7.10 NMAC - N, 01/15/2014; A, 12/16/15; A, 6/18/2017; A, 3/27/2021; A, 7/31//2023]

## **CHAPTER 29: [RESERVED]**

## **CHAPTER 30: ARCHITECTS**

### **PART 1: GENERAL PROVISIONS**

#### **16.30.1.1 ISSUING AGENCY:**

New Mexico Board of Examiners for Architects.

[16.30.1.1 NMAC - Rp, 16.30.1.1 NMAC, 9/26/2023]

#### **16.30.1.2 SCOPE:**

Provisions for Part 1 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.1.2 NMAC - Rp, 16.30.1.2 NMAC, 9/26/2023]

#### **16.30.1.3 STATUTORY AUTHORITY:**

Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board may make rules not inconsistent with law."

[16.30.1.3 NMAC - Rp, 16.30.1.3 NMAC, 9/26/2023]

#### **16.30.1.4 DURATION:**

Permanent.

[16.30.1.4 NMAC - Rp, 16.30.1.4 NMAC, 9/26/2023]

#### **16.30.1.5 EFFECTIVE DATE:**

September 26, 2023, unless a different date is cited at the end of the section.

[16.30.1.5 NMAC - Rp, 16.30.1.5 NMAC, 9/26/2023]

#### **16.30.1.6 OBJECTIVE:**

The objective of this rule is to clearly define terminology used within Sections 61-15-1 to -13 NMSA 1978.

[16.30.1.6 NMAC - Rp, 16.30.1.6 NMAC, 9/26/2023]

#### **16.30.1.7 DEFINITIONS:**

**A. "Architect"** means an architect registered in New Mexico as defined in Section 61-15-2 NMSA 1978.

**B. "Architect-of-record"** means the architect licensed by the state who is in responsible charge of the project, who designs and prepares the construction documents from which the building is constructed, and who signs and seals the required documents.

**C. "Architectural services"** means services for projects located in New Mexico that shall be performed by a registered architect or under the architect's responsible charge as defined in Section 61-15-2 NMSA 1978.

**D. "Competence"** means:

(1) in the practice of architecture, an architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by architects of good standing practicing in New Mexico;

(2) an architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience or ability in the specific technical areas involved; and

(3) an architect shall take into account all applicable state and municipal building codes, laws and regulations; an architect may rely on the opinion of others (example: attorneys, engineers, building officials) as to the intent and meaning of the codes, laws and regulations.

**E. "Consulting associate architect"** means an architect who is acting in an advisory capacity to a registered architect, and whose present position is subordinate to the registered architect as described in Paragraph (1) of Subsection A of Section 61-15-8 NMSA 1978.

**F. "Felony conviction"** means conviction of a felony with a copy of the record of conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence.

**G. "Gross negligence"** means:

(1) being habitually guilty of neglect toward professional responsibilities in the practice of architecture as determined by the board; or

(2) being found extremely careless and lacking in ordinary care and concern in the practice of architecture; should the board not discipline an architect for a single act of gross negligence, the board does not waive the right to invoke sanctions against the architect for repeated acts of gross negligence.

**H. "Incidental practice of architecture and engineering" means:**

(1) architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

(2) engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

(3) all buildings and related structures within the regulatory provisions of the New Mexico Building Codes General, Title 14, Chapter 7 NMAC will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than six hundred thousand dollars (\$600,000) or having a total occupant load greater than 50, with the exception of:

(a) single-family dwellings not more than two stories in height;

(b) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(c) garages or other structures not more than two stories in height which are appurtenant to buildings described in Subparagraphs (a) and (b) above; or

(d) nonresidential buildings, as defined in the New Mexico Building Codes General, Title 14, Chapter 7 NMAC or additions having a total occupant load of 10 or less and not having more than two stories in height, which shall not include E-3 day care, H (hazardous) or I (institutional) occupancies;

(e) alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

(4) the owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project.

(5) occupant load shall be defined and determined by the method set forth in the current, adopted code.

**I. "Incompetency" means:**

(1) being adjudicated mentally incompetent by a court; or

(2) engaging in conduct which evidences a lack of knowledge, ability or fitness to discharge the duty and responsibility owed by the architect to a client and to the public in order to safeguard life, health and property and to promote public welfare.

**J. "Intern architect" is a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board.**

**K. "Misconduct" means:**

(1) knowingly preparing or stamping construction documents in violation of applicable codes, laws or regulations;

(2) stamping and signing construction documents, specifications, reports or other professional work not prepared under the architect-of-record's responsible charge, as defined herein;

(3) engaging in any conduct involving fraud or deceit related to the business or practice of architecture;

(4) making any false statement or giving any false information in connection with an application for registration or for renewal of registration;

(5) being convicted of a crime related to the practice of architecture with a copy of the record of the conviction, certified by the clerk of the court entering the conviction, serving as conclusive evidence;

(6) violating federal or state statute or rule that directly relates to the practice of architecture;

(7) being unable to practice architecture with reasonable skill and safety to clients by reason of use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

(8) making any substantial misrepresentation in the course of practice including, but not limited to, false, misleading or deceptive advertising or fraudulent or misleading claims;

(9) using or altering material prepared by another person without the knowledge and consent of that person;

(10) using the professional seal of another person without the knowledge and consent of that person;

(11) engaging in conduct in conflict with the Code of Conduct for Architects (16.30.4 NMAC);

(12) engaging in conduct that the architect knows or should know through professional knowledge or experience is not within the acceptable standard for professional conduct that is ordinarily applied by architects of good standing practicing in the state of New Mexico or that is set forth in the board's Minimum Standards for the Practice of Architecture in New Mexico, (16.30.6 NMAC);

(13) violating the Architectural Act, Sections 61-15-1 through 13 NMSA 1978, the rules and regulations of the board, or the architectural laws of any other state or jurisdiction;

(14) incurring a prior disciplinary action in another state or jurisdiction based upon acts or conduct by the registrant which if committed in this state would subject the registrant to disciplinary action by the board; certified copies of the record of disciplinary action shall be conclusive evidence thereof; and

(15) failing to report to the board any adverse action taken against the registrant by the licensing board of another jurisdiction or the national council of architectural registration boards (NCARB) for acts or conduct that would constitute grounds for disciplinary action by the board.

(16) Knowingly allowing an unauthorized person to use the architect's seal.

**L. "NCARB"** means the national council of architectural registration boards.

**M. "Practice of architecture"** as defined in Section 61-15-2 NMSA 1978, means rendering or offering to render architectural services. "Offering to render" is defined as soliciting or executing architectural services as defined in Section 61-15-2 NMSA 1978.

**N. "Project"** means the building or a group of buildings and the space within the site surrounding the buildings as defined in the construction documents (Subsection H of Section 61-15-2 NMSA 1978). Architectural and engineering stamps are required for any subsequent and physically linked construction to a project which, when seen

together with the original construction, would have required architectural and engineering seals.

**O. "Responsible charge"** means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised professional judgment with respect thereto. An architect's placing of the architect registration seal and signature on a document certifies that the architect has exercised direction, guidance and judgment on all issues pertaining to the health, safety and general welfare of the public, and accepts all legal responsibility for all architectural matters embodied within the document which shall meet the acceptable standards of architectural practice in the state of New Mexico as put forth by the board (Subsection I of Section 61-15-2 NMSA 1978).

**P. "Signature"** shall mean handwritten or electronic as follows:

(1) a handwritten identification that represents the act of putting one's name on a document to attest to its validity; the handwritten identification must be:

- (a) original and written by hand;
- (b) permanently affixed to the original document(s) being certified;
- (c) applied to the document by the identified registrant; or

(2) an electronic identification that is attached to or logically associated with an electronic document; the electronic identification must be:

- (a) unique to the person using it;
- (b) under the sole control of the registrant using it;

(c) linked to a document in such a manner that the electronic identification is invalidated if any data in the document is changed.

[16.30.1.7 NMAC - Rp, 16.30.1.7 NMAC, 9/26/2023]

## **PART 2: ORGANIZATION AND ADMINISTRATION**

### **16.30.2.1 ISSUING AGENCY:**

New Mexico Board of Examiners for Architects.

[16.30.2.1 NMAC - Rp, 16.30.2.1 NMAC, 9/26/2023]

### **16.30.2.2 SCOPE:**

Provisions for Part 2 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.2.2 NMAC - Rp, 16.30.2.2 NMAC, 9/26/2023]

**16.30.2.3 STATUTORY AUTHORITY:**

Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board...may make rules not inconsistent with law."

[16.30.2.3 NMAC - Rp, 16.30.2.3 NMAC, 9/26/2023]

**16.30.2.4 DURATION:**

Permanent.

[16.30.2.4 NMAC - Rp, 16.30.2.4 NMAC, 9/26/2023]

**16.30.2.5 EFFECTIVE DATE:**

September 26, 2023, unless a different date is cited at the end of the section.

[16.30.2.5 NMAC - Rp, 16.30.2.5 NMAC, 9/26/2023]]

**16.30.2.6 OBJECTIVE:**

The objective of this rule is to clearly define the organizational structure of the board, the duties of the officers, the committees, types of meetings, order of business, the number needed for quorum, to provide authority to amend the board's rules and regulations, and to define the board's responsibility for publications.

[16.30.2.6 NMAC - Rp, 16.30.2.6 NMAC, 9/26/2023]

**16.30.2.7 DEFINITIONS:**

**[RESERVED]**

[16.30.2.7 NMAC - Rp, 16.30.2.7 NMAC, 9/26/2023]

**16.30.2.8 UNIFORM LICENSING ACT:**

Procedures for administration of the New Mexico Architectural Act shall be governed by the provisions of the Uniform Licensing Act, Sections 61-15-1 through -31 NMSA 1978.

[16.30.2.8 NMAC - Rp, 16.30.2.8 NMAC, 9/26/2023]

### **16.30.2.9 OFFICERS:**

The board shall annually elect a chair, vice chair, and a secretary/treasurer who shall be chosen from among its members. Officers shall hold office until their successors have been duly elected and qualified. At the last regular meeting of the fiscal year, officers shall be elected. New officers shall take office on the first day of the fiscal year.

[16.30.2.9 NMAC - Rp, 16.30.2.9 NMAC, 9/26/2023]

### **16.30.2.10 DUTIES OF OFFICERS:**

#### **A. The chair shall:**

- (1) preside at all regular and special meetings, when present;
- (2) appoint all committee members, and subcommittee members, and their chairpersons;
- (3) sign with the secretary/treasurer all approved board meeting minutes, all formal certificates of registration and the annual report to the governor; and
- (4) perform all other duties ordinarily pertaining to the office of chair or as herein and hereafter prescribed.

**B. The vice chair shall in the absence of the chair, preside at the meeting and execute the duties of the chair.**

#### **C. The secretary/treasurer shall:**

- (1) report on the financial status of the board at each regular meeting and upon request at a special meeting;
- (2) recommend to the board for its approval all proposed expenditures over the amount authorized by the legislature.
- (3) approve all transfers of funds within categories and recommend to the board for its approval all budget adjustment requests between the categories or from cash reserves;
- (4) present a budget for each fiscal year to recommend to the board for its approval at the last meeting of the year;
- (5) when necessary, appear and represent the board at all hearings where financial issues arise;

(6) after each board meeting, identify activities that shall be completed before the next meeting and the individuals to whom assigned; and

(7) sign with the chair all approved board meeting minutes and all formal certificates of registration.

[16.30.2.10 NMAC - Rp, 16.30.2.10 NMAC, 9/26/2023]

#### **16.30.2.11 COMMITTEES:**

In addition to committees listed herein, the board may vote to establish subcommittees as it deems necessary.

**A. Rules and regulations committee whose responsibilities shall include:**

- (1) proposed statutory changes;
- (2) proposed amendments or repeals or changes to board rules;
- (3) review and draft responses, if appropriate, to complaints to the board; and
- (4) review investigations of violations of the statute and regulations pertaining to the practice of architecture and refer complaints to the board with its recommendation for subsequent action.

**B. Examination and reciprocity committee whose responsibility shall include:**

- (1) review of applicants for registration to determine if they meet the requirements of Section 61-15-6 NMSA and recommending board action in accordance with the Uniform Licensing Act;
- (2) reviewing and recommending board action on applications for reciprocity;  
and
- (3) all matters pertaining to examination.

**C. Finance and operations committee whose responsibilities shall include:**

- (1) reviewing the budget, assisting the secretary/treasurer and board staff in preparing a draft budget annually and making budget recommendations to the board;
- (2) reviewing the expenditures of the agency and assisting the secretary/treasurer in making regular reports and recommendations to the board regarding expenditures;

(3) reviewing office operations with the director to determine staffing requirements and recommend personnel actions to the board; and

(4) reviewing with the director office operations to assure efficiency, economy and security in all board affairs.

**D.** Committee for planning and development whose responsibilities shall include:

(1) developing short and long-term goals for board consideration and approval;

(2) examining ways and methods for improving board services and functions; and

(3) monitoring the impact of architectural regulation and examining ways in which to increase its effectiveness.

**E.** Joint practice committee whose responsibilities shall include:

(1) attending joint practice committee meetings; and

(2) reporting to the board matters discussed at the joint practice committee meetings.

[16.30.2.11 NMAC - Rp, 16.30.2.11 NMAC, 9/26/2023]

#### **16.30.2.12 [RESERVED]**

[16.30.2.12 NMAC - Rp, 16.30.2.12 NMAC, 9/26/2023]

#### **16.30.2.13 BOARD RESPONSIBILITIES:**

**A.** The board is responsible for providing oversight for all board functions.

**B.** The board shall appoint the director.

**C.** Publications:

(1) Roster: A roster showing the number and addresses of all registered architects shall be prepared by the board and made available or sold to the public in accordance with the Architectural Act, Subsection E of Section 61-15-5 NMSA 1978.

(2) Annual report: The chair shall submit an annual report to the governor and shall make that report available to all registrants and the public, through the board office, pursuant to Section 61-15-5 NMSA 1978.

(3) Architectural Act, rules and regulations: The board shall maintain current editions of the act that will be published as often as the board deems necessary. These shall be made available to all architects registered in the state of New Mexico and to all applicants applying for registration. In addition, notice shall be made to all registered architects when changes occur in the statutes or rules and regulations.

**D.** Upon the recommendation of the architectural education board member, the board may appoint a student observer to a one-year term to observe board meetings and act as a liaison to the student observer's college of architecture and other educational institutions. The student observer must be a full-time student in good standing who is studying architecture at an accredited college of architecture in New Mexico.

[16.30.2.13 NMAC - Rp, 16.30.2.13 NMAC, 9/26/2023]

### **PART 3: REGISTRATION AND RENEWAL, DUPLICATE CERTIFICATES, SEAL SPECIFICATIONS AND DOCUMENT IDENTIFICATION**

#### **16.30.3.1 ISSUING AGENCY:**

New Mexico Board of Examiners for Architects.

[16.30.3.1 NMAC - Rp, 16.30.3.1 NMAC, 9/26/2023]

#### **16.30.3.2 SCOPE:**

Provisions for Part 3 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.3.2 NMAC - Rp, 16.30.3.2 NMAC, 9/26/2023]

#### **16.30.3.3 STATUTORY AUTHORITY:**

Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board...may make rules not inconsistent with law."

[16.30.3.3 NMAC - Rp, 16.30.3.3 NMAC, 9/26/2023]

#### **16.30.3.4 DURATION:**

Permanent.

[16.30.3.4 NMAC - Rp, 16.30.3.4 NMAC, 9/26/2023]

#### **16.30.3.5 EFFECTIVE DATE:**

September 26, 2023, unless a different date is cited at the end of the section.

[16.30.3.5 NMAC - Rp, 16.30.3.5 NMAC, 9/26/2023]

**16.30.3.6 OBJECTIVE:**

The objective of this rule is to clearly establish guidelines and procedures for registration and registration renewal as an architect in New Mexico and for issuance of a duplicate certificate of registration and to provide specifications and guidelines for the use of an individual seal and for document identification.

[16.30.3.6 NMAC - Rp, 16.30.3.6 NMAC, 9/26/2023]

**16.30.3.7 DEFINITIONS:**

[RESERVED]

[16.30.3.7 NMAC - Rp, 16.30.3.7 NMAC, 9/26/2023]

**16.30.3.8 GENERAL QUALIFICATIONS:**

**A.** The examination and reciprocity committee shall make its recommendations to the board regarding the qualifications of applicants for registration. A majority vote of the board shall be required in determining those applicants qualified for registration.

**B.** The applicant shall be of good character and repute. Factors that the board may consider under this qualification are:

(1) misstatement or misrepresentation of fact by the applicant in connection with his or her application;

(2) violation of any of the standards of conduct required by registration holders and set forth in the statutes or rules and regulations; or

(3) practicing architecture without a valid and current registration in the jurisdiction in which the practice took place; or

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

(a) homicide or manslaughter;

(b) trafficking, or trafficking in controlled substances;

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

(d) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(e) crimes involving adult abuse, neglect or financial exploitation;

(f) crimes involving child abuse or neglect;

(g) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, misuse of public funds, violation of the procurement code, offering or soliciting an illegal kickback, tampering with public records, perjury, identity theft, or receiving stolen property;

(h) human trafficking;

(i) driving under the influence or driving while intoxicated;

(j) using a forged architectural registration seal pursuant to Subsection A of Sections 61-15-10, et. seq. NMSA 1978; or

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

(5) The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

(6) The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

(7) Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Architecture Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

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

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

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

(c) a juvenile adjudication; or

(d) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** Rules and procedures set out herein for obtaining registration in New Mexico apply equally to residents of the state and non-residents.

**D.** An oral interview before the board may be required of any applicant for New Mexico registration.

**E.** All applicants must pass the New Mexico architectural jurisprudence exam administered by the board. Failure to answer all questions may result in a failing grade. An applicant who has failed two successive architectural jurisprudence exams shall not be eligible to apply for architectural registration for a period of one year from the date of the last jurisprudence exam failed.

**F.** All registration and application fees are non-refundable.

[16.30.3.8 NMAC - Rp, 16.30.3.8 NMAC, 9/26/2023]

#### **16.30.3.9 REGISTRATION THROUGH EDUCATION, TRAINING AND EXAMINATION:**

**A.** Registration standards shall be in accordance with the standards of NCARB as described in the latest editions of the NCARB Certification Guidelines and the NCARB Education Guidelines.

**B.** Training requirements shall satisfy the NCARB standards of training. The applicant shall provide a NCARB architectural experience program AXP record number showing enrollment in AXP. The education standard shall be in accord with the NCARB guidelines as set forth in the latest edition of the NCARB certification guidelines, the NCARB education standard and AXP guidelines. Copies of the latest editions of the NCARB certification guidelines, the NCARB education standard and the AXP guidelines are available from the board office or NCARB.

**C.** Application for examination:

(1) Individuals applying for registration by examination shall request application forms from the board. The application, together with the application fee, shall be sent to the board office.

(2) Applications will be accepted at any time, for review and approval by the board. Approved examination candidates will schedule examinations with NCARB. The board may require applicants for examination to appear before it for a personal interview.

(3) To pass the architect registration examination (A.R.E.), an applicant must achieve a passing grade on each division as determined by NCARB. A passing grade for any division of the A.R.E., version 4.0 or later, shall remain valid pursuant to NCARB's score validity policy in effect at the time of application. Divisions of the examination, version 4.0 or later, that were considered expired prior to the adoption of NCARB's score validity policy shall be reinstated pursuant to NCARB's score validity policy in effect at the time of application. NCARB, in its discretion, may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, by active duty in military service or by other like causes.

(4) In case an applicant does not qualify for examination, for reason other than failure to submit a valid application, he or she shall be informed of the cause and apprised of his or her rights under the Uniform Licensing Act, Sections 61-1-1 through 31 NMSA 1978. Should the applicant subsequently meet the requirements for examination, he or she may resubmit the application.

**D.** Examination materials and results shall not be considered public records pursuant to Section 61-15-5 NMSA 1978. Nothing therein shall prevent the board from reporting an applicant's scores to the architectural registration boards in other jurisdictions or to the national council of registration boards (NCARB). The board shall give written notification to an applicant no later than 30 days after the board receives the results from NCARB.

**E.** Special provisions for examinees with disabilities:

(1) Any examinee requiring special examination provisions to accommodate a qualifying temporary or permanent disability as defined by the Americans with Disabilities Act, including any modification of the Architect Registration Examination administration process, must submit a written request for such provisions at least 90 days prior to the exam, including documentation justifying such request.

(2) The board shall have the right to solicit additional information within 30 days of such request. The examinee shall provide such additional information within 10 days following receipt of the board's request.

**F.** Upon receipt of a complete application and fee, board staff are authorized to approve and issue a registration to an applicant for whom no licensing issues are apparent from the application. Board staff shall consult with the enforcement subcommittee if disciplinary issues are present before issuing a registration. The board shall vote to ratify the issuance of all registrations issued by staff at the next regularly scheduled board meeting. In the event the board votes not to ratify a registration issued by board staff, the board shall pursue disciplinary action as required by the Uniform Licensing Act, and Section 61-15-12 NMAC 1978.

### **16.30.3.10 REGISTRATION THROUGH RECIPROCITY:**

**A.** An individual who holds a current NCARB certificate and is seeking registration through reciprocity shall return a completed application and all fees to the board for processing. The application shall be valid for one year from the time the board receives it.

**B.** An individual currently registered as an architect in another jurisdiction who does not hold a current NCARB certificate may apply for a New Mexico architect license upon receiving an NCARB certification acquired through the alternative path to licensure for experienced professionals.

**C.** An individual who does not hold a current NCARB certificate and is seeking registration through reciprocity as a broadly experienced architect must hold a current and valid registration issued by the licensing authority of another jurisdiction and either: (1) hold a degree accredited by the national architectural accrediting board, pass the necessary examination, and successfully complete the architectural experience program (AXP) offered by NCARB; or (2) hold a position of responsibility for at least the previous five years in the jurisdiction(s) of licensure with no disciplinary action during that five-year period. The term "position of responsibility" shall mean a person in responsible charge as defined in Subsection N of 16.30.1.7 NMAC. The broadly experienced category applicant shall return to the board a completed application, on a form prescribed by the board, along with other pertinent documents and application fee. Each applicant shall provide the board evidence of academic training and work experience directly related to architecture and demonstrating minimum competence as described in 16.30.6 NMAC including but not limited to, evidence of training or experience in the following areas:

- (1) design and construction documents;
- (2) construction administration;
- (3) project management; and
- (4) architectural related activities.

**D.** Each applicant must attest on an affidavit that the applicant:

(1) has not performed or offered to perform, and will not perform or offer to perform, architectural services in the state of New Mexico until such time as the applicant becomes a New Mexico registered architect;

(2) is in good standing and has disclosed all requested information on disciplinary proceedings in any other jurisdiction; and



**B. out-of-state**

\$325.00

[16.30.3.11 NMAC - Rp, 16.30.3.11 NMAC, 9/26/2023]

### **16.30.3.12 CONTINUING EDUCATION:**

Architects registered in New Mexico will be required to show compliance with mandatory education requirements as a condition for renewing registration:

#### **A. Purpose and scope:**

(1) These rules provide for a continuing education program to insure that all architects remain informed of these technical subjects necessary to safeguard life, health, property, and promote the public welfare.

(2) Continuing education is post licensure learning that enables a registered architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety and welfare.

(3) These rules apply to all architects registered in New Mexico.

#### **B. Definitions:**

(1) "Continuing education hour" is one continuous instructional hour (minimum 50 minutes) spent in structured educational activities intended to increase or update the architect's knowledge and competence in health, safety and welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity, then such prescribed time shall, unless the board finds the prescribed time to be unreasonable, be accepted as the architect's time for continuing education hour purposes irrespective of actual time spent on the activity.

(2) "Health, safety and welfare in architecture" is anything that relates to the structure or soundness of a building or site or its role in promoting the health, safety or well-being of its occupants.

(3) "Health, safety and welfare subjects" are technical and professional subjects in continuing education that the board deems appropriate to protect the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction and utilization of buildings and the built environment.

(a) Building systems: structural, mechanical, electrical, plumbing, communications, security, fire protection.

(b) Construction contract administration: contracts, bidding, contract negotiations.

(c) Construction documents: drawings, specifications, delivery methods.

(d) Design: urban planning, master planning, building designs, site design, interiors, safety and security measures.

(e) Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(f) Legal: laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public.

(g) Materials and methods: construction systems, products, finishes, furnishings, equipment.

(h) Pre-design: land use analysis, programming, site selection, site and soils analysis, surveying.

(i) Preservation: historic, reuse, adaptation.

(4) "Structured educational activities" are educational activities in which at least seventy-five percent of an activity's content and instruction time must be devoted to health, safety and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety and welfare subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

### **C. Requirements:**

(1) In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 continuing education hours each calendar year or be exempt from these continuing education requirements as provided below. Failure to complete these requirements may result in non-renewal of the architect's registration or other disciplinary action by the board. Architects shall be assessed an administrative fee of \$100.00 for each continuing education hour they fail to complete. In addition to the fee, the architect shall be required to make up the deficient health safety welfare continuing education hours within 60 days. A first violation of this provision shall not be reported as disciplinary action to NCARB. Two or more violations of this provision shall be reported as disciplinary action to NCARB. Special circumstances will be reviewed by the subcommittee at its discretion.

(2) Continuing education hours must be completed in health, safety and welfare subjects acquired in structured education activities. Continuing education hours may be acquired at any location, whether delivered by direct contact or distant learning methods. Excess continuing education hours may not be credited to a future renewal.

**D. Activities:** The following list shall be used by all registrants in determining the types of activities that would fulfill continuing education requirements:

(1) continuing education hours in attendance at short courses or seminars dealing with architectural subjects and sponsored by academic institutions;

(2) continuing education hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and functions; such presentations as those sponsored by the American institute of architects, construction specifications institute, construction products manufacturers council or similar organizations devoted to architectural education may qualify;

(3) continuing education hours in attendance at short courses or seminars related to new technology and offered by colleges, universities, professional organizations or system suppliers;

(4) continuing education hours spent in self-study courses such as those sponsored by the national council of architectural registration boards, American institute of architects or similar organizations;

(5) up to three preparation hours may be credited for each class hour spent teaching architectural courses or seminars; college or university faculty may not claim credit for teaching regular curriculum courses;

(6) up to three continuing education hours spent in architectural research that is published or formally presented to the profession or public;

(7) college or university credit courses dealing with architectural subjects; each semester hour shall equal 15 continuing education hours; a quarter hour shall equal 10 continuing education hours;

(8) up to four continuing education hours in service to the public that is directly related to the practice of architecture in the area of health, safety and welfare.

**E. Records and record-keeping:**

(1) A registered architect shall complete and submit forms prescribed or accepted by the board certifying to the architect's having obtained the required continuing education hours. Documentation of reported continuing education hours shall be maintained by the architect for three years from the date of award.

(2) One continuing education hour shall represent a minimum of actual course time. No credit will be allowed for introductory remarks, meals, breaks or administrative matters related to courses of study.

(3) Failure to fulfill the continuing education requirements may result in non-renewal of an architect's certificate of registration and will result in the administrative or disciplinary actions set forth in Subsection C of this section. Certification of fulfillment of continuing education requirements without completion of the continuing education may result in disciplinary action.

(4) Any untrue or false statements or the use thereof with respect to course attendance or any other aspect of continuing education activity is fraud or misrepresentation and may subject the registrant to additional disciplinary action.

**F. Initial registration by examination:** An architect whose initial examination registration (not reciprocity) occurs less than 12 months from December 31st shall not be required to report continuing education hours for that calendar year. An architect whose initial examination registration occurs more than 12 months prior to December 31st shall be required to complete 12 continuing education hours within the final calendar year prior to renewal.

**G. Reinstatement:** Pursuant to Section 61-15-7 NMSA 1978, a former registrant may only apply for reinstatement and renewal of an expired certificate under 16.30.3.13 NMAC if delinquent continuing education hours are earned as required by Subparagraph (a) of Paragraph (3) of Subsection B of 16.30.3.11 NMAC, i.e. 12 continuing education hours each calendar year while registration is expired or be exempt from these continuing education requirements as provided below.

**H. Exemptions:** A registrant shall be deemed to have complied with the foregoing continuing education requirements if the architect attests in the required affidavit that for not less than 21 months of the preceding two-year-period of registration, the architect:

(1) has served honorably on active duty in the military service (exceeding 90 consecutive days); or

(2) is a government employee working as an architect and assigned to duty outside the United States, or outside the jurisdiction established by the national council for architectural registration boards.

**I.** The board may consider a hardship case under extenuating circumstances to modify the requirements established by these rules.

**J. Audit:** A number of registrants shall be selected at random to submit substantiating information to support their continuing education claim. If any credits are disallowed by the board, then the registrant shall have 60 calendar days after notification to substantiate the original claim or obtain other continuing education hours to meet the minimum requirements. Such continuing education hours shall not be used again in the next renewal cycle. Any registrant found to be non-compliant with the minimum continuing education hours requirement will result in the administrative or

disciplinary actions set forth in Subsection C of this section. Additional audits may be conducted at the board's discretion.

**K. Non-compliance:** Failure to comply with the requirements of this section shall result in non-renewal of registration and forfeit of the renewal fee.

[16.30.3.12 NMAC - Rp, 16.30.3.12 NMAC, 9/26/2023]

**16.30.3.13 EXPIRATION OF A CERTIFICATE:**

**A.** Certificates of registration shall expire on December 31st as prescribed by these rules.

**B.** A certificate expires upon the death of a registrant.

[16.30.3.13 NMAC - Rp, 16.30.3.13 NMAC, 9/26/2023]

**16.30.3.14 RENEWAL OF AN EXPIRED CERTIFICATE:**

**A.** A registrant whose license has expired for no more than one month shall be required to pay the registration fee and a late fee of fifty dollars (\$50).

**B.** A reinstatement applicant whose license has been expired for more than one month shall be required to:

(1) pay a registration fee and a penalty equal to one year's registration fee for each year expired but in no case shall the penalty exceed three times the annual registration fee;

(2) submit a signed and notarized reinstatement affidavit as provided by the board; and

(3) complete continuing education requirements as required by these rules; at the board's discretion, the former registrant may be required to present evidence to the board of continued proficiency, complete additional requirements, and appear personally before the board in order that the board may determine whether to renew the lapsed certificate.

**C.** Reinstatement of a certificate that has been lapsed for more than three years requires submittal of an NCARB certificate and required application forms as a new applicant.

[16.30.3.14 NMAC - Rp, 16.30.3.14 NMAC, 9/26/2023]

**16.30.3.15 ARCHITECT EMERITUS:**

Upon written request to the board, any architect registered in New Mexico may renew his or her registration as an architect emeritus for a biennial fee of twenty dollars (\$20.00) if the following requirements are met.

**A.** The registrant shall be 60 years of age or older and retired from the practice of architecture on the date of his or her registration renewal. Retired means that the architect no longer practices architecture in New Mexico and no longer stamps and certifies construction documents with his or her seal for projects located in New Mexico that are subject to the jurisdiction of the board.

**B.** The registrant shall have 10 years of continuous registration as an architect, five years as a registered architect in New Mexico, unless practicing under a specific exemption authorized by law.

**C.** In the event an architect emeritus wishes to reinstate a registration to practice architecture, the board may require proof of proficiency and the fulfillment of additional requirements deemed necessary, such as providing proof of continuous architectural registration elsewhere with the registration in good standing. Reinstatement of the license following the request to terminate an architect emeritus status shall include completion of continuing education requirements per Subsection B of 16.30.3.12 NMAC.

[16.30.3.15 NMAC - Rp, 16.30.3.15 NMAC, 9/26/2023]

#### **16.30.3.16 DUPLICATE WALL CERTIFICATES:**

The board may, after consideration of a written request from a registrant outlining the circumstances supporting the request, authorize the issuance of a duplicate wall certificate of registration. The fee for supplying such a certificate shall be thirty-five dollars (\$35).

[16.30.3.16 NMAC - Rp, 16.30.3.16 NMAC, 9/26/2023]

#### **16.30.3.17 DISPLAY OF A CERTIFICATE OF REGISTRATION:**

The board requires that each registrant shall display his or her certificate of registration in a conspicuous location in his or her primary place of business.

[16.30.3.17 NMAC - Rp, 16.30.3.17 NMAC, 9/26/2023]

#### **16.30.3.18 INDIVIDUAL SEAL AND DOCUMENT IDENTIFICATION:**

**A.** Registration seal specifications: Each architect registered in the state of New Mexico shall secure a registration seal of the following design: The seal shall have two concentric circles with the outer circle measuring one and three-quarter inches in diameter and the inner circle being one and one-quarter inches in diameter. The upper

portion of the annular space between the two circles shall bear the words "STATE OF NEW MEXICO" and the lower portion shall bear the words "REGISTERED ARCHITECT". The space enclosed by the inner circle shall bear the name of the architect and his or her registration number. In no event shall the seal contain more than one name of an architect. By placement of a seal and signature on a drawing, an architect verifies that his or her registration is valid and that he or she is practicing in accordance with the Architectural Act, Sections 61-15-1 through 13 NMSA 1978 and these rules and regulations.

**B. Use of registration seal:**

(1) Each original sheet of construction drawings and each cover sheet of specifications, submitted for permitting, and reports, prepared by or under the responsible charge of an individual architect, must bear the imprint of the seal with the signature of that architect and the date of the signature closely aligned to the seal. The name and address of the architect must also appear on the sealed page. A registrant may apply a seal, signature and date of signature by hand. A registrant may affix an electronically-generated seal, signature, and date of signature. An electronic signature may be utilized provided the registrant utilizes a secure method of affixation; the registrant does not authorize any other person to so affix; and the registrant and client have agreed to conduct transactions by electronic means. Drawings, reports or documents that are signed using an electronic signature shall employ an authentication procedure to ensure the validity of the electronic signature. Signature must satisfy requirements defined in 16.30.1.7 NMAC.

(2) As provided in the Architectural Act, Subsection A of Section 61-15-7 NMSA 1978, all plans, specifications, plats and reports prepared by an architect or under the architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by the architect or under the architect's responsible charge on work described in project exemptions, under Section 61-15-9 NMSA 1978.

(3) Placing of multiple architectural seals on plans, specifications or reports shall not be permitted. The architect-of-record must seal, sign and date all construction drawings, specifications, and reports prepared by or under the supervision of that architect. In doing so, the architect-of-record assumes full responsibility for these documents.

(4) Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible charge by persons not employed in the office where the architect is resident, shall maintain and make available to the board upon request for at least five years following such signing and sealing, adequate and complete records

demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. An exception is made for:

(a) architects who review, adapt, and seal prototypical projects provided that the project qualifies as a prototypical project meaning the original plans were designed by other architects, engineers or architects and engineers with the intent of being used in several diverse locations with local adaptations;

(b) a kit-of-parts that is a manufactured item and the New Mexico registered architect is not responsible for the components.

(5) Architectural and engineering seals are required for any subsequent and physically linked construction to a project which, when seen together with the original construction, would have required both seals.

(6) A legally applied seal and signature is a permanent part of construction documents and may not be removed for non-payment of fees or other civil action.

**C. Assumption of projects:**

(1) Sealed work: Prior to sealing, signing and dating work, a successor registered architect shall be required to notify the original architect, his successors, or assign, by certified letter to the last known address of the original registered architect, of the successor's intention to use or reuse the original registered architect's work. A successor registered architect must use his or her own title block, seal and signature and must remove the title block, seal and signature of the original architect before sealing, signing and dating any sealed construction drawings and specifications. The successor registered architect shall take full responsibility for the drawings as though they were the successor's original product.

(2) Unsealed work: When an architect assumes responsibility of an incomplete project, the following evaluation must occur before the architect can be said to have exhibited responsible charge over the project:

(a) Program: the architect shall meet with the client to assure that the client's needs are met.

(b) Codes: the architect shall assure that the project is in compliance with all federal, state, and local regulations.

(c) Coordination: the architect shall assure coordination with the other professionals in a project.

(d) Analysis: the architect shall assure the project meets all technical, aesthetic, and quality requirements and that site and environmental issues have been addressed.

(e) The architect of record who assumes the incomplete project shall be charged with keeping records of the project for five years.

**D. Plan checking:** Any authorized person checking documents for compliance with any applicable statutes, codes, ordinances, rules or regulations such as building codes, fire codes or zoning ordinances may "red-line" and list changes to meet such applicable statutes, codes, ordinances, rules and regulations, as this is not the practice of the profession. However, a person may not modify a professional document submitted for review unless that modification is supported by reference to an applicable code or standard. A non-registrant shall not modify, in any manner, a document embodying the discretion or judgment of a registrant without the express permission of the architect who is in responsible charge.

[16.30.3.18 NMAC - Rp, 16.30.3.18 NMAC, 9/26/2023]

#### **16.30.3.19 CHANGE OF ADDRESS:**

Registrants shall notify the board of a change of primary address within 30 days of a move.

[16.30.3.19 NMAC - Rp, 16.30.3.19 NMAC, 9/26/2023]

### **PART 4: CODE OF CONDUCT**

#### **16.30.4.1 ISSUING AGENCY:**

New Mexico Board of Examiners for Architects.

[16.30.4.1 NMAC - Rp, 16 NMAC 30.4.1, 9/6/2001]

#### **16.30.4.2 SCOPE:**

Provisions for Part 4 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.4.2 NMAC - Rp, 16 NMAC 30.4.2, 9/6/2001]

#### **16.30.4.3 STATUTORY AUTHORITY:**

Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board...may make rules not inconsistent with law."

[16.30.4.3 NMAC - Rp, 16 NMAC 30.4.3, 9/6/2001]

**16.30.4.4 DURATION:**

Permanent.

[16.30.4.4 NMAC - Rp, 16 NMAC 30.4.4, 9/6/2001]

**16.30.4.5 EFFECTIVE DATE:**

September 6, 2001, unless a different date is cited at the end of the section.

[16.30.4.5 NMAC - Rp, 16 NMAC 30.4.5, 9/6/2001]

**16.30.4.6 OBJECTIVE:**

The objective of this rule is to clearly outline the standards of conduct expected to be upheld by an individual registered as a New Mexico architect.

[16.30.4.6 NMAC - Rp, 16 NMAC 30.4.6, 9/6/2001]

**16.30.4.7 DEFINITIONS:**

**[RESERVED]**

[16.30.4.7 NMAC - Rp, 16 NMAC 30.4.7, 9/6/2001]

**16.30.4.8 COMPETENCE:**

**A.** In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in New Mexico.

**B.** In designing a project, an architect shall take into account all applicable state and municipal building laws, codes and regulations. While an architect may rely on the advice of other professionals, such as attorneys, engineers, and other qualified persons, as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws, codes and regulations.

**C.** An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training and experience in the specific technical areas involved.

**D.** No person shall be permitted to practice architecture if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.

[16.30.4.8 NMAC - Rp, 16 NMAC 30.4.8.1, 9/6/2001]

**16.30.4.9 CONFLICT OF INTEREST:**

**A.** An architect shall not accept compensation for services from more than one (1) party on a project unless the circumstances are fully disclosed to all interested parties in writing and agreed to in writing by all interested parties.

**B.** If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his or her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

**C.** An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products without full disclosure to the client.

**D.** When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

**E.** An architect shall not pay or receive a finder's fee, commission or compensation for the referral of a client to another professional, including but not limited to, an engineer, surveyor, builder, realtor or another architect, unless the circumstances are fully disclosed to all interested parties in writing and agreed to in writing by all interested parties.

[16.30.4.9 NMAC - Rp, 16 NMAC 30.4.8.2, 9/6/2001]

**16.30.4.10 FULL DISCLOSURE:**

**A.** An architect, making public statements on architectural questions, shall disclose whether the architect is being compensated for making such a statement.

**B.** An architect shall accurately represent to a prospective or existing client or employer the architect's qualifications and the scope of the architect's responsibility in connection with work for which he or she is claiming credit.

**C.** If, in the course of an architect's work on a project, the architect becomes aware of a decision taken by the architect's employer or client, against the architect's advice, which violates applicable state or municipal building laws, codes and regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall:

- (1)** notify the employer or client in writing;
- (2)** report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws, codes and regulations;
- (3)** refuse to consent to the decision; or
- (4)** in circumstances where the architect reasonably believes that such decisions will be taken notwithstanding the architect's objection, terminate the architect's services with reference to the project and have no liability to the architect's client or employer on account of the termination.

**D.** An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with the architect's application for registration or renewal.

**E.** An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience or character.

**F.** An architect possessing knowledge of a violation of these rules by another architect or an applicant for registration shall report such knowledge to the board.

[16.30.4.10 NMAC - Rp, 16 NMAC 30.4.8.3, 9/6/2001; A, 9/15/2016]

#### **16.30.4.11 COMPLIANCE WITH LAWS:**

**A.** An architect, in the conduct of his or her architectural practice, shall not be convicted of any crime listed in Paragraph (4) of Subsection B of 16.30.3.8 NMAC.

**B.** An architect shall neither offer nor make any payment or gift to a government official, whether elected or appointed, with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

**C.** An architect shall comply with the registration laws and regulations governing his or her professional practice in any jurisdiction.

[16.30.4.11 NMAC - Rp, 16 NMAC 30.4.8.4, 9/6/2001; A, 01/11/2022]

#### **16.30.4.12 PROFESSIONAL CONDUCT:**

**A.** Each office maintained for the preparation of architectural drawings, specifications, reports or other professional work shall have an architect regularly employed having direct knowledge and supervisory control of such work.

**B.** In providing architectural services, an architect shall confer with the client to assure that the client's program needs are met.

**C.** An architect shall not sign or seal drawings, specifications, reports or other professional work which was not prepared by the architect or under his or her responsible charge as defined in Subsection N of 16.30.1.7 NMAC. Responsible charge may be exercised through a third party who is not a registered architect, but the architect must maintain and make available to the board upon request for at least five years following sealing or signing, adequate and complete records demonstrating the extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation.

**D.** An architect shall neither offer nor make any gifts, other than gifts of nominal value, which may include reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

**E.** An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

**F.** A registered architect shall not associate in a business venture offering architectural services with a person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating board rules and regulations or statutes. A registered architect with such knowledge shall report such occasions to the board, and shall cooperate with any resulting investigations.

[16.30.4.12 NMAC - Rp, 16 NMAC 30.4.8.5, 9/6/2001; A, 9/16/2004; A, 6/10/2018]

#### **16.30.4.13 MISREPRESENTATION OF PRIOR EXPERIENCE:**

Registered architects shall accurately represent to a prospective or existing client or employer their qualifications and the scope of their responsibility in connection with work for which they are claiming credit.

**A.** In presenting qualifications to prospective clients, both public and private, it shall be the responsibility of each registered architect to clearly and appropriately state prior professional experience of the architect and the firm the architect is representing. If an architect uses visual representations of prior projects or experience, the architect whose seal appears must be clearly identified.

**B.** An architect who has been an employee of another architectural practice may not claim unconditional credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that the individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of the architect's participation in the project.

**C.** An architect who was formerly a principal in a firm may legitimately make additional claims provided the architect discloses the nature of ownership in the previous architectural firm (example: stockholder or junior partner) and identifies with specificity the architect's responsibilities for the project.

**D.** An architect who presents a project that has received awards recognition must comply with the requirements of this rule with regard to project presentation to the public and prospective clients.

**E.** Projects which remain unconstructed and which are listed as credits should be listed as "unbuilt" or some similar designation.

[16.30.4.13 NMAC - Rp, 16 NMAC 30.4.8.6, 9/6/2001]

## **PART 5: ENFORCEMENT**

### **16.30.5.1 ISSUING AGENCY:**

New Mexico Board of Examiners for Architects.

[16.30.5.1 NMAC - Rp, 16 NMAC 30.5.1, 9/6/2001]

### **16.30.5.2 SCOPE:**

Provisions for Part 5 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.5.2 NMAC - Rp, 16 NMAC 30.5.2, 9/6/2001]

### **16.30.5.3 STATUTORY AUTHORITY:**

Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board...may make rules not inconsistent with law."

[16.30.5.3 NMAC - Rp, 16 NMAC 30.5.3, 9/6/2001]

### **16.30.5.4 DURATION:**

Permanent.

[16.30.5.4 NMAC - Rp, 16 NMAC 30.5.4, 9/6/2001]

**16.30.5.5 EFFECTIVE DATE:**

September 6, 2001, unless a different date is cited at the end of the section.

[16.30.5.5 NMAC - Rp, 16 NMAC 30.5.5, 9/6/2001]

**16.30.5.6 OBJECTIVE:**

The objective of this rule is to clearly describe violations and the complaint process.

[16.30.5.6 NMAC - Rp, 16 NMAC 30.5.6, 9/6/2001]

**16.30.5.7 DEFINITIONS:**

All terms defined in this section shall have the same meaning as terms defined in the Parental Responsibility Act, Sections 40-5A-1 through 13 NMSA 1978.

**A. "HSD"** means the New Mexico human services department.

**B. "Statement of compliance"** means a certified statement from HSD stating that an applicant or registrant is in compliance with a judgment and order for support.

**C. "Statement of non-compliance"** means a certified statement from HSD stating that an applicant or registrant is not in compliance with a judgment and an order for support.

[16.30.5.7 NMAC - Rp, 16 NMAC 30.5.7, 9/6/2001; A, 01/11/2022]

**16.30.5.8 COMPLAINTS:**

**A.** Disciplinary proceedings against a registered New Mexico architect, applicant, or unlicensed individual may be initiated by a complaint of any person, including members of the board, that is signed under penalty of perjury. Complaint forms shall be obtained from the board office or the board's website and shall be reviewed by the enforcement subcommittee of the rules and regulations committee.

**B.** Complaint forms shall be confidential pursuant to Subsection D of Section 61-15-5 NMSA 1978. Complaints admitted as evidence during a formal disciplinary hearing are no longer confidential pursuant to Subsection D of Section 61-15.5 [61-15-5] NMSA 1978, and may be subject to public inspection.

**C.** The enforcement subcommittee shall have the authority to initiate investigations and determine whether sufficient evidence exists to support the recommendation for the issuance of a notice of contemplated action to the full board for a vote. If the

enforcement subcommittee deems the alleged action did not amount to a violation or was a minor violation, it may close the matter with an advisory letter.

**D.** a report of all complaints filed shall be provided to the board at each regular board meeting.

[16.30.5.8 NMAC - Rp, 16 NMAC 30.5.8, 9/6/2001; A, 9/15/2016; A, 6/10/2018; A, 01/11/2022]

#### **16.30.5.9 SETTLEMENT AGREEMENTS:**

For all non-parental responsibility actions:

**A.** The enforcement subcommittee may negotiate a proposed settlement agreement at any time prior to the issuance of a notice of contemplated action. The proposed settlement agreement is subject to approval by vote of the board and consent of the respondent.

**B.** The board may require an acknowledgement of disciplinary action for any violation.

**C.** The board may require an admission of guilt in a settlement agreement for any non-minor violation.

**D.** The board may report the settlement agreement to the relevant computer database(s).

[16.30.5.9 NMAC - N, 9/6/2001; A, 9/16/2004; A, 5/4/2008; A, 9/15/2016]

#### **16.30.5.10 NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS ("NCARB") CERTIFICATE REVOCATION:**

The board shall have the right to review and to suspend or revoke a New Mexico registration granted on the basis of NCARB certification should the certification be revoked by NCARB as a result of a disciplinary action. The individual shall have the right to apply for reinstatement of New Mexico registration of and when the NCARB certification has been restored.

[16.30.5.10 NMAC - Rp, 16 NMAC 30.3.10.13, 9/6/2001]

#### **16.30.5.11 VIOLATIONS:**

A person using any designation tending to imply to the public that the individual is registered under the Architectural Act to practice architecture; such as architect, architectural services, or words to that effect, is in violation of Section 61-15-10 NMSA 1978.

[16.30.5.11 NMAC - Rp 16 NMAC 30.5.9, 9/6/2001; A, 9/15/2016]

**16.30.5.12 PARENTAL RESPONSIBILITY ACT:**

**A.** Disciplinary action: If an applicant or registrant is not in compliance with a judgment and order for support, the board:

- (1) shall deny an application for registration;
- (2) shall deny the renewal of a registration; and
- (3) has grounds for suspension or revocation of the registration.

**B.** Certified list: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board registrants and applicants. Upon the later receipt of an application for registration or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and registrants who are on the certified list and the action the board has taken in connection with such applicants and registrants.

**C.** Initial action: Upon determination that an applicant or registrant appears on the certified list, the board shall:

(1) commence a formal proceeding under Subsection D of 16.30.5.12 NMAC to take appropriate action under Subsection A of 16.30.5.12 NMAC; or

(2) for current registrants only, informally notify the registrant that the registrant's name is on the certified list and that the registrant must provide the board with a subsequent statement of compliance from HSD by the earlier of the date of application for registration renewal or a specified date not to exceed 60 days; if the registrant fails to provide this statement, the board shall commence formal proceedings under Subsection D of 16.30.5.12 NMAC.

**D.** Notice of contemplated action: Prior to taking any action specified in Subsection A of 16.30.5.12 NMAC, the board shall serve upon the applicant or registrant a written notice stating that:

(1) the board has grounds to take such action, and that the board shall take such action unless the registrant or applicant mails a letter (certified mail, return receipt requested) within 20 days after service of the notice requesting a hearing; or provides the board within 30 days of the date of the notice, with a statement of compliance from HSD.

(2) if the applicant or registrant disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or registrant should contact the HSD child support enforcement division.

E. Evidence and proof: In any hearing under 16.30.5.12 NMAC, relevant evidence is limited to the following:

(1) statement of non-compliance is conclusive evidence that requires the board to take action under Subsection A of 16.30.5.12 NMAC, unless:

(2) the applicant or registrant provides the board with a subsequent statement of compliance which shall preclude the board from taking action under this rule.

F. Order: When a disciplinary action is taken under this rule solely because the applicant or registrant is not in compliance with a judgment and order for support, the order shall state the application or registration shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for re-applications or reinstatement of lapsed registrations.

G. Procedures: Procedures under 16.30.5.12 NMAC shall be governed by the Uniform Licensing Act, Sections 61-1-1 through -33 NMSA 1978.

[16.30.5.12 NMAC - Rp, 16 NMAC 30.5.10, 9/6/2001]

## **PART 6: MINIMUM STANDARDS FOR THE PRACTICE OF ARCHITECTURE IN NEW MEXICO**

### **16.30.6.1 ISSUING AGENCY:**

New Mexico Board of Examiners for Architects.

[16.30.6.1 NMAC – Rp, 16.30.6.1 NMAC, 9/26/2023]

### **16.30.6.2 SCOPE:**

Provisions for Part 6 apply to any person registered as an architect, or to anyone applying for registration as an architect in New Mexico.

[16.30.6.2 NMAC - Rp, 16.30.6.2 NMAC, 9/26/2023]

### **16.30.6.3 STATUTORY AUTHORITY:**

Subsection C of Section 61-15-4 NMSA 1978 prescribes that "The board...may make rules not inconsistent with law."

[16.30.6.3 NMAC - Rp, 16.30.6.3 NMAC, 9/26/2023]

**16.30.6.4 DURATION:**

Permanent.

[16.30.6.4 NMAC - Rp, 16.30.6.4 NMAC, 9/26/2023]

**16.30.6.5 EFFECTIVE DATE:**

September 26, 2023, unless a different date is cited at the end of the section.

[16.30.6.5 NMAC - Rp, 16.30.6.5 NMAC, 9/26/2023]

**16.30.6.6 OBJECTIVE:**

The objective of this rule is to clearly outline the minimum standards of practice expected from an individual registered as a New Mexico architect.

[16.30.6.6 NMAC - Rp, 16.30.6.6 NMAC, 9/26/2023]

**16.30.6.7 DEFINITIONS:**

**[RESERVED]**

[16.30.6.7 NMAC - Rp, 16.30.6.7 NMAC, 9/26/2023]

**16.30.6.8 DESIGN AND CONSTRUCTION DOCUMENTS:**

**A. Programming, if required by contract:**

(1) Definition: To create or assist the owner in creating a project's design parameters and overall scope including priorities, goals, budget, data, concepts and general needs.

(2) The architect must be able to:

(a) prepare a program, presentations, reports and periodic reviews for owners and consultants;

(b) summarize and evaluate data and requirements; and

(c) form an educated opinion of probable costs and adequacy of the owner's budget.

**B. Site and environmental analysis:**

(1) Definition: Site analysis includes land planning, urban design and environmental evaluation of the physical, economic and social impact of proposed land use on, including but not limited to, the environment, ecology, traffic and population patterns, zoning site constraints, adequacy of site for parking and loading, etc., and utility availability.

(2) The registrant must be able to select, organize and evaluate pertinent data that leads to a conceptual design in coordination with the owner's program while conforming to the project's requirements.

**C. Schematic design:**

(1) Definition: From the owner-approved program, the development of solutions to satisfy technical and aesthetic requirements with an updated opinion of probable cost.

(2) The registrant must be able to prepare, from the program, alternative preliminary design concepts, presentation drawings and models and form an updated opinion of probable cost.

**D. Building cost analysis:**

(1) Definition: Evaluation of probable construction cost.

(2) The registrant must be able to:

(a) make computations based on area and volume and quantity surveys based on the project's specific requirements; and

(b) evaluate the proposed costs for accuracy and fairness.

**E. Code research:**

(1) Definition: Assurance of a project's compliance with federal, state and local regulation requirements.

(2) The registrant must be able to research and document codes and guidelines to assure a specific project's compliance with law and should be knowledgeable of procedures to obtain relief or variances.

**F. Design development:**

(1) Definition: Based on the owner-approved schematic design, creating the size and character of the entire project including selection of materials and engineering systems with an updated opinion of probable cost for the owner's further approval.

(2) The registrant must be able to:

(a) prepare detailed development drawings from schematic design documents;

(b) develop schedules and outline specifications, the project's systems, with estimates for construction time and construction cost; and

(c) form updated opinions of probable cost.

**G. Construction documents:**

(1) Definition: The description in graphic form of all the essentials of the work done in concurrence with the written specifications and the provision to the owner of an updated opinion of probable cost and, if relevant, the suggestion that alternative bids should be considered.

(2) The registrant must:

(a) be able to prepare accurate, consistent, complete and understandable construction documents and effectively coordinate consultant(s) drawings; and

(b) understand the responsibilities and liabilities arising from the issuance of construction documents.

**H. Engineering systems coordination:**

(1) Definition: Responsibility for coordinating with consulting engineers in the selection, design and/or coordination of all building systems including traditional engineering systems.

(2) The registrant must be knowledgeable of how systems work, including system benefits and limitations, availability, cost and space requirements necessary, and must know when it is necessary to engage engineering professionals and other professionals or consultants.

**I. Specifications and materials research:**

(1) Definition: The evaluation and selection of materials or products, based on appropriateness, durability, aesthetic quality, initial cost, maintenance and the project's standard of quality.

(2) The registrant must:

(a) have the ability to assess materials, including familiar items in unusual applications; and

(b) be able to communicate in graphic and written form to all parties, in logical and orderly sequence, the requirements of the construction process.

**J. Document checking and coordination:**

(1) Definition: Cross-checking construction documents and drawings of other consultants for accuracy and compatibility.

(2) The registrant must be able to assure accuracy and compatibility of all construction documents for a project.

[16.30.6.8 NMAC - Rp, 16.30.6.8 NMAC, 9/26/2023]

**16.30.6.9 CONSTRUCTION ADMINISTRATION (if required by contract):**

**A. Bidding and contract negotiation.**

(1) Definition: Assist the client in establishing and administering bidding procedures, issuing addenda, evaluating proposed substitutions, reviewing the qualifications of bidders, analyzing bids or negotiating proposals and making recommendations for the selection of contractors.

(2) The registrant should make clear what the registrant's role shall be in each of the following steps:

(a) the bid/award process;

(b) the analysis and evaluation of bids;

(c) settling protests to bid acceptability; and

(d) the role of lending institutions.

**B. Construction - office phase.**

(1) Definition: Processing contractor's applications for payment, preparing change orders, reviewing shop drawings and samples and interpreting construction documents.

(2) The registrant must be able to:

(a) timely process applications for payment;

(b) evaluate requests for changes and prepare change orders; and

(c) interpret and attempt to resolve conflicts relating to the contract documents and resolve disputes.

**C. Construction - observation phase.**

(1) Definition: Assurance that contractor's work conforms to requirements of contract documents, that standards of workmanship are upheld, and that all work conforms to required codes. It includes the interpretation of contract documents, clarification of design intent, and the resolution of conflicts.

(2) The registrant must have an understanding of contract documents and must be able to:

(a) evaluate quality of materials and workmanship;

(b) analyze construction timetables and produce progress reports;

(c) interpret contract documents;

(d) evaluate dispute resolution alternatives;

(e) monitor and receive all data, warranties and releases required by the contract documents; and

(f) undertake a completion inspection with verification that the work was completed in accordance with the contract documents.

[16.30.6.9 NMAC - Rp, 16.30.6.8 NMAC, 9/26/2023]

**16.30.6.10 DESIGN/BUILD WHERE THE ARCHITECT IS ALSO THE CONTRACTOR:**

Unless a contractual relationship is stated otherwise, an architect is responsible for the minimum competencies of construction administration in a design/build project.

[16.30.6.10 NMAC - Rp, 16.30.6.10 NMAC, 9/26/2023]

**16.30.6.11 PROJECT MANAGEMENT:**

Means defining goals; coordinating tasks and scheduling, assessing all discrepancies and performance of corrective actions, maintaining design quality; closing out project records and agreements; and performing project evaluations. It includes owner notification of any additional services that may be required prior to their need.

[16.30.6.11 NMAC - Rp, 16.30.6.11 NMAC, 9/26/2023]

## **PART 7: LICENSURE FOR MILITARY SERVICE MEMBERS**

### **16.30.7.1 ISSUING AGENCY:**

New Mexico Board of Examiners for Architects, 2550 Cerrillos Road - Third Floor, Santa Fe, NM 87505; telephone (505) 476-4830.

[16.30.7.1 NMAC - N, 1/15/2019]

### **16.30.7.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, their spouses and veterans.

[16.30.7.2 NMAC - N, 1/15/2019]

### **16.30.7.3 STATUTORY AUTHORITY:**

Subsection C of Section 61-15-4 NMSA 1978, prescribes that "The board...may make rules not inconsistent with law."

[16.30.7.3 NMAC - N, 1/15/2019]

### **16.30.7.4 DURATION:**

Permanent.

[16.30.7.4 NMAC - N, 1/15/2019]

### **16.30.7.5 EFFECTIVE DATE:**

January 15, 2019 unless a different date is cited at the end of the section.

[16.30.7.5 NMAC - N, 1/15/2019]

### **16.30.7.6 OBJECTIVE:**

The objective of this part is to expedite licensure for military service members, their spouses and recent veterans pursuant to Subsection C of Section 61-15-4 NMSA 1978.

[16.30.7.6 NMAC - N, 1/15/2019]

### **16.30.7.7 DEFINITIONS:**

[RESERVED]

[16.30.7.7 NMAC - N, 1/15/2019]

**16.30.7.8 EXPEDITED LICENSURE:**

The Board complies with the expedited licensure procedures and fee schedule for military service members, spouses and veterans as outlined in the Uniform Licensing Act, Section 61-1-34, NMSA 1978.

[16.30.7.8 NMAC - N, 1/15/2019; A, 01/11/2022]

**16.30.7.9 [RESERVED]**

[16.30.7.9 NMAC - N, 1/15/2019; Repealed 01/11/2022]

**CHAPTER 31: ATTORNEYS [RESERVED]**

**CHAPTER 32 : AUCTIONS AND AUCTIONEERS  
[RESERVED]**

**CHAPTER 33: BAIL BONDSMEN AND SURETY  
BONDSMEN [RESERVED]**

**CHAPTER 34: BARBERS AND COSMETOLOGISTS**

**PART 1: GENERAL PROVISIONS**

**16.34.1.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.1.1 NMAC - Rp 16 NMAC 34.1.1, 6/16/2001]

**16.34.1.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.1.2 NMAC - Rp 16 NMAC 34.1.2, 6/16/2001; A, 7/14/2018]

**16.34.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Barbers and Cosmetology Act, Sections 61-17A-1 to -25 NMSA 1978.

[16.34.1.3 NMAC - Rp 16 NMAC 34.1.3, 6/16/2001; A, 12/27/2022]

**16.34.1.4 DURATION:**

Permanent.

[16.34.1.4 NMAC - Rp 16 NMAC 34.1.4, 6/16/2001]

**16.34.1.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.1.5 NMAC - Rp 16 NMAC 34.1.5, 6/16/2001]

**16.34.1.6 OBJECTIVE:**

The objective of Part 1 is to promote, preserve and protect the public health, safety and welfare by establishing regulations generally applicable to all licensees and professions subject to the Barbers and Cosmetology Act.

[16.34.1.6 NMAC - Rp 16 NMAC 34.1.6, 6/16/2001; A, 12/27/2022]

**16.34.1.7 DEFINITIONS:**

As used in the Barbers and Cosmetologists Act:

**A. "applicant"** has the same meaning as defined in Subsection B of Section 61-1-2 NMSA 1978;

**B. "apprentice"** means a person enrolled in a barber apprenticeship program approved by and registered with the state apprenticeship agency;

**C. "approval number"** means the number assigned by the board to designate an approved provider;

**D. "approved"** means accepted as a provider by the board;

**E. "barber"** has the same meaning as defined in Subsection A of Section 61-17A-2 NMSA 1978;

**F. "barber apprenticeship"** means an apprenticeship program registered with the state apprenticeship agency;

**G. "barbering"** has the same meaning as defined in Section 61-17A-3 NMSA 1978;

**H. "board"** has the same meaning as defined in Subsection B of Section 61-17A-2 NMSA 1978;

**I. "branch campus/additional location"** means an additional location that provides the same administrative services as the main campus, and offers at least one complete program entered into the programs offered at the main campus; a branch campus/additional location must be approved by the board as a separate school with a stand-alone license;

**J. "clean or cleansing"** means washing with liquid soap and water, detergent, antiseptics, or other adequate methods to remove all visible debris or residue. Cleansing is not disinfection;

**K. "contact hour"** means one contact hour equals a minimum of 50 minutes of instruction;

**L. "cosmetologist"** has the same meaning as defined in Subsection C of Section 61-17A-2 NMSA 1978;

**M. "cosmetology"** has the same meaning as defined in Section 61-17A-4 NMSA 1978;

**N. "current work experience"** means verified work that has occurred within the previous five years;

**O. "department"** has the same meaning as defined in Subsection D of Section 61-17A-2 NMSA 1978;

**P. "disinfect or disinfection"** means the use of chemical agents (after cleaning) to destroy potentially dangerous pathogens on non-porous items;

**Q. "disinfectant"** means an EPA-registered bactericidal, virucidal and fungicidal chemical effective against pathogens of concern when used as directed on the manufacturer's label. For purposes of this rule alcohol and UV light boxes are not approved for disinfection;

**R. "electrologist"** means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

**S. "electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

**T. "enterprise"** has the same meaning as defined in Subsection F of Section 61-17A-2 NMSA 1978;

**U. "expansion campus facility"** means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

**V. "establishment"** has the same meaning as defined in Subsection G of Section 61-17A-2 NMSA 1978;

**W. "esthetician"** has the same meaning as defined in Subsection H of Section 61-17A-2 NMSA 1978;

**X. "eyebrow threading"** has the same meaning as defined in Subsection I of Section 61-17A-2 NMSA 1978;

**Y. "eyelash extensions"** means strands of silk, mink, or another synthetic or natural material that are applied one at a time and fixed to an individual's natural eyelashes;

**Z. "executive director"** means the director for the board;

**AA. "expansion campus facility"** means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;

**BB. "externship"** means a student enrolled in any course licensed by this act may, at the school's option, participate in an externship program upon completion of seventy-five percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except for offering complete services on the public, applying any chemicals, or receiving any compensation;

**CC. "hairstylist"** has the same meaning as defined in Subsection J of Section 61-17A-2 NMSA 1978;

**DD. "HSD"** means the New Mexico human services department;

**EE. "hands-on training"** means student training on clients, students or models that includes active personal participation and practical experience necessary to gain knowledge. Training on mannequins is considered hands-on training;

**FF. "instructor"** means a person licensed to teach in a school of cosmetology, barbering or in a school of electrology;

**GG.** "journey worker" means a person who holds a current New Mexico barber license; is recognized by the sponsor as having attained and mastered a level of skill, abilities, and competencies in barbering and is authorized to provide related instruction and on-the-job training to licensed apprentices. The maximum allowable ratio of licensed apprentices to journey workers during on-the-job training is one to one;

**HH.** "jurisprudence exam" means the examination given regarding the laws, rules and regulations, which relate to the practice of barbers and cosmetologists in the state of New Mexico;

**II.** "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of the act;

**JJ.** "license in good standing" refers to a current, valid, board-issued license with no restrictions placed on the license by the board;

**KK.** "main campus" means a school, which has been licensed by the board; any change in location of the main campus must comply with the procedures set forth in 16.34.8 NMAC of these rules; the main campus includes the primary facilities and any separate or detached expansion campus facility of the primary training site within a two-mile radius;

**LL.** "manicurist-esthetician" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and who uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

**MM.** "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

**NN.** "multi-use" means non-porous instruments, items, equipment, implements or tools that must be cleaned and disinfected. The items must be disinfected by a complete immersion in an EPA registered, bactericidal, virucidal and fungicidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

**OO.** "non-porous" means multi-use items such as metal, glass and plastic;

**PP.** "outreach enterprise" means an independent mobile unit, or system of units, equipped with or carrying both professional and special equipment used by a

professional licensee of this act to a site or premises for the purpose of providing professional services to the handicapped, restricted, homebound, impaired, incapacitated, delicate, or otherwise constrained client;

**QQ.** "sponsor" means the sponsor in whose name the standards of apprenticeship will be registered with the state apprenticeship agency, and which will have the full responsibility for administration and operation of a barber apprenticeship program;

**RR.** "provider" means the person, firm, corporation, institution or agency approved to conduct or sponsor a continuing education program and ensure its integrity;

**SS.** "revocation" has the same meaning as defined in Subsection J of Section 61-1-2 NMSA 1978;

**TT.** "sanitation" has the same meaning as defined in Subsection L of Section 61-17A-2 NMSA 1978;

**UU.** "school" has the same meaning as defined in Subsection M of Section 61-17A-2 NMSA 1978;

**VV.** "single use items" means tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, and porous files, etc.) shall be disposed of immediately after use;

**WW.** "state apprenticeship agency" means the department of workforce solutions' state apprenticeship agency;

**XX.** "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;

**YY.** "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support;

**ZZ.** "sterilize or sterilization" means to eliminate all forms of bacteria or other microorganisms;

**AAA.** "student" has the same meaning as defined in Subsection N of Section 61-17A-2 NMSA 1978;

**BBB. "supervising licensee"** means licensee designated by the establishment owner or manager to act on behalf of the enterprise or establishment in the absence of the owner or manager. The supervising licensee must be licensed in all aspects of the activity being practiced in the enterprise or establishment;

**CCC. "suspension"** has the same meaning as defined in Subsection K of Section 61-1-2 NMSA 1978;

**DDD. "verified work experience"** means work experience in the applicable discipline in a licensed establishment, enterprise or electrology clinic as verified by:

- (1) certified and notarized statement by employer(s);
- (2) certified and notarized statement by licensed co-worker(s);
- (3) certified and notarized statement by client(s);
- (4) copies of tax returns; or
- (5) copies of W-2's;

[16.34.1.7 NMAC - Rp 16 NMAC 34.1.7, 6/16/2001; A, 7/16/2004; A, 10/4/2007; A, 12/17/2015; A, 10/29/2016; A, 7/14/2018; A, 12/27/2022; A, 8/29/2023]

#### **16.34.1.8 MISSION OF THE BOARD:**

The mission of the board is to promote, preserve and protect the public health, safety and welfare by regulating the practices of barbering, cosmetology, electrology, esthetics, hairstyling, manicuring, and pedicuring in New Mexico. The board is not an advocacy organization but is instead a regulatory body responsible at all times and in all situations for acting in the interest of the public.

[16.34.1.8 NMAC – N, 12/27/2022]

#### **16.34.1.9 AUTHORITY OF THE REGULATION AND LICENSING DEPARTMENT:**

Notwithstanding any other provisions under these rules, the department shall have the authority to:

- A.** process and issue licenses to applicants who meet the requirements of the Barbers and Cosmetology Act and board rules;
- B.** investigate persons engaging in practices that may violate the provisions of the Barbers and Cosmetology Act and report results of investigation to the board;
- C.** approve the selection of and supervise primary staff assigned to the board;

D. carry out the operations of the board to include budgetary expenditures;

E. maintain records, including financial records; and

F. keep a licensee record in which the names, addresses and license numbers of all licensees shall be recorded together with a record of all license renewals, suspensions and revocations.

[19.34.1.9 NMAC - N, 12/27/2022]

#### **16.34.1.10 INFORMATIONAL OBLIGATIONS OF LICENSEES:**

##### **A. Contact information:**

(1) A licensee is obligated to maintain current and accurate contact information on file with the department.

(2) A licensee shall notify the department within 30 days of a change of the licensee's contact information.

(3) Failure to disclose a change of mailing or residential address may constitute grounds for disciplinary action.

(4) For the purpose of this rule, "contact information" means the licensee's mailing address, residential address, email address, and telephone number.

##### **B. Names and addresses of place of business:**

(1) A licensee is obligated to maintain the current and accurate name and address of the licensee's place of business on file with the department.

(2) A licensee shall notify the department within 30 days of any changes in the name and address of the licensee's place of business.

(3) Failure to disclose a change of the name and mailing address of the licensee's employer may constitute grounds for disciplinary action.

[16.34.10 NMAC - N, 12/27/2022]

## **PART 2: LICENSING**

#### **16.34.2.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.2.1 NMAC - Rp 16 NMAC 34.2.1, 06/16/2001]

#### **16.34.2.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, and establishments.

[16.34.2.2 NMAC - Rp 16 NMAC 34.2.2, 06/16/2001; A, 07/14/2018]

#### **16.34.2.3 STATUTORY AUTHORITY:**

Section 61-17A-5 - License required to provide services for compensation directly or indirectly.

[16.34.2.3 NMAC - Rp 16 NMAC 34.2.3, 06/16/2001]

#### **16.34.2.4 DURATION:**

Permanent.

[16.34.2.4 NMAC - Rp 16 NMAC 34.2.4, 06/16/2001]

#### **16.34.2.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.2.5 NMAC - Rp 16 NMAC 34.2.5, 06/16/2001]

#### **16.34.2.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes licensure requirements for barbers, cosmetologists, hairstylists, manicurist/pedicurists, estheticians and electrologists. It further provides for licensure requirements of establishments, enterprises, electrology clinics, schools and instructors.

[16.34.2.6 NMAC - Rp 16 NMAC 34.2.6, 06/16/2001; A, 07/14/2018]

#### **16.34.2.7 DEFINITIONS:**

**[RESERVED]**

[16.34.2.7 NMAC - Rp 16 NMAC 34.2.7, 6/16/2001; A, 12/17/2015; A, 4/15/2022]

#### **16.34.2.8 GENERAL LICENSING PROCEDURES:**

**A.** Application forms:

**(1)** Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Applications must include the required fee in the form of a money order, cashier's check, business check, or credit card for on-line renewal only, (no personal checks will be accepted). Incomplete applications will be returned. Applications are valid for one year from date of receipt. Designated deadlines will apply to resubmitted applications.

**(2)** With the exception of applications for barber apprentice licenses as listed in Subsection E below, applications for licensure must include:

**(a)** proof of age indicating applicant is at least 17 years of age; please provide one of the following: a copy of birth certificate, driver's license, state issued identification card, or baptismal certificate;

**(b)** proof of applicable secondary education: please provide a copy of one of the following: a high school diploma, G.E.D. certificate or transcript of G.E.D. test scores, letter from the high school attended containing the school seal, copy of the high school transcript showing 10th grade equivalency or higher, a post-secondary transcript, successful completion of a 10th grade equivalency test, letter from the G.E.D. testing facility showing that the G.E.D has been passed; documents submitted in a language other than English must be accompanied by a certified translation completed by a government certified translator; and

**(c)** a transcript of hours from a school or a certificate of completion of a barber apprenticeship issued by the state apprenticeship agency showing that the training hours were completed within the preceding 12 months; if the training hours were obtained more than 12 months before the application is submitted to the board, then the applicant will need to register at a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education; upon completion and proof of the remediation, the applicant may apply for and submit to the complete theory examination, the applicable practical examination and a state law examination.

**(d)** A current valid email address;

**(e)** The applicant must have successfully passed the national written and practical examinations. The minimum passing scaled score for all written and practical licensing examinations is 75.

**B.** Photographs: applicants for original licensure shall attach a recent passport size, color photograph, front-view of face. The photo must be at least one and one-half inches by one and one-half inches and no larger than two inches by three inches.

**C.** Electronic signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.

**D.** Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications.

**E.** Upon acceptance into a barber apprenticeship program, the apprentice shall apply for a barber apprentice license on the form required and provided by the board. Applications shall include the required fee in the form of a money order, cashier's check, business check or credit card (no personal checks will be accepted).

**F.** Renewal is the responsibility of the licensee:

**(1)** Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees or reexamination as set forth in the act.

**(2)** A licensee, with a valid instructor license for the preceding 12 months, may use the instructor license to renew or reinstate his original practitioner license.

**(3)** The board will issue renewal licenses within 15 working days of receipt of the renewal request and applicable fee.

**(4)** Timely renewal of an establishment, enterprise, electrology clinic and school license is the full and complete responsibility of the LICENSEE. Failure to renew the license within 30 days after its expiration, will result in payments of renewal and late fees.

**(5)** A licensee, who works at more than one establishment must obtain an official duplicate license for each establishment pursuant to 16.34.4.15 NMAC.

[16.34.2.8 NMAC - Rp 16 NMAC 34.2.8, 06/16/2001; A, 07/16/2004; A, 10/04/2007; A, 12/17/2015; A, 10/29/2016; A, 07/14/2018]

#### **16.34.2.9 CUSTODY AND ALTERATION OF LICENSES:**

**A.** All board issued licenses and permits are property of the board and shall remain in the custody of the licensee at the discretion of the board.

**B.** Licenses and permits shall not be altered in any way.

**C.** Inspectors or board designees may retrieve any license or permit which is altered, suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment, an enterprise, an electrology clinic, or school.

[16.34.2.9 NMAC - Rp 16 NMAC 34.2.9, 06/16/2001; A, 10/04/2007; A, 12/17/2015]

#### **16.34.2.10 LICENSES POSTED:**

**A.** All licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public upon entry to the establishment at all times.

**B.** Licensees must attach a recent passport size colored photograph to the board issued license and sign the license where indicated.

**C.** All licensees, who have been placed on probation, will be issued a license, which states the licensee is on disciplinary probation. The license shall be posted where clearly visible to the public upon entry to the establishment at all times.

**D.** Licensees must present a driver's license or other identification when requested by the public, the board or its authorized representative.

**E.** Hours of operation shall be posted where clearly visible to the public at all times.

**F.** Most recent inspection report shall be printed and posted in each establishment within 72 hours of the inspection and posted where clearly visible to the public. It is the responsibility of the licensee that signed the inspection report and the operator to ensure this requirement is met.

[16.34.2.10 NMAC - Rp 16 NMAC 34.2.10, 06/16/2001; A, 10/04/2007; A, 12/17/2015]

#### **16.34.2.11 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Barbers, cosmetologists, hairstylist, manicurists/pedicurists, estheticians, electrologists, and instructors currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon satisfying the following requirements:

**(1)** receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

**(2)** refer to 16.34.2.8 NMAC, general licensing procedures; 16.34.5.8 NMAC, general licensure requirements; and 16.34.6.8 NMAC, reciprocity;

**(3)** other required verification will be that the board office will contact the applicant's prior licensing board by email, mail, or telephone for confirmation of what is provided by the applicant.

**B.** The board may waive the following requirements for licensure:

**(1)** application fees;

(2) specific forms or documentation required, on an individual case by case basis, under 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC.

D. Licenses issued under (the emergency provision) shall be issued for a period of one year or less following the date of issuance, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before one year following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.34.2.11 NMAC - N/E, 11/10/2005; A, 07/14/2018]

#### **16.34.2.12 EMERGENCY LICENSE TERMINATION:**

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under section 16.34.2.8, 16.37.5.8, and 16.34.6.8 NMAC; or

(2) proof that the emergency license holder has engaged in fraud deceit, misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.34.2.12 NMAC - N/E, 11/10/2005]

#### **16.34.2.13 [RESERVED]**

[16.34.2.13 NMAC - N, 12/17/2015; Repealed, 4/15/2022]

#### **16.34.2.14 [RESERVED]**

[16.34.2.14 NMAC - N, 12/17/2015; Repealed 4/15/2022]

#### **16.34.2.15 CRIMINAL CONVICTIONS:**

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

- (1) homicide or manslaughter;
- (2) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (3) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (4) crimes involving child abuse or neglect;
- (5) crimes involving fraud, forgery, embezzlement, credit card fraud, or receiving stolen property; or
- (6) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

**B.** The board shall not consider the fact of a felony criminal conviction as part of an application for licensure unless the felony conviction in question is one of the disqualifying felony criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a felony criminal conviction unless the felony conviction in question is one of the disqualifying felony criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Barbers and Cosmetologists Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying felony criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.34.2.15 NMAC - N, 4/15/2022]

### **PART 3: EXAMINATIONS**

**16.34.3.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.3.1 NMAC - Rp 16 NMAC 34.3.1, 6/16/2001]

**16.34.3.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.3.2 NMAC - Rp 16 NMAC 34.3.2, 6/16/2001; A, 07/14/2018]

**16.34.3.3 STATUTORY AUTHORITY:**

Section 61-17A-7 NMSA 1978 - Board Powers and Duties - This directs the barbers and cosmetologists board to establish outlines for examinations for licensure.

[16.34.3.3 NMAC - Rp 16 NMAC 34.3.3, 6/16/2001]

**16.34.3.4 DURATION:**

Permanent.

[16.34.3.4 NMAC - Rp 16 NMAC 34.3.4, 6/16/2001]

**16.34.3.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.3.5 NMAC - Rp 16 NMAC 34.3.5, 6/16/2001]

**16.34.3.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this outlines examinations for licensure and scoring requirements.

[16.34.3.6 NMAC - Rp 16 NMAC 34.3.6, 6/16/2001]

**16.34.3.7 DEFINITIONS:**

Refer to Part 1.

[16.34.3.7 NMAC - Rp 16 NMAC 34.3.7, 6/16/2001]

**16.34.3.8 NOTICE OF EXAMINATION:**

**A.** The application for examination and applicable fee required by the act or these rules must be received by the board or its designee according to the published schedule. It is the applicant's duty to meet all deadlines. Any arrangement to have a third party (such as a school) transmit the fee and application is made at the applicant's risk. Failure of the third party to transmit the fee in a timely manner will render the applicant being ineligible to take the examination in question.

**B.** The doors to the examination room will close promptly at the scheduled examination start time. Applicants who do not appear on time or who do not have the required documents will not be permitted to the examination or will not be admitted to the examination. In extreme situations where mitigating circumstances are present, the board or its designee will decide whether to allow the applicant to take the examination.

[16.34.3.8 NMAC - Rp 16 NMAC 34.3.8, 6/16/2001; A, 10/4/2007]

#### **16.34.3.9 EXAMINATION SCORES:**

**A.** The minimum passing scaled score for all written and practical licensing examinations is seventy five.

**B.** Examinations for all licenses except instructor licenses are scored in three individual segments, each requiring a minimum segment scaled score of seventy five. The segments are:

- (1) national practical;
- (2) national theory written; and
- (3) state law written.

**C.** If an applicant fails to attain a scaled score of seventy five on any segment of the examination, he/she will be required to retake the failed segment in its entirety.

**D.** Examinations for instructor licenses for all disciplines are scored in two individual segments, each requiring a minimum scaled score of seventy five. The segments are:

- (1) theory written; and
- (2) state law written.

[16.34.3.9 NMAC - Rp 16 NMAC 34.3.9, 6/16/2001; A, 7/16/2004; A, 10/4/2007]

#### **16.34.3.10 [RESERVED]**

[16.34.3.10 NMAC - Rp, 16 NMAC 34.3.10, 6/16/2001; A, 10/04/2007; Repealed, 07/14/2018]

#### **16.34.3.11 EXAMINATIONS FOR EXPIRED LICENSES:**

**A.** An applicant whose license has expired for more than five years shall re-enter a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education. Upon completion of the remediation, he may apply for and submit to the complete written theory examination, the applicable practical examination and a written state law examination.

**B.** An applicant whose license has expired for one year but less than five years shall be required to retake the applicable examinations.

[16.34.3.11 NMAC - Rp 16 NMAC 34.3.11, 6/16/2001; A, 7/16/2004; A, 10/4/2007]

#### **16.34.3.12 EXAMINATION REQUIREMENTS FOR EXPIRED LICENSES:**

All applicants for examination to reinstate an expired license shall submit a completed application for examination as required for original licensure and submit proof that he:

**A.** meets the age requirements set forth for original licensure;

**B.** meets the secondary education requirements set forth for original licensure; and

**C.** has been previously licensed by the New Mexico board of barbers and cosmetologists.

[16.34.3.12 NMAC - Rp 16 NMAC 34.3.12, 6/16/2001; A, 10/4/2007]

#### **16.34.3.13 EXAMINATION REQUIREMENTS FOR FOREIGN TRAINED APPLICANTS:**

Any foreign indicated person who meets the requirements set forth in 16.34.2.8 NMAC may apply for a New Mexico license by examination. The examination application must be submitted to the board or its designee along with the following supporting documentation:

**A.** notarized translation of his valid license or certificate from another nation;

**B.** notarized translation of certified transcript of training from school or nation;

**C.** notarized translation of any other documents that may be required by the board or its designee;

**D.** notarized letters of employment from past employers or employment records to prove work experience if applicable as stated in Subsection B of 16.34.6.8 NMAC;

E. the requirements for translation apply only to documents written in a language other than English;

F. the board shall require examination applicants with foreign training who fail any part of the examination to register at a licensed school, submit to a scholastic evaluation to determine their training needs, and complete a minimum of 150 hours of remedial education. Upon completion and proof of the remediation, the applicant will be allowed to re-examine in the failed areas.

[16.34.3.13 NMAC - N, 10/4/2007]

**16.34.3.14 EXAMINATION REQUIREMENTS FOR APPLICANTS WITH FULL HOURS, NO OUT-OF-STATE LICENSE:**

An applicant, who has completed an equivalent course of study in the United States within the preceding 12 months, but has not obtained a license in another state, will be admitted to the New Mexico board examinations subject to all requirements, which apply to New Mexico applicants to take examination.

[16.34.3.14 NMAC - N, 10/4/2007; A, 07/14/2018]

**PART 4: SPECIAL LICENSES**

**16.34.4.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.4.1 NMAC - Rp 16 NMAC 34.4.1, 06/16/2001]

**16.34.4.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, and establishments; applicants for examination and students.

[16.34.4.2 NMAC - Rp 16 NMAC 34.4.2, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

**16.34.4.3 STATUTORY AUTHORITY:**

Section 61-17A-7 - Board Powers and Duties - The board may create and establish standards for special licenses. Section 61-17A-11 - Requirements for licensure of instructors.

[16.34.4.3 NMAC - Rp 16 NMAC 34.4.3, 06/16/2001]

**16.34.4.4 DURATION:**

Permanent.

[16.34.3.4 NMAC - Rp 16 NMAC 34.3.4, 06/16/2001]

**16.34.4.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.4.5 NMAC - Rp 16 NMAC 34.4.5, 06/16/2001]

**16.34.4.6 OBJECTIVE:**

To create and establish standards and fees for special licenses pursuant to Paragraph (8) of Subsection A of Section 61-17A-7 NMSA 1978 of the Barbers and Cosmetologists Act.

[16.34.4.6 NMAC - Rp 16 NMAC 34.4.6, 6/16/2001; A, 8/29/2023]

**16.34.4.7 DEFINITIONS:**

Refer to Part 1.

[16.34.4.7 NMAC - Rp 16 NMAC 34.4.7, 06/16/2001]

**16.34.4.8 [RESERVED]**

[16.34.4.8 NMAC - Rp 16 NMAC 34.4.8, 06/16/2001; A, 10/04/2007; Repealed, 12/17/2015]

**16.34.4.9 BARBER APPRENTICE LICENSE:**

The board shall issue a barber apprentice license to an applicant who submits the apprentice license fee, the application form required and provided by the board, and a copy of the apprenticeship agreement between the apprentice and the registered apprenticeship program, issued by the state apprenticeship agency.

**A.** A barber apprentice license is valid during the time the apprentice is active in a registered apprenticeship program, but in no case longer than 36 months from the date of issuance. A barber apprentice license will automatically become invalid upon the apprentice's cancellation from a registered apprenticeship program or deregistration of an apprenticeship program by the state apprenticeship agency. The apprentice is responsible for returning the invalid license to the board within 30 days of the apprentice's cancellation or deregistration of the program.

**B.** The board may recommend to the state apprenticeship agency deregistration of a barber apprenticeship program for any violation of the board's rules or regulations.

**C.** A barber apprentice may receive related instruction from a journey worker/licensed barber instructor outside of a licensed establishment; however, barber apprentice services may not be performed on the public and practical application may not be taught outside of a licensed establishment.

[16.34.4.9 NMAC - Rp 16 NMAC 34.4.9, 6/16/2001; Repealed, 10/4/2007; N, 10/29/2016; A, 8/29/2023]

**16.34.4.10 MANICURIST/ESTHETICIAN LICENSE (900 HOURS OR EQUIVALENT CREDIT):**

**A.** A combined manicurist/esthetician license permits the practitioner to:

- (1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;
- (2) reduce corns callouses by using softening preparations or abrasion in order to beautify the foot;
- (3) use chemical substances on the nails for the purpose of strengthening, repairing or lengthening the nails using nail tips, wraps or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;
- (4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;
- (5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet;
- (6) use cosmetic preparations, antiseptics, powders, oils, clays or lotion to any part of the body of a person;
- (7) apply massage and manipulation techniques using the hands or mechanical apparatus;
- (8) apply light therapy, high frequency and other types of facial treatments; and use specialized skin care and facial machines in applying facial treatments;
- (9) apply cosmetic makeup preparations to contour and beautify the skin;
- (10) application of product to eyelashes and eyebrows, including eyelash extensions and lash and brow tinting procedures; and
- (11) remove superfluous or unwanted hair from the body of a person by any means except electrolysis or other invasive techniques and shaving.

**B.** A manicurist/esthetician shall not treat an obviously infected ingrown toenail or use any technique involving mechanical penetration of the skin beneath a callous or corn.

**C.** A manicurist/esthetician shall not perform facial services on any person with a communicable skin disease.

**D.** A manicurist/esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.

[16.34.4.10 NMAC – Rp, 16 NMAC 34.4.10, 06/16/2001; Repealed, 07/16/2004; N, 8/29/2023]

#### **16.34.4.11 BARBER/COSMETOLOGY LICENSE (CROSSOVER):**

A barber/cosmetology license may be issued to any licensee who has completed a crossover course in either barbering or cosmetology and has taken and passed the appropriate exams. Upon completion of the crossover, the licensee must contact the board office and request that their licenses be combined.

[16.34.4.11 NMAC – Rp 16 NMAC 34.4.10, 06/16/2001; Repealed, 04/12/2010; N, 8/29/2023]

#### **16.34.4.12 [RESERVED]**

[16.34.4.12 NMAC - Rp 16 NMAC 34.4.12, 06/16/2001; Repealed, 07/16/2004]

#### **16.34.4.13 QUALIFIED INSTRUCTORS:**

**A.** An eligible applicant may be issued an instructor license provided he or she submits a transcript for a 1000-hour instructor training course or proof of two years of current and consecutive work experience and passes the instructor licensing examination which can be taken only once for multiple licenses.

**B.** A provisional instructor license will be issued to an eligible applicant who meets the board requirements and has completed three full years of current verified full time work experience as a practitioner in the field in which he/she seeks licensure as an instructor under the following terms and conditions:

**(1)** The work experience must be current to ensure up-to-date knowledge in the field in which the applicant seeks provisional licensure.

**(2)** The provisional license will be effective until the next renewal period of March thirty-one.

(3) The provisional license will only be renewed twice upon completion of the required continuing education in professional development and the required fee as set forth by board rules.

(4) To obtain an instructor license, the holder of a provisional instructor license must complete an examination application and pass the instructor licensing examination. Failing any portion of the instructor examination automatically voids the provisional instructor license. The provisional license must then be returned to the board office.

(5) The holder of a provisional instructor license must sit for the licensing examination prior to the expiration of the provisional license.

(6) No more than fifty percent of the total instructional staff at any licensed school in the state of New Mexico may be licensed under this category. When determining ratios, more than one part-time provisional instructor may be combined to count as one instructor.

[16.34.4.13 NMAC - Rp 16 NMAC 34.4.13, 06/16/2001; A, 10/04/2007; A, 04/12/2010; A, 12/17/2015]

#### **16.34.4.14 STUDENT PERMIT:**

**A.** Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within 15 days of date of registration, the board will issue a student permit and permit number. The student permit authorizes the holder to practice course related skills in an approved school and perform services on the public only after fifteen percent of the required hours for graduation from the course of study are accrued.

**B.** Student permit are valid for 90 days following completion of graduation requirements. The student permit will be issued to the student upon graduation of course of study by a school official and can be used to enter a licensed establishment and provide all services in the applicable course of study under the constant supervision of a licensee of the board, in the applicable course of study. The student permit holder may not assume supervisory or managerial responsibilities of a licensed establishment at any time. The student permit is valid for 90 days while waiting to test. Once the 90 days has expired the student permit must be turned into the state board office and the student must terminate working at the licensed establishment. It is the responsibility of the licensed establishment to monitor the expiration of the student permit. The student permit must be turned into the board with initial licensure application as part of the application process. No extensions will be given after the 90 days has terminated.

**C.** Student permits are the property of the board and must be returned to the board office with the notice of termination or official transcript of credit by the school.

Additional requirements applicable to student permits are found in Paragraph 7 of Subsection A of 16.34.8.13 NMAC of these rules.

**D.** Student permits cannot be used outside a school environment without board approval.

**E.** Student permits are not to be used as a student externship permit as defined in 16.34.8.17 NMAC.

[16.34.4.14 NMAC - Rp 16 NMAC 34.4.14, 06/16/2001; A, 07/16/2004; A, 10/04/2007; A, 04/12/2010; A, 11/14/2010; A, 12/17/2015; A, 07/14/2018]

#### **16.34.4.15 DUPLICATE LICENSES:**

A duplicate license will be issued to any board licensee who submits a written request along with the required fee.

[16.34.4.15 NMAC - Rp 16 NMAC 34.4.15, 06/16/2001; A, 10/04/2007; A, 12/17/2015]

### **PART 5: REGULAR LICENSES**

#### **16.34.5.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.5.1 NMAC - Rp 16 NMAC 34.5.1, 6/16/2001]

#### **16.34.5.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.5.2 NMAC - Rp 16 NMAC 34.5.2, 6/16/2001; A, 07/14/2018]

#### **16.34.5.3 STATUTORY AUTHORITY:**

Sections 61-17A-5, 61-17A-7, 61-17A-8, 61-17A-9, 61-17A-10, 61-17A- 11. 61-17A-12 and 61-17A-15 NMSA 1978 of the Barbers and Cosmetologists Act. The board may provide the standards for the licensure of barbers, cosmetologists, hairstylists, manicurist/pedicurists, estheticians, and electrologists and the licensure of instructors, schools, enterprises and establishments.

[16.34.5.3 NMAC - Rp 16 NMAC 34.5.3, 6/16/2001; A, 07/14/2018]

#### **16.34.5.4 DURATION:**

Permanent.

[16.34.5.4 NMAC - Rp 16 NMAC 34.5.4, 6/16/2001]

**16.34.5.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.5.5 NMAC - Rp 16 NMAC 34.5.5, 6/16/2001]

**16.34.5.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes licensure requirements for all courses of study.

[16.34.5.6 NMAC - Rp 16 NMAC 34.5.6, 6/16/2001]

**16.34.5.7 DEFINITIONS:**

Refer to 16.34.1 NMAC

[16.34.5.7 NMAC - Rp 16 NMAC 34.5.7, 6/16/2001; A, 10/29/2016]

**16.34.5.8 GENERAL LICENSURE REQUIREMENTS:**

**A.** Any person is eligible to be registered as a practitioner and is qualified to receive a license as a registered barber, cosmetologist, hairstylist, manicurist, esthetician, manicurist/esthetician, or electrologist who submits proof that the applicant:

- (1) is at least 17 years of age;
- (2) has completed the course of study for the license in a licensed school within the preceding 12 months; or for a barber license, proof that the applicant has either completed the course of study in a licensed school within the preceding 24 months or has successfully completed a barber apprenticeship program registered by the state apprenticeship agency within the preceding 24 months;
- (3) has paid the required fees as set forth in these rules; and
- (4) has passed the practical and written examination conducted by the board.

**B.** Any person is eligible for initial registration or re-registration as an instructor and is qualified to receive a license as an instructor who submits proof that the applicant has met all the above requirements and in addition:

(1) for barber instructors, has an education equivalent to the completion of four years of high school; and

(2) holds a current license in New Mexico as a practitioner in the field in which the applicant is seeking licensure as an instructor.

(3) Applications are valid for one year from date of receipt.

(4) All application fees are non-refundable.

[16.34.5.8 NMAC - Rp 16 NMAC 34.5.8, 6/16/2001; A, 7/16/2004; A, 12/17/2015; A, 10/29/2016; A, 7/14/2018; A, 12/27/2022; A, 8/29/2023]

#### **16.34.5.9 BARBER LICENSE (1200 HOURS OR EQUIVALENT CREDIT):**

**A.** A barber license permits the practitioner to perform the following services upon the upper part of the human body for cosmetic purposes:

(1) shave or trim beards;

(2) cut and style hair whether by hand or mechanical or electrical apparatus;

(3) curl, wave, permanent wave or chemically relax the hair;

(4) give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;

(5) shampoo, bleach, dye, or apply tonics to the hair;

(6) apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper parts of the body;

(7) care for and service wigs and hairpieces; and

(8) remove superfluous or unwanted hair from the body of a person by any means except electrolysis; and

(9) application of product to eyelashes and eyebrows, including eyelash extensions and lash brow tinting procedures.

**B.** A barber shall not perform any type of nail services without obtaining appropriate licensure.

[16.34.5.9 NMAC - Rp 16 NMAC 34.5.9, 6/16/2001; A, 12/17/2015; A, 8/29/2023]

**16.34.5.10 COSMETOLOGIST LICENSE (1600 HOURS OR EQUIVALENT CREDIT):**

**A.** A cosmetologist license permits the practitioner to:

- (1) cut and style hair whether by hand or mechanical or electrical apparatus;
- (2) braid, natural hair braid, curl, wave, permanent wave or chemically relax the hair;
- (3) give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, including removal of superfluous or unwanted hair except by means of shaving and electrolysis;
- (4) shampoo, bleach, dye, or apply tonics to the hair;
- (5) apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;
- (6) manicure and pedicure the nails of a person and add nail extensions;
- (7) care for and service wigs and hairpieces;
- (8) cut or trim beards with clippers or scissors only; and
- (9) application of product to eyelashes and eyebrows, including eyelash extensions and lash and brow tinging procedures.

**B.** A cosmetologist shall not perform any type of shaving using a straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.

[16.34.5.10 NMAC - Rp 16 NMAC 34.5.10, 6/16/2001; A, 10/4/2007; A, 12/17/2015; A, 8/29/2023]

**16.34.5.11 MANICURIST/PEDICURIST LICENSE (400 HOURS OR EQUIVALENT CREDIT):**

**A.** A manicurist/pedicurist license permits the practitioner to:

- (1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;
- (2) reduce corns or callouses by using softening preparations or abrasion in order to beautify the foot;

(3) use chemical substances on the nails for the purpose of strengthening, repairing, or lengthening the nails using nail tips, wraps, or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;

(4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;

(5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet.

**B.** A manicurist/pedicurist shall not treat an obviously infected ingrown to a nail or use any technique involving mechanical penetration of the skin beneath a callous or corn.

**C.** A manicurist/pedicurist shall not perform any type of temporary or permanent hair removal techniques without first obtaining appropriate licensure.

[16.34.5.11 NMAC - Rp 16 NMAC 34.5.11, 6/16/2001; A, 12/17/2015]

#### **16.34.5.12 ESTHETICIAN LICENSE (600 HOURS OR EQUIVALENT CREDIT):**

**A.** An esthetician license permits the practitioner to:

- (1) use cosmetic preparations on the skin for cleansing and stimulating;
- (2) apply massage and manipulation techniques using the hands or mechanical apparatus;
- (3) apply light therapy, high frequency and other types of facial treatments;
- (4) use specialized skin care and facial machines in applying facial treatments;
- (5) apply cosmetic makeup preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;
- (6) application of product to eyelashes and eyebrows, including eyelash extensions and lash and brow tinting procedures;
- (7) remove superfluous or unwanted hair from the body of a person by any means except electrolysis or other invasive techniques and shaving.

**B.** An esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.

**C.** Using the term or title of "medical esthetician" is not allowable under the act. This term is misleading and could be deemed deceptive or fraudulent.

[16.34.5.12 NMAC - Rp 16 NMAC 34.5.12, 6/16/2001; A, 10/4/2007; A, 8/29/2023]

**16.34.5.13 ELECTROLOGIST LICENSE (600 HOURS OR EQUIVALENT CREDIT):**

An electrologist license permits the licensee to remove from or destroy hair on the human body through the use of electrolysis or any other means of temporary or permanent hair removal. Electrolysis is defined as the decomposition of a chemical compound or body tissues, particularly hair root protein through the use of an electric current applied to the body with an invasive, needle-shaped electrode or probe.

[16.34.5.13 NMAC - Rp 16 NMAC 34.5.13, 6/16/2001]

**16.34.5.14 INSTRUCTOR LICENSE (1000 HOURS OR EQUIVALENT CREDIT):**

**A.** An instructor license permits the instructor to teach only those courses or subjects in which he/she has had practical training and received licensure as a practitioner as follows;

(1) a cosmetologist who obtains a cosmetologist instructor license can teach all phases of cosmetology, esthetics, manicuring/pedicuring and salon business, but cannot teach or supervise shaving.

(2) a barber who obtains a barber instructor license can teach barbering, esthetics and salon business, but cannot teach or supervise manicuring/pedicuring.

(3) a manicurist/pedicurist who obtains a license as a manicuring instructor can teach manicuring/pedicuring and salon business, but cannot teach or supervise other cosmetology or barbering services.

(4) an esthetician who obtains a license as an esthetician instructor can teach esthetics and salon business, but cannot teach or supervise other cosmetology, barbering, manicuring/pedicuring or electrology services.

(5) an electrologist who obtains a license as an electrology instructor can teach electrology and salon business, but cannot teach or supervise, cosmetology, barbering, manicuring or esthetic services.

(6) a manicurist/esthetician who obtains a license as a manicurist/esthetician instructor can teach manicuring/pedicuring, esthetics and salon business, but cannot teach or supervise other cosmetology, barbering, or electrology services.

**B.** Teaching or supervising unauthorized subjects or courses may lead to revocation of the instructor license or other disciplinary action by the board.

[16.34.5.14 NMAC - Rp 16 NMAC 34.5.14, 6/16/2001]

**16.34.5.15 [RESERVED]**

[16.34.5.15 NMAC - Rp 16 NMAC 34.5.15, 6/16/2001; A, 12/17/2015; Repealed, 8/29/2023]

**16.34.5.16 [RESERVED]**

[16.34.5.16 NMAC - N, 12/17/2015; Repealed, 8/29/2023]

**16.34.5.17 HAIRSTYLIST LICENSE (1200 HOURS OR EQUIVALENT):**

**A.** A hairstylist license permits the practitioner to:

(1) cleanse, massage or stimulate the scalp with oils, creams, lotions or other cosmetic or chemical preparations;

(2) apply cosmetic or chemical preparations, antiseptics, powders, oils, clays or lotions to the scalp;

(3) cut, arrange, apply hair extensions to or style the hair by any means;

(4) shampoo, bleach, dye, or apply tonics to the hair;

(5) cleanse, color, lighten, wave or straighten the hair with cosmetic or chemical preparations;

(6) cut or trim beards with clippers or scissors only;

**B.** A hairstylist shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.

[16.34.5.17 - N, 07/14/2018]

**PART 6: LICENSING BY RECIPROCITY: CREDIT FOR OUT-OF-STATE TRAINING**

**16.34.6.1 ISSUING AGENCY:**

New Mexico Board of Barbers and Cosmetologists.

[16.34.6.1 NMAC - Rp 16.34.6.1 NMAC, 12/27/2022]

**16.34.6.2 SCOPE:**

The provisions in Part 6 of Chapter 34 apply to all applicants for expedited licensure.

[16.34.6.2 NMAC - Rp, 16.34.6.2 NMAC, 12/27/2022]

### **16.34.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Barbers and Cosmetologists Act, Sections 61-17A-1 to -25 NMSA 1978.

[16.34.6.3 NMAC - Rp, 16.34.6.3 NMAC, 12/27/2022]

### **16.34.6.4 DURATION:**

Permanent.

[16.34.6.4 NMAC - Rp, 16.34.6.4 NMAC, 12/27/2022]

### **16.34.6.5 EFFECTIVE DATE:**

December 27, 2022, unless a later date is cited at the end of a section.

[16.34.6.5 NMAC - Rp, 16.34.6.5 NMAC, 12/27/2022]

### **16.34.6.6 OBJECTIVE:**

The objective of Part 6 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.34.6.6 NMAC - Rp, 16.34.6.6 NMAC, 12/27/2022]

### **16.34.6.7 DEFINITIONS:**

**A. "Licensing jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978:

**B. "Expedited license"** has the same meaning as defined in Subsection C of Section 61-1-2 NMSA 1978.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**E. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**G. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.34.6.7 NMAC - Rp, 16.34.6.7 NMAC, N, 12/27/2022; A, 08/29/2023]

#### **16.34.6.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS:**

**A. Barber License:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a barber under Section 61-17A-17 of the Barbers and Cosmetologists Act:

(1) Florida, New Jersey, New York, Oregon, and the U.S. Virgin Islands, on the grounds that the education and/or training requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) American Samoa and the Northern Mariana Islands, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

**B. Cosmetologist license:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a cosmetologist under Section 61-17A-17 of the Barbers and Cosmetologists Act:

(1) California, Florida, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, and Puerto Rico on the grounds that the education and/or training requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) Alaska and the Northern Mariana Islands, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

(3) American Samoa, on the grounds that this jurisdiction will license applicants with a license from any U.S. state.

**C. Manicurist/pedicurist license:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a manicurist/pedicurist under Section 61-17A-17 of the Barbers and Cosmetologists Act:

(1) Alaska, Connecticut, Florida, Maine, Maryland, Massachusetts, Ohio, Oregon, Pennsylvania, and Virginia, on the grounds that the education and/or training requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) American Samoa, Northern Mariana Islands, and Puerto Rico, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

**D. Esthetician license:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as an esthetician under Section 61-17A-17 of the Barbers and Cosmetologists Act:

(1) Alaska, Florida, Massachusetts, Michigan, Oregon, Pennsylvania, South Carolina, and Wisconsin, on the grounds that the education and/or training requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) American Samoa, the Northern Mariana Islands, and Puerto Rico, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

**E. Electrologist license:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as an electrologist under Section 61-17A-17 of the Barbers and Cosmetologists Act:

(1) American Samoa, Alabama, Alaska, Arizona, Colorado, Georgia, Kentucky, Minnesota, Mississippi, Missouri, New York, the Northern Mariana Islands, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Virginia, Washington, West Virginia, and Wyoming, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

(2) Guam, on the grounds that this jurisdiction will license applicants from a jurisdiction that allows estheticians to practice without regulation.

**F. Instructor license:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as an instructor under Section 61-17A-17 of the Barbers and Cosmetologists Act:

(1) Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia,

and Wyoming, on the grounds that the education and/or training requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, on the grounds that licensure requirements, if any, cannot be determined.

**G. Hairstylist license:** Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as an esthetician under Section 61-17A-17 of the Barbers and Cosmetologists Act: Alabama, American Samoa, Arkansas, California, Delaware, District of Columbia, Florida, Guam, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Marina Islands, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Vermont, Virginia, and Wisconsin, on the grounds that these jurisdictions do not license this profession.

[16.34.6.8 NMAC - Rp, 16.34.6.8 NMAC, 12/27/2022]

#### **16.34.6.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

**[RESERVED]**

[16.34.6.9 NMAC - Repealed, 12/27/2022]

#### **16.34.6.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing in an eligible jurisdiction as defined in these rules; and
- (3) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-17A-21 NMSA 1978:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.34.6.10 NMAC - Rp, 16.34.6.10 NMAC, 12/27/2022]

**16.34.6.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

(1) A completed and signed application form;

(2) Proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and

(3) Submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-17A-21 NMSA 1978:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.34.6.11 NMAC - Rp, 16.34.6.11 NMAC, 12/27/2022]

#### **16.34.6.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board. Initial licenses, including expedited licenses, may be issued for a period greater than twelve months, but less than twenty-four months, in order to align the license expiration date with the board's renewal cycle.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, upon renewal, the licensee shall be required to pass the practical and written examination conducted by the board as a prerequisite to license renewal.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

**D.** Licensees who have not completed a course of study equivalent to the requirements for regular licensure may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience shall be equivalent to 150 hours of training. Work experience less than six full months will not be considered toward training hours.

[16.34.6.12 NMAC - Rp, 16.34.6.12 NMAC, N, 12/27/2022; A, 08/29/2023]

## **PART 7: ESTABLISHMENTS AND ENTERPRISES**

### **16.34.7.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.7.1 NMAC - Rp 16 NMAC 34.7.1, 6/16/2001]

### **16.34.7.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.7.2 NMAC - Rp 16 NMAC 34.7.2, 06/16/2001; A, 07/14/2018]

### **16.34.7.3 STATUTORY AUTHORITY:**

Sections 61-17A-15, 61-17A-18 and 61-17A-19 of the Barbers and Cosmetologists Act. This authorizes the board to develop establishment standards and issue a license to establishments, enterprises and clinics that are in compliance with all requirements established by the board.

[16.34.7.3 NMAC - Rp 16 NMAC 34.7.3, 06/16/2001]

### **16.34.7.4 DURATION:**

Permanent.

[16.34.7.4 NMAC - Rp 16 NMAC 34.7.4, 06/16/2001]

### **16.34.7.5 EFFECTIVE DATE:**

June 16, 2001 unless a different date is cited in the history note at the end of a section.

[16.34.7.5 NMAC - Rp 16 NMAC 34.7.5, 06/16/2001]

### **16.34.7.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part outlines establishment and outreach enterprise requirements.

[16.34.7.6 NMAC - Rp 16 NMAC 34.7.6, 06/16/2001]

### **16.34.7.7 DEFINITIONS:**

The following definitions are recommended infection control standards used for cleaning (sanitizing), disinfecting, and sterilization:

**A.** "clean or cleansing" means washing with liquid soap and water, detergent, antiseptics, or other adequate methods to removal all visible debris or residue. Cleansing is not disinfection.

**B.** "disinfect or disinfection" means the use of chemical agents (after cleaning) to destroy potentially dangerous pathogens on non-porous items;

**C.** "disinfectant" means an EPA-registered bactericidal, fungicidal and virucidal chemical effective against pathogens of concern when used as directed on the manufacturer's label. For purposes of this rule alcohol and UV light boxes are not approved for disinfection.

**D.** "proper use of EPA-registered bactericidal, fungicidal and virucidal disinfectants" means disinfecting using the following:

**(1)** implements and surfaces shall first be thoroughly cleaned of all visible debris prior to disinfection. EPA-registered bactericidal, fungicidal and virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates;

**(2)** some disinfectants may be sprayed on instruments, tools, or equipment to be disinfected;

**(3)** disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled; and

**(4)** these chemicals are harsh and may affect the long term use of scissors and other sharp objects. Leaving items in solution in accordance with manufacturers' recommendation for effective disinfection is recommended.

**E.** "multi-use" means non-porous instruments, items, equipment, implements or tools that must be cleaned and disinfected. The items must be disinfected by a complete immersion in an EPA-registered, bactericidal, fungicidal and virucidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

**F.** "laundering" means to wash in washing machine with detergent, dried and hot to the touch, kept in enclosed container or cabinet;

**G.** "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

**H.** "single use items" means tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, and porous files, etc.) shall be disposed of immediately after use;

**I.** "sterilize or sterilization" means to eliminate all forms of bacteria or other microorganisms.

[16.34.7.1 NMAC - Rp 16 NMAC 34.7.1, 06/16/2001; A, 12/17/2015]

### **16.34.7.8 APPLICATION AND REQUIREMENTS FOR ENTERPRISE OR ESTABLISHMENT LICENSE:**

**A.** A completed official application for an enterprise or establishment license must be filed with the board at least fifteen days prior to the expected opening of the enterprise or establishment: Applications must include the required fee in the form of a money order, cashier's check, business check or credit card for on-line transactions, (no personal checks will be accepted). Applications must include:

- (1) a copy of the owner's business license must accompany initial application;
- (2) a list of all booth renters working in the establishment (if applicable);
- (3) all fees are non-refundable;
- (4) incomplete applications will be returned; and
- (5) electronic signatures will be acceptable for applications submitted pursuant to 16.34.1 NMAC through 16.34.16 NMAC.

**B.** The application, if complete, may be administratively approved. A formal inspection of the enterprise, outreach enterprise unit or establishment shall take place after the issuance of the license.

**C.** When an enterprise or establishment relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the administrative fee.

**D.** If any portion of the establishment is completely segregated from the primary area, a duplicate establishment license must be acquired and posted in the separate area. A duplicate license fee will be assessed.

**E.** All enterprise and establishment licenses must be renewed each year on the last day of the month of original issue date.

**F.** Official enterprise or establishment license must be displayed where visible to the public upon entry to the establishment;

**G.** The most recent inspection report shall be printed and posted in each establishment where visible to the public within 72 hours of the inspection. It is the responsibility of the licensee that signed the inspection report and the owner to ensure this requirement is met.

**H.** The following information shall be kept on file on the premises of an enterprise or establishment and available for inspection by the board:

(1) the full names of all employees in the enterprise or establishment and their exact duties;

(2) the name and address of enterprise or establishment owner;

(3) a complete description of all services performed;

(4) implementation of proper program of identification of products during use and in storage to avoid confusion as to products or their ingredients; such program shall include efforts to ensure that ingredient information provided by manufacturers or distributors remains available with the product for use by licensed professionals and clients.

(5) safety data sheet (SDS) must be current. A file containing pertinent information regarding products. Hard copies **MUST** be available. Computer based storage or access may only be used when all employees have access at all hours;

(6) a copy or access to the New Mexico board of barbers and cosmetologists statutes and rules;

(7) a site specific OSHA exposure control plan;

(8) if a pedicure tub is maintained on the premises, a log is maintained by the salon showing the legible signature, license number of the person disinfecting pedicure tub as defined in 16.34.7.9 NMAC. The time and date of the disinfection process and the name of the disinfectant used. Log entries must be maintained on the salon premises for 12 months; and

(9) as defined in 16.34.7.9 NMAC a log of each autoclave use must be maintained showing all testing samples and results, and a maintenance log of all maintenance performed according to the manufacturer's directions. The salon must retain the most recent twelve months of the log at the salon for review by the board;

I. Each establishment licensed by the board shall post a sign at the main entrance, which indicates the type of business being performed.

J. Proper signage must indicate the type of services offered.

K. If establishment is attached to a residence, it shall have a separate entrance. Permission from the county or city is required prior to submittal of application.

L. Each mobile outreach unit shall post a sign indicating the type of business being performed. The outreach enterprise license will be maintained at its business address. Each mobile outreach unit shall carry and have posted a duplicate enterprise license assigned to that unit.

M. Any establishment or mobile outreach enterprise unit licensed by the board may not be used for living or sleeping quarters or in any way for residential purposes. If an establishment is located in a private residence, a segregated area must be provided for the licensed activity and maintenance of proper water supply and toilet standards to ensure proper infection control and safety standards. Reasonable access to a restroom must be provided by the establishment or mobile outreach enterprise unit.

N. Except as provided in these rules, no services authorized under this act may be provided away from a licensed establishment. Services authorized under this act may be provided in mobile outreach units only as specified in these rules.

O. Any licensee performing services in a mobile outreach unit must carry a current duplicate license at all times. The licensee must show the client the license upon request.

P. Each outreach enterprise mobile unit will be equipped with or have available a cellular phone or other communication capability necessary for immediate access or prompt response.

Q. Each outreach enterprise mobile unit must have signage on at least two sides for identification information in letters no smaller than five inches.

R. Outreach enterprise mobile units shall be used for the sole purpose stated in 16.34.1 NMAC of these rules.

[16.34.7.8 NMAC - Rp 16 NMAC 34.7.8, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

#### **16.34.7.9 INFECTION CONTROL & SAFETY STANDARDS FOR ESTABLISHMENTS AND ENTERPRISES:**

A. All licensees who operate enterprise or establishments, including outreach mobile units must comply with the following minimum infection control and safety standards. Failure to comply with these requirements may result in an administrative

fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

**(1)** maintenance of adequate ventilation to ensure that occupants are not improperly exposed to hazardous products or chemicals;

**(2)** maintenance of smoking restriction to ensure that products or chemicals used are not inadvertently ignited;

**(3)** maintenance of spill standards to ensure that occupants are not improperly exposed to any product or chemical;

**(4)** maintenance of hot and cold running water available in an operable manner to perform professional services in a safe and sanitary manner while serving the public;

**(5)** all establishments shall be completely separated by solid partitions, or by walls where food is prepared should be enclosed and away from public areas;

**(6)** rest rooms of establishments must be in working order and have ceiling high partitions from the rest of the establishment or common area;

**(7)** hours of operation shall be posted where clearly visible to the public at all times;

**(8)** each establishment must have signs stating;

**(a)** only "disinfected tools or new disposable supplies" may be used on clients; and

**(b)** "single use" instruments, items and supplies must be discarded after each use.

**(9)** most recent inspection report shall be posted where clearly visible to the public upon entry to the establishment;

**(10)** each establishment owner/manager must print the inspection report within 72 hours of inspection and post the inspection in a conspicuous place;

**(11)** maintenance of all equipment in safe working condition;

**(12)** compliance with local licensing, fire, building, health, ventilation, heating and safety requirements;

**(13)** floors, walls, and other fixtures must be kept reasonably clean at all times;

**(14)** floors shall be thoroughly cleaned each day;

**(15)** hair cuttings must be swept up and deposited in a closed receptacle after each haircut;

**(16)** trash containers must be emptied daily and kept clean by washing or using plastic liners;

**(17)** it is the responsibility of all licensees, including the salon owner and the designated licensed salon manager to ensure that all infection control requirements are followed;

**(18)** implementation of proper component mixing practices to reduce the risk of undesired reactions;

**(19)** maintenance of safety data sheets containing pertinent facts regarding products;

**(20)** implementation of proper storage practices to ensure that products are maintained in the manner that prevents any risk of fire or of undesired reactions;

**(21)** implementation of proper disinfection practices of working tools and implements; all

non-porous (multi-use) items must be cleaned and then disinfected per procedure listed in Subsection B. of 16.34.7.9 NMAC;

**(22)** sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of filled contaminated waste containers on-site shall not exceed 90 days; containers shall be stored as far away as possible from autoclave/clean instruments. Establishment shall maintain records of waste removal;

**(23)** use of an autoclave requires monthly spore tests. Autoclaves and autoclave packaging of tools are prohibited unless regular (at least once per month but not more than 30 days between tests) spore tests are performed by a contracted laboratory. If a positive spore test is received, the autoclave may not be used until a negative spore result is received;

**(24)** each establishment must maintain a log of each autoclave use, all testing samples and results, and a maintenance log of all maintenance performed according to the manufacturer's directions. The salon must retain the most recent twelve months of the log at the salon for review by the board;

**(25)** there shall be adequate disinfectants in your place of business to perform all scheduled services for two business days;

**(26)** adherence to the product manufacturer's directions for safe use that appear on the product labeling; including proper mixing, replacement of solution, contact time and disposal;

**(27)** disinfectant solutions must be made daily, and disposed of at the end of the day or immediately if visible debris is present;

**(28)** if concentrated disinfectants must be diluted with water, measuring devices must be readily available and used to ensure an effective solution is made;

**(29)** all products and chemicals not in the original container must be kept in closed and legibly labeled container with name of product, product description (disinfectant) and manufacturer's name;

**(30)** disinfected implements must be stored in a disinfected, dry, covered container and be isolated from contaminants. At no time can these items come into contact with used/dirty items;

**(31)** all multi-use implements must be kept in covered, marked, separate containers (dirty or disinfected);

**(32)** maintain disinfected combs, brushes and implements in enclosed containers marked as "ready for use";

**(33)** maintain dirty or used combs, brushes and implements in enclosed containers marked "not ready for use";

**(34)** towel warmers must be disinfected daily. Salons using hot steamed towels in services must meet the following requirements:

**(a)** all towels, linens, sheets, robes and other linens must be laundered after each use, dried and hot to the touch, and be kept in enclosed container or cabinet;

**(b)** towels must be washed with detergent, (properly diluted), and dried on "hot";

**(c)** practitioners preparing towels for the warmers must first wash their hands or wear gloves;

**(d)** wet towels used in services must be prepared fresh each day. At the end of the day, unused steamed towels must be removed and laundered;

**(e)** clean towels, sheets, robes and other linens must be used for each client;

**(f)** the use of paper or disposable towels, linens, etc. shall be disposed of after each use; and

**(g)** a new, disposable neck strip must be used for each client or a freshly laundered unused towel be placed between chair cloth/shampoo cape and person's skin. The chair cloth and shampoo cape must not have direct contact with client's skin.

**(35)** filters and drains of pedicure basins must be cleaned and disinfected after each use with an EPA hospital grade disinfectant. Immediately after each service, the practitioner must follow steps listed below:

**(a)** dirty water is drained, and any visible debris is removed;

**(b)** all removable filter screens, inlet jets, footplates, impeller assemblies, and other parts are removed and debris eliminated before scrubbing with a disinfected brush and detergent and water;

**(c)** the tub basin is scrubbed with detergent and water, and rinsed with water, and drained;

**(d)** removable parts are replaced;

**(e)** the basin or tub is filled with clean water and an EPA-registered hospital level disinfectant is added following the manufacturer's directions;

**(f)** if the pedicure tub is electrical, the fan or pump must be turned on and the unit operated for the entire contact time; and

**(g)** after the contact time is complete, the disinfectant must be drained, and the tub rinsed with clean water.

**(36)** pedicure tub liners are single use items and must be disposed of immediately after use;

**(37)** pedicure basins shall be disinfected between clients, at the end of the day, and deep disinfection once weekly; and

**(38)** a log is maintained by the salon showing the legible signature, license number of the person disinfecting the tub, the time and date of the disinfection process and the name of the disinfectant used. Log entries must be maintained on the salon premises for 12 months.

**(39)** Eyebrow thread is a single use item and must be disposed of immediately after use.

**B.** Cleaning and disinfection:

**(1)** all single-use instruments, items, tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: eyebrow thread, disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, toe separators, porous files and porous buffers, etc.) shall be disposed of immediately after use;

**(2)** prior to use on any client, all multi-use (non-porous) instruments, items, equipment, implements or tools must be cleaned and disinfected. Items must be cleaned with soap and warm water or a chemical cleaner. The items must then be disinfected by a complete immersion in an EPA-registered, bactericidal, fungicidal and virucidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

**(3)** before disinfecting any surface or item, any visible debris and disposable parts must be removed. After cleaning, all surfaces of non-porous, multi-use tool or implement, including handles, must be disinfected by fully submerging the item in disinfectant in a covered container for the full amount of contact time listed on the manufacturer's label;

**(4)** implements and surfaces shall first be thoroughly cleaned of all visible debris prior to disinfection. EPA-registered bactericidal, fungicidal and virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates;

**(5)** EPA-registered bactericidal, fungicidal and virucidal disinfectants shall be used as follows:

**(a)** some disinfectants may be sprayed on the instruments, tools, or equipment to be disinfected;

**(b)** disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled; and

**(c)** these chemicals are harsh and may affect the long term use of scissors and other sharp objects. Leaving items in solution in accordance with manufacturers' recommendation for effective disinfection is recommended.

**(6)** head rests, hand rests, pedicure basins, foot rests, manicure tables and other fixtures that come in contact with licensees and the public shall be cleaned and disinfected prior to use for each client;

**(7)** cups, bowls, basins, and jars must be cleaned and disinfected prior to use on each client;

**(8)** after each client, the implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal and virucidal disinfectant. Equipment, implements, tools, and materials to be cleaned and disinfected include, but are not limited to: combs and picks, haircutting shears, thinning shears/texturizers, edgers, guards, perm rods;

**(9)** items MUST stay immersed or visibly moist with disinfectant for the entire contact time listed on the manufacturer's label to be effective;

**(10)** whether or not disposable, the following must be replaced with clean or new (including, but not limited to) towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas);

**(11)** items that may not be immersed can be sprayed or wiped with disinfectant sprays and wipes that are bactericidal, fungicidal and virucidal (EPA-registered disinfectants) and must remain visibly moist for contact time indicate on the product label:

**(a)** metal guards, clipper blades, drill bits, high frequency waxes, and other removable parts must be removed. All product residue, hair skin debris, nail dust, other visible debris must be brushed or wiped off, and the removable part must be disinfected with an EPA-registered, hospital level disinfectant spray or wipe after each use. The surfaces must remain wet with the spray or wipe disinfectant for the contact time listed on the disinfectant label; and

**(b)** electric clippers, nail drills, flat irons, blow dryers, glass or metal electrodes, esthetic machines, steamers, or other electric or electronic tools must be cleaned and disinfected after each use, including the body and handle.

**(12)** clipper wash designed as cleaner, not as disinfectant, unless specified as disinfectant on label;

**(13)** all disinfectant solution must be changed per the manufacturer's label or sooner if contaminated;

**(14)** all products must be wiped clean and the exterior disinfected with a disinfectant wipe at the end of the day;

**(15)** all fluids, semi-fluids, creams, waxes, and powders must be kept in clean covered containers with a solid cover, and must be dispensed in a manner which prevents contamination of the unused supply;

**(16)** products in tubs must be removed with disposable or disinfected spatulas, and fingers may never be used;

**(17)** products removed from container must not be returned to the container and must be used or discarded;

**(18)** containers must be wiped cleaned and the exterior disinfected with a disinfectant wipe at the end of the day;

**(19)** wax pots must be kept covered and the exterior cleaned daily;

**(a)** if debris is found in the wax pot, or if the wax has been contaminated by contact with skin;

**(b)** unclean applicators, or double dipping, the wax pot must be emptied, the wax discarded, and the pot must be disinfected;

**(c)** disposable spatulas and wooden sticks may be dipped into the wax only once and then discarded without using the other end;

**(d)** applicators may be dipped only once into the wax unless the wax is a single-service item and unused wax is discarded after each service; and

**(e)** any surface touched by a used wax stick must be disinfected immediately after the service.

**(20)** paraffin warmers must be kept covered, the exterior cleaned daily, and the wax must be debris free. Cannot go back into paraffin tub;

**(21)** a new waxing stick must be used for each wax application; no double-dipping;

**(22)** all licensees must provide a suitable place equipped to give adequate service, as advertised to clients, subject to inspection by the board;

**(23)** practitioners shall wash their hands with liquid soap, or use a liquid hand sanitizer, prior to performing any services on a client. Thoroughly wash hands and the exposed portion of arms with soap and water before providing services to each client after smoking, drinking, eating and using the restroom; and

**(24)** proper use of protective devices when so indicated by the product manufacturer's direction for safe use or when the nature of the product indicates such protection is necessary.

**C.** Blood exposure procedure:

**(1)** If a blood exposure should occur, the following steps must be followed:

**(a)** when possible injured party should go to a sink and rinse injury with running water and "milk" the injury if possible to remove any bacteria that may have entered the wound;

**(b)** supply injured party with antiseptic or single use packet of antibacterial ointment and the appropriate dressing to cover the injury; and

**(c)** bag all blood-soiled (contaminated) porous articles and dispose of in trash. Immediately wash and disinfect all non-porous items (do not continue service with these items). This is the responsibility of the licensee.

**(2)** If the client is injured, the following steps must be followed:

**(a)** stop service;

**(b)** protection - put on gloves;

**(c)** clean injured area;

**(d)** apply antiseptic;

**(e)** cover the injury with the appropriate dressing to prevent further blood exposure;

**(f)** bag and dispose of all contaminated single use items;

**(g)** clean and disinfect any implements or surfaces contaminated;

**(h)** clean hands; and

**(i)** return to service.

**(3)** disinfect all non-porous items (do not continue service with these items).

**(4)** do not allow containers, brushes, nozzles or liquid styptic container to touch the skin or contact the wound. Use a disposable applicator (never use styptic pencil unless specified for single use).

#### **D. Prohibitions:**

**(1)** licensees shall not use any product in providing a service authorized under the Act that is banned or deemed to be poisonous or unsafe by the United States food and drug administration (FDA) or other local, state, or federal governmental agencies responsible for making such determination;

**(2)** possession or storage on licensed premises of any item banned or deemed to be poisonous or unsafe by the FDA or governmental agency shall be considered *prima facie* evidence of its use;

**(3)** for the purpose of performing services under the Act, no licensee shall buy, sell, or use, or apply to any person liquid monomeric methyl methacrylate (MMA);

**(4)** the use, storage or dispensing of such beauty service products containing methyl methacrylate (MMA) or other chemicals determined to be hazardous to the health of licensees or consumers by the board of any federal, state or local health agency, shall be prohibited:

**(a)** fumigants, formalin (formaldehyde) tablets or formalin liquids;

**(b)** roll on wax is prohibited;

**(c)** UV light boxes;

**(d)** autoclaves and autoclave packaging of tools are prohibited unless regular (at least once per month but not more than 30 days between tests) spore tests are performed by a contracted laboratory. If a positive spore test is received, the autoclave may not be used until a negative spore result is received;

**(e)** practitioners must not use tools or implements provided by customers unless the practitioner first cleans and disinfects the tool or implement;

**(f)** prohibited tools must not be used even if supplied by the customer;

**(g)** salons must not store tools or implements in boxes for customers;

**(h)** licensees may not perform services on the public while under the influence of alcohol or drugs;

**(i)** alcohol cannot be served at any establishment without proper license;

**(j)** procedures performed by any means, by hand, chemical, mechanical, or electrical apparatus or appliance which comes into contact with or penetrates into the dermal layer of the skin is considered invasive;

**(k)** the use of any product or preparation that comes into contact with or penetrates the dermis layer of the skin;

**(l)** no establishment or school shall use of any razor-edged device or tool; to include but not limited to credo blades, callus shavers, rasps, graters or other tools for the purpose of removing skin or calluses that could cause an open flesh wound;

**(m)** no animals in establishments or mobile units unless it is a qualified service animal in accordance with the Service Animal Act, Sections 28-11-1.1 to .6 NMSA 1978; and

**(n)** live fish, leeches, snails, and other living creatures may not be used in any cosmetic service.

[16.34.7.9 NMAC - Rp 16 NMAC 34.7.9, 06/16/2001; A, 07/16/2004; A, 10/4/2007; A, 12/17/2015; A, 07/14/2018]

#### **16.34.7.10 CHANGES OF OWNERSHIP:**

**A.** An establishment or enterprise license is nontransferable.

**B.** A change of ownership or control is any action by which a person or corporation obtains authority to control the actions of an enterprise or establishment. These actions may include, but are not limited to:

- (1)** the transfer of the controlling interest of stock of an enterprise or establishment to its parent corporation;
- (2)** the merger of two or more enterprises or establishments;
- (3)** the division of enterprise or establishment into two or more enterprises or establishments;
- (4)** the transfer of the assets or liabilities of an enterprise or establishment to its parent corporation;
- (5)** the acquisition by an individual of the controlling interest of an enterprise or establishment, whether a proprietorship, partnership or corporation;
- (6)** the sale of an enterprise or establishment;
- (7)** the lease of or right to do business as an enterprise or establishment.

**C.** If ownership or legal control of a licensed enterprise or establishment changes, the new owner, lessee or other legally responsible party must submit a new application as defined in Subsection A. of 16.34.7.8 NMAC and secure a new license from the board.

**D.** If legal control of an enterprise or establishment does not change, but the organization of the ownership does change (e.g. a sole proprietor becomes the sole stock holder of a corporation which owns the enterprise or establishment), the board must receive notarized proof of such change within thirty days of such change.

[16.34.7.10 NMAC - Rp 16 NMAC 34.7.10, 06/16/2001; A, 12/17/2015]

**16.34.7.11 SUPERVISION OF LICENSED PRACTICE:**

**A.** Any enterprise or establishment licensed by the board must be under the immediate supervision of a board licensee while licensed activity is being practiced therein.

**B.** The supervising licensee must be licensed in ALL aspects of the licensed activity being practiced in the enterprise or establishment during the time he/she is in charge, (e.g. a licensed manicurist cannot supervise a barber shop or beauty salon unless he/she also holds a barber or cosmetology license respectively).

**C.** The enterprise or establishment owner or manager must appoint a licensee to act on their behalf in their absence. The holder of a temporary license may not act as a supervisor of any enterprise or establishment.

[16.34.7.11 NMAC - Rp 16 NMAC 34.7.11, 06-16-01]

**16.34.7.12 PRACTICE IN UNLICENSED ENTERPRISES OR ESTABLISHMENTS:**

**A.** The practices, rendering, or offering of licensed activities for compensation in an unlicensed enterprise or establishment is prohibited. It shall constitute malpractice within the meaning of section 61-17A-21 NMSA 1978 of the Barbers and Cosmetologists Act for an individual licensed under the act to provide or offer to provide for compensation any service in an unlicensed enterprise or establishment unless otherwise authorized by the act or these rules.

**B.** Before a licensee begins to work in an enterprise or establishment required to be licensed under the act, the licensee shall ask to see the enterprise or establishment license. The licensee shall not provide or offer to provide any licensed activity in any enterprise or establishment until the licensee actually has seen a valid, current enterprise or establishment license.

**C.** The licensee shall notify the board if he or she is not shown a valid, current enterprise or establishment license for the enterprise or establishment promptly upon request.

[16.34.7.12 NMAC - Rp 16 NMAC 34.7.12, 06/16/2001]

**16.34.7.13 [RESERVED]**

[16.34.7.13 NMAC - Rp 16 NMAC 34.7.13, 6/16/2001; Repealed, 8/29/2023]

**16.34.7.14 SPECIAL EVENTS PERMIT:**

Any licensee desiring to sponsor a special event such as a fund-raiser, garage sale, telethon, etc. that will not be conducted at the licensed establishment, must first obtain approval from the board office. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board office must be submitted at least ten days prior to the event. Approval for the special events may be made administratively.

[16.34.7.14 NMAC - Rp 16 NMAC 34.7.14, 06/16/2001]

## **PART 8: SCHOOLS**

### **16.34.8.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.8.1 NMAC - Rp 16 NMAC 34.8.1, 06/16/2001]

### **16.34.8.2 SCOPE:**

All barber, cosmetology, hairstylist, esthetician, manicurist/pedicurist, manicurist/esthetician, instructor, electrology schools and all students of barbering, cosmetology, hairstylist, esthetician, manicurist/pedicurist, manicurist/esthetician, instructor and electrology.

[16.34.8.2 NMAC - Rp 16 NMAC 34.8.2, 06/16/2001; A, 07/14/2018]

### **16.34.8.3 STATUTORY AUTHORITY:**

Sections 61-17A-12, 61-17A-18 and 61-17A-19 of the Barbers and Cosmetologists Act. This authorizes the board to establish requirements for opening, relocating, school name change for barber, cosmetology, electrology and specialty schools.

[16.34.8.3 NMAC - Rp 16 NMAC 34.8.3, 06/16/2001]

### **16.34.8.4 DURATION:**

Permanent.

[16.34.8.4 NMAC - Rp 16 NMAC 34.8.4, 06/16/2001]

### **16.34.8.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.8.5 NMAC - Rp 16 NMAC 34.8.5, 06/16/2001]

#### **16.34.8.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes the standards for opening, relocating and name change for schools governed by the act.

[16.34.8.6 NMAC - Rp 16 NMAC 34.8.6, 06/16/2001]

#### **16.34.8.7 DEFINITIONS:**

Refer to Part 1

[16.34.8.7 NMAC - Rp 16 NMAC 34.8.7, 06/16/2001]

#### **16.34.8.8 APPLICATION FOR OPENING, RELOCATING, CHANGING NAME OF A SCHOOL:**

**A.** A school license is nontransferable.

**B.** A change of ownership or control is any action by which a person or corporation obtains authority to control the actions of an institution. These actions may include, but are not limited to:

(1) the transfer of the controlling interest of stock of an institution to its parent corporation.

(2) the merger of two or more institutions;

(3) the division of an institution into two or more enterprises or establishments;

(4) the transfer of the assets or liabilities of an institution to its parent corporation;

(5) the acquisition by an individual of the controlling interest of an institution, whether a proprietorship, partnership or corporation;

(6) the sale of an institution; or

(7) the lease of or right to do business as an institution.

**C.** If ownership or legal control of a licensed school changes, the new owner, lessee or other legally responsible party must submit a new application and secure a new license from the board.

**D.** If legal control of a school does not change, but the organization of ownership does change (e.g. a sole proprietor becomes the sole stockholder of a corporation

which owns the school), the board must receive notarized proof of such change within 30 days of such change.

**E.** A completed application to open, change ownership or relocate a school authorized under this act must be filed with the board. An application to open a school, change ownership or relocate or change the name of a school filed by a currently licensed school owner must be filed at least 15 days in advance of the expected date of change.

**(1)** Applications must be on official forms approved by the board and must include the appropriate fee.

**(2)** Applicants to open, change ownership or relocate a school must demonstrate that the school is financially responsible and the school has sufficient resources to ensure against precipitous closure. Applicants shall provide at least the following information: evidence of ownership; corporate or business status; identity and address of owners, partners, shareholders, and directors; copies of articles of incorporation and by-laws, if applicable; evidence of financial responsibility, including compiled financial statement and balance sheet indicating assets and liabilities; a corporate surety bond or terminates a program prior to the completion of a student's contract with the school; disclosure of the filing within the last seven years of bankruptcy of owner(s), partner(s), or director(s); and the identity of two business or financial references.

**(3)** An owner(s), partner(s), or director(s) of a school applicant must sign a release directed to financial institutions authorizing the disclosure of financial information and shall disclose loan history.

**(4)** An owner(s), partner(s), or director(s) of a school applicant will be required to disclose civil actions brought within 10 years of the date of the application against an owner(s), partner(s), or director(s) for or involving nonpayment of debt, fraud, or misrepresentation and the disposition of such action(s).

**(5)** An owner(s), partner(s), or director(s) of a school applicant will be required to disclose any arrest or conviction within the ten years of the date of the application for fraud, larceny, embezzlement, or any crime involving stealing, taking, theft, robbery, or unlawful appropriation of money or anything of value that belongs to another and the disposition of such action(s).

**(6)** A school is not financially responsible if an owner(s), partner(s), or director(s) is not making payments in accordance with an agreement, judgment, or debt obligation, or if an owner(s), partner(s), or director(s) has been convicted of felony involving a crime described in Paragraph 5 of Subsection E of 16.34.8.8 NMAC and that owner(s), partner(s), or director(s) is not sufficiently rehabilitated as provided in the Criminal Offender Employment Act, Section 28-2-1 through 28-2-6 NMSA 1978.

**(7)** In the case of a change of ownership of a school, the school establishment license of the prior owner does not expire for 30 days after the date of sale providing it is a current and valid license. In order to ensure continued training for students, the new owner may operate under the prior license until the earlier of the 30-day expiration date of the prior license or obtaining the new school establishment license.

**(8)** In case of a change of ownership of a school, the new school shall submit a student roster of all students enrolled at the time of the change which lists for each student the name, the date of birth, the social security number, course enrolled, the course beginning date and the student permit. The school shall submit the student roster to the board within 30 days of the change of ownership.

**F.** The application, if complete, may be administratively approved. A formal inspection of the establishment shall occur within 90 days of opening. Incomplete applications without proper and complete supporting documents will be returned.

**G.** When a school relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the school relocation fee.

**H.** If any portion of the school is completely segregated from the primary area, a duplicate school license must be acquired and posted in the separate area. A duplicate license fee will be assessed. The school must also comply with 16.34.8.12 NMAC, expansion campus facility requirements.

**I.** All school licenses must be renewed on March 31 of each year.

**J.** Each school licensed by the board shall post a current copy of the statutes and rules and regulations and the most recent inspection report in an area where clearly visible to the public.

**K.** Each school licensed by the board shall post an exterior sign which indicates the facility houses a school.

[16.34.8.8 NMAC - Rp 16 NMAC 34.8.8, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

#### **16.34.8.9 GENERAL REQUIREMENTS:**

**A.** Schools may not permit its students to perform any laboratory services on the public under any circumstances until the student has accrued fifteen percent of the total hours required within the course.

**B.** Schools shall display in a conspicuous place within the reception or clinic area of the school a sign which indicates that all services are performed by supervised students.

**C.** Schools shall not pay compensation to any of its students, either directly or indirectly.

**D.** Instructors or student instructors shall not be permitted to perform services on the public other than that part of the practical work which pertains directly to the teaching or demonstration of subjects included in the curriculum.

**E.** Schools shall provide both theory instruction and practical skills training in all subjects applicable to the course of study according to the curriculum prescribed by the board.

**F.** Schools shall provide a minimum of 24 hours of infection control and safety standards theory prior to any practical procedures.

**G.** Instructor approved hands-on procedures in schools shall be completed by students on clients, students or models; training on mannequins is considered hands on training as defined in 16.34.1.7 NMAC.

**H.** Schools shall maintain the equivalent of at least one full time instructor for every twenty students in attendance or part thereof.

**I.** Schools must at all times be under the immediate supervision of a licensed instructor.

**J.** Schools, which advertise services to the public in order to attract clients for its students, must include in each advertisement the statement that all services are performed by supervised students.

[16.34.8.9 NMAC - Rp 16 NMAC 34.8.9, 06/16/2001; A, 12/17/2015]

#### **16.34.8.10 PHYSICAL REQUIREMENTS:**

All schools must comply with the sanitary and safety rules for establishments outlined in 16.34.7.9 NMAC of these rules and provide for:

**A.** a clean, well-maintained facility;

**B.** a reception area for clients and guests;

**C.** an area designated for theory instruction equipped with enough tables or desks and chairs to meet the instructional needs of assigned or scheduled students;

**D.** a designated clinic or laboratory area for supervised practical skills training;

**E.** sanitary, lavatories with hot and cold wash facilities;

**F.** sufficient grounded electrical outlets to provide for the safe operation of all laboratory and classroom equipment;

**G.** safe and secure maintenance of student records;

**H.** separate entrances and visitor reception areas if a professional service facility or salon is in the same building;

**I.** a designated work area for instructors for the purpose of planning, record keeping, counseling, consultation and administrative tasks;

**J.** properly marked exits to facilitate safe evacuation in case of emergency;

**K.** a dispensary or supply room adequately supplied to meet the reasonable anticipated needs of students and staff.

[16.34.8.10 NMAC - Rp 16 NMAC 34.8.10, 06/16/2001; A, 10/04/2007]

#### **16.34.8.11 EQUIPMENT, TEACHING AIDS:**

Schools shall have in good working order apparatus, equipment and implements necessary for the full and ready teaching of all subjects included in the curriculum including, but not limited to the following:

**A.** one applicable workstation for each student assigned a clinic patron at any one time;

**B.** one suitable bulletin board conspicuously located for posting rules and regulations, licenses, notices, etc.

**C.** one board of adequate size to be seen by all students in the class;

**D.** teaching aids and applicable projection equipment for all subjects taught within the curriculum;

**E.** textbooks and lesson plans for the appropriate and authorized courses of study;

**F.** suitable reference materials including books, current periodicals, supplementary information to meet the requirements and objectives of the courses of study and which are available for independent study.

[16.34.8.11 NMAC - Rp 16 NMAC 34.8.11, 06/16/2001; A, 10/04/2007]

#### **16.34.8.12 EXPANSION CAMPUS FACILITY:**

**A.** A completed official application to operate an expansion campus facility must be filed with the board at least fifteen days prior to the expected opening of the classroom or clinic. The application must include a statement of the distance between the approved primary facility and the new expansion campus facility, must be within a two mile radius of the main campus.

**B.** The application, if complete, may be administratively approved. A formal inspection of the establishment shall occur within ninety days of opening. Incomplete applications without proper and complete supporting documents will be returned.

**C.** Duplicate licenses for the school and all instructors teaching in any expansion campus facility shall be conspicuously displayed therein.

**D.** If the ownership or address of the original, primary facility changes from that of the expanded campus facility, licensure of the expanded campus facility does not automatically continue for the expansion campus facility.

**E.** An expansion campus facility must bear the same name as the original, primary facility and its advertising sign must indicate the same name as the primary facility.

[16.34.8.12 NMAC - Rp 16 NMAC 34.8.12, 06/16/2001; A, 10/04/2007]

#### **16.34.8.13 REGULATIONS CONCERNING STUDENTS:**

**A.** Student registration:

(1) When a school receives an application from a prospective student, it shall promptly notify the student of the registration requirements of the board.

(2) It shall constitute a violation of the rules, within the meaning of the act, for a school to engage in failure to transmit student registration documents and fees in a timely fashion to the board pursuant to Subsection G of 16.34.15.8 NMAC, wherein fines will be imposed.

(3) It shall be the responsibility of the prospective student to comply with the registration requirements by the first day the student attends class for credit. Failure to do so may result in loss of hours earned prior to proper registration.

(4) No school shall allow a student to attend class for credit until the student has complied with the registration requirements:

(a) Applicants for the barber, cosmetology, hairstylist, manicure/pedicure, esthetician, electrologist, and manicure/esthetician courses must be at least 16 years of age.

(b) Applicants for the instructor course for barbers must be at least 17 years of age and have successfully completed four years of high school or the equivalent.

(5) Acceptable proof of age and education requirements as follows:

(a) Proof of age includes a copy of a birth certificate, a driver's license or a state issued identification card, or a baptismal certificate.

(b) Proof of two years of secondary education includes a high school diploma, a G.E.D. certificate or transcript of G.E.D. test scores, a sealed letter from the high school attended, a copy of the high school transcript showing all required grades have been passed, a letter from the G.E.D. testing facility stating that the G.E.D. test has been passed, or any other test approved by the United States department of education for the purpose of determining an applicant's ability to benefit, providing that documentation of grade equivalency is established by the test publisher and the required grade level for the course of study has been achieved.

(c) The board, or its executive director, may accept as proof of secondary education the applicant's notarized statement that the applicant has completed the required secondary education, but has been unable to obtain documentary proof of that from a foreign nation. A notarized statement will not be accepted for students who have completed the secondary education in the United States.

(6) Evidence of compliance with the foregoing requirements shall accompany the application for registration form provided by the board.

(7) Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within 15 days of the date of registration, the board office will then issue a student permit and a permit number. The student permit authorizes the holder to practice course related skills in an approved school on the public only after successful completion of fifteen percent of the program. In addition, the student permit also authorizes the student to participate in the student externship program pursuant to 16.34.8.17 NMAC of these rules. A photograph of the student (front view, head only, at least one and one-half inches by one and one-half inches) shall be attached to the permit. The permit shall be displayed in a binder in the school in which the student is enrolled and open to review by the state inspector or other board designee. Student permits are the property of the board and must be returned to the board by the school upon termination of the student's enrollment.

(8) If inspection of the student permits and school records determines that students are attending class without being properly registered with the board, the student may be denied the hours previously accrued and the school will be reported to the board for disciplinary action.

**B. Student transfers/re-entries:**

(1) Any previously registered student desiring to transfer to another school, or re-enter the previous school shall submit a new registration form and required fees to the board. Students transferring schools as a result of a school closure shall submit a new registration form but are not required to pay a re-registration fee. Students attending a school, which undergoes a change of ownership, are not required to re-register with the board.

(2) Any student desiring to re-enter school must submit proof of the successfully completed previous training in order to receive credit for it.

(3) A student enrolled in any course may withdraw and transfer hours or equivalent credit acquired to another course not to exceed the amount of hours or equivalent credit of each subject within the new course curriculum requirements. Appropriate termination notices and course registration documents must be submitted to the board office when a student transfers to another course.

(4) Students enrolled in the cosmetology curriculum may take the examination for one of the specialty courses at which time the school certifies that the student has completed the requirements for the course in which the student seeks licensure. All other requirements for examination must also be met. The student may continue to attend classes in the cosmetology course. However, if licensure is obtained in any specialty course and the student continues attending classes in the cosmetology course, students cannot perform any services on the public in the school for which the individual is now licensed.

**C. Records of student academic progress:**

(1) Schools shall keep records of academic progress for each student and these records shall be open for inspection by members of the board or its designees.

(2) Schools will designate in the enrollment contract and other consumer information, all requirements for withdrawal or graduation. When all requirements have been met, the school must return the student's permit to the board, and submit a sealed official transcript of training to the board and to the student showing that course requirements for graduation have been met. The board recognizes for transfer, hours or equivalent credits reported on the official transcript of training. Circumstances regarding transfer of or approval of student hours may be brought to the board on an individual basis for special consideration by the board. The board may, in its discretion, recognize hours or equivalent credit or partial hours or partial credit for transfer when an official transcript of training has not been submitted by the school.

(3) If a student terminates their enrollment status without meeting all withdrawal or graduation requirements, the school in which the student was enrolled shall notify the board of termination in writing within 30 days of the student's formal termination date using the format prescribed by the board, and return the student's permit.

(4) Schools offering clock hour training shall define its attendance requirements to include one hundred percent attendance for the course length for licensure or may allow excused absences for no more than ten percent of the course length for satisfactory course completion.

(a) student attendance policies are applied uniformly and fairly;

(b) attendance policies give appropriate credit for all hours attended;

(c) schools shall not adjust attendance hours of students whether hours are added, as a reward, or deducted, as a penalty;

(d) the school shall report actual hours attended by the student or shall round the hours to the nearest half hour (i.e. if a student attended 44 minutes past the hour, the school would report the previous half hour; if a student attended 45 minutes past the hour, the school would report the next hour);

(e) the school must maintain attendance records for each student to verify that the minimum attendance standard set forth by the board is being met; and

(f) in cases where schools are authorized to offer training via distance learning methods, the school establish standards for converting competencies achieved to clock or credit hours.

(5) To be considered a graduate, a student must have completed the course scheduled for completion and met the minimum attendance standard (or ninety percent) of the established course of study and all other academic and evaluation factors established by the school. Therefore, in addition to completion of the required hours, the student must have satisfactorily completed the practical and theoretical curriculum requirements set forth by the school. Those requirements must include documentation that the student has satisfactorily completed each unit of study prescribed by the board in the applicable course of study. The excused absences do not allow a student to accelerate in their course of study. Even though they may limit excused absences, they will not be allowed to sit for the state licensing examination until the number of hours, prescribed by the board for the applicable course of study, have elapsed.

(6) If a student is required OR allowed by the school to train more than the scheduled hours in a class day, students must be given credit for the additional time in the appropriate subject. Schools have full discretion in setting forth class schedules for each course offered as long as minimum requirements for graduation meet the board standards.

(7) Students may not be called from a scheduled theory class to perform services on the public.

(8) Schools expressing academic measurement in terms of credit hours shall set forth requirements for each unit of study within a course or program which ensures that required levels of competency or skills ability have been met. Such schools must award appropriate credit for each unit of study completed satisfactorily. Records of the students' academic progress within the course of study must be maintained for all students.

(9) The school shall provide a catalog to prospective students containing enough information to permit an informed choice among training opportunities and institutions. Catalogs which comply with the school's accrediting agency will be deemed to comply with this rule.

(10) Schools must comply with the Family Education Right to Privacy Act and must guarantee the rights of students to have access to their cumulative records and provide for proper supervision and interpretation of student records when reviewed.

(11) Schools and students shall enter into a signed written agreement which fully and accurately reflects the contractual rights and obligations of the parties, particularly with regard to suspension, expulsion, refunds, tuition and fees, withdrawal and graduation requirements. Contracts which comply with the school's accrediting agency will be deemed in compliance with this rule.

**D.** Records regarding state board examinations: Each school shall disclose to prospective students its annual statistics regarding the school's state examination pass rate. The board or its designee will send a letter to each school after each examination containing the result information on each student, which will serve as the source documentation for calculating the disclosed statistics.

[16.34.8.13 NMAC - Rp 16 NMAC 34.8.13, 6/16/2001; A, 7/16/2004; A, 10/4/2007; A, 12/17/2015; A, 7/14/2018; A, 12/27/2022]

#### **16.34.8.14 STUDENT SCHOOL GRIEVANCES:**

Each school licensed by the board must have an internal grievance process for students to seek solutions to any student complaint or concern that is not frivolous or without merit. Evidence of final resolution of such complaints will be retained in the school's file in order to determine the frequency, nature, and patterns of complaints for the institution. Verification that the procedure is in place and being followed will occur during routine inspections of schools. Formal complaints can be filed with the board pursuant to 16.34.13 NMAC of these rules. Schools may not retaliate against students who file complaints with the board.

[16.34.8.14 NMAC - Rp 16 NMAC 34.8.14, 06/16/2001]

#### **16.34.8.15 CURRICULUM:**

**A.** The following minimum curriculum requirements are established for all schools licensed under the act. Schools offering training in clock hours must meet the following minimum hours in each unit of study. Schools offering training in credit hours must offer an equivalent training program as prescribed by the schools accrediting agency clock hour/credit hour conversion formula. In absence of such a formula the state board will prescribe the credit hour/clock hour conversion formula. Schools may offer all or part of the courses set forth herein provided appropriate facility requirements are met and Instructors have appropriate practitioner training to teach the subjects offered. This does not preclude schools from offering non-related courses or advanced courses, which are not prescribed in these rules. Courses are automatically approved if the course units are between one hundred percent and one hundred twenty percent of the minimum. Schools desiring to offer instruction that exceeds one hundred twenty percent of the minimum requirements (i.e. a course that is over twenty five percent of the board's published minimum requirements) must submit to the board the following:

- (1) a course outline indicating all course hours or credits offered;
- (2) a class schedule for the entire course indicating how and when each unit of instruction is offered;
- (3) justification of why the course should be approved at the extended length.

**B.** Barber course curriculum - **1200**-course hours or equivalent credit:

- (1) **THEORY: 75 hours or equivalent credit**
  - (a) limited to orientation;
  - (b) state laws and regulations;
  - (c) professional image;
  - (d) first aid;
  - (e) chemistry;
  - (f) electricity;
  - (g) job seeking; and
  - (h) ethics
- (2) **STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**
  - (a) related theory and safety;

- (b) preparation, procedures and practice;
  - (c) products, materials and implements;
  - (d) public sanitation;
  - (e) methods of sanitation and sterilization;
  - (f) chemical agents;
  - (g) types and classifications of bacteria;
  - (h) bacterial growth;
  - (i) infections; and
  - (j) infection control and safety standards
- (3) SHAMPOO, RINSES, SCALP TREATMENTS: 75 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation;
  - (e) procedures and practice;
  - (f) products, materials and implements;
  - (g) hair analysis;
  - (h) disorders of the hair and scalp;
  - (i) hair and scalp treatments;
  - (j) related chemistry; and
  - (k) client record keeping and safety
- (4) CHEMICAL REARRANGING - PERMS AND RELAXERS: 200 hours or equivalent credit**

- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) hair analysis and client consultation;
  - (g) related chemistry; and
  - (h) client record keeping and safety
- (5) HAIRSTYLING: 150 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) hair analysis and client consultation;
  - (g) related chemistry;
  - (h) wet styling;
  - (i) blow drying;
  - (j) finger waving;
  - (k) air waving;
  - (l) hair pressing;
  - (m) hair extensions;
  - (n) hair weaving;

- (o) braiding;
- (p) corn rowing;
- (q) client consultation and recommendations;
- (r) client record keeping and safety; and
- (s) care of wigs and hair pieces

**(6) HAIR COLORING - BLEACHING: 125 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) hair analysis and client consultation;
- (g) related chemistry;
- (h) temporary, semi-permanent, and permanent applications;
- (i) bleaching, tinting, toning, frosting, special effects and problems;
- (j) client consultation and recommendations; and
- (k) client record keeping and safety

**(7) HAIR CUTTING AND BEARD TRIMMING: 250 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) shaving, honing and stropping;
- (e) preparation, procedures, and practice;

- (f) use of scissors, shears, razor and clippers;
  - (g) products, materials and implements;
  - (h) client consultation and recommendations; and
  - (i) client record keeping and safety
- (8) FACIALS: 175 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) theory of massage and facial treatments;
  - (g) makeup application;
  - (h) use of electrical appliances, currents and specialized machines for treatments;
  - (i) artificial eyelashes;
  - (j) removal of unwanted hair;
  - (k) eyelash and brow tinting;
  - (l) light therapy;
  - (m) client consultation and recommendations; and
  - (n) client record keeping and safety
- (9) REQUIRED HANDS-ON-TRAINING - instructor approved procedures**
- (a) 40 facial shave;
  - (b) 30 shaving around ears and neck;
  - (c) 25 ladies haircuts;

- (d) 75 mens haircuts;
- (e) 25 hairstyling;
- (f) chemical texturing:
  - (i) seven permanent waving and
  - (ii) seven permanent relaxing

**(10) SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**

- (a) related theory;
- (b) opening a salon and business plan;
- (c) written agreements;
- (d) regulations and laws;
- (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
- (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
- (g) salon safety

**(11) MISCELLANEOUS: 25 hours or equivalent credit**

- (a) to be applied by the Instructor to strengthen student performance in curriculum related areas, or
- (b) for supervised field trips and other course related training;

**C. Cosmetology course curriculum - 1600-course hours or equivalent credit**

**(1) THEORY: 75 hours or equivalent credit**

- (a) limited to orientation;
- (b) state laws and regulations;
- (c) professional image;
- (d) first aid;

- (e) chemistry;
- (f) electricity;
- (g) job seeking; and
- (h) ethics

**(2) STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**

- (a) related theory and safety;
- (b) preparation, procedures and practice;
- (c) products, materials and implements;
- (d) public sanitation;
- (e) methods of sanitation and sterilization;
- (f) chemical agents;
- (g) types and classifications of bacteria;
- (h) bacterial growth;
- (i) infections; and
- (j) infection control and safety standards

**(3) SHAMPOO, RINSES, SCALP TREATMENTS: 75 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation;
- (e) procedures and practice;
- (f) products, materials and implements;

- (g) hair analysis;
- (h) disorders of the hair and scalp;
- (i) hair and scalp treatments;
- (j) related chemistry; and
- (k) client record keeping and safety

**(4) CHEMICAL REARRANGING - PERMS AND RELAXERS: 200 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) hair analysis and client consultation;
- (g) related chemistry; and
- (h) client record keeping and safety

**(5) HAIRSTYLING: 150 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) hair analysis and client consultation;
- (g) related chemistry;
- (h) wet styling;

- (i) blow drying;
  - (j) finger waving;
  - (k) air waving;
  - (l) hair pressing;
  - (m) hair extensions;
  - (n) hair weaving;
  - (o) braiding;
  - (p) corn rowing;
  - (q) client consultation and recommendations;
  - (r) client record keeping and safety; and
  - (s) care of wigs and hair pieces
- (6) HAIR COLORING - BLEACHING: 125 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) hair analysis and client consultation;
  - (g) related chemistry;
  - (h) temporary, semi-permanent, and permanent applications;
  - (i) bleaching, tinting, toning, frosting, special effects and problems;
  - (j) client consultation and recommendations; and
  - (k) client record keeping and safety

**(7) HAIR CUTTING: 200 hours or equivalent credit**

- (a)** related theory;
- (b)** anatomy;
- (c)** physiology;
- (d)** preparation, procedures, and practice;
- (e)** use of scissors, shears, razor and clippers;
- (f)** products, materials and implements;
- (g)** client consultation and recommendations; and
- (h)** client recordkeeping and safety

**(8) FACIALS: 175 hours or equivalent credit**

- (a)** related theory;
- (b)** anatomy;
- (c)** physiology;
- (d)** preparation, procedures and practice;
- (e)** products, materials and implements;
- (f)** theory of massage and facial treatments;
- (g)** makeup application;
- (h)** use of electrical appliances, currents and specialized machines for treatments;
- (i)** artificial eyelashes;
- (j)** removal of unwanted hair;
- (k)** eyelash and brow tinting;
- (l)** light therapy;
- (m)** client consultation and recommendations; and

- (n) client record keeping and safety
- (9) MANICURING/PEDICURING: 175 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) theory of massage;
  - (g) advanced nail techniques;
  - (h) client consultation and recommendations; and
  - (i) client record keeping and safety
- (10) REQUIRED HANDS-ON TRAINING: instructor approved procedures:**
- (a) 75 ladies haircuts;
  - (b) 25 mens haircuts;
  - (c) 25 hairstylings;
  - (d) 30 coloring;
  - (e) chemical texturing:
    - (i) seven permanent waving; and
    - (ii) seven permanent relaxing
- (11) SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
- (a) related theory;
  - (b) opening a salon and business plan;
  - (c) written agreements;

(d) regulations and laws;

(e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

**(12) MISCELLANEOUS: 300 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

**D. Manicurist/pedicurist course curriculum - 400-course hours or equivalent credit**

**(1) THEORY: 75 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

**(2) STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

- (d) public sanitation;
  - (e) methods of sanitation and sterilization;
  - (f) chemical agents;
  - (g) types and classifications of bacteria;
  - (h) bacterial growth;
  - (i) infections; and
  - (j) infection control and safety standards
- (3) MANICURING/PEDICURING: 175 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) theory of massage;
  - (g) advanced nail techniques;
  - (h) client consultation and recommendations; and
  - (i) client record keeping and safety
- (4) REQUIRED HANDS-ON TRAINING: instructor approved procedures**
- (a) 45 manicures;
  - (b) 45 pedicures; and
  - (c) 20 acrylic nail sets
- (5) SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
- (a) related theory;

- (b) opening a salon and business plan;
- (c) written agreements;
- (d) regulations and laws;
- (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
- (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
- (g) salon safety

**(6) MISCELLANEOUS: 25 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

**E. Esthetician course curriculum - 600-course hours or equivalent credit**

**(1) THEORY: 75 hours or equivalent credit**

- (a) limited to orientation;
- (b) state laws and regulations;
- (c) professional image;
- (d) first aid;
- (e) chemistry;
- (f) electricity;
- (g) job seeking; and
- (h) ethics

**(2) STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**

- (a) related theory and safety;

- (b) preparation, procedures and practice;
  - (c) products, materials and implements;
  - (d) public sanitation;
  - (e) methods of sanitation and sterilization;
  - (f) chemical agents;
  - (g) types and classifications of bacteria;
  - (h) bacterial growth;
  - (i) infections;
  - (j) infection control and safety standards
- (3) FACIALS: 350 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) theory of massage;
  - (g) facial treatments and makeup application;
  - (h) use of electrical appliances, currents and specialized machines for treatments;
  - (i) artificial eyelashes;
  - (j) removal of unwanted hair;
  - (k) eyelash and brow tinting;
  - (l) light therapy;
  - (m) client consultation and recommendations; and

(n) client record keeping and safety

**(4) SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**

(a) related theory;

(b) opening a salon and business plan;

(c) written agreements;

(d) regulations and laws;

(e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

**(5) REQUIRED HANDS-ON TRAINING: instructor approved procedures:**

(a) 50 basic facial procedures;

(b) 25 machine facial procedures;

(c) 25 waxing procedures; and

(d) 10 makeup procedures

**(6) MISCELLANEOUS: 50 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

**F. Manicurist/esthetician course curriculum - 900-course hours or equivalent credit**

**(1) THEORY: 100 hours or equivalent credit**

(a) limited to orientation;

(b) state laws and regulations;

(c) professional image;

(d) first aid;

(e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

**(2) STERILIZATION, SANITATION, BACTERIOLOGY: 150 hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

(d) public sanitation;

(e) methods of sanitation and sterilization;

(f) chemical agents;

(g) types and classifications of bacteria;

(h) bacterial growth;

(i) infections; and

(j) infection control and safety standards

**(3) FACIALS: 350 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation, procedures and practice;

(e) products, materials and implements;

- (f) theory of massage;
- (g) facial treatments and makeup application;
- (h) use of electrical appliances, currents and specialized machines for treatments;

- (i) artificial eyelashes;

- (j) removal of unwanted hair;

- (k) eyelash and brow tinting;

- (l) light therapy;

- (m) client consultation and recommendations; and

- (n) client record keeping and safety

**(4) MANICURING/PEDICURING: 175 hours or equivalent credit**

- (a) related theory;

- (b) anatomy;

- (c) physiology;

- (d) preparation, procedures and practice;

- (e) products, materials and implements;

- (f) theory of massage;

- (g) advanced nail techniques;

- (h) client consultation and recommendations; and

- (i) client record keeping and safety

**(5) REQUIRED HANDS-ON TRAINING: instructor approved procedures**

- (a) 50 basic facial procedures;

- (b) 25 machine facial procedures;

- (c) 25 waxing procedures;

- (d) 10 makeup;
  - (e) 45 manicure;
  - (f) 45 pedicure; and
  - (g) 20 acrylic nail sets
- (6) SALON BUSINESS, RETAIL SALES: 75 hours or equivalent credit**
- (a) related theory;
  - (b) opening a salon and business plan;
  - (c) written agreements;
  - (d) regulations and laws;
  - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
  - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
  - (g) salon safety
- (7) MISCELLANEOUS: 50 hours or equivalent credit**
- (a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
  - (b) for supervised field trips and other course related training

**G. Electrology course curriculum - 600-course hours or equivalent credit**

- (1) THEORY: 75 hours or equivalent credit**
- (a) limited to orientation;
  - (b) state laws and regulations;
  - (c) professional image;
  - (d) first aid;
  - (e) chemistry;

- (f) electricity;
- (g) job seeking; and
- (h) ethics

**(2) STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**

- (a) related theory and safety;
- (b) preparation, procedures and practice;
- (c) products, materials and implements;
- (d) public sanitation;
- (e) methods of sanitation and sterilization;
- (f) chemical agents;
- (g) types and classifications of bacteria;
- (h) bacterial growth;
- (i) infections; and
- (j) infection control and safety standards

**(3) ELECTROLYSIS AND THERMOLOGY: 350 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) use of electrical currents;
- (g) insertion of needles;
- (h) before and after treatment and care;

- (i) destruction of the papilla;
  - (j) consultation and recommendations; and
  - (k) client record keeping and safety
- (4) SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
- (a) related theory;
  - (b) opening a salon and business plan;
  - (c) written agreements;
  - (d) regulations and laws;
  - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
  - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
  - (g) salon safety

**(5) MISCELLANEOUS: 50 hours or equivalent credit**

- (a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
- (b) for supervised field trips and other course related training

**H. Instructor course curriculum - 1000 course hours or equivalent credit**

**(1) THEORY: 75 hours or equivalent credit**

- (a) limited to orientation;
- (b) state laws and regulations;
- (c) employment and compensation information;
- (d) professional ethics and image;
- (e) effective communications;
- (f) first aid;

- (g) chemistry;
- (h) electricity;
- (i) job seeking;
- (j) ethics;
- (k) principles of teaching;
- (l) teacher maturity;
- (m) student learning principles; and
- (n) academic advising

**(2) COURSE DEVELOPMENT AND LESSON PLANNING: 100 hours or equivalent credit**

- (a) planning;
- (b) analysis;
- (c) implementation
- (d) benefits;
- (e) outline;
- (f) examples of lesson plans;
- (g) components of effective lesson plans;
- (h) principles of preparing lesson plans; and
- (i) practical course review

**(3) TEACHING METHODS: 100 hours or equivalent credit**

- (a) preparation;
- (b) presentation;
- (c) application;
- (d) testing;

- (e) lecture and workbooks;
- (f) demonstrations and return demonstrations;
- (g) discussion;
- (h) question and answer;
- (i) projects; and
- (j) field trips

**(4) TEACHING AIDS: 50 hours or equivalent credit**

- (a) films or videos;
- (b) charts;
- (c) mannequins;
- (d) reference materials;
- (e) chalkboards; and
- (f) overhead projectors and transparencies

**(5) THEORY TEACHING AND CLASSROOM MANAGEMENT: 200 hours or equivalent credit**

- (a) independent classroom instructing;
- (b) records and reports;
- (c) safety measures;
- (d) classroom conditions and maintenance;
- (e) class supervision and control;
- (f) classroom problems and solutions; and
- (g) academic advising

**(6) TESTING AND STUDENT EVALUATION: 50 hours or equivalent credit**

- (a) measurement of student ability/achievement;

- (b) diagnosis of student weaknesses;
- (c) motivation for study;
- (d) oral and written testing; and
- (e) development and use of testing/measurement Instruments

**(7) LABORATORY SUPERVISION: 300 hours or equivalent credit**

- (a) independent clinic supervision;
- (b) client communications/reception desk;
- (c) inventory control;
- (d) effective dispensary procedures;
- (e) supervision of clinic sanitation/client safety; and
- (f) technical skills ability

**(8) MISCELLANEOUS: 125 hours or equivalent credit**

- (a) fundamentals of business management;
- (b) to be applied by Instructor to strengthen student performance in curriculum areas; or
- (c) for supervised field trips and other course related training cosmetology course.

**I. Hairstylist curriculum - 1200-course hours or equivalent credit**

**(1) THEORY: 75 hours or equivalent credit**

- (a) limited to orientation;
- (b) state laws and regulations;
- (c) professional image;
- (d) first aid;
- (e) chemistry;

(f) electricity;

(g) job seeking; and

(h) ethics

**(2) STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**

(a) related theory and safety;

(b) preparation, procedures and practice;

(c) products, materials and implements;

(d) public sanitation;

(e) methods of sanitation and sterilization;

(f) chemical agents;

(g) types and classifications of bacteria;

(h) bacterial growth;

(i) infections; and

(j) infection control and safety standards

**(3) SHAMPOO, RINSES, SCALP TREATMENTS: 75 hours or equivalent credit**

(a) related theory;

(b) anatomy;

(c) physiology;

(d) preparation;

(e) procedures and practice;

(f) products, materials and implements;

(g) hair analysis;

- (h) disorders of the hair and scalp;
- (i) hair and scalp treatments;
- (j) related chemistry; and
- (k) client record keeping and safety

**(4) CHEMICAL REARRANGING - PERMS AND RELAXERS: 250 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) hair analysis and client consultation;
- (g) related chemistry; and
- (h) client record keeping and safety

**(5) HAIRSTYLING: 150 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) hair analysis and client consultation;
- (g) related chemistry;
- (h) wet styling;
- (i) blow drying;

- (j) finger waving;
  - (k) air waving;
  - (l) hair pressing;
  - (m) hair extensions;
  - (n) hair weaving;
  - (o) braiding;
  - (p) corn rowing;
  - (q) client consultation and recommendations;
  - (r) client record keeping and safety; and
  - (s) care of wigs and hair pieces
- (6) HAIR COLORING - BLEACHING: 225 hours or equivalent credit**
- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures and practice;
  - (e) products, materials and implements;
  - (f) hair analysis and client consultation;
  - (g) related chemistry;
  - (h) temporary, semi-permanent, and permanent applications;
  - (i) bleaching, tinting, toning, frosting, special effects and problems;
  - (j) client consultation and recommendations; and
  - (k) client record keeping and safety
- (7) HAIR CUTTING: 225 hours or equivalent credit**

- (a) related theory;
  - (b) anatomy;
  - (c) physiology;
  - (d) preparation, procedures, and practice;
  - (e) use of scissors, shears, razor and clippers;
  - (f) products, materials and implements;
  - (g) client consultation and recommendations; and
  - (h) client recordkeeping and safety
- (8) REQUIRED HANDS-ON TRAINING: instructor approved procedures:**
- (a) 75 ladies haircuts;
  - (b) 25 mens haircuts;
  - (c) 25 hairstylings;
  - (d) 30 coloring;
  - (e) chemical texturing:
    - (i) seven permanent waving; and
    - (ii) seven permanent relaxing
- (9) SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
- (a) related theory;
  - (b) opening a salon and business plan;
  - (c) written agreements;
  - (d) regulations and laws;
  - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;

(f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and

(g) salon safety

**(10) MISCELLANEOUS: 75 hours or equivalent credit**

(a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or

(b) for supervised field trips and other course related training

**J.** Field trips: Students enrolled in an approved course of study are allowed to supplement their training through supervised field trips. Such trips and hours or equivalent credit accrued must be supervised and verified by a school official. Field trips, which include curriculum activities such as providing services to residents of nursing homes, must be supervised by a licensed instructor. Hours or equivalent credit accrued through field trips are recorded in the miscellaneous category. If a student is actually participating in a technical skills competition, the hours may be recorded in the applicable curriculum category.

[16.34.8.15 NMAC - Rp 16 NMAC 34.8.15, 06/16/2001; A, 12/17/2015; A, 07/14/2018]

**16.34.8.16 CROSSOVER CREDITS:**

A. Individuals who are licensed as barbers and who wish to become licensed as cosmetologists must have at least one year of full time, verified work experience in a licensed establishment and complete 175 course hours or applicable credit hours in a licensed school, unless otherwise approved by the board, as follows:

**B. MANICURING/PEDICURING: 175 hours or equivalent credit**

- (1) related theory;
- (2) anatomy;
- (3) physiology;
- (4) preparation, procedures and practice;
- (5) products, materials and implements;
- (6) theory of massage;
- (7) advanced nail techniques;

- (8) client consultation and recommendations; and
- (9) client record keeping and safety

C. Individuals who are licensed as cosmetologists and who wish to become licensed as barbers must complete 150 course hours or applicable credit hours in a school, unless otherwise approved by the board, as follows:

**D. BEARD TRIMMING AND SHAVING: 150 hours or equivalent credit**

- (1) related theory;
- (2) anatomy;
- (3) physiology;
- (4) preparation, procedures and practice;
- (5) products, materials and implements; and
- (6) beard trimming, shaving, honing and stropping

E. To obtain a license with the crossover credits listed above, the applicant must submit to and pass a practical examination in the applicable subject(s) only.

F. The board will consider, on a case-by-case basis, approval of crossover credits for training in other disciplines that may directly or indirectly relate to courses approved in these rules. The applicant shall furnish copies of all applicable transcripts by subject and clock or credit hours previously earned. The board may approve such hours or equivalent credits not to exceed fifty percent of the requirements for regular applicants for licensure under these rules. Credit for work experience completed in other disciplines will not be credited toward course requirements under these rules.

[16.34.8.16 NMAC - Rp 16 NMAC 34.8.16, 06/16/2001; A, 12/17/2015]

**16.34.8.17 STUDENT EXTERNSHIPS:**

A. Students enrolled in any course licensed by this act may, at the school's option, participate in an externship program upon completion of seventy-five percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except offering complete services on the public. The student would be allowed, for example, to perform receptionist duties, ASSIST stylists with salon services; perform inventory or dispensary activities, sanitation duties, etc. Students will NOT be allowed to take appointments for complete services or apply

chemicals (specifically hair color or bleach, perm solution, chemical relaxers, or acrylic nail products) to any client. This program will allow students who are nearing graduation to begin a professional relationship with a salon and increase the graduate's opportunities for successful employment after graduation. In addition, it will allow the salon to perform very valuable "on-the-job" training while the student is still in training. In order to qualify for the externship program, the following requirements must be met:

(1) the student must have successfully completed seventy-five percent of the contracted course of study;

(2) the student must have taken and passed an interim FINAL written and practical examination establishing the individual's qualifications to assist in the establishment;

(3) the establishment must agree to and complete a certification of attendance and training completed during the externship. The training must relate to curriculum requirements;

(4) the student must apply for and post a student externship permit in the establishment while training in the establishment;

(5) the student must meet any other eligibility requirement established by the school;

(6) the establishment must notify and obtain permission from each individual client to allow the student to assist in any manner in providing services to the client.

(7) the school must accept the training certified by the establishment and include it on the official transcript of training for state board;

(8) a school official must make periodic visits to establishments to observe and verify the program is being followed according to requirements.

**B.** Establishments are not required to participate in this program. However, if they elect to participate, they must agree to comply with the requirements of the program.

[16.34.8.17 NMAC - Rp 16 NMAC 34.8.17, 06/16/2001; A, 12/17/2015]

#### **16.34.8.18 REFRESHER COURSES:**

**A.** Schools may offer a customized refresher course for individuals who have been out of school for 12 months or longer and not yet obtained licensure and to licensees who wish to re-enter school and update their professional skills. The following requirements must be met for those students enrolled in a refresher course who are not already licensed.

(1) The student must be re-registered with the board and all other matriculation requirements met as required for regular students;

(2) The earned hours or equivalent credit will be added to the student's existing transcript even though the requirements for licensure may have already been met.

(a) Successfully completed training must be reported on the official transcript of training accompanied by the student permit must be sent to the board office upon completion.

(b) A notice of termination and student permit must be sent to the board office upon termination from enrollment for unsuccessful completion of training.

**B.** Individuals who are already licensed who enroll in a refresher course must meet the following requirements.

**C.** The student file must contain a copy of the individual's current license, which may be reviewed by the inspector.

[16.34.8.18 NMAC - Rp 16 NMAC 34.8.18, 06/16/2001; A, 10/04/2007; A, 12/17/2015]

#### **16.34.8.19 SCHOOL REGISTRATION:**

#### **SCHOOL TUITION REFUND AND SETTLEMENT POLICY:**

**A.** In cases where students are regulated by federal or special program refund policies that policy prevails. The school must publish in its enrollment agreement or registration contract a refund policy that contains the following minimum guidelines:

(1) If a student cancels the enrollment more than three business days after signing the contract but prior to starting classes, a refund of all monies paid to the school less the applicable registration (administration fee not to exceed two hundred dollars (\$200) or fifteen percent of the tuition and fees, whichever is less) will be made.

(2) For students who enroll and begin classes but withdraw prior to course completion (after three business days of signing the contract), the school must apply a refund calculation schedule at least as liberal as the following: The percent of scheduled time enrolled to total course and total tuition school shall receive or retain is as follows:

(a) 0.01% to 04.9%	20%
(b) 5% to 09.9%	30%
(c) 10% to 14.9%	40%
(d) 15% to 24.9%	45%
(e) 25% to 49.9%	70%
(f) 50% and over	100%

**B.** If permanently closed or no longer offering instruction after a student has enrolled, the school will provide a pro rata refund of tuition to the student.

**C.** If the course is canceled subsequent to a student's enrollment, the school will either provide a full refund of all monies paid or completion of the course at a later time.

**D.** Students who withdraw or terminate prior to course completion may be charged a separate cancellation fee not to exceed one hundred fifty dollars.

**E.** All extra costs, such as books, equipment, graduation fees, etc., which are not included in the tuition price must be stated in the contract and any non-refundable items will be identified. Such costs may be deducted from the contracted program cost prior to applying the tuition adjustment calculation.

**F.** If promissory notes or contracts for tuition are sold or discounted to third parties, the institution and/or third party must comply with this cancellation and settlement policy.

[16.34.8.19 NMAC - Rp 16 NMAC 34.8.21, 06-16-01]

#### **16.34.8.20 SPECIAL EVENTS PERMIT:**

A school desiring to sponsor a special event such as a fund-raiser, garage sale, telethon, etc. that will not be conducted at the licensed establishments, must first obtain approval from the board office. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board office must be submitted at least ten days prior to the event. Applications for special events may be approved administratively. Special events for charities shall submit an application, no fees are required, as long as the money collected is donated to the charity specified on the application.

[16.34.8.20 NMAC - Rp 16 NMAC 34.8.22, 06/16/2001; A, 12/17/2015]

#### **16.34.8.21 STUDENT TRAINING - HIGH SCHOOL PROGRAMS:**

**A.** Students enrolled in the career enrichment courses (CEC) or any other associate high school program must meet the following requirements before enrolling for any course as follows:

(1) proof of completion of the second year of high school or its equivalent (i.e. only juniors and seniors can participate);

(2) proof that student is at least sixteen years of age;

(3) submission of a complete student registration form and required fees through the associate school licensed under this act.

**B.** In order for students to receive credit for attendance in high school related programs, such as CEC or EXCEL or others, the high school must certify the training provided and send that documentation to the licensed school that has registered the student. The licensed school will report the hours or equivalent credit to the state board and identify the type of student on a separate form designated by the board upon completion of the high school training program. The following restrictions apply:

**(1)** Students participating in high school programs cannot earn more than fifteen percent of the program in the high school facility.

**(2)** The licensed school must provide the student with an OFFICIAL TRANSCRIPT OF TRAINING for all hours or equivalent credit earned under the high school program because the board office retains those records for only one year.

[16.34.8.21 NMAC -Rp 16 NMAC 34.8.23, 06/16/2001; A, 10/04/2007]

#### **16.34.8.22 DISTANCE EDUCATION:**

It is recognized that delivery of relevant course content can be achieved in a variety of methods including online learning and distance education. Programs such as Instructor training may be completely accomplished via distance learning. Practitioner programs are limited to no more than twenty-five percent of the program content online. The following standards should apply when schools choose to use distance learning methods.

**A.** The school must notify the board and obtain approval before offering any distance learning courses.

**B.** The school must determine if the student has the requisite skills and competencies to succeed in a distance learning environment prior to enrollment.

**C.** The school must make available to students the necessary textbooks, supplementary educational materials and equipment needed to fulfill the program requirements.

**D.** The school must establish measurable and achievable performance outcomes that shall be compared to similar subject matter and objectives whether offered through traditional or distance methods.

**E.** The school must specify the expected knowledge, skills, and competency levels that students will achieve in a distance learning course.

**F.** The school shall effectively oversee the distance learning course and ensure it meets the objectives and mission of the school.

**G.** The school is responsible for the quality of courses of study offered through distance learning and the achievement of expected acceptable outcomes for each student irrespective of any contractual arrangements, partnerships, or consortia entered into with third parties for provision of components of a distance learning course.

[16.34.8.22 NMAC - N, 07/16/2004]

**16.34.8.23 ADVANCED TRAINING:**

Educational programs provided for the purpose of continuing education or advanced education in a specific field of licensure that are more than 150 hours in length must be conducted in a licensed school and supervised by a licensed instructor whether or not the program leads to licensure. Programs for advanced or continuing education of 150 hours or less will be considered seminars or workshops. They may or may not be conducted in a licensed establishment but must be supervised by a New Mexico licensee. Advanced training must be specific to the field of licensure.

[16.34.8.23 NMAC - N, 8/29/2023]

**PART 9: CONTINUING EDUCATION**

**16.34.9.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.9.1 NMAC - Rp 16 NMAC 34.9.1, 06-16-01]

**16.34.9.2 SCOPE:**

All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, and providers.

[16.34.9.2 NMAC - Rp 16 NMAC 34.9.2, 06-16-01]

**16.34.9.3 STATUTORY AUTHORITY:**

Section 61-17A-7 - Board Powers and Duties - This authorizes the board to establish continuing education requirements for licensure renewal.

[16.34.9.3 NMAC - Rp 16 NMAC 34.9.3, 06-16-01]

**16.34.9.4 DURATION:**

Permanent.

[16.34.9.4 NMAC - Rp 16 NMAC 34.9.4, 06-16-01]

**16.34.9.5 EFFECTIVE DATE:**

June 16, 2001 unless a different date is cited in the history note at the end of a section.

[16.34.9.5 NMAC - Rp 16 NMAC 34.9.5, 06-16-01]

**16.34.9.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes continuing education requirements for licensees and to set guidelines for continuing education providers.

[16.34.9.6 NMAC - Rp 16 NMAC 34.9.6, 6/16/2001; A, 8/29/2023]

**16.34.9.7 DEFINITIONS:**

Refer to Part 1

[16.34.9.7 NMAC - Rp 16 NMAC 34.9.7, 06-16-01]

**16.34.9.8 CONTINUING EDUCATION REQUIREMENTS:**

**A.** Providers of continuing education are listed below. The licensee must provide proof of attendance with license renewal. Educational programs provided for the purpose of continuing or advanced education must be specific to the field of licensure.

(1) cosmetology educators of America (CEA) seminars and workshops conducted in any state;

(2) adult continuing education association programs in professional development, education, counseling, instructing or related programs;

(3) continuing education units (CEU's) recognized by four year institutions in any state in professional development, education, counseling, teaching or related programs;

(4) all schools licensed by the New Mexico state board of barbers and cosmetologists;

(5) credits recognized for teacher certification in any state according to the following conversion table:

(a) theory (cognitive/lecture): 1 credit hour = 30 clock hours;

(b) practice/demonstration: 1 credit hour = 45 clock hours.

(6) attendance at accreditation and team training workshops and instructor continuing education programs offered by nationally recognized accrediting agencies;

(7) certification of completion of Dale Carnegie professional development and business courses;

(8) the pivot point instructor symposium classes;

(9) educational classes or conferences sponsored by the Aveda institute;

(10) conferences sponsored by the American aesthetics education association;

(11) classes sponsored by Milady/Thomson learning's career institute;

(12) classes sponsored by Vidal Sassoon; or

(13) local, state, regional, or national industry trade shows with credit not to exceed fifty percent of the annual requirement for continuing education, or six hours; in addition, no more than fifty percent of the hours scheduled at such a trade show can contribute to the six hour maximum; the licensee must provide verifiable proof of attendance including an agenda of the event, a receipt for payment of attendance, or other such reasonable evidence of attendance;

(14) online faculty and professional development programs.

**B.** Licensee may also submit, subsequent to their attendance, copies of other programs and seminars that are not automatically approved. The board will consider such programs at the next regularly scheduled meeting and determine if credit is approved or denied. Detailed documentation of the program length and content must be submitted for the board to make a determination. Notification of approval or denial will be sent to the licensee within 30 days after the board meeting.

[16.34.9.8 NMAC - Rp 16 NMAC 34.9.8, 6/16/2001; A, 10/4/2007; A, 12/17/2015; A, 8/29/2023]

#### **16.34.9.9 [RESERVED]**

[16.34.9.9 NMAC - Rp 16 NMAC 34.9.9, 6/16/2001; A, 12/17/2015; Repealed, 8/29/2023]

#### **16.34.9.10 [RESERVED]**

[16.34.9.10 NMAC - Rp 16 NMAC 34.9.10, 6/16/2001; A, 7/16/2004; A, 12/17/2015; Repealed, 8/29/2023]

## **PART 10: INVESTIGATIONS AND CONFIDENTIALITY**

**16.34.10.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.10.1 NMAC - Rp 16 NMAC 34.10.1, 06/16/2001]

**16.34.10.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.10.2 NMAC - Rp 16 NMAC 34.10.2, 06/16/2001; A, 07/14/2018]

**16.34.10.3 STATUTORY AUTHORITY:**

Section 61-17A-7 - This authorizes any member of the board, its employees or agents to enter and inspect any establishment or enterprise for the purpose of determining compliance with the Barbers and Cosmetologists Act.

[16.34.10.3 NMAC - Rp 16 NMAC 34.10.3, 06/16/2001]

**16.34.10.4 DURATION:**

Permanent.

[16.34.10.4 NMAC - Rp 16 NMAC 34.10.4, 06/16/2001]

**16.34.10.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.10.5 NMAC - Rp 16 NMAC 34.10.5, 06/16/2001]

**16.34.10.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes the investigative methods.

[16.34.10.6 NMAC - Rp 16 NMAC 34.10.6, 06/16/2001]

**16.34.10.7 DEFINITIONS:**

Refer to Part 1.

[16.34.10.7 NMAC - Rp 16 NMAC 34.10.7, 06/16/2001]

#### **16.34.10.8 INVESTIGATIVE METHODS:**

The board may use any lawful method of investigation it deems necessary and appropriate, including undercover investigation using board personnel, law enforcement personnel, and other investigative personnel and techniques.

[16.34.10.8 NMAC - Rp 16 NMAC 34.10.8, 06/16/2001]

#### **16.34.10.9 CONFIDENTIALITY OF INVESTIGATIONS:**

The board shall take all lawful confidentiality measures, which it deems necessary and appropriate to protect the effectiveness of its investigations, subject to the requirements of the New Mexico Inspection of Public Records Act.

[16.34.10.9 NMAC - Rp 16 NMAC 34.10.9, 06/16/2001]

#### **16.34.10.10 COMPLIANCE WITH BOARD REQUESTS:**

**A.** Pursuant to powers vested in it, the board may from time to time request that a licensee provide it with information or documents concerning the licensee's activities.

**B.** Within fifteen days of receipt of such request the licensee shall respond by complying with the request.

**C.** Failure to respond timely is a violation of the rules and provides sufficient evidence to issue a notice of contemplated action against the licensee.

[16.34.10.10 NMAC - Rp 16 NMAC 34.10.10, 06/16/2001]

### **PART 11: VIOLATIONS**

#### **16.34.11.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.11.1 NMAC - Rp 16 NMAC 34.11.1, 6/16/2001]

#### **16.34.11.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.11.2 NMAC - Rp 16 NMAC 34.11.2, 6/16/2001; A, 07/14/2018]

#### **16.34.11.3 STATUTORY AUTHORITY:**

Sections 61-17A-7 and 61-17A-21 of the Barbers and Cosmetologists Act. This authorizes the board to refuse to issue, renew, suspend or revoke a license for anyone in non-compliance with the Barbers and Cosmetologists Act.

[16.34.11.3 NMAC - Rp 16 NMAC 34.11.3, 6/16/2001]

**16.34.11.4 DURATION:**

Permanent.

[16.34.11.4 NMAC - Rp 16 NMAC 34.11.4, 6/16/2001]

**16.34.11.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.11.5 NMAC - Rp 16 NMAC 34.11.5, 6/16/2001]

**16.34.11.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes the board to take action against a licensee in non-compliance of the act.

[16.34.11.6 NMAC - Rp 16 NMAC 34.11.6, 6/16/2001]

**16.34.11.7 DEFINITIONS:**

Refer to Part 1.

[16.34.11.7 NMAC - Rp 16 NMAC 34.11.7, 6/16/2001]

**16.34.11.8 VIOLATIONS BY LICENSEES:**

**A.** When the board becomes aware of information or evidence tending to indicate that a violation of the act or these rules has been or is being committed by a licensee or student, it will review the matter and take appropriate action, or it may refer the matter to an informal subcommittee for review and recommendation, or it may make such investigation as it deems appropriate.

**B.** If an investigation is made, upon conclusion that a violation has occurred, the board shall:

- (1) take no further action;
- (2) issue a notice of contemplated action (NCA) under the Uniform Licensing Act;

(3) invite the parties to an informal conference with the board or the board's designee to aid in the board's resolution of the matter;

(4) issue a cease and desist order in accordance with the Uniform Licensing Act if the board determines that conditions within the establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize the establishment;

(5) file a formal complaint with a court of appropriate jurisdiction; or

(6) issue or direct the board's executive director to issue a letter of warning, a statement of what the board believes must be done to come into compliance with the act or these rules or a similar communication.

[16.34.11.8 NMAC - Rp 16 NMAC 34.11.8, 6/16/2001; A, 7/16/2004; A, 12/17/2015; A, 12/27/2022]

#### **16.34.11.9 VIOLATION OF SANITATION AND SAFETY REQUIREMENTS:**

**A.** If an establishment or enterprise fails the second inspection (re-inspection):

(1) an administrative fee pursuant to 16.34.15.8 NMAC;

(2) a cease and desist order will be served in accordance with the Uniform Licensing Act;

(3) a re-inspection fee of up to \$200.00 will be assessed, at the time of the re-inspection.

**B.** If an establishment or enterprise fails the third inspection (second re-inspection):

(1) the inspector will file a complaint;

(2) a re-inspection fee of \$200.00 will be assessed, at the time of the re-inspection;

(3) a cease and desist will be served in accordance with the Uniform Licensing Act.

[16.34.11.9 NMAC - Rp 16 NMAC 34.11.9, 6/16/2001; Repealed, 10/4/2007; N, 7/14/2018; A, 12/27/2022]

## **PART 12: RECORD KEEPING BY THE BOARD OFFICE**

### **16.34.12.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.12.1 NMAC – Rp 16 NMAC 34.12.1, 06-16-01]

**16.34.12.2 SCOPE:**

All schools governed by the Barbers and Cosmetologists Act.

[16.34.12.2 NMAC – Rp 16 NMAC 34.12.2, 06-16-01]

**16.34.12.3 STATUTORY AUTHORITY:**

Section 61-17A-12 – Licensure of Schools – This authorizes the Board to establish record keeping procedures.

[16.34.12.3 NMAC – Rp 16 NMAC 34.12.3, 06-16-01]

**16.34.12.4 DURATION:**

Permanent.

[16.34.12.4 NMAC – Rp 16 NMAC 34.12.4, 06-16-01]

**16.34.12.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.12.5 NMAC – Rp 16 NMAC 34.12.5, 06-16-01]

**16.34.12.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes the time frame in which student documents are kept in the Board office.

[16.34.12.6 NMAC – Rp 16 NMAC 34.12.6, 06-16-01]

**16.34.12.7 DEFINITIONS:**

Refer to Part 1.

[16.34.12.7 NMAC – Rp 16 NMAC 34.12.7, 06-16-01]

**16.34.12.8 RETENTION PERIOD:**

Student registration and Official Transcript of Training or Notices of Termination will be kept in the Board office for one year from the date of formal termination or withdrawal

from the school. If the student wishes to validate incomplete hours or equivalent credits earned in previous years, he/she must be able to document the hours or equivalent credits with a sealed transcript from the school. Official Transcripts of Training received by the Board for students who complete the course of training are retained in the Board office.

[16.34.12.8 NMAC – Rp 16 NMAC 34.12.8, 06-16-01]

## **PART 13: ADMINISTRATIVE PROCEDURES**

### **16.34.13.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.13.1 NMAC - Rp 16 NMAC 34.13.1, 6/16/2001]

### **16.34.13.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, establishments, applicants and consumers.

[16.34.13.2 NMAC - Rp 16 NMAC 34.13.2, 6/16/2001; A, 07/14/2018]

### **16.34.13.3 STATUTORY AUTHORITY:**

Section 61-17A-7 - Board Powers and Duties - This authorizes the board to adopt and file rules and regulations necessary to carry out the provisions of the Barbers and Cosmetologists Act.

[16.34.13.3 NMAC - Rp 16 NMAC 34.13.3, 6/16/2001]

### **16.34.13.4 DURATION:**

Permanent.

[16.34.13.4 NMAC - Rp 16 NMAC 34.13.4, 6/16/2001]

### **16.34.13.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.13.5 NMAC - Rp 16 NMAC 34.13.5, 6/16/2001]

### **16.34.13.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part establishes the requirements and standards for complaints, inspections, examinations and tele-conference meetings.

[16.34.13.6 NMAC - Rp 16 NMAC 34.13.6, 6/16/2001]

#### **16.34.13.7 DEFINITIONS:**

Refer to Part 1.

[16.34.13.7 NMAC - Rp 16 NMAC 34.13.7, 6/16/2001]

#### **16.34.13.8 COMPLAINTS:**

**A.** The board, or its designee, will consider a formal complaint filed against a licensee or an establishment provided the complaint is on the proper form, signed and notarized.

**B.** When a complaint is received on the proper form, the board, or its designee, will write to the licensee the complaint is against and request a response within fifteen days of receipt of such request.

**C.** The response will be reviewed by a committee designated by the board chairman.

**D.** If the committee's recommendation is that the complaint be taken before the board, the complaint will be reviewed at the next regularly scheduled board meeting. The executive director will notify all individuals involved of the action taken.

[16.34.13.8 NMAC - Rp 16 NMAC 34.13.8, 6/16/2001; A, 10/4/2007]

#### **16.34.13.9 INSPECTIONS:**

**A.** Schools and establishments licensed by the board are subject to inspection by any member of the board, its employees or agents who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.

**B.** Outreach enterprise mobile units are subject to inspection by any member of the board, its employees or agent who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act. Inspections may occur at the enterprise's base location, a mutually convenient public pullover location, at a unit's appointment destination. The outreach enterprise will maintain with each client's service record a permission statement, provided by the board, signed by the client allowing the board inspection to be conducted on the client's property while services are being performed.

**C.** It shall constitute a violation of the Barbers and Cosmetologists Act when a licensee:

**(1)** attempts by means of any threat, force, intimidation or violence to deter, interfere with or prevent any inspector or board designee from performing any official duty of the department or board;

**(2)** willfully resists, does not cooperate with the inspector, does not allow an inspection to occur, delays or obstructs an inspector or board designee in the performance of his/her official duty;

**(3)** fails to comply with the lawful command of an inspector or board designee in the discharge of his/her official duty.

[16.34.13.9 NMAC - Rp 16 NMAC 34.13.9, 6/16/2001; A, 12/17/2015]

#### **16.34.13.10 EXAMINATION PROCEDURES:**

**A.** To be eligible for the examination, the applicant must meet all requirements and follow all procedures set forth by the board or its designee.

**B.** Special needs: If an applicant has a physical disability or a special need that prevents him/her from taking the examination under the regular conditions, he/she may request special accommodations. Written documentation of the disability must be submitted to the board office to determine what special accommodations are necessary. If special accommodations are needed to take the exam, the board office or its designee must be notified with the examination application.

**C.** Policy on cheating: The exchange of information related to exam performance between examinees during the exam is prohibited. Applicants are not allowed to have any written or taped material in the testing area other than the supplies listed and approved for the exam.

[16.34.13.10 NMAC - Rp 16 NMAC 34.13.10, 6/16/2001; A, 7/16/2004; A, 10/4/2007]

#### **16.34.13.11 TELE-CONFERENCE MEETINGS:**

Pursuant to Section 10-15-1 (C) NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment under the following conditions:

**A.** this rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person;

**B.** each member participating by conference telephone must be identified when speaking;

**C.** all participants must be able to hear each other at the same time;

**D.** members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting;

**E.** the member of the board participating by telephone can only vote on a matter if he/she has copies of the documents that are available to the members who are physically present; and

**F.** the member participating by telephone cannot vote on any matter where the credibility of a witness who physically appears at the meeting is an issue that the board members must consider when voting on a pending matter.

[16.34.13.11 NMAC - Rp 16 NMAC 34.13.11, 6/16/2001]

#### **16.34.13.12 RECORD KEEPING - FEES:**

Records of monies received in the board office for licenses and fees are maintained in the board office for a period of one year from date of receipt.

[16.34.13.12 NMAC - Rp 16 NMAC 34.13.12, 6/16/2001]

#### **16.34.13.13 PETITIONS:**

**A.** The board shall accept for consideration at its regular meetings where licensee actions are taken, petitions for variance of these rules. If a licensee wishes to petition the board for a variance of these rules, the licensee shall do so by filing with the board, in writing, a petition for variance. Such petition shall cite the specific section of these rules from which a variance is sought. It shall include an explanation of all factors and considerations to support the variance sought. A petition needs to be submitted at least 15 days prior to the board meeting where it is to be considered. The petitioner may also request to personally appear before the board to support the petition. The board will only accept petitions that are submitted in the following format:

- (1)** list the specific section of the rules to be varied, including part number and section;
- (2)** provide the petitioner's rationale for the variance;
- (3)** provide thorough documentation to support the request for variance; and
- (4)** provide nine copies of the petition and supporting documentation in soft-sided binders for review by the board.

**B.** Decisions made by the board on a petition for variance shall be made in the same procedural manner as other actions of the board.

C. The denial of a petition for variance cannot be appealed.

[16.34.13.13 NMAC - N, 6/16/2001; A, 10/4/2007; A, 07/14/2018]

## **PART 14: FEES**

### **16.34.14.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.14.1 NMAC - Rp 16 NMAC 34.14.1, 06/16/2001]

### **16.34.14.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, specialty licenses, enterprises and establishments.

[16.34.14.2 NMAC - Rp 16 NMAC 34.14.2, 06/16/2001; A, 10/29/2016; A, 07/14/2018]

### **16.34.14.3 STATUTORY AUTHORITY:**

The Barbers and Cosmetologists Act, Sections 61-17A-7 and 61-17A-16 NMSA 1978. This authorizes the board to establish fees.

[16.34.14.3 NMAC - Rp 16 NMAC 34.14.3, 06/16/2001]

### **16.34.14.4 DURATION:**

Permanent.

[16.34.14.4 NMAC - Rp 16 NMAC 34.14.4, 06/16/2001]

### **16.34.14.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.14.5 NMAC - Rp 16 NMAC 34.14.5, 06/16/2001]

### **16.34.14.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part itemizes all fees.

[16.34.14.6 NMAC - Rp 16 NMAC 34.14.6, 06/16/2001]

### **16.34.14.7 DEFINITIONS:**

Refer to 16.34.1 NMAC

[16.34.14.7 NMAC - Rp 16 NMAC 34.14.7, 06/16/2001; A, 10/29/2016]

**16.34.14.8 FEES:**

The board or department, where applicable, may charge the following fees:

- A. Enterprise or establishment license (original): \$200.00
- B. Enterprise or establishment license (renewal): \$50.00
- C. Booth establishment license (original): \$200.00
- D. Booth establishment license (renewal): \$50.00
- E. School license (original and renewal): \$500.00
- F. Relocation of a school: \$185.00
- G. Barber license (original and renewal): \$100.00
- H. Barber/cosmetologist license (original and renewal): \$100.00
- I. Cosmetologist license (original and renewal): \$100.00
- J. Hairstylist license (original and renewal): \$50.00
- K. Manicurist/pedicurist license (original and renewal): \$100.00
- L. Manicurist/esthetician license (original and renewal): \$100.00
- M. Electrologist license (original and renewal): \$100.00
- N. Esthetician license (original and renewal): \$100.00
- O. Instructor license (original and renewal): \$100.00
- P. Expedited license (original): \$150.00
- Q. Administrative fee (other examination administrative costs): a maximum of \$100.00
- R. Administrative fee (lists on disks): \$95.00
- S. Administrative fee (relocation of establishments, etc.): \$25.00

**T.** Examinations and re-examinations all licenses except instructor: a maximum of \$100.00

**U.** Instructor examination and re-examination: a maximum of \$100.00

**V.** Duplicate licenses: \$25.00

**W.** Student permit license: \$25.00

**X.** Barber apprentice license: \$25.00

**Y.** Late fee: \$40.00

**Z.** Provider approval, initial and renewal: \$50.00

**AA.** Re-inspection fee: up to \$200.00.

[16.34.14.8 NMAC - Rp 16 NMAC 34.14.8, 6/16/2001; A, 7/16/2004; A, 10/04/2007; A, 4/12/2010; A, 10/29/2016; A, 7/14/2018; A, 4/15/2022; A, 12/27/2022; A, 8/29/2023]

## **PART 15: ADMINISTRATIVE PENALTIES AND FINES**

### **16.34.15.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.15.1 NMAC - Rp 16 NMAC 34.15.1, 6/16/2001]

### **16.34.15.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.15.2 NMAC - Rp 16 NMAC 34.15.2, 06/16/2001; A, 07/14/2018]

### **16.34.15.3 STATUTORY AUTHORITY:**

Sections 61-17A-7 and 61-17A-23 NMSA1978 of the Barbers and Cosmetologists Act. This authorizes the board to establish administrative penalties and fines.

[16.34.15.3 NMAC - Rp 16 NMAC 34.15.3, 6/16/2001]

### **16.34.15.4 DURATION:**

Permanent.

[16.34.15.4 NMAC - Rp 16 NMAC 34.15.4, 6/16/2001]

**16.34.15.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.15.5 NMAC - Rp 16 NMAC 34.15.5, 6/16/2001]

**16.34.15.6 OBJECTIVE:**

Pursuant to the Barbers and Cosmetologists Act this part defines the violations of any provision of the act and lists possible penalties and fines.

[16.34.15.6 NMAC - Rp 16 NMAC 34.15.6, 6/16/2001]

**16.34.15.7 DEFINITIONS:**

Refer to Part 1.

[16.34.15.7 NMAC - Rp 16 NMAC 34.15.7, 6/16/2001]

**16.34.15.8 ADMINISTRATIVE PENALTIES AND FINES:**

Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one thousand dollars (\$1,000) for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine or revocation of license or other disciplinary action. The penalties to be assessed are as follows:

**A.** A re-inspection fee of two hundred dollars (\$200) will be assessed for each inspection pursuant to 16.34.11.9

**B.** Failure to comply with establishment requirements:

(1) first offense: two hundred dollars (\$200);

(2) second offense: four hundred dollars (\$400);

(3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**C.** Failure to comply with sanitation and safety requirements for establishments:

(1) first offense: warning from inspector/"board";

(2) second offense: two hundred dollars (\$200);

(3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**D. Failure to post required licenses:**

(1) first offense: one hundred fifty dollars (\$150);

(2) second offense: four hundred dollars (\$400)

(3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**E. Working on an expired or invalid license:**

(1) first offense: one hundred fifty dollars (\$150);

(2) second offense: four hundred dollars (\$400);

(3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**F. Performing services for compensation in an unlicensed establishment:**

(1) first offense: five hundred dollars (\$500);

(2) second offense: six hundred dollars (\$600);

(3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**G. Failure by a school to properly and timely register all students:**

(1) first offense: two hundred dollars (\$200);

(2) second offense: four hundred dollars (\$400);

(3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

H. Committing any of the causes listed in Subsection A of Section 61-17-21 NMSA 1978 not otherwise addressed in these rules:

(1) first offense: two hundred dollars (\$200);

(2) second offense: four hundred dollars (\$400);

(3) third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars (\$999) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

I. Student loan default is defined as "the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the lender or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days."

J. Official notice of default: The board shall take steps to impose a fine up to nine hundred ninety nine dollars (\$999) or take other disciplinary action as permitted by the act or the Uniform Licensing Act which may include suspension, revocation or failure to renew a license.

[16.34.15.8 NMAC - Rp 16 NMAC 34.15.8, 06/16/2001; A, 04/12/2010; A, 07/14/2018]

#### **16.34.15.9 COST INCURRED FOR HEARINGS:**

Section 61-1-4G, NMSA1978 states as follows, licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 16-1-3 NMSA 1978 is not taken by the board.

[16.34.15.9 NMAC - N, 6/16/2001]

### **PART 16: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

#### **16.34.16.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.16.1 NMAC - Rp 16 NMAC 34.16.1, 06/16/2001]

#### **16.34.16.2 SCOPE:**

All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.16.2 NMAC - Rp 16 NMAC 34.16.2, 06/16/2001; A, 07/14/2018]

**16.34.16.3 STATUTORY AUTHORITY:**

The board adopts this section pursuant to the Parental Responsibility Act, Chapter 25, Laws of 1995.

[16.34.16.3 NMAC - Rp 16NNAC 34.16.3, 06/16/2001]

**16.34.16.4 DURATION:**

Permanent.

[16.34.16.4 NMAC - Rp 16 NMAC 34.16.4, 06/16/2001]

**16.34.16.5 EFFECTIVE DATE:**

June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.16.5 NMAC - Rp 16 NMAC 34.16.5, 06/16/2001]

**16.34.16.6 OBJECTIVE:**

This part establishes the requirements and possible penalties for non-compliance of the Parental Responsibility Act.

[16.34.16.6 NMAC - Rp 16 NMAC 34.16.6, 06/16/2001]

**16.34.16.7 DEFINITIONS:**

Refer to Part 1.

[16.34.16.7 NMAC - Rp 16 NMAC 34.16.7, 06/16/2001]

**16.34.16.8 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the board:

- A. shall deny an application for a license;
- B. shall deny the renewal of a license; and

C. has grounds for suspension or revocation of the license.

[16.34.16.8 NMAC - Rp 16 NMAC 34.16.8, 06/16/2001]

**16.34.16.9 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board licensees and applicants. Upon the later receipt of an application for license or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action board has taken in connection with such applicants and licensees.

[16.34.16.9 NMAC - Rp 16 NMAC 34.16.9, 06/16/2001]

**16.34.16.10 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the board shall:

A. commence a formal proceeding under 16.34.16.11 NMAC to take the appropriate action under 16.34.16.8 NMAC; or

B. for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed sixty days; if the licensee fails to provide this statement, the board shall commence a formal proceeding under 16.34.16.11 NMAC.

[16.34.16.10 NMAC - Rp 16 NMAC 34.16.10, 06/16/2001]

**16.34.16.11 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in 16.34.16.8 NMAC, the board shall serve upon the applicant or licensee a written notice stating that:

A. the board has grounds to take such action, and that the board shall take such action unless the licensee or applicant;

(1) mails a letter (certified mail return receipt requested) within twenty days after service of the notice requesting a hearing; or

(2) provides the board, within thirty days of the date of the notice, with a statement of compliance from HSD; and

**B.** if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

[16.34.16.11 NMAC - Rp 16 NMAC 34.16.11, 06/16/2001]

**16.34.16.12 EVIDENCE AND PROOF:**

In any hearing under this part, relevant evidence is limited to the following:

**A.** a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under 16.34.16.8 NMAC, unless;

**B.** the applicant or licensee provides the board with a subsequent statement of compliance, which shall preclude the board from taking any action under this section.

[16.34.16.12 NMAC - Rp 16 NMAC 34.16.12, 06/16/2001]

**16.34.16.13 ORDER:**

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

[16.34.16.13 NMAC - Rp 16 NMAC 34.16.13, 06/16/2001]

**16.34.16.14 PROCEDURES:**

Proceedings under this part shall be governed by the Uniform Licensing Act, Section 61-1-1, et seq.

[16.34.16.14 NMAC - Rp 16 NMAC 34.16.14, 06/16/2001]

**PART 17 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENT CHILDREN AND VETERANS [REPEALED]**

**16.34.17.1 ISSUING AGENCY [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.2 SCOPE [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.3 STATUTORY AUTHORITY [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.4 DURATION [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.5 EFFECTIVE DATE [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.6 OBJECTIVE [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.7 DEFINITIONS [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.8 APPLICATION REQUIREMENTS [REPEALED]:**

[This part was repealed December 27, 2022.]

**16.34.17.9 RENEWAL REQUIREMENTS [REPEALED]:**

[This part was repealed December 27, 2022.]

**CHAPTER 35: COLLECTION AGENTS AND AGENCIES  
[RESERVED]**

# CHAPTER 36: BODY ARTISTS AND OPERATORS

## PART 1: GENERAL PROVISIONS

### 16.36.1.1 ISSUING AGENCY:

Board of Body Art Practitioners.

[16.36.1.1 NMAC - Rp, 16.36.1.1 NMAC, 2/4/2016; A, 2/3/2022]

### 16.36.1.2 SCOPE:

Any person licensed to practice body art tattoo, piercing, scarification and all operators.

[16.36.1.2 NMAC - Rp, 16.36.1.2 NMAC, 2/4/2016]

### 16.36.1.3 STATUTORY AUTHORITY:

These rules are promulgated pursuant to the Body Art Safe Practices Act, Sections 61-17B-3, 61-17B-5, 61-17B-7 and 61-17B-13 NMSA 1978.

[16.36.1.3 NMAC - Rp, 16.36.1.3 NMAC, 2/4/2016]

### 16.36.1.4 DURATION:

Permanent.

[16.36.1.4 NMAC - Rp, 16.36.1.4 NMAC, 2/4/2016]

### 16.36.1.5 EFFECTIVE DATE:

February 4, 2016, unless a later date is cited at the end of a section.

[16.36.1.5 NMAC - Rp, 16.36.1.5 NMAC, 2/4/2016]

### 16.36.1.6 OBJECTIVE:

To define terms relevant to body art, custody and alteration of licenses, license posted, exemptions and municipalities.

[16.36.1.6 NMAC - Rp, 16.36.1.6 NMAC, 2/4/2016]

### 16.36.1.7 DEFINITIONS:

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning.

**A. "Aftercare"** means written instructions given to the client, specific to the body piercing or tattooing procedure(s) rendered, on caring for the body piercing or tattoo and surrounding area.

**B. "Antiseptic"** means an agent that destroys disease-causing microorganisms on human skin or mucosa.

**C. "Apprentice"** means a person who works under the direct supervision of a licensed apprentice sponsor to learn a trade from someone who is already skilled at a job.

**D. "Apprentice Sponsor"** means a person who is an actively licensed, skilled professional in a profession, art, craft or trade for a minimum of five years and is someone who accepts responsibility to teach an apprentice one on one.

**E. "Aseptic"** means the state of being free from the living disease, fermentation, or putrefaction.

**F. "Autoclave"** means a piece of medical equipment that employs the steam under pressure method of sterilization.

**G. "Board"** means the board of body art practitioners.

**H. "Body art"** means tattooing, body piercing, scarification, or permanent cosmetics but does not include practices that are considered medical procedures by the New Mexico medical board.

**I. "Body art establishment"** means a fixed or mobile place where body art is administered on the premises.

**J. "Body artist"** means a person who administers body piercing, tattooing, scarification, or permanent cosmetics.

**K. "Body piercing"** means to cut, stab or penetrate the skin to create a permanent hole or opening.

**L. "Client"** means an individual receiving any body art procedure(s).

**M. "Completed procedure"** means, for the purposes of determining qualification for licensure, a tattoo, body piercing, scarification or permanent cosmetics that has been finished, including any touchups or additional work following initial healing, with the client released from service.

**N. "Direct Supervision"** means the process under which an act is performed by another person with a licensed body artist or permanent makeup cosmetics professional practitioner licensed pursuant to the Body Art Safe Practices Act:

- (1) Is physically present in the establishment throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed;
- (3) evaluates and approves the procedure performed before the client departs the care setting; and
- (4) Is capable of responding immediately if any emergency should arise.

**O. "Disqualifying Criminal Conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

**P. "Equipment"** means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances.

**Q. "Guest License"** means a person temporary authorized to administer tattooing, body piercing-scarification, or permanent cosmetics for a period of 30 days from date license issued.

**R. "Instruments used for body art"** means hand pieces, needles, needle bars and other items that may come into contact with a person's body during the administration of body art.

**S. "Jurisprudence Examination"** means the examination given regarding the laws, rules and regulations, which relate to the practice of body art in the state of New Mexico.

**T. "License"** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

**U. "Licensing fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

**V. "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**W. "Operator"** means the owner of a body art establishment.

**X. "Permanent Cosmetics Practitioner"** means a person who uses tattoo techniques of placing pigment under the skin for cosmetic purposes to restore or enhance a person's appearance, with any manual device or machine used for tattooing.

**Y. "SDS"** means safety data sheet(s) used to communicate the hazards of hazardous chemical products which may be found in a body art establishment.

**Z. "Sharps"** means any sterilized object that is used for the purpose of penetrating the skin or mucosa, including needles, scalpel blades and razor blades.

**AA. "Single use"** means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

**BB. "Special Event"** means an event where procedures will be performed and will not be conducted at a licensed establishment.

**CC. "Sterilization"** means destruction of all forms of macrobiotic life, including spores.

**DD. "Substantially Equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Body Art Safe Practice Act.

**EE. "Supervising Licensee"** means licensed practitioner who manages the licensed body art establishment. This may or may not be the operator.

**FF. "Veteran"** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.36.1.7 NMAC - Rp, 16.36.1.7 NMAC, 2/4/2016; A, 6/21/2018; A, 2/3/2022, A, 7/12/2022]

#### **16.36.1.8 CUSTODY AND ALTERATION OF LICENSES:**

**A.** Licenses issued by the board are at all times the property of the board, and may remain in the custody of the licensee only as long as the licensee complies with the act and board rules.

**B.** Licenses shall not be altered in any way.

**C.** Inspectors or board designees may retrieve any license which is suspended, revoked, expired, altered or left by a licensee who is no longer employed at an establishment.

**D.** A current body art apprenticeship, practitioner or operator license is not transferable from one person to another.

[16.36.1.8 NMAC - Rp, 16.36.1.8 NMAC, 2/4/2016; A, 6/21/2018]

**16.36.1.9 LICENSES POSTED:**

**A.** All official board issued licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public upon entry of the establishment.

**B.** Licensees must attach a recent passport size colored photograph to the board issued license and sign the license where indicated.

**C.** All licensees, who have been placed on probation, will be issued a license, which states the licensee is on disciplinary probation.

**D.** Licensees must present a driver's license or other identification when requested by the public, the board or its authorized representative.

**E.** A special event license shall be posted where clearly visible to the public upon entry of the event.

[16.36.1.9 NMAC - Rp, 16.36.1.9 NMAC, 2/4/2016; A, 6/21/2018]

**16.36.1.10 EXEMPTIONS:**

**A.** A person who pierces only the outer perimeter of the ear, not including any cartilage, using a pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, is exempt from the requirements of the Body Art Safe Practices Act, Section 61-17B-1 NMSA 1978.

**B.** A member of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes is exempt from the requirements of the Body Art Safe Practices Act.

[16.36.1.10 NMAC - Rp, 16.36.1.10 NMAC, 2/4/2016; A, 6/21/2018]

**16.36.1.11 MUNICIPALITIES:**

The Body Art Safe Practices Act, Section 61-17B-1 NMSA 1978 provides minimum standards for safe body art practices. A municipality may by ordinance provide more stringent standards.

[16.36.1.11 NMAC - Rp, 16.36.1.11 NMAC, 2/4/2016]

**16.36.1.12 ELECTRONIC SIGNATURES:**

Electronic signatures will be acceptable for body artist practitioner and establishment applications, renewal applications and forms pursuant to the Uniform Electronic Transactions Act, Section 14-16-1 NMSA 1978.

[16.36.1.12 NMAC - N, 2/3/2022]

## **PART 2: LICENSURE REQUIREMENTS**

### **16.36.2.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.2.1 NMAC - Rp, 16.36.2.1 NMAC, 6/21/2018, A, 2/3/2022]

### **16.36.2.2 SCOPE:**

Any person licensed to practice body art tattoo and all operators.

[16.36.2.2 NMAC - Rp, 16.36.2.2 NMAC, 6/21/2018, A, 2/3/2022]

### **16.36.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5 NMSA 1978.

[16.36.2.3 NMAC - Rp, 16.36.2.3 NMAC, 6/21/2018]

### **16.36.2.4 DURATION:**

Permanent.

[16.36.2.4 NMAC - Rp, 16.36.2.4 NMAC, 6/21/2018]

### **16.36.2.5 EFFECTIVE DATE:**

June 16, 2018, unless a later date is cited at the end of a section.

[16.36.2.5 NMAC - Rp, 16.36.2.5 NMAC, 6/21/2018]

### **16.36.2.6 OBJECTIVE:**

To outline the application process, training and examination requirements and the renewal procedures.

[16.36.2.6 NMAC - Rp, 16.36.2.6 NMAC, 6/21/2018]

**16.36.2.7 DEFINITIONS:**

**[RESERVED]**

**16.36.2.8 APPRENTICE LICENSE APPLICATION FOR BODY ART TATTOO:**

**A. Application forms:**

(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications. All applications are valid for one year from date received.

(2) Applications for apprentice licensure must include:

(a) non-refundable application fee;

(b) a completed and signed application;

(c) applicant name;

(d) must be at least 18 years of age;

(e) current electronic mail address;

(f) current phone number;

(g) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be current upon receipt of application.

(h) an apprentice sponsorship application which must be completed and signed by a body art practitioner who meets the requirements within 16.36.2.9 NMAC and is licensed in the kind of body art the applicant is seeking an apprenticeship license;

(i) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and

(j) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

**B. Photographs:** Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

**C.** Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or higher.

**D.** An apprentice must remain under the direct supervision of their sponsor until all requirements have been met or the apprentice license has been terminated by the board.

**E.** Renewal of a body art apprentice license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice sponsor;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be current upon receipt of application.

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

(d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.2.8 NMAC - Rp, 16.36.2.8 NMAC, 6/21/2018, A, 2/3/2022; A, 7/12/2022]

#### **16.36.2.9 SPONSOR LICENSE APPLICATION FOR BODY ART TATTOO:**

**A.** A licensee may be approved to sponsor only one body art tattoo, apprentice at a time. Incomplete applications will be returned. All applications are valid for one year from date received. A complete application includes:

(1) non-refundable application fee;

(2) a current New Mexico body art tattoo, license;

(3) documentation of legally practicing body art tattooing for at least five years without any disciplinary action;

(4) a curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following requirements as required in 16.36.2.15 NMAC; curriculum shall include references and resources to be used and methods of evaluation for each area covered;

(5) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be active upon receipt of application;

(6) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

**B.** Photographs: Applicants for sponsor licensure shall attach a recent passport size, color photograph, front-view of face.

**C.** Upon approval of application, a board approved log will be available to record progress during the apprenticeship. This log will serve as proof of completion of training program.

**D.** Upon completion of the apprenticeship program, the sponsor and apprentice shall submit the apprentice log to the board administrator. The signed log shall be sent to the board within 15 days and shall include a sworn statement made under penalty of perjury, from the sponsor and the apprentice stating the apprenticeship has been completed. The sponsor will give a copy of the signed log and statement to the apprentice.

**E.** The apprentice will then receive notification from the board stating the apprentice is eligible to take the national theory exam.

**F.** Renewal of body art apprentice sponsor license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist tattoo apprentice sponsor license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be active upon receipt of application; and

(c) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

[16.36.2.9 NMAC - Rp, 16.36.2.9 NMAC, 6/21/2018, A, 2/3/2022; A, 7/12/2022]

#### **16.36.2.10 APPLICATION FOR BODY ART TATTOO PRACTITIONER LICENSE:**

##### **A. Application forms:**

(1) Applications shall be made on the official form provided by the board. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) applicant name;

(c) date of birth;

(d) must be at least 18 years of age;

(e) establishment mailing address;

(f) phone number;

(g) name, address and phone number of licensed establishment where services will be performed. Establishment license must be current upon receipt of application;

(h) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

(i) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

(j) proof of completion of tattoo training program and examination as defined in 16.36.2.14 NMAC.

(k) a recent passport size, color photograph; and

(l) non-refundable application fee as required by the board.

**B.** The applicant shall take and pass a written examination approved by the board and the board approved jurisprudence examination. The applicant must pass the exams with a minimum score of seventy-five percent or higher.

**C.** Renewal of a practitioner license:

- (1) License will expire one year after date of issue;
- (2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee;
- (3) Licensees shall renew their license on or before the expiration date;
- (4) Renewal of license shall include the following information:

(a) name and address of establishment. Establishment license must be current upon receipt of application;

(b) name of establishment operator or supervisor;

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

(d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.2.10 NMAC - Rp, 16.36.2.10 NMAC, 6/21/2018; A, 2/3/2022; A, 7/12/2022]

**16.36.2.11 [RESERVED]**

[16.36.2.11 NMAC - Rp, 16.36.2.11 NMAC, 6/21/2018; Repealed, 2/3/2022]

**16.36.2.12 [RESERVED]**

[16.36.2.12 NMAC – N, 1/11/2022; Repealed, 7/12/2022]

**16.36.2.13 PROOF OF COMPLETION OF TRAINING PROGRAM:**

Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a body artist apprentice, body artist practitioner, such training must include:

**A.** a board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months

prior to application and annually thereafter. The training may be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA sponsored;
- (6) red cross; or
- (7) board approved.

**B.** Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA (occupational safety and health administration) sponsored;
- (6) red cross; or
- (7) board approved;

[16.36.2.13 NMAC - Rp, 16.36.2.13 NMAC, 6/21/2018, A, 2/3/2022; A, 7/12/2022]

**16.36.2.14 [RESERVED]**

[16.36.2.14 NMAC - Rp, 16.36.2.14 NMAC, 6/21/2018; Repealed, 2/3/2022]

**16.36.2.15 TATTOO APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS:**

**A.** Upon successful completion of apprenticeship program, an applicant for original tattoo practitioner license shall provide proof, acceptable to the board or its designee, that applicant has completed an apprenticeship program under the direct supervision of

a licensed practitioner with instruction and experience in the kind of body art for which the applicant seeks a body art practitioner license.

**B.** Proof of completing an apprentice program shall be submitted on a log provided by the board

**C.** Tattoo apprenticeship curriculum; 1400 hours

(1) Orientation - 100 hours:

- (a) state laws and regulations;
- (b) tax and business license requirements;
- (c) OSHA blood borne pathogens standard;
- (d) the establishment's exposure control plan;
- (e) SDS sheets;
- (f) paperwork and business documentation;
- (g) HIPAA (Health Insurance Portability and Accountability Act of 1996 privacy rule);
- (h) environment/appropriate studio set-up;
- (i) professional image;
- (j) appropriate communication with clients;
- (k) ethics and legalities;
  - (i) minors;
  - (ii) drugs and alcohol;
  - (iii) medical conditions/risk assessment; and
  - (iv) personal boundaries.
- (l) Dealing with emergencies:
  - (i) blood spills;
  - (ii) fainting;

- (iii) bleeding;
- (iv) needlesticks; and
- (v) other exposures.

(2) Sterilization, disinfection theory and practical - 100 hours:

- (a) microbiology;
- (b) definitions;
- (c) microorganisms of the skin;
- (d) factors that influence the survival and growth of microorganisms;
- (e) breaking the chain of infection;
- (f) infection control;
- (g) handwashing;
- (h) types of soaps and hand sanitizers;
- (i) use of gloves and other personal protective equipment;
- (j) how to recognize, prevent and remedy cross-contamination;
- (k) immunizations;
- (l) cleaning, disinfection and sterilization;
- (m) sterile chart;
- (n) cleaning/appropriate procedures;
- (o) implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;
- (p) disinfection/appropriate use and disposal of disinfecting solutions; and
- (q) sterilization/appropriate use and maintenance of autoclave sterilizers.

(3) Tattooing observation/theory - 200 hours:

- (a) artistic development;

- (b) drawing for clients;
- (c) stencil making and application;
- (d) color theory/understanding the color wheel;
- (e) line quality and proportion;
- (f) shading and coloring technique;
- (g) pigments and color mixing;
- (h) portfolio construction and maintenance;
- (i) anatomy;
- (j) understanding of skin;
- (k) parts and functions of skin;
- (l) Surgically modified skin and scar tissue.
- (m) Compromised skin from medical procedure, such as radiation and chemotherapy.
- (n) determining the appropriateness of a tattoo placement;
- (o) equipment;
- (p) disposable supplies;
- (q) needles;
- (r) sharps disposal;
- (s) reusable equipment;
- (t) storage;
- (u) tattoo equipment maintenance;
- (v) understanding the electromagnetic tattoo machine and its history;
- (w) liner/shader set-up;
- (x) quality and conductivity of metals used in tattoo machines;

- (y) spring gauges and maintenance;
  - (z) the difference between long stroke/short stroke technique;
  - (aa) tattoo machine schematics, electronics and constructions;
  - (bb) tuning and adjustment of machines;
  - (cc) understanding current/voltage and reciprocation response;
  - (dd) needle-making safety and construction; and
  - (ee) aftercare.
- (4) Tattooing observation/practical - 1000 hours:
- (a) proper use of safety procedures outlined in theory training;
  - (b) aseptic technique;
  - (c) room set-up and break-down;
  - (d) skin preparation;
  - (e) client relations/relaxation techniques;
  - (f) pain management;
  - (g) tattooing techniques;
  - (h) line quality and solid color techniques;
  - (i) pigment and implementation selection and use;
  - (j) needle depth and machine/hand speed coordination;
  - (k) dealing with mistakes;
  - (l) bandaging techniques; and

(m) in order to be approved practical work must include a minimum of 50 completed procedures, for the purposes of determining qualifications for licensure under this rule. Completed procedure means a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing and the client is released from service.

**D.** An applicant for a body art tattoo practitioner license shall take the tattoo examination approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program.

**E.** Individuals who have been approved to take the written examination will have 12 months from approval date to take the examination and get licensed through the board.

[16.36.2.15 NMAC - N, 6/21/2018; A, 7/12/2022]

**16.36.2.16 [RESERVED]**

[16.36.2.16 NMAC - N, 6/21/2018; Repealed, 2/3/2022]

**16.36.2.17 [RESERVED]**

[16.36.2.17 NMAC - Rp, 16.36.2.18 NMAC, 6/21/2018; Repealed, 2/3/2022]

**16.36.2.18 [RESERVED]**

[16.36.2.18 NMAC - N, 6/21/2018; Repealed, 2/3/2022]

**16.36.2.19 EXPIRED LICENSE:**

**A.** An applicant whose license has been expired for one year but less than two years shall submit an application, payment of all renewal fees to bring the license current, proof of completion of blood borne pathogens training within the prior 12 months, current CPR and first aid certification, and take and pass a board approved jurisprudence examination with a minimum score of seventy-five percent.

**B.** An applicant whose license has expired for more than two years shall take the tattoo, body piercing-scarification or permanent cosmetic written examination approved by the board with a passing minimum score approved by the board. Applicant must also take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

**C.** An operator whose establishment license has expired shall submit a reinstatement application, payment of reinstatement fee for each year the license has been expired; and name of licensed operator.

**D.** A practitioner whose license has been expired more than five years shall re-enter an approved training program (apprenticeship), take the tattoo, body piercing-scarification or permanent cosmetic exam approved by the board with a passing

minimum score approved by the board and take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

[16.36.2.19 NMAC - N, 6/21/2018]

**16.36.2.20 CROSSOVER HOURS:**

Individuals who are licensed in one discipline may transfer 100 hours of orientation toward their apprenticeship in another discipline, if they have at least one year of full time, verified work experience in a licensed establishment and complete the remaining required hours for licensure.

[16.36.2.20 - N, 6/21/2018]

**16.36.2.21 [RESERVED]**

[16.36.2.21 NMAC - N, 6/21/2018, Repealed, 2/3/2022]

**16.36.2.22 CREDIT GRANTED FOR SUBSTANTIALLY EQUIVELENT TRAINING AND EXPERIENCE:**

**A.** An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico. The applicants training and experience meets the training and experience and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

**B.** An applicant licensed in another state or jurisdiction shall submit the follow requirements:

- (1) completed and signed application;
- (2) non-refundable application fee;
- (3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;
- (4) verifications of licensure mailed by the licensing authority from the other state or jurisdiction to the board which shall include:
  - (a) verification that the applicant holds a valid and unexpired license;
  - (b) the license issuance date;
  - (c) the license expiration date;

(d) a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority;

(5) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC; and

(6) jurisprudence exam with a passing score of seventy-five percent or higher.

**C.** An applicant seeking credit for training and experience obtained as a body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the following requirements;

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

(4) proof of practice equivalent to the hours of training defined in 16.36.2.15 NMAC

(a) W-2 or 1099 forms; or

(b) federal or state tax returns verifying occupational status.

(5) jurisprudence exam with a passing score of seventy-five percent or higher.

(6) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

**D.** If the applicant training and experience does not meet the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, the board may request additional requirements outlined in 16.36.2.23 NMAC.

[16.36.2.22 NMAC - N, 2/3/2022; A, 7/12/2022]

**16.36.2.23 ADDITIONAL TRAINING REQUIREMENTS:**

If the board determines that an applicant's training and experience is not substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, it may require:

(1) the applicant to complete additional training before proceeding with the application process; and

(2) an examination approved by the board outlined in 16.36.2.15 NMAC.

[16.36.2.23 NMAC - N, 2/3/2022, A, 7/12/2022]

### **PART 3: REQUIREMENTS FOR ESTABLISHMENTS**

#### **16.36.3.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.3.1 NMAC - Rp, 16.36.3.1 NMAC, 2/4/2016; A, 2/3/2022]

#### **16.36.3.2 SCOPE:**

Any person licensed to practice body art tattoo, piercing, scarification and all operators.

[16.36.3.2 NMAC - Rp, 16.36.3.2 NMAC, 2/04/2016]

#### **16.36.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5 NMSA 1978.

[16.36.3.3 NMAC - Rp, 16.36.3.3 NMAC, 2/04/2016]

#### **16.36.3.4 DURATION:**

Permanent.

[16.36.3.4 NMAC - Rp, 16.36.3.4 NMAC, 2/04/2016]

#### **16.36.3.5 EFFECTIVE DATE:**

February 4, 2016, unless a later date is cited at the end of a section.

[16.36.3.5 NMAC - Rp, 16.36.3.5 NMAC, 2/04/2016]

#### **16.36.3.6 OBJECTIVE:**

To outline the application process for body art operator licensure and requirements for all establishments.

[16.36.3.6 NMAC - Rp, 16.36.3.6 NMAC, 2/4/2016, A, 2/3/2022]

### **16.36.3.7 DEFINITIONS:**

**[RESERVED]**

### **16.36.3.8 REQUIREMENTS FOR ESTABLISHMENT:**

**A.** All walls and floors of a body art establishment shall be washable and in good repair. Walls and floors shall be maintained in a clean condition. All surfaces, including client chairs and benches shall be of such construction as to be easily cleaned and sanitized after each client procedure. All body art establishments shall be completely separated from any other business or non-business using floor-to-ceiling walls and doors. Rooms where body art procedures occur shall be free from debris or any safety hazards and shall not be used for storage.

**B.** Establishments located within or at a private residence must meet zoning requirements. An establishment located in or at a private residence shall meet establishment requirements as stated in 16.36.3.8 NMAC.

**C.** There shall be a minimum of 40 square feet of floor space for each procedure room. Each body art establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple procedure rooms shall be separated by clean, non-porous and washable dividers, curtains or partitions, which shall be maintained with an EPA registered disinfectant.

**D.** The body art establishment shall be well-ventilated and provided adequate artificial light.

**E.** No animals of any kind shall be allowed in an establishment, except service animals used by persons with limitations as defined in the Americans with Disabilities Act. Aquariums are allowed, but not within a procedure room.

**F.** A separate, readily accessible, hand sink with hot and cold running water, under pressure, preferably equipped with wrist or foot operated controls and supplied with liquid soap and disposable paper towels shall be readily accessible within the body art establishment. One hand sink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding any service sinks, and one toilet in a body art establishment.

**G.** At least one covered waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily and solid waste shall be removed from the premises at least weekly. Receptacles in the operator

area shall either have a foot operated lid or a lid that can and shall remain open during body art procedures to prevent hand contact with the receptacle during a procedure. All refuse containers shall be cleanable and kept clean.

**H.** All instruments and supplies shall be stored in clean dry covered containers.

**I.** If reusable cloth items, including but not limited to lap-cloths, are used, they shall be mechanically washed after each client procedure. Reusable cloth items shall be mechanically washed with detergent and dried. The cloth items shall be stored in a clean dry environment.

**J.** The following information shall be kept on file on the premises of a body art establishment and available for inspection by the board:

- (1) the full names of all employees in the establishment and their exact duties;
- (2) the board-issued license with identification photograph;
- (3) the body art establishment name and hours of operation;
- (4) the name and address of the body art establishment owner;
- (5) a complete description of all body art performed;
- (6) maintenance of a safety data sheet (SDS) file containing pertinent information regarding products; and
- (7) a copy of the Body Art Safe Practices Act and current rules.

**K.** An operator shall notify the board in writing not less than 30 days before changing the location of a body art establishment. The notice shall include the street address of the new location.

[16.36.3.8 NMAC - Rp, 16.36.3.8 NMAC, 2/4/2016; A, 6/21/2018; A, 7/12/2022]

### **16.36.3.9 APPLICATION FOR BODY ART OPERATOR ESTABLISHMENT LICENSE:**

**A.** Any establishment licensed by the board must be under the immediate supervision of a board licensed practitioner while licensed activity is being practiced therein. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

**B.** The supervising licensee(s) must be licensed by the board in tattoo, piercing scarification, or permanent cosmetics.

**C. Application forms:**

**(1)** Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

**(2)** Applications for licensure must include:

**(a)** a completed and signed application;

**(b)** name of the body art establishment;

**(c)** name of the operator of the establishment;

**(d)** government-issued identification with a photo showing proof of age indicating applicant is at least 18 years old;

**(e)** establishment address;

**(f)** establishment phone number;

**(g)** name(s) of the body art supervising practitioner(s) working at the establishment, each of whom must be currently licensed with the board at time of application;

**(h)** a copy of current city or county business license;

**(i)** copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2 or 16.36.9. or 16.36.10 NMAC pursuant to Chapter 61, Article 17B NMSA 1978;

**(j)** proof of current immunizations as defined in 16.36.2 or 16.36.9. or 16.36.10 NMAC pursuant to Chapter 61, Article 17B NMSA 1978;

**(k)** proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC pursuant to Chapter 61, Article 17B NMSA 1978; and

**(l)** non-refundable application fee as required by the board.

**D. Renewal of a body art operator establishment license:**

**(1)** License will expire one year after date of issue;

**(2)** Timely renewal of license(s) is the full and complete responsibility of the licensee; Failure to renew the license by the expiration date will result in a late fee;

**(3)** Licensees shall renew their license on or before the expiration date;

**(4)** Renewal of a body art operator establishment license shall include the following information:

**(a)** name(s) of the body art supervising practitioner(s) working at the establishment, must be currently licensed with the board at time of application;

**(b)** copy of current city or county business license;

**(c)** copy of current CPR, first aid and blood borne pathogen training certificates, as 16.36.2 or 16.36.9. or 16.36.10 NMAC pursuant to Chapter 61, Article 17B NMSA 1978;

**(d)** proof of current immunizations as defined in 16.36.2 or 16.36.9. or 16.36.10 NMAC pursuant to Chapter 61, Article 17B NMSA 1978; and

**(e)** proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC pursuant to Chapter 61, Article 17B NMSA 1978.

[16.36.3.9 NMAC – N, 2/3/2022]

#### **16.36.3.10 EXPIRED LICENSE:**

An operator whose establishment license has expired shall submit a reinstatement application, payment of reinstatement fee for each year the license has been expired; and name of licensed operator.

[16.36.3.10 NMAC – N, 2/3/2022]

### **PART 4: ENFORCEMENT, COMPLAINTS AND DISCIPLINARY ACTION**

#### **16.36.4.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.4.1 NMAC - Rp, 16.36.4.1 NMAC, 2/4/2016, A, 2/3/2022]

#### **16.36.4.2 SCOPE:**

Any person licensed to practice body art tattoo, piercing, scarification and all operators.

[16.36.4.2 NMAC - Rp, 16.36.4.2 NMAC, 02/04/2016]

#### **16.36.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5, 61-17B-9, 61-17B-10, 61-17B-11.

[16.36.4.3 NMAC - Rp, 16.36.4.3 NMAC, 02/04/2016]

**16.36.4.4 DURATION:**

Permanent.

[16.36.4.4 NMAC - Rp, 16.36.4.4 NMAC, 02/04/2016]

**16.36.4.5 EFFECTIVE DATE:**

February 4, 2016, unless a later date is cited at the end of a section. [16.36.4.5 NMAC - Rp, 16.36.4.5 NMAC, 02/04/2016]

**16.36.4.6 OBJECTIVE:**

To inform licensees of the complaint procedures, enforcement and disciplinary actions.

[16.36.4.6 NMAC - Rp, 16.36.4.6 NMAC, 02/04/2016]

**16.36.4.7 DEFINITIONS:**

[RESERVED]

**16.36.4.8 ENFORCEMENT, COMPLAINTS AND DISCIPLINARY ACTION:**

**A.** A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Body Art Safe Practices Act.

**B.** It shall be unlawful for any artist to perform body piercing or tattoo procedures outside of a licensed body piercing or tattooing establishment.

**C.** It shall constitute a violation of the Body Art Safe Practices Act when a licensee:

**(1)** attempts by means of any threat, force, intimidation or violence to deter, interfere with or prevent any inspector or board designee from performing any official duty of the department or board;

**(2)** willfully resists, delays or obstructs an inspector or board designee in the performance of his/her official duty;

**(3)** fails to comply with the lawful command of an inspector or board designee in the discharge of his/her official duty; or

**(4)** fails to cooperate in investigations, proceedings, and requirements of this code.

**D.** The board, or its designee, will consider a formal complaint filed against a licensee or an establishment provided the complaint is on the proper form, signed under penalty of perjury.

**E.** When a complaint is received on the proper form, the board, or its designee, will write to the licensee the complaint is against and request a response within 15 days of receipt of such request.

**F.** The response will be reviewed by a committee designated by the board chairman.

**G.** If the committee's recommendation is that the complaint be taken before the board, the complaint will be reviewed at the next regularly scheduled board meeting. The board shall:

- (1)** take no further action; or
- (2)** issue a notice of contemplated action (NCA) under the Uniform Licensing Act; or
- (3)** assess an administrative penalty subject to appropriate procedural requirements and safeguards.

**H.** Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Body Art Safe Practices Act.

**I.** The board may fine, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the act, the Uniform Licensing Act, or these rules.

**J.** Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one hundred fifty dollars (\$150) for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine and revocation of license or other disciplinary action. The penalties to be assessed are as follows:

- (1)** Failure to comply with operator requirements:
  - (a)** first offense: one hundred dollars (\$100);
  - (b)** second offense: one hundred fifty dollars (\$150);

**(c)** third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**(2)** Failure to comply with sanitation and safety requirements:

**(a)** first offense: one hundred dollars (\$100);

**(b)** second offense: one hundred fifty dollars (\$150);

**(c)** third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**(3)** Failure to post required licenses:

**(a)** first offense: fifty dollars (\$50);

**(b)** second offense: one hundred fifty dollars (\$150);

**(c)** third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**(4)** Working on an expired or invalid license:

**(a)** first offense: fifty dollars (\$50);

**(b)** second offense: one hundred fifty dollars (\$150);

**(c)** third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act

**(5)** Performing services for compensation in an unlicensed establishment:

**(a)** first offense: one hundred dollars (\$100);

**(b)** second offense: one hundred fifty dollars (\$150);

**(c)** third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**(6)** Any violation of the Body Art Safe Practices Act or rules:

**(a)** first offense: one hundred dollars (\$100);

**(b)** second offense: one hundred fifty dollars (\$150);

**(c)** third and subsequent offenses: the board shall take steps to impose a further fine up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

**K.** The board may suspend a license immediately without prior notice to the holder of the license if it determines, after inspection, that conditions within a body art establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize a body art establishment. A suspension action taken pursuant to this section is effective when communicated to the operator or body artist. Suspension action taken pursuant to this section shall not continue beyond the time that the conditions causing the suspension cease to exist, as determined by a board inspection at the request of the operator or body artist. A license holder may request an administrative hearing, as provided by Section 61-17B-5 NMSA 1978 of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within 10 days.

[16.36.4.8 NMAC - Rp, 16.36.4.8 NMAC, 2/4/2016, A, 2/3/2022]

#### **16.36.4.9 DISQUALIFYING CRIMINAL CONVICTIONS:**

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

- (1)** murder;
- (2)** aggravated assault;
- (3)** assault with intent to commit a violent felony;
- (4)** aggravated battery inflicting great bodily harm or with a deadly weapon;
- (5)** kidnapping;
- (6)** abandonment of a child resulting in death or great bodily harm;
- (7)** abuse of child;
- (8)** negligent abuse of a child resulting in death;
- (9)** intentional abuse of a child 12 to 18 years old resulting in death;
- (10)** sexual exploitation of children;

- (11)** sexual exploitation of children by prostitution;
- (12)** criminal sexual penetration;
- (13)** criminal sexual contact;
- (14)** criminal sexual contact of a minor;
- (15)** aggravated indecent exposure;
- (16)** criminal sexual communication with a child;
- (17)** human trafficking;
- (18)** willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (19)** willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;
- (20)** sex offender who fails to comply with SORNA re moving to another state;
- (21)** failure to comply with proclamation of the governor;
- (22)** practicing medicine without a license;
- (23)** forgery;
- (24)** fraud;
- (25)** aggravated escape from the custody of the children, youth and families department;
- (26)** bringing contraband into a juvenile detention facility or juvenile correctional facility;
- (27)** tampering with public records;
- (28)** delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior;
- (29)** intentionally selling an imitation controlled substance to a person under the age of eighteen years; and

**(30)** selling or giving alcoholic beverages to minors, and possession of alcoholic beverages by minors.

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Body Art Safe Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1)** an arrest not followed by a valid conviction;
- (2)** a conviction that has been sealed, dismissed, expunged or pardoned;
- (3)** a juvenile adjudication; or

**(4)** a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.36.4.9 NMAC – N, 2/3/2022]

## **PART 5: STANDARDS OF PRACTICE**

### **16.36.5.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.5.1 NMAC - Rp, 16.36.5.1 NMAC, 2/4/2016; A, 2/3/2022]

### **16.36.5.2 SCOPE:**

Any person licensed to practice body art tattoo, piercing, scarification and all operators.

[16.36.5.2 NMAC - Rp, 16.36.5.2 NMAC, 02/04/2016]

**16.36.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-8.

[16.36.5.3 NMAC - Rp, 16.36.5.3 NMAC, 02/04/2016]

**16.36.5.4 DURATION:**

Permanent.

[16.36.5.4 NMAC - Rp, 16.36.5.4 NMAC, 02/04/2016]

**16.36.5.5 EFFECTIVE DATE:**

February 4, 2016, unless a later date is cited at the end of a section.

[16.36.5.5 NMAC - Rp, 16.36.5.5 NMAC, 02/04/2016]

**16.36.5.6 OBJECTIVE:**

To provide minimum licensure with minimum practice of standards.

[16.36.5.6 NMAC - Rp, 16.36.5.6 NMAC, 02/04/2016]

**16.36.5.7 DEFINITIONS:**

[RESERVED]

**16.36.5.8 STANDARDS OF PRACTICE AND PROFESSIONAL STANDARDS:**

Practitioners are required to comply with the following minimum standards.

**A.** A practitioner shall perform all body art procedures in accordance with universal precautions set forth by occupational health and safety administration (OSHA) and the United States centers for disease control.

**B.** Smoking, eating, or drinking by anyone is prohibited in the procedure room while body art preparation, procedure and clean-up is being performed.

**C.** A practitioner shall refuse service to any person who, in the opinion of a reasonable objective observer, may be under the influence of alcohol or drugs.

**D.** A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art, the licensee must thoroughly wash their hands

in hot running water with liquid antimicrobial soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

**E.** The skin of the licensee shall be free of rash or infection. No licensee affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

**F.** In performing body art procedures, a practitioner shall wear disposable single-use gloves. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with Subsection D before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for hand washing procedures as part of a good personal hygiene program.

**G.** If, while performing body art, the licensee's glove is pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person, the procedures in Subsections D and E above shall be repeated immediately. Any item or instrument used for body art which is contaminated during the procedure shall be discarded and replaced immediately with new sanitary items or instrument before the procedure resumes.

**H.** Contaminated waste, which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved "red" bag which is marked with the international "biohazard" symbol. It must then be disposed of by an approved medical waste facility pursuant to federal and state regulations including but not limited to 29 CFR 1910.1030 and New Mexico solid waste management regulations promulgated by the New Mexico environment department. Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on-site shall not exceed 90 days. Establishment shall maintain records of waste removal.

**I.** Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its content. The applicator or gauze shall be used once and then discarded.

**J.** It is the responsibility of the operator of the body art establishment to be in possession of the most current regulations and aftercare instructions.

**K.** Jewelry inserted into a newly pierced area must be the appropriate length and diameter for the unique anatomy and placement of the piercing. Materials appropriate to wear in a fresh body piercing must be able to withstand the heat and pressure of an autoclave sterilization and compatible with the body to prevent irritation, allergy, or infection. Materials must be to the specific grade of metal designated by code through the American Society for Testing and Materials Standards (ASTM), the International Organization for Standardization (ISO) or to the standards listed below:

- (1) surgical steel should meet on or more of the following criteria:
  - (a) ASTM F-138
  - (b) ISO 5832-1
  - (c) ISO 10993-6
  - (d) ISO 10993-10
  - (e) ISO 10993-11; or
  - (f) EEC Nickel Directive compliant.
- (2) titanium;
  - (a) ASTM F-136;
  - (b) ASTM F-1295;
  - (c) ISO 5832-3; or
  - (d) commercially pure titanium that is ASTM F-67 compliant.
- (3) niobium:
- (4) gold that is 14k to 18k, nickel-free, cadmium-free and alloyed for biocompatibility. Gold plated, gold-filled, or fold overlay/vermeil jewelry is not acceptable for fresh piercing.
- (5) platinum;
- (6) biocompatible polymers;
- (7) glass:
  - (a) fused quartz glass;

(b) lead-free borosilicate; or

(c) lead free soda-lime glass.

[16.36.5.8 NMAC - Rp, 16.36.5.8 NMAC, 2/4/2016; A, 7/12/2022]

**16.36.5.9 STERILE PROCEDURES AND SANITATION:**

**A.** All non-disposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with a liquid soap solution and hot water or an appropriate disinfectant to remove blood and tissue residue and placed in an ultrasonic unit which shall remain on the premises of the body art establishment and which will be operated in accordance with the manufacturer's instructions.

**B.** All facilities that reprocess reusable instruments shall have an equipment cleaning room that is physically separated from the work stations. Facilities that use all disposable equipment shall be exempt from this requirement.

**C.** After cleaning, all non-disposable instruments used for body art shall be packed individually in paper peel-packs and sterilized. All paper peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Properly packaged, sterilized and stored equipment can be stored no more than one year. Paper peel-packs must be dated with an expiration date not to exceed one year. Sterile equipment may not be used after the expiration date without first repackaging and resterilizing.

**D.** All non-disposable instruments used for body art shall be sterilized in an autoclave at the body art establishment. Off-site sterilization is prohibited. The sterilizer shall be used, cleaned, and maintained according to manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit must be available for inspection by the board.

**E.** Each holder of a license to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. These test records shall be retained by the operator for a period of three years and provided to the board upon request.

**F.** After sterilization, the instrument used for body art, tattooing or body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

**G.** All instruments used for body art, tattooing or body piercing shall remain stored in sterile packages until just prior to performing a body art procedure. When assembling instruments used for performing body art, the operator shall wear disposable medical gloves and use techniques to ensure that the instruments and gloves are not contaminated.

H. All inks, dyes, pigments and sharps shall be specifically manufactured for performing body art procedures and shall not be adulterated. Immediately before applying a tattoo, the quantity of the dye to be used for the tattoo shall be transferred from the bottle and placed into sterile, single use paper cups or plastic caps. Upon completion of the tattoo, these single cups or caps and their contents shall be discarded.

I. For body piercing and tattooing establishments primarily utilizing a Statim autoclave, reusable items shall be sterilized in an autoclave in a bulk load without sterilization pouches, previous to sterilization in the Statim autoclave, for the body piercing or tattoo procedure. Reusable instruments and single use items sterilized in a Statim autoclave cassette must be used immediately after opening the Statim autoclave cassette. The items contained in the Statim autoclave cassette shall be used for one client only and shall include use of an integrater strip.

[16.36.5.9 NMAC - Rp, 16.36.5.9 NMAC, 2/4/2016; A, 7/12/2022]

#### **16.36.5.10 REQUIREMENTS FOR SINGLE USE ITEMS:**

A. All sharps shall be sterilized prior to use and stored in paper peel-packs.

B. Single use items shall not be used on more than one client for any reason. After use, all single use needles, razors and other sharps shall be immediately disposed of in approved sharps containers. Piercing needles are strictly single use.

C. All body art stencils shall be single use and disposable. Petroleum jellies, soaps and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with sterile gauze or in a manner which prevents contamination of the original container and its contents. The gauze shall be used only once and then discarded.

[16.36.5.10 NMAC - Rp, 16.36.5.10 NMAC, 02/04/2016]

#### **16.36.5.11 CLIENT CARE AND RECORDS REQUIREMENTS:**

A. Prior to performing a body art procedure on a client, the practitioner shall:

(1) inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:

(a) history of diabetes;

(b) history of hemophilia (bleeding);

(c) history of skin disease, skin lesions, or skin sensitivities to soaps, disinfectants etc.;

(d) history of allergies or adverse reactions to pigment, dyes, or other sensitivities;

(e) history of epilepsy, seizures, fainting, or narcolepsy;

(f) use of medications such as anticoagulants, which thin the blood or interfere with blood clotting; and

(g) any other conditions such as hepatitis or HIV.

(2) require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents them from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by Subsection J of 16.36.5.8 NMAC.

B. Preparation and care of a client's skin area must comply with the following:

(1) Any skin area or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.

(2) Before a body art procedure is performed, the immediate skin area and the areas of the skin surrounding where body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors or safety razors with single-use blades shall be used. Blades shall be discarded after each use, and reusable holders shall be cleaned and autoclaved after each use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.

(3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with the OSHA blood borne pathogens standard.

C. The body art establishment shall keep a record of all persons who have had body art procedures performed. The record shall include:

(1) client's name;

(2) date of birth;

(3) address;

(4) the date of the procedure;

(5) the name of licensee who performed the procedure(s);

- (6) the type of procedure performed and its location on the client's body;
- (7) the signature of the client and, if the client is a minor, written proof of parental or legal guardian presence and consent;
- (8) specific ink color(s) applied, and, when available, the manufacturer, catalogue identification number or supplier invoice of each color used.

D. For jewelry, a record of the manufacturer, catalogue identification number or supplier invoice shall be maintained.

E. All records described in this paragraph shall be retained for a minimum of three years and provided to the board upon request. Records destroyed after three years shall be destroyed by shredding or appropriate destruction methods.

F. The licensee shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:

- (1) on proper cleansing of the area which received the body art;
- (2) to consult a health care provider for:
  - (a) unexpected redness, tenderness or swelling at the site of the body art procedure;
  - (b) any rash;
  - (c) unexpected drainage at or from the site of the body art procedure; or
  - (d) a fever within 24 hours of the body art procedure; and
- (3) the address, and phone number of the establishment; a copy shall be provided to the client; a model set of aftercare instructions shall be made available by the board.

[16.36.5.11 NMAC - Rp, 16.36.5.11 NMAC, 02/04/2016]

## **PART 6: FEES**

### **16.36.6.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.6.1 NMAC - Rp, 16.36.6.1 NMAC, 02/04/2016, A, 2/3/2022]

### **16.36.6.2 SCOPE:**

Any person licensed to practice body art tattoo, piercing, scarification and all operators.

[16.36.6.2 NMAC - Rp, 16.36.6.2 NMAC, 02/04/2016]

**16.36.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5.

[16.36.6.3 NMAC - Rp, 16.36.6.3 NMAC, 02/04/2016]

**16.36.6.4 DURATION:**

Permanent.

[16.36.6.4 NMAC - Rp, 16.36.6.4 NMAC, 02/04/2016]

**16.36.6.5 EFFECTIVE DATE:**

February 4, 2016, unless a later date is cited at the end of a section.

[16.36.6.5 NMAC - Rp, 16.36.6.5 NMAC, 02/04/2016]

**16.36.6.6 OBJECTIVE:**

To outline fees for examinations, applications, renewal, late penalty fee, duplicate license and administrative fees

[16.36.6.6 NMAC - Rp, 16.36.6.6 NMAC, 02/04/2016]

**16.36.6.7 DEFINITIONS:**

[RESERVED]

**16.36.6.8 FEES:**

All fees are payable to the board and are non-refundable. Fees are as follows:

- |  |        |
|--|--------|
| A. establishment license (original)              | \$300; |
| B. establishment license (renewal)               | \$300; |
| C. apprentice sponsor application                | \$50;  |
| D. apprentice sponsor license (original/renewal) | \$100; |
| E. apprentice license (original and renewal)     | \$50;  |
| F. practitioner license per specialty (original) | \$100; |
| G. practitioner license per specialty (renewal)  | \$100; |
| H. permanent cosmetic license (original)         | \$100; |

- |   |        |
|---|--------|
| I. permanent cosmetic license (renewal) | \$100; |
| J. administrative fee (electronic list) | \$100; |
| K. duplicate licenses                   | \$25;  |
| L. late fee                             | \$35.  |

[16.36.6.8 NMAC - Rp, 16.36.6.8 NMAC, 02/04/2016]

## **PART 7: LICENSURE REQUIREMENTS FOR SPECIAL EVENTS, MOBILE BODY ART AND GUESTS**

### **16.36.7.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.7.1 NMAC – N, 2/3/2022]

### **16.36.7.2 SCOPE:**

Any person wanting to participate in a body art related special event, mobile body art and guests.

[16.36.7.2 NMAC – N, 2/3/2022]

### **16.36.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5 NMSA 1978.

[16.36.7.3 NMAC – N, 2/3/2022]

### **16.36.7.4 DURATION:**

Permanent.

[16.36.7.4 NMAC – N, 2/3/2022]

### **16.36.7.5 EFFECTIVE DATE:**

February 3, 2022, unless a later date is cited at the end of a section.

[16.36.7.5 NMAC – N, 2/3/2022]

### **16.36.7.6 OBJECTIVE:**

To outline the application process, for body art related special events, mobile body art, and guests.

[16.36.7.6 NMAC – N, 2/3/2022]

**16.36.7.7 DEFINITIONS:**

**[RESERVED]**

**16.36.7.8 SPECIAL EVENT, MOBILE BODY ART AND GUEST LICENSE REQUIREMENTS:**

**A.** Any licensee desiring to sponsor a special event must first obtain approval from the board office staff. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board must be submitted at least 10 days prior to the event. Approval for the special events may be made administratively.

**(1)** The sponsor(s) and the establishment where the sponsor(s) is practicing must have a current license.

**(2)** The sponsor shall apply for the license at least 30 days prior to the event.

**B.** All provisions of these regulations shall apply with the following exceptions.

**(1)** Hand wash facilities shall be easily accessible to each procedure area and designated for use by artists only. Hand wash facilities or temporary hand wash facilities shall consist of antibacterial liquid soap, single-use paper towels, and adequate supply of potable water dispensed through a continuous flow spout. Wastewater shall be collected and disposed of in a sanitary manner.

**(2)** Body artist practitioners may bring pre-sterilized instruments or instruments that have been sterilized at another location with documentation showing a negative spore test result within the previous 30 days. On site sterilization units may be used and shall comply with 16.36.5 NMAC of these rules.

**(3)** After the last procedure is completed, all procedure areas shall be cleaned and disinfected.

**C.** A guest licensee is a body artist practitioner who is licensed in another jurisdiction or meets the requirements of licensure in New Mexico and shall practice 30 days or less in New Mexico. Registration is required before any person may act as a guest licensee. An applicant for registration as a guest licensee must:

**(1)** hold current licensure as a body artist practitioner in another jurisdiction or have the education or experience relating to the applicable type of New Mexico license requested; and

(2) be under the sponsorship of a New Mexico licensed body artist practitioner.

D. To be registered as a guest licensee the following must be submitted to the board:

(1) verification of sponsorship by a licensed body artist practitioner;

(2) a complete application;

(3) registration fee;

(4) proof of age indicating applicant is at least 18 years old (government-issued identification with a photo);

(5) copy of current CPR, first aid and blood borne pathogen training as defined within 16.36.7.9 NMAC.

(6) verification of licensure in another jurisdiction.

E. Applicants not licensed in another jurisdiction must provide documentation of education and experience relating to the applicable type of New Mexico license requested.

F. Guest body art registration will expire 30 days from the date of issuance. A guest license shall not extend beyond 30 days unless the licensee petitions the board and provides documentation that licensee has not worked 30 days in New Mexico. A guest license shall not be granted more than three times within a 12 month period.

[16.36.7.8 NMAC – N, 2/3/2022]

#### **16.36.7.9 PROOF OF COMPLETION OF TRAINING PROGRAM:**

Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a permanent cosmetic practitioner or body art operator. Such training must include:

A. A board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months prior to application and annually thereafter. The training may be obtained through any of the following:

(1) nationally accredited organization;

- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA sponsored;
- (6) red cross; or
- (7) board approved.

**B.** Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA (occupational safety and health administration) sponsored;
- (6) red cross; or
- (7) board approved;

**C.** An applicant for a permanent cosmetics apprenticeship shall file an apprentice agreement notarized by all parties that applicant shall complete the board required training requirements.

[16.36.7.9 NMAC - N, 2/3/2022]

## **PART 8: EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS AND VETERANS**

### **16.36.8.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.8.1 NMAC – N, 2/3/2022]

### **16.36.8.2 SCOPE:**

This part sets for the application procedures to expedite licensure for military service members, their spouse or dependent children, and for veterans.

[16.36.8.2 NMAC – N, 2/3/2022]

**16.36.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5 NMSA 1978.

[16.36.8.3 NMAC – N, 2/3/2022]

**16.36.8.4 DURATION:**

Permanent.

[16.36.8.4 NMAC – N, 2/3/2022]

**16.36.8.5 EFFECTIVE DATE:**

February 3, 2022, unless a later date is cited at the end of a section.

[16.36.8.5 NMAC – N, 2/3/2022]

**16.36.8.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to 61-1-34 NMSA 1978.

[16.36.8.6 NMAC – N, 2/3/2022]

**16.36.8.7 DEFINITIONS:**

**[RESERVED]**

**16.36.8.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the board. All applications are valid for one year from date received. All fees are non-refundable.

**B.** The applicant shall provide a complete application that includes the following information:

- (1) applicant's full name;
- (2) current mailing address;

- (3) current electronic mail address;
- (4) date of birth;
- (5) current bloodborne pathogens certification;
- (6) current CPR/First Aid certification; and
- (7) proof as described in subsection C below.

**C.** The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

**E.** Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Body Art Safe Practices Act.

[16.36.8.8 NMAC - N, 2/3/2022]

**16.36.8.9 RENEWAL REQUIREMENTS:**

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.36.2 or 16.36.9. or 16.36.10 NMAC pursuant to Chapter 61, Article 17B NMSA 1978.

B. As a courtesy, the board will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

C. An applicant whose license has expired for more than five years shall re-enter an approved training program (apprenticeship), take the tattoo, body piercing-scarification or permanent cosmetic exam approved by the board with a passing minimum score approved by the board and take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

[16.36.8.9 NMAC - N, 2/3/2022]

**PART 9: LICENSURE REQUIREMENTS FOR PERMANENT COSMETICS PRACTITIONER**

**16.36.9.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.9.1 NMAC – N, 2/3/2022]

**16.36.9.2 SCOPE:**

Any person licensed as a permanent cosmetics practitioner pursuant to the Body Art Safe Practices Act.

[16.36.9.2 NMAC – N, 2/3/2022]

**16.36.9.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5 NMSA 1978.

[16.36.9.3 NMAC – N, 2/3/2022]

**16.36.9.4 DURATION:**

Permanent.

[16.36.9.4 NMAC – N, 2/3/2022]

**16.36.9.5 EFFECTIVE DATE:**

February 3, 2022, unless a later date is cited at the end of a section.

[16.36.9.5 NMAC – N, 2/3/2022]

**16.36.9.6 OBJECTIVE:**

To outline the application process, training and examination requirements and the renewal procedures for permanent cosmetics practitioner licensure.

[16.36.9.6 NMAC – N, 2/3/2022]

**16.36.9.7 DEFINITIONS:**

[RESERVED]

**16.36.9.8 APPRENTICE LICENSE APPLICATION FOR PERMANENT COSMETICS PRACTITIONER:**

**A. Application forms:**

(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications. All applications are valid for one year from date received.

(2) Applications for apprentice licensure must include:

- (a) non-refundable application fee;
- (b) a completed and signed application;
- (c) full applicant name;
- (d) applicant must be at least 18 years of age;
- (e) current electronic mail address;

(f) current phone number;

(g) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be current upon receipt of application.

(h) an apprentice sponsorship application which must be completed and signed by a body art practitioner who meets the requirements within 16.36.9.9 NMAC and is licensed in the kind of body art the applicant is seeking an apprenticeship license;

(i) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.13 NMAC; and

(j) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

**B. Photographs:** Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

**C.** Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or higher.

**D.** An apprentice must remain under the direct supervision of a sponsor until all requirements have been met or the apprentice license has been terminated by the board.

**E. Renewal of a body art apprentice license:**

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the Licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice sponsor;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be current upon receipt of application.

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and

(d) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

[16.36.9.8 NMAC – N, 1/11/2022; A, 7/12/2022]

#### **16.36.9.9 SPONSOR LICENSE APPLICATION FOR PERMANENT COSMETICS:**

**A.** A licensee may be approved to sponsor up to four permanent cosmetic apprentice at a time. A sponsor must be licensed in the areas they will be training. Incomplete applications will be returned. All applications are valid for one year from date received. A complete application includes:

- (1) non-refundable application fee;
- (2) a current New Mexico permanent cosmetics practitioners license;
- (3) documentation of legally practicing as a permanent cosmetics practitioner for a minimum of five years without any disciplinary action;
- (4) a curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following requirements as required in 16.36.9.13 NMAC. The curriculum shall include references and resources to be used and methods of evaluation for each area covered; and
- (5) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be active upon receipt of application;
- (6) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

**B.** Photographs: Applicants for sponsor licensure shall attach a recent passport size, color photograph, front-view of face.

**C.** Upon approval of application, a board approved log will be available to record progress during the apprenticeship. This log will serve as proof of completion of training program.

**D.** Upon completion of the apprenticeship program, the sponsor and apprentice shall submit proof of completed training.

**E.** The apprentice will then receive notification from the board stating the apprentice is eligible to take the national theory exam.

**F.** Renewal of body art apprentice sponsor license:

- (1) License will expire one year after date of issue.

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice sponsor license on or before the expiration date.

(4) Renewal of apprentice license shall include the following information:

(a) a curriculum as required in 16.36.9.13 NMAC. The curriculum shall include references and resources to be used and methods of evaluation for each area covered;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be active upon receipt of application; and

(c) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

**G.** Sponsors adding another area of practice to their license to train apprentices can take practical training hours from a certified training program equivalent to the training required by New Mexico. Proof of practical training from a certified training program and a copy of the curriculum must be submitted with the application no later than August 30, 2022.

[16.36.9.9 NMAC – N, 1/11/2022; A, 7/12/2022]

#### **16.36.9.10 APPLICATION FOR PERMANENT COSMETICS PRACTITIONER LICENSE:**

**A.** Application forms:

(1) Applications shall be made on the official form provided by the board. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) applicant name;

(c) date of birth;

(d) applicant must be at least 18 years of age;

(e) establishment mailing address;

(f) current phone number;

(g) name, address and phone number of licensed establishment where services will be performed. Establishment license must be current upon receipt of application;

(h) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.13 NMAC;

(i) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC;

(j) proof of completion permanent cosmetics training program and examination as defined in 16.36.9.12 NMAC and 16.36.9.13 NMAC;

(k) a recent passport size, color photograph; and

(l) non-refundable application fee as required by the board.

**B.** The applicant shall take and pass a written examination approved by the board and the board approved jurisprudence examination. The applicant must pass the exams with a minimum score of seventy-five percent or higher.

**C.** A licensee applying for an additional area of practice must submit the following requirements;

(1) completed and signed application;

(2) duplicate license fee as defined in 16.36.6.8 NMAC;

(3) proof of completing the permanent cosmetics practical training program for the area of practice as defined in 16.36.9.13 NMAC.

**D.** Renewal of a practitioner license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee;

(3) Licensees shall renew their license on or before the expiration date;

(4) Renewal of license shall include the following information:

(a) name and address of establishment. Establishment license must be current upon receipt of application;

(b) name of establishment operator or supervisor;

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.13 NMAC; and

(d) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

[16.36.9.10 NMAC - N, 1/11/2022; A, 7/12/2022]

**16.36.9.11 [RESERVED]**

[16.36.9.11 NMAC – N, 1/11/2022; Repealed, 7/12/2022]

**16.36.9.12 PROOF OF COMPLETION OF SAFETY AND SANITATION:**

Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a permanent cosmetic practitioner or body art operator. Such training must include:

**A.** a board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months prior to application and annually thereafter. The training may be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA sponsored;
- (6) red cross; or
- (7) board approved.

**B.** Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;

- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA (occupational safety and health administration) sponsored;
- (6) red cross; or
- (7) board approved.

[16.36.9.12 NMAC - N, 1/11/2022; A, 7/12/2022]

**16.36.9.13 PERMANENT COSMETIC APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS:**

**A.** Upon successful completion of an apprenticeship program, an applicant for an original permanent cosmetic practitioner license shall provide proof of having completed a 100 hour theory training program, and practical training under direct supervision with a board approved sponsor as defined in 16.36.1.7 NMAC. Curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following minimum requirements:

**B.** Practical hours must be completed for each area of practice:

- (1) eyebrow technique, 20 hours;
- (2) eyeliner technique, 20 hours;
- (3) lip technique, 20 hours;
- (4) beauty mark technique, 10 hours;
- (5) tattoo lightening, 10 hours;
- (6) scalp micropigmentation, 20 hours;
- (7) scar camouflage, 40 hours.

**C.** Direct supervision for practical training in permanent cosmetics techniques must include:

- (1) shading;
- (2) lining;
- (3) pointillism.

**D.** Client records shall be maintained by the practitioner applicant to verify that the minimum requirements for the procedures were completed.

**E.** Introduction to permanent cosmetics: 5 hours

- (1) History of tattooing as it applies to permanent cosmetics.
- (2) Overview of the different types of machines and devices.
- (3) State laws and regulations for permanent cosmetics practitioners.

**F.** Professional standards and client care: 10 hours

- (1) Client expectations.
- (2) Medical history.
- (3) Consent and disclosure form.
- (4) Record keeping.
- (5) HIPPA standards.
- (6) Photography.

**G.** Office set-up: 5 hours

- (1) Understanding establishment requirements and rules.
- (2) General equipment.
- (3) Table, chair, work surface, and lighting.

**H.** Safety and Sanitation: 30 hours

- (1) Definition of terms.
- (2) Discuss acceptable forms of sterilization.
- (3) Proper use of chemical agents, antiseptics, disinfestations, and fumigants.
- (4) OSHA and CDC guidelines regarding blood borne pathogens. Apprentice must have training certificates outlined in 16.36.9.12 NMAC prior to entering a training program.
- (5) Hand washing stations.

- (6) Hepatitis B vaccination.
- (7) PPE, such as gloves and proper attire to avoid cross contamination.
- (8) Proper handling of devices, needles, and pigments.
- (9) Sanitary measures during procedure set-up, and clean-up.

**I. Client preparation: 10 hours**

- (1) Preparing the clients skin.
- (2) Ways of marking the skin.
- (3) Anesthetics used before, during, and after procedure.

**J. Color and pigment theory: 10 hours**

- (1) Knowledge of skin type and undertones.
- (2) Pigment care such as expiration, storage, and mixing.
- (3) Use of safety sheets.

**K. Skin anatomy: 15 hours**

- (1) Understanding of skin and layers.
- (2) Healing process of the skin and its care.
- (3) Diseases, disorders, and conditions such as; infection, herpes simplex, shingles, moles, warts, freckles, psoriasis, eczema, rosacea, and reactions.
- (4) Surgically modified skin and scar tissue.
- (5) Compromised skin from medical procedure, such as radiation and chemotherapy.

**L. Machine/Needle theory: 10 hours**

- (1) Operation, maintenance, and instrument storage.
- (2) Proper needle handling and disposal.
- (3) Groups, numbers, and configurations.

- (4) Pre-sterilized, single use.

**M.** Business set-up: 5 hours

- (1) Basic business and social media guidelines.
- (2) Legal requirements.
- (3) Insurance/liability.
- (4) New Mexico laws and regulations.

**N.** An applicant for permanent cosmetic practitioner license shall take an exam approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program.

**O.** Out of state training must be taken from a board approved training program that is equivalent to the training required in New Mexico. A curriculum must be submitted to the board for approval prior to any training. An approved training program application must include the following requirements;

- (1) application provided by the board;
- (2) establishment fee as defined in 16.36.6 NMAC;
- (3) training program name and contact information;
- (4) sponsor application and fee for each instructor;
- (5) sponsors must provide proof of practicing for a minimum of five years outlined in 16.36.9.9 NMAC and 16.36.9.15 NMAC.
- (6) a curriculum as required in Section 16.36.9.12 NMAC and 16.36.9.13 NMAC to the board staff for approval;
- (7) an apprentice must apply for a New Mexico apprentice license and uphold requirements within the state or other jurisdiction they receive the training;
- (8) out of state training programs approved by the board must comply with the renewal requirements for establishments and sponsors.

[16.36.9.13 NMAC – N, 1/11/2022; A, 7/12/2022]

#### **16.36.9.14 EXPIRED LICENSE:**

**A.** An applicant whose license has been expired for one year but less than two years shall submit an application, payment of all renewal fees to bring the license current, proof of completion of blood borne pathogens training within the prior 12 months, current CPR and first aid certification, and take and pass a board approved jurisprudence examination with a minimum score of seventy-five percent.

**B.** An applicant whose license has expired for more than two years shall take the permanent cosmetic written examination approved by the board with a passing minimum score approved by the board. Applicant must also take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

**C.** An operator whose establishment license has expired shall submit a reinstatement application, payment of reinstatement fee for each year the license has been expired; and name of licensed operator.

**D.** A practitioner whose license has been expired more than five years shall re-enter an approved training program (apprenticeship), take permanent cosmetic exam approved by the board with a passing minimum score approved by the board and take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

[16.36.9.14 NMAC – N, 2/3/2022]

#### **16.36.9.15 CREDIT GRANTED FOR SUBSTANTIALLY EQUIVELENT TRAINING AND EXPERIENCE:**

**A.** An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico. The applicants training and experience meets the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

**B.** An applicant licensed in another state or jurisdiction shall submit the follow requirements:

- (1) completed and signed application;
- (2) non-refundable application fee;
- (3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.6.13 NMAC;

(4) verifications of licensure mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a) verification that the applicant holds a valid and unexpired license;

(b) the license issuance date;

(c) the license expiration date;

(d) a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority;

(5) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC; and

(6) jurisprudence exam with a passing score of seventy-five percent or higher.

**C.** An applicant seeking credit for training and experience obtained as a body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the following requirements;

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.12 NMAC;

(4) proof of practice equivalent to the hours of training defined in 16.36.9.13 NMAC

(a) W-2 or 1099 forms; or

(b) federal or state tax returns verifying occupational status.

(5) jurisprudence exam with a passing score of seventy-five percent or higher.

(6) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

**D.** If the applicant training and experience does not meet the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, the board may request additional requirements outlined in 16.36.9.16 NMAC.

[16.36.9.15 NMAC - N, 1/11/2022; A, 7/12/2022]

**16.36.9.16 ADDITIONAL TRAINING REQUIREMENTS:**

If the board determines that an applicant's training and experience is not substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, it may require:

(1) the applicant to complete additional training before proceeding with the application process; and

(2) an examination approved by the board outlined in 16.36.9.13 NMAC.

[16.36.9.16 NMAC - N, 1/11/2022; A, 7/12/2022]

**PART 10: LICENSURE REQUIREMENTS FOR BODY PIERCING-SCARIFICATION PRACTITIONER**

**16.36.10.1 ISSUING AGENCY:**

Board of Body Art Practitioners.

[16.36.10.1 NMAC – N, 2/3/2022]

**16.36.10.2 SCOPE:**

Any person licensed to practice body piercing-scarification under the Body Art Safe Practices Act.

[16.36.10.2 NMAC – N, 2/3/2022]

**16.36.10.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5 NMSA 1978.

[16.36.10.3 NMAC – N, 2/3/2022]

**16.36.10.4 DURATION:**

Permanent.

[16.36.10.4 NMAC – N, 2/3/2022]

**16.36.10.5 EFFECTIVE DATE:**

February 3, 2022, unless a later date is cited at the end of a section.

[16.36.10.5 NMAC – N, 2/3/2022]

**16.36.10.6 OBJECTIVE:**

To outline the application process, training and examination requirements and the renewal procedures.

[16.36.10.6 NMAC – N, 2/3/2022]

**16.36.10.7 DEFINITIONS:**

[RESERVED]

[16.36.10.7 NMAC – N, 2/3/2022]

**16.36.10.8 APPRENTICE LICENSE APPLICATION FOR BODY PIERCING-SCARIFICATION:**

**A. Application forms:**

(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications. All applications are valid for one year from date received.

(2) Applications for apprentice licensure must include:

- (a) non-refundable application fee;
- (b) a completed and signed application;
- (c) applicant name;
- (d) must be at least 18 years of age;
- (e) current electronic mail address;
- (g) current phone number;

(h) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be current upon receipt of application.

(i) an apprentice sponsorship application which must be completed and signed by a body art practitioner who meets the requirements within 16.36.10.9 NMAC and is licensed in the kind of body art the applicant is seeking an apprenticeship license;

(j) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC; and

(k) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

**B. Photographs:** Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

**C.** Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or higher.

**D.** An apprentice must remain under the direct supervision of his or her sponsor until all requirements have been met or the apprentice license has been terminated by the board.

**E. Renewal of a body art apprentice license:**

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the Licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body piercing-scarification license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice sponsor;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be current upon receipt of application.

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC; and

(d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.10.8 NMAC – N, 2/3/2022; A, 7/12/2022]

**16.36.10.9 SPONSOR LICENSE APPLICATION FOR BODY PIERCING-SCARIFICATION:**

**A.** A licensee may be approved to sponsor only one body piercing-scarification apprentice at a time. Incomplete applications will be returned. All applications are valid for one year from date received. A complete application includes:

- (1) non-refundable application fee;
- (2) a current New Mexico body piercing-scarification license;
- (3) documentation of legally practicing body piercing-scarification for at least five years without any disciplinary action;
- (4) a curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following requirements as required in 16.36.10.13 NMAC; curriculum shall include references and resources to be used and methods of evaluation for each area covered;
- (5) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be active upon receipt of application; and
- (6) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

**B.** Photographs: Applicants for sponsor licensure shall attach a recent passport size, color photograph, front-view of face.

**C.** Upon approval of application, a board approved log will be available to record progress during the apprenticeship. This log will serve as proof of completion of training program.

**D.** Upon completion of the apprenticeship program, the sponsor and apprentice shall submit the apprentice log to the board administrator. The log shall be sent to the board administrator within 15 days and shall include a sworn statement made under penalty of perjury, from the sponsor and the apprentice stating the apprenticeship has been completed. The sponsor will give a copy of the log and statement to the apprentice.

E. The apprentice will then receive notification from the board stating the apprentice is eligible to take the national theory exam.

F. Renewal of body piercing and scarification sponsor license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body piercing and scarification apprentice sponsor license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice; and

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be active upon receipt of application.

(c) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.10.9 NMAC – N, 2/3/2022; A, 7/12/2022]

#### **16.36.10.10 APPLICATION FOR BODY PIERCING-SCARIFICATION PRACTITIONER LICENSE:**

A. Application forms:

(1) Applications shall be made on the official form provided by the board. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) applicant name;

(c) date of birth;

(d) proof of age indicating applicant is at least 18 years of age (government-issued identification with a photo);

(e) establishment mailing address;

(f) current phone number;

(g) name, address and phone number of licensed establishment where services will be performed. Establishment license must be current upon receipt of application;

(h) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC;

(i) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

(j) proof of completion of body piercing-scarification training program and examination as defined in 16.36.10.14 NMAC.

(k) a recent passport size, color photograph; and

(l) non-refundable application fee as required by the board.

**B.** The applicant shall take and pass a written examination approved by the board and the board approved jurisprudence examination. The applicant must pass the exams with a minimum score of seventy-five percent or higher.

**C.** Renewal of a practitioner license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee;

(3) Licensees shall renew their license on or before the expiration date;

(4) Renewal of license shall include the following information:

(a) name and address of establishment. Establishment license must be current upon receipt of application;

(b) name of establishment operator or supervisor;

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC; and

(d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.10.10 NMAC – N, 2/3/2022; A, 7/12/2022]

**16.36.10.11 [RESERVED]**

[16.36.9.11 NMAC – N, 1/11/2022; Repealed, 7/12/2022]

**16.36.10.12 PROOF OF COMPLETION OF TRAINING PROGRAM:**

Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a body piercing scarification practitioner, or body art operator. Such training must include:

**A.** a board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months prior to application and annually thereafter. The training may be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA sponsored;
- (6) red cross; or
- (7) board approved.

**B.** Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA (occupational safety and health administration) sponsored;

- (6) red cross; or
- (7) board approved.

[16.36.10.12 NMAC – N, 2/3/2022; A, 7/12/2022]

**16.36.10.13 BODY PIERCING - SCARIFICATION APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS:**

**A.** Upon successful completion of apprenticeship program, an applicant for original piercing-scarification practitioner license shall provide proof of having completed an apprenticeship program. The 100 hours of theory can be taught in a group training but the 1100 hours of practical training shall be done under the direct supervision of a board approved sponsor.

**B.** Proof of completing an apprentice program shall be submitted on a log provided by the board;

**C.** Body piercing apprenticeship curriculum: 1200 hours:

- (1) Business requirements – 10 hours:
  - (a) state laws and regulations;
  - (b) OSHA regulations and requirements;
    - (i) bloodborne pathogens standards;
    - (ii) universal precautions;
    - (iii) exposure control plans;
    - (iv) hazard communication and SDS sheets;
    - (v) waste disposal;
    - (vi) recordkeeping;
  - (c) HIPPA (Health Insurance Portability and Accountability Act of 1996 privacy rule);
  - (d) environment;
    - (i) reception and display;
    - (ii) procedure room furniture, fixtures, and lighting;

- (iii) sterilization/instrument processing room(s);
- (iv) restrooms;

(e) professional ethics and legalities;

- (i) personal boundaries;
- (ii) bedside manners;
- (iii) medical conditions/risk assessment;
- (iv) business documentation and recordkeeping;
- (v) insurance/liability;
- (vi) waivers;
- (vii) minors;
- (viii) drugs and alcohol;
- (ix) dealing with emergencies.

(2) Scientific Concepts – 20 hours:

(a) Anatomy and Physiology;

- (i) parts and functions of skin and underlying anatomy;
- (ii) knowledge and ability to avoid damage to underlying blood vessels and nerves;
- (iii) knowledge and recognition of disorders, anomalies, and diseases of the skin;
- (iv) surgically modified skin and scar tissue;
- (v) skin that is compromised due to medical procedures such as radiation and chemotherapy;
- (vi) wound healing and wound care;

(b) Safety, Sanitation, and Infection Control:

- (i) microbiology and pathology;

- (ii) microorganisms of the skin;
- (iii) factors that influence the survival and growth of microorganisms;
- (iv) disease transmission;
- (v) hand hygiene;
- (vi) use and limitation of gloves and other personal protective equipment;
- (vii) how to recognize, prevent and remedy cross-contamination;
- (viii) infections control;
- (ix) sanitation and cleaning;
- (x) disinfection;
- (xi) sterilization;
- (xii) personal immunizations;
- (xiii) aseptic technique;
- (xiv) skin prep and proper use of antiseptics;
- (xv) proper use of disinfectants;
- (xvi) use and maintenance of ultrasonic cleaners and instrument washers;
- (xvii) use and maintenance of different types of autoclaves.

(3) Body piercing theory – 70 hours:

(a) Client consultation;

- (i) determining the appropriateness of the piercing;
- (ii) communicating risks;
- (iii) medical history as it pertains to piercing;
- (iv) allergies.

- (b) Tools, supplies and equipment used for body piercing;
  - (i) disposable supplies: including handling, storage, and disposal;
  - (ii) reusable tools and equipment: including handling and storage;
  - (iii) types of tools used for piercing procedures and jewelry manipulation;
  - (iv) piercing guns (theory only).
- (c) Needles;
  - (i) needle handling, storage, and disposal;
  - (ii) bevel theory;
  - (iii) needle modification.
- (d) Jewelry;
  - (i) standards and certifications;
  - (ii) certified materials for new piercings as outlined in 16.36.5 NMAC;
  - (iii) other appropriate materials for new piercings;
  - (iv) jewelry materials for healed piercings;
  - (v) jewelry styles;
  - (vi) characteristics of jewelry that is safe for initial piercings;
  - (vii) characteristics of potentially problematic jewelry;
  - (viii) cleaning, sterilization and storage of jewelry.
- (e) Body piercing theory should include the following for each procedure outlined in 16.36.10.13.3 (f) NMAC;
  - (i) related anatomy;
  - (ii) appropriate placement;
  - (iii) jewelry size and style;

- (iv) tray setup and break down;
  - (v) marking implements and techniques;
  - (vi) piercing and jewelry insertion techniques;
  - (vii) healing and aftercare;
  - (viii) preventing and troubleshooting problems;
- (4) Body piercing theory should cover the following procedures:
- (a) Ear piercings;
    - (i) earlobe;
    - (ii) ear cartilage – helix;
    - (iii) ear cartilage – flat/scapha;
    - (iv) ear cartilage – conch;
    - (v) ear cartilage – diath;
    - (vi) ear cartilage – rook;
    - (vii) ear cartilage – tragus;
    - (vii) ear cartilage – forward helix;
    - (ix) ear cartilage – orbital an industrial.
  - (b) Facial piercings:
    - (i) nostril;
    - (ii) high nostril;
    - (iii) septum;
    - (iv) eyebrow;
    - (v) nose bridge.
  - (c) Oral piercings:

- (i) tongue;
- (ii) lip (including labret, philtrum, etc.);
- (iii) oral frenulum piercing;
- (iv) vertical lip;
- (v) cheek.

(d) Torso piercings:

- (i) nipple;
- (ii) navel;

(e) Genital piercing:

- (i) vulva piercings;
- (ii) penis piercings;

(f) surface piercings;

(g) single point piercings;

(h) the process of stretching piercings.

(5) Body piercing observation/practical – 1100 hours:

- (a) demonstrate proper use of safety procedures outlined in theory training;
- (b) aseptic technique;
- (c) room set-up and break-down;
- (d) skin preparation;
- (e) bedside manner;
- (f) piercing techniques;
- (g) dealing with mistakes;

(h) body piercing practitioner training shall include, at a minimum, 100 hours of procedure observation. This should include no less than 100 piercing procedures. Those 100 procedures should feature a variety of piercing locations and techniques.

(i) body piercing practitioner training shall include, at a minimum, 50 completed body piercing procedures performed by the apprentice under sponsor supervision. The 50 completed procedures shall consist of at least five completed procedures in each of the following areas:

- (i) earlobes;
- (ii) ear cartilage – helix, scapha. or conch;
- (iii) inner ear cartilage – tragus, rook, or daith;
- (iv) nostril;
- (v) septum;
- (vi) nipple;
- (vii) navel;
- (viii) tongue; and
- (ix) lip/labret.

An applicant for a body art piercing-scarification practitioner license shall take the body piercing-scarification examination approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program.

[16.36.10.13 NMAC – N, 2/3/2022; A, 7/12/2022]

#### **16.36.10.14 EXPIRED LICENSE:**

**A.** An applicant whose license has been expired for one year but less than two years shall submit an application, payment of all renewal fees to bring the license current, proof of completion of blood borne pathogens training within the prior 12 months, current CPR and first aid certification, and take and pass a board approved jurisprudence examination with a minimum score of seventy-five percent.

**B.** An applicant whose license has expired for more than two years shall take the body piercing-scarification written examination approved by the board with a passing minimum score approved by the board. Applicant must also take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

**C.** An operator whose establishment license has expired shall submit a reinstatement application, payment of reinstatement fee for each year the license has been expired; and name of licensed operator.

**D.** A practitioner whose license has been expired more than five years shall re-enter an approved training program (apprenticeship), take the body piercing-scarification exam approved by the board with a passing minimum score approved by the board and take and pass a board approved jurisprudence examination with a minimum passing score of seventy-five percent.

[16.36.10.14 NMAC – N, 2/3/2022]

#### **16.36.10.15 CROSSOVER HOURS:**

Individuals who are licensed in one discipline may transfer 100 hours of orientation toward their apprenticeship in another discipline, if they have at least one year of full time, verified work experience in a licensed establishment and complete the remaining required hours for licensure.

[16.36.10.15 NMAC – N, 2/3/2022]

#### **16.36.10.16 CREDIT GRANTED FOR SUBSTANTIALLY EQUIVALENT TRAINING AND EXPERIENCE:**

**A.** An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico. The applicants training and experience meets the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

**B.** An applicant licensed in another state or jurisdiction shall submit the following requirements:

- (1) completed and signed application;
- (2) non-refundable application fee;
- (3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.12 NMAC;

(4) verifications of licensure mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a) verification that the applicant holds a valid and unexpired license;

(b) the license issuance date;

(c) the license expiration date;

(d) a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority;

(5) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC; and

(6) jurisprudence exam with a passing score of seventy-five percent or higher.

**C.** An applicant seeking credit for training and experience obtained as a body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the following requirements;

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.12 NMAC;

(4) proof of practice equivalent to the hours of training defined in 16.36.10.13 NMAC

(a) W-2 or 1099 forms; or

(b) federal or state tax returns verifying occupational status.

(5) jurisprudence exam with a passing score of seventy-five percent or higher.

(6) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

**D.** If the applicant training and experience does not meet the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, the board may request additional requirements outlined in 16.36.10.17 NMAC.

[16.36.10.16 NMAC - N, 2/3/2022; A, 7/12/2022]

#### **16.36.10.17 ADDITIONAL TRAINING REQUIREMENTS:**

If the board determines that an applicant's training and experience is not substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, it may require:

(1) the applicant to complete additional training before proceeding with the application process; and

(2) an examination approved by the board outlined in 16.36.10.13 NMAC.

[16.36.10.17 NMAC - N, 2/3/2022; A, 7/12/2022]

## **CHAPTER 37: COURT REPORTERS [RESERVED]**

## **CHAPTER 38: COURT INTERPRETERS [RESERVED]**

## **CHAPTER 39: ENGINEERING AND SURVEYING PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS-PROFESSIONAL ENGINEERING AND SURVEYING-ORGANIZATION AND ADMINISTRATION**

#### **16.39.1.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.1.1 NMAC - Rp, 16 NMAC 39.1.1, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

#### **16.39.1.2 SCOPE:**

Provisions for Part 1 apply to staff and officers of the board and to any person licensed as a professional engineer or a professional surveyor, or to anyone applying for licensure as a professional engineer or a professional surveyor in New Mexico.

[16.39.1.2 NMAC - Rp, 16 NMAC 39.1.2, 1/01/2002]

**16.39.1.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." 16.39.1 NMAC applies to both engineering and surveying.

[16.39.1.3 NMAC - Rp, 16 NMAC 39.1.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

**16.39.1.4 DURATION:**

Permanent.

[16.39.1.4 NMAC - Rp, 16 NMAC 39.1.4, 1/01/2002]

**16.39.1.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

[16.39.1.5 NMAC - Rp, 16 NMAC 39.1.5, 1/01/2002]

**16.39.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 39 is to clearly define the organizational structure of the board, the types of meetings and order of business, the number needed for a quorum, the duties of the officers, the responsibilities of the board, the preparation and distribution of a roster of licensed professional engineers and surveyors, the establishment of fees, and retired status.

[16.39.1.6 NMAC - Rp, 16 NMAC 39.1.6, 1/01/2002]

**16.39.1.7 DEFINITIONS:**

**A. "Category"** means professional engineer or professional surveyor.

**B. "Branch"** means discipline.

[16.39.1.7 NMAC - Rp, 16 NMAC 39.1.7, 1/1/2002; A, 7/1/2015]

**16.39.1.8 THE BOARD:**

**A.** The name of this board shall be the state board of licensure for professional engineers and professional surveyors hereinafter referred to as the "board".

**B.** The official seal of the board shall be an embossed circular seal one and three-quarter inches in diameter consisting of two concentric circles; the outer circle to be one and three-quarter inches in diameter. The inner circle is to be one and one-quarter inches in diameter. The inner circle shall contain the seal of the state of New Mexico and the words, "state of New Mexico." The words, "board of licensure for professional engineers and professional surveyors", shall be contained between the two concentric circles.

**C.** The fiscal year of the board shall be July 1, through June 30 of the following calendar year.

[16.39.1.8 NMAC - Rp, 16 NMAC 39.1.8, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

#### **16.39.1.9 MEMBERS OF THE BOARD:**

Members of the board are not employees within the meaning of that term under the Governmental Conduct Act; however, they are public officers; therefore the Governmental Conduct Act applies to all board members.

[16.39.1.9 NMAC - Rp, 16 NMAC 39.1.9, 1/01/2002; A, 7/01/2006]

#### **16.39.1.10 MEETINGS OF THE BOARD:**

**A.** Special and emergency meetings of the board may be called at any time by the chair of the board, or a majority of the board members; and meetings of either of the two committees may be called at any time by order of the respective chair of the professional engineering committee or the professional surveying committee or a majority of the committee members.

**B.** Proper public notice of all meetings shall be given in accordance with the provisions of the Open Meeting Act.

[16.39.1.10 NMAC - Rp, 16 NMAC 39.1.10, 1/01/2002; A, 12/28/2017]

#### **16.39.1.11 ORGANIZATION OF THE BOARD:**

**A.** Annually, at the last meeting of the fiscal year, the board shall elect its officers, who shall take office on July 1.

**B.** Annually, at the first meeting after July 1, the chair of the board shall appoint from the board's members such additional committees as may be found appropriate by the board.

[16.39.1.11 NMAC - Rp, 16 NMAC 39.1.11, 1/01/2002]

**16.39.1.12 DUTIES OF THE BOARD, OFFICERS OF THE BOARD, AND THE EXECUTIVE DIRECTOR:**

**A.** The board shall act as a whole in all administrative, financial and personnel matters and any other activity not specifically related to the practices of engineering or surveying.

**B.** The board shall appoint an executive director who shall serve at the pleasure of the board.

**C.** The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of licensure, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the chair.

**D.** The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

**E.** The secretary of the board shall co-sign all certificates of licensure and in the absence or incapacity of the chair and vice-chair, exercise the duties and shall possess all the powers of the chair.

**F.** The executive director shall perform and supervise the following for the board and professional engineering and professional surveying committees:

**(1)** conduct and care for all correspondence in the name of the board, the professional engineering committee and the professional surveying committee;

**(2)** record and file all applications, certificates of licensure, examinations, licenses and revocations for both professional engineering and professional surveying committees;

**(3)** prepare and submit to the board, at the first meeting of each fiscal year for review and approval, an annual report of board activities and statistics for the preceding fiscal year, including a financial report; prepare the approved annual report for transmittal to the governor;

**(4)** keep a record of all meetings of the board and committees and maintain a proper account of the business of the board; a draft of the meetings' minutes shall be provided to each member for comment within ten working days after each meeting; a final draft shall be provided to each board member at the next meeting for final approval;

**(5)** receive and account for all funds and transfer same to state treasurer within 24 hours of receipt; authorize and approve payment by department of finance and

administration invoices and vouchers for only those expenditures included in the board's approved operating budget;

**(6)** present and submit to the board at the first meeting of each fiscal year a financial report prepared by the rules of generally accepted accounting principles as of the preceding June 30th, such report to include the reporting of the transactions of the board during the preceding fiscal year, and a complete statement of the receipts, expenses and expenditures of the board; upon being approved by the board, shall be included in the annual report and submitted to the governor;

**(7)** receive and review licensure applications for completeness for consideration by the respective committees;

**(8)** schedule and arrange for the administration of written examinations provided for in the Engineering and Surveying Practice Act, content of which having been approved by the board or respective professional engineering or professional surveying committees; when requested by the applicant, the director shall make reasonable accommodations for the testing of an applicant with a certified disability in accordance with the provisions of the Americans with Disabilities Act and who meets the minimum qualifications in the Engineering and Surveying Practice Act and these rules; when necessary qualified assistance, approved by the board, may be retained for conduct of examinations;

**(9)** prepare and maintain a current roster on the board's website, and furnish copies to the public upon request and payment of a fee as determined by the board; in accordance with Section 61-23-13 NMSA 1978;

**(10)** prepare and maintain a current roster of business entities with an affidavit identifying the authorized company officer and the professional engineer or professional surveyor or both who is employed by the business entity and in the responsible charge;

**(11)** provide one week in advance of each meeting, drafts of the agenda of the meeting to each member of the board;

**(12)** publish an annual newsletter at a minimum;

**(13)** direct investigations of any alleged violations or infringements of the Engineering and Surveying Practice Act; a written report covering status of protest actions and alleged violations shall be presented to the appropriate committee at each meeting; this may be in the form of appropriate commentary recorded in the minutes, supported by a separate file on the case; when necessary, qualified assistance, approved by the board, may be retained for conduct of investigations;

**(14)** file formal disciplinary actions upon approval by the board with the appropriate jurisdiction for prosecution of alleged violations of the act and the board's rules.

[16.39.1.12 NMAC - Rp, 16 NMAC 39.1.12, 1/1/2002; A, 7/1/2006; A, 7/1/2015; A, 12/28/2017]

**16.39.1.13 DUTIES OF THE OFFICERS OF THE PROFESSIONAL ENGINEERING AND PROFESSIONAL SURVEYING COMMITTEES:**

**A.** The chair shall preside at all meetings and shall otherwise perform all duties pertaining to the office of the chair.

**B.** The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

[16.39.1.13 NMAC - Rp, 16 NMAC 39.1.13, 1/01/2002]

**16.39.1.14 PROCEDURES AT BOARD MEETINGS AND COMMITTEE MEETINGS:**

**A.** The order of business may be as follows:

**(1) board meetings:**

- (a)** public notice;
- (b)** approval of agenda;
- (c)** approval of minutes;
- (d)** reports of committees;
- (e)** communications;
- (f)** old business;
- (g)** new business;
- (h)** complaints and violations;
- (i)** adjournment.

**(2) committee meetings:**

- (a)** public notice;
- (b)** approval of agenda;
- (c)** approval minutes;

- (d) reports of sub-committees;
- (e) communications;
- (f) old business;
- (g) new business;
- (h) complaints and violations;
- (i) applications;
- (j) adjournment.

**B.** *Roberts' rules of order* shall generally govern the procedure of the board and committee meetings except as otherwise provided for in Title 16, Chapter 39 of the New Mexico administrative code or the Engineering and Surveying Practice Act.

**C.** Board members may participate in a meeting of the board or committees by means of a telephone conference or similar communications equipment and participation by such means shall constitute presence in person at the meeting. Participation by telephone may only occur when it is difficult or impossible for board members to attend.

[16.39.1.14 NMAC - Rp, 16 NMAC 39.1.14, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

#### **16.39.1.15 ROSTER:**

The roster shall contain the following information for each licensee: legal name, street address or post office box number, city, state, zip code, class of licensure, discipline, status, and license number.

[16.39.1.15 NMAC - Rp, 16 NMAC 39.1.15, 1/1/2002; A, 7/1/2015]

#### **16.39.1.16 FEES:**

**A.** A fee will be assessed to process an application for a license to practice, for enrollment as an engineering intern or surveying intern, and for examinations.

**B.** Examination fees shall be paid on or before the date specified by the board prior to the date of the scheduled examination. Said fees are earned fees and are not refundable if the applicant should fail to appear for the examination.

**C.** Renewal and application fees are earned fees and are not refundable.

**D.** All fees shall be set by the board. Changes in renewal fees, application fees, and examination fees shall become effective as designated by the board.

[16.39.1.16 NMAC - Rp, 16 NMAC 39.1.16, 1/01/2002; A, 7/01/2006]

**16.39.1.17 STATUS OF LICENSURE:**

**A.** Intern Certification - a licensee's intern certification will automatically be superseded by the professional license and will not show as "active" on the roster.

**B.** Retired status - a licensee shall become eligible for retired status with a waiver of renewal fees after meeting all the following qualifications:

- (1) retired from active practice;
- (2) at least 60 years of age;
- (3) have been a licensee for a continuous period of 20 years, at least 10 of which must have been in New Mexico;
- (4) the licensee has filed an application prescribed by the board for retired status prior to the expiration of the license;
- (5) the licensee does not have any pending complaints;
- (6) the licensee does not have any pending litigation; and
- (7) the licensee has completed any imposed disciplinary actions.

**C.** Licensees shall request retired status by letter. In the event the licensee on retired status desires to return to practice, the licensee shall apply to the board, comply with the continuing professional development requirements; and if approved shall pay the appropriate fee.

**D.** Professional engineers and professional surveyors on "retired status" with the board may use the titles "engineer", "surveyor", "professional engineer", "professional surveyor", PE or PS after their names and shall add "(Ret.)" or "(Retired)" after such title.

**E.** Inactive status - a licensee shall become eligible for inactive status with a waiver of renewal fees and professional development requirements after meeting all the following qualifications:

- (1) the licensee is not engaged in the respective professions (engineering or surveying) which requires licensure in this jurisdiction;

(2) the licensee has been a licensed professional engineer or surveyor in this jurisdiction for 10 consecutive years;

(3) the licensee has filed an application prescribed by the board for inactive status prior to the expiration of the license;

(4) the licensee does not have any pending complaints;

(5) the licensee does not have any pending litigation; and

(6) the licensee has completed any imposed disciplinary actions.

**F.** In the event a licensee on inactive status desires to return to practice within six years of acquiring inactive status, the licensee shall make proper application to the board, comply with the continuing professional development requirements (a minimum of 30 PDHs) and if approved shall pay the appropriate fee.

**G.** An inactive licensee who has maintained inactive status in excess of six consecutive years may be readmitted to active practice of the profession only upon making proper application and completion of the requirements as prescribed by the board for reinstatement of a license.

[16.39.1.17 NMAC - Rp, 16 NMAC 39.1.17, 1/1/2002; A, 7/1/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

## **PART 2: CONTINUING PROFESSIONAL DEVELOPMENT**

### **16.39.2.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.2.1 NMAC - Rp, 16 NMAC 39.2.1, 12/01/2001; A, 7/01/2006; A, 7/1/2015]

### **16.39.2.2 SCOPE:**

Provisions for Part 2 apply to any person licensed as a professional engineer or a professional surveyor, or to anyone applying for licensure as a professional engineer or a professional surveyor in New Mexico.

[16.39.2.2 NMAC - Rp, 16 NMAC 39.2.2, 12/01/2001]

### **16.39.2.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that the board shall adopt and promulgate rules of professional responsibility for professional engineers and

professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. 16.39.2 NMAC applies to both engineering and surveying. Sections 61-23-24.1 and 61-23-27.12, NMSA 1978 prescribe that "the board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure (Title 16, Chapter 39 of the New Mexico Administrative Code) of the board."

[16.39.2.3 NMAC - Rp, 16 NMAC 39.2.3, 12/01/2001; A, 7/01/2006; A, 12/28/2017]

#### **16.39.2.4 DURATION**

Permanent.

[16.39.2.4 NMAC - Rp, 16 NMAC 39.2.4, 12/01/2001]

#### **16.39.2.5 EFFECTIVE DATE:**

December 1, 2001, unless a later date is cited at the end of a section or paragraph.

[16.39.2.5 NMAC - Rp, 16 NMAC 39.2.5, 12/01/2001]

#### **16.39.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 39 is to clearly define requirements of a professional development program for the renewal of professional engineer and surveyor licenses.

[16.39.2.6 NMAC - Rp, 16 NMAC 39.2.6, 12/01/2001]

#### **16.39.2.7 DEFINITIONS:**

**A.** Professional development hour (PDH) - a contact hour (nominal) of instruction or presentation.-The PDH is the common denominator for other units of credit.

**B.** Continuing education unit (CEU) - unit of credit customarily used for continuing education courses. One continuing education unit equals 10 contact hours in approved continuing education course.

**C.** College/unit semester/quarter hour - credit for course in ABET approved programs or other related college course approved in accordance with Subsection E of 16.39.2.8 NMAC.

**D.** Course/activity - any qualifying course or activity with a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice. Regular duties are not considered qualified activities.

**E.** Dual licensee - a person who is licensed as both a professional engineer and a professional surveyor.

**F.** Ethics/business-related course or activity - any qualifying course or activity with content areas related to:

- (1) the awareness of ethical concerns and conflicts;
- (2) an enhanced familiarity with the codes of conduct;
- (3) an understanding of standards of practice or care; or
- (4) project management and risk-assessment management.

[16.39.2.7 NMAC - Rp, 16 NMAC 39.2.7, 12/01/2001; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

#### **16.39.2.8 CONTINUING PROFESSIONAL DEVELOPMENT - REQUIREMENTS:**

The purpose of the continuing professional development requirement is to enhance the continuing level of professional development of professional engineers and professional surveyors.

**A.** Introduction - Every licensee shall meet the continuing professional development requirements of these regulations for professional development as a condition for license renewal.

**B.** Failure to meet requirements - Submission of professional development hours (PDHs) shall be made concurrently with license renewal. Failure to meet the PDH requirements will result in the rejection of renewal.

**C.** Requirements - each licensee is required to obtain 30 professional development hours (PDH) units during a biennium at least two of which shall be in ethics/business-related. If a licensee exceeds the biennial requirement in any biennial cycle, a maximum of 15 PDH units may be carried forward into the subsequent biennium in accordance with what has been previously reported to the board. PDH units may be earned from participation in qualifying activities as follows:

- (1) successful completion of college courses relevant to engineering and surveying;
- (2) successful completion of short courses, tutorials, webinar or distance-education courses offered for self-study, independent study or group study through synchronous or asynchronous delivery method such as live, correspondence, archival or the internet;

(3) presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, conferences, or educational institutions;

(4) teaching or instructing in Paragraphs (1) through (3) of Subsection D of 16.39.2.8 NMAC;

(5) authoring published papers, articles, books, or accepted licensing examination items;

(6) active participation in professional or technical societies;

(7) patents;

(8) active participation in educational outreach activities, pertaining to professional licensure or the surveying/engineering professions, as a speaker, instructor, presenter or panelist.

**D. Units - the conversion of other units of credit to PDH units is as follows:**

(1)	One college or unit semester.....	45 PDH;
(2)	One college or unit quarter hour.....	30 PDH;
(3)	One continuing education unit.....	10 PDH;
(4)	One hour of professional development in coursework, seminars, or professional or technical presentations made at meetings, conventions, or conferences.....	1 PDH;
(5)	for teaching, apply multiple of two(teaching credit is valid for teaching a course or seminar for the first time only; teaching credit does not apply to full-time faculty);	
(6)	Publications:	
	(a) each published peer-reviewed paper or book in the licensee's area of professional practice.....	10 PDH;
	(b) each published paper or article other than Subparagraph (a) of Paragraph (6) of Subsection E of 16.39.2.8 NMAC in the licensee's area of professional practice.....	5 PDH;
(7)	active participation in professional and technical societies (each organization).....	2 PDH;
(8)	each patent.....	10 PDH;
(9)	One hour of outreach activity.....	1 PDH (max 6 PDH/biennium).

**E. Determination of credit - the board has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit:**

(1) credit for college or community college approved courses will be based upon course credit established by the college;

(2) credit for qualifying seminars, workshops, professional conventions, and courses/activities may be recommended by the professional societies;

(3) additional criteria for credit determination shall be included in the board policy.

**F. Record keeping** - each licensee is responsible for maintaining records that support credits claimed is the responsibility of the licensee. Records required include but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned;

(2) attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance;

(3) proof of membership in a technical organization issuing a publication as a part of its membership fee;

(4) a log indicating the medium used for a technical review, the subject of the review, the author or sponsoring organization, the date the review was conducted, a brief written summary of the contents of the reviewed material and the time spent on the review;

(5) the organization sponsoring a civic or community activity, the date and location of the activity, the subject of the activity and the licensee's involvement in the activity. These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

**G. Exemptions** - a licensee may be exempt from the professional development educational requirements for One of the following reasons:

(1) new licensees by way of examination or comity/endorsement shall be exempt for the first year directly following the issuance of their license; PDH requirements will be prorated for any remaining portion of the licensing period beyond One year from the date of initial licensure;

(2) a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year; supporting documentation shall be furnished to the board;

(3) licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt; supporting documentation must be furnished to the board;

(4) licensees who have been approved for "retired status" by the board shall be exempt from the professional development hours required; in the event such a person elects to return to active practice of professional engineering or professional surveying, professional development hours must be earned before returning to active practice for the preceding biennial cycle.

**H. Reinstatement** - a licensee may bring a lapsed license to active status by obtaining all delinquent PDH units outstanding from the last biennium and complying with all other reinstatement requirements in the Engineering and Surveying Practice Act and the board's rules and regulations; however, if the total number required to become current exceeds 30, then 30 shall be the maximum number required.

**I. Comity/out-of-jurisdiction resident** - licensees who are residents of other jurisdictions shall meet the continuing professional development requirements of this board. These requirements may be deemed satisfied when a non-resident licensee provides evidence of having met requirements for another state engineering/surveying licensing board that are equal to or exceed the requirements of this board.

**J. Dual licensees** - the number of PDH units required shall remain the same for persons who hold a dual license as a professional engineer and professional surveyor; for persons who hold a dual license, half of the PDH units shall be in each profession.

**K. Forms** - all renewal applications will require the number of earned PDH units. The licensee must sign the renewal application, and submit with the appropriate fee.

[16.39.2.8 NMAC - Rp, 16 NMAC 39.2.8, 12/1/2001; A, 7/1/2006; A, 7/1/2015; A, 1/1/2016; A, 12/28/2017; A, 12/16/2022]

## **PART 3: ENGINEERING LICENSURE, DISCIPLINES, APPLICATIONS, EXAMS, PRACTICE, SEAL OF LICENSEE AND ENDORSEMENTS**

### **16.39.3.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.3.1 NMAC - Rp, 16 NMAC 39.3.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

### **16.39.3.2 SCOPE:**

Provisions for Part 3 apply to any person certified as an engineer intern, licensed as a professional engineer, or to anyone applying for certification as an engineer intern or licensure as a professional engineer in New Mexico.

[16.39.3.2 NMAC - Rp, 16 NMAC 39.3.2, 1/01/2002]

### **16.39.3.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. Subsection C of Section 61-23-10 NMSA 1978 states the professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act. Subsections A and B of Section 61-23-19 NMSA 1978 prescribe, "the board shall provide for the proper authentication of all documents. The board shall regulate the use of seals."

[16.39.3.3 NMAC - Rp, 16 NMAC 39.3.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

### **16.39.3.4 DURATION:**

Permanent.

[16.39.3.4 NMAC - Rp, 16 NMAC 39.3.4, 1/01/2002]

### **16.39.3.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

[16.39.3.5 NMAC - Rp, 16 NMAC 39.3.5, 1/01/2002]

### **16.39.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 39 is to clearly define the procedure for granting licensure to practice engineering or certification as engineer interns, identify and provide procedures for engineering disciplines, applications and examinations, practice of engineering, seal of licensees and application by endorsement guidelines.

[16.39.3.6 NMAC - Rp, 16 NMAC 39.3.6, 1/01/2002; A, 7/1/2015]

### **16.39.3.7 DEFINITIONS:**

**A. "ABET"** is defined as the accreditation board for engineering and technology.

**B. "Board-approved, four - year curriculum in engineering"** is defined as:

(1) engineering curriculum of at least four years that has been accredited by ABET within at least three years of the applicant's graduation with a bachelor's degree in engineering;

(2) curriculum not accredited by ABET but with the minimum number of engineering credits required for accreditation by ABET; and

(3) curriculum required for graduate degree (master or doctoral) in engineering from an engineering program with an ABET-accredited bachelor's degree has successfully completed (as confirmed by letter from graduation committee) all requirements deficient to bachelor's degree in engineering.

**C. "Branch"** refers to engineering disciplines as referred to in 16.39.3.8 NMAC.

**D. "Category"** refers to the type of license such as professional engineer or professional surveyor as referred to in Subsections L and P of Sections 61-23-23 NMSA 1978.

**E. "Electronic signature"** means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**F. "Engineering accreditation commission"** is defined as the engineering accreditation commission of ABET, or any successor commission or organization.

**G. "Engineering discipline"** is defined as a designated area of proficiency and competence in the practice of engineering.

**H. "Engineering experience"** is defined as experience gained by the time of the application that includes demonstration of a knowledge of engineering mathematics, physical and applied science, properties of materials, and the fundamental principles of engineering design as well as demonstration of the application of engineering principles in the practical solution of engineering problems and is:

(1) progressive experience on engineering projects that demonstrates an increasing quality and responsibility;

(2) experience not associated with a graduate degree if that degree that is used to satisfy education requirements;

(3) experience obtained in compliance with the licensure act;

(4) experience gained in the armed services of a character equivalent to that which would have been gained in the civilian sector doing similar work;

- (5) experience gained under the supervision of a licensed professional engineer;
- (6) experience not gained under the supervision of a licensed professional engineer provided that an explanation is made to the satisfaction of the Board showing why the experience should be considered acceptable including the appropriate credentials of the unlicensed supervisor;
- (7) sales experience demonstrating that engineering principles were required and used in gaining the experience;
- (8) teaching experience in engineering or engineering-related courses at a junior-, senior-, or graduate-level in a college or university offering an engineering program of four years or more that is approved by the board;
- (9) experience gained in engineering research and design projects by members of an engineering faculty where the program is approved by the board;
- (10) experience gained in engineering research by industry or government employees; or
- (11) experience in construction demonstrating the application of engineering principles.

I. **"FE exam"** refers to the fundamentals of engineering exam.

J. **"NCEES"** refers to the national council of examiners for engineering and surveying.

K. **"PE exam"** refers to the principles and practice of engineering exam.

L. **"Signature"** means a physical or digital representation of the name of the person who applied it.

[16.39.3.7 NMAC - Rp, 16 NMAC 39.3.7, 1/01/2002; A, 7/01/2006; A, 1/01/2007; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

### **16.39.3.8 ENGINEERING DISCIPLINES:**

A. Licensure is granted as a professional engineer and shall be so stated on the certificate. Although the Engineering and Surveying Practice Act makes no specific designation as to the disciplines of engineering practice on the certificates as issued by the board, the records and roster of the board shall indicate the discipline(s) in which the licensee is competent to practice in accordance with this section. Only the discipline(s) of engineering for which the applicant has successfully been examined or approved by the professional engineering committee will be recorded.

**B.** Requests for engineering disciplines will be accepted from the following list; and the board's records and roster will be annotated with the corresponding alphabetical code:

(1)	architectural	A
(2)	aeronautical	B
(3)	civil	C
(4)	agricultural	D
(5)	electrical and computer	E
(6)	network engineer	F
(7)	geological/geotechnical	G
(8)	chemical	H
(9)	industrial	I
(10)	mechanical	M
(11)	mining/mineral	N
(12)	metallurgical/materials	NN
(13)	petroleum	P
(14)	control systems	Q
(15)	structural	R
(16)	nuclear	T
(17)	fire protection	U
(18)	environmental	V
(19)	construction	W
(20)	naval architecture and marine	Nm
(21)	software	Sw

**C.** Other disciplines may be considered as reviewed and approved by the board.

**D.** A licensee may be listed in no more than three disciplines of engineering. Subsequent to initial licensure, a licensee may apply for licensure in another discipline of engineering. The licensee shall demonstrate competence in that discipline and may be required to appear before the board. Demonstration of competence may be accomplished by presenting evidence as follows:

(1) the licensee shall file a separate application for the additional discipline requested and pay an application fee for the additional application; and

(2) complete the application forms to indicate clearly the education, experience, and three acceptable personal references which will substantiate proficiency in the discipline for which the licensee is applying; experience and personal references must be stated;

(3) an applicant for licensure by endorsement may initially apply for up to three disciplines, provided substantial evidence is presented to the board to demonstrate competence for each requested discipline.

**E. Structural discipline** - except for an applicant with a B.S. degree with a structural option and a minimum of four years of post-baccalaureate structural engineering experience, listing as a structural engineer may be obtained by having gained an acceptable engineering degree which included a minimum of six hours of structural design; having licensure as a professional engineer; and having four years of structural experience gained after licensure and acceptable to the board.

(1) Passing the NCEES structural tests part I & II may be substituted for two years of the required experience.

(2) A master's degree in structures may be substituted for one year of the required experience.

(3) An applicant for licensure as a structural engineer by endorsement shall meet the requirements of Paragraphs (1) and (2) of Subsection D of 16.39.3.8 NMAC.

**F. Specialty sub-disciplines** - The professional engineering committee of the board may determine that the special practice of engineering within one or more of the engineering disciplines in Subsection B of 16.39.3.8 NMAC requires unique training/education and experience to adequately protect the public safety and health, and the professional engineering committee of the board shall declare this special practice of engineering to be a specialty sub-discipline. The declaration of a specialty sub-discipline shall be based on a need identified by the state or any of its political subdivisions, availability of appropriate and timely training/education within the state of New Mexico, and the ability of the identification of a specialty sub-discipline to inform the public of the needed special practice of engineering. If the professional engineering committee of the board declares a specialty sub-discipline, after a rules hearing, the requirements for the special practice of engineering shall be included in Title 16, Chapter 39 of the New Mexico administrative code for engineering and surveying:

(1) the specialty sub-discipline rules shall specify the training/education and experience requirements to obtain certification for the special engineering practice, including provisions for equivalent training when a particular course of training/education is specified; in anticipation that more than one discipline identified in Subsection B of 16.39.3.8 NMAC will qualify for the specialty sub-discipline, the rules shall identify which engineering disciplines in Subsection B of 16.39.3.8 NMAC, are most likely to qualify for the specialty sub-discipline;

(2) the board shall maintain a list of engineers who have been certified as meeting the requirements for the specialty sub-discipline; the list shall be available to the public upon request and pursuant to the inspection of public records; the professional engineering committee of the board shall establish a form for the application to obtain a certification for the specialty sub-discipline; upon approval by the professional engineering committee of the board, the qualified licensee's name shall be added to the list of licensees having the specialty sub-discipline;

(3) a licensee's name may be removed from the list of persons certified for the specialty sub-discipline, upon determination by the professional engineering committee of the board that the licensee no longer qualifies for the certification specialty sub-discipline; such removal shall be only after the appropriate process/hearing by the professional engineering committee of the board;

(4) the failure to obtain certification for the specialty sub-discipline shall not limit the practice of engineering within any of the engineering disciplines identified in Subsection B of 16.39.3.8 NMAC, and the failure to obtain certification in the specialty sub-discipline shall not constitute practice outside the licensee's area of competence; however, the failure to obtain certification for a specialty sub-discipline and a determination by the professional engineering committee of the board of inappropriate practice of engineering within the engineering specialty may be cause for determination that the engineering practice is not within the licensee's authorized discipline, and that appropriate disciplinary action can be taken;

(5) the certification of a specialty sub-discipline shall be for a period established by the professional engineering committee of the board, but not less than two years or more than six years; renewal of the specialty sub-discipline shall be concurrent with license renewal;

(6) the professional engineering committee of the board may remove the specialty sub-discipline from the rules for engineering and surveying, after a rules hearing, upon the finding that the training/education is no longer available or that the designation of the specialty sub-discipline is no longer needed to protect the public safety and health.

[16.39.3.8 NMAC - Rp, 16 NMAC 39.3.8, 1/01/2002; A, 7/01/2006; A, 1/01/2007; A, 7/1/2015; A, 12/28/2017; A, 12/16/2022]

### **16.39.3.9 APPLICATION - ENGINEERING INTERN AND PROFESSIONAL ENGINEER:**

**A.** Types of applications- licensure as a professional engineer or certification as an engineer intern require that an applicant present his or her qualifications on forms prescribed by the board.

**B.** Any application, to be complete, must include acceptable replies from references, official transcripts provided directly from the colleges or universities attended; and if applicable, verification of prior examinations taken in other states.

**C.** Board members shall not be used as references.

**D.** Applications for engineering intern certification will be accepted after applicant has passed the fundamentals of engineering exam and graduated from a board-approved, four - year engineering curriculum; or graduated from a four - year

engineering technology program that is accredited by the technical accreditation commission of the ABET, augmented by at least two years of board-approved, post graduate engineering experience. Applications to take the fundamentals of engineering exam administered by the NCEES will not be required from the state board. Successful passing of the fundamentals of engineering exam does not ensure certification as an engineer intern.

**E.** Applicants for the principles and practices of engineering examination must have certification as an engineer intern and have successfully completed an ABET accredited engineering curriculum of four years or more from a program that fulfills the required content of the engineering education standard as defined by NCEES and shall have a minimum of two years of post-baccalaureate experience acceptable to the professional engineering committee at the date of application and shall have passed the fundamentals of engineering examination. Applicants with an ABET accredited engineering technology degree shall have a minimum of four years of post-baccalaureate experience acceptable to the board at the date of application and shall have passed the fundamentals of engineering examination.

**F.** No applicant will be eligible to take the professional engineering examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.3.9 NMAC.

**G.** Applicants for the professional engineering license will be accepted after applicant has passed the professional engineering exam and has fulfilled the education and experience requirements. Successful passing of the professional engineering exam does not ensure licensure as a professional engineer. To satisfy the statutory requirement for board-approved engineering experience prior to licensure, a candidate with an ABET accredited engineering curriculum of four years or more or a program that fulfills the required content of the engineering education standard as defined by NCEES and shall have four years of post-baccalaureate experience acceptable to the professional engineering committee, and a candidate with an ABET accredited engineering technology degree shall have six years of post-baccalaureate experience acceptable to the professional engineering committee. After successfully completing the professional engineering examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 16.39.3.9 NMAC.

**H.** To update a professional engineer (PE) application file in relation to experience, the applicant must complete the appropriate portions of the application form and provide references acceptable to the professional engineering committee to verify each additional experience record.

**I.** Applications for licensure or certification by examination or comity/endorsement which have been approved by the professional engineering committee shall remain valid for two years from the date of approval.

**J.** An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional engineering committee's satisfaction, evidence that the applicants' qualifications are equal to, or exceed those in New Mexico, including review and fulfillment of the required content of the engineering standard as defined by NCEES.

**K.** All applicants for PE licensure shall also show proficiency in the English language and shall have a minimum of four years experience working in the United States or for a United States corporation under the direction of a professional engineer who will attest to the applicant's ability and knowledge as a competent engineer.

[16.39.3.9 NMAC - Rp, 16 NMAC 39.3.9, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

### **16.39.3.10 EXAMINATIONS--ENGINEERING INTERN AND PROFESSIONAL ENGINEER:**

**A.** Regularly scheduled examinations shall be held in accordance with NCEES examination schedules.

**B.** Any applicant that fails an examination will be notified by NCEES.

**C.** An applicant that has not achieved a passing score on the principles and practice of engineering examination after three unsuccessful attempts, shall only be eligible to take the next scheduled examination after waiting a period of twelve months. The applicant shall provide documentation to the board of further study in preparation of the exam. If an applicant has not achieved a passing score on the principles and practice of engineering examination within the two year application period, the applicant shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.

**D.** The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one of the following:

**(1)** an "open book" examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;

**(2)** a "closed book" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or

**(3)** a "computer based" examination.

**E.** Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.

**F.** Questions regarding the completed fundamentals of engineering examination or the principles and practice of engineering examination shall be directed to NCEES.

[16.39.3.10 NMAC - Rp, 16 NMAC 39.3.10, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

### **16.39.3.11 PRACTICE OF ENGINEERING:**

**A.** Neither a person nor a business entity shall advertise, accept work or offer to practice engineering work in a discipline of engineering unless the person or a member of the organization has been approved by the professional engineering committee in the appropriate discipline and who is legally able to bind that business entity by contract.

**B.** Neither persons nor business entities shall circumvent these rules. Licensees or business entities may advertise for work only in those disciplines of engineering in which they are approved by the professional engineering committee to practice. Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

**C.** In the event a question arises as to the competence of a licensee in a specific technical field which cannot be otherwise resolved to the board's satisfaction, the board shall, either upon request of the licensee or of its own volition, require the licensee to pass an appropriate examination.

**D.** The professional engineering committee will consider the use of the terms, "engineer," "engineering," or any modification or derivative of such terms, in the title of a firm or business entity to constitute the offering of engineering. The board will also consider the use of these terms or any modification or derivative of such terms in a corporation's name or its articles of incorporation or in a foreign corporation's certificate of authority as published by the New Mexico secretary of state to constitute the offering of engineering services.

**E.** In the case of practice through a business entity offering or providing services or work involving the practice of engineering, an authorized company officer and the professional engineer who is employed by the business entity and in responsible charge shall place on file with the board within 30 days a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional engineer or authorized company officer, the affidavit shall be revised within 30 days and resubmitted to the board.

**F.** The board shall recognize that there may be occasions when engineers need to obtain supplemental survey information for the planning and design of an engineering project. An engineer may densify, augment and enhance previously performed survey

work by a surveyor for a project as defined in Subsection U of Section 61-23-3 NMSA 1978 of the Engineering and Surveying Practice Act.

**G.** In the case of an employee of a business entity who performs only the engineering services involved in the operation of the business entity's business, the extent to which the engineering services can be provided without licensure is limited to only the legal boundaries of the property owned or leased by that business. Practice beyond this extent or within off-premises easements is considered within public space and is subject to the Engineering and Surveying Practice Act.

[16.39.3.11 NMAC - Rp, 16 NMAC 39.3.11, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

### **16.39.3.12 SEAL OF LICENSEE:**

**A.** Each licensed professional engineer shall obtain a seal/stamp, which shall appear on all final engineering design drawings, the certification page of all specifications and engineering reports prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps signatures are not acceptable. Electronic signatures as provided by law and board's policy shall be acceptable.

**B.** The seal/stamp shall be the impression type seal, the rubber type, or a computer-generated facsimile. Computer generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

**C.** The design of the seal/stamp shall consist of either:

(1) three concentric circles, the outermost circle being one and one-half inches in diameter, the middle circle being one inch in diameter, and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, "*professional engineer*" and the licensee's name. The inner ring shall contain the words "*New Mexico*". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable; or

(2) a design approved by the board which contains the words "*professional engineer*", the licensee's name, "*New Mexico*", and the license number issued by the board each in text no less than 0.1 inches in height.

**D.** Professional engineers who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

**E.** For the purposes of the Engineering and Surveying Practice Act, a licensee of this board has "responsible charge of the work" as defined in Subsection O of Section 61-23-3 NMSA 1978 and may sign, date and seal/stamp plans, specifications, drawings

or reports which the licensee did not personally prepare when plans, specifications, drawings or reports have been sealed only by another licensed engineer, and the licensee or persons directly under his personal supervision have reviewed the plans, specifications, drawings or reports and have made tests, calculations or changes in the work as necessary to determine that the work has been completed in a proper and professional manner.

**F.** The seal and signature shall be placed on work only when it is under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.

**G.** When the document contains more than one sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two or more licensees may affix their signatures and seals provided it is designated by a note under the seal specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet and, in the case of multiple licensees, explicitly identify the portion of work attributable to each licensee.

**H.** An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature. If the document contains more than one licensee and is electronically transmitted as specified under the preceding paragraph, each signature must contain an independent electronic signature.

[16.39.3.12 NMAC - Rp, 16 NMAC 39.3.12, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022; A, 12/16/2022]

### **16.39.3.13 ENDORSEMENTS:**

For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional engineering committee will only recognize licensure granted by those authorities when the professional engineering committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineering and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-14 and 61-23-14.1, NMSA 1978". Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the district of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional engineer shall be as follows:

**A.** has been actively licensed for the contiguous 10 years immediately preceding application to New Mexico, and has not received any form of disciplinary action related to the practice of engineering or professional conduct from any jurisdiction within the

five years preceding application to New Mexico, and has not had the applicant's professional license suspended or revoked at any time from any jurisdiction; (2019 law);

**B.** graduation from an approved engineering curriculum that fulfills the required content of the engineering education standard as defined by NCEES, four years of experience satisfactory to the professional engineering committee, and passing of the eight - hour fundamentals and eight - hour professional examinations; (2017 law);

**C.** graduation from an ABET accredited engineering technology program, six years of experience satisfactory to the professional engineering committee, and passing of the eight - hour fundamentals examination and eight - hour professional examination (1993 law);

**D.** graduation from an approved engineering curriculum, four years of experience satisfactory to the professional engineering committee, and passing of the eight hour fundamentals and eight - hour professional examinations; (1979 law and 1987 law);

**E.** licensure prior to July 1, 2002, graduation from an ABET accredited engineering technology program or from an engineering or related science curriculum approved by the committee, six years of experience satisfactory to the professional engineering committee, and passing of the eight -hour fundamentals and eight -hour professional examination (1993 law);

**F.** licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum other than the ones approved by the committee, eight years of experience satisfactory to the professional engineering committee, and passing of the eight -hour fundamentals and eight -hour professional examination (1979 law and 1987 law);

**G.** licensure prior to July 1, 1993, by graduation from an engineering or related science curriculum, 20-years experience satisfactory to the professional engineering committee, and passing the eight -hour professional examination (1979 law and 1987 law);

**H.** licensure prior to July 1, 1940, by 12 years of experience satisfactory to the professional engineering committee (1934 law);

**I.** licensure prior to July 1, 1957, by graduation from an approved curriculum, and four years or more of experience satisfactory to the professional engineering committee (1935 law);

**J.** licensure prior to July 1, 1957, by passing a written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved curriculum, and four years or more of experience satisfactory to the professional engineering committee (1952 law);

**K.** licensure prior to July 1, 1967, by 24 years of experience satisfactory to the professional engineering committee, and by passing an oral examination (1957 law);

**L.** licensure prior to July 1, 1967, by graduation from an approved curriculum prior to July 1, 1957, and passing the eight - hour professional examination (1957 law);

**M.** licensure prior to July 1, 1979, by eight years of experience satisfactory to the professional engineering committee, and by having passed the eight - hour fundamentals and eight - hour professional examinations (1969 law);

**N.** licensure prior to July 1, 1979, by 30 years of experience, the last 12 years of which must have been of outstanding nature and by having been nationally eminent among his peers (1967 law);

**O.** for the purposes of endorsement, an approved engineering curriculum shall be an ABET accredited engineering curriculum of four years or more or equivalent as determined by the board.

[16.39.3.13 NMAC - Rp, 16 NMAC 39.3.13, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

## **PART 4: INCIDENTAL PRACTICE**

### **16.39.4.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.4.1 NMAC - Rp, 16 NMAC 39.4.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

### **16.39.4.2 SCOPE:**

Provisions for Part 4 apply to any person licensed as a professional engineer.

[16.39.4.2 NMAC - Rp, 16 NMAC 39.4.2, 1/01/2002]

### **16.39.4.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Subsection C of Section 61-23-10 NMSA 1978 prescribes that "the

professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act." Subsection K of Section 61-23-10 NMSA 1978 states "the board, in cooperation with the board of examiners for architects and the board of landscape architects shall create a joint standing committee to be known as the 'joint practice committee'." Subsection L of Section 61-23-10 NMSA 1978 states "as used in the Engineering and Surveying Practice Act, 'incidental practice' shall be defined by identical regulations of the board of licensure for professional engineers and professional surveyors and the board of examiners for architects."

[16.39.4.3 NMAC - Rp 16 NMAC 39.4.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

**16.39.4.4 DURATION:**

Permanent.

[16.39.4.4 NMAC - Rp, 16 NMAC 39.4.4, 1/01/2002]

**16.39.4.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

[16.39.4.5 NMAC - Rp, 16 NMAC 39.4.5, 1/01/2002]

**16.39.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 39 is to define architectural work incidental to engineering and engineering work incidental to architecture as approved by the joint practice committee and as an identical rule to Subsection G of Section 16.30.1.7 NMAC (board of examiners for architects).

[16.39.4.6 NMAC - Rp, 16 NMAC 39.4.6, 1/01/2002; A, 12/28/2017]

**16.39.4.7 DEFINITIONS:**

[RESERVED]

[16.39.4.7 NMAC - Rp, 16 NMAC 39.4.7, 1/01/2002]

**16.39.4.8 INCIDENTAL PRACTICE OF ARCHITECTURE AND ENGINEERING:**

As defined in Subsection A of Section 61-23-22 NMSA 1978 means:

**A.** architectural work incidental to engineering shall be that architectural work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

**B.** engineering work incidental to architecture shall be that engineering work provided on projects with a building construction value not greater than six hundred thousand dollars (\$600,000) and having a total occupant load not greater than 50;

**C.** all buildings and related structures within the regulatory provisions of the New Mexico Uniform Building Code (NMUBC) will require the proper authentication of the building construction documents by all participating disciplines in accordance with their respective governing acts on projects with a building construction value greater than six hundred thousand dollars (\$600,000) or having a total occupant load greater than 50, with the exception of:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two stories in height which are appurtenant to buildings described in Paragraph (1) and (2) of Subsection C of 16.39.4.8 NMAC; or

(4) nonresidential buildings, as defined in the uniform building code, or additions having a total occupant load of 10 or less and not more than two stories in height, which shall not include E-3 (Day Care), H (Hazardous), or I (Institutional) occupancies;

(5) alterations to buildings or structures which present no unusual conditions, hazards or change of occupancy.

**D.** the owner, user or using agency shall select the prime design professional (architect or engineer) for any project based on the requirements and nature of the project;

**E.** occupant load shall be defined and determined by the method set forth in Table 33-A of the Uniform Building Code (UBC).

[16.39.4.8 NMAC - Rp, 16 NMAC 39.4.8, 1/01/2002; A, 7/1/2015; A, 12/28/2017]

## **PART 5: SURVEYING APPLICATIONS, EXAMINATIONS, PRACTICE OF SURVEYING, SEAL OF REGISTRANT**

### **16.39.5.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.5.1 NMAC - Rp, 16 NMAC 39.5.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

### **16.39.5.2 SCOPE:**

Provisions for Part 5 apply to any person certified as a Surveyor Intern, licensed as a professional surveyor, or to anyone applying for certification as a Surveyor Intern or licensure as a professional surveyor in New Mexico.

[16.39.5.2 NMAC - Rp, 16 NMAC 39.5.2, 1/01/2002]

### **16.39.5.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Subsection D of 61-23-10 NMSA 1978 states "the professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act."

[16.39.5.3 NMAC - Rp, 16 NMAC 39.5.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

### **16.39.5.4 DURATION:**

Permanent.

[16.39.5.4 NMAC - Rp, 16 NMAC 39.5.4, 1/01/2002]

### **16.39.5.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

[16.39.5.5 NMAC - Rp, 16 NMAC 39.5.5, 1/01/2002]

#### **16.39.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 39 is to clearly define the application and examination procedures, practice of surveying, and seal of licensee.

[16.39.5.6 NMAC - Rp, 16 NMAC 39.5.6, 1/01/2002]

#### **16.39.5.7 DEFINITIONS:**

**A. "ABET"** is defined as the accreditation board for engineering and technology.

**B. "Augment"**, as it relates to curriculum in this part, shall refer to classes taken as a part of or in addition to a formal degree program.

**C. "Authoritative location"** is defined as an accurately and precisely established location of a feature, object or boundary sufficient for use in establishing property rights, legal proceedings, or to protect the welfare and safety of the public.

**D. "Board-approved, four year curriculum in surveying"** is defined as:

(1) surveying curriculum of four years that has been accredited by ABET within at least three years of the applicant's graduation with a bachelor's degree in surveying;

(2) curriculum not accredited by ABET but with a minimum number of surveying credits required for accreditation by ABET;

**E. "Board-approved related science degree"** is defined as:

(1) A four year bachelor of arts or science degree that is augmented by a minimum of 18 core curriculum hours in surveying, 12 hours of higher mathematics and six hours of basic science.

(2) Core surveying classes shall include a minimum of a three hour semester course in each of the following areas:

(a) boundary law/ legal principles of land surveying;

(b) public land surveying system (PLSS);

(c) plane surveying;

(d) geodesy or photogrammetry.

(3) The remainder of the 18 core curriculum hours in surveying may include classes in route surveying, geographic information systems, land development, global

positioning systems, photogrammetry or geodesy, remote sensing, mapping, or professional ethics .

(4) 12 hours of higher mathematics may include college algebra, trigonometry, analytical geometry, differential and integral calculus, linear algebra, numerical analysis, probability and statistic and advanced calculus.

(5) Six hours of basic science may include physics, chemistry, geology, physical geography, biology, and astronomy.

**F. "Four year"**, as it relates to a minimum course of academic study in this part, means a program of study normally associated with a university, college or other accredited academic course of study that includes a minimum 120 semester hours.

**G. "Geomatics"**, as it relates to curriculum as discussed in these rules, will be considered synonymous with surveying.

**H. "NCEES"** refers to the national council of examiners for engineering and surveying.

[16.39.5.7 NMAC - Rp, 16 NMAC 39.5.7, 1/01/2002; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

#### **16.39.5.8 APPLICATION - SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:**

**A.** Types of application - licensure as a professional surveyor or certification as a survey intern require that an applicant present his or her qualifications on forms prescribed by this board.

**B.** Any application, to be complete, must include acceptable replies from references, official transcript(s) provided directly from the university; and if applicable, verification(s) of prior examinations taken in other state(s).

**C.** Board members shall not be used as references.

**D.** Applications for surveying intern certification will be accepted after an applicant has passed the fundamentals of surveying exam and has graduated from a board-approved, four year surveying curriculum, or if a graduate of an approved four year curriculum in a related science as defined by Subsection E of Section 16.39.5.7 NMAC and augmented with the required two-year combined office and field board approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the required years of experience, but work prior to or while attending school may be counted toward the required experience at the discretion of the board.

**E.** Applicants for the principles and practices of surveying examination having graduated with a board-approved four year surveying curriculum of four years or more, or with a related-science degree, as determined by the board shall have a minimum of four years of experience acceptable to the professional surveying committee at the date of application and shall have passed the fundamentals of surveying examination.

**F.** No applicant will be eligible to take the professional surveying examination whose application for eligibility has not been completed, reviewed and approved by the board, as set forth in 16.39.5.8 NMAC.

**G.** Applicants for the professional surveying license will be accepted after applicant has passed the professional surveying exam, the New Mexico state specific surveying exam, and has fulfilled the education and experience requirements. Successful passing of the professional surveying exam does not ensure licensure as a professional surveyor. To satisfy the statutory requirement for board-approved surveying experience prior to licensure, a candidate with a board-approved surveying curriculum of four years or more as determined by the board shall have four years of experience acceptable to the professional surveying committee. This experience may be acquired before or after certification as a surveying intern. A candidate with a related science degree shall have four years of surveying experience acceptable to the professional surveying committee pursuant to the Engineering and Surveying Practice Act, Subsection A of Section 61-23-27.4 NMSA 1978. After successfully completing the professional surveying examination, an applicant, if necessary to meet the licensing requirements in the New Mexico Engineering and Surveying Practice Act, shall update the application as provided by Subsection H of 16.39.5.8 NMAC.

**H.** To update a professional survey (PS) application file in relation to experience, the applicant must complete an application update form and provide references acceptable to the professional surveying committee to verify each additional experience record.

**I.** Applications for licensure or certification by examination, comity or endorsement which have been approved by the professional surveying committee shall remain valid for two years from the date of approval.

**J.** An applicant with foreign credentials requesting licensure by examination or endorsement shall provide to the professional surveying committee's satisfaction, evidence that the applicant's qualifications are equal to or exceed the qualifications for licensure in effect in New Mexico at the time of application.

**K.** All applicants for professional surveyor license shall show proficiency in the English language and shall have a minimum of four years of experience if a graduate of a board approved, four year surveying curriculum or eight years if a graduate of a board approved related science curriculum, working in the United States, or for a United States corporation, under the direction of a licensed professional surveyor who can attest to the applicant's ability and knowledge as a competent surveyor.

L. When considering surveying applicants who are graduates of educational programs from a school, college or university outside of the United States and its jurisdictions, or considering applicants from related science programs, the board will evaluate and approve the degrees on an individual basis. The board may require an independent evaluation of the education and such evaluation shall be done through an organization approved by the board and at the expense of the applicant.

[16.39.5.8 NMAC - Rp, 16 NMAC 39.5.8, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 1/1/2016; A, 12/28/2017; A, 3/12/2022; A, 12/16/2022]

### **16.39.5.9 EXAMINATIONS--SURVEYOR INTERN AND PROFESSIONAL SURVEYOR:**

A. Regularly scheduled examinations shall be held in accordance with NCEES examination schedules. Other examinations may be held at times and places as determined by the professional surveying committee.

B. An applicant that fails the New Mexico state specific surveying examination will be notified of the next available examination sessions. A written request to retake the examination and payment of the examination fee shall be on or before the specified date set by the board. Any applicant that fails a NCEES examination will be notified by NCEES.

C. An applicant that has not achieved a passing score on the principles and practice of surveying examination after three unsuccessful attempts, shall only be eligible to take the next scheduled examination after waiting a period of 12 months. The applicant shall provide documentation to the board of further study in preparation of the exam. If an applicant has not achieved a passing score on the principles and practice of surveying examination within the two year application period shall only be eligible to take the next scheduled examination after re-submitting a new application and providing detailed documentation to the board of further study in preparation of the exam.

D. The type of examination will be disclosed to the examinee at a time to be set by the NCEES. The examination type will be one of the following:

(1) an "**open book**" examination shall be an examination during which the examinee may use reference material as specified by the national council of examiners for engineering and surveying;

(2) a "**closed book**" examination shall mean that absolutely no reference material of any shape or form may be used by the examinee except as provided by the board during the examination; or

(3) a "**computer based**" examination.

**E.** Only calculators specified by the NCEES shall be admitted in the examination room during the administration of the licensing examinations.

**F.** An applicant who has a question regarding the New Mexico state specific surveying examination shall put the question in writing to the professional surveying committee. The question will be considered at the next professional surveying committee meeting. The committee's answer to the examinee shall be in writing. Questions regarding the completed fundamental of surveying examination or the principles and practice surveying examination shall be directed to NCEES.

[16.39.5.9 NMAC - Rp, 16 NMAC 39.5.9, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

#### **16.39.5.10 PRACTICE OF SURVEYING:**

**A.** A person or any business entity shall not advertise or offer to practice surveying work or accept such work unless that person or a member of the business entity is licensed by the board and is legally able to bind that business entity by contract.

**B.** Neither persons nor business entities shall circumvent these rules.

**C.** Nothing in this section is intended to prevent the existence of an association of professionals in different disciplines.

**D.** The board will consider the use of the terms, "surveyor", "surveying" or any modification or derivative of such terms, in the title of a firm or business entity to constitute the offering of surveying services. The board also considers the use of these terms or any modification or derivative of such terms in a domestic corporation's articles of incorporation or in a foreign corporation's certificate of authority as published by the New Mexico's secretary of state to constitute the offering of surveying services.

**E.** In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit within 30 days, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be revised within 30 days and resubmitted to the board.

**F.** Inclusions and exclusions to the practice of surveying.

Land surveying does not encompass work products which represent only a generalized location of a feature, object, or boundary upon which the public would not reasonably rely as the precise location of that feature, object, or boundary.

(1) Activities included within the practice of surveying activities that must be accomplished by or under the responsible charge of a professional surveyor (unless specifically exempted in Subsection B of this Section) include, but are not limited to, the following:

(a) The creation of maps and georeferenced databases representing authoritative locations for boundaries, the location of fixed works, or topography. This includes maps and georeferenced databases prepared by any person or government agency where that data is provided to the public as a survey product.

(b) Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information.

(c) Certification of positional accuracy of maps or measured survey data.

(d) Adjustment or authoritative interpretation of raw survey data.

(e) Geographic information system (GIS)-based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected.

(f) Authoritative interpretation of maps, deeds, and other land title documents to resolve conflicting data elements.

(g) Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control.

(h) Analysis, adjustment or transformation of cadastral data of the parcel layers with respect to the geodetic control layer within a geographic information system (GIS) resulting in the affirmation of positional accuracy.

(2) Activities excluded from the practice of surveying. A distinction must be made in the use of electronic systems between making or documenting original measurements in the creation of survey products, versus the copying, interpretation, or representation of those measurements in such systems. Further, a distinction must be made according to the intent, use, or purpose of measurement products in electronic systems to determine a definitive location versus the use of those products as a locational reference for planning, infrastructure management, and general information. The following items are not to be included as activities within the definition of the practice of surveying:

(a) The creation of general maps:

(i) Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians.

(ii) Prepared for publication in a gazetteer or atlas as an educational tool or reference publication.

(iii) Prepared for or by education institutions for use in the curriculum of any course of study.

(iv) Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event.

(v) Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and user guides.

(b) The transcription of previously georeferenced data into a geographic information system (GIS) or land information systems (LIS) by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

(c) The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

(d) The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

(e) The incorporation or use of documents or databases prepared by any federal agency into a Geographic information system (GIS)/ land information systems (LIS), including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps.

(f) Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management responsibility. The distribution of these maps and/or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data sources and dates, and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.

(g) Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data.

(h) Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

**G.** In the case of an employee of a business entity who performs only the surveying services involved in the operation of the business entity's business, the extent to which the surveying services can be provided without licensure is limited to only the legal boundaries of the property owned or leased by that business. Practice beyond this extent or within off-premises easements is considered within public space and is subject to the Engineering and Surveying Practice Act.

[16.39.5.10 NMAC - Rp, 16 NMAC 39.5.10, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022]

#### **16.39.5.11 SEAL OF LICENSEE:**

**A.** Each licensed professional surveyor shall obtain a seal/stamp which must be impressed on all plats, reports, etc., prepared by the licensee in responsible charge. Adjacent to the seal/stamp shall appear the original signature of the licensee along with the date the signature was applied. Rubber stamps and all facsimiles of signatures are not acceptable. Electronic signature as provided by law and board's policy shall be acceptable.

**B.** The seal/stamp shall be either the impression type seal, the rubber type, or a computer-generated facsimile. Computer-generated seals shall be bona fide copies of the actual seal/stamp specific to the work being presented.

**C.** The design of the seal/stamp shall consist of either:

(1) three concentric circles, the outermost circle being one and one-half inches in diameter, the middle circle being one inch in diameter, and the innermost circle being one-half inch in diameter. The outer ring shall contain the words, "professional surveyor" and the licensee's name. The inner ring shall contain the words "New Mexico". The center circle shall contain the license number issued by the board. Any border pattern used by the manufacturer is acceptable; or

(2) a design approved by the board which contains the words "professional surveyor", the licensee's name, "New Mexico", and the license number issued by the board each in text no less than 0.1 inches in height.

**D.** Professional surveyors who were licensed prior to the enactment of these current rules and who have maintained that license without lapse, may retain and use the seals, stamps, and wall certificates previously approved.

**E.** The seal and signature shall be placed on work only when it was under the licensee's responsible charge. The licensee shall sign and seal only work within the licensee's area of discipline.

**F.** When the document contains more than one sheet, the first or title page shall be sealed and signed by the licensee who was in responsible charge. Two or more licensees may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each sheet shall be sealed and signed by the licensee or licensees responsible for that sheet. When a firm performs the work, each sheet shall be sealed and signed by the licensee or licensees who were in responsible charge of that sheet and, in the case of multiple licensees, explicitly identify the portion of work attributable to each licensee.

**G.** An electronic signature, as an option to a permanently legible signature, is acceptable for professional documents. The licensee shall provide adequate security regarding the use of the seal and signature. If the document contains more than one licensee and is electronically transmitted as specified under the preceding paragraph, each signature must contain an independent electronic signature.

[16.39.5.11 NMAC - Rp, 16 NMAC 39.5.11, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017; A, 3/12/2022; A, 12/16/2022]

#### **16.39.5.12 ENDORSEMENTS:**

For the purpose of New Mexico licensees by endorsement from other states, or possessions, the professional surveying committee will only recognize licensure granted by those authorities when the professional surveying committee has determined that the applicant possesses qualifications which "do not conflict with the provisions of the Engineer and Surveying Practice Act and are of standard not lower than that specified in Sections 61-23-27.3 and 61-23-27.4 NMSA 1978". Conditions establishing eligibility for licensure by endorsement shall have been met at the time of initial licensure. Additionally, the applicant must have a current license in another state, the District of Columbia, a territory or a possession of the United States, or in a foreign country. Conditions for endorsement for licensure as a professional surveyor shall be as follows:

**A.** Graduation from a four year board-approved surveying curriculum, four years of experience satisfactory to the professional surveying committee, and passing of the fundamentals of surveying and professional surveying examinations (1995 law).

**B.** Graduation from an engineering or related science curriculum that are approved by the committee and augmented with 18 semester hours of surveying, eight years of

experience satisfactory to the professional surveying committee, and passing of the eight hour fundamentals and eight hour professional examinations (1995 law).

**C.** Licensure prior to July 1, 1995, by graduation from a two year board-approved surveying or associated curriculum, eight years of experience satisfactory to the professional surveying committee and passing of the eight hour fundamentals and eight hour professional examination.

**D.** Licensure prior to July 1, 1995, by graduation from a board- approved surveying or associated curriculum of at least 45 semester hours, eight years of experience satisfactory to the professional surveying committee, and passing of the eight hour fundamentals and eight hour professional examination;

**E.** Licensure prior to July 1, 1979, eight years of experience satisfactory to the professional surveying committee and passing of the eight hour fundamentals and eight hour professional examinations.

[16.39.5.12 NMAC - N, 7/1/2015; A, 12/28/2017]

## **PART 6: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

### **16.39.6.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505)476-4565.

[16.39.6.1 NMAC - N, 7/1/2015]

### **16.39.6.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.39.6.2 NMAC - N, 7/1/2015]

### **16.39.6.3 STATUTORY AUTHORITY:**

Section 61-23-10 (B) NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." 16.39.1 NMAC applies to both engineering and surveying.

[16.39.6.3 NMAC - N, 7/1/2015]

**16.39.6.4 DURATION:**

Permanent.

[16.39.6.4 NMAC - N, 7/1/2015]

**16.39.6.5 EFFECTIVE DATE:**

July 1, 2015, unless a later date is cited at the end of a section.

[16.39.6.5 NMAC - N, 7/1/2015]

**16.39.6.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to Section 61-23-10 (B) NMSA 1978.

[16.39.6.6 NMAC - N, 7/1/2015]

**16.39.6.7 DEFINITIONS:**

Definitions regarding military service members, veterans, spouses and dependents are outlined pursuant to 61-1-34 NMSA 1978.

**A. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**B. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**C. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.39.6.7 NMAC - N, 7/1/2015; A, 3/12/2022; A, 12/16/2022]

**16.39.6.8 APPLICATION REQUIREMENTS:**

**A.** Applications for licensure shall be completed on a form provided by the department.

**B.** The information shall include:

- (1) completed application;

(2) satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States.

**C.** The license shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application.

**D.** Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

[16.39.6.8 NMAC - N, 7/1/2015; A, 3/12/2022; A, 12/16/2022]

#### **16.39.6.9 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Article 23 NMSA 1978.

**B.** The licensee must submit the following documents at the time of renewal:

(1) Proof of military service, spouse or dependent, or veteran status:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of spouse's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of spouse's DD214 and copy of marriage license;

(d) for dependent children of military service members: copy of military orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD214 showing proof of honorable discharge.

(2) applicants for professional engineering license must meet the requirement as outlined in 16.39.3.9 NMAC;

(3) applicants for professional surveying license must meet the requirement as outlined in 16.39.5.8 NMAC.

C. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial renewal period pursuant to Subsection B of Section 61-23-10 NMSA 1978.

[16.39.6.9 NMAC - N, 7/1/2015; A, 12/16/2022]

## **PART 7: MISC. PROCEDURES FOR REVOCATION, SUSPENSION, IMPOSITION OF FINES, REISSUANCE OF CERTIFICATES AND DISCIPLINARY ACTION**

### **16.39.7.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 875057, telephone no. (505) 476-4565.

[16.39.7.1 NMAC - Rp, 16 NMAC 39.7.1, 1/01/2002; A, 7/01/2006; A, 7/01/2015]

### **16.39.7.2 SCOPE:**

Provisions for Part 7 apply to persons certified as engineer interns or surveyor interns, persons licensed as, professional engineers or professional surveyors, applicants for either licensure or certification, and persons who engage in the business or act in the capacity of a professional engineer or professional surveyor without being licensed by the board.

[16.39.7.1 NMAC - Rp 16 NMAC 39.7.2, 1/01/2002; A, 7/01/2006]

### **16.39.7.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 7 applies to both engineering and surveying.

[16.39.7.3 NMAC - Rp 16 NMAC 39.7.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

### **16.39.7.4 DURATION:**

Permanent.

[16.39.7.4 NMAC - Rp, 16 NMAC 39.7.4, 1/01/2002]

**16.39.7.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

[16.39.7.5 NMAC - Rp, 16 NMAC 39.7.5, 1/01/2002]

**16.39.7.6 OBJECTIVE:**

The objective of Part 7 is to define procedures for revocation, suspension, imposition of fines, reissuance of certificates and disciplinary action. It is also to define actions constituting violations of the act.

[16.39.7.6 NMAC - Rp, 16 NMAC 39.7.6, 1/01/2002]

**16.39.7.7 DEFINITIONS:**

"Disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA1978.

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

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

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

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

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

**16.39.7.9 VIOLATIONS:**

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

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

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

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

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

**F. Criminal Convictions:**

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

- (a) crimes involving homicide, murder, manslaughter, or resulting in death;
- (b) crimes involving human trafficking, or trafficking in controlled substances;
- (c) kidnapping, false imprisonment, assault, aggravated assault, battery, aggravated battery;
- (d) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;

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

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

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

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

(i) violation of Partial-Birth Abortion Ban Act;

(j) crimes involving bribery, intimidating witnesses, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;

(k) crimes involving jury tampering;

(l) crimes involving escape from custody, jail or penitentiary;

(m) crimes involving harboring or aiding a felon;

(n) crimes involving tax evasion or tax fraud;

(o) crimes involving violations of the Mortgage Foreclosure Consultant Fraud Prevention Act, or the Savings and Loan Act;

(p) crimes involving the Credit Union Act;

(q) crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

(r) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;

(s) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;

(t) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;

(u) crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;

(v) crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;

(w) crimes involving making or permitting a false public voucher;

(x) crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;

(y) crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so, or violations of the New Mexico Uniform Securities Act;

(z) crimes involving extortionate extensions of credit;

(aa) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of and official act, or illegal kickbacks;

(bb) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

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

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

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

(2) The board shall not consider the fact of a criminal conviction as part of an application for licensure, or license renewal, unless the conviction in question is one of

the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

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

(4) Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Engineering and Surveying Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Paragraph (1) of Subsection F of 16.39.7 NMAC.

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

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

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

(c) a juvenile adjudication; or

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

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

## **PART 8: CODE OF PROFESSIONAL CONDUCT ENGINEERING AND SURVEYING**

### **16.39.8.1 ISSUING AGENCY:**

State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.

[16.39.8.1 NMAC - Rp, 16 NMAC 39.8.1, 1/01/2002; A, 7/01/2006; A, 7/1/2015]

### **16.39.8.2 SCOPE:**

Provisions for part 8 apply to persons certified as engineer interns or surveyor interns, licensed as professional engineers or professional surveyors or anyone applying for

certification as an engineer intern or surveyor intern or licensed as a professional engineer or professional surveyor.

[16.39.8.2 NMAC - Rp, 16 NMAC 39.8.2, 1/01/2002; A, 7/01/2006]

**16.39.8.3 STATUTORY AUTHORITY:**

Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." Part 8 applies to both engineering and surveying.

[16.39.8.3 NMAC - Rp, 16 NMAC 39.8.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

**16.39.8.4 DURATION:**

Permanent.

[16.39.8.4 NMAC - Rp, 16 NMAC 39.8.4, 1/01/2002]

**16.39.8.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

[16.39.8.5 NMAC - Rp, 16 NMAC 39.8.5, 1/01/2002]

**16.39.8.6 OBJECTIVE:**

The objective of part 8 is to establish and maintain rules of professional conduct for professional engineers and professional surveyors.

[16.39.8.6 NMAC - Rp, 16 NMAC 39.8.6; 1/01/2002; A, 7/01/2006]

**16.39.8.7 DEFINITIONS:**

In these Rules of Professional Conduct, the word "licensee" shall mean any person holding a current license or certification issued by the Board.

[16.39.8.7 NMAC - Rp, 16 NMAC 39.8.7, 1/01/2002]

**16.39.8.8 PREAMBLE:**

**A.** In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following Rules of Professional Conduct shall apply to every person holding a certificate of licensure to perform engineering or surveying services in the State of New Mexico.

**B.** The Rules of Professional Conduct as promulgated herein are an exercise of the regulatory power vested in the Board by virtue of the acts of the legislature. These rules are in addition to but are not intended to supersede, the provisions of the New Mexico Engineering and Surveying Practice Act.

**C.** All persons licensed under the New Mexico Engineering and Surveying Practice Act are charged with having knowledge of the existence of these Rules of Professional Conduct and shall be deemed to be familiar with the provisions of these rules and to understand them. Such knowledge shall encompass understanding these rules of Professional Conduct and failure to follow these rules may be considered misconduct by the Board.

[16.39.8.8 NMAC - Rp, 16 NMAC 39.8.8, 1/01/2002]

#### **16.39.8.9 RULES OF PROFESSIONAL CONDUCT:**

**A.** The protection of the public safety, health, welfare and property in the performance of professional duties.

(1) Perform those duties in conformance with accepted engineering and surveying practices.

(2) Notify their employer or client and such other authority as may be appropriate of any instance in which their professional judgment is overruled under circumstances endangering the public safety, health, welfare or property.

(3) Approve and seal only those engineering and surveying documents which conform to applicable engineering and surveying standards.

(4) Shall not reveal privileged or confidential facts, data or information without prior consent of the client or employer except as authorized or required by law or this code.

(5) Refuse to associate in a business venture with any person or firm whom they may have reason to believe is engaging in fraudulent or dishonest business or professional practices as an engineer or surveyor and refuse to use or permit the use of their name or firm in connection with any such business venture.

(6) Inform the board of any violation of this code. Cooperate with the board in furnishing information or assistance as may be requested by the board in matters concerning violations.

(7) Shall not assist or participate in the unlawful practice of engineering and surveying by a person or firm.

**B. Specialization and the performance of services only in specific areas of competence.**

(1) Licensees shall undertake assignments only when qualified by education, experience or examination in the specific technical fields of engineering or surveying involved.

(2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competency, nor to any such plan or documents not prepared under their responsible charge.

(3) Licensees may accept an assignment when the total work involves technical fields beyond those in which they are qualified, providing their services are limited to those phases in which they are qualified and that the phases in which they are not qualified are performed by licensees who are properly qualified. In this instance, each qualified licensee will sign and seal the documents for their phase of the assignment.

**C. The issuance of public statements.**

(1) Licensees shall be objective and truthful in professional reports, statements or testimony. A professional report or professional opinion issued by or under the responsible charge of a licensee shall not contain any intentionally false, misleading or deceitful statements or testimony. Any report, statement or testimony by a licensee shall contain all relevant and pertinent information as required by accepted engineering or surveying principles.

(2) If a licensee issues statements on technical matters in his or her capacity as a professional engineer or professional surveyor on behalf of an interested party, the licensee must expressly preface his or her remarks by identifying said interested party and by revealing the existence and nature of any interest the licensee may have in the matter.

(3) A licensee who is competent in the subject matter may express publicly technical opinions that are found upon knowledge of the facts.

**D. Professional relationships with employer or client.**

(1) Licensees shall act in professional matters for each employer or client to avoid conflicts of interest. Licensees shall disclose all known or potential conflicts of interest to their employers or clients by promptly informing them of any business association, interest or other circumstances which could reasonably be expected to influence their judgment or the quality of their services.

(2) Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(3) Licensees shall not solicit or accept any gratuity, material favor, or any valuable consideration, directly or indirectly, from contractors, their agents, servants or employees or from any other party dealing with his client or employer in connection with any project for which he is performing or has contracted to perform engineering or surveying services. (The phrase "valuable consideration" is defined to mean any act, article, money or other material possession which is of such value or proportion that its acceptance creates a clandestine obligation on the part of the receiver or otherwise compromises his ability to exercise his own judgment.)

(4) Licensees in public service as a member or employee of a governmental body, agency or department shall not participate, directly or indirectly in deliberations or actions which would constitute a conflict of interest with respect to services offered or provided by him, his associates, or the licensee's business entity to such governmental body, agency or department.

(5) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their business entity serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of appropriate public authority.

(6) Licensees shall not reveal privileged or confidential facts, data or information obtained in a professional capacity without prior consent of the client or employer except:

(a) As provided in Paragraphs (2) and (6) of Subsection A of 16.39.8.9 NMAC.

(b) As authorized or required by law.

(c) Any document that is a matter of public record by virtue of it being on file with a public agency.

(d) Any fact, data or information which is clearly the property of the engineer or surveyor.

#### **E. Solicitation of professional employment.**

(1) Licensees shall not falsify or permit misrepresentation of their, or their associates' academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in or for the subject matter of prior assignments. Brochures or other representations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees,

associates, joint ventures or past accomplishments with the intent and purpose of enhancing their qualifications and their work.

(2) Licensees shall not offer, give, solicit or receive, either directly or indirectly, any commission, gift, or other valuable consideration in order to secure or influence the award of work and shall not make any political contribution in an amount intended to influence the award of a contract by public authority, and which may be reasonably construed by the public as having the effect or intent to influence the award of a contract.

**F. Avoiding conduct or practice that deceives the public.**

(1) Licensees shall avoid the use of a statement containing a material misrepresentation of a fact or omitting a material fact.

(2) Consistent with the foregoing, licensees may prepare articles for the lay or technical press, but such articles shall not imply credit to the author for work performed by others.

**G. Interaction with other licensees.**

(1) Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other licensees.

(2) Licensees in private practice shall not review the work of another licensee for the same client, except with the knowledge of such licensees, or unless the connection of such licensee with the work has been terminated.

(3) Licensees in governmental, industrial, or educational employment are entitled to review and evaluate the work of other licensees when so required by their employment duties.

[16.39.8.9 NMAC - Rp, 16 NMAC 39.8.9, 1/01/2002; A, 7/1/2015; A, 12/28/2017; A, 12/16/2022]

## **CHAPTER 40: FIREFIGHTERS [RESERVED]**

## **CHAPTER 41: UTILITY OPERATORS [RESERVED]**

## **CHAPTER 42: INTERIOR DESIGNERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.42.1.1 ISSUING AGENCY:**

Regulation and Licensing Department

[11/10/97; 16.42.1.1 NMAC - Rn, 16 NMAC 42.1.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.1.2 SCOPE:**

The provisions in Part 1 of Chapter 42 apply to all parts and provide relevant information to the, licensees, applicants and the general public.

[11/10/97; 16.42.1.2 NMAC - Rn, 16 NMAC 42.1.2, 10/26/2002; A, 7/18/2023]

**16.42.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Interior Design Act, Section 61-24C-5 NMSA 1978.

[11/10/97; 16.42.1.3 NMAC - Rn, 16 NMAC 42.1.3, 10/26/2002; A, 7/18/2023]

**16.42.1.4 DURATION:**

Permanent.

[11/10/97; 16.42.1.4 NMAC - Rn, 16 NMAC 42.1.4, 10/26/2002]

**16.42.1.5 EFFECTIVE DATE:**

November 10, 1997, unless a different date is cited at the end of a section or paragraph.

[11/10/97; 16.42.1.5 NMAC - Rn, 16 NMAC 42.1.5, 10/26/2002]

**16.42.1.6 OBJECTIVE:**

To define the terms relevant to interior design and establish display of license and advertising requirements.

[11/10/97; 16.42.1.6 NMAC - Rn, 16 NMAC 42.1.6, 10/26/2002; A, 7/18/2023]

**16.42.1.7 DEFINITIONS:**

**A. "Applicant"** has the same meaning as defined in Subsection A of Section 61-24C-3 NMSA 1978;

**B. "Department"** has the same meaning as defined in Subsection B of Section 61-24C-3 NMSA 1978;

**C. "Interior design"** has the same meaning as defined in Subsection C of Section 61-24C-3 NMSA 1978;

**D. "Licensed interior designer" or "licensed designer"** has the same meaning as defined in Subsection D of Section 61-24C-3 NMSA 1978.

[16.42.1.7 NMAC – N, 7/18/2023]

**16.42.1.8 [RESERVED]:**

[11/10/97; 16.42.1.8 NMAC - Rn, 16 NMAC 42.1.8, 10/26/2002; Repealed, 7/18/2023]

**16.42.1.9 [RESERVED]:**

[11/10/97; 16.42.1.9 NMAC - Rn, 16 NMAC 42.1.9, 10/26/2002; Repealed, 7/18/2023]

**16.42.1.10 [RESERVED]:**

[11/10/97; 16.42.1.10 NMAC - Rn, 16 NMAC 42.1.10, 10/26/2002; A, 08/15/2014; Repealed, 7/18/2023]

**16.42.1.11 DISPLAY OF LICENSE:**

The certificate of licensure shall be publicly displayed at the licensee's place of employment. Licensees with more than one place of employment shall also publicly display duplicate original licenses at any secondary places of employment.

[11/10/97; 16.42.1.11 NMAC - Rn, 16 NMAC 42.1.11, 10/26/2002]

**16.42.1.12 ADVERTISING:**

**A.** Each licensed interior designer (LID), shall include their name, state and license number in any newspaper, telephone directory, or any other advertising medium used by the LID. A sole proprietorship, corporation, limited liability company or partnership advertising interior design services is required to display the name, state and license number of at least one LID employed by or working within that business entity.

**B. Definition:**

(1) When using the words "licensed interior designer" or "licensed interior design" in any advertising medium, LIDs shall include their position, job description, or title and include the state and license number. A license number is not required unless the individual is a LID and using the terms "licensed interior design" or "licensed interior designer".

(2) The term "newspaper, telephone directory, or other advertising medium" as used in Subsection A, shall mean any of the following when paid for or produced by or for a licensed interior designer (LID) (telephone business directory listings are deemed to be produced for a LID notwithstanding whether the listings are paid for):

- (a) telephone directory listings;
- (b) construction site signs;
- (c) airwave transmissions;
- (d) handbills;
- (e) all billboards, on or off site;
- (f) shopping and service guides;
- (g) magazine advertisements (including trade association publications);
- (h) classified advertisements;
- (i) signs on vehicles;
- (j) promotional materials such as video tapes, flyers, brochures;

(k) business stationery: when using business stationery as an advertising medium, the LID shall include name or signature, position, job description or title of the individual and shall include the state and license number;

- (l) business cards;
- (m) television advertisement;
- (n) internet advertisement;
- (o) compact disc (CD) or digital video disk (DVD).

(3) The term shall not apply to the following:

(a) on-site signage used for identification, i.e., on facade, front door, or location of business;

(b) information identifying a charitable donation to any organization exempt from federal income tax;

(c) telephone directory listings for professional interior design organizations.

### **C. Seal:**

(1) The official seal shall be as follows: an embossed circular seal two inches in diameter consisting of two concentric circles; the annular space between the two circles shall contain the seal of the state of New Mexico.

(2) The department authorizes a seal or stamp for use by licensed interior designers. The seal shall attest that the documents were prepared and reviewed by the licensed interior designer (LID). When an LID signs, stamps or seals a document containing the work of others, the LID represents that the entire document has been prepared by them under their responsible control, unless they include a written statement adjacent to their signature, stamp or seal identifying the portion of the document that was prepared by them or prepared under their responsible control. A LID who signs, stamps or seals a document which was not prepared by them but was prepared under their responsible control is subject to disciplinary proceedings as if they prepared it themselves.

(3) The seal/stamp will bear the LID's name and license number and the legend "Licensed Interior Designer State of New Mexico." All plans, specifications and reports issued by a LID shall have the LID's signature placed across the seal/stamp.

[11/10/97; 16.42.1.12 NMAC - Rn, 16 NMAC 42.1.12, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

## **PART 2: CODE OF PROFESSIONAL CONDUCT**

### **16.42.2.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[11/10/97; 16.42.2.1 NMAC - Rn, 16 NMAC 42.2.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

### **16.42.2.2 SCOPE:**

The licensed interior designer shall be governed by the code of professional conduct when providing interior design services in any context. This code shall apply to the conduct of all licensees and applicants.

[11/10/97; 16.42.2.2 NMAC - Rn, 16 NMAC 42.2.2, 10/26/2002; A, 11/14/2009; A, 7/18/2023]

### **16.42.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Interior Design Act, Section 61-24C-5 NMSA 1978.

[11/10/97; 16.42.2.3 NMAC - Rn, 16 NMAC 42.2.3, 10/26/2002; A, 7/18/2023]

**16.42.2.4 DURATION:**

Permanent.

[11/10/97; 16.42.2.4 NMAC - Rn, 16 NMAC 42.2.4, 10/26/2002]

**16.42.2.5 EFFECTIVE DATE:**

November 10, 1997, unless a different date is cited at the end of a section or paragraph.

[11/10/97; 16.42.2.5 NMAC - Rn, 16 NMAC 42.2.5, 10/26/2002]

**16.42.2.6 OBJECTIVE:**

To establish standards of conduct to be upheld by all applicants and licensees. A violation of this part is sufficient reason for disciplinary action pursuant to the Interior Design Act.

[11/10/97; 16.42.2.6 NMAC - Rn, 16 NMAC 42.2.6, 10/26/2002; A, 11/14/2009; A, 7/18/2023]

**16.42.2.7 DEFINITIONS:**

[RESERVED]

**16.42.2.8 CODE OF PROFESSIONAL CONDUCT:**

A. Responsibility to the public:

(1) Licensed interior designers (LIDs) shall comply with all existing applicable laws, regulations, and codes governing business practices and procedures and the practice of interior design as established by federal, state, and local jurisdictions in which they practice.

(2) LIDs shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by LIDs of good standing, practicing in the same locality.

(3) LIDs shall not engage in any form of false or misleading advertising [or] promotional activities and shall not imply through advertising or other means that persons associated with them or their business entity are licensed interior designers unless licensed by the state of New Mexico.

(4) LIDs shall neither offer nor make any payment or gift to a local, state, or federal official, appointed or elected, with the intent of influencing the official's judgment in connection with an existing or prospective project in which the LID is interested.

(5) LIDs serving in a public capacity shall not accept payments or gifts which are intended to influence their judgment. A person serving in a "public capacity" is defined as anyone working for or on behalf of any government entity.

(6) LIDs shall not engage in conduct involving fraud or flagrant disregard of the rights of others.

(7) LIDs shall not assist, abet, or counsel others to commit fraudulent, negligent, or illegal conduct in connection with a project.

(8) LIDs shall not discriminate in their professional activities on the basis of race, religion gender, national origin, age, sexual orientation, or non-disqualifying disability.

#### B. Responsibilities to the client:

(1) Interior design contract documents prepared under the direction of a LID shall contain the following statement: "This document is not an architectural or engineering study, drawing, specification, or design and is not to be used as the basis for construction of any load-bearing framing, wall, or structure construction." This shall not apply to LIDs who are licensed professionals in such field. "Contract documents" shall be interpreted to mean final contracts, drawings and specifications for and interior design project.

(2) The contract between a LID and a client shall clearly set forth the scope and nature of the project, general description of materials involved, the services to be performed, and the method of compensation for those services. LIDs shall not materially alter the score or objectives of a project without the client's consent.

(3) LIDs shall fully disclose to the client all methods of compensation which the LID shall receive in connection with the project and shall not accept any form, of undisclosed compensation from any person or firm with whom the LID deals in connection with the project.

(4) LIDs shall not accept compensation for their services from more than one party on a project unless the circumstances are fully disclosed and agreed to in writing by all interested parties.

(5) If LIDs have any business association, direct or indirect financial interest, or other interest which could be substantial enough to influence their judgment in connection with their performance of professional services, the LID shall fully disclose in writing to their clients or employers the nature of interest. If the clients or employers

object to such association, financial interest, or other interest, the LID will either terminate such association or interest or decline the commission or employment.

(6) LIDs shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the LIDs service, nor shall the members state that they can achieve results by means that violate applicable laws or this code.

(7) LIDs shall not divulge any confidential information about the client or the client's project, or utilize photographs of the project without the express written permission of the client. LID's shall disclose in writing to the client the specifications or drawings over which the LID retains proprietary rights, and which do not require client permission prior to use.

(8) LIDs when rendering interior design services shall disclose in writing to the client whether or not they have professional insurance. If they have professional insurance, LIDs shall fully disclose in writing to the client the nature and extent of all insurance coverage, including workman's compensation and bonds, covering subcontractors employed by the LID.

[11/10/97; 16.42.2.8 NMAC - Rn, 16 NMAC 42.2.8, 10/26/2002; A, 11/14/2009]

## **PART 3: LICENSING REQUIREMENTS**

### **16.42.3.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[11/10/97; 16.42.3.1 NMAC - Rn, 16 NMAC 42.3.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

### **16.42.3.2 SCOPE:**

The provisions in Part 3 apply to all parts and provide relevant information to the licensees, applicants and general public.

[11/10/97; 16.42.3.2 NMAC - Rn, 16 NMAC 42.3.2, 10/26/2002]

### **16.42.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Interior Design Act, Sections 61-24C-8, 61-24C-9; Section 61-24C-10; and 61-24C-11, NMSA 1978.

[11/10/97; 16.42.3.3 NMAC - Rn, 16 NMAC 42.3.3, 10/26/2002; A, 7/18/2023]

### **16.42.3.4 DURATION:**

Permanent.

[11/10/97; 16.42.3.4 NMAC - Rn, 16 NMAC 42.3.4, 10/26/2002]

**16.42.3.5 EFFECTIVE DATE:**

July 8, 1998, unless a different date is cited at the end of a section.

[11/10/97, 7/8/98; 16.42.3.5 NMAC - Rn, 16 NMAC 42.3.5, 10/26/2002; A, 7/18/2023]

**16.42.3.6 OBJECTIVE:**

This part is to establish the minimum requirements for applicants applying for licensure as a licensed interior designer.

[11/10/97; 16.42.3.6 NMAC - Rn, 16 NMAC 42.3.6, 10/26/2002; A, 11/14/2009]

**16.42.3.7 DEFINITIONS:**

"Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

[16.42.3.7 NMAC - N, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.3.8 LICENSURE:**

**A.** License required: Effective June 16, 1989, no person shall represent themselves as a licensed interior designer unless they are licensed pursuant to the Interior Design Act.

**B.** Applications and qualifications for licensure: Any person desiring licensure as an interior designer shall apply as indicated in 16.42.3.9 NMAC, licensure by examination, or 16.42.3.10 NMAC, licensure without examination. Electronic signatures will be acceptable for applications submitted pursuant to 14-16-1 through 14-16-19, NMSA 1978.

[11/10/97, 7/8/98; 16.42.3.8 NMAC - Rn, 16 NMAC 42.3.8, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.3.9 LICENSURE BY EXAMINATION:**

Any person desiring licensure by examination as an interior designer shall apply to the department on a form prescribed by the department, pay the required application fee, and furnish evidence to the department documenting that the applicant meets the requirement for licensure. The following are the requirements for licensure.

**A.** Completed application form, provided by the department. All areas of the form must be filled out and the application must be signed. Application must be accompanied by application fee.

**B.** Verification of passing the National Council for Interior Design Qualification (NCIDQ) examination or other nationally recognized examination approved by the department, must be submitted to the department.

**C.** Active certification from the National Council for Interior Design Qualification or another nationally recognized certification must be submitted to the department.

[11/10/97, 7/8/98; 16.42.3.9 NMAC - Rn, 16 NMAC 42.3.9, 10/26/2002, A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

#### **16.42.3.10 LICENSURE WITHOUT EXAMINATION:**

The department may, on a case-by-case basis, review and issue a license to any person applying for a license, who does not satisfy the licensing requirements in 16.42.3.9 NMAC if the applicant provides evidence to the department that:

**A.** The applicant has an active licensure in another state or country where qualifications are equal to or exceed those required by the Interior Designers Act and the applicant complies with all other requirements of the Interior Designers Act; or

**B.** The applicant has apprenticed for at least eight years under a licensed interior designer who passed the National Council for Interior Design Qualification examination or another nationally recognized examination approved by the department.

[11/10/97; 16.42.3.10 NMAC - Rn, 16 NMAC 42.3.10, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

#### **16.42.3.11 [RESERVED]:**

[16.42.3.11 NMAC - N/E, 12/12/2005; A, 08/15/2014; Repealed, 07/18/2023]

#### **16.42.3.12 EXPEDITED LICENSURE:**

**A.** The department shall issue in no later than 30 days a license by reciprocity to an applicant from another state who holds a current license in good standing, provided the requirements for licensure in the state where the applicant is licensed meet or exceed the requirements for licensure in the state of New Mexico.

**B.** An expedited license is a one year provisional license that confers the same rights, privileges, and responsibilities as regular licenses issued by the department, provided that the department may allow for the initial term of an expedited license to be

greater than one year by rule or may extend an expedited license upon a showing of extenuating circumstances.

**C.** Before the end of the expedited license term and upon application, the department shall issue a regular license through the license renewal process.

[16.42.3.12 NMAC - N/E, 12/12/2005; A, 7/18/2023]

#### **16.42.3.13 LICENSE RENEWAL:**

**A.** All licenses issued by the department shall expire four years after the date issued and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on the application form prescribed by the department.

**B.** Each licensed interior designer must have completed no less than 20 continuing education hours of educational instruction or training in interior design subjects or courses of study, within each renewal period, as defined in 16.42.6.8 NMAC. The department may make exceptions from this continuing education requirement in cases that the licensee provides evidence of emergency or hardship.

[16.42.3.13 NMAC - N, 11/14/2009; A, 7/18/2023]

#### **16.42.3.14 EXPIRED LICENSE:**

The holder of a license that has expired through failure to renew may renew the license, upon approval of the department.

[16.42.3.14 NMAC - N, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

#### **16.42.3.15 INACTIVE STATUS:**

**A.** A license in good standing may be transferred to inactive status upon written request to the department. Such request shall be made prior to the expiration of the license.

(1) The licensee shall submit their license to the department along with a written request to be placed on inactive status. The licensee is deemed inactive status at the time of the request and license are stamped and received at the department. In the event the license is lost or otherwise unavailable for delivery, inactivation of the license will take place at the time the department receives and marks them at the department.

(2) After three years of inactive status a licensee is required to re-apply for licensure.

(3) No licensee will automatically be placed on inactive status by failure of the licensee to renew their license or to pay the annual inactive status fee.

(4) No licensee shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

(5) The voluntary inactivation of a license will not prevent the commission from taking disciplinary action against the licensee.

**B.** An annual inactive status fee must be submitted to the department by October 1st of each year. Failure to pay the inactive fee will result in the license being deemed expired.

**C.** Any person who desires to reinstate his license must notify the [board] department of his desire to reinstate the inactive license. Upon receipt of such notice, the board office will send the inactive licensee an application for reinstatement.

**D.** The inactive licensee shall submit the application for reinstatement together with the applicable fee(s) and proof of no less than 20 continuing education hours for each four year period of inactive status, as defined in 16.42.6 NMAC.

[16.42.3.15 NMAC - N, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

### **16.42.3.16 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS:**

#### **A. Definitions:**

(1) "Good standing" means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a license or registrant under the authority of the license.

(2) "Licensing fee" has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

(3) "Licensing jurisdiction" has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

(4) "Military service member" has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

(5) "Veteran" has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

**B.** A candidate seeking licensure under Section 61-1-34 NMSA 1978 must submit to the department a complete applicant containing the following:

- (1) Completed and signed application form.
- (2) Proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces;
- (3) submission of the following documentation:
  - (a) for a military service member; a copy of military orders;
  - (b) for a spouse of military service member; copy of military service member's military orders and a copy of marriage license;
  - (c) for a spouse of deceased military service members; a copy of decedent's DD form 214 and a copy of marriage license;
  - (d) for dependent children of military service members; a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal income tax return or other governmental or judicial documentation establishing dependency; or
  - (e) for veterans (retired or separated); proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**C.** Electronic signatures are acceptable for application submitted pursuant to Section 14-16-1 through Sections 14-16-19, NMSA 1978.

**D.** Fees:

- (1) The initial licensing fee is waived for the first four years of licensure.
- (2) The renewal fee is \$250.00 as defined in 16.42.5 NMAC.

**E.** Renewal requirements:

- (1) A licensee pursuant to this section shall not be renewed unless the licensee meets requirements for licensure and for the renewal of a license pursuant to Section 61-24C-10, NMSA 1978.
- (2) Original and renewal licensing shall be valid for a period of four years.
- (3) Prior to the expiration of the license; licensee shall apply for renewal and pay the renewal fee as set forth in 16.42.3.13 NMAC.

[16.42.3.16 NMAC - N, 08/15/2014; A, 7/18/2023]

## **PART 4: COMPLAINTS**

### **16.42.4.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[11/10/1997; 16.42.4.1 NMAC - Rn, 16 NMAC 42.4.1, 10/26/2002; A, 11/14/2009; A, 8/15/2014; A, 7/18/2023]

### **16.42.4.2 SCOPE:**

The provisions in Part 4 of Chapter 42 apply to all licensees, and applicants for licensure.

[11/10/1997; 16.42.4.2 NMAC - Rn, 16 NMAC 42.4.2, 10/26/2002; A, 7/18/2023]

### **16.42.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Interior Design Act, 61-24C-5; 61-24C-10, 61-24C-11 and 61-24C-12 NMSA 1978.

[11/10/1997; 16.42.4.3 NMAC - Rn, 16 NMAC 42.4.3, 10/26/2002; A, 7/18/2023]

### **16.42.4.4 DURATION:**

Permanent.

[11/10/97; 16.42.4.4 NMAC - Rn, 16 NMAC 42.4.4, 10/26/2002]

### **16.42.4.5 EFFECTIVE DATE:**

November 10, 1997 unless a different date is cited at the end of a section of paragraph.

[11/10/97; 16.42.4.5 NMAC - Rn, 16 NMAC 42.4.5, 10/26/2002]

### **16.42.4.6 OBJECTIVE:**

The objective of Part 4 is to establish the procedures for filing complaints against a licensee, the authority of the department regarding ground for denial, suspension, or revocation of a license.

[11/10/1997; 16.42.4.6 NMAC - Rn, 16 NMAC 42.4.6, 10/26/2002; A, 7/18/2023]

### **16.42.4.7 DEFINITIONS:**

[RESERVED]

#### **16.42.4.8 COMPLAINTS:**

Disciplinary proceedings against a licensed interior designer may be initiated by a sworn complaint of any person. Complaint forms shall be obtained from the department or department website and must be filed with the department or online.

[11/10/1997; 16.42.4.8 NMAC - Rn, 16 NMAC 42.4.8, 10/26/2002; A, 7/18/2023]

#### **16.42.4.9 DISCIPLINE:**

Unprofessional conduct is grounds for denial, suspension or revocation of a license under Subsection F of Section 61-24C-10 NMSA 1978, unprofessional conduct shall include, but is not limited to, violations of the code of professional conduct for interior design.

[11/10/1997; 16.42.4.9 NMAC - Rn, 16 NMAC 42.4.9, 10/26/2002; A, 11/14/2009; A, 7/18/2023]

#### **16.42.4.10 POTENTIALLY DISQUALIFYING CRIMINAL CONVICTIONS:**

Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license or certificate by the department.

##### **A. Physical harm to others:**

- (1) murder;
- (2) manslaughter;
- (3) assault;
- (4) battery;
- (5) abandonment of a child resulting in death or great bodily harm;
- (6) abuse of a child;
- (7) kidnapping;
- (8) false imprisonment;
- (9) sexual assault;

##### **B. Property damage:**

- (1) shooting at property;
- (2) criminal damage to property;
- (3) dangerous use of explosives;
- (4) graffiti;
- (5) arson;

**C. Fraud:**

- (1) misrepresentation fraudulent statements or alterations of documents;
- (2) improper sale, disposal, removal or concealing of encumbered property;
- (3) tax fraud;
- (4) conspiracy;
- (5) Medicaid, Medicare or insurance fraud;
- (6) money laundering;

**D. Theft:**

- (1) breaking and entering;
- (2) larceny;
- (3) robbery;
- (4) burglary;
- (5) shoplifting;
- (6) I.D. theft;
- (7) credit card or other financial information;
- (8) receiving or transferring stolen property;

**E. Financial crimes:**

- (1) embezzlement;

- (2) extortion;
- (3) receiving stolen property;
- (4) forgery;
- (5) receiving illegal kickbacks;
- (6) racketeering;
- (7) falsification of documents;
- (8) white collar crimes;

**F. Drug offenses:**

- (1) drug trafficking;
- (2) possession;
- (3) contributing to the delinquency of a minor;

**G. Sex crimes:**

- (1) distribution of pornography;
- (2) human trafficking;
- (3) criminal sexual penetration or contact;
- (4) failure to register with the sex offender and notification act;

**H. Any crimes identified under Section 61-24C-10, NMSA 1978;**

**I. Miscellaneous:**

- (1) felon in possession of a firearm;
- (2) bribery of an official;
- (3) accepting a bribe;
- (4) gambling and gaming crimes;
- (5) stalking;

- (6) terrify, intimidate, threaten, harass, annoy or offend another;
- (7) escape from incarceration;
- (8) DWI;
- (9) practicing a profession without a license or on a revoked or suspended license;
- (10) violation of the subdivision act, mortgage foreclosure act, mortgage loan company act or uniform money services act;
- (11) violation of the controlled substance act;

**J.** The department shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Section 16.42.4.10 NMAC.

**K.** The department shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in 16.42.4.10 NMAC.

**L.** Nothing in this rule prevents the department from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Interior Designers Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in 16.42.4.10 NMAC.

**M.** In connection with an application for licensure, the department shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in 16.42.4.10 NMAC

[16.42.4.10 NMAC - N, 3/12/2022; A, 7/18/2023]

## **PART 5: FEES**

**16.42.5.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[11/10/97; 16.42.5.1 NMAC - Rn, 16 NMAC 42.5.1, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

**16.42.5.2 SCOPE:**

Applicant and licensure fees required for application, licensing, renewals, penalties, and other fees required under the Interior Designers Act.

[11/10/97; 16.42.5.2 NMAC - Rn, 16 NMAC 42.5.2, 10/26/2002; A, 7/18/2023]

**16.42.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Interior Design Act, 61-24C-14, and 61-24C-16 NMSA 1978.

[11/10/97; 16.42.5.3 NMAC - Rn, 16 NMAC 42.5.3, 10/26/2002; A, 7/18/2023]

**16.42.5.4 DURATION:**

Permanent.

[11/10/97; 16.42.5.4 NMAC - Rn, 16 NMAC 42.5.4, 10/26/2002]

**16.42.5.5 EFFECTIVE DATE:**

November 10, 1997 unless a different date is cited at the end of a section of paragraph.

[11/10/97; 16.42.5.5 NMAC - Rn, 16 NMAC 42.5.5, 10/26/2002]

**16.42.5.6 OBJECTIVE:**

The objective of Part 5 is to establish fees to generate revenue adequate to fund the cost of program administration.

[11/10/97; 16.42.5.6 NMAC - Rn, 16 NMAC 42.5.6, 10/26/2002]

**16.42.5.7 DEFINITIONS:**

[RESERVED]

**16.42.5.8 FEES:**

All fees are non-refundable.

- A. Applicants for licensure shall pay an initial licensure fee of two hundred (\$200.00).
- B. The renewal fee shall be two hundred fifty dollars (\$250.00).
- C. The late fee shall be one hundred dollars (\$100.00).
- D. The fee for a duplicate or replacement license shall be twenty-five dollars (\$25.00).
- E. The reinstatement fee shall be two hundred dollars (\$200.00).
- F. The fee for inactive status shall be fifty dollars (\$50.00) due annually by October 1<sup>st</sup> each year.
- G. The fee for printable labels of licensees shall be twenty-five dollars (\$25.00).
- H. The fee for electronic list of licensees shall be fifteen dollars (\$15.00).
- I. The fee for each CEU course application shall be seventy-five dollars (\$75.00).
- J. The fee for a verification of licensure shall be fifteen dollars (\$15.00).

[11/10/97; 16.42.5.8 NMAC - Rn & A, 16 NMAC 42.5.8, 10/26/2002; A, 11/14/2009; A, 08/15/2014; A, 7/18/2023]

## **PART 6: CONTINUING EDUCATION GUIDELINES**

### **16.42.6.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[11/10/97; 16.42.6.1 NMAC - Rn, 16 NMAC 42.6.1, 10/26/2002; A, 08/15/2014; A, 7/18/2023]

### **16.42.6.2 SCOPE:**

The provisions in Part 6 of Chapter 42 apply to all interior designers who are applying to renew their license.

[11/10/97; 16.42.6.2 NMAC - Rn, 16 NMAC 42.6.2, 10/26/2002]

### **16.42.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Interior Design Act, Section, 61-24C-10 NMSA 1978.

[11/10/97; 16.42.6.3 NMAC - Rn, 16 NMAC 42.6.3, 10/26/2002; A, 7/18/2023]

**16.42.6.4 DURATION:**

Permanent.

[11/10/97; 16.42.6.4 NMAC - Rn, 16 NMAC 42.6.4, 10/26/2002]

**16.42.6.5 EFFECTIVE DATE:**

November 10, 1997 unless a different date is cited at the end of a section of paragraph.

[11/10/97; 16.42.6.5 NMAC - Rn, 16 NMAC 42.6.5, 10/26/2002]

**16.42.6.6 OBJECTIVE:**

The objective of Part 6 is to establish criteria for continuing education for interior designers licensed in New Mexico.

[11/10/97; 16.42.6.6 NMAC - Rn, 16 NMAC 42.6.6, 10/26/2002]

**16.42.6.7 DEFINITIONS:**

A. "Continuing Education Unit (CEU)" means a point awarded to a professional person by a professional organization for having attended an educational program relevant to the goals of the organization. A value is established for the course and that number of points is given.

B. "Continuing Education (CE)" means educational opportunities for professionals.

[16.42.6.7 NMAC - Rn, 16 NMAC 42.6.7, 10/26/2002; A, 08/15/2014]

**16.42.6.8 CONTINUING EDUCATION:**

Interior designers in New Mexico shall be required to develop their professional knowledge and competency in conformity with this rule by completion of continuing education approved by the department.

A. Prior to renewal, every interior designer is required to complete 20 hours of continuing education in interior design subjects or courses of study approved by the department or interior design continuing education council (IDCEC).

B. Organization and administration: The department shall:

(1) evaluate and approve either prospectively, or retrospectively, specific courses, programs of education, and training as formal programs of learning which

contribute directly to the professional competency of an interior designer, and shall determine the appropriate number of CEU hours to be granted for each course offering submitted;

(2) audit the continuing education professional education records of licensees as deemed necessary; and

(3) approve courses that have received IDCEC approval.

**C.** Minimum requirements of approved courses: Formal programs of learning which build upon the basic knowledge of interior design shall meet the following criteria:

(1) enhance the quality of technical knowledge;

(2) enhance overall comprehensive professional education;

(3) provide knowledge in new technical areas; or

(4) provide practical applications on issues which impact the public health, safety and welfare.

**D.** Approved subject areas:

(1) Unless otherwise approved by the department, subjects or courses of study accepted for the purposes of this rule shall be limited to the following:

(a) Design:

(i) computer aided drafting and design (CAD);

(ii) space planning and programming;

(iii) product performance;

(iv) document and specs;

(v) advancement in specialized field;

(vi) interior detailing; and

(vii) historic preservation.

(b) Health and safety planning:

(i) life safety requirements;

- (ii) barrier free requirements;
- (iii) codes and ordinances; and
- (iv) interior products and finishes.

(c) Mechanical, plumbing, and electrical systems:

- (i) principles and design;
- (ii) new equipment and control systems; and
- (iii) energy conservation.

(d) Building systems:

- (i) acoustics;
- (ii) basic building systems; and
- (iii) lighting.

(e) Business:

- (i) contracts and agreements;
- (ii) accounting;
- (iii) business law; and
- (iv) project management.

(f) Ethics.

(2) Additional methods for meeting CEU requirements:

(a) Unless otherwise approved by the department and subject to the formalities and further requirements of this rule, alternative methods for earning CEUs shall be limited to the following:

- (i) service as an instructor at a college or university level course of an interior design related course;
- (ii) authoring or co-authoring a published professional interior design related paper, article, book or presentation.

(b) It is the responsibility of the licensee to provide sufficient documentation and proof of the specific service or activity to the department to prove that the alternative method of obtaining CE credit meets the criteria in 6.42.6.8(E) NMAC; it is also the responsibility of the attendee to provide proof of attendance.

(c) Pre-approval of alternative methods of obtaining CE credit is not mandatory but, is highly recommended.

**E.** In order for a licensee to receive credit for programs of learning, as defined above, the following formalities and further requirements must be met:

(1) Higher education credit courses shall be credited for continuing education purposes at the rate of fifteen (15) hours for each semester or credit hour. A copy of a transcript documenting course completion must be submitted as proof of compliance.

(2) Higher education non-credit courses shall be credited for continuing education purposes equivalent to the actual number of classroom hours. A copy of transcript documenting course completion must be submitted as proof of compliance.

(3) Continuing professional education credit for teaching a higher education course shall be credited with twice the number of credits awarded for attending the course for the first presentation of the course or program, the same number of credits granted a participant for the second presentation of the course, and none thereafter. A letter from education institution must be submitted as proof of completion.

**F.** Criteria for approval of providers of continuing education:

(1) The department sets forth the following criteria to be used in approving course providers:

(a) Proof of competence and expertise of the instructors is required.

(b) A provider shall not advertise course as department approved unless department approval has been obtained.

(2) General requirements for course approval shall include:

(a) Course meets topic area guidelines as set forth in Paragraph (1) of Subsection D of 16.42.6.8 NMAC.

(b) Length of course must be a minimum of one (1.0 CEU) instructional hours. Each instructional hour shall include at least fifty minutes of continuous actual instruction.

(c) For course approval, providers must complete the department-approved continuing education program review form which may be obtained from the department or department website.

(d) Provider must submit course materials to the department on the review form, form can be obtained from department or department website.

(e) Previously approved courses shall be re-reviewed by the committee and the department if any of the following circumstances occur:

(i) course instructor changed;

(ii) course content changed;

(iii) course received evaluation results from attendees, indicating that the course did not meet the approval criteria outlined in Paragraph (3) of Subsection B of 16.42.6.8 NMAC, Subparagraph (a) of Paragraph (1) of Subsection D of 16.42.6.8 NMAC and Subparagraph (b) of Paragraph (2) of Subsection D of 16.42.6.8 NMAC;

(iv) course documentation not submitted by the provider as required by Subparagraph (a) of Paragraph (4) of Subsection D of 16.42.6.8 NMAC;

(v) changes in the number of CEUs;

(vi) course documentation incomplete or irregularities exist;

(vii) course is advertised as department approved when no such approval has been granted; and

(viii) if any of these conditions exist, a previously approved course shall not be considered approved by the [board] department. The provider is responsible for resubmitting previously approved courses for re-approval if required by the above criteria.

(f) Pay application fees.

(g) Proof of attendance certificate: At the completion of the course, the provider must furnish proof of attendance certificates to all who satisfactorily complete the course. A copy of the attendance certification shall be maintained by the instructor for a two-year period. Said certificate shall contain the following items of information:

(i) name of the provider;

(ii) name of the attendee and license number;

(iii) name of the instructor;

- (iv) title of course and number of CEU credits;
- (v) New Mexico interior design approval number;
- (vi) date and location of presentation;
- (vii) length of course, excluding breaks (e.g. time); and
- (viii) provider's signature as verification of attendee satisfactory completion of the course.

(h) the attendee shall submit a copy of the proof of attendance with other documentation.

(3) Proof of attendance list:

(a) Within 30 calendar days after the completion of the course, the provider must furnish a proof of attendance list to the department. The proof of attendance list shall include the following information:

- (i) name of provider;
- (ii) names of attendees;
- (iii) signatures of attendees
- (iv) title of course and the New Mexico interior design approval number;
- (v) date and location of course,
- (vi) number of CEU credits; and
- (vii) course evaluation forms.

(b) The provider must also furnish each attendee with a current copy of the department-provided course evaluation form which every attendee shall complete and sign in ink at the conclusion of the course. The provider shall collect the course evaluation forms and submit the original forms to the department within 30 calendar days of course completion.

(c) The names and number of attendees on the proof of attendance list must match the names and number of the evaluation forms.

(d) A current copy of the department-provided course evaluation form shall be obtained from the board office for duplication by the provider.

(e) The department reserves the right to audit the presentation of any course it has approved. The audit may be done without prior notification to the provider; however, the provider is not required to furnish materials and services associated with the course to the auditor without prior notice and compensation.

**G.** Reporting of continuing education hours: Licensed interior designers shall submit to the department with their renewal application and fee, the required proof of attendance of department approved or IDCEC approved CEUs completed during the applicable renewal period. The department shall verify credit hours earned prior to renewing the license.

[11/10/97; 16.42.6.8 NMAC - Rn, 16 NMAC 42.6.8, 10/26/2002; A, 08/15/2014; A, 7/18/2023]

## **PART 7: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENT CHILDREN AND VETERANS**

### **16.42.7.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.42.7.1 NMAC – N, 3/12/2022; A, 7/18/2023]

### **16.42.7.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, spouses, dependent children, and veterans.

[16.42.7.2 NMAC – N, 3/12/2022]

### **16.42.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Section 61-1-34 NMSA 1978 of the Uniform Licensing Act, and the Interior Designers Act, Sections 61-24C-1 to 16 NMSA 1978.

[16.42.7.3 NMAC – N, 3/12/2022; A, 7/18/2023]

### **16.42.7.4 DURATION:**

Permanent.

[16.42.7.4 NMAC – N, 3/12/2022]

### **16.42.7.5 EFFECTIVE DATE:**

January 4, 2014, unless a later date is cited at the end of a section.

[16.42.7.5 NMAC - RP, 16.42.7.5 NMAC, 3/12/2022]

**16.42.7.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to Section 61-1-34 NMSA 1978.

[16.42.7.6 NMAC – N, 3/12/2022]

**16.42.7.7 DEFINITIONS:**

**A. "License"** has the same meaning as defined in Subsection E of Section 61-1-2 NMSA 1978.

**B. "Licensing Fee"** has the same meaning as defined in Subsection E of Section 61-1-34 NMSA 1978.

**C. "Military service member"** has the same meaning as defined in Subsection E of Section 61-1-34 NMSA 1978.

**D. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Interior Designers Act.

**E. "Veteran"** has the same meaning as defined in Subsection E of Section 61-1-34 NMSA 1978.

[16.42.7.7 NMAC – N, 3/12/2022; A, 7/18/2023]

**16.42.7.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the department.

**B.** The applicant shall provide a complete application that includes the following information:

- (1) applicant's full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) date of birth; and

(5) proof as described in Subsection C of 16.42.7.8 NMAC.

**C.** The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and a copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members; copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the department as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background report if required for a license, and any required fees.

**E.** Military service members and veterans shall not pay and the department shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**F.** A license issued pursuant to this section shall be valid for the time period that is specified in the Interior Designers Act.

**G.** Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.

[16.42.7.8 NMAC – N, 3/12/2022; A, 7/18/2023]

**16.42.7.9 [RESERVED]**

#### **16.42.7.10 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.42.3 NMAC pursuant to Interior Designers Act, Sections 61-24C-1 to 16 NMSA 1978.

**B.** As a courtesy, the department, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the department. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.42.7.10 NMAC – N, 3/12/2022; A, 7/18/2023]

## **CHAPTER 43: HOISTING OPERATORS**

### **PART 1: GENERAL PROVISIONS**

#### **16.43.1.1 ISSUING AGENCY:**

The Construction Industries Division of the Regulation and Licensing Department.

[16.43.1.1 NMAC - N, 03/31/15]

#### **16.43.1.2 SCOPE:**

This rule applies to all hoisting operators engaged in construction, excavation or demolition activities within the state of New Mexico.

[16.43.1.2 NMAC - N, 03/31/15]

#### **16.43.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Section 60-15-6 NMSA 1978, of the Hoisting Operators Safety Act (60-15-1 to -15 NMSA 1978).

[16.43.1.3 NMAC - N, 03/31/15]

#### **16.43.1.4 DURATION:**

Permanent.

[16.43.1.4 NMAC - N, 03/31/15]

#### **16.43.1.5 EFFECTIVE DATE:**

March 31, 2015, unless a later date is cited at the end of a section.

[16.43.1.5 NMAC - N, 03/31/15]

**16.43.1.6 OBJECTIVE:**

To promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating hoisting equipment to be trained and licensed when employed in construction, demolition or excavation work.

[16.43.1.6 NMAC - N, 03/31/15]

**16.43.1.7 DEFINITIONS:**

**A. Act** means the Hoisting Operators Safety Act (Sections 60-15-1 to -15 NMSA 1978).

**B. CID** means the construction industries division.

**C. Construction** means the act or process of constructing or being constructed.

**D. Council** means the hoisting operators licensure examining council.

**E. Demolition** means the act or process of wrecking, razing or destroying.

**F. Department (or "RLD")** means the New Mexico regulation and licensing department.

**G. Direct supervision** means the training supervisor being in direct visual sight to their trainee for at least the first one hundred (100) hours of supervised time, and thereafter being in close proximity and on the same jobsite with the trainee, with the supervisor being directly responsible for the trainee.

**H. Excavation** means the act of digging, hollowing out or removing materials.

**I. HSD** means the New Mexico human services department.

**J. In-house training course** means a course in hoisting equipment operations approved by the council and offered by an employer, person or organization that results in a trainee receiving an in-house hoisting operation card pursuant to (Section 60-15-7 NMSA 1978).

**K. OSHA** means the United States department of labor occupational safety and health administration.

**L. Stipulated agreement** means a binding agreement between the department and a person, licensee or entity engaged in activity governed by the act to resolve violations or alleged violations of the act.

**M. Superintendent** means the superintendent of the NM regulation and licensing department.

**N. ULA** means the New Mexico Uniform Licensing Act (Sections 61-1-1 to -33 NMSA 1978).

[16.43.1.7 NMAC - Rp, 16.43.2.7 NMAC, 03/31/15]

#### **16.43.1.8 PARENTAL RESPONSIBILITY ACT COMPLIANCE:**

**A. Compliance required:** Any applicant or licensee must be in compliance with the Parental Responsibility Act, (Sections 40-5A-1 to -13 NMSA 1978)

**B. Denial, suspension or revocation:** Upon receipt from HSD of a certified list of persons not in compliance with a judgment and order for child support, the department shall match the certified list against licensees and applicants. The department shall initiate proceedings under the ULA to deny an initial application or renewal application, or to suspend or revoke an Active license for noncompliance with a judgement or order for child support. If a license is suspended or revoked for noncompliance with the Parental Responsibility Act, the final order shall state that the license may be reinstated at any time by providing the department with a certified statement of compliance from HSD.

**C. Proof of compliance:** Applicants and licensees may prove compliance with the Parental Responsibility Act as follows:

(1) An applicant for initial licensure or renewal that provides a certified statement of compliance from HSD within thirty (30) days from the date of notice that their application is subject to denial for noncompliance with the Parental Responsibility Act shall have their application reinstated for consideration.

(2) A licensee that has received notice that their license is subject to suspension or revocation may provide a certified statement of compliance to the department at anytime and the department will dismiss the proceedings.

(3) A licensee that has had their license suspended or revoked shall have their license reinstated upon providing the department with a certified statement of compliance.

[16.43.1.8 NMAC - Rp, 16.43.2.18 NMAC, 03/31/15]

#### **16.43.1.9 DISCIPLINE:**

Every licensee or applicant shall be afforded notice and the opportunity to be heard in accordance with the ULA before the superintendent may deny an application, place probationary limitations on a license, suspend or revoke a license or assess an administrative penalty against a licensee. Hearings will be held by a hearing officer, which may be a member of the council or a department employee designated by the council, or by the full membership of the council. The council shall review hearing officer reports and make disciplinary recommendations to the superintendent.

**A.** In addition to any violation of the act, the following may be grounds for disciplinary action:

(1) refusal of a licensee to comply with a stop work order issued by the department;

(2) making a material misstatement or misrepresentation in an application for initial licensure or renewal;

(3) intentionally making a material misstatement to the department during an official investigation;

(4) aiding or abetting another in violating provisions of the act or a rule adopted pursuant to the act;

(5) altering or falsifying a license issued by the department;

(6) failing or refusing to furnish the department, its investigators or its representatives information requested in the course of an official investigation by the department; or

(7) operating hoisting equipment in a negligent or reckless manner as determined by the department.

**B. Stipulated agreement:** In lieu of a hearing, the department and the licensee may enter into a stipulated agreement to resolve any alleged violations.

**C. Surrender of license after suspension or revocation:** Upon suspension or revocation of a license, or as soon thereafter as practicable, the licensee shall surrender possession of their license to the department and the department will place the license in the licensee's file.

**D. Appeal:** A licensee or applicant may appeal a final order in accordance with the ULA pursuant to

(Sections 60-15-11 and 60-15-12 NMSA 1978).

[16.43.1.9 NMAC - N, 03/31/15]

#### **16.43.1.10 FINES:**

In accordance with Section 60-15-11(F) NMSA 1978, the superintendent may issue a citation and a fine to an individual or business that violates the act, or any regulation adopted pursuant to the act, as long as the fine does not exceed limitations set pursuant to Section 60-15-13 NMSA 1978. Unlicensed hoisting operator: If a fine is assessed against an unlicensed operator, the superintendent may provide the unlicensed operator the option to respond to the order assessing the fine and enter into a stipulated agreement to resolve the violation by paying a lesser fine under the condition that the unlicensed operator admits guilt and agrees to become licensed.

[16.43.1.9 NMAC - Rp, 16.43.2.19 NMAC, 03/31/15]

#### **16.43.1.11 REPORT OF INCIDENT:**

**A.** Any in-house hoisting operator card holder or licensee involved in any incident that involves a death, or an injury to three (3) or more individuals, shall submit a report as required under applicable state or federal safety laws.

**B.** Any in-house hoisting operator card holder or licensee involved in any incident that involves a personal injury requiring a hospital stay of seventy-two (72) hours or more, or any incident that involves damage to property or equipment of one thousand (\$1,000) dollars or more, shall notify the department within ninety-six (96) hours of the incident.

**C.** Failure to report an incident may result in a disciplinary actions, penalties or fines.

**D.** Upon receipt of a report regarding an incident that may have involved a crane operator or hoisting operator, the department, council or its designee may gather information on the incident and may assign an inspector or investigator to visit the site of the incident, investigate the cause(s) of the incident, and submit a written report to the council summarizing their findings.

**E.** The council may review any incident investigation findings and make a recommendation to the department.

[16.43.1.11 NMAC - Rp, 16.43.2.20 NMAC, 03/31/15]

#### **16.43.1.12 INSPECTION/INVESTIGATION:**

**A. Inspection services:** The department may contract for inspection services or may enter into agreement(s) with any private or state agency such as, but not limited to, NM-OSHA or the CID to provide inspection services regarding hoisting operators.

**B. Investigation services:** The department may contract for investigation services or may enter into agreement(s) with any private or state agency such as, but not limited to, NM-OSHA or the CID to provide investigation services in order to investigate the cause(s) of any accident involving a hoisting operator or hoisting equipment.

[16.43.1.12 NMAC - Rp, 16.43.2.21 NMAC, 03/31/15]

#### **16.43.1.13 HOISTING OPERATORS LICENSURE EXAMINING COUNCIL:**

**A. Establishment of council:** The hoisting operators licensure examining council is established in accordance with (Section 60-15-14 NMSA 1978).

**B. Elections:** At the first council meeting of each calendar year, the council shall elect, by majority vote of the members present, the following officers: chair, vice-chair, and secretary. No officer shall be elected more than twice in succession to the same office. If an officer leaves the council for any reason, a successor officer shall be elected, by majority vote of the members present at the next meeting of the council, to serve the remainder of the term. Any member absent from three consecutive regularly scheduled council meetings shall be deemed to have resigned from the council.

**C. Compensation:** Council members may be reimbursed as provided in the Per Diem and Mileage Act, Sections 10-8-1 to -8 NMSA 1978, and shall receive no other compensation, perquisite, or allowance.

**D. Meetings:** The council shall meet no less than quarterly. A meeting shall be convened at the request of the department, call of the chair, or upon written request addressed to the chair of two (2) council members. Meetings shall be held in compliance with the requirements of the Open Meetings Act (10-15-1 to -4 NMSA 1978). A quorum shall consist of at least half of the duly appointed commissioners at the time of a meeting.

**E. Telephone attendance:** If it is difficult or impossible for a member of the council to attend a meeting in person, the member may participate through a telephone conference. Each council member participating by telephone conference must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the council who speaks during the meeting.

**F. Public records:** The council and department shall comply with the Inspection of Public Records Act, (Sections 14-2-1 to -12 NMSA 1978). The council's administrator shall be the custodian of the council's records.

**G. Duties:** In addition to obligations under Section 60-15-14(B), duties of the council shall include:

- (1) holding hearings in accordance with the provisions of ULA;

(2) examining proposed in-house training course providers and refresher course providers to determine whether they meet the requirements of the act and these rules, and publishing and updating lists of approved training providers;

(3) making recommendations to the department concerning any aspect of licensing under the act or these rules, including recommending new council members to the superintendent;

[16.43.1.13 NMAC - Rp, 16.43.2.23 NMAC, 03/31/15]

#### **16.43.1.14 FEES:**

##### **A. Fee payments:**

(1) All checks to the department from applicants and licensees shall be made payable to "The New Mexico Hoisting Program."

(2) All payments shall be delivered to the department's office.

(3) All fees and payments shall be refundable in whole or in part.

**B. Application fee:** The application fee for a license in any classification or for a change in classification shall be fifty dollars(\$50). The application and initial fees must be submitted with the completed application.

##### **C. Initial license fee:**

(1) An applicant accepted for licensure as a class I hoisting operator shall pay an initial fee of seventy five dollars (\$75) for a two (2) year license.

(2) An applicant accepted for licensure as a class II hoisting operator shall pay an initial fee of seventy five dollars (\$75) for a two (2) year license.

(3) An applicant accepted for licensure as a class III hoisting operator shall pay an initial fee of twenty-five dollars (\$25) for a two (2) year license.

##### **D. Renewal license fee:**

(1) The fee for renewal of a class I hoisting operator license is seventy-five dollars (\$75). The renewed license shall be valid for two (2) years from the expiration date of the previous license.

(2) The fee for renewal of a class II hoisting operator license is seventy-five dollars (\$75). The renewed license shall be valid for two (2) years from the expiration date of the previous license.

**(3)** The fee for renewal of a class III hoisting operator license is twenty-five dollars (\$25). The renewed license shall be valid for two (2) years from the expiration date of the previous license.

**E. Late fee:** Unless a renewal application is filed on or before the expiration date, a late fee of five dollars (\$5) may be charged in addition to a renewed license fee for each month that the renewal application is past due.

**F. Reinstatement fee:** A license that is not renewed within six (6) months of its expiration may be reinstated if a renewal application is submitted. The reinstatement fee is one hundred dollars (\$100) and is assessed in addition to any renewal or late fee.

**G. General examination fee:** The fee for an initial or subsequent general examination for any classification shall be set by the department in consultation with the examining vendor approved by the council, but in no event shall the fee exceed one hundred and fifty (\$150) dollars.

**H. Law and safety examination fee:** The fee for an initial or subsequent law and safety examination shall be set by the department in consultation with the testing agency, but in no event shall the fee exceed twenty five dollars (\$25).

**I. Practical examination fee:** The fee for initial and subsequent practical examinations shall be set between the applicant and the examining vendor approved by the council.

**J. Duplicate license fee:** The fee for the replacement of a lost, destroyed or mutilated license, or for the issuance of a replacement license shall be ten dollars (\$10).

**K. In-House training course fee:**

**(1)** Any employer, person or organization seeking approval of its in-house training course shall submit a three hundred dollar (\$300) application fee.

**(2)** Upon course approval from the council, an employer, person or organization shall submit a certification fee of four hundred dollars (\$400).

**(3)** Any employer, person or organization wishing to renew its course certification shall submit a three hundred dollar (\$300) renewal fee.

**L. Returned check fee:** Any check that fails to clear the bank, or is returned unpaid by the bank for any reason, shall be assessed a thirty-five dollar (\$35) fee. A returned check may cause any license issued or to be issued, or any examination scheduled or to be scheduled to be immediately suspended until proper payment is received in full by the department, including any applicable fees as set out in this section.

**M. Administrative fees:**

(1) The fee for photocopies of documents shall be twenty-five cents (\$0.25) per page.

(2) The fee for certified copies of documents shall be seventy-five cents (\$0.75) per page.

[16.43.1.14 NMAC - Rp, 16.43.2.24 NMAC, 03/31/15]

## **PART 2: HOISTING OPERATORS SAFETY; HOISTING OPERATORS CODE**

### **16.43.2.1 ISSUING AGENCY:**

The Construction Industries Division of the Regulation and Licensing Department.

[16.43.2.1 NMAC - Rp, 16.43.2.1 NMAC, 03/31/15]

### **16.43.2.2 SCOPE:**

These rules apply to all hoisting operators engaged in construction, excavation or demolition activities within the state of New Mexico.

[16.43.2.2 NMAC - Rp, 16.43.2.2 NMAC, 03/31/15]

### **16.43.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Section 60-15-6 NMSA 1978, of the Hoisting Operators Safety Act (Sections 60-15-1 to -14 NMSA 1978).

[16.43.2.3 NMAC - Rp, 16.43.2.3 NMAC, 03/31/15]

### **16.43.2.4 DURATION:**

Permanent.

[16.43.2.4 NMAC - Rp, 16.43.2.4 NMAC, 03/31/15]

### **16.43.2.5 EFFECTIVE DATE:**

March 31, 2015, unless a later date is cited at the end of a section.

[16.43.2.5 NMAC - Rp, 16.43.2.5 NMAC, 03/31/15]

### **16.43.2.6 OBJECTIVE:**

To promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating hoisting equipment to be trained and licensed when employed in construction, demolition or excavation work.

[16.43.2.6 NMAC - Rp, 16.43.2.6 NMAC, 03/31/15]

#### **16.43.2.7 DEFINITIONS:**

**[RESERVED]**

[16.43.2.7 NMAC - Rp, 16.43.2.7 NMAC, 03/31/15]

[See 16.43.1.7 NMAC and Section 60-15-3 NMSA 1978 for applicable definitions]

#### **16.43.2.8 IN-HOUSE TRAINING:**

**A.** A person who has successfully completed an in-house training course approved by the council may operate hoisting equipment without the written examination required by Section 60-15-7 NMSA 1978 for a period of two (2) years. Prior to the expiration of two (2) years, and with at least five hundred (500) hours of seat time, the person shall apply for a license pursuant to 16.43.2.10 through 16.43.2.12 NMAC, as applicable.

**B. Employer responsibility:** An employer choosing to exempt its employees from the licensing requirements of the act for two (2) years by offering an in-house training course for its employees shall be responsible for the qualifications, capability, experience, physical condition, and actions of its hoisting operators.

**C. Standards for approval of training course:** The council shall determine whether training programs meet the requirements of the federal occupational safety and health administration, United States department of labor or occupational health and safety bureau of the United States department of environment.

#### **D. Approval of training course:**

**(1)** Any employer, person or organization wishing to offer an in-house training course to hoisting operators in this state shall first obtain written approval of the course from the council. The request must be submitted on a council approved form containing a complete description of the program's curriculum, content, examination coverage and instructor(s) qualifications. An application fee, as required under 16.43.1.14 NMAC, shall be included with a completed application.

**(2)** After review of the application submitted, the council shall indicate in writing its approval or disapproval, and if disapproved, the council shall provide a reason for the disapproval. The council shall notify the employer, person or organization in writing of the approval or disapproval of the proposal within ninety (90) days of receipt of

the completed form. Upon approval, the employer, person or organization shall submit to the council a non-refundable certification fee as required under 16.43.1.14 NMAC.

(3) The certification shall be for a period of two (2) years.

[16.43.2.8 NMAC - Rp, 16.43.2.9 NMAC, 03/31/15]

#### **16.43.2.9 LICENSE:**

**A. Licensure required:** No person shall operate hoisting equipment in construction, demolition or excavation work when the hoisting equipment is used to hoist or lower individuals or material unless the person is licensed under the act, holds an in-house hoisting operator card or is exempt pursuant to Section 60-15-3(M) NMSA 1978.

**B. Description of license:** The license issued by the department shall include, at a minimum: license number; expiration date of license; license classification and endorsement(s); licensee's name, address, and signature; and authorized signature of the designated representative of the department.

**C. Initial license period:** An initial license shall be valid for two (2) years from the date of issuance.

**D. Examination requirements:** All applicants must take the written general examination and the law and safety examination as approved by the council. A class I and II hoisting operator must also take a practical examination or complete a council approved in-house training course.

**E. Validity:** A license issued under the act and these rules is valid throughout the state of New Mexico. A license is valid only for the classification and endorsement(s) for which it is issued.

**F. Possession:** The licensee must have their license in their possession and on their person at all times while engaged in the operation of hoisting equipment or any other activity subject to the act.

**G. Proof of license:** If a hoisting operator is asked for proof of licensure by a state inspector, or a state investigator as designated by the department or council, the operator shall produce their hoisting operator's license accompanied by a current motor vehicle driver's license or other form of photo identification.

**H. Non-assignable and non-transferable:** A license may be used legally only by the person to whom it is issued; it may not be transferred, shared, or otherwise assigned.

**I. Lost license:** If a license is lost, destroyed or mutilated, the licensee shall immediately deliver to the department a written statement setting forth the

circumstances surrounding the loss, destruction or mutilation of the license, and any applicable fee for the issuance of a duplicate license.

[16.43.2.9 NMAC - Rp, 16.43.2.8 NMAC, 03/31/15]

#### **16.43.2.10 APPLICATION PROCEDURE:**

##### **A. Application for licensure:**

(1) Each applicant for licensure must submit to the department the appropriate documentation as specified in these rules.

(2) The filing date of the application shall be the date the application is date-stamped by the department upon its receipt.

**B. Period of validity:** If for any reason all requirements for licensure are not completed by the applicant within six (6) months after the date of filing an application, the application shall be deemed withdrawn. The applicant shall then be required to re-apply for licensure and pay a new application fee.

**C. Licensure in lesser classification:** The department will forward to the council scanned license applications for approval. If the program administrator receives confirmation from the council that the applicant qualifies for a lesser type of license, the administrator will offer the applicant the opportunity of licensure in a lesser classification. If the applicant wishes to obtain licensure in the lesser classification, the applicant must notify the department in writing within thirty (30) days after receipt of the department's offer. Once approved by the superintendent, the administrator will issue a license of lesser classification.

[16.43.2.10 NMAC - Rp, 16.43.2.10 NMAC, 03/31/15]

#### **16.43.2.11 CLASS I HOISTING OPERATOR:**

##### **A. Scope of work:**

(1) A class I hoisting operator shall have an endorsement on the applicant's license, based on experience, authorizing him to operate any size or weight of one or more of the following types of cranes: conventional, hydraulic or tower.

(2) A class I hoisting operator may perform the work of a class II or class III hoisting operator without being licensed in either of those classifications.

##### **B. Requirements for licensure:**

(1) **Application:** applicant must submit to the department a completed application in an approved form.

**(2) Fee:** applicant must submit to the department applicable fee(s) as set out in these rules.

**(3) Age requirement:** the applicant must be at least twenty-one (21) years of age at the time the application is received by the department.

**(4) Experience requirement:**

**(a)** The applicant's experience must include at least five hundred (500) hours of seat time on a crane of the type for which the applicant seeks the initial endorsement in the past three (3) years prior to applying. For a conventional crane endorsement, the applicant's experience must have been with conventional cranes of any size or type. For a hydraulic crane endorsement, the applicant's experience must have been with hydraulic cranes with a manufacturer's rating capacity equal to or greater than one hundred (100) tons and a boom length equal to or greater than one hundred fifty (150) feet. For a tower crane endorsement, the applicant's experience must have been with tower cranes of any size or type.

**(b)** The applicant must demonstrate their operating competency by passing the general examination, the law and safety examination and the practical examination. The practical examination may be substituted with a council approved in-house training course for the type of hoisting equipment for which the applicant seeks a license and an endorsement.

**(c)** A class I hoisting operator who seeks an additional endorsement on their license shall keep a log book of their seat time with the appropriate type of hoisting equipment and must accumulate five hundred (500) hours of seat time under the direct supervision of either a class I hoisting operator with the proper endorsement or the manufacturer's representative.

**(d)** A class II or class III hoisting operator who seeks an initial endorsement as a class I hoisting operator shall keep a log book of their seat time with the appropriate type of hoisting equipment and must accumulate five hundred (500) hours of seat time under the direct supervision of a class I hoisting operator with the proper endorsement.

**(5) Verification of work experience:**

**(a)** Applicant shall furnish written statement(s) from present or former supervisor(s) or employer(s) verifying that the applicant has had, in total, at least 500 hours seat time operating the type(s) of hoisting equipment which the applicant is applying for licensure in the past three (3) years prior to applying. The statement(s) shall contain at least the following information relating to the applicant: dates of employment, type(s) and tonnage(s) of hoisting equipment operated, and number of hours of operation of each type of equipment.

**(b)** If applicant is a class I hoisting operator seeking an additional endorsement on their license, applicant shall present to the department their log book showing at least five hundred (500) hours of seat time operating the type of equipment for which the applicant seeks an additional endorsement. The seat time must have been under the direct supervision of either a class I hoisting operator with the proper endorsement or the manufacturer's representative.

**(c)** A class II or class III hoisting operator who seeks an initial endorsement as a class I hoisting operator shall present to the department their log book showing at least five hundred (500) hours of seat time operating the type of equipment for which the applicant seeks the endorsement. The seat time must have been under the direct supervision of a class I hoisting operator with the proper endorsement.

**(6) Proof of physical condition:**

**(a)** The applicant shall furnish to the department a current certificate of physical examination conducted and signed by a licensed physician or physician assistant within the past twelve (12) months.

**(b)** The applicant shall furnish to the department a report from a certified drug testing laboratory showing that the applicant has passed a drug screen within the past twelve (12) months.

**(7) Proof of compliance with Parental Responsibility Act:** If applicant's name appears on a certified list from the New Mexico human services department of persons not in compliance with a judgment and order for child support, the applicant must present to the department a statement of compliance from the human services department.

**(8) Law and safety examination:** The applicant must demonstrate knowledge of the act and these rules by passing a written New Mexico law and safety examination selected and approved by the council. Such examination will include questions regarding the operation of hoisting equipment, hoisting laws, load charts, and signals.

[16.43.2.11 NMAC - Rp, 16.43.2.11 NMAC, 03/31/15]

**16.43.2.12 CLASS II HOISTING OPERATOR:**

**A. Scope of work:**

**(1)** A class II hoisting operator may operate a hydraulic crane of up to one hundred (100) tons lifting capacity with a maximum boom length of one hundred fifty (150) feet, regardless of mounting or means of mobility.

(2) A class II hoisting operator may perform the duties of a class I hoisting operator without being licensed in that classification *only* while working under the direct supervision of a class I hoisting operator with the proper endorsement.

(3) A class II hoisting operator may perform the work of a class III hoisting operator without being licensed in that classification.

**B. Requirements for licensure:**

(1) **Application:** Applicant must submit to the department a completed application in an approved form.

(2) **Fee:** Applicant must submit to the department applicable fee(s) as set out in these rules.

(3) **Age requirement:** The applicant must be at least eighteen (18) years of age.

(4) **Experience requirements:**

(a) The applicant's experience must include at least five hundred (500) hours of seat time on a hydraulic crane over two (2) tons and up to one hundred (100) tons lifting capacity with a maximum boom length of one hundred fifty (150) feet, regardless of mounting or means of mobility in the past three (3) years prior to applying.

(b) The applicant must demonstrate their operating competency by passing the general examination, the law and safety examination and the practical examination. The practical examination may be substituted with a council approved in-house training course for the type of hoisting equipment for which the applicant seeks a license and an endorsement.

(c) A class III hoisting operator who seeks licensing as a class II hoisting operator must have at least five hundred (500) hours of seat time operating the appropriate type of equipment under the direct supervision of a class I with the proper endorsement or a class II hoisting operator.

(5) **Verification of work experience:**

(a) Applicant shall submit written statement(s) from present or former supervisors or employers verifying that the applicant has had, in total, at least five hundred (500) hours seat time operating the type of hoisting equipment which the applicant is applying for licensure. The statement(s) shall contain at least the following information relating to the applicant: dates of employment, type(s) and tonnage(s) of hoisting equipment operated, and number of hours of operation of each type of equipment.

(b) If applicant is a class III hoisting operator seeking to qualify as a class II hoisting operator, applicant must present their log book verifying at least five hundred (500) hours of seat time operating the appropriate type of equipment under the direct supervision of a class I with the proper endorsement or a class II hoisting operator.

**(6) Proof of physical condition:**

(a) The applicant shall furnish to the department a current certificate of physical examination conducted and signed by a licensed physician or physician assistant within the past twelve (12) months.

(b) The applicant shall furnish to the department a report from a certified drug testing laboratory showing that the applicant has passed a drug screen within the past twelve (12) months.

**(7) Proof of compliance with Parental Responsibility Act:** If applicant's name appears on a certified list from the New Mexico human services department of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from human services department.

**(8) Law and safety examination:** The applicant must demonstrate knowledge of the act and these rules by passing a written New Mexico law and safety examination selected and approved by the council. Such examination will include questions regarding the operation of hoisting equipment, hoisting laws, load charts, and signals.

[16.43.2.12 NMAC - Rp, 16.43.2.12 NMAC, 03/31/15]

**16.43.2.13 CLASS III HOISTING OPERATOR:**

**A. Scope of work:**

(1) A class III hoisting operator may work as an apprentice, trainee, or crane oiler or driver, under the direct supervision of a class I with the proper endorsement or class II hoisting operator.

(2) A class III hoisting operator may perform the duties of a class I or class II hoisting operator without being licensed in that classification *only* while working under the direct supervision of a class I with the proper endorsement or class II hoisting operator.

**B. Requirements for licensure:**

(1) **Application:** Applicant must submit to the department a completed application in an approved form.

**(2) Fee:** Applicant must submit to the department applicable fees as set out in these rules.

**(3) Age requirement:** The applicant must be at least eighteen (18) years of age at the time the application is received by the department.

**(4) Experience requirements:** No prior experience in the hoisting industry is required.

**(5) Proof of physical condition:**

**(a)** The applicant shall furnish to the department a current certificate of physical examination conducted and signed by a licensed physician or physician assistant within the past twelve (12) months.

**(b)** The applicant shall furnish to the department a report from a certified drug testing laboratory showing that the applicant has passed a drug screen within the past twelve (12) months.

**(6) Proof of compliance with Parental Responsibility Act:** If applicant's name appears on a certified list from the New Mexico's human services department of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from human services department.

**(7) Law and safety examination:** The applicant must demonstrate knowledge of the act and these rules by passing a written New Mexico law and safety examination selected and approved by the council. Such examination will include questions regarding the operation of hoisting equipment, hoisting laws, load charts, and signals.

[16.43.2.13 NMAC - Rp, 16.43.2.13 NMAC, 03/31/15]

**16.43.2.14 LOG BOOK:**

**A. Class I hoisting operator:** A log book must be kept by any class I hoisting operator who seeks an additional endorsement on their class I license.

**B. Class II hoisting operator:** A log book must be kept by any class II hoisting operator who seeks to become a class I hoisting operator.

**C. Class III hoisting operator:** A log book must be kept by any class III hoisting operator who seeks to become a class I or class II hoisting operator.

**D. Contents of log book:** The log book shall contain, at a minimum: the name of the person maintaining the log, type and tonnage of equipment operated, boom length, date and specific hours of operation, total hours of operation, printed name of direct

supervisor (a class I with the proper endorsement or class II hoisting operator in the proper class of equipment being operated) and signature of direct supervisor for respective time periods.

[16.43.2.14 NMAC - Rp, 16.43.2.14 NMAC, 03/31/15]

#### **16.43.2.15 EXAMINATIONS:**

**A. Testing services:** The department or council may accept examinations administered by nationally approved companies or the results of an examination administered by an approved in-house training provider.

#### **B. General examination:**

(1) A written general examination selected and approved by the council shall be scheduled at least monthly; the dates and locations of the examinations shall be determined by the examining vendor approved by the council.

(2) The written general examination shall test the applicant's knowledge of hoisting equipment operation, its care and maintenance, inspection and set-up, and related safety practices.

(3) The written general examination shall be required to be taken and passed by all applicants for hoisting operator licenses in any classification.

(4) A passing grade shall be a score above seventy-five percent (75%).

#### **C. Law and safety examination:**

(1) A written New Mexico law and safety examination selected and approved by the council shall be scheduled at least monthly; the dates and locations of the examinations shall be determined by the examining vendor approved by the council.

(2) The law and safety examination shall test the applicant's knowledge of the act and the rules under Title 16, Chapter 43. Such examination for class I, class II and class III applicants will include questions regarding hoisting equipment operation, load charts and signals. Such examination will include questions regarding the operation of hoisting equipment, hoisting laws, load charts, signals, and hoisting laws.

(3) All applicants for hoisting operator licenses in any classification are required to pass the law and safety examination.

(4) A passing grade shall be a score above seventy-five percent (75%).

#### **D. Practical examination:**

(1) A practical exam shall be conducted by a designee of the council.

(2) If an applicant passes the general examination and the law and safety examination but does not meet the experience requirements set out in 16.43.2.10 or 16.43.2.11 NMAC of these rules, and the applicant elects not to accept a lesser classification as provided in 16.43.2.12 NMAC of these rules, then the applicant shall be required to pass a practical examination.

(3) The practical examination shall demonstrate the applicant's competence in the safe operation of hoisting equipment. The applicant shall satisfactorily demonstrate the ability to perform common tasks required of a hoisting operator, including but not limited to operation, inspection and maintenance procedures, understanding load capacity charts, safely raising and lowering a load, raising and lowering the boom, swinging the crane with a suspended load, braking, and understanding hand signals.

(4) Practical examinations shall be scheduled by an examining vendor approved by the council.

(5) The exam will be graded on a pass or fail basis, determined by the proctor of the examination.

(6) A practical examination may be substituted with an in-house training course approved by the council for the the type of hoisting equipment for which the applicant seeks a license or endorsement.

**E. Re-scheduling of examination:** Any applicant unable to take the law and safety examination at their scheduled time must notify the examining vendor in a timely manner or the examination fee will be forfeited.

[16.43.2.15 NMAC - Rp, 16.43.2.15 NMAC, 03/31/15]

#### **16.43.2.16 CHANGES IN STATUS:**

**A. Change of address:** A licensee shall report to the department in writing any change of permanent address within thirty (30) days of such change.

**B. Change of name:** If a licensee legally changes their name and wishes their license to reflect that name change, the licensee shall submit proof of the name change and a fee in accordance with these rules.

**C. Change of classification:** An applicant for a hoisting operator's license in a classification different from the classification currently held or for an additional endorsement shall apply on approved forms supplied by the department.

[16.43.2.16 NMAC - Rp, 16.43.2.16 NMAC, 03/31/15]

#### **16.43.2.17 LICENSE RENEWAL:**

**A. Timely renewal:** It is the responsibility of the licensee to timely renew their license on forms prescribed by the department. There shall be a thirty (30) day grace period at the end of a two (2) year license before the license will be deemed expired.

**B. Filing date:** The filing date of the application shall be the date it is received and date-stamped by the department.

#### **C. Refresher course:**

(1) A refresher course must have been completed no more than twelve (12) months prior to the filing date of the licensee's renewal application.

(2) The council shall produce a list of all approved refresher courses and shall update the list whenever any party is added to or removed. The list, and any updates, shall be forwarded to the department to publish on the council's website.

#### **D. Documentation required for renewal of license:**

(1) **Renewal form:** A licensee must submit to the department a completed renewal form no later than thirty (30) days after the expiration of their license.

(2) **Fee:** Applicant must submit to the department any application fee(s) as set out in these rules.

(3) **Proof of physical condition:** The required proof shall be the same as an initial license.

(4) **Proof of compliance with Parental Responsibility Act:** The required proof shall be the same as the initial license.

(5) **Refresher course:** A licensee must submit to the department proof of successful completion of a refresher course as set in these rules.

[16.43.2.17 NMAC - Rp, 16.43.2.17 NMAC, 03/31/15]

## **CHAPTER 44: LANDSCAPE ARCHITECTS**

### **PART 1: GENERAL PROVISIONS**

#### **16.44.1.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.1.1 NMAC - Rp, 16.44.1.1 NMAC, 9-30-16]

#### **16.44.1.2 SCOPE:**

This part applies to the board, licensees, certificate holders, applicants and the general public.

[16.44.1.2 NMAC - Rp, 16.44.1.2 NMAC, 9-30-16]

#### **16.44.1.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Landscape Architects Act, Sections 61-24B-1, 61-24B-3, 61-24B-6, 61-24B-7, 61-24B-10 NMSA 1978.

[16.44.1.3 NMAC - Rp, 16.44.1.3 NMAC, 9-30-16]

#### **16.44.1.4 DURATION:**

Permanent.

[16.44.1.4 NMAC - Rp, 16.44.1.4 NMAC, 9-30-16]

#### **16.44.1.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.1.5 NMAC - Rp, 16.44.1.5 NMAC, 9-30-16]

#### **16.44.1.6 OBJECTIVE:**

The objective of 16.44.1 NMAC is to set forth the provisions which apply to all persons affected or regulated by the Landscape Architects Act, and to establish definitions, board meeting dates, and election of officers.

[16.44.1.6 NMAC - Rp, 16.44.1.6 NMAC, 9-30-16]

#### **16.44.1.7 DEFINITIONS:**

As used in these regulations, the following words and phrases have the following meanings unless the context or intent clearly indicates a different meaning.

**A. "Accredited"** means accreditation by the landscape architectural accreditation board (LAAB) or a recognized equivalent accrediting agency.

**B. "Act"** means the Landscape Architects Act, Sections 61-24B-1 through 61-24B-17 NMSA 1978.

**C. "Administrator"** "board administrator" or "program manager" means the staff person assigned certain express or implied executive and administrative functions of the board as defined by board regulation or as required to carry out the provisions of the act.

**D. "Applicant"** means a person who has completed all educational requirements for licensure or certification and has filed an initial application with the board.

**E. "Board"** means the New Mexico board of landscape architects.

**F. "Board regulation"** or "regulation" means any part adopted by the board pursuant to authority under the act and includes any superseding regulation. "Rule" means board regulation.

**G. "Candidate"** means a person who has filed with the board a completed form for licensure or certification that is complete in all particulars and appears on the face to satisfy all minimum educational, supervision, payment and other requirements except examination requirements as required by the act and these regulations and is eligible to take the L.A.R.E.

**H. "Certificate holder"** or "certification" means an individual certified under the Landscape Architects Act as a landscape architect in training.

**I. "CLARB"** means the council of landscape architect registration boards or its successor.

**J. "CLARB certification"** means certification by CLARB that a landscape architect has met the minimum standards of education, examination, experience and professional conduct established by the council and is thereby recommended for licensure in all member jurisdictions.

**K. "CLARB council record"** means the verified documentation of an individual's education, experience, examination, licensure and professional conduct compiled by CLARB.

**L. "Client"** means a person or corporate entity that is the recipient of landscape architectural services.

**M. "Consultant"** means a licensed landscape architect who provides professional advice or opinion to a licensee and who has no professional relationship with the client, has no authority over the project or has no responsibility for the services performed for the client.

**N. "Continuing professional education"** (CPE) means a board requirement of continuing education, instruction or participation as a condition of renewal of licensure.

**O. "Custodian"** means board administrator.

**P. "Electronic transmission"** means the sending of information through the internet or by telephone facsimile (FAX) or e-mail.

**Q. "Filed with the board"** means actual receipt during normal business hours at the board office in Santa Fe, New Mexico.

**R. "General administration of a construction contract"** means the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship and the periodic observation of construction to facilitate consistency with the general intent of the construction documents.

**S. "Good cause"** means the inability to comply because of illness, undue hardship, or extenuating circumstances that are not willful and are beyond the control of the person asserting good cause. Those asserting good cause shall have the burden to demonstrate good cause.

**T. "Inactive status"** means a procedure of the board to affirm that a licensee is not engaged in active practice.

**U. "Initial application"** means the initial application for licensure or certification filed with the board by an applicant not previously or currently licensed in a jurisdiction.

**V. "Joint practice committee"** (JPC) means a committee statutorily comprised of two architects, two landscape architects and two engineers or land surveyors and a public member.

**W. "Landscape architect"** or "registered landscape architect" (RLA) means an individual registered under the Landscape Architects Act to practice landscape architecture.

**X. "Landscape architect in training"** (LAIT) means an individual certified under the Landscape Architects Act who is actively pursuing completion of the requirements for licensure pursuant to that act, under direct supervision of a registered landscape architect.

**Y. "Landscape architect registration examination"** (L.A.R.E.) means the national examination promulgated by CLARB.

**Z. "Landscape architecture"** means the art, profession or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts to protect the health, safety and welfare of the public. Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture,

engineering or land surveying as defined in Sections 61-15-2, 61-23-2.1 and 61-23.27.9 NMSA 1978.

**AA. "Licensed"** means licensed, registered or any other term when such terms identify a person whose professional behavior is subject to regulation by the board.

**BB. "Licensee in good standing"** means a licensee who is not the subject of a pending investigation, adjudicatory proceeding, or petition on appeal or review, or whose license is not restricted, suspended, or revoked in New Mexico or any other state or licensing jurisdiction.

**CC. "Licensee"** means a person licensed pursuant to the provisions of the act and board regulations.

**DD. "NCARB"** means the national council of architectural registration boards.

**EE. "Practical experience"** means experience that demonstrates an essential understanding of the practice of landscape architecture pursuant to the act. Practical experience shall begin after graduation from a degree program as set forth in the act.

**FF. "Professional relationship"** means a mutually agreed-upon relationship between a landscape architect and a client for the purpose of the client(s) obtaining the landscape architect's professional services.

**GG. "Professional services"** means all actions of the landscape architect in the context of professional relationship with the client.

**HH. "Registrant," "registered" or "registration"** means an individual registered under the Landscape Architects Act as a landscape architect.

**II. "Related field"** means a field having an impact on or affecting the field of landscape architecture including, but not limited to, such fields as architecture or engineering.

**JJ. "Renewal cycle/period"** means the time during which a licensee or certificate holder renews his/her license.

**KK. "Sponsor"** means an individual, organization, association, institution or other entity that provides education activity for the purpose of fulfilling the continuing education requirements.

**LL. "Supervisee"** means any person who functions under the authority of a registered landscape architect to provide landscape architectural services as provided in the act or board regulations.

**MM.** "Supervisor" means a registered landscape architect who agrees to provide adequate supervision over a student, applicant, employee or staff or other non-licensed person and who remains ultimately responsible for the professional conduct of the non-licensed person and the welfare of the client.

[16.44.1.7 NMAC - Rp, 16.44.1.7 NMAC, 9-30-16]

#### **16.44.1.8 BOARD MEMBERSHIP:**

**A.** Board members: The board of landscape architects consists of five members appointed by the governor who are residents of New Mexico and serve for three-year staggered terms. The landscape architect members shall have been registered as landscape architects for at least five years.

**B.** The members shall be appointed as follows:

**(1)** Three shall be professional members who are registered under the Landscape Architects Act as landscape architects. The governor shall appoint the professional members from a list of names nominated by the New Mexico chapter of the American society of landscape architects (ASLA).

**(2)** Two members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of landscape architecture.

**C.** Expiration dates: Each member shall hold office until the expiration of his or her appointed term or until a successor is duly appointed. When the term of each member ends, the governor shall appoint the member's successor for a term of three years. Any vacancy occurring in the board membership other than by expiration of term shall be filled by the governor by appointment for the un-expired term of the member. The governor may remove any board member for misconduct, incompetence, or neglect of duty.

[16.44.1.8 NMAC - Rp, 16.44.1.8 NMAC, 9-30-16]

#### **16.44.1.9 BOARD OPERATIONS:**

**A.** Elections. At its annual meeting in July, the board shall elect a chair, vice chair, and secretary-treasurer.

**B.** All board officers shall exercise authority subject to the act, board regulations, and specific directions of the board. Duties of the board chair, vice chair, and secretary-treasurer are as follows:

**(1)** The board chair shall preside at board meetings and adjudicatory hearings unless another presiding officer is named by the board.

**(2)** At the direction of the board, the board chair shall respond to inquiries and correspondence, execute orders of the board in any pending adjudicatory proceeding unless a hearing officer is appointed, sign decisions of the board unless the board designates another member to sign, appoint board members to formal committees, and provide direction to the board administrator on routine matters to facilitate the efficient operation of board functions between meetings.

**(3)** The vice chair shall preside at board meetings and adjudicatory hearings in the absence of the chair. If the office of chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.

**(4)** The secretary-treasurer shall preside at board meetings and adjudicatory proceedings in the absence of the chair and vice chair.

**C. Vacancy.** If the office of board chair becomes vacant, the board shall elect a chair at the next meeting or any subsequent meeting. If the office of vice chair or secretary-treasurer becomes vacant, the board may hold elections as it deems necessary and advisable.

**D. Duties of the board administrator.** The board administrator shall at all times perform assigned duties subject to the act, the Uniform Licensing Act, Sections 61-1-1 through 61-1-34 NMSA 1978, board rules and regulations, and the specific direction of the board. The board administrator shall perform duties as specified in these rules and regulations, shall supervise other personnel, and shall ensure the responsiveness and efficiency of the functions of the board.

**E. Board office.** The board office is located in Santa Fe, New Mexico.

**F. Board meetings.** The board shall conduct meetings in accordance with New Mexico Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978.

**(1)** The board shall hold an annual meeting in July and shall hold other meetings as it deems necessary and advisable.

**(2)** The board shall conduct its meetings in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, revised, when necessary and advisable. The board administrator shall prepare the meeting agenda in accordance with the New Mexico Open Meetings Act and board resolution. The board may change the order of agenda items during its meeting. The board shall transact official business only at a legally constituted meeting with a quorum present. The board is not bound in any way by any opinion, statement, or action of any board member(s), the board administrator, or other staff except when the action is pursuant to a lawful instruction or direction of the board. Except for proceedings to adopt, amend, or repeal regulations governed by Section 61-1-29 NMSA 1978, the board, in its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall

be timely made and shall not cause delay or disruption of the board's meeting. Except for conferences for the purpose of settlement or simplification of the issues, no person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person. Pursuant to Subsection C of Section 10-15-1 NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person.

**(3)** Any board member who cannot be impartial in the determination of any matter before the board and cannot judge a particular matter or controversy fairly on the basis of its own merits shall not participate in any board deliberation or vote on the matter. Any board member with a personal, social, family, financial, business, or pecuniary interest in a matter shall voluntarily recuse himself or herself and shall not participate in a hearing, consideration, deliberation, or vote on the matter, except as provided by law. Board members shall not disclose to any non-member the content of any executive session discussion or deliberation, or any other confidential matters that may be the subject of an executive session or attorney client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure. Nothing herein shall preclude the board from including in executive session discussions or confidential committee meetings the board administrator or other persons the board deems necessary to assist the board in carrying out the functions of the board.

**(4)** License and certificate roster. The board will maintain a current roster of persons holding licenses and certificates in the state of New Mexico. Copies may be made available at a charge determined by the board.

[16.44.1.9 NMAC - Rp, 16.44.1.9 NMAC, 9-30-16]

#### **16.44.1.10 BOARD RECORDS:**

**A.** Public records shall be available for inspection in accordance with the provisions of the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

**B.** The custodian shall charge for copying 8 ½" by 11" paper (16.44.8.8 NMAC). The custodian may charge an additional fee for copying undersize or oversize documents or papers. The board shall not be required to create any document or compile data for an individual or private entity. Consistent with the Inspection of Public Records Act and taking into account the available staff, space, and the needs of other legitimate public business, the custodian may determine the reasonable time, place, and conditions for access to public records. Public records shall not be removed from the board office except by board members, board staff, or agents of the board for official public business.

[16.44.1.10 NMAC - Rp, 16.44.1.10 NMAC, 9-30-16]

**16.44.1.11 SEAL:**

**A.** The official seal of the board shall be as follows: an embossed circular seal two inches in diameter, consisting of two concentric circles. The annular space between the two circles shall contain the seal of the state of New Mexico.

**B.** The board may also authorize a seal/stamp for use by registered landscape architects. Said seal/stamp will bear the registrant's name and registration number and the legend "registered landscape architect state of New Mexico." All plans, specifications, and reports issued by a registrant shall have the registrant's signature placed across the seal/stamp.

[16.44.1.11 NMAC - Rp, 16.44.1.11 NMAC, 9-30-16]

**16.44.1.12 ADVERTISEMENT:**

In accordance with the joint practice committee of the state of New Mexico, the following procedure shall apply to advertising:

**A.** When individuals representing other disciplines, professions, or skills are listed they must be identified by the particular skill area.

**B.** When advertising in a discipline area there must be a New Mexico registrant in that field who can legally bind by contract the company, corporation or business.

**C.** If only registrants within the profession or discipline are being listed, no special identification is required.

[16.44.1.12 NMAC - Rp, 16.44.1.12 NMAC, 9-30-16]

**16.44.1.13 DESIGN COMPETITION:**

A landscape architect licensed in another jurisdiction must be licensed in New Mexico before participating, partaking, or bidding in any design competition in New Mexico.

[16.44.1.13 NMAC - Rp, 16.44.1.13 NMAC, 9-30-16]

**16.44.1.14 BOARD REGULATION:**

Board regulations may be adopted, amended, repealed, or superseded by rule making proceedings pursuant to applicable provisions of the act, the Uniform Licensing Act, and the State Rules Act.

[16.44.1.14 NMAC - Rp, 16.44.1.14 NMAC, 9-30-16]

## **PART 2: EDUCATIONAL AND EXAMINATION REQUIREMENTS FOR LICENSURE**

### **16.44.2.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects.

[16.44.2.1 NMAC - Rp, 16.44.2.1 NMAC, 9/30/2016; A, 12/27/2022]

### **16.44.2.2 SCOPE:**

The provisions of 16.44.2 NMAC apply to applicants for licensure and certification.

[16.44.2.2 NMAC - Rp, 16.44.2.2 NMAC, 9-30-2016]

### **16.44.2.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Landscape and Architects Act, Sections 61-24B-8, 61-24B-11, 61-24B-12, 61-24B-16 NMSA 1978.

[16.44.2.3 NMAC - Rp, 16.44.2.3 NMAC, 9-30-2016]

### **16.44.2.4 DURATION:**

Permanent.

[16.44.2.4 NMAC - Rp, 16.44.2.4 NMAC, 9-30-2016]

### **16.44.2.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.2.5 NMAC - Rp, 16.44.2.5 NMAC, 9-30-2016]

### **16.44.2.6 OBJECTIVE:**

This part establishes the minimum educational and examination requirements for applicants applying for licensure or certification.

[16.44.2.6 NMAC - Rp, 16.44.2.6 NMAC, 9-30-2016]

### **16.44.2.7 DEFINITIONS:**

(Refer to Part 1)

### **16.44.2.8 EDUCATIONAL REQUIREMENTS:**

**A.** Qualifications for registration as a landscape architect. A person desiring to become registered as a landscape architect shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant:

(1) has graduated from an accredited program in landscape architecture at a school, college or university and has a minimum of two years of practical experience after graduation and acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect; or

(2) has graduated from a non-accredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of four years of practical experience after graduation and acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect; or

(3) has graduated from a program in a field related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of five years of practical experience after graduation and acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect; or

(4) has a minimum of ten years of practical experience in landscape architectural work that is acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect, provided that:

(a) each satisfactorily completed year of study in an accredited program of landscape architecture may be accepted in lieu of one year of practical experience required under this subsection; or

(b) a baccalaureate degree from a school, college or university may be accepted in lieu of two years of practical experience required under this subsection.

**B.** Qualifications for certification as a landscape architect in training. A person desiring to be certified as a landscape architect in training shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant has practical experience in landscape architectural work acceptable to the board and:

(1) has graduated from an accredited program in landscape architecture at a school, college or university; or

(2) has graduated from a non-accredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum; or

(3) has graduated from a program related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum.

[16.44.2.8 NMAC - Rp, 16.44.2.8 NMAC, 9-30-2016]

#### **16.44.2.9 EXAMINATION:**

**A.** Applicants for registration as a landscape architect shall be required to pass the board's examination for landscape architects.

(1) To qualify for licensure, an applicant must demonstrate professional competence by passing the (L.A.R.E.) or have previously passed the uniform national examination (UNE). An applicant who passes the examination may be issued a registration to practice as a landscape architect provided the applicant meets all the current requirements for licensure.

(2) The board shall conduct examination of applicants at least once each year.

(3) The passing score on the L.A.R.E. is that score recommended by CLARB. The examination is scored on a pass-fail basis.

(4) An applicant who fails to pass the L.A.R.E. may reapply for the examination if the applicant complies with the rules established by the board in effect at the time of reapplication.

(5) An applicant may sit for the L.A.R.E. before or while completing the practical experience/supervision.

**B.** Applicants for certification as a landscape architect in training shall be required to pass the board's examination for landscape architect in training.

(1) To qualify for certification as a landscape architect in training, an applicant must demonstrate some level of professional competence and demonstrate the applicant's pursuit of a landscape architectural career by passing any two sections of the L.A.R.E.

(2) The board shall conduct examinations of applicants for certification as a landscape architect in training at least once each year.

(3) The passing score on the L.A.R.E. is that score recommended by CLARB. The examination is scored on a pass-fail basis.

(4) An applicant who passes the examination may be issued a certificate as a landscape architect in training allowing the use of the landscape architect in training designation provided the applicant meets all the current requirements for certification.

(5) An applicant who fails to pass the examination may reapply for the examination if the applicant complies with the rules established by the board in effect at the time of reapplication.

(6) Certification as a landscape architect in training is limited to five years in duration as established by the board.

[16.44.2.9 NMAC - Rp, 16.44.2.9 NMAC, 9-30-2016]

**16.44.2.10 [RESERVED]**

**16.44.2.11 [RESERVED]:**

[16.44.2.11 NMAC - Rp, 16.44.2.11 NMAC, 9/30/2016; Repealed, 12/27/2022]

### **PART 3: REGISTRATION FOR LICENSURE**

#### **16.44.3.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects.

[16.44.3.1 NMAC - Rp, 16.44.3.1 NMAC, 9/30/2016; A, 12/27/2022]

#### **16.44.3.2 SCOPE:**

The provisions of 16.44.3 NMAC apply to all applicants for licensure or certification.

[16.44.3.2 NMAC - Rp, 16.44.3.2 NMAC, 9-30-2016]

#### **16.44.3.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Landscape Architects Act, Sections 61-24B-4, 61-24B-8, 61-24B-9 NMSA 1978, Uniform Licensing Act, Section 61-1-34 NMSA 1978 and Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-19 NMSA 1978.

[16.44.3.3 NMAC - Rp, 16.44.3.3 NMAC, 9-30-2016]

#### **16.44.3.4 DURATION:**

Permanent.

[16.44.3.4 NMAC - Rp, 16.44.3.4 NMAC, 9-30-16]

**16.44.3.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.3.5 NMAC - Rp, 16.44.3.5 NMAC, 9-30-2016]

**16.44.3.6 OBJECTIVE:**

This part is to establish the minimum requirements for applicants applying for licensure as a landscape architect or certification as a landscape architect in training.

[16.44.3.6 NMAC - Rp, 16.44.3.6 NMAC, 9-30-2016]

**16.44.3.7 DEFINITIONS:**

(Refer to Part 1)

**16.44.3.8 REGISTRATION OR CERTIFICATION:**

**A.** Unless currently licensed to practice landscape architecture pursuant to the Landscape Architects Act and these rules, no person shall:

- (1)** engage in the practice of landscape architecture; or
- (2)** use the title or represent himself or herself as a landscape architect; or
- (3)** use any other title, abbreviation, letters, signs or devices that indicate the person is a landscape architect.

**B.** Unless currently certified as a landscape architect in training, no person shall:

- (1)** use the title or represent himself or herself as a landscape architect in training; or
- (2)** use any other title, abbreviation, letters, signs, or devices that indicate the person is a landscape architect in training.

**C.** Any person who renders or offers to render landscape architecture services while his or her license is expired, suspended or revoked is subject to the board's jurisdiction and may face disciplinary action by the board. Any person who renders or offers to render services as a landscape architect in training while he or she is not a certificate holder is subject to the board's jurisdiction and may face disciplinary action by the board.

**D.** It is a misdemeanor:

(1) for a person not licensed under the Landscape Architects Act to practice landscape architecture or represent himself or herself as a landscape architect; or

(2) for any person to practice landscape architecture during the time that his or her license as a landscape architect or as a landscape architect in training is expired, suspended, or revoked.

[16.44.3.8 NMAC - Rp, 16.44.3.8 NMAC, 9-30-2016]

### **16.44.3.9 APPLICATION AND FEES:**

**A.** Application forms: To apply for licensure as a landscape architect or a certificate as a landscape architect in training, the applicant shall submit a completed application on the form provided by the board. The applicant shall ensure that the application is complete and that all fees are paid.

**B.** A non-refundable application fee is due at the time of application. The amount of this fee shall be as defined in 16.44.8.8 NMAC.

**C.** Compliance: The applicant shall comply with the Landscape Architects Act and the board's rules and regulations.

**D.** Examination: Eligibility and application to sit for the landscape architect registration examination\_(L.A.R.E) shall be as established by the council of landscape architect registration board (CLARB), as prescribed by 16.44.2.9 NMAC.

[16.44.3.9 NMAC - Rp, 16.44.3.9 NMAC, 9-30-2016]

### **16.44.3.10 LANDSCAPE ARCHITECT APPLICANTS NOT PREVIOUSLY LICENSED IN ANY JURISDICTION:**

**A.** Application Procedure: The applicant shall submit the following:

- (1) a completed and signed application;
- (2) the application fee as required by board;
- (3) official educational transcripts sent to the board office directly from the institution's office of the registrar;
- (4) verification of practical experience;
- (5) samples of work: to assist the board in evaluating the applicant's practical experience, the applicant shall submit evidence of his or her experience with the completed application form in one or both of the following formats:

(a) a minimum of six and a maximum of ten graphic images (formatted to 8 ½ x 11") of projects or drawings depicting construction, planting, irrigation, or design; or

(b) a maximum two-page summary or abstract that describes relevant experience such as administration, research, planning, or teaching;

(6) letters of reference: An applicant for licensure as a landscape architect shall submit three letters of reference, two of which shall be from individuals who are not members of the board; the letters of reference shall be from individuals who are not related to the applicant and who are familiar with and will speak to the applicant's professional activities;

(7) CLARB council record; and

(8) L.A.R.E. test results.

B. The board administrator will notify the applicant once the application file appears to be complete. The board will review the application at the next regular scheduled board meeting. The board administrator will notify the applicant of the board's decision relative to the application.

[16.44.3.10 NMAC - Rp, 16.44.3.10 NMAC, 9-30-2016]

**16.44.3.11 [RESERVED]**

**16.44.3.12 [RESERVED]:**

[16.44.3.13 NMAC - Rp, 16.44.3.13 NMAC, 9/30/2016; Repealed, 12/27/2022]

**16.44.3.13 LANDSCAPE ARCHITECT APPLICANTS WHO ARE CLARB CERTIFIED:**

A. Initial application procedure. To open an initial application file, the applicant shall submit the following:

(1) a completed and signed application;

(2) the application fee as required by the board;

(3) certification received directly from CLARB.

B. Once the application file is complete the board office will notify the applicant. The board administrator has been authorized by the board to then issue a license to the applicant.

[16.44.3.13 NMAC - Rp, 16.44.3.13 NMAC, 9-30-2016]

**16.44.3.14 [RESERVED]**

**16.44.3.15 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Landscape architects currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be granted an emergency license in New Mexico during a four-month period following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board office of a completed application that has been signed and notarized and accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) other required verification may be obtained from the council of landscape architectural registration boards through the CLARB council record;

(3) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.44.2 NMAC;

(4) sworn affidavit that the applicant was personally or professionally affected by the disaster.

**B.** The board may waive the application fees only.

**C.** The board may waive the specific forms required under 16.44.3.12 NMAC and 16.44.3.13 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D.** The emergency license shall expire on June 30 following the date of issue. Application for initial license shall be made on or before April 1 following the date of issue of the emergency license.

**E.** The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the initial license.

[16.44.3.15 NMAC - Rp, 16.44.3.15 NMAC, 9-30-2016]

**16.44.3.16 TERMINATION OF EMERGENCY LICENSE:**

**A.** The emergency license shall terminate upon the following circumstances:

(1) the issuance of a license under 16.44.3.10; 16.44.3.12 and 16.44.3.13 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.44.3.16 NMAC - Rp, 16.44.3.16 NMAC, 9-30-2016]

#### **16.44.3.17 EXEMPTIONS:**

A. The following shall be exempt from the provisions of the Landscape Architects Act as long as they do not hold themselves out to the public as landscape architects or use the term "landscape architect" without being registered pursuant to the Landscape Architects Act, 61-24B NMSA 1978:

(1) landscape architects who are not legal residents of or who have no established place of business in this state who are acting as consulting associates of a landscape architect registered under the provisions of the Landscape Architects Act, 61, 24B NMSA 1978, provided that the nonresident landscape architect meets equivalent registration qualifications in his own state or country;

(2) landscape architects acting solely as officers or employees of the United States; and

(3) a person making plans for a landscape associated with a single-family residence or multi-family residential complex of four units or less except when it is part of a larger complex.

B. Nothing in the Landscape Architects Act, 61-24B NMSA 1978 is intended to limit, interfere with or prevent a professional architect, engineer or land surveyor from engaging in landscape architecture within the limits of his or her licensure.

C. Nothing in the Landscape Architects Act, 61-24B NMSA 1978 is intended to limit, interfere with or prevent the landscape architects in training, drafters, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the registered landscape architect or to prevent the employment of superintendents on the construction, enlargement or alterations of landscape improvements or any appurtenances thereto or to prevent such superintendents from acting under the immediate personal supervision of registered landscape architects by whom the plans and specifications of any landscape architectural services were prepared.

[16.44.3.17 NMAC - Rp, 16.44.3.17 NMAC, 9-30-16]

#### **16.44.3.18 [RESERVED]:**

[16.44.3.18 NMAC - N, 9/30/2016; Repealed, 12/27/2022]

#### **16.44.3.19 ELECTRONIC APPLICATIONS:**

In accordance with the Uniform Electronic Transactions Act, Sections 14-16-1 through 14-16-21 NMSA 1978, the board or its designee will accept electronic application.

**A.** A person seeking licensure as a New Mexico landscape architect or seeking certification as a New Mexico landscape architect in training may do so by submitting an electronic application. Applicants shall submit all information as required by 16.44.3 NMAC.

**B.** A landscape architect may renew his or her license, and a landscape architect in training may renew his or her certificate, electronically through a designated website provided by the board. A person renewing his or her license or certificate shall submit all documentation as required by 16.44.4 NMAC.

**C.** A landscape architect who is currently on inactive status may submit an electronic applications requesting reactivation of his or her certificate of registration. A person requesting reactivation of his or her certificate of registration shall submit all documentation as required by the Landscape Architects Act, Sections 61-24B-9.1 NMSA 1978 and 16.44.6.9 NMAC.

**D.** A person whose landscape architect license or landscape architect in training certificate has been suspended or revoked, or has expired, may in accordance with the Landscape Architects Act, the board's rules and any lawful board or court order, submit an electronic application seeking reinstatement. Applicants shall submit all information as required by the Landscape Architects Act, 61-24B NMSA and the board's rules.

[16.44.3.19 NMAC - N, 9-30-2016]

### **PART 4: LICENSE EXPIRATION AND RENEWAL**

#### **16.44.4.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects.

[16.44.4.1 NMAC - Rp, 16 44.4.1 NMAC, 9/30/2016; A, 12/27/2022]

#### **16.44.4.2 SCOPE:**

The provisions of 16.44.4 NMAC apply to registered landscape architects and certified landscape architects in training.

[16.44.4.2 NMAC - Rp, 16 44.4.2 NMAC, 9-30-2016]

**16.44.4.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Landscape Architects Act, Sections 61-24B-11, 61-24B-15 NMSA 1978 and the Uniform Licensing Act, Section 61-1-34 NMSA 1978.

[16.44.4.3 NMAC - Rp, 16 44.4.3 NMAC, 9-30-2016]

**16.44.4.4 DURATION:**

Permanent.

[16.44.4.4 NMAC - Rp, 16 44.4.4 NMAC, 9-30-2016]

**16.44.4.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.4.5 NMAC - Rp, 16 44.4.5 NMAC, 9-30-2016]

**16.44.4.6 OBJECTIVE:**

This part establishes the procedures for license and certificate expiration and renewal.

[16.44.4.6 NMAC - Rp, 16 44.4.6 NMAC, 9-30-2016]

**16.44.4.7 DEFINITIONS:**

(Refer to Part 1)

**16.44.4.8 LICENSE AND CERTIFICATE RENEWAL:**

**A.** Each landscape architect shall renew his or her license to practice landscape architecture in New Mexico annually on or before June 30 of the year by remitting to the board administrator a renewal fee with the renewal application form provided by the board. Continuing education hours shall be documented as described in 16.44.5.8. NMAC.

**B.** Each landscape architect in training shall renew his or her certificate to practice in New Mexico annually on or before June 30 of the year by remitting to the board administrator a renewal fee with the renewal application form provided by the board.

[16.44.4.8 NMAC - Rp, 16 44.4.8 NMAC, 9/30/2016; A, 12/27/2022]

**16.44.4.9 LICENSE AND CERTIFICATE EXPIRATION DATE:**

A license or certificate shall expire on July 1 unless renewed on or before June 30.

[16.44.4.9 NMAC - N, 8-14-16]

**16.44.4.10 [RESERVED]**

**16.44.4.11 LICENSEE AND CERTIFICATE HOLDER RESPONSIBILITY:**

**A.** The licensee or certificate holder shall inform the board office of any changes in his or her physical mailing address, email address and telephone numbers within 30 days of the change.

**B.** Timely submittal of the complete renewal application shall be the sole responsibility of the licensee or certificate holder. Failure to receive a renewal application notice shall not relieve the licensee or certificate holder of his or her responsibility of renewing on or before June 30.

[16.44.4.11 NMAC - Rp, 16 44.4.11 NMAC, 9-30-2016]

**16.44.4.12 RENEWAL OF EXPIRED LICENSE:**

**A.** An individual holding an expired license or certificate may submit a renewal application and shall be required to pay all applicable renewal fees and late fees as prescribed by 16.44.8 NMAC.

**B.** Expired licenses or certificates that are not renewed within 12 months of the expiration date shall not be renewed.

**C.** Individuals seeking to renew licenses or certificates after 12 months from the expiration date shall be required to apply for a new license or certificate.

**D.** An individual with an expired license and practicing landscape architecture or holding oneself out to be a landscape architect is in violation of the Landscape Architects Act and is subject to disciplinary proceedings in accordance with the Landscape Architects Act and the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978.

**E.** An individual with an expired certificate holding oneself out to be a landscape architect in training is in violation of the Landscape Architect Act and is subject to disciplinary proceedings in accordance with the Landscape Architect Act and of the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978.

[16.44.4.12 NMAC - Rp, 16 44.4.12 NMAC, 9-30-2016]

**16.44.4.13 APPROVAL OF RENEWAL APPLICATION:**

Upon receipt of a complete renewal application, the board authorizes the administrator to issue a license or certificate with an expiration date of June 30, which shall be ratified by the board at their next regularly scheduled meeting.

[16.44.4.13 NMAC - Rp, 16 44.4.13 NMAC, 9-30-2016]

## **PART 5: CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS**

### **16.44.5.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.5.1 NMAC - Rp, 16.44.5.1 NMAC, 9-30-16]

### **16.44.5.2 SCOPE:**

The provisions of 16.44.5 NMAC apply to all registered landscape architects who are applying to renew their license.

[16.44.5.2 NMAC - Rp, 16.44.5.2 NMAC, 9-30-16]

### **16.44.5.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Landscape Architects Act, Sections 61-24B-11, 61-24B-15 NMSA 1978.

[16.44.5.3 NMAC - Rp, 16.44.5.3 NMAC, 9-30-16]

### **16.44.5.4 DURATION:**

Permanent.

[16.44.5.4 NMAC - Rp, 16.44.5.4 NMAC, 9-30-16]

### **16.44.5.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.5.5 NMAC - Rp, 16.44.5.5 NMAC, 9-30-16]

### **16.44.5.6 OBJECTIVE:**

The objective of 16.44.5 NMAC is to establish criteria for professional continuing education for landscape architects licensed in New Mexico.

[16.44.5.6 NMAC - Rp, 16.44.5.6 NMAC, 9-30-16]

#### **16.44.5.7 DEFINITIONS:**

(Refer to Part 1)

#### **16.44.5.8 PURPOSE OF CONTINUING PROFESSIONAL EDUCATION:**

**A.** The purpose of continuing professional education (CPE) requirements for registered landscape architects is to ensure that the licensees update and advance their skill such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, registered landscape architects are encouraged to fulfill a portion of their (CPE) requirements in the areas of ethics, professional conduct and public health, safety and welfare.

**B.** Timeframe of CPE: The board requires every two years a minimum of 30 contact hours of CPE to be completed as a condition for renewal of any registration under the Landscape Architects Act. While the license renewal shall be every year, with the CPE reporting every other year. The 30 hours reporting period will begin July 1 of every odd-numbered year. During a biennial reporting period every registrant is required to obtain 30 CPE hours as approved by the board. During a biennial reporting period the licensee shall submit to the board the report itemizing CPE contact hours for the applicable reporting period, every other year. If a registrant exceeds the minimum biennium requirement in any reporting cycle, credits may not be carried forward into the subsequent biennium.

**C.** Recordkeeping: Each registered landscape architect shall maintain:

**(1)** a log showing the subject and type of activity claimed, the sponsoring organization, location, duration and instructor's or speaker's name;

**(2)** documentation sufficient to prove completion of the activity claimed, such as attendance verification records, completion certificates or other documents;

**(3)** records for at least four years, and throughout any period when registration is in an inactive status if applicable;

**(4)** copies of all records that may be requested by the board for audit verification purposes, which shall include:

**(a)** a list showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and CPE hours earned; and

**(b)** attendance verification records in the form of completion certificates, paid receipts or other documents supporting evidence of attendance; these records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

- (5) a form as provided by the board in order to document CPE units.

[16.44.5.8 NMAC - Rp, 16.44.5.8 NMAC, 9-30-16]

#### **16.44.5.9 PREAPPROVED PROGRAM CATEGORIES:**

**A.** Listed below are pre-approved methods for acquiring CPE hours. Hours must be relevant to the design professions that are recognized as landscape architects, engineers, and architects. The conversion of hours or credit is as follows:

- (1) three college semester hours: 30 hours per biennium;
- (2) three college quarter hours: 20 hours per biennium;
- (3) each continuing education unit: 10 hours per biennium;
- (4) professional development in course work, seminars, professional conventions, workshops related to design professions: hour per hour of lecture time per biennium;
- (5) teaching credit (valid for teaching a course or seminar for the first time only): 15 hours per biennium;
- (6) each published professionally related paper, article, or book: 10 hours per biennium;
- (7) each professional presentation when presented at a national, state, regional or municipal program for the first time only: three hours per biennium;
- (8) serving on federal, state or municipal boards and commissions as a design professional where one is elected or appointed: one hour per month of service not to exceed 24 hours per biennium;
- (9) active participation in professional and technical societies and their committees: four hours per biennium;
- (10) committee chair or elected official of a professional technical society: eight hours per biennium;
- (11) active participation in a public board specifically related to the practice of landscape architecture; licensee must not receive a salary and is only paid pursuant to the Per Diem and Mileage Act: eight hours per biennium;
- (12) business related courses: 10 hours per biennium;
- (13) self-improvement courses: 6 hours per biennium

**(14)** short subjects for design professionals, i.e. CLARB, NCARB etc.: as established by sponsor.

**B. Determination of credit:** The board has final authority with respect to approval of courses, credit, CPE value for courses, and other methods of earning credit.

**(1)** Credit for college or community college approved courses will be based upon course credit established by the college.

**(2)** Credit for seminars, workshops, professional conventions and course/activities may be as recommended by the professional societies.

**(3)** Educational travel/independent study credit allowed shall not exceed eight hours of occurrence with a maximum of 16 hours per biennium.

**C. Exemptions:** A registered landscape architect may be exempt, upon board review and approval, from CPE requirements in any of the following situations:

**(1)** the new landscape architect's first renewal period is less than one year from the original date of licensure;

**(2)** a landscape architect is called to active duty in the armed forces for a period of time exceeding 120 consecutive days in a calendar year; this individual may be exempt from obtaining one-half of the required CPE during the current biennium;

**(3)** a landscape architect experiences physical disability or illness that prevents the landscape architect from practicing landscape architecture; the landscape architect shall provide supporting documentation for the board's review and approval; if the landscape architect elects to return to practice, the landscape architect shall complete all CPE hours required during the current biennium.

**D. Audit:** Upon request, each registered landscape architect shall provide proof of satisfying the CPE requirements. If the landscape architect fails to furnish the information to the board or if the information is not sufficient to satisfy the requirements, the licensee shall not be renewed.

**E. Disallowance:** If the board disallows one or more CPE activities claimed, the board may, at its discretion, allow the registered landscape architect up to 120 days after notification to substantiate the original claim or to complete other CPE activities sufficient to meet the minimum requirements.

**F. Noncompliance:** A registrant who does not satisfy the CPE requirement for registration renewal will be placed on probationary status and so notified by the board following the renewal date. The registrant must comply within six months following the renewal date or the registration may be classified as suspended. The contact hours needed to fulfill the prior biennial period requirement shall not be included in the

subsequent renewal period. Failure of a registrant to satisfy the CPE requirements for registration renewal may be cause for the board to deny license renewal for the licensee.

[16.44.5.9 NMAC - Rp, 16.44.5.9 NMAC, 9-30-16]

## **PART 6: INACTIVE STATUS AND REINSTATEMENT**

### **16.44.6.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.6.1 NMAC - Rp, 16.44.6.1 NMAC, 9-30-16]

### **16.44.6.2 SCOPE:**

The provisions of 16.44.6.6 NMAC apply to all registered landscape architects who plan to place their license on inactive status, or reinstate their inactive license to active status.

[16.44.6.2 NMAC - Rp, 16.44.6.2 NMAC, 9-30-16]

### **16.44.6.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Landscape Architects Act, Section 61-24B-9.1 NMSA 1978.

[16.44.6.3 NMAC - Rp, 16 44.6.3 NMAC, 9-30-16]

### **16.44.6.4 DURATION:**

Permanent.

[16.44.6.4 NMAC - Rp, 16.44.6.4 NMAC, 9-30-16]

### **16.44.6.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.6.5 NMAC - Rp, 16.44.6.5 NMAC, 9-30-16]

### **16.44.6.6 OBJECTIVE:**

This part establishes the requirements and procedures to place an active license on inactive status or to reinstate the license to active status.

[16.44.6.6 NMAC - Rp, 16.44.6.6 NMAC, 9-30-16]

**16.44.6.7 DEFINITIONS:**

(Refer to Part 1)

[16.44.6.7 NMAC - Rp, 16 44.6.7 NMAC, 9-30-16]

**16.44.6.8 INACTIVE STATUS:**

**A.** A current licensee in good standing is eligible to be placed on inactive status. A licensee who failed to renew a license by June 30 of any year shall renew the license in accordance with 16.44.4 NMAC before the licensee can be considered for inactive status.

**B.** A licensee who wishes to be placed on inactive status shall notify the board administrator in writing before his or her current license expires. The administrator will acknowledge receipt of the notification.

**C.** A licensee shall pay the fees established by the board to be placed on inactive status.

**D.** Rendering or offering to render landscape architectural services or engaging in the practice of landscape architecture while on inactive status shall be considered sufficient grounds for disciplinary action by the board.

**E.** An inactive licensee shall comply with the continuing professional education (CPE) requirements (including reporting CPE's) as described in 16.44.5 NMAC.

**F.** An inactive licensee shall not represent himself or herself as a registered landscape architect in public statements that include, but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations.

**G.** A licensee on inactive status shall at all times comply with the provisions of 16.44.7 NMAC.

[16.44.6.8 NMAC - Rp, 16 44.6.8 NMAC, 9-30-16]

**16.44.6.9 REINSTATEMENT FROM INACTIVE STATUS:**

**A.** If the inactive licensee requests reinstatement to active status, he or she shall:

**(1)** notify the board in writing, requesting reinstatement to active status;

- (2) provide satisfactory proof of completion of the CPE requirements;
- (3) not have violated any rule of the Landscape Architects Act or the rules and regulations of the board; and
- (4) pay the appropriate renewal fee established by the board.

**B.** A licensee on inactive status can return to active status any time provided he or she pays the appropriate fees and is current with the CPE requirements of 16.44.5 NMAC.

**C.** A licensee on inactive status shall not render or offer to render landscape architectural services or otherwise engage in the practice of landscape architectural until he or she receives an active license.

**D.** A licensee who does not meet the CPE requirements may not move into active status.

[16.44.6.9 NMAC - Rp, 16 44.6.9 NMAC, 9-30-16]

## **PART 7: CODE OF PROFESSIONAL CONDUCT**

### **16.44.7.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.7.1 NMAC - Rp, 16.44.7.1 NMAC, 9-30-16]

### **16.44.7.2 SCOPE:**

This part applies to the board, licensees, certificate holders, applicants for licensure or certification, and the general public.

[16.44.7.2 NMAC - Rp, 16.44.7.2 NMAC, 9-30-16]

### **16.44.7.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Landscape Architects Act, Sections 61-24-B1, 61-24-B3, 61-24-B6, 61-24-B7, 61-24-B10 NMSA 1978.

[16.44.7.3 NMAC - Rp, 16.44.7.3 NMAC, 9-30-16]

### **16.44.7.4 DURATION:**

Permanent.

[16.44.7.4 NMAC - Rp, 16.44.7.4 NMAC, 9-30-16]

**16.44.7.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.7.5 NMAC - Rp, 16.44.7.5 NMAC, 9-30-16]

**16.44.7.6 OBJECTIVE:**

This part establishes the standards against which the required professional conduct of a registered landscape architect or a landscape architect in training is measured. Each licensee, certificate holder and applicant will be governed by this part whenever providing landscape architectural services. A violation of this part is sufficient reason for disciplinary action pursuant to the Landscape Architects Act.

[16.44.7.6 NMAC - Rp, 16.44.7.6 NMAC, 9-30-16]

**16.44.7.7 DEFINITIONS:**

(Refer to Part 1)

**16.44.7.8 CODE OF PROFESSIONAL CONDUCT:**

**A.** This code expresses in general terms the level of professional conduct expected of licensees in the state of New Mexico. Such a code is no guarantee of moral actions on the part of the licensees but depends upon the integrity of each registrant or certificate holder to conduct himself or herself in a responsible and straightforward manner both in dealings with clients and other professionals.

**B.** Licensees should be more than a group of individuals offering a service to the public. They should comprise an entity with a bond between licensees based on mutual respect and a dedication to improving the quality of life for all persons.

**C.** The licensee shall:

**(1)** exert every effort towards the preservation and protection of our natural resources and toward understanding the interaction of the economic and social systems with these resources;

**(2)** further the welfare and advancement of the profession by constantly striving to provide the highest level of professional services, avoiding even the appearance of improper professional conduct;

(3) serve the client or employer with integrity, understanding, knowledge, and creative ability and respond morally to social, political, economic, and technological influences;

(4) make full disclosure to the client or employer of any financial interest, that even remotely bears upon the services or project;

(5) truthfully and clearly inform the client or employer of his or her qualification and capabilities to perform services;

(6) not make exaggerated, misleading, deceptive or false statements or claims to the public about his or her professional qualifications, experience or performance;

(7) regard as confidential any information obtained by him or her as to the business affairs and technical methods or processes of a client or employer;

(8) not give, lend, or promise anything of value to any public official in order to influence or attempt to influence the official's judgment or action in the letting of contracts;

(9) refrain from lending his or her name or stamp/seal for plans or other documents for the preparation of which he or she was not directly responsible;

(10) refrain from using the advantages of a salaried position to influence the letting of contracts;

(11) not knowingly make false statements about the professional work of others; and

(12) refrain from engaging in any discriminatory practices prohibited by law in the employment of his or her professional and non-professional personnel and in the conduct of his or her business.

[16.44.7.8 NMAC - Rp, 16.44.7.8 NMAC, 9-30-16]

## **PART 8: FEES**

### **16.44.8.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.8.1 NMAC - Rp, 16.44.8.1 NMAC, 9-30-16]

### **16.44.8.2 SCOPE:**

The provisions of 16.44.8 NMAC apply to all applicants for, registration or certification, annual renewal for licensees and anyone who requests a mailing list of licensees or copies of public records.

[16.44.8.2 NMAC - Rp, 16.44.8.2 NMAC, 9-30-16]

**16.44.8.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to the Landscape Architects Act, Section 61-24B11 NMSA 1978.

[16.44.8.3 NMAC - Rp, 16.44.8.3 NMAC, 9-30-16]

**16.44.8.4 DURATION:**

Permanent.

[16.44.8.4 NMAC - Rp, 16.44.8.4 NMAC, 9-30-16]

**16.44.8.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.8.5 NMAC - Rp, 16.44.8.5 NMAC, 9-30-16]

**16.44.8.6 OBJECTIVE:**

The objective of 16.44.8 NMAC is to establish fees to generate revenue adequate to fund the cost of program administration.

[16.44.8.6 NMAC - Rp, 16.44.8.6 NMAC, 9-30-16]

**16.44.8.7 DEFINITIONS:**

(Refer to Part 1).

**16.44.8.8 FEES:**

**A.** The following is a schedule of fees to be paid by applicant or licensee. All fees are non-refundable:

<b>(1)</b>	Application for licensure	\$ 75.00
<b>(2)</b>	Initial registration for landscape architects	\$200.00
<b>(3)</b>	Initial certification for landscape architects in training	\$150.00
<b>(4)</b>	Annual renewal for landscape architects	\$200.00
<b>(5)</b>	Annual renewal for landscape architects in training	\$150.00

(6)	Duplicate of original certificate	\$35.00
(7)	Replacement certificate, new name	\$35.00
(8)	Mailing list	\$100.00
(9)	Mailing labels	\$125.00
(10)	Verification of registration or certification	\$10.00
(11)	Score verification	as required by CLARB
(12)	L.A.R.E.	as required by CLARB
(13)	Inactive status fee	\$ 100.00
(14)	Reactivation of licensure from inactive status	\$ 200.00
(15)	Copying cost per 8 ½" x 11" page	\$ .30

(16) Reinstatement of suspended license: Current renewal fees and late fees as assessed

**B. Late fees:**

(1) If the renewal application is not received or postmarked by June 30, a late fee of \$100.00 is assessed. If the renewal application is not received or postmarked by August 31, an additional late fee of \$100.00 for a total of \$200.00 is assessed.

(2) A late fee will be assessed if the renewal fee, renewal form, and, when applicable, complete continuing professional education (CPE) requirements are not received by the board administrator or post marked by June 30.

(3) If a registrant is approved under an exemption as described in Paragraph (2) and (3) of Subsection C of 16.44.5.9 NMAC, a late fee will not be assessed.

[16.44.8.8 NMAC - Rp 16.44.4.8 NMAC, 9-30-16]

**PART 9: COMPLAINTS**

**16.44.9.1 ISSUING AGENCY:**

New Mexico Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.9.1 NMAC – Rp, 16 44.9.1 NMAC, 9-30-16]

**16.44.9.2 SCOPE:**

The provisions of 16.44.9 NMAC apply to all licensees and applicants for such registration or certification licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensee of this board.

[16.44.9.2 NMAC – Rp, 16 44.9.2 NMAC, 9-30-16]

**16.44.9.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Landscape and Architects Act, Sections 61-24B12, and Section 61-24B16 NMSA 1978.

[16.44.9.3 NMAC – Rp, 16 44.9.3 NMAC, 9-30-16]

**16.44.9.4 DURATION:**

Permanent.

[16.44.9.4 NMAC – Rp, 16 44.9.4 NMAC, 9-30-16]

**16.44.9.5 EFFECTIVE DATE:**

September 30, 2016, unless a later date is cited at the end of a section.

[16.44.9.5 NMAC - Rp 16 44.9.5 NMAC, 9-30-16]

**16.44.9.6 OBJECTIVE:**

The objective of 16.44.9 NMAC is to establish the procedures for filing complaints against a licensee, the authority of the board regarding grounds for denial, suspension, or revocation of a license.

[16.44.9.6 NMAC – Rp, 16 44.9.6 NMAC, 9-30-16]

**16.44.9.7 DEFINITIONS:**

(Refer to Part 1)

**16.44.9.8 COMPLAINT PROCEDURES:**

**A.** Inquiries regarding filing of complaints.

(1) Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

(2) Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board's jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints shall be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based.

**B.** Procedures for processing complaints. The board administrator shall:

(1) log in the date of receipt of the complaint;

**(2)** determine that the subject of the complaint is a registered landscape architect, a certified landscape architect in training or an applicant or person otherwise within the jurisdiction of the board;

**(3)** assign a complaint number and set up an individual file; complaint numbering shall begin in January of each year;

**(4)** forward the complaint to the chair of the complaint committee and the complaint manager or a designee;

**(5)** send a letter to the complainant confirming receipt of the complaint.

**C. Review by the complaint committee.**

**(1)** The chairperson of the board shall appoint a board member to chair the complaint committee. The complaint committee shall consist of at least one member of the board.

**(2)** The complaint manager, if assigned, or designee will review the complaint and meet with the administrative prosecutor and complaint committee chair as needed.

**(3)** If the allegations in the complaint would, if substantiated, constitute grounds for disciplinary action, the complaint committee will recommend a course of action regarding investigation of the complaint.

**(4)** The complaint committee shall oversee the investigation of the complaint. A case summary including the alleged violations of the code of conduct or other parts of the regulations or act will be presented to the full board along with recommendation(s) for disposition of the complaint. The identity of the licensee or applicant and the complainant will not be disclosed to the full board by the complaint committee.

**(5)** Unless the complaint committee determines that it will impede an investigation or interfere with the acquisition of documents or relevant papers or the development of the case, the complaint committee shall inform the licensee or applicant of the complaint and request a response to the allegations. Disclosure of data, communications, and information relating to actual or potential disciplinary action shall be made in accordance with Section 61-1-11 NMSA 1978 or superseding statute.

**(6)** The complaint committee may employ experts, consultants, or private investigators to assist in investigations of complaints.

**(7)** The complaint committee, on behalf of the board, may issue investigative subpoenas, pursuant to Subsection A of Section 61-1-4 NMSA 1978.

**D. Review by the full board.**

(1) Any board member or any member of the complaint committee who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances shall not participate in the decision whether to issue a notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.

(2) The board shall review the case summary presented by the complaint committee, relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence that a violation may have occurred, the board shall forward the evidence to the administrative prosecutor for issuance of a notice of contemplated action.

(3) Following the issuance of a notice of contemplated action, the board may at its option authorize a board member, the hearing officer, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement must be approved by the board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee of his or her rights to hearing under the Uniform Licensing Act.

(4) The board may refer a complaint to the attorney general for injunctive proceedings or to the district attorney for criminal prosecution.

[16.44.9.8 NMAC – Rp, 16 44.9.8 NMAC, 9-30-16]

#### **16.44.9.9 ADJUDICATORY PROCEEDINGS:**

##### **A. General provisions and pre-hearing and preliminary matters.**

(1) All hearings shall be conducted either by the board or, at the election of the board, by a hearing officer.

(2) If the board appoints a hearing officer, the hearing officer shall have authority to decide pre-hearing matters, preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case. Except as otherwise limited in this part, the hearing officer shall have the authority to rule on all non-dispositive motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case, including, without limitation:

(a) unopposed or stipulated motions to change venue;

**(b)** motions for continuance of a hearing date; a motion to vacate the hearing must contain a statement that the licensee or applicant waives his or her right to a hearing held not more than 60 days from the date of service of the notice of hearing;

**(c)** the granting of one notice of peremptory excusal to each party if the notice is timely and if the peremptory excusal does not result in a loss of a quorum of the board; and

**(d)** motions regarding discovery.

**(3)** The original of any papers and pleadings shall be filed with the board. Copies shall be sent to the hearing officer and attorneys or parties of record.

**(4)** The hearing officer or designated board member shall issue appropriate orders to control the course of the proceedings.

**(5)** Consistent with provisions of the Uniform Licensing Act and to the extent practicable, the rules of civil procedure for the district courts shall apply unless the hearing officer or designated board member orders otherwise.

**(6)** A request for an order shall be made by motion filed with the board. Except for motions made during the course of the hearing, a motion shall be in writing. A motion shall state with particularity the grounds for the motion and shall set forth the relief and order sought.

**(7)** A motion shall be accompanied by a memorandum brief in support of the motion. The brief shall state with particularity the grounds for the motion and shall contain citation to authorities, statutes, and references to the pleadings on file. If matters outside of the pleadings are considered, a copy of the referenced material shall be attached to the brief.

**(8)** The hearing officer or the designated board member may order the filing of briefs or other documents and may set oral argument on any matter.

**(9)** No more than two continuances of the hearing date will be granted without the approval of the board for good cause shown.

**(10)** All dispositive motions shall be decided by the board.

**(11)** No proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall be effective unless approved by the board and executed by the board and the licensee or applicant. The board or hearing officer may seek information from the administrative prosecutor and the licensee or applicant concerning circumstances of the case relevant to a consideration of the proposed settlement or clarification of the proposed terms and conditions. No board member is presumed to be

biased and shall not be excused based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case. The board may submit a counterproposal for the settlement or resolution of the case.

**(12)** Any proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall contain at least the following:

**(a)** an admission of all jurisdictional facts; an acknowledgment of the rights contained in the Uniform Licensing Act and an express waiver of those rights and of all rights to hearing and judicial review or any other opportunity to contest the validity of the board order in any other proceeding or forum;

**(b)** a provision that the proposal resolves only the violations alleged in the specific notice of contemplated action and a statement that the board reserves the right to initiate other proceedings for any other violations of the act or board regulations;

**(c)** a description of the facts underlying each alleged violation;

**(d)** if appropriate, a list of the acts or practices from which the licensee or applicant will refrain in the future;

**(e)** a statement of the type, terms, and conditions of the proposed disciplinary action of the board;

**(f)** a statement that the licensee will be responsible for all costs of disciplinary proceedings or a statement setting forth the reason why the licensee should be excused from paying costs; the affidavit of the board administrator concerning the costs incurred to date shall accompany the proposal;

**(g)** a statement that the decision and order of the board shall be a public record and shall be reported as required by law; and

**(h)** other provisions necessary to ensure the complete and final resolution of the proceedings.

**(13)** A proposal to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or presiding officer upon the filing of a timely motion.

**B.** Duties of the board administrator. The board administrator shall:

**(1)** after consultation with the board or hearing officer, issue a notice of hearing stating the date, time, and place of the hearing;

(2) execute on behalf of the hearing officer or board notices, scheduling orders, subpoenas, and subpoenas duces tecum, and other routine procedural documents that facilitate the efficient conduct of adjudicatory proceedings;

(3) maintain the official record of all papers and pleadings filed with the board in any matter;

(4) prepare an affidavit as to costs of any disciplinary proceeding at the conclusion of any hearing or upon request by a party submitting a proposed settlement, consent agreement, or voluntary surrender of a license in lieu of prosecution;

(5) prepare, certify, and file with the district court the record of the case on appeal or review;

(6) unless the board orders otherwise, have the authority to sign the decision of the board to grant or refuse a request to reopen the case.

#### **C. Conduct of hearings.**

(1) The hearing officer, or presiding officer if the case is heard by the board, shall ensure the fair, efficient, and orderly conduct of the hearing in accordance with the Uniform Licensing Act.

(2) Unless the board orders otherwise, a board member hearing officer, the board chair, or presiding officer shall have the authority to sign the written decision of the board.

(3) The board administrator shall serve the decision of the board on the licensee or applicant in accordance with law.

(4) A motion for an order staying the operation of a board decision shall be decided by the board.

[16.44.9.9 NMAC – Rp, 16 44.9.9 NMAC, 9-30-16]

#### **16.44.9.10 SURRENDER OF LICENSE:**

**A.** If a license is suspended or revoked by the board for any reason specified in the rules and regulations of the board or in the act, the licensee shall immediately surrender his or her license in person or by registered mail to the board.

**B.** If the licensee's scope of practice is restricted or limited or otherwise subject to conditions, the license may reflect the restriction, limitations, or condition.

[16.44.9.10 NMAC – Rp, 16 44.9.10 NMAC, 09-30-16]

## **PART 10: EXPEDITED LICENSURE**

### **16.44.10.1 ISSUING AGENCY:**

The New Mexico Board of Landscape Architects.

[16.44.10.1 NMAC - N, 1/18/2023]

### **16.44.10.2 SCOPE:**

The provisions in Part 10 of Chapter 44 apply to all applicants for expedited licensure.

[16.44.10.2 NMAC - N, 1/18/2023]

### **16.44.10.3 STATUTORY AUTHORITY:**

Part 10 is promulgated pursuant to the Landscape Architects Act, Sections 61-24B-1 to 17, NMSA 1978 (specifically Section 61-24B-7 NMSA 1978) and 61-1-31.1 and Section 61-1-34, NMSA 1978, of the Uniform Licensing Act.

[16.44.10.3 NMAC - N, 1/18/2023]

### **16.44.10.4 DURATION:**

Permanent.

[16.44.10.4 NMAC - N, 1/18/2023]

### **16.44.10.5 EFFECTIVE DATE:**

January 18, 2023, unless a later date is cited at the end of a section.

[16.44.10.5 NMAC - N, 1/18/2023]

### **16.44.10.6 OBJECTIVE:**

The objective of Part 10 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.44.10.6 NMAC - N, 1/18/2023]

### **16.44.10.7 DEFINITIONS:**

**A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States and the District of Columbia, except those included in the list of disapproved licensing jurisdictions in 16.44.10.8 NMAC; and

(2) any foreign country included in 16.44.10.9 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "License"** has the same meaning as defined in Subsection E of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Licensing jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**G. "Military orders"** as pertains to the military service member, means official military orders, including orders from separation or retirement, or any notification, certification or verification from the service member's commanding officer, with respect to the service member's current or future military status.

**H. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**I. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in an eligible jurisdiction as defined in Subsection A of this section.

(2) does not have a disqualifying criminal conviction, as defined the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**J. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.44.10.7 NMAC - N, 1/18/2023]

**16.44.10.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS FOR DISAPPROVAL:**

**A.** Applicants licensed as a landscape architect in the following states and territories of the United States or the District of Columbia shall not be eligible for expedited licensure under Subsection (D) Section 61-24B9 NMSA 1978 of the Landscape Architects Act:

(1) Colorado, Delaware, Florida, Georgia, Idaho, Massachusetts, Michigan, Mississippi, Nevada, Rhode Island, Wisconsin, and Wyoming, on the grounds that the education or experience requirements are not consistent with New Mexico's minimum requirements for licensure;

(2) District of Columbia, on the grounds that education, experience, and examination requirements cannot be determined; and

(3) American Samoa and the U.S. Virgin Islands, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate landscape architects.

(4) Approved jurisdictions for expedited licensure as landscape architect are: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Guam, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

**B.** Applicants licensed as landscape architect in training in the following states and territories of the United States or the District of Columbia shall not be eligible for expedited licensure under Section 61-24B-9(D), NMSA 1978 of the Landscape Architects Act:

(1) Idaho, Iowa, and Nevada, on the grounds that the education, experience or examination requirements are not consistent with New Mexico's minimum requirements for licensure;

(2) Puerto Rico, on the grounds that education, experience, and examination requirements cannot be determined; and

(3) American Samoa, Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming,

on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate landscape architects in training.

**C.** Approved jurisdictions for expedited licensure as landscape architect in training: Arizona, Oregon, and Utah.

[16.44.10.8 NMAC - N, 1/18/2023]

#### **16.44.10.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

**[RESERVED]**

#### **16.44.10.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 and Section 61-24B-7 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing in an eligible jurisdiction as defined; and
- (3) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-24B-12 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.44.10.10 NMAC - N, 1/18/2023]

**16.44.10.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and
- (3) submission of the following documentation:
  - (a) for a military service member, a copy of military orders;
  - (b) for a spouse of a military service members: copy of military service member's military orders, and copy of marriage license;
  - (c) for a spouse of a deceased military service member, a copy of decedent's DD 214 and copy of marriage license;
  - (d) for a dependent child of a military service member, a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or
  - (e) for veterans, retired or separated, proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-24B-12 NMSA 1978:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee or renewal fee for the first three years of licensure by the board.

[16.44.10.11 NMAC - N, 1/18/2023]

#### **16.44.10.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board. Initial licenses, including expedited licenses, may be issued for a period greater than 12, but less than 24 months, in order to align the license expiration date with the board's renewal cycle.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the L.A.R.E exam, the licensee shall be required to pass the examination prior to renewing the license.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to board rules.

[16.44.10.12 NMAC - N, 1/18/2023]

## **CHAPTER 45: LAW ENFORCEMENT OFFICERS [RESERVED]**

## **CHAPTER 46: LIBRARIANS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: LIBRARIAN CERTIFICATION IN NEW MEXICO**

#### **16.46.2.1 ISSUING AGENCY:**

Office of Cultural Affairs, Library Division.

[5-11-81; Recompiled 12/31/01]

**16.46.2.2 SCOPE:**

Who may apply: Any person who is actively engaged in or who expects to engage actively in library service may apply for a certificate, either with or without examination, and if found competent and qualified, will be granted the certificate applied for.

[5-11-81; Recompiled 12/31/01]

**16.46.2.3 STATUTORY AUTHORITY:**

Authority: Certification of librarians has been a part of New Mexico law since 1947. The New Mexico Laws of 1977, the Executive Reorganization Act, authorizes the State Librarian to prescribe and hold examinations for the certification of librarians or to require submission of credentials to establish the qualifications of those seeking certification as librarians, and to issue certificates of librarianship to qualified persons.

[5-11-81; Recompiled 12/31/01]

**16.46.2.4 DURATION:**

Permanent.

[Recompiled 12/31/01]

**16.46.2.5 EFFECTIVE DATE:**

May 11, 1981 [unless a later date is cited at the end of a section].

[5-11-81; Recompiled 12/31/01]

**16.46.2.6 OBJECTIVE:**

Purpose: The purpose of librarian certification is:

- A. To secure qualified librarians through the setting up of standards.
- B. To improve the quality of library service in New Mexico.

[5-11-81; Recompiled 12/31/01]

**16.46.2.7 DEFINITIONS:**

**[RESERVED]**

[Recompiled 12/31/01]

### **16.46.2.8 BENEFITS:**

The intent of the certification law is to obtain qualified personnel for the state's libraries. The law requires certification for the chief librarian of a public or state agency library only. However, certification is available to those persons other than the chief librarian should they wish it. The benefits accrued to those persons is solely that knowledge they obtain in whatever course work and/or study they undertake to qualify for certification. Being certified carries no additional benefits unless local communities and agencies have allowed for it within their own jurisdictions.

[5-11-81; Recompiled 12/31/01]

### **16.46.2.9 TYPES OF CERTIFICATES:**

**A. Permanent Professional Certification:** A permanent professional librarian's certificate is issued without examination to an applicant who is a graduate of a library school accredited by the American Library Association.

**B. Grade II Certification:**

(1) A Grade II librarian's certificate is issued to an applicant without examination when the applicant is a graduate of an accredited college or university, and has a major in library science or has completed twenty-one (21) semester hours of library science courses beyond the requirements of a Grade I certificate.

(2) A Grade II librarian's certificate is issued by examination to an applicant who lacks the educational requirements for a Grade II certificate if they successfully pass the examination given by the State Librarian for a Grade II certificate.

[5-11-81; Recompiled 12/31/01]

**C. Grade I Certification:**

(1) A Grade I librarian's certificate is issued to an applicant without examination when the applicant has completed two (2) years of undergraduate work plus nine (9) semester hours of library science courses in an accredited college or university.

(2) A Grade I librarian's certificate is issued by examination to an applicant who lacks the minimum educational requirements for a Grade I certificate if they successfully pass the examination given by the State Librarian for a Grade I certificate.

**D. Temporary Certification:**

(1) The State Librarian issues a temporary certificate without examination to an applicant who is unqualified for any other type of librarian certification when the State

Librarian receives written recommendation for the issuance of a temporary certificate for the applicant from the library board or governing body concerned, stating that no qualified applicant is available for the position.

(2) The temporary certificate is issued for all grades and is valid for one (1) year only, but may be renewed or extended for one year periods upon written recommendation from the library board or governing body concerned, stating that no qualified applicant is available for the position.

[5-11-81; Recompiled 12/31/01]

#### **16.46.2.10 REQUIRED CERTIFICATION:**

**A.** A Permanent Professional Librarian's Certificate is required for the chief librarian of any library supported by public funds and serving a municipality or other political subdivision having a population in excess of 15,000 persons as shown by the last federal decennial census; or Of any state agency or state supported institution.

**B.** A Grade II Librarian's Certificate is required for the chief librarian of any library supported by public funds and serving a municipality or other political subdivision having a population of at least 10,000 but not more than 15,000 persons, as shown by the last federal decennial census.

**C.** A Grade I Librarian's Certificate is required for the chief librarian or any library supported by public funds and serving a municipality or other political subdivision having a population of at least 3,000 persons, but not more than 10,000 persons as shown by the last federal decennial census.

**D.** . THESE PROVISIONS DO NOT APPLY TO PUBLIC SCHOOL OR COUNTY LAW LIBRARIES.

[5-11-81; Recompiled 12/31/01]

#### **16.46.2.11 FEES:**

**A.** The fee for a certificate issued without examination is \$5.00. The fee for a certificate issued by examination is \$10.00. All fee money is deposited with the State Treasurer and is used to defray the expenses incurred in the certification of librarians.

**B.** Checks or money orders should be made payable to: OCA (Office of Cultural Affairs), Library Division, and submitted to the State Librarian together with application and transcript if required.

[5-11-81; Recompiled 12/31/01]

#### **16.46.2.12 TEST COVERAGE:**

**A.** The examinations are written. They are given in two parts: Grade I is a four-hour examination and is given in the morning; Grade II is an eight-hour examination and is given in two parts: the first part is given in the morning and the second part is given in the afternoon.

**B.** Knowledge in the fields of cataloging, reference, administration, public library standards, literature, and book selection are examined.

**C.** A suggested bibliography for use as a study guide is provided each applicant. It is the applicant's responsibility to secure the study materials.

[5-11-81; Recompiled 12/31/01]

**16.46.2.13 THE CERTIFICATION EXAMINATION IS GIVEN TWICE EACH YEAR, THE EXACT DATES TO BE SENT AND ANNOUNCED BY THE STATE LIBRARIAN DURING JANUARY OF EACH YEAR:**

[5-11-81; Recompiled 12/31/01]

**16.46.2.14 THE PASSING GRADE ON THE EXAMINATION IS 70. ANY APPLICANT AGGRIEVED IN FAILING THE EXAMINATION MAY APPEAL TO THE STATE LIBRARIAN WITHIN THIRTY DAYS FOR REVIEW:**

[5-11-81; Recompiled 12/31/01]

**16.46.2.15 APPLICANTS FAILING TO MAKE THE PASSING GRADE MAY TAKE THE EXAMINATIONS WHEN NEXT GIVEN. NO APPLICANT MAY TAKE THE EXAMINATIONS MORE THAN THREE TIMES. THE \$10.00 FEE MUST BE PAID EACH TIME AN APPLICATION IS SUBMITTED FOR EXAMINATIONS:**

[5-11-81; Recompiled 12/31/01]

**16.46.2.16 APPLICANTS FOR PERMANENT, GRADE I AND GRADE II LIBRARIAN'S CERTIFICATES WITHOUT EXAMINATION MUST SUBMIT CERTIFIED COPIES OF THEIR COLLEGE TRANSCRIPTS WITH THEIR APPLICATIONS:**

[5-11-81; Recompiled 12/31/01]

**16.46.2.17 APPLICATION SHOULD BE SENT TO THE STATE LIBRARIAN, TOGETHER WITH A CHECK OR MONEY ORDER TO COVER THE FEE, AND TRANSCRIPTS IF REQUIRED. THE CERTIFICATE WILL BE ISSUED TO THE APPLICANT WITHIN NINETY DAYS AFTER THE APPLICATION IS FILED IN THE CASE OF THOSE QUALIFYING WITHOUT EXAMINATION; OR THE APPLICANT WILL BE ADVISED WITHIN THAT PERIOD THAT THE APPLICATION HAS BEEN DENIED OR WHY IT HAS NOT YET BEEN ISSUED. ALL APPLICATIONS TO TAKE THE LIBRARIAN'S CERTIFICATION EXAMINATION SHALL BE FILED WITH THE**

**STATE LIBRARIAN NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE DATE FOR THE NEXT EXAMINATION.:**

[5-11-81; Recompiled 12/31/01]

**16.46.2.18 ALL INQUIRIES, SUPPORTING DOCUMENTS, AND APPLICATIONS SHOULD BE ADDRESSED TO:**

State Librarian

New Mexico State Library

P. O. Box 1629

Santa Fe, New Mexico 87503

(Telephone inquiries should be made to the State Librarian's office.)

[5-11-81; Recompiled 12/31/01]

**16.46.2.19 NO PUBLIC FUNDS SHALL BE PAID TO ANY LIBRARY FAILING TO COMPLY WITH THE REQUIRED PROVISIONS OF THE CERTIFICATION LAWS:**

[5-11-81; Recompiled 12/31/01]

**16.46.2.20 REFER TO THE LATEST EDITION OF NEW MEXICO STATUTES FOR THE EXACT WORDING OF THE CERTIFICATION LAW:**

[5-11-81; Recompiled 12/31/01]

**16.46.2.21 APPROVED:**

CLIFFORD E. LANG, STATE LIBRARIAN

[5-11-81; Recompiled 12/31/01]

## **CHAPTER 47: HORSE RACING LICENSEES**

### **PART 1: GENERAL PROVISIONS**

**16.47.1.1 ISSUING AGENCY:**

New Mexico Racing Commission.

[16.47.1.1 NMAC - Rp, 16 NMAC 47.1.1, 03/15/2001]

**16.47.1.2 SCOPE:**

All persons, firms, or associations participating in horse racing in New Mexico. Additional regulations may be cross-referenced in 15.2.1 NMAC; 15.2.2 NMAC; 15.2.3 NMAC; 15.2.4 NMAC; 15.2.5 NMAC; 15.2.6 NMAC; and 15.2.7 NMAC.

[16.47.1.2 NMAC - Rp, 16 NMAC 47.1.2, 03/15/2001]

**16.47.1.3 STATUTORY AUTHORITY:**

Section 60-1A-5 through 60-1A-11 NMSA 1978 provides that all persons engaged in racing, or operating a horse racing meeting, and persons operating concession for or under authority of any licensee or employed by the concessionaire shall be licensed by the state racing commission.

[16.47.1.3 NMAC - Rp, 16 NMAC 47.1.3, 03/15/2001; A, 09/15/09]

**16.47.1.4 DURATION:**

Permanent.

[16.47.1.4 NMAC - Rp, 16 NMAC 47.1.4, 03/15/2001]

**16.47.1.5 EFFECTIVE DATE:**

March 15, 2001 unless a later date is cited at the end of a section.

[16.47.1.5 NMAC - Rp, 16 NMAC 47.1.5, 03/15/2001]

**16.47.1.6 OBJECTIVE:**

To establish licensing requirements for horse racing participants; and establish and describe the requirements, standards and criteria for human substance abuse testing for occupational licensees licensed by the commission.

[16.47.1.6 NMAC - Rp, 16 NMAC 47.1.6, 03/15/2001; A, 02/25/2020]

**16.47.1.7 DEFINITIONS:**

Refer to 15.2.1.7 NMAC.

[16.47.1.7 NMAC - Rp, 16 NMAC 47.1.7, 03/15/2001]

**16.47.1.8 GENERAL PROVISIONS:**

**A. Licenses required:** A person as defined by 15.2.1.7 NMAC shall not participate in pari-mutuel racing under the jurisdiction of the commission or be employed by an association who is a gaming operator, without a valid license issued by the commission.

(1) License categories shall include the following and others as may be established by the commission: Group A - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. Group B - associations, racing professionals, concession operators, contractors, and managerial racing officials. Group C - supervisory racing officials. Group D - persons employed by the association or employed by a person or concern contracting with the association, to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari-mutuel wagering is being conducted. Group E - racetrack employees and authorized agents.

(2) Persons required to be licensed shall submit a thoroughly and accurately completed application on forms furnished by the commission and accompanied by the required fee. Persons seeking licensure as an authorized agent for an owner under the age of 18 shall be required to be 18 years or older and shall submit fingerprints to undergo a background check. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Announcer	\$ 75.00
Assistant general manager	\$100.00
Assistant racing secretary	\$ 20.00
Association	\$100.00
Auditor, official	\$ 75.00
Authorized agent	\$ 10.00
Clerk of scales	\$ 20.00
Clocker	\$ 20.00
Club, racetrack	\$100.00
Concession employee	\$ 10.00
Concession operator	\$100.00
Custodian of jockey room	\$ 20.00
Director or corporate officer	\$100.00
Director of operations	\$ 75.00
Director of racing	\$ 75.00
Exercise person	\$ 20.00
General manager	\$100.00
Groom	\$ 10.00
Horseman's bookkeeper	\$ 20.00
Identifier (horse)	\$ 20.00
Janitor	\$ 10.00
Jockey (3 year)	\$200.00
Jockey (1 year)	\$100.00

Jockey (apprentice) (3 year)	\$200.00
Jockey (apprentice) (1 year)	\$100.00
Jockey agent	\$ 75.00
Jockey valet	\$ 10.00
Laborer	\$ 10.00
Office personnel (specify position)	\$ 10.00
Official veterinarian (3 year)	\$200.00
Official veterinarian (1 year)	\$100.00
Outrider	\$ 20.00
Owner (3 year)	\$200.00
Owner (1 year)	\$100.00
Paddock judge	\$ 20.00
Pari mutuel employee	\$ 10.00
Pari mutuel manager	\$ 75.00
Placing judge	\$ 20.00
Photo employee	\$ 10.00
Plater	\$100.00
Pony person	\$ 10.00
Private barns	\$100.00
Racing secretary-handicapper	\$ 75.00
Security chief	\$ 75.00
Security staff	\$ 10.00
Simulcast company employee	\$ 10.00
Simulcast coordinator	\$ 75.00
Simulcast operator	\$100.00
Special event, 1 or 2 day	\$200.00
Stable name (3 year)	\$200.00
Stable name (1 year)	\$100.00
Stable superintendent	\$ 75.00
Starter	\$ 75.00
Starter assistant	\$ 20.00
Ticket seller (admissions)	\$ 10.00
Timer	\$ 20.00
Totalisator employee	\$ 10.00
Totalisator operator	\$100.00
Track maintenance, employee	\$ 10.00
Track physician	\$100.00
Track superintendent	\$ 75.00
Trainer (3 year)	\$200.00
Trainer (1 year)	\$100.00
Trainer assistant	\$ 20.00
Veterinarian assistant	\$ 20.00
Veterinarian, practicing (3 year)	\$200.00
Veterinarian, practicing (1 year)	\$100.00
Veterinarian, racing (3 year)	\$200.00

Veterinarian, racing (1 year)	\$100.00
Watchman	\$ 10.00

(3) License applicants shall be required to furnish to the commission a set(s) of fingerprints and a recent photograph. Any license applicant that is under the age of 18 years of age is exempt from the requirement to submit fingerprint cards.

(a) All license applicants shall be required to be re-fingerprinted every six years and re-photographed periodically as determined by the commission.

(b) Requirements for fingerprints may be fulfilled by:

- (i) submission of fingerprints; or
- (ii) verification that fingerprints were submitted for processing;
- (iii) submission of a fingerprint reciprocity affidavit; or
- (iv) provide proof of licensure from another jurisdiction to which fingerprints were submitted within the last six years.

(4) License applicants for groom, watchman, exercise and pony persons must submit to a drug (controlled substances) and alcohol-screening test when making application for license.

(5) As a participant of the national racing compact licensing program and as an alternative to the licensure requirements set forth in Paragraphs (2) through (4) of Subsection A of 16.47.1.8 NMAC, the commission may authorize applicants to utilize the national racing compact licensing program to obtain a New Mexico racing license subject to the applicable licensure fees set forth in Paragraph (2) of Subsection A of 16.47.1.8 NMAC.

**B. Multi-state licensing information:** Applicants may be permitted to submit an association of racing commissioners international, incorporated multi-state license information form and association of racing commissioners international, incorporated fingerprint card and thereby obtain a criminal record check that can be used in other jurisdictions.

**C. Age requirement:**

(1) Applicants for licensing, except owners, must be a minimum of 14 years of age, but no one under the age of 16 may be licensed as a pony person or exercise person and no one under the age of 18 may be licensed as an authorized agent or jockey agent.

(2) A licensee must be a minimum of 14 years of age to handle a horse in the paddock.

**D. Consent to investigation:** The filing of an application for license shall authorize the commission and the board to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications, and to verify information provided by the applicant.

**E. Consent to search and seizure:** By acceptance of a license, a licensee consents to search and inspection by the commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state and federal law.

**F. Approval or recommendations by stewards:** The commission may designate categories of licenses, which shall require stewards' prior approval or recommendation. Prior approval will include exercise riders, pony riders, and apprentice jockeys.

**G. Employer responsibility:**

(1) The employment of any unlicensed person under the jurisdiction of the commission is prohibited.

(2) Every employer shall report the discharge of any licensed employee in writing to the stewards, including the person's name and occupation.

**H. Employer endorsement of license applications:** The license application of an employee must be signed by the employer.

**I. Financial responsibility:**

(1) All persons engaged in racing shall maintain financial responsibility in matters pertaining to racing and the Parental Responsibility Act.

(2) Any person licensed by the commission may file a financial responsibility complaint against another licensee. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due in connection with his/her operations as a licensee. A judgment from a civil court, which has been issued within one year of the date of the complaint, may be honored by the stewards as long as at least the defendant is a licensee.

**J. License refusal:** The commission may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

**K. License denial:**

(1) The commission may formally deny an application in accordance with these rules.

(2) An application denied, if requested by the applicant, shall be reported in writing to the applicant denied stating the reasons for denial, and the date when a reapplication may be submitted.

(3) An application denied may be reported to the association of racing commissioners international, incorporated and North American pari-mutuel regulators association whereby other racing jurisdictions shall be advised.

**L. Grounds for disciplinary measures for a licensee, and refusal, denial, suspension, or revocation of a license:**

(1) The commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

(a) has been convicted of a felony;

(b) has been convicted of violating any law regarding gambling or a controlled dangerous substance;

(c) who is unqualified, by experience or otherwise, to perform the activities for which a license is required, or who fails to pass an examination prescribed by the commission;

(d) has failed to disclose or falsely states any information required in the application;

(e) has been found in violation of rules governing racing in this state or other jurisdictions;

(f) has been found to have made false or misleading statements to the commission, stewards, or any racing official;

(g) has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(h) has had a license denied, suspended, or revoked by any racing jurisdiction;

(i) is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting; interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to

danger anywhere on the racetrack grounds; the fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

(j) demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused; for the purpose of this sub-section, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within 30 days of the date of the notice, the applicant provides the commission with a certified statement from the department that they are in compliance with a judgment and order for support;

(k) is ineligible for employment pursuant to federal or state law concerning age or citizenship;

(l) is disrespectful or intimidates any official, commissioner, or commission staff or any other licensee;

(m) attempts to influence any racing official or commission staff member;

(n) has knowingly filed a false complaint against another licensee or a racing official where the racing commission or the stewards determine that the complaint was made without reasonable or probable cause and for the purpose of the harassment or abuse of the complaint process;

(o) has engaged in conduct unbecoming or detrimental to the best interests of racing.

(2) A license suspension or revocation shall be reported in writing to the applicant and the association of racing commissioners international, incorporated, whereby other racing jurisdictions shall be advised.

(3) Any license denied, suspended or revoked by the commission pursuant to these rules shall state the time period for the effect of its ruling. When the action is taken for a misdemeanor or felony conviction, the time period shall be the period of the licensee's or applicant's imprisonment; or if not imprisoned, the period of probation, deferral, unless the person can satisfy the commission of sufficient rehabilitation. This rule shall also apply to licensees who voluntarily turn in their license because of, or in anticipation of, a conviction.

(4) If a license is suspended or revoked by the commission or stewards pursuant to these rules the commission or stewards may probate all or any portion of the suspension.

(a) The order or ruling entered placing a licensee on probation shall state the specific probationary period and the terms and conditions of the probation.

(b) The terms and conditions of the probation must have a reasonable relationship to the violation and may include:

- (i) passing a prescribed examination in a specific area;
- (ii) periodic reporting to the commission, stewards or other designated person on any matter that is the basis of the probation;
- (iii) a medical evaluation and completion of a prescribed treatment program; and
- (iv) other terms and condition as specified in the order or ruling that are reasonable and appropriate.

(c) If the commission or stewards determine the licensee has failed to comply with the terms of the probation, the probation may be revoked on three days' notice to the licensee and the licensee may be required to appear before the New Mexico racing commission. Failure to comply with the terms of the probation may subject the licensee to additional disciplinary action.

#### **M. Duration of license:**

(1) All annual licenses, with the exception of the authorized agent, issued by the commission expire one year from the last day of the month issued. All triennial licenses expire three years from the last day of the month issued.

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

#### **N. Changes in application information:**

(1) During the period for which a license has been issued, the licensee shall report to the commission changes in information provided on the license applications as to current legal name, marital status, permanent address, telephone number, email address, criminal convictions, license suspension of 10 days or more and license revocations in other jurisdictions

(2) A child or spouse pass, or a change in current legal name requires a completed application on forms furnished by the commission and payment of a photo badge fee.

(3) A licensee requesting a first time badge replacement shall submit a completed application on forms furnished by the commission and payment of a photo badge fee. Any subsequent badge replacements require the licensee to submit a completed application on forms furnished by the commission and payment of the original license fee.

#### **O. Temporary licenses:**

(1) The commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the commission with the exception of casino employees and also food concession employees who work in non-restricted areas.

(2) The commission may grant an association, who is not conducting a live horse race meeting, a grace period of 30 days to obtain the required licenses for its simulcast employees. An association shall provide to the commission each month, an employment roster for all simulcast employees.

**P. More than one license:** More than one license to participate in horse racing may be granted except when prohibited by these rules due to a potential conflict of interest. An applicant for a license shall be subject to obtaining a license for each category for which an applicant will be participating, subject to the approval of the board of stewards.

(1) The commission may refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the commission or stewards find to be a conflict of interest.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

(3) A person who is licensed as an owner or trainer in a horse registered for racing at a race meeting in this jurisdiction shall not be employed or licensed as a jockey, apprentice jockey; jockey agent; racing official; assistant starter; track maintenance supervisor; jockey room custodian; valet; outrider; racing chemist, testing laboratory employee, or security personnel.

#### **R. License presentation:**

(1) A person must present an appropriate license or other authorization issued by the commission to enter a restricted area. The commission may issue authorization to the spouse or child of a licensed owner, trainer or jockey to enter a restricted area.

(2) The stewards may require visible display of a license while the licensee is engaged in the duty for which he/she is licensed and on the association grounds unless the licensee is mounted on a horse.

(3) A license may only be used by the person to whom it is issued.

**S. Temporary access authority:** Track security may authorize unlicensed persons temporary access to restricted areas. Such person shall be identified and their purpose and credentials verified and approved in writing by track security. Such authorization or credential may only be used by the person to whom it is issued.

**T. Knowledge of rules:** A licensee shall be knowledgeable of the rules of the commission; and by acceptance of the license, agrees to abide by the rules.

**U. Protection of horses:**

(1) Each person licensed by the commission shall do all that is reasonable and within their power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

(2) No licensee or other person under the jurisdiction of the commission shall subject or permit any animal under their control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

**V. Restrictions:**

(1) Cellular telephone use is prohibited:

(a) on the race track surface beginning one half hour before first post through the last race becoming official; and

(b) behind the starting gate during racing hours.

(2) The association shall be responsible for posting notices of the cellular telephone prohibition in these restricted areas.

[16.47.1.8 NMAC - Rp, 16 NMAC 47.1.8, 3/15/2001, A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 2/14/2002; A, 11/14/2002; A, 3/31/2003; A, 7/15/2003; A, 9/29/2006; A, 3/30/2007; A, 8/14/2008; A, 6/15/2009; A, 9/15/2009; A, 1/1/2014; A, 4/1/2014; A, 6/1/2016; A, 12/16/2016; A, 7/1/2017; A, 3/14/2018; A, 2/25/2020; A, 5/24/2022; A, 4/9/2024]

**16.47.1.9 OWNERS:**

**A. Licensing requirements for owners:**

(1) Each person who has a five percent or more ownership or beneficial interest in a horse is required to be licensed.

(2) If younger than 18 years of age, an applicant for an owner's license must submit a notarized affidavit from his/her parent or legal guardian stating that the parent or legal guardian assumes responsibility for the applicant's financial, contractual, and other obligations relating to the applicant's participation in racing.

(3) If submitting an owner's application by facsimile, the application shall be notarized. The notarized facsimile shall be treated as the original document.

(4) If the commission has reason to doubt the financial responsibility of an applicant for an owner's license, the applicant may be required to complete a verified financial statement.

(5) Licensed owners are responsible for disclosure of the true and entire ownership of each of their horses registered with the racing secretary. Any change in ownership or trainer of a horse registered with the racing secretary must be approved by the stewards. A new owner must comply with all licensing requirements.

(6) The commission may refuse, deny, suspend, or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless there is a showing on the part of the applicant or licensed owner, and the commission determines that participation in racing will not permit a person to serve as a substitute for an ineligible person. The transfer of a horse to circumvent a commission rule or ruling is prohibited.

#### **B. Licensing requirements for multiple owners:**

(1) If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required in 16.47.1.8 NMAC.

(2) Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the commission.

(3) Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.

(4) To obtain an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse must establish a bona fide need for the license and the issuance of such license must be approved by the stewards.

(5) Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice, or order at such

address shall constitute official notice to all persons involved in the ownership of such horse.

(6) The written appointment of a managing owner or authorized agent shall be filed with the commission.

**C. Lease agreements:** A horse may be raced under lease provided a completed breed registry or other lease form acceptable to the commission is attached to the certificate of registration and on file with the racing secretary. The lessor and lessee must be licensed as horse owners.

**D. Stable name registration:**

(1) Licensed owners and lessees may adopt a stable name subject to the approval of the commission.

(2) The applicant must identify all persons using the stable name. Changes must be reported immediately to the commission.

(3) A person who has registered a stable name may cancel it upon written notice to the commission.

(4) A stable name may be changed by registering a new stable name.

(5) A stable name, which has been registered by any other person, will not be approved by the commission.

(6) A stable name shall be clearly distinguishable from other registered stable names.

(7) The stable name and the name of the owner shall be published in the program. If the stable name consists of more than one person, the program shall list the name of the managing owner along with the phrase "et al".

(8) All persons using a stable name must comply with all rules regarding licensing of owners.

**E. Racing colors:**

(1) Owners or trainers must provide racing colors, which are subject to the approval of the commission.

(2) Racing colors must be registered with the racing secretary no later than the close of entries for that day of racing. If colors are registered they shall be used unless permission to substitute colors is received from the stewards.

(3) Standard track colors will be furnished by the association for owners or trainers who do not provide their own colors. The stewards may authorize a temporary substitution of racing colors when necessary.

(4) The racing colors to be worn by each jockey in a race shall be described in the program, and any change shall be announced to the public prior to the commencement of the race.

**F. Private barns/stables:** An owner or lessee of a private barn/stable adjacent to or within a reasonable distance of a New Mexico racing facility governed by the commission may by consent have direct access to that racetrack provided they consent to the jurisdiction of the commission and agree, in writing to comply with all rules and regulations of the commission. Direct access simply means they may enter the licensed racetrack without having to go through the general public gate or the horsemen's gate, but they may do so only after consenting in writing to jurisdiction of and complying with the commission and its rules and regulations.

[16.47.1.9 NMAC - Rp, 16 NMAC 47.1.9, 03/15/2001; A, 02/14/2002; A, 07/15/2003; A, 02/25/2020]

#### **16.47.1.10 TRAINERS:**

##### **A. Eligibility:**

(1) An applicant for a license as trainer or assistant trainer must be at least 18 years of age.

(2) The board of stewards may first determine whether an applicant for a license as a trainer or assistant trainer has taken an examination in another pari-mutuel jurisdiction prior to applying for a license in New Mexico. The board of stewards shall have sole discretion in which jurisdiction to reciprocate licensing.

(3) Applicants not previously licensed as a trainer or assistant trainer in New Mexico or applying for a renewal license as a trainer shall be qualified, as determined by the stewards or other commission designee, by reason of:

(a) At least five years experience as a licensed groom, jockey, exercise rider, or pony person.

(b) Shall be required to pass the New Mexico racing commission's sanctioned written trainers examination, with a minimum score of eighty percent in each category, an oral interview with the board of stewards and pass a demonstration of practical skills.

(c) Must submit two written statements from trainers currently licensed in New Mexico as to the character and qualifications of the applicant and one written statement

from a currently licensed owner stating intent to place one or more horses with the applicant, when licensed.

(d) Applicants failing the first written/oral examination must wait 90 days before retaking the trainer's test.

(e) Applicants failing the second written/oral examination must wait 180 days before retaking the trainer's test.

(f) Applicants failing the third written/oral examination must wait one year before retaking the trainer's test.

(4) Any trainer who has been the subject of a medication violation or investigation in any jurisdiction is subject to an oral examination conducted by the stewards; a demonstration of practical skills; or a New Mexico racing commission's sanctioned written trainers examination and must pass with a minimum score of eighty percent in each category.

(5) Upon timely request to the steward's or commission designee due to disability or other factors affecting the applicant's ability to effectively complete the trainer's test (such as illiteracy or language barriers), reasonable accommodations shall be made for the applicant including, but not limited to, oral administration of the examination, use of a pre-approved translator, and aid from pre-approved assistant where deemed appropriate by the stewards or commission designee administering the examination.

(6) Failure to start a minimum of one horse every six months while holding a trainer's license shall require licensee to retest or interview before the board of stewards.

(7) Any trainer who has obtained a trainer's license in another jurisdiction but has failed to start a minimum of five horses in a jurisdiction that conducts pari-mutuel wagering, will be required to pass an oral examination before the New Mexico board of stewards, a demonstration of practical skills administered by a New Mexico racing commission designee; and take the New Mexico commission sanctioned written trainers examination and must pass with a minimum score of eighty percent in each category.

(8) Any potential trainer or assistant trainer who has started the licensing process in the state of New Mexico and obtains a trainer's or assistant trainer's license in another jurisdiction will be required to pass an oral examination before the New Mexico board of stewards, a demonstration of practical skills administered by a New Mexico racing commission designee, and take the New Mexico racing commission sanctioned written trainers examination and must pass with a minimum score of eighty percent in each category.

(9) Any trainer or assistant trainer who has passed the HISA written examination will also be required to pass an oral examination before the New Mexico board of stewards, a demonstration of practical skills administered by a New Mexico racing commission designee and take a New Mexico racing commission sanctioned written trainers examination and must pass with a minimum score of eighty percent in each category.

**B. Absolute insurer:**

(1) The trainer is the absolute insurer of the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug or medication, or other prohibited substance in such horses. A positive test for a prohibited drug or medication or other prohibited substance or the presence of permitted medication in excess of maximum allowable levels as reported by a commission-approved laboratory is prima facie evidence of a violation of this rule. The trainer is absolutely responsible regardless of the acts of third parties.

(2) A trainer must prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(3) A trainer whose horse has been claimed remains the absolute insurer for the race in which the horse is claimed.

**C. Other responsibility: A trainer is responsible for:**

(1) the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

(2) maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(3) ensuring that fire prevention rules are strictly observed in the assigned stable area;

(4) providing a list to the chief of security of the trainer's employees on association grounds and any other area under the jurisdiction of the commission; the list shall include each employee's name, occupation, social security number, and occupational license number; the chief of security shall be notified by the trainer, in writing, within 24 hours of any change;

(5) the proper identity, custody, care, health, condition, and safety of horses in their charge;

(6) disclosure of the true and entire ownership of each horse in their care, custody or control; any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary;

(7) training all horses owned wholly or in part by them which are participating at the race meeting; registering with the racing secretary each horse in their charge within 24 hours of the horse's arrival on association grounds;

(8) immediately notify the stewards and commission veterinarian of all out-of-state certified horses on furosemide;

(9) having each horse in their care that is racing, or is stabled on association grounds, tested for equine infectious anemia (EIA) and for filing evidence of such negative test results with the racing secretary as required by the commission;

(10) using the services of those veterinarians licensed by the commission to attend horses that are on association grounds;

(11) immediately reporting the alteration in the sex of a horse in their care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

(12) promptly reporting to the racing secretary and the official veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

(13) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in their charge;

(14) promptly reporting the death of any horse in their care on association grounds to the stewards and the official veterinarian and compliance with the rules in Subsection C of 15.2.6.12 NMAC governing post-mortem examinations;

(15) maintaining a knowledge of the medication record and status of all horses in their care;

(16) immediately reporting to the stewards and the official veterinarian if they know, or has cause to believe, that a horse in their custody, care or control has received any prohibited drugs or medication;

(17) representing an owner in making entries and scratches and in all other matters pertaining to racing; horses entered as to eligibility and weight or other allowances claimed;

(18) horses entered as to eligibility and weight or other allowances claimed;

(19) ensuring the fitness of a horse to perform creditably at the distance entered;

(20) ensuring that their horses are properly shod, bandaged, and equipped; toe grabs with a height greater than two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited; the horse shall be scratched and the trainer may be subject to fine;

(21) ensuring that horses are properly bandaged, and equipped; and no jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein; a safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp;

(22) presenting horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(23) personally attending to their horses in the paddock and supervising the saddling thereof, unless excused by the stewards; if the trainer is excused, the trainer must secure another trainer or assistant trainer who is licensed by the commission to assume those duties;

(24) instructing the jockey to give their best effort during a race and that each horse shall be ridden to win;

(25) attending the collection of urine or blood sample from the horse in their charge or delegating a licensed employee or the owner of the horse to do so; and

(26) notifying horse owners upon the revocation or suspension of their trainer's license; upon application by the owner, the stewards may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

#### **D. Assistant trainers:**

(1) A trainer may employ an assistant trainer, who shall be equally responsible with the employing trainer for the condition of the horses in their care. The name of the assistant trainer shall be shown on the official program along with that of the employing trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission may include those requirements prescribed in Paragraph (1) of Subsection A of 16.47.1.10 NMAC.

(3) An assistant trainer must be licensed for a minimum of two years as an assistant trainer before being eligible to obtain a trainer's license.

(4) If an assistant trainer passed the written examination with a minimum score of 80 percent in each category within the previous 48 months, the licensee is not required to retake the test in order to obtain their trainer's license.

(5) An assistant trainer shall assume the same duties and responsibilities as imposed on the licensed trainer.

(6) The trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

(7) A trainer that is involved in, or notified of, or under suspension for 30 days or more of a drug or rule violation, shall not transfer their horses to his or her assistant trainer or an employee of the trainer.

#### **E. Substitute trainers:**

(1) If any licensed trainer is prevented from performing his duties or is absent from the track where he is participating, the stewards shall be immediately notified, and at the same time, a substitute trainer or assistant trainer, acceptable to the stewards, shall be appointed. The stewards shall be advised when the regular trainer resumes his duties.

(2) A substitute trainer must accept responsibility for the horses in writing and be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race pursuant to Paragraphs (1), (2) and (3) of Subsection B of 16.47.1.10 NMAC.

#### **F. Program trainers:**

(1) A program trainer, as defined in 15.2.1 NMAC, is a licensed trainer who, solely for the purposes of the official race program, is identified as the trainer of a horse that is actually under the control of, and trained by another person who may or may not hold a current trainer's license in any jurisdiction. Any trainer shall be deemed a program trainer if they:

(a) enter into an agreement on behalf of an unlicensed, ineligible or suspended trainer for the sole purpose of completing an entry form for a race;

(b) pay an entry, nomination or starter fee on behalf of an unlicensed, ineligible or suspended trainer;

(c) receive a financial or beneficial interest from an unlicensed, ineligible or suspended trainer for the sole purpose of being listed as the trainer on the official race program; or

(d) obtain official works within New Mexico's jurisdiction on behalf of an unlicensed, ineligible or suspended trainer; or

(e) solicit or accepts a loan of anything of value from the unlicensed, ineligible or suspended trainer; or

(f) use the firm or individual name of the unlicensed, ineligible or suspended trainer when billing customers; or

(g) pay any compensation to the unlicensed, ineligible, or suspended trainer.

(2) A licensed trainer who violates Paragraph (1) of this subsection will be subject to the following penalties:

(a) First offense - six month suspension and a \$5,000 fine.

(b) Second offense - one year suspension and a \$10,000 fine.

(c) Third offense - license revocation with a three year ban on re-application and \$20,000 fine.

(d) A fourth or subsequent offense shall carry the same penalty as that imposed for a third offense, and the penalties will run consecutively.

(3) On request by the commission or any of its agents, a person who assumes the care, custody or control of the horses of the unlicensed, ineligible or suspended trainer, shall permit the commission or its agents to examine all financial or business records to ensure compliance with this section.

[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 3/15/2001; A, 11/15/2001; A, 3/30/2007; A, 8/30/2007; A, 6/30/2009; A, 9/15/2009; A, 7/5/2010; A, 5/16/2014; A, 9/15/2014; A, 3/15/2016; A, 6/1/2016; A, 12/16/16; A, 3/14/2018; A, 2/25/2020; A, 12/28/2021; A, 4/9/2024]

#### **16.47.1.11 OWNER'S AUTHORIZED AGENTS:**

##### **A. Licenses required:**

(1) A written authorized agent appointment, acknowledged before a notary public must be approved by the board of stewards.

(2) A written appointment must be filed with the commission office for each owner represented and is not transferable to any other partnership, stable name, or owner-principal.

(3) A written instrument signed by the owner shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument must be acknowledged before a notary public.

(4) If the written instrument is a power of attorney it shall be filed with the commission office and attached to the regular application form.

(5) Any changes must be made in writing, notarized and filed as provided in Paragraph (3) of Subsection A of 16.47.1.11 NMAC above.

(6) All authorized agent appointments shall expire December 31st each year or when terminated by the owner in writing, acknowledged before a notary public, and filed with the commission office whereupon the agency appointment shall not be valid.

(7) An authorized agent shall be licensed by the commission as such and must be a minimum of 18 years old.

#### **B. Powers and duties:**

(1) An authorized agent may perform on behalf of the licensed owner-principal all acts related to racing, as specified in the agency appointment that could be performed by the owner-principal if such principal were present.

(2) In executing any document on behalf of the principal, the authorized agent must clearly identify the authorized agent and the owner-principal.

(3) When an authorized agent enters a claim for the account of an owner-principal, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

(4) Authorized agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary.

[16.47.1.11 NMAC - Rp, 16 NMAC 47.1.11, 03/15/2001; A, 03/30/2007; A, 08/14/2008; A, 4/20/2021]

#### **16.47.1.12 JOCKEYS:**

##### **A. Eligibility:**

(1) A jockey must pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

(2) Prior to obtaining a license an applicant for a first time jockey or an apprentice jockey license must demonstrate their riding ability by participating in five races and must receive prior approval from the stewards, the starter, the head outrider, and the designated representatives of the jockeys and the horsemen at the track. The demonstration of riding competence and ability is defined as a minimum of:

(a) breaking a horse in company from the starting gate;

(b) working a horse in company from the starting gate;

(c) switching the whip from one hand to the other while maintaining control of the horse in a stretch drive; and

(d) causing the horse to switch leads coming out of a turn.

(3) Failure to demonstrate the required ability shall result in the withdrawal of the license.

(4) The stewards may authorize a temporary license to ascertain the applicant's riding competence and ability.

(5) A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

(6) An applicant whose weight exceeds 130 pounds at the time of application shall not be issued a jockey's license.

#### **B. Apprentice jockeys:**

(1) An apprentice jockey must be 16 years of age and if less than the age of 18, a parent or guardian must sign the license application assuming full financial responsibility for the applicant.

(2) An applicant for an apprentice jockey license shall provide a certified copy of the applicant's birth certificate or other satisfactory evidence of date of birth.

(3) An apprentice jockey license does not apply to quarter horse racing.

(4) An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

(5) An apprentice certificate may be obtained from the stewards on a form provided by the commission.

(6) An apprentice jockey shall ride with a five pound weight allowance beginning with their first mount and for one full year from the date of their fifth winning

mount. If after riding one year from the date of their fifth winning mount, the apprentice jockey has failed to ride a total of 40 winners, they shall continue to ride with a five pound weight allowance for one more year from the date of their fifth winning mount or until they have ridden 40 winners, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount unless an apprentice jockey is unable to ride for a period of seven consecutive days or more after the date of their fifth winning mount because of service in national armed forces, enrollment in high school or an institution of secondary education, or because of physical disablement, or restriction on racing or other valid reasons, the commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such apprentice jockey was unable to ride. The stewards or commission may issue apprentice extensions with proper documentation.

(7) An apprentice jockey must meet the conditions set forth in Subsection A of 16.47.1.12 NMAC.

**C. Foreign jockeys:** Whenever a jockey from a foreign country rides in this jurisdiction, the jockey must declare that they are a holder of a valid license in their country and currently not under suspension. To facilitate this process, the jockey shall present a declaration sheet in a language recognized in this jurisdiction to the commission. The jockey must complete a license application and be fingerprinted to be maintained in the files of the commission.

**D. Jockeys responsibility:**

(1) A jockey shall not have a valet-attendant except one provided and compensated by the association.

(2) No person other than the licensed contract employer, or a licensed jockey agent, may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make his own riding engagements.

(3) A jockey shall have no more than one jockey agent.

(4) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

(5) A jockey who has a medical condition which makes it necessary to possess or use a prescribed, prohibited, or controlled substance pursuant to Paragraph (3) of Subsection B of 15.2.6.8 NMAC, that jockey shall provide to the stewards a letter signed by a licensed physician, physician assistant, or nurse practitioner certifying that the consumption of the prohibited, prescribed, or controlled substances will not adversely affect the divided attention, psychophysical abilities of a jockey, to include but not limited to reaction time and the jockey's ability to accurately judge time and distance. The letter must certify that the prohibited, prescribed, or controlled substance will not affect a jockey's ability to carry out their responsibilities properly and safely while in the

performance of their duties which includes being in actual physical control of a large equine animal while in close physical competition on a racetrack surface and will not jeopardize the health, safety and welfare of the other individuals participating.

**E. Colors, numbers, advertising:**

**(1)** A jockey shall be properly attired for riding in a race, wearing the colors of the owner of the horse he or she is riding, and exhibiting a number on the saddlecloth that corresponds to the number of the horse on the program.

**(2)** Advertising or promotional material may be worn by a jockey upon approval from the board of stewards and racetrack management. Approval is discretionary and may be denied for just cause.

**(3)** Jockeys shall submit a commission approved form, including a description of the advertisement or promotional material to be worn with the name of the brands and sponsors.

**(4)** The form must be submitted to the board of stewards at the time of entry before the applicable race.

**(5)** Advertising, including logos, labels or product endorsements shall be permitted on jockey attire from the point of weighing out for a race to weighing in after its conclusion.

**(6)** Advertisement on jockey clothing is limited to.

**(a)** A maximum of 32 square inches on each thigh of the pants on the outer sides between the hip and knee and 10 square inches on the rear at the base of the spine.

**(b)** A maximum of 24 square inches on boots and leggings on the outside of each, nearest the top of the boot.

**(c)** A maximum of six square inches on the front center in the neck area.

**(7)** A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

**(8)** Advertising or promotional material displayed on jockey clothing shall not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress.

**(9)** A jockey may wear the following advertising or promotional materials within the parameters outlined in the size restrictions above without obtaining prior approval.

**(a)** Materials advertising or promotion the jockey's guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture of logo.

**(b)** The permanently disabled jockey's fund (PDJF) in the form of the pictures of its logo, with no additional picture or log.

**F. Jockey betting:** No jockey shall be allowed to bet before or during any live racing program.

### **G. Jockey Suspensions and Designated Races:**

**(1)** Prior to the commencement of a race meeting, a listing of designated races by the stewards shall be submitted to the executive director. A copy of such races shall be posted in the jockeys' room and any other such place deemed appropriate by the stewards. The stewards may elevate a race to designated race status after the commencement of the race meet and shall submit it to the executive director and update the listing as above.

**(2)** A jockey suspended for 10 days or less for a riding violation, unless otherwise specified in the ruling, may continue to exercise horses during the training hours and may fulfill riding engagements in designated races, as designated by the stewards at the beginning of the race meet.

**(3)** The official ruling where designated races are permitted shall state: "The term of this suspension shall not prohibit participation in designated race days."

**(4)** A jockey who is serving a suspension of 10 race days or less may ride in designated races during the suspension under the following conditions:

**(a)** The race has been specified as a designated race by the stewards officiating at the race meet; and

**(b)** the jockey is named no later than the time set for the close of entries for the designated race.

**(5)** When a jockey rides in a designated race (s)

**(a)** The jockey agrees that if they participate in only one designated race in New Mexico, the day will be recognized as a suspension day; or

(b) the jockey agrees that if they participate in more than one designated race in New Mexico, the day will still not be recognized as a suspension day and they will serve an additional race day of suspension in place of the race day on which the jockey rides in a designated race, to be served on the next race day; or

(c) the jockey agrees that if they participate in one or more designated races in any other jurisdiction while under suspension in New Mexico, the day will still not be recognized as a suspension day and the jockey will serve an additional race day of suspension in place of the race day on which the jockey rides in a designated race, to be served on the next race day.

(6) A jockey may ride all races for the day they are riding a designated race, however, the jockey is to continue to take the next available day until his suspension is completed.

[16.47.1.12 NMAC - Rp, 16 NMAC 47.1.12, 3/15/2001; A, 8/31/2004; A, 10/31/2006; A, 6/15/2009; A, 12/14/2012; A, 12/16/2016; A, 9/26/2018; A, 12/28/2021]

#### **16.47.1.13 JOCKEY AGENTS:**

##### **A. Eligibility:**

(1) An applicant for a license as a jockey agent must be a minimum of 18 years of age, demonstrate to the stewards that he/she has a contract for agency with at least one jockey who has been licensed by the commission; and be qualified, as determined by the stewards or other commission designee, by reason of experience, background and knowledge; a jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an interview or oral examination.

(2) Applicants not previously licensed as a jockey agent shall be required to pass a written and oral examination.

**B. Limits on contracts:** A jockey agent may serve as agent for no more than three jockeys and shall secure a license as a jockey agent. A jockey agent must register his/her riders with the stewards upon his/her arrival at each individual meet and must report any changes during the meet.

**C. Responsibility:** All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made, such records being subject to examination by the stewards at any time.

**D. Prohibited areas:** A jockey agent is prohibited from entering the jockey room, winner's circle, racing strip, paddock or saddling enclosure during the hours of racing, unless permitted by the stewards.

#### **E. Agent withdrawal:**

(1) When any jockey agent withdraws from representation of a jockey, the jockey agent shall immediately notify the stewards and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

(2) A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

[16.47.1.13 NMAC - Rp, 16 NMAC 47.1.13, 03/15/2001; A; 05/30/2003; A, 08/14/2008]

#### **16.47.1.14 HORSESHOER'S ELIGIBILITY:**

**A.** An applicant for a license as horseshoer must be at least 18 years of age; be qualified, as determined by the stewards and horseshoer consultant, by reason of experience, background and knowledge of horseshoeing; a horseshoer's license from another jurisdiction, having been issued within a prior period as determined by the commission, may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an interview or oral examination; a demonstration of practical skills in horseshoeing.

**B.** Applicants not previously licensed as a horseshoer shall be required to pass a written/oral examination, demonstrate practical skills, and submit at least two written statements as to the character and qualifications of the applicant.

[16.47.1.14 NMAC - Rp, 16 NMAC 47.1.14, 03/15/2001]

#### **16.47.1.15 PONY PERSON AND EXERCISE RIDER ELIGIBILITY:**

**A.** An applicant for a license as a pony person or an exercise rider must be at least 16 years of age and shall submit and pass a drug (controlled substance) and alcohol screening test.

**B.** Applicants not previously licensed as a pony person or exercise rider shall be required to appear before the board of stewards for an oral interview.

(1) If applicant passes the oral interview, they will be issued a license and placed on probation for 30 days. The probation period will commence on the day the license is issued.

(2) During this 30 day probation period, the applicant's riding ability will be observed by the outrider on duty. It is the responsibility of the applicant to notify the outrider of their presence on the racetrack prior to entering onto the racetrack.

(3) Failure for applicant to receive approval from both outriders on demonstrating their riding ability after the 30 day probation period has lapsed, shall subject the license to be revoked.

[16.47.1.15 NMAC - N, 07/01/2017]

#### **16.47.1.16 PRACTICING VETERINARIANS:**

**A. Eligibility:** An applicant for a license as practicing veterinarian shall be qualified and licensed to practice veterinary medicine in this jurisdiction and be otherwise qualified to be issued a license to participate in racing. An application for a practicing veterinarian license from the commission must be accompanied by a copy of the applicant's current license to practice veterinary medicine.

#### **B. Responsibility:**

(1) All practicing veterinarians administering drugs, medications or other substances shall be responsible to see that the drugs, medications or other substances, and the veterinary treatment of horses are administered in accordance with 15.2.6 NMAC.

(2) All practicing veterinarians shall promptly notify the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge.

[16.47.1.16 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.15 NMAC, 07/01/2017]

#### **16.47.1.17 HUMAN DRUG OR CONTROLLED SUBSTANCE AND ALCOHOL TESTING:**

**A.** If a licensee has a medical condition which makes it necessary to possess or use a prohibited substance, or prescribed or controlled substance pursuant to Paragraph B of 15.2.6.8 NMAC, the licensee shall provide to the stewards a letter signed by a licensed physician, physician assistant, or nurse practitioner certifying that the consumption of the prohibited, or prescribed, or controlled substances will not adversely affect the divided attention, psychophysical abilities of the licensee, to include but not limited to reaction time and the ability to judge time and distance. The letter must certify that the prohibited, or prescribed, or controlled substance will not affect a licensee's ability to carry out their responsibilities properly and safely while in the performance of their duties which includes being in actual physical control of a large equine animal or operating mechanical equipment on the grounds of the association and will not jeopardize the health, safety and welfare of the other individuals participating.

**B. Restricted activities:** All licensees may be subject to testing for controlled substances, drugs and alcohol. It shall be a violation for a licensee to utilize their commission issued license if the licensee:

- (1) is engaged in illegal sale or distribution of alcohol or a controlled substance;
- (2) possesses, without a valid prescription, a controlled substance;
- (3) is intoxicated or under the influence of alcohol;
- (4) is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the commission;
- (5) has in their possession within the association grounds, any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;
- (6) refuses to submit to drug or controlled substances or alcohol testing, or both;
- (7) presently has drugs or controlled substances or alcohol in their body.

**C.** With regard to alcohol, the results of a breath test showing a reading of more than .08 BAC in the sample provided by a licensee in a non-safety sensitive position shall be the criterion for a finding of alcohol present in the body. Such results shall operate as prima facie evidence of the presence of alcohol in a prohibitive amount in a licensee.

**D.** Licensees in safety positions, as determined by the stewards are in violation of this rule if they have any measurable level of alcohol, as determined by a breathalyzer test. Such results shall operate as prima facie evidence of the presence of alcohol in a prohibitive amount in the licensee.

**E.** There is zero tolerance for trainers and assistant trainers to be under the influence of controlled substances or alcohol or both while saddling horses in the paddock.

[16.47.1.17 NMAC - Rp, 16 NMAC 47.1.16, 3/15/2001; Rp, 16.47.1.16 NMAC, 7/1/2017; A, 9/26/2018; A, 4/9/2024]

**16.47.1.18 TESTING PROCEDURES:**

## **A. Controlled Substance and Drug Testing:**

(1) At its discretion, the commission may conduct random or episodic random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the association grounds.

(2) All licensees may be subject to testing for controlled substances and drugs.

(3) No advance notice need be given.

(4) Refusing to test, failing to appear for a test, leaving before the test is over or otherwise failing to cooperate shall be considered a positive test. If this occurs during a race meet, the licensee is subject to and may be ejected from association grounds.

(5) For licensees who are testing under the provisions in this chapter, and whose urine testing shows the presence of drugs or controlled substances shall be confirmed by a laboratory acceptable to the commission.

(6) An association shall provide a drug or controlled substance screening test for all applicants for grooms, exercise riders, jockey valets, starters, assistant starters, ambulance personnel, and pony persons when making application for license. The cost for the drug-screening test will be borne by the applicant payable to the association at a reasonable cost approved by the commission.

(7) The licensee being tested may request a confirmation test when the sample quantity permits. Such request shall be made in writing immediately after a positive result of the test and be directed to the commission agent involved in the testing. The licensee requesting a confirmation test, or their agent, shall be present during the preparation and packing of the sample for delivery to the commission's testing laboratory. The licensee and the commission shall both be notified of the confirmation testing results.

(8) Chain of custody: The commission shall provide for a secure chain of custody for the confirmation sample. The commission shall retain ownership of all samples.

(9) Financial responsibility: All costs for the transportation and confirmation testing for the sample portion shall be the financial responsibility of the commission, unless otherwise noted in a stewards' ruling.

## **B. Alcohol Testing:**

(1) At its discretion, the commission may conduct random or episodic breath alcohol testing as well as testing based on reasonable suspicion, in order to ensure safety on the association grounds.

(2) All licensees may be subject to breath alcohol testing.

(3) No advance notice need be given as to random breath alcohol testing.

(4) Refusing to test, failing to appear for a test, leaving before the test is over or otherwise failing to cooperate shall be considered a positive test. If this occurs during a race meet, the licensee is subject to and may be ejected from association grounds.

(5) If the breath testing results for non-safety position licensees show a reading of more than .08 BAC in the sample, such licensees shall be relieved of their duties for that day.

(6) For a licensee's second breath testing violation in any jurisdiction, the licensee shall be referred to the board of stewards and shall be fined no less than two hundred dollars and shall be suspended for a period of not more than sixty days.

(7) For a licensee's third breath testing violation in any jurisdiction, the licensee shall be fined two hundred dollars, suspended for a minimum of sixty days, and referred to the commission's board of stewards for further action.

[16.47.1.18 NMAC - Rp, 16 NMAC 47.1.16, 3/15/2001; Rp, 16.47.1.17 NMAC, 7/1/2017; A, 4/9/2024]

#### **16.47.1.19 ASSESSMENT/TREATMENT REQUIREMENTS:**

**A. General:** A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license. If there has been an offense, under 16.47.1.17 NMAC, above, the procedures in Subsections B, C and D of 16.47.1.18 NMAC will be followed.

##### **B. First-time offenders:**

(1) The board of stewards or the commission may, at its discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the board of stewards or the commission may act on the information at hand.

(2) Actions in the case of first offenders may include revocation of the license, suspension of the license for up to six months, placing the offender on probation for up to 90 days or ordering formal assessment and treatment.

(3) Treatment or assessment, if ordered, must meet the conditions given in Subsection C of 16.47.1.18 NMAC.

##### **C. Second-time offenders:**

(1) The license of the person may be revoked or suspended for a period of up to one year or a professional assessment of the person may be ordered by the commission.

(2) If a professional assessment indicates presence of a problem or alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year.

(3) If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the board of stewards or the commission may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the board of stewards or the commission. Required features of any program or practitioner acceptable to the board of stewards or the commission will be: accreditation or licensure by an appropriate government agency, if required by state statute; a minimum of one year follow-up treatment; and, a formal contract indicating the elements of the treatment and follow-up program that will be completed by the licensee and, upon completion, certified to the board of stewards or the commission as completed. To affect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

**D. Third-time offenders:** For third-time offenders, the offender's license may be revoked and the offender may be deemed ineligible for licensure for up to five years.

[16.47.1.19 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.18 NMAC, 07/01/2017]

#### **16.47.1.20 RELAPSE OF LICENSEE IN RECOVERY PROGRAM GENERAL:**

Although relapse (failure to maintain abstinence) is not inevitable, it is common for relapse to occur in recovery from alcoholism or other substance dependence. Therefore, a licensee who is engaged in a formal program of recovery, and is compliant with all provisions other than abstinence, will not be regarded automatically as having committed a new offense.

[16.47.1.20 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.19 NMAC, 07/01/2017]

#### **16.47.21 POST-RELAPSE PROCEDURES:**

**A.** When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the board of stewards or the commission an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery, and an opinion as to whether a "new offense" occurred.

**B.** The board of stewards or the commission will determine whether a new offense has occurred in each instance. If a new offense has occurred, the board of stewards or the commission will proceed under Subsections B or C of 16.47.1.18 NMAC. Otherwise, the licensee shall continue in the agreed upon program of recovery.

[16.47.1.21 NMAC - Rp, 16 NMAC 47.1.16, 03/15/2001; Rp, 16.47.1.20 NMAC, 07/01/2017]

## **CHAPTER 48: PRIVATE LAW ENFORCEMENT PRACTITIONERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.48.1.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.1.1 NMAC - Re-pr, 16.48.1.1 NMAC, 9/24/2008; A, 2/23/2021]

#### **16.48.1.2 SCOPE:**

This part applies to the licensees, registrants, and applicants.

[16.48.1.2 NMAC - Re-pr, 16.48.1.2 NMAC, 9/24/2008; A, 2/23/2021]

#### **16.48.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5 NMSA 1978.

[16.48.1.3 NMAC - Re-pr, 16.48.1.3 NMAC, 9/24/2008; A, 2/23/2021]

#### **16.48.1.4 DURATION:**

Permanent.

[16.48.1.4 NMAC - Re-pr, 16.48.1.4 NMAC, 9/24/2008]

#### **16.48.1.5 EFFECTIVE DATE:**

September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.1.5 NMAC - Re-pr & A, 16.48.1.5 NMAC, 9/24/2008]

#### **16.48.1.6 OBJECTIVE:**

To define terms relevant to private investigations, when a license is required, persons exempted, custody and alteration of license, transferability, display of license, notification of changes, local regulations, and professional ethical standards.

[16.48.1.6 NMAC - Re-pr, 16.48.1.6 NMAC, 9/24/2008]

#### **16.48.1.7 DEFINITIONS:**

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

- A. "act"** means the New Mexico Private Investigations Act;
- B. "advisory board"** means the New Mexico private investigations advisory board;
- C. "alarm company"** means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;
- D. "applicant"** means any natural person who is applying for registration or licensure pursuant to the private investigations act;
- E. "armored car company"** has the same meaning as defined in Subsection A of Section 61-27B-2 NMSA 1978;
- F. "bodyguard"** has the same meaning as defined in Subsection B of Section 61-27B-2 NMSA 1978;
- G. "branch office"** has the same meaning as defined in Subsection C of Section 61-27B-2 NMSA 1978;
- H. "charts"** means a continuous recording of the physiological changes in human respiration, cardiovascular activity and skin resistance or conductance;
- I. "client"** has the same meaning as defined in Subsection D of Section 61-27B-2 NMSA 1978;
- J. "conviction"** has the same meaning as defined in Subsection E of Section 61-27B-2 NMSA 1978;
- K. "department"** has the same meaning as defined in Subsection F of Section 61-27B-2 NMSA 1978;
- L. "good moral character"** means a personal history characterized by honesty, fairness and respect for the rights of others and for state and federal law;

**M. "individual"** has the same meaning as defined in Subsection G of Section 61-27B-2 NMSA 1978;

**N. "legal business entity"** has the same meaning as defined in Subsection H of Section 61-27B-2 NMSA 1978;

**O. "licensee"** has the same meaning as defined in Subsection I of Section 61-27B-2 NMSA 1978;

**P. "polygraph examiner"** has the same meaning as defined in Subsection J of Section 61-27B-2 NMSA 1978;

**Q. "polygraph examination"** also referred to as a psychophysiological detection of deception (PDD) means a test or series of tests designed to assess the truthfulness of an examinee to an issue or issues of concern and includes all charts, reports, allied documents and recordings generated or received regarding the testing procedures;

**R. "polygraph instrument"** means a mechanical or digital computer instrument that, at a minimum, records simultaneously physiological changes in human respiration, skin resistance or conductance, and cardiovascular activity including relative blood pressure or volume;

**S. "polygraphy"** has the same meaning as defined in Subsection K of Section 61-27B-2 NMSA 1978 NMSA 1978;

**T. "private investigation company"** has the same meaning as defined in Subsection L of Section 61-27B-2 NMSA 1978;

**U. "private investigator"** has the same meaning as defined in Subsection M of Section 61-27B-2 NMSA 1978;

**V. "private investigations employee"** has the same meaning as defined in Subsection N of Section 61-27B-2 NMSA 1978;

**W. "private investigations manager"** has the same meaning as defined in Subsection O of Section 61-27B-2 NMSA 1978;

**X. "private patrol company"** has the same meaning as defined in Subsection P of Section 61-27B-2 NMSA 1978;

**Y. "private patrol employee"** has the same meaning as defined in Subsection Q of Section 61-27B-2 NMSA 1978;

**Z. "private patrol operations manager"** has the same meaning as defined in Subsection R of Section 61-27B-2 NMSA 1978;

- AA.** "private patrol operator" has the same meaning as defined in Subsection S of Section 61-27B-2 NMSA 1978;
- BB.** "proprietary commercial organization" has the same meaning as defined in Subsection T of Section 61-27B-2 NMSA 1978;
- CC.** "provisional license" means a license to practice polygraphy for the probationary period that is required to determine operational competency;
- DD.** "psychologist" means an individual in good standing and licensed by the New Mexico Board of Psychologist Examiners or another United States jurisdiction to engage in the practice of psychology;
- EE.** "registered agent" means Registered agent means a business or individual designated to receive service of process or subpoena on behalf of a private investigations company or private patrol company licensed and doing business in New Mexico, located out of the state. The registered agent must also be available to receive any informational notices or other documents on behalf of the licensee.
- FF.** "registrant" has the same meaning as defined in Subsection U of Section 61-27B-2 NMSA 1978;
- GG.** "screening examination" means any examination that is non-specific and deals with general background information;
- HH.** "security dog handler" has the same meaning as defined in Subsection V of Section 61-27B-2 NMSA 1978;
- II.** "security guard" has the same meaning as defined in Subsection W of Section 61-27B-2 NMSA 1978;
- JJ.** "sponsor" means a licensed polygraph examiner;
- KK.** "special event" has the same meaning as defined in Subsection X of Section 61-27B-2 NMSA 1978;
- LL.** "specific event examination" means any examination that deals with a specific issue, crime or incident, criminal or otherwise;
- MM.** "superintendent" means the superintendent of the regulation and licensing department;
- NN.** "test data" means the psychological or physiological data recorded or collected during a psychological evaluation or polygraph examination;

**OO.** "test data analysis" means the quantitative application of standardized scoring rules to the psychological or physiological test data and includes the use of computerized scoring programs and interpretation of collateral and clinical information collected during the evaluation.

[16.48.1.7 NMAC - Re-pr, 16.48.1.7 NMAC, 9/24/2008; A, 1/15/2019; A, 2/23/2021]

#### **16.48.1.8 CODE OF ETHICS AND CREED OF CONDUCT:**

**A.** Code of ethics for private security management. As managers of private security functions and employees, we pledge:

**(1)** to recognize that our principal responsibilities are, in the services of our organizations and clients, to protect life and property as well as to prevent and reduce crime against our business, industry, or other organizations and institutions; and in the public interest, to uphold the law and to respect the constitutional rights of all persons;

**(2)** to be guided by a sense of integrity, honor, justice and morality in the conduct of business; in all personnel matters; in relationships with government agencies, client and employers; and in responsibilities to general public;

**(3)** to strive faithfully to render security services of the highest quality and to work continuously to improve our knowledge and skills and thereby improve the overall effectiveness of private security;

**(4)** to uphold the trust of our employers, our clients, and the public by performing our function within the law, nor ordering or condoning violations of law, and ensuring that our security personnel conduct their assigned duties lawfully and with proper regard for the rights of others;

**(5)** to respect the reputation and practice of others in the private security field, but to expose to the proper authorities any conduct that is unethical or unlawful;

**(6)** to apply uniform and equitable standards of employment in recruiting and selecting personnel regardless of race, creed, color, sex or age and in providing salaries commensurate with job responsibilities and with training, education and experience;

**(7)** to cooperate with recognized and responsible law enforcement and other criminal justice agencies; to comply with security licensing and registration laws and other statutory requirements that pertain to our business;

**(8)** to respect and protect the confidential and privileged information of employers and clients beyond the terms of our employment, except where their interests are contrary to law or to this code of ethics;

**(9)** to maintain a professional posture in all business relationships with employers, and clients, with others in the private security field, and with members of other professions; and to insist that our personnel adhere to the highest standard of professional conduct;

**(10)** to encourage the professional advancement of our personnel by assisting them to acquire appropriate security knowledge, education and training;

**B.** Code of ethics for private security employees. In recognition of the significant contribution of private security to crime prevention and reduction, as a private security guard, I pledge:

**(1)** to accept the responsibilities and fulfill the obligations of my role: protecting life and property; preventing and reducing crimes against my employer's business, or other organizations and institutions to which I am assigned; upholding the law; and respecting the constitutional rights of all persons;

**(2)** to conduct myself with honesty and integrity and to adhere to the highest moral principles in the performance of my security duties;

**(3)** to be faithful, diligent and dependable in discharging my duties, and to uphold at all times the laws, policies, and procedures that protect the rights of others;

**(4)** to observe the precepts of truth, accuracy, and prudence without allowing personal feelings, prejudices, animosities or friendships to influence my judgments;

**(5)** to report to my superiors, without hesitation, any violation of the law or of my employer's or client's regulation;

**(6)** to respect and protect the confidential and privileged information of my employer or client beyond the term of my employment, except where their interests are contrary to law or to this code of ethics;

**(7)** to cooperated with all recognized and responsible law enforcement and government agencies in matters within their jurisdiction;

**(8)** to accept no compensation, commission, gratuity or other advantage without the knowledge and consent of my employer;

**(9)** to conduct myself professionally at all times, and to perform my duties in a manner that reflects positively upon myself, my employer, and private security;

**(10)** to strive to continually to improve my performance by seeking training and educational opportunities that will better prepare me for my private security duties.

**C.** Code of ethics for polygraph examiners.

**(1)** I shall at all times conduct myself in a manner reflecting credit to the polygraph profession.

**(2)** I shall deal fairly and impartially with all individuals, regardless of social, political, racial, religious, ethnic, economic or fraternal status.

**(3)** I shall keep all decisions free of personal or any other extraneous influence and render unbiased opinion in all decisions.

**(4)** I shall not publish misleading advertisements or claims concerning the polygraph profession. I shall advise each client or examinee of the infeasibility of conducting an examination where I encounter conditions or circumstances that so warrant.

**(5)** I shall not conduct a polygraph examination of any person I have reason to believe may be mentally or physically unfit, without first seeking an opinion of medical, psychological or psychiatric authority, as appropriate, prior to testing.

**(6)** I shall not include an opinion in any decision or report relating to medical, psychological, psychiatric, legal, or any other field in which I am not qualified unless it relates to polygraph.

**(7)** I shall refrain from criticizing or maligning other polygraph examiners except as required by legal proceedings.

**(8)** I shall not testify concerning polygraph charts of another examiner until I have satisfied the requirements of NM Rule of Evidence 11-707, NMRA 2004.

**(9)** I shall support the professional goals of the polygraph profession at every opportunity.

**(10)** I shall consider the integrity and goals of the polygraph profession above my personal desires and ambitions.

**D. Polygraphy creed of conduct:** To encourage uniformity of procedures, enhance the image of polygraphy, promote the welfare of the public, establish standards and promote an understanding among all polygraphers operating in the state of New Mexico, the following standards of principle are endorsed.

**(1)** The primary goal of a polygraph examination is to assess reactions pertaining to chart evaluations, respecting all rights of the examinee and using proper polygraph techniques and procedures accepted profession wide.

**(2)** No examinee will be compelled to take a polygraph examination except in compliance with existing law or terms of probation or parole. No force, threats, duress,

coercion or promises will be made by a licensee in an effort to complete a polygraph examination.

(3) A minimum of three charts is required to reach a conclusive diagnostic opinion in any polygraph examination conducted by a licensee.

(4) Inquiries into the personal life, sexual habits, political or religious principles, or any other aspects of one's life that are not connected to, or necessary for, addressing the issue concerned will not be made.

(5) Examinations addressing secondary aspects of an unresolved direct issue will not be made merely to avoid or circumvent addressing a primary issue or to satisfy the personal desires of the examinee or client.

(6) Information concerning polygraph examinations will not be released to unauthorized persons. This does not preclude consultation with other examiners, or testimony before legal proceeding or other duly constituted authority, or information requested by the department.

(7) It is the responsibility of each examiner to promote proper polygraph procedures. Knowledge of deliberate violations of the law governing polygraphy should be brought to the attention of the department. Any relevant issue shall be presented to national professional association for consideration and action, if appropriate.

(8) Any polygraph examiner conducting a registered business in the state of New Mexico must show proof of full time residency in the state while conducting business in the state. Any exception shall be heard or proved by the department.

(9) Anyone conducting a polygraph exam in the state of New Mexico must be licensed by the state.

[16.48.1.8 NMAC - Re-pr, 16.48.1.8 NMAC, 9/24/2008; A, 2/23/2021]

#### **16.48.1.9 SAVINGS CLAUSE:**

If any provision of these rules or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.

[16.48.1.9 NMAC - Re-pr, 16.48.1.9 NMAC, 9/24/2008]

#### **16.48.1.10 PRACTICING WITHOUT A LICENSE:**

It is unlawful for an individual to:

**A.** act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager or private patrol operation employee to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to the Private Investigations Act (Section 61-27B-1 NMSA 1978);

**B.** render physical protection for remuneration as a bodyguard unless the individual is licensed as a private investigator or a private patrol operator;

**C.** continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager, private patrol operations manager private patrol operation employee if the individual's license issued pursuant to the Private Investigations Act has expired or been suspended or revoked;

**D.** falsely represent that the individual is employed by a licensee; or

**E.** practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act.

[16.48.1.10 NMAC - Re-pr & A, 16.48.1.10 NMAC, 9/24/2008; A, 1/15/2019]

#### **16.48.1.11 LICENSURE EXEMPTIONS:**

**A.** As used in this section, "temporary" means a period of time not to exceed the duration of one private event or one school or nonprofit organization event, as described in Paragraphs (2) and (3) of Subsection B of this section.

**B.** The Private Investigations Act does not apply to:

**(1)** an individual employed exclusively and regularly by one employer in connection with the affairs of that employer, provided that the individual patrols or provides security only on the premises of the employer as limited by the employer;

**(2)** an individual employed exclusively to provide temporary security at a private event that is not open to the public;

**(3)** individuals providing temporary security at athletic or other youth events and where the events occur under the auspices of a public or private school or a nonprofit organization;

**(4)** an attorney licensed in New Mexico conducting private investigations while engaged in the practice of law;

**(5)** an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of the officer's or employee's official duties or an employee working

exclusively on federal government property for a private patrol company contracting with the federal government and the security guard has training that exceeds state requirements unless the federal government contract requires state licensing;

(6) a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

(7) a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;

(8) a licensed collection agency or an employee of the agency while acting within the scope of employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property;

(9) admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or

(10) an institution subject to the jurisdiction of the director of the financial institutions division of the department or the comptroller of currency of the United States.

[16.48.1.11 NMAC - Re-pr & A, 16.48.1.11 NMAC, 9/24/2008]

#### **16.48.1.12 CUSTODY AND ALTERATION OF LICENSES:**

**A.** Licenses and registrations issued by the department are at all times the property of the department, and may remain in the custody of the licensee or registrant only as long as the licensee or registrant complies with the act and department rules.

**B.** Licenses shall not be altered in any way.

**C.** Inspectors or department designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment.

[16.48.1.12 NMAC - Re-pr, 16.48.1.12 NMAC, 9/24/2008; A, 2/23/2021]

#### **16.48.1.13 LICENSE NOT TRANSFERABLE; CHANGE IN OWNERSHIP OR MANAGEMENT; NAME CHOICE AND NAME CHANGE:**

**A.** A license or registration issued by the department pursuant to the Private Investigations Act shall not be transferred or assigned.

**B.** A change of ownership or management of a private investigation company or private patrol company shall be filed with the department on an application form prescribed by the department, accompanied by the required fees, within 30 days following any such change. Failure to file for a change of a private investigation company or private patrol company within the 30 day period shall be grounds for termination of the license of a private investigation company or private patrol company.

**C.** A change in the name of a private investigation company or private patrol company shall require a name change application on a form provided by the department. A private investigation company or a private patrol company shall not conduct business under a fictitious name until the company has obtained the authorization for use of the name from the department. The department shall not authorize the use of a fictitious name that may generate public confusion with the name of a public officer or agency or the name of an existing private investigation company or private patrol company.

[16.48.1.13 NMAC - Re-pr, 16.48.1.13 NMAC, 9/24/2008]

**16.48.1.14 DISPLAY OF REGISTRATION OR LICENSE AND NOTIFICATION OF CHANGES:**

**A.** A private investigation company, private investigations manager, private patrol company, private patrol operator and private patrol operations manager license shall at all times be posted in a conspicuous place in the New Mexico principal place of business of the licensee.

**B.** A copy of the registration or license of each registrant or licensee employed, or under contract for services, by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant or licensee works.

**C.** A private investigator, private investigations employee, polygraph examiner, security guard level one, security guard level two or security guard level three registration or license issued by the department shall at all times be in the possession of and located on the person of a registrant or licensee when working.

**D.** A private patrol company shall provide each security guard employed, or under contract for security guard services, an identification badge that includes the name of the company, the name of the security guard and a photo of the security guard. The required photo must have been taken within the preceding month of the creation of the identification badge and must be updated at least every two years. A security guard shall wear the company identification badge and the registration card issued by the department on the outside of the guard's uniform so that the identification badge and card are visible to others.

**E.** If the private patrol company is unable to provide each security guard employed, or under contract for security guard services, with an identification badge, the security guard may obtain an identification badge from the department at a cost established by the department.

**F.** A licensee or a registrant shall notify the department immediately in writing of a change in the email, mailing or contact address of the licensee or registrant.

**G.** Failure to notify the department within 30 days of changes required to be reported pursuant to this section or failure to carry or display a registration or license as required is grounds for suspension of a license or registration.

[16.48.1.14 NMAC – Re-pr & A, 16.48.1.14 NMAC, 9/24/2008; A, 1/15/2019; A, 7/18/2023]

#### **16.48.1.15 LOCAL REGULATIONS:**

The provisions of the Private Investigations Act (Section 61-27B-1 NMSA 1978) shall not prevent the local authorities of a city or county by ordinance and within the exercise of the police power of the city or county from imposing local ordinances upon a street patrol special officer or on a person licensed or registered pursuant to the Private Investigations Act if the ordinances are consistent with that act.

[16.48.1.15 NMAC - Re-pr, 16.48.1.15 NMAC, 9/24/2008]

### **PART 2: REQUIREMENTS FOR LICENSURE**

#### **16.48.2.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.2.1 NMAC - Re-pr, 16.48.2.1 NMAC, 9/24/2008; A, 10/26/2021]

#### **16.48.2.2 SCOPE:**

All individuals and business entities that apply for licensure, registration or approval under the Private Investigations Act.

[16.48.2.2 NMAC - Re-pr, 16.48.2.2 NMAC, 9/24/2008; A, 2/8/2022]

#### **16.48.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5 NMSA 1978.

[16.48.2.3 NMAC - Re-pr, 16.48.2.3 NMAC, 9/24/2008; A, 10/26/2021]

#### **16.48.2.4 DURATION:**

Permanent.

[16.48.2.4 NMAC - Re-pr, 16.48.2.4 NMAC, 9/24/2008]

#### **16.48.2.5 EFFECTIVE DATE:**

September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.2.5 NMAC - Re-pr & A, 16.48.2.5 NMAC, 9/24/2008]

#### **16.48.2.6 OBJECTIVE:**

To establish the procedures and outline the documents and information necessary to complete the application process for licensure, registration, and security guard training instructor approval.

[16.48.2.6 NMAC - Re-pr, 16.48.2.6 NMAC, 9/24/2008; A, 10/26/2021; A, 2/8/2022]

#### **16.48.2.7 DEFINITIONS:**

Please refer to 16.48.1.7 NMAC in addition to the definitions within this part.

**A. "Chemical agents"** means tear gas or any other certifiable non-lethal chemical agents used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**B. "Defensive impact tools"** means straight baton, expandable baton, side handle baton or other defensive impact tools used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**C. "Electronic non-lethal devices"** means tasers or other certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**D. "One-year verifiable training"** means proof of experience that has been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 1,000 hours of actual work performed in the respective area of licensure or registration sought after.

**E. "Restraint and control devices"** means handcuffs or similar certifiable devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**F. "Traffic crash reconstruction"** means the application of the laws of physics to physical evidence left as a result of a collision.

[16.48.2.7 NMAC - Re-pr & A, 16.48.2.7 NMAC, 9/24/2008; A, 1/15/2015; A, 1/15/2019; A, 7/18/2023]

**16.48.2.8 GENERAL LIABILITY INSURANCE, BIOMETRIC CRIMINAL HISTORY REPORT AND GENERAL APPLICATION INFORMATION:**

**A. General liability insurance:**

(1) A private investigation company or a private patrol company seeking to obtain or retain a license under the provisions of the Private Investigations Act shall maintain a general liability certificate of insurance in the amount of not less than one million dollars (\$1,000,000);

(2) Any failure to furnish and maintain licensee's general liability certificate of insurance shall be grounds for denial or revocation of a license issued under the provisions of the Private Investigations Act;

(3) In the event a general liability certificate of insurance is offered which varies from the department requirements the department shall determine whether the insurance is in substantial conformance with the Private Investigations Act and department rules;

(4) The duration of each general liability certificate of insurance shall, unless sooner terminated in accordance with law, be for the term of the license issued as set forth on the face thereof and 30 days thereafter; and

(5) Such general liability certificate of insurance shall also be filed and maintained for each period of renewal of license and the duration thereof shall be for the renewal period specified on the face of the license and 30 days thereafter.

**B. Biometric criminal history report:**

(1) Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check.

(2) Unless otherwise posted on the regulation and licensing department website, applicants must register with the New Mexico Department of Public Safety's fingerprinting vendor, pay the fingerprint processing fee, and provide fingerprints in accordance with the vendor's established process.

(3) Background check results will be sent directly to the regulation and licensing department electronically.

(4) Additional information is published on the regulation and licensing department website under the private investigations advisory board.

**C. General application information:**

(1) Information provided to the department for as part of the application or renewal process is subject to the Inspection of Public Records Act.

(2) All applicants, which includes each owner, director and officer of a business, for licensure must submit the following information:

(a) full name and if applicable, other names the applicant has used;

(b) mailing address;

(c) contact phone number;

(d) email address;

(e) date of birth;

(f) social security number;

(g) release of information form;

(h) name of jurisdiction, license number, and license status for other jurisdictions in which the applicant is or has been licensed;

(i) proof of military service member or veteran;

(j) fingerprint cards or other biometric data for federal criminal history report submission; and

(k) non-refundable license fee as set forth in Section 16.48.5 NMAC.

[16.48.2.8 NMAC - Re-pr & A, 16.48.2.8 NMAC, 9/24/2008; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

**16.48.2.9 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATOR LICENSE:**

**A. Application requirements:** Applicants for licensure as a private investigator must meet the qualifications and requirements described in Section 61-27B-7 NMSA 1978, and must submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) qualifying work experience;
- (3) successfully pass a jurisprudence examination to be administered by the department;
- (4) firearm certification, if applicable;
- (5) fingerprint cards or other biometric data for federal criminal history report submission; and
- (6) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Qualifying experience:** Years of qualifying work experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the applicant. Proof of experience must have been acquired within the five years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

- (1) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;
- (2) investigation of persons;
- (3) the location, disposition or recovery of lost or stolen property;
- (4) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or
- (5) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer.

**C. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check, as set forth in Subsection B of 16.48.2.8 NMAC.

**D. Firearm certification:** Pursuant to Section 61-27B-31, if applicant elects to be firearm certified, the applicant must provide the following:

(1) proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and

(2) results of a psychological evaluation as set forth in Section 16.48.2.21 NMAC.

**E. Traffic Crash Reconstruction:** A private investigator licensed under the Private Investigations Act shall not offer or provide traffic crash reconstruction unless the private investigator has completed a traffic crash reconstruction course offered by the Institute of Police Technology and Management (IPTM), Northwestern University Center for Public Safety, or equivalent training offered by another university or state law enforcement agency.

[16.48.2.9 NMAC - Re-pr & A, 16.48.2.9 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

#### **16.48.2.10 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION COMPANY LICENSE:**

**A. Application requirements:** Applicants for licensure as a private investigations company must meet the qualifications and requirements described in Section 61-27B-8 NMSA 1978, and must submit a completed application, which includes:

(1) general application information as listed in Subsection C of 16.48.2.8 NMAC;

(2) business contact phone number;

(3) business mailing address;

(4) business email address;

(5) business name and DBA if applicable;

(6) identify the type of business (corporations, LLCs, and partnerships must register with the New Mexico Secretary of State);

(7) name and license number of an owner who is licensed as a private investigator, or a licensed private investigations manager, and certification that they will manage the daily operations of the private investigation company;

(8) business address of a physical location in New Mexico where records are maintained and made available for department inspection;

(9) if the applicant is a company located outside of New Mexico, the name and address of a New Mexico registered agent;

(10) general liability certificate of insurance;

(11) fingerprint cards or other biometric data for federal criminal history report submission; and

(12) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Employee termination:** If the contract or employment of a private investigations employee terminates, the private investigations company must notify the department within thirty days from the date of the private investigations employee.

**C. General liability insurance:** A private investigation company shall provide proof of a current general liability certificate of insurance in the amount of no less than one million dollars as set forth in Subsection A of 16.48.2.8 NMAC.

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, officers, and directors of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection B of 16.48.2.8 NMAC.

[16.48.2.10 NMAC - Re-pr & A, 16.48.2.10 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

#### **16.48.2.11 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION MANAGER LICENSE:**

**A. Application requirements:** Applicants for licensure as a private investigations manager must meet the qualifications and requirements described in Section 61-27B-9 NMSA 1978, and must submit a completed application, which includes:

(1) general application information as listed in Subsection C of 16.48.2.8 NMAC;

(2) employer business name and DBA if applicable;

(3) employer private investigations company license number;

(4) release of information; and

(5) license number of the applicant's New Mexico private investigator license in good standing;

(6) successfully pass a jurisprudence examination to be administered by the department;

(7) a certificate of employment or contract for services with the private investigation company that the applicant is being licensed to manage; and

(8) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Certificate of employment:** Under the Private Investigations Act a private investigations manager must be employed by, or provide services on a contract basis, to a private investigation company and be responsible for managing the daily operations of the private investigations company. A certificate of employment or contract must be completed and signed by an owner, director or officer of the New Mexico licensed private investigation company the applicant is or will be employed or contracted to manage.

[16.48.2.11 NMAC Re-pr & A, 16.48.2.11 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

#### **16.48.2.12 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS AND PRIVATE PATROL EMPLOYEE REGISTRATION:**

**A. Application requirements:** Applicants for licensure as a private investigations employee or private patrol employee must meet the qualifications and requirements described in Section 61-27B-14 NMSA 1978, and submit a completed application, which includes:

(1) general application information as listed in Subsection C of 16.48.2.8 NMAC;

(2) employer business name and DBA if applicable;

(3) employer company license number;

(4) successfully pass a jurisprudence examination to be administered by the department;

(5) certificate of employment or contract for services with a private investigation or private patrol company;

(6) firearm certification, if applicable;

(7) biometric criminal history background check; and

(8) non-refundable registration fee as set forth in 16.48.5 NMAC;

## **B. Certificate of employment:**

(1) A private investigations employee must be employed by, or provide investigative services on a contract basis, a private investigation company and must be under the direct control and supervision of a New Mexico licensed private investigator in good standing. A certificate of employment or contract must be completed and signed by an owner, director or officer of the New Mexico licensed private investigation company the applicant is or will be employed or contracted to provide investigative services.

(2) A private patrol employee must be employed by, or provide private patrol services on a contract basis, a private patrol company and must be under the direct control and supervision of a New Mexico licensed private patrol operations manager or a level three security guard in good standing. A certificate of employment or contract must be completed and signed by an owner, director or officer of the New Mexico licensed private patrol company that applicant is or will be employed or contract to provide private patrol services.

(3) If the contract or employment of a private investigations employee or private patrol employee terminates for any reason, the registration of the individual terminates. The private investigations employee or private patrol employee shall turn over the employee's registration to the employer upon ceasing employment.

**C. Firearm certification:** Pursuant to Section 61-27B-31 NMSA 1978, if applicant elects to be firearm certified, the applicant must provide the following:

(1) proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and

(2) results of a psychological evaluation as set forth in Section 16.48.2.21 NMAC.

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check, as set forth in Subsection H of 16.48.2.8 NMAC.

[16.48.2.12 NMAC Re-pr & A, 16.48.2.12 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

## **16.48.2.13 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATOR LICENSE:**

**A. Application requirements:** Applicants for licensure as a private patrol operator must meet the qualifications and requirements described in Section 61-27B-10 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) qualifying work experience;
- (3) successfully pass a jurisprudence examination to be administered by the department;
- (4) firearm certification, if applicable
- (5) biometric criminal history background check; and
- (6) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Qualifying work experience:** Pursuant to Section 61-27B-10 NMSA 1978, an applicant must submit proof of at least three years' experience of actual work performed as a security guard or an equivalent position. Proof of qualifying experience of actual work performed includes the following:

- (1) not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a supervisory capacity;
- (2) experience shall have been acquired within five years preceding the filing of the application with the department;
- (3) years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employer(s) and is subject to independent verification by the department as it determines is warranted; and
- (4) the burden of proving necessary experience is on the applicant.

**C. Firearm certification:** Pursuant to Section 61-27B-31, if applicant elects to be firearm certified, the applicant must provide the following:

- (1) proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and
- (2) results of a psychological evaluation as set forth in Section 16.48.2.21 NMAC.

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, applicants must submit to a biometric federal criminal history background check, as set forth in Subsection H of 16.48.2.8 NMAC.

[16.48.2.13 NMAC - Re-pr & A, 16.48.2.13 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

#### **16.48.2.14 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL COMPANY LICENSE:**

**A. Application requirements:** Applicants for licensure as a private patrol company must meet the qualifications and requirements described in Section 61-27B-11 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) business contact phone number;
- (3) business mailing address;
- (4) business email address;
- (5) business name and DBA if applicable;
- (6) identify the type of business (corporations, LLCs, and partnerships must register with the New Mexico Secretary of State);
- (7) name and license number of an owner who is licensed as a private patrol officer, or a licensed private patrol operations manager, and certification that they will manage the daily operations of the private patrol company;
- (8) business address of a physical location in New Mexico where records are maintained and made available for department inspection;
- (9) if the applicant is a company located outside of New Mexico, the name and address of a New Mexico registered agent;
- (10) copy of general liability certificate of insurance;
- (11) completed and signed release of information form for each owner, director and officer
- (12) biometric criminal history background check for each owner, director and officer;
- (13) uniform description and photographs of uniforms; and
- (14) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Employee termination:** If the contract or employment of a private patrol employee terminates, the private patrol company must notify the department within thirty days from the date of termination of employment of the private patrol employee.

**C. General liability insurance:** A private patrol company shall file with the department a copy of a general liability certificate of insurance in the amount of one million dollars (\$10,000).

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC.

[16.48.2.14 NMAC Re-pr & A, 16.48.2.14 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

#### **16.48.2.15 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATIONS MANAGER LICENSE:**

**A. Application requirements:** Applicants for licensure as a private patrol operations manager must meet the qualifications and requirements described in Section 61-27B-12 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) employer business name and DBA if applicable;
- (3) employer private patrol company license number;
- (4) license number of the applicant's New Mexico private patrol operator license or level three security guard registration in good standing;
- (5) successfully pass a jurisprudence examination to be administered by the department;
- (6) a certificate of employment or contract with the private patrol company that the applicant is being licensed to manage; and
- (7) non-refundable license fee as set forth in Section 16.48.5 NMAC.

**B. Certificate of employment:** Under the Private Investigations Act a private patrol operations manager must be employed by, or provide services on a contract basis, to a private patrol company and be responsible for managing the daily operations of the private patrol company. A certificate of employment or contract must be completed and

signed by an owner, director or officer of the New Mexico licensed private patrol company the applicant is or will be employed or contracted to manage.

[16.48.2.15 NMAC - Re-pr & A, 16.48.2.15 NMAC, 9/24/2008; A, 5/1/2010; A, 10/26/2021; A, 7/18/2023]

#### **16.48.2.16 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A POLYGRAPH EXAMINER LICENSE:**

**A. Application requirements:** Applicants for licensure as a polygraph examiner must meet the qualifications and requirements described in Section 61-27B-13 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) pass a jurisprudence examination to be administered by the department;
- (3) copy of certificate of completion or diploma from an accredited polygraph examiners course approved by the department;
- (4) name and license number of probationary sponsor or documentation of probationary completion, if applicable;
- (5) biometric criminal history background check; and
- (6) non-refundable application fee as set forth in Section 16.48.5 NMAC.

**B. Probationary status:** Applicants who have not been licensed for a minimum of two years immediately prior to the date of application must complete a probationary operational competency period consisting of at least six months, under the supervision of a New Mexico Licensed Polygraph Examiner. Upon successful completion of a written examination, a provisional license may be issued. During the probationary period:

- (1) the polygraph examinations administered by the provisional licensee shall be reviewed for operational competency by a licensed polygraph examiner approved by the department to serve as a sponsor for the provisional licensee;
- (2) the provisional licensee must conduct a minimum of 30 polygraph examinations, a minimum of five of which must be examinations, two of the "specific" examinations, and three of the "screening type" examinations must be performed in the presence of the sponsor, or recorded in their entirety for review by the sponsor. In the case of an applicant who conducts only "specific" examinations, a minimum of five "specific" examinations must be conducted in the presence of the sponsor, or recorded in their entirety for review by the sponsor.

(3) The sponsor must submit a progress report regarding the progress of the provisional licensee every 60 days on forms provided by the department.

(4) If an unsatisfactory report is submitted, the sponsor shall review the polygraph examinations administered by the provisional licensee for operational competency. Upon recommendation of the sponsor, the department may revoke the provisional license or take such action as it deems necessary to assure operational competency.

**C. Non-probationary status:** Applicants who have a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico for a minimum of two years immediately preceding the date of application, and no pending or formal disciplinary actions issued against the license in the last five years, are not required to complete the probationary period.

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC.

[16.48.2.16 NMAC - Re-pr & A, 16.48.2.16 NMAC, 9/24/2008; A, 08/30/09; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

#### **16.48.2.17 LEVEL ONE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A. Application requirements:** Applicants for licensure as a level one security guard must meet the qualifications and requirements described in Section 61-27B-16 NMSA 1978, and submit a completed application, which includes:

(1) general application information as listed in Subsection C of 16.48.2.8 NMAC;

(2) successfully pass a jurisprudence examination to be administered by the department;

(3) certificate of completing a department approved level one training program;

(4) biometric criminal history background check;

(5) non-refundable registration fee as defined in 16.48.5 NMAC;

**B. Level one training certificate:** Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. An eight-hour curriculum is the minimum

training required and must be completed within twelve months prior to application for security guard level one registration. This rule adopts and hereby incorporates by reference the *Level One Training Curriculum* first edition 2020 approved by the advisory board on February 26, 2021, and with the same effective date of this rule.

**C. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC.

[16.48.2.17 NMAC - Re-pr & A, 16.48.2.17 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

### **16.48.2.18 LEVEL TWO SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A. Application requirements:** Applicants for licensure as a level two security guard must meet the qualifications and requirements described in Section 61-27B-17 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) license number of current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;
- (3) successfully pass a jurisprudence examination to be administered by the department;
- (4) certificate of completing a department approved level two training program;
- (5) certificate of completing a department approved weapon training program;
- (6) biometric criminal history background check; and
- (7) non-refundable registration fee as defined in 16.48.5 NMAC.

**B. Level two training certificate:** Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. A twenty-hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration.

**C. Level two weapons training certificate:** An applicant must successfully complete training for the specific weapon to be armed with while on duty. Electronic non-lethal device training shall be done in accordance with manufacturer requirements for any device carried or utilized by the registrant.

**D. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all owners, director and officers of a private investigation company must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8 NMAC.

[16.48.2.18 NMAC - Re-pr & A, 16.48.2.18 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

### **16.48.2.19 LEVEL THREE SECURITY GUARD APPLICANT QUALIFICATIONS AND EXPERIENCE REQUIREMENTS:**

**A. Application requirements:** Applicants for licensure as a level three security guard must meet the qualifications and requirements described in Section 61-27B-18 NMSA 1978, and submit a completed application, which includes:

- (1) general application information as listed in Subsection C of 16.48.2.8 NMAC;
- (2) license number of current registration in good standing as a level two security guard or certificate of completing department approved level one and level two security guard training;
- (3) successfully pass a jurisprudence examination to be administered by the department;
- (4) certificate of completing a department approved level three training program;
- (5) certificate of completing a department approved weapon training program;
- (6) psychological examination;
- (7) biometric criminal history background check; and
- (8) non-refundable registration fee as defined in 16.48.5 NMAC.

**B. Level three training certification:** Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. A sixteen-hour curriculum is the minimum training required, to include the laws pertaining to firearms and deadly physical force

and must be completed within twelve months prior to application for security guard level three registration.

**C. Level three weapons training certificate:** An applicant for weapon endorsement must successfully complete training, as defined in Subsection E of 16.48.2.18 NMAC, for the specific weapon endorsement. The following endorsement for level two applicants for electronic non-lethal device training shall be done in accordance with manufacturer requirements for any device carried or utilized by the registrant.

**D. Firearm certification:** Pursuant to Section 61-27B-31, if applicant elects to be firearm certified, the applicant must provide the following:

(1) proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC, including a copy of applicant's firearms qualification score sheet and the registration number for the department approved instructor; and

(2) results of a psychological evaluation as set forth in Section 16.48.2.21 NMAC.

**E. Psychological evaluation:** Prior to certification as a level three security guard, each applicant must be evaluated by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. Any psychologist licensed and in good standing in the state of New Mexico or other United States jurisdiction, may administer the evaluation.

(1) All psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

(2) Evaluations cannot be more than one year old for certification purposes.

(3) The original evaluation form must be signed and transmitted directly to the department within thirty days by the psychologist that performed the psychological evaluation

(4) An applicant knowingly providing false information or knowingly failing to disclose information shall be grounds for denial of licensure.

(5) Any applicant who fails the psychological evaluation shall not complete another psychological evaluation for at least ninety days from the date indicated on the original evaluation form signed and transmitted directly to the department by the psychologist that performed the psychological evaluation. If an applicant fails the evaluation, the department will make an electronic annotation in the candidate's file to ensure compliance with this rule.

(6) The psychological evaluation shall consist of at least one of the following psychological assessments to include the Minnesota multi-phasic inventory-2 restructured form, the Minnesota Multi-Phasic Inventory 2, or the Personality Assessment Inventory, as well as two additional measures of emotional functioning (Beck Depression Inventory-II, Beck Anxiety Inventory, PTSD Checklist-C).

**F. Federal criminal history report:** Pursuant to Section 61-27B-34, NMSA 1978, all applicants for licensure as a security guard level three must submit to a biometric federal criminal background check, as set forth in Subsection H of 16.48.2.8.

[16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 9/24/2008; A, 11/28/2009; A, 5/1/2010; A, 1/15/2015; A, 1/15/2019; A, 10/26/2021; A, 7/18/2023]

### **16.48.2.20 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR SECURITY GUARD INSTRUCTOR REGISTRATION:**

An individual seeking to be a registered instructor shall complete an application on a form provided by the department. The department shall review applications, register instructors, and maintain a list of current instructors authorized to teach the department's approved curriculum.

**A.** Proof of professional certification and requirements specific to each level of instruction.

(1) Level One Instructor: instructor certification related to the level one training curriculum topics, issued by a law enforcement academy (LEA), an accredited higher education institution, United States military branch, or the federal law enforcement training center (FLETC). The certification submitted must have been issued within four years preceding the date the application is submitted;

(2) Level Two Instructor: approval as a level one instructor and, specific weapon instructor certification related to the level two training curriculum, issued by the respective weapon manufacturer. Weapon certification must have been issued within four years preceding the date the application is submitted;

(3) Level Three Instructor: firearms instructor certification issued by a law enforcement academy (LEA), a recognized federal government entity, United States military branch, the federal law enforcement training center (FLETC), or the national rifle association law enforcement activities division. Firearms certification must have been issued within four years preceding the date the application is submitted.

**B.** Every four years from the registration date or as requested by the department, the instructors must resubmit certification that takes place within four years preceding the renewal request in order to remain [approved]registered.

**C.** A registered instructor must complete a minimum of four hours of continuing education specific to instructor development and case law specific to security every four years from the date of registration. Continuing education may be provided by the department and subject to periodic review. Continuing education for instructors shall not count toward continuing education credit required for renewal of an individual licensure or certification pursuant to 16.48.6.8 NMAC.

[16.48.2.20 NMAC - N, 1/15/2019; A, 10/26/2021; A, 2/8/2022; A, 7/18/2023]

#### **16.48.2.21 PSYCHOLOGICAL EVALUATION:**

**A. Requirements:** If an applicant elects to be firearm certified, it shall be necessary for each applicant to be examined by a licensed psychologist regarding the individual's mental suitability to carry a firearm within the individual's scope of duty as a licensed level three security guard. Any psychologist licensed and in good standing in the state of New Mexico or other United States jurisdiction, is able to administer the exam.

(1) All psychological evaluations shall be on a form provided by the department and must state if the applicant is recommended or not recommended to carry a firearm. If an applicant is not recommended to carry a firearm, the psychologist shall specify the reason(s) the applicant is not recommended to carry a firearm.

(2) Evaluations cannot be more than one (1) year old for certification purposes.

(3) The original evaluation form shall be signed and transmitted directly to the department within thirty days by the psychologist that performed the psychological evaluation

(4) The applicant knowingly providing false information or knowingly failing to disclose information shall be grounds for denial of licensure.

(5) Any examinee who fails the psychological evaluation shall not complete another psychological evaluation for at least ninety days from the date indicated on the original evaluation form signed and transmitted directly to the department by the psychologist that performed the psychological evaluation. If an examinee fails the evaluation, the department will make an electronic annotation in the candidate's file to ensure compliance with this rule.

(6) The department may request a subsequent psychological evaluation of an individual licensed pursuant to the Private Investigations Act to re-evaluate the suitability of the individual in the interest of maintaining public safety,

**B. Evaluation standards:** The psychological evaluation shall consist of at least one of the following psychological assessment to include the Minnesota multi-phasic inventory-2 restructured form, the Minnesota Multi-Phasic Inventory 2, or the Personality

Assessment Inventory, as well as two additional measures of emotional functioning (Beck Depression Inventory-II, Beck Anxiety Inventory, PTSD Checklist-C).

[16.48.2.21 NMAC – N, 7/18/2023]

**16.48.2.22 CESSATION OF LICENSE BUSINESS:**

A registrant or licensee subject to the Private Investigations Act who ceases to do business as a registrant or licensee before the registration or license expiration date shall submit written notice of cancellation of the registration or license to the department within 30 days of cessation of such business.

[16.48.2.22 NMAC - Rn, 16.48.2.21 NMAC, 1/15/2019; A, 7/18/2023]

**16.48.2.23 [RESERVED]**

[16.48.2.23 NMAC - Rn, 16.48.2.22 NMAC, 1/15/2019; Repealed, 10/26/2021]

**16.48.2.24 LIMITED EXEMPTION TO LICENSURE:**

An investigator licensed in another state may conduct business in New Mexico only under the circumstances indicated below:

- A.** the investigation must be initiated in the investigator's home state;
- B.** the investigator may spend no more than 30 days per case while conducting an investigation in another state; and
- C.** the investigator is prohibited from soliciting business while in New Mexico and from establishing a business or setting up residence while conducting an investigation in New Mexico.

[16.48.2.24 NMAC - Rn, 16.48.2.23 NMAC, 1/15/2019; A, 7/18/2023]

**16.48.2.25 RECIPROCITY:**

**A.** An applicant for licensure or registration by reciprocity may not engage in the practice of private investigations, private patrol operator, polygraph examiners or security guard in New Mexico until approval for licensure by reciprocity has been given and the department has issued an initial license.

**B.** Acceptance of a reciprocity applicant for licensure or registration is subject to department approval. All applicants for licensure or registration by reciprocity shall:

- (1) be duly and currently licensed or registered, for at least one year, in at least one other state;

(2) have no history of disciplinary action within the last year against any professional license or registration;

(3) provide proof of having met education and experience requirements in the state of licensure similar to or better than those required in New Mexico.

[16.48.2.25 NMAC - Rn, 16.48.2.24, 1/15/2019; A, 2/8/2022; A, 7/18/2023]

#### **16.48.2.26 INCOMPLETE INITIAL APPLICATIONS:**

**A.** Initial applications for any license or registration type will expire twelve months from the date the application is stamped "received" by the department.

**B.** The fingerprint background check required for initial application expires after ninety days from the date it is issued. If the applicant wants to continue with the application process, and the fingerprint background check has expired, the applicant will be required to submit a new fingerprint background check to continue the application process.

**C.** After the expiration of the twelve month period, applicant will be required to submit a new initial application.

[16.48.2.26 NMAC – N, 10/26/2021]

#### **16.48.2.27 TERM:**

The term for initial licensure and registration shall be three years.

[16.48.2.27 NMAC - N, 2/8/2022]

### **PART 3: STANDARDS OF PRACTICE**

#### **16.48.3.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.3.1 NMAC - Re-pr, 16.48.3.1 NMAC, 9/24/2008; A, 10/26/2021]

#### **16.48.3.2 SCOPE:**

All individuals and business entities registered and licensed under the Private Investigations Act.

[16.48.3.2 NMAC - Re-pr, 16.48.3.2 NMAC, 09/24/08]

#### **16.48.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5,

[16.48.3.3 NMAC - Re-pr, 16.48.3.3 NMAC, 09/24/08]

**16.48.3.4 DURATION:**

Permanent.

[16.48.3.4 NMAC - Re-pr, 16.48.3.4 NMAC, 09/24/08]

**16.48.3.5 EFFECTIVE DATE:**

September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.3.5 NMAC - Re-pr & A, 16.48.3.5 NMAC, 09/24/08]

**16.48.3.6 OBJECTIVE:**

To establish uniform standards of practice.

[16.48.3.6 NMAC - Re-pr, 16.48.3.6 NMAC, 09/24/08]

**16.48.3.7 DEFINITIONS:**

Refer to 16.48.1.7 NMAC

[16.48.3.7 NMAC - Re-pr, 16.48.3.7 NMAC, 09/24/08]

**16.48.3.8 [RESERVED]**

[16.48.3.8 NMAC - Re-pr, 16.48.3.8 NMAC, 9/24/2008; Repealed, 10/26/2021]

**16.48.3.9 [RESERVED]**

[16.48.3.9 NMAC - Re-pr, 16.48.3.9 NMAC, 9/24/2008; Repealed, 10/26/2021]

**16.48.3.10 DEPUTY SHERIFF COMMISSIONS:**

**A.** No licensee subject to the Private Investigators Act shall require any employee, as a condition or requirement of the employee's hiring or continued employment, to obtain a deputy sheriff's commission from any county sheriff, or to obtain a similar commission from any federal, state or local law enforcement agency.

**B.** No licensee subject to the Private Investigators Act nor any of their employees shall, during the pursuit of their licensed activities, display any deputy sheriff's or similar commission or badge issued pursuant to that commission in a manner likely to cause confusion between the licensed business and any city, local, federal or state police organization, or any branch of the United States military.

[16.48.3.10 NMAC - Re-pr, 16.48.3.10 NMAC, 9/24/2008; A, 10/26/2021]

#### **16.48.3.11 FICTITIOUS NAMES AND TITLES:**

**A.** Fictitious names under which licensees conduct businesses shall not contain words which may foster confusion with city, local, state or federal law enforcement agencies, such as "police".

**B.** The terms, "police", "sheriff", "peace officer", or "law enforcement", shall not be used as part of any business name and shall not be displayed or used on business cards, stationary, advertisements, badges, uniforms, emblems, insignia or identification. No person licensed or required to be licensed under this act shall in any way give the impression that they are connected with the federal government, state government or any political subdivision of a state government.

[16.48.3.11 NMAC - Re-pr, 16.48.3.11 NMAC, 9/24/2008; A, 10/26/2021]

#### **16.48.3.12 UNIFORMS, INSIGNIA, AND BADGES:**

**A.** Uniforms worn by a registrant or licensee shall be of such design as not to be confused with uniforms worn by city, local or state police, or by any branch of the United States military. Insignia attached to the uniform of any registrant or licensee shall be of such design and placed in such manner as not to be confused with insignia attached to uniforms worn by city, local or state police, or by any branch of the United States military. A badge may be worn by a registrant or licensee only while such individual is in uniform and on duty.

**B.** A patch, at least 2 1/2" x 1/2", entitled "SECURITY" will be worn on the left upper sleeve.

**C.** An identifiable plate showing the name of the individual and the company will be worn by all uniformed personnel. Such identification will be placed on the individual's outermost garment and be clearly visible at all times.

**D.** All private patrol operators and company licensees shall furnish the department a complete description of their uniform and shall furnish full length color photographs of the front and each side view of the uniform. All photographs must be clear and legible and shall accurately depict the uniform. A printed form, furnished by the department, shall be submitted describing those features deemed pertinent.

[16.48.3.12 NMAC - Re-pr, 16.48.3.12 NMAC, 09/24/08]

## **PART 4: MANDATORY FIREARMS TRAINING**

### **16.48.4.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.4.1 NMAC - Re-pr, 16.48.4.1 NMAC, 9/24/2008; A, 10/26/2021]

### **16.48.4.2 SCOPE:**

All individuals that apply for licensure and are authorized to carry a firearm under the Private Investigations Act.

[16.48.4.2 NMAC - Re-pr, 16.48.4.2 NMAC, 9/24/2008]

### **16.48.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-31.

[16.48.3.3 NMAC - Re-pr, 16.48.4.3 NMAC, 9/24/2008]

### **16.48.4.4 DURATION:**

Permanent.

[16.48.4.4 NMAC - Re-pr, 16.48.4.4 NMAC, 9/24/2008]

### **16.48.4.5 EFFECTIVE DATE:**

September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.4.5 NMAC - Re-pr & A, 16.48.4.5 NMAC, 9/24/2008]

### **16.48.4.6 OBJECTIVE:**

To establish the firearms training requirements necessary to apply for licensure.

[16.48.4.6 NMAC - Re-pr, 16.48.4.6 NMAC, 9/24/2008]

### **16.48.4.7 DEFINITIONS:**

Refer to 16.48.1.7 NMAC

[16.48.4.7 NMAC - Re-pr, 16.48.4.7 NMAC, 9/24/2008]

**16.48.4.8 MANDATORY FIREARMS TRAINING:**

**A.** A private investigator, a private patrol operator, a private investigations employee, or a level three security guard or a private patrol operations employee may carry a firearm upon successful completion of the mandatory firearm training required by the department. Any licensee who carries a firearm on duty shall be required to provide proof of being firearm certified by an instructor recognized by the department pursuant to Paragraph (3) of Subsection A, of 16.48.2.20 NMAC prior to carrying a weapon on duty, and annually thereafter.

**B.** The licensee or registrant will be required to qualify with the same type of weapon(s) and caliber(s) they will be carrying while on duty.

**C.** Specific course requirements and verification of completion forms will be posted on the department's website and are available upon request.

**D.** The firearms qualification forms issued by an instructor recognized and certified by the New Mexico law enforcement academy, federal government entity, military or the national rifle association law enforcement activities division shall at all times be in the possession of and located on the person of a registrant when working.

**(1) Handgun:**

**(a)** Ability to recite the four firearms safety rules.

**(b)** Ability to safely present (draw) and re-holster.

**(c)** Ability to safety load and unload.

**(d)** Ability to describe and perform immediate corrective action for class 1, 2, and 3 malfunctions.

**(e)** Ability to describe and perform tactical and emergency (speed) reloading.

**(f)** Obtain a minimum passing score of eighty percent (40 hits) on the "50 Round Day Qualification Course of Fire – Handgun." All rounds are fired to the body from a standing position unless otherwise specified herein:

**(i)** Draw, shoot a failure drill in seven seconds, re-holster – seven yard line.

**(ii)** Draw, shoot a failure drill in seven seconds, re-holster – seven yard line.

- (iii) Draw, shoot two rounds in 10 seconds, re-holster – 25 yard line.
- (iv) Draw, move to kneeling position of choice and shoot two rounds in 12 seconds, recover to a standing position and re-holster – 25 yard line.
- (v) Draw, shoot two rounds in 8 seconds, re-holster – 15 yard line.
- (vi) Draw, shoot two rounds, move to kneeling position of choice, reload and empty firearm and shoot two rounds from kneeling in 12 seconds, recover to a standing low-ready position – 15 yard line.
- (vii) From a low-ready position shoot two rounds in five seconds, re-holster – 15 yard line.
- (viii) Draw, shoot two rounds, reload an empty firearm and shoot two rounds in 12 seconds, re-holster – 10 yard line.
- (ix) Draw, shoot two rounds, reload an empty firearm and shoot two rounds in 12 seconds, re-holster – 10 yard line.
- (x) From a low-ready strong hand only position shoot two rounds in four seconds, recover to a low-ready position – seven yard line.
- (xi) From a low-ready strong hand only position shoot two rounds in four seconds, recover to a low-ready position – seven yard line.
- (xii) From a low-ready support hand only position shoot two rounds in four seconds, recover to a low-ready position – seven yard line.
- (xiii) From a low-ready support hand only position shoot two rounds in four seconds, transition and re-holster – seven yard line.
- (xiv) Draw, shoot two rounds in four seconds, recover to a low-ready position- five yard line.
- (xv) From a low-ready position shoot two rounds in three seconds, re-holster – five yard line.
- (xvi) Draw, shoot two rounds to the body, take one step to the right, shoot one round to the head in 10 seconds – five yard line.
- (xvii) Draw, shoot two rounds to the body, take one step to the right, shoot one round to the head in 10 seconds, re-holster – five yard line.

**(xviii)** Draw to weapon retention position, shoot two rounds to the body, take one step back, assume a two-handed shooting stance and shoot one round to the head in seven seconds, re-holster – one yard line.

**(xix)** Draw to weapon retention position, shoot two rounds to the body, take one step back, assume a two-handed shooting stance and shoot one round to the head in seven seconds, re-holster – one yard line.

**(2)** Rifle:

**(a)** Ability to recite the four firearms safety rules.

**(b)** Ability to safely use a sling, and present to low ready and high ready positions.

**(c)** Ability to safely load and unload.

**(d)** Ability to describe and perform immediate corrective action for class 1, 2, and 3 malfunctions.

**(e)** Ability to describe and perform tactical and emergency (speed) reloading.

**(f)** Obtain a minimum passing score of eighty percent (24 hits) on the "30 Round Day Qualification Course of Fire – Rifle". All rounds are fired to the body from a standing position unless otherwise specified herein:

**(i)** From a low-ready half-load position, shoot two rounds in 4 seconds, recover to a low-ready position – 15 yard line.

**(ii)** From a low-ready full-load position, shoot two rounds in 3 seconds, recover to a low-ready position – 15 yard line.

**(iii)** From a low-ready full-load position, shoot two rounds in three seconds, recover to a safe low-ready or slung position – 15 yard line.

**(iv)** From a low-ready half-load position, shoot two rounds in five seconds, recover to a low-ready position – 25 yard line.

**(v)** From a low-ready full-load position, shoot two rounds in three seconds, recover to a low-ready position – 25 yard line.

**(vi)** From a low-ready full-load position, shoot two rounds in three seconds, recover to a low-ready or slung position – 25 yard line.

**(vii)** From a low-ready half-load position, assume a kneeling position of choice and shoot two rounds in seven seconds, recover to a standing low-ready position – 25 yard line.

**(viii)** From a low-ready full-load position, assume a kneeling position of choice and shoot two rounds in five seconds, recover to a standing low-ready position – 25 yard line.

**(ix)** From a low-ready full-load position, assume a kneeling position of choice and shoot two rounds in five seconds, recover to a standing safe low-ready or slung position – 25 yard line.

**(x)** From a low-ready half-load position, assume a kneeling position of choice and shoot two rounds in nine seconds, recover to a standing low-ready position – 50 yard line.

**(xi)** From a low-ready full-load position, assume a kneeling position of choice and shoot two rounds in seven seconds, recover to a standing safe low-ready or slung position – 50 yard line.

**(xii)** From a low-ready half-load position, assume a prone position, shoot two rounds, reload an empty firearm, and fire two rounds in 20 seconds, recover to a standing safe low-ready or slung position – 50 yard line.

**(xiii)** From a low-ready half-load position, assume a prone position, shoot two rounds, reload an empty firearm, and fire two rounds in 25 seconds, recover to a standing safe low-ready or slung position – 100 yard line.

**(3)** Shotgun: All rounds are fired to the body unless otherwise specified herein.

**(a)** Ability to recite the four firearms safety rules.

**(b)** Ability to safely use a sling, and present to low ready and high ready positions.

**(c)** Ability to safely load and unload.

**(d)** Ability to describe and perform immediate corrective action for class 1, 2, and 3 malfunctions.

**(e)** Ability to describe and perform tactical and emergency (speed) reloading.

**(f)** Obtain a minimum passing score of eighty percent (16 hits) on the "20 Round Day Qualification Course of Fire – Shotgun". All rounds are fired to the body from a standing position unless otherwise specified herein:

**(i)** From a low-ready half-load position, shoot two rounds, load one round, and shoot two rounds in 12 seconds, recover to a safe low-ready or slung position – seven yard line - .00 buckshot rounds.

**(ii)** From a low-ready half-load position, shoot two rounds, assume a kneeling position of choice, speed load an empty firearm, tactically load one round and shoot two rounds from kneeling in 15 seconds, recover to a safe low ready or slung position – 15 yard line - .00 buckshot rounds.

**(iii)** From a low-ready half-load position, shoot one round, assume a kneeling position of choice, and shoot one round from kneeling in seven seconds, recover to a safe low ready or slung position – 25 yard line - .00 buckshot rounds.

**(iv)** From a low-ready half-load position, select load one round and shoot one head shot in six seconds, recover to a safe low-ready or slung position – 10 yard line – slug round.

**(v)** From a low-ready half-load position, shoot two rounds in four seconds, recover to a safe low ready or slung position – 15 yard line – slug rounds.

**(vi)** From a low-ready bolt open position, speed load an empty firearm and shoot one round in four seconds, recover to a safe low-ready or slung position – 25 yard line – slug round.

**(vii)** From a low-ready bolt open position, assume a kneeling position of choice, speed load an empty firearm, tactically load one round and shoot two rounds in two seconds, recover to a safe low-ready or slung position – 25 yard line – slug rounds.

**E.** Optional, non-mandatory night/low light courses of fire acceptable for use in conducting qualification courses of fire pursuant to the above three categories of firearms will be posted on the department's website and are available upon request for internal industry use as desired.

#### **F. Authorized Targets and Scoring Process**

**(1)** Instructors will only use a "TQ-19" style target, which depicts an average adult human-sized silhouette comprised of torso, neck, and head zones. There shall be clearly designated body/neck and head zones as scoring areas outlined by a colored perimeter line for each zone. Only body-designated rounds impacting within the outlined body and neck area will be scored as "hits". Only headshot-designated rounds impacting within the outlined head area will be scored as "hits". All other rounds that impact outside of the outlined strike areas will be scored as "misses". For clarification, an actual round impact which breaks the perimeter line of the designated target zone will scored as a "hit", paper tears around the perimeter of a round impact that break the perimeter line are not sufficient to be scored as a "hit".

**(2)** Alibis will only be considered for firearm malfunctions that the shooter immediately and properly employs an action drill to correct.

**(3)** Ammunition management is the shooter's responsibility.

**G.** All shooters must adhere to the safety rules and directions of the attending range and the approved firearm instructor(s) providing the training.

[16.48.4.8 NMAC - Re-pr & A, 16.48.4.8 NMAC, 9/24/2008; A, 5/1/2010; A, 1/15/2019; A, 10/26/2021]

## **PART 5: FEES**

### **16.48.5.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.5.1 NMAC - Re-pr, 16.48.5.1 NMAC, 9/24/2008; A, 5/25/2021]

### **16.48.5.2 SCOPE:**

All individuals and businesses applying to be licensed or registered under the Private Investigations Act.

[16.48.5.2 NMAC - Re-pr, 16.48.5.2 NMAC, 9/24/2008; A, 2/8/2022]

### **16.48.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5 NMSA 1978.

[16.48.5.3 NMAC - Re-pr, 16.48.5.3 NMAC, 9/24/2008; A, 2/8/2022]

### **16.48.5.4 DURATION:**

Permanent.

[16.48.5.4 NMAC - Re-pr, 16.48.5.3 NMAC, 09/24/08]

### **16.48.5.5 EFFECTIVE DATE:**

September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.5.5 NMAC - Re-pr & A, 16.48.5.5 NMAC, 09/24/08]

**16.48.5.6 OBJECTIVE:**

To establish fees to generate revenue adequate to fund the cost of program administration as authorized under Section 61-27B-20 NMSA 1978.

[16.48.5.6 NMAC - Re-pr, 16.48.5.6 NMAC, 9/24/2008; A, 2/8/2022]

**16.48.5.7 DEFINITIONS:**

[RESERVED]

[Refer to 16.48.1.7 NMAC]

**16.48.5.8 FEE SCHEDULE:**

**A.** All fees payable to the department are non-refundable.

**B.** Application fees:

(1) private investigator	\$100
(2) private investigations manager	\$100
(3) private patrol operator	\$100
(4) private patrol operations manager	\$100
(5) polygraph examiner	\$100
(6) instructor	\$100

**C.** Initial registration (three year term) and renewal fees:

(1) security guard level one	\$50
(2) security guard level two	\$50
(3) security guard level three	\$75
(4) private investigations employee	\$100
(5) private patrol employees	\$100
(6) instructor	\$100

**D.** Initial license (three year term) and renewal fees:

(1) private investigator	\$300
(2) private investigations manager	\$200
(3) private patrol operator	\$300
(4) private patrol operations manager	\$200
(5) polygraph examiner	\$300
(6) private investigations company	\$300
(7) private patrol company	\$300

**E.** Other fees applying to private investigators, private patrol operators and polygraph examiners:

(1) change in license	\$200
(2) late fee on license or registration renewals	\$100
(3) special event permit	\$100
(4) private patrol company special event license	\$50
(5) polygraph examination	\$100
(6) security guard card	\$10

**F.** Background fees shall be the amount established by the department of public safety for the processing of criminal history background checks.

[16.48.5.8 NMAC - Re-pr & A, 16.48.5.8 NMAC, 9/24/2008; A, 5/1/2010; A, 5/12/2016; A, 5/25/2021; A, 2/8/2022; A, 7/18/2023]

## **PART 6: CONTINUING EDUCATION**

### **16.48.6.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.6.1 NMAC - N, 9/24/2008; A, 10/26/2021]

### **16.48.6.2 SCOPE:**

This part applies to licensees and registrants pursuant to the Private Investigations Act.

[16.48.6.2 NMAC - N, 9/24/2008; A, 10/26/2021]

### **16.48.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5 NMSA 1978.

[16.48.6.3 NMAC - N, 9/24/2008; A, 10/26/2021]

### **16.48.6.4 DURATION:**

Permanent.

[16.48.6.4 NMAC - N, 09/24/08]

### **16.48.6.5 EFFECTIVE DATE:**

September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.6.5 NMAC - N, 09/24/08]

**16.48.6.6 OBJECTIVE:**

The objective of Part 6 is to inform licensees and registrants of continuing education required for license renewal.

[16.48.6.6 NMAC - N, 9/24/2008; A, 10/26/2021; A, 2/8/2022]

**16.48.6.7 DEFINITIONS:**

For purposes of continuing education requirements, "**renewal period**" shall mean the period between issuance of license or registration to expiration of license or registration.

[16.48.6.7 NMAC - N, 9/24/2008; A, 10/26/2021]

[Refer to 16.48.1.7 NMAC]

**16.48.6.8 CONTINUING EDUCATION:**

**A.** Continuing education is required for renewal of an individual license or registration.

**B.** Private investigators and private patrol operators must complete a minimum of two hours of continuing education credit per year. Upon renewal for a three year period pursuant to 16.48.7.8 NMAC, a private investigator and private patrol operator must complete a minimum of six hours of continuing education credit from an approved source, during each renewal period to maintain their license.

**C.** Security guards must complete a minimum of two hours of continuing education credit per year. Upon renewal for a three year period pursuant to 16.48.7.8 NMAC, a security guard must complete a minimum of six hours of continuing education credit from an approved source, during each renewal period to maintain their registration.

**D.** Polygraph licensees must complete a minimum of 10 hours of continuing education credit per year. Upon renewal for a three year period pursuant to 16.48.7.8 NMAC, a polygraph licensee must complete a minimum of thirty hours of continuing education credit from an approved source, during each renewal period to maintain their license.

**E.** Proof of participation in or presentation of continuing education must be submitted with the license or registration renewal application, or registration or license will not be renewed.

F. All continuing education hours must be earned during the renewal period; no carryover will be permitted.

G. Firearms requalification courses will not count towards mandatory continuing education credits.

H. Approved providers of continuing education include:

- (1) college level courses;
- (2) in-house training provided by a private patrol company licensed by the department;
- (3) the New Mexico law enforcement academy; or
- (4) any other department-approved educational institution or program.

I. One hour of continuing education credit will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license or registration. College level courses will be granted fifteen hours of continuing education credit for each successfully completed college credit.

J. Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first licensing period of an initial license or registration.

[16.48.6.8 NMAC - N, 9/24/2008; A, 10/26/2021; A, 2/8/2022]

## **PART 7: LICENSE RENEWAL, INACTIVE STATUS AND REINSTATEMENT**

### **16.48.7.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.7.1 NMAC - N, 9/24/2008; A, 10/26/2021]

### **16.48.7.2 SCOPE:**

This part applies to the licensees and registrants licensed and registered pursuant to the Private Investigations Act.

[16.48.7.2 NMAC - N, 9/24/2008; A, 10/26/2021]

### **16.48.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5 NMSA 1978.

[16.48.7.3 NMAC - N, 9/24/2008; A, 2/8/2022]

**16.48.7.4 DURATION:**

Permanent.

[16.48.7.4 NMAC - N, 9/24/2008]

**16.48.7.5 EFFECTIVE DATE:**

September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.7.5 NMAC - N, 9/24/2008]

**16.48.7.6 OBJECTIVE:**

This part establishes the procedures for license expiration and license and registration renewal.

[16.48.7.6 NMAC - N, 9/24/2008; A, 10/26/2021]

**16.48.7.7 DEFINITIONS:**

Refer to 16.48.1.7 NMAC.

[16.48.7.7 NMAC - N, 9/24/2008]

**16.48.7.8 LICENSE AND REGISTRATION RENEWAL:**

To align with three-year initial terms and transition current licenses and registrations to a three-year renewal cycle, until December 31, 2023, each expiring license and registration ending in an even number (2, 4, 6, 8, 0) will renew for a final two-year term and pay a pro-rated renewal fee, and each expiring license and registration ending in an odd number (1, 3, 5, 7, 9) will renew for a three-year term. Beginning January 1, 2024, all expiring licenses and registrations will renew for three year terms. Licensees and registrants shall renew their licenses issued pursuant to the Private Investigations Act by submitting the renewal application and all forms required by the department as described in the application.

**A.** The completed application shall include applicant's:

**(1)** full name;

- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) current license or registration number, and any expired license or registration numbers issued to the applicant by the department;
- (5) two, 2X2 inch recent photographs or an upload of a recent electronic headshot photograph;
- (6) proof of required continuing education;
- (7) firearms qualification, if required;
- (8) documentation showing submission of background check form to the department of public safety no less than 30 days prior to the expiration of the renewal term (documentation may include certified mail return receipt, mailing or delivery confirmation) required to be submitted only by individuals who currently hold and wish to maintain a firearm certification as a private investigator, private patrol operator, private investigations employee, a private patrol operations employee or level three security guard pursuant to 16.48.4 NMAC;
- (9) any required fees;
- (10) general liability insurance, if required; and
- (11) surety bond, if required.

**B.** Renewal applications must be postmarked or submitted online no later than the expiration date of the license or registration or a late fee will be assessed without exception. Continuing education credits shall be documented as described in 16.48.6 NMAC.

**C.** The department may require renewal applications be submitted electronically.

[16.48.7.8 NMAC - N, 9/24/2008; A, 1/15/2019; A, 10/26/2021; A, 2/8/2022]

#### **16.48.7.9 LICENSE RENEWAL DEADLINE:**

Licensees or registrants failing to submit a renewal application and the required documentation on or before the expiration date shall be considered expired and must refrain from practicing. A licensee or registrant will be allowed a 30-day grace period in which they will be allowed to renew their license or registration with a late fee. Any renewal received after the 30-day grace period will not be accepted and the licensee or registrant will need to comply with 16.48.2 NMAC.

[16.48.7.9 NMAC - N, 9/24/2008; A, 5/10/2010; A, 1/15/2019]

**16.48.7.10 LICENSE RENEWAL NOTICES:**

Courtesy renewal notices will be electronically mailed to each current licensee and registrant at least 30 days prior to the expiration date of the license.

[16.48.7.10 NMAC - N, 9/24/2008; A, 1/15/2019; A, 10/26/2021]

**16.48.7.11 LICENSEE RESPONSIBILITY:**

Renewal notices will be electronically mailed to the last known electronic mail address on file with the] department. It is the responsibility of the licensee and registrant to keep the department informed of any changes in electronic mail, physical mail address and phone numbers. Failure to receive the renewal notice shall not relieve the licensee or registrant of the responsibility of renewing his license before the expiration date.

[16.48.7.11 NMAC - N, 9/24/2008; A, 1/15/2019; A, 10/26/2021]

**16.48.7.12 APPROVAL OF RENEWAL APPLICATION:**

Upon department approval of the renewal application, the department will issue a license or registration with new expiration date.

[16.48.7.12 NMAC - N, 9/24/2008; A, 2/8/2022]

**16.48.7.13 INACTIVE STATUS:**

**A.** A licensed or registered person in good standing may request up to five years of inactive status by notifying the department in writing before the expiration of their current license.

**B.** An inactive status license or registration may be restored within the five year period upon submitting a reinstatement application provided by the department.

**C.** A license or registration placed on inactive status not restored within five years is automatically expired without notice from the department.

[16.48.7.13 NMAC - N, 9/24/2008; A, 10/26/2021; A, 2/8/2022]

**16.48.7.14 REINSTATEMENT OF INACTIVE LICENSURE OR REGISTRATION:**

Reinstatement of a license or registration that is in inactive status requires the following:

**A.** completion of a reinstatement application relevant to the license or registration;

**B.** payment of an application fee and initial license or registration fee equal to the relevant initial fees provided in 16.48.5 NMAC;

**C.** department of public safety background check required to be submitted only by individuals who wish to also reinstate a firearm certification as a private investigator, private patrol operator, private investigations employee, private patrol operations employee, or level three security guard pursuant to 16.48.4 NMAC; and

**D.** proof of completion of two hours of continuing education credit for each year the license or registration was inactive.

[16.48.7.14 NMAC N, 9/24/2008; A, 5/10/2010; A, 10/26/2021; A, 2/8/2022]

## **PART 8: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

### **16.48.8.1 ISSUING AGENCY:**

Regulation and Licensing Department.

[16.48.8.1 NMAC - N, 1/15/2015; A, 10/26/2021]

### **16.48.8.2 SCOPE:**

This part sets forth application procedures to expedite licensure and registration for military service members, their spouses, dependent children, and veterans.

[16.48.8.2 NMAC - N, 1/15/2015; A, 10/26/2021]

### **16.48.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Private Investigations Act, Section 61-27B-5 NMSA 1978.

[16.48.8.3 NMAC - N, 1/15/2015; A, 10/26/2021]

### **16.48.8.4 DURATION:**

Permanent.

[16.48.8.4 NMAC - N, 01/15/15]

### **16.48.8.5 EFFECTIVE DATE:**

January 15, 2015, unless a later date is cited at the end of a section.

[16.48.8.5 NMAC - N, 01/15/15]

**16.48.8.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children, and veterans pursuant to 61-1-34 NMSA 1978.

[16.48.8.6 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.7 DEFINITIONS:**

**A. "License"** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

**B. "Licensing fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

**C. "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**D. "Substantially equivalent"** means the determination by the department that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirement of the Private Investigations Act.

**E. "Veteran"** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.48.8.7 NMAC - N, 1/15/2015; A, 10/26/2021]

**16.48.8.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the department.

**B.** The applicant shall provide a completed application that includes the following information:

- (1) applicant's full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) date of birth;

- (5)** two, 2X2 in recent photographs or upload of a recent electronic headshot photograph;
- (6)** copy of completion of polygraph school diploma, if required;
- (7)** completed jurisprudence examination for the license or registration, if required;
- (8)** firearms qualification, if required;
- (9)** information on any past disciplinary action;
- (10)** fingerprinting receipt to establish positive identification for a federal criminal history background check;
- (11)** any required fees; and
- (12)** proof as described in subsection (C) below.

**C.** The applicant shall provide the following satisfactory evidence as follows:

- (1)** applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;
- (2)** applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and
- (3)** the following documentation:
  - (a)** for military service member: copy of military orders;
  - (b)** for spouse of military service members: copy of military service member's military orders and copy of marriage license;
  - (c)** for spouses of deceased military services members: copy of decedent's DD214 and copy of marriage license;
  - (d)** for dependent children of military service members: copy of military orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;
  - (e)** for veterans (retired or separated): copy of DD214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the department as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

**E.** Military service members and veterans shall not pay and the department shall not charge a licensing fee for the first three years for a license or registration issued pursuant to this rule.

**F.** A license or registration issued pursuant to this section shall be valid for the time period that is specified in the Private Investigations Act.

**G.** Electronic signatures will be acceptable for applications submitted pursuant to section 14-16-1 through section 14-16-19 NMSA 1978.

[16.48.8.8 NMAC - N, 1/15/2015; A, 10/26/2021]

#### **16.48.8.9 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.48.7 NMAC pursuant to Chapter 61, Article 27B NMSA 1978.

**B.** As a courtesy, the department will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the department. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.48.8.9 NMAC - N, 1/15/2015; A, 10/26/2021]

### **PART 9 DISCIPLINARY PROCEEDINGS**

#### **16.48.9.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department

[16.48.9.1 NMAC – N, 12/28/2021]

#### **16.48.9.2 SCOPE:**

This part applies to applicants, licensees, registrants and to anyone wishing to file a complaint against a licensee or registrant licensed or registered pursuant to the Private Investigations Act.

[16.48.9.2 NMAC – N, 12/28/2021]

### **16.48.9.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Private Investigations Act, Sections 61-27B-5 and 61-27B-26 NMSA 1978, and the Uniform Licensing Act, Sections 61-1-1 through 61-1-36 NMSA 1978.

[16.48.9.3 NMAC – N, 12/28/2021]

### **16.48.9.4 DURATION:**

Permanent.

[16.48.9.4 NMAC – N 12/28/2021]

### **16.48.9.5 EFFECTIVE DATE:**

December 28, 2021, unless a later date is cited in the history note at the end of a Section.

[16.48.9.5 NMAC – N, 12/28/2021]

### **16.48.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 48 is to set forth the procedures for filing complaints, for initiating disciplinary action against applicants, licensees, and registrants, to lay out the investigative procedures available to the department and to further define actions by an applicant, licensee or registrant considered as violations of the Private Investigations Act, the Uniform Licensing Act, and these rules.

[16.48.9.6 NMAC – N, 12/28/2021]

### **16.48.9.7 DEFINITIONS:**

As used in this Section, the following words and phrases have the following meanings:

**A. "Applicant"** has the same meaning as defined in Subsection B of Section 61-1-2 NMSA 1978.

**B. "Complaint"** means a written complaint on a form provided by the department and filed with the department against a licensee or registrant.

**C. "Complainant"** means the party who files a complaint against a licensee or registrant.

**D. "Disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

**E. "Hearing"** means a formal evidentiary hearing conducted pursuant to the Uniform Licensing Act, whereby the respondent is afforded due process and the opportunity to be heard by the department, or its designated hearing officer, before the department takes action which might result in disciplinary action against the respondent's application for license or registration, or respondent's license or registration issued pursuant to the Private Investigations Act.

**F. "Hearing officer"** means the person designated by the department at its discretion, to conduct hearings under the Uniform Licensing Act.

**G. "Notice of contemplated action" or "NCA"** means the administrative pleading required by the Uniform Licensing Act whereby initiating a formal disciplinary proceeding and notifying a respondent of the department's intent to take action based upon the violations of practice charged in the subject complaint, and providing the respondent the opportunity to request a hearing before the department.

**H. "Pre-NCA settlement agreement"** means an agreement reached between the department and the respondent as an option in lieu of the department proceeding with referring the matter for issuance of a notice of contemplated action.

**I. "Respondent"** means an applicant, licensee, or registrant that is the subject of complaint filed with the department.

**J. "Revocation"** has the same meaning as defined in Subsection J of Section 61-1-2 NMSA 1978.

**K. "Subject matter expert"** means a member of the private investigations profession or an advisory board member who has been designated to review complaints at the request of the superintendent.

**L. "Suspension"** has the same meaning as defined in Subsection K of Section 61-1-2 NMSA 1978.

**M. "Violation"** means a violation of the Private Investigations Act or the rules duly adopted by the department pursuant to the Private Investigations Act.

[16.48.9.7 NMAC – N, 12/28/2021; A, 7/18/2023]

#### **16.48.9.8 GENERAL PROVISIONS:**

**A.** A complaint may be initiated in writing by any person on a complaint form provided by the department. A complaint must be legible, signed by the complainant under penalty of perjury, and must include the following information:

**(1)** full name, mailing address, electronic mail address, and phone number of the complainant;

(2) clearly stated factual allegations including the date, time, and location of the incident that is the subject matter of the complaint constituting the alleged violations of any provisions of the Private Investigations Act or Code of Ethics and Creed of Conduct, 16.48.1 NMAC;

(3) a list of any other people that have information about the subject matter in the complaint, if any, and their full name, mailing addresses, and phone numbers, including electronic mail addresses if available; and

(4) any documentation available to support the allegations in the complaint, any photographs submitted must be in color.

**B.** Only complaints written on the official complaint form will be formally addressed by the department. The form required for an official complaint may be obtained from the department's website under the "file a complaint" tab, then select "boards and commissions complaint form".

**C.** Private cause of action: Neither the action nor inaction of the department on any complaint shall preclude the initiation of any private cause of action by the complainant.

[16.48.9.8 NMAC – N, 12/28/2021]

#### **16.48.9.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:**

**A.** The department's assigned compliance staff will maintain a written log of all complaints received which records at a minimum, the date the complaint was received; name, electronic mail and physical mailing address(es) of the complainant(s) and respondent(s); and the name, electronic mail and physical address(es) of all possible witnesses listed on the complaint.

**B.** Upon receipt of a complaint the department's compliance staff will:

(1) log in the date the complaint was received;

(2) determine whether the respondent is licensed, registered or is an applicant for licensure or registration with the department;

(3) assign a complaint number and create an individual file. Complaint numbering shall begin with 01 each calendar year;

(4) after a legal review, send complainant written acknowledgment of receipt of the complaint and any follow up questions needed to clarify the complaint; and

(5) send a copy of the complaint to the respondent(s) via electronic mail or certified U.S. mail to the address of record in the respondent's file, unless the department reasonably determines that disclosure of the information in the complaint at

that time, will substantially and materially impair the integrity or efficacy of the investigation.

[16.48.9.9 NMAC – N, 12/28/2021]

**16.48.9.10 RESPONDING TO COMPLAINT:**

**A.** The respondent must submit a written response to the department within 20 business days of receipt the complaint, and shall provide all necessary documents and exhibits in support of the response.

**B.** A failure to submit a written response to the department within the time frame specified may result in disciplinary action up to and including revocation of the license or registration at the discretion of the department.

[16.48.9.10 NMAC – N, 12/28/2021]

**16.48.9.11 DEPARTMENT REVIEW AND INVESTIGATION OF COMPLAINTS:**

**A.** The department will review and investigate all written, signed complaints against a respondent unless it is determined that there is insufficient evidence, cause, or jurisdiction to proceed.

**B.** If the department determines that further information is needed, the department may utilize an investigator or subject matter expert to review complaints as part of its investigation. The purpose of an investigation is to gather information regarding the complaint and to verify facts in the complaint.

**C.** Investigative Subpoenas: The department is authorized to issue investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations.

**D.** Upon completion of the investigation, the compliance staff or investigator will prepare a report which includes its factual findings and conclusions on any violations of the Private Investigations Act and rules, all relevant exhibits, and a recommendation to the superintendent as to a course of action regarding the compliant.

[16.48.9.11 NMAC – N, 12/28/2021]

**16.48.9.12 DEPARTMENT ACTION ON A COMPLAINT:**

**A.** If the department determines after investigation, that there is not sufficient evidence or cause to issue a notice of contemplated action, or other disciplinary action, the case shall be closed and the department's assigned compliance staff shall send a letter of the decision to both the complainant and respondent. The letter will state the department's decision and that the decision is final unless new evidence is presented.

**B.** If the department determines that there is sufficient evidence or cause to issue a notice of contemplated action, the department may send a referral to the office of the attorney general by forwarding a complete copy of the investigation file, including exhibits, for assignment of an administrator prosecutor.

**C.** The department may take any other action with regard to a complaint which is within its authority, including referring the complaint to the attorney general for injunctive proceedings; or referring the complaint to the attorney general or a district attorney for criminal prosecution of persons alleged to be engaging in business regulated by the Private Investigations Act who fraudulently makes a representation as being a licensee or registrant, represents employment by a licensee, or violates a mandatory requirement set forth in statute or rule subject to criminal penalties.

**D.** At the discretion of the superintendent, the complaint may be referred to a subject matter expert or to the advisory board for review.

(1) Any appointed subject matter expert or advisory board member who believes that they are not capable of judging a particular complaint fairly on the basis of the member's own circumstances shall not participate in the decision to consider the facts and circumstances of the complaint or to issue a notice of contemplated action and must not participate in the final recommendation to the superintendent.

(2) Where the appearance of impropriety or any violation of the government conduct act may occur, an advisory board member shall recuse from any consideration of the complaint, the hearing, deliberation or recommendation to the decision of the department.

**E.** Before the issuance of a notice of contemplated action, the superintendent may authorize department staff to confer with the respondent for the purpose of seeking a pre-NCA settlement agreement. Any proposed pre-NCA settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent's attorney should sign the pre-NCA settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

**F.** After issuance of a notice of contemplated action, the administrative prosecutor may negotiate a settlement agreement with the respondent. Any proposed settlement agreement must be approved by the superintendent and must be negotiated with the consent of the respondent, and shall include a knowing and intentional waiver by the respondent of the right to a hearing under the Uniform Licensing Act. The respondent's attorney should sign the settlement agreement or the respondent must acknowledge that the respondent has been advised to seek the advice of an attorney and has waived the right to do so.

**G.** All disciplinary hearings shall be conducted in accordance with the Uniform Licensing Act. The superintendent will appoint a hearing officer to conduct the hearing.

(1) The hearing officer will be fully authorized to make all necessary procedural and evidentiary decisions on behalf of the department, including, but not limited to, matters related to discovery, continuances, time extensions, amendment, pre-hearing conferences, and proposed findings of fact and conclusions of law.

(2) The hearing officer may make such orders the hearing officer determines may be necessary to including but not limited to discovery schedules, pleading schedules, and briefing schedules.

(3) No party will engage in ex-parte communications with the hearing officer or any member of the advisory board or department staff in any matter in which a notice of contemplated action has been issued.

(4) Respondents who have been found culpable and sanctioned by the department may be assessed a fine for each violation, not to exceed \$1,000 unless a greater amount is provided by law, pursuant to Subsection L of Section 61-1-3 NMSA 1978.

**H.** Pursuant to the Private Investigations Act and the Uniform Licensing Act, the department, in its sole and sound discretion, may impose any of the following penalties against a respondent upon a finding of a violation of the Private Investigations Act, the rules promulgated under the Private Investigations Act, or the Code of Ethics and Creed of Conduct adopted by the department, including for those acts of "unprofessional conduct" defined in 16.48.1.8 NMAC:

- (1) denial of application for licensure;
- (2) refusal to renew licensure;
- (3) written reprimand;
- (4) written censure;
- (5) imposition of probationary conditions on a license for a specified time period;
- (6) the requirement that the licensee or applicant complete a program of remedial education;
- (7) corrective action as specified by the superintendent;
- (8) suspension of a license;

(9) revocation of a license; and

(10) in addition to or in lieu of any of the foregoing, the department may assess a fine for unlicensed activity, not to exceed \$10,000 for each violation of the Private Investigations Act by a person to have engaged in practice regulated by the department without appropriate license or registration.

I. A respondent whose license has been revoked may reapply for licensure one year from the effective date of the revocation.

(1) The department shall have discretion to approve or to reject any application for reinstatement of the license following the one year period of revocation.

(2) If the department determines that rejection of the application for reinstatement of the license will be considered, it shall do so only in accordance with the notice and hearing provisions of the Uniform Licensing Act.

(3) No application for reinstatement shall be granted unless all fines and costs assessments related to the license revocation proceeding shall have been paid in full.

[16.48.9.12 NMAC – N, 12/28/2021; A, 7/18/2023]

#### **16.48.9.13 DEPARTMENT REVIEW AND ACTION UPON APPLICANT BACKGROUND CHECK RESULTS:**

A. The department will review each application received pursuant to 16.48.2 NMAC.

B. If the department determines that additional documentation is required because the application is not complete, or if the department has any questions about the application, the department may request that the applicant provide a written clarifying statement or additional documentation including any additional documents or written clarifying statements related to federal or department of public safety background check results.

C. The department will refer to the office of the attorney general for notice of contemplated action, any applications that produce evidence of a violation of the Private Investigations Act.

[16.48.9.13 NMAC – N, 12/28/2021]

#### **16.48.9.14 CRIMINAL CONVICTIONS:**

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

**(1)** private investigations company, and private patrol company, includes individuals or all owners, officers or directors or members of the entity: a felony offense including an offense involving dishonesty or involving an intentional violent act or illegal use or possession of a deadly weapon;

**(2)** private investigator, and private investigations manager: a felony offense including an offense involving dishonesty or an intentional violent act or illegal use or possession of a deadly weapon;

**(3)** polygraph examiner: a felony involving an intentional violent act or the illegal use or possession of a deadly weapon;

**(4)** private patrol operator or private patrol operations manager: a felony offense including an offense involving dishonesty or intentional violent act or illegal use or possession of a deadly weapon;

**(5)** private investigations employee: a felony involving an intentional violent act or illegal use or possession of a deadly weapon; and

**(6)** security guard level one, level two, and level three: a felony offense, including an offense involving dishonesty or involving an intentional violent act or illegal use or possession of a deadly weapon.

**B.** The department shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** Nothing in this rule prevents the department from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violates the Private Investigations Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** In connection with an application for licensure, the department shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

**(3)** a juvenile adjudication; or

**(4)** a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.48.9.14 NMAC – N, 12/28/2021]

**16.48.9.15 DISIPINARY ACTIONS ARE PUBLIC RECORD:**

Any disciplinary action including complaints, witness statements, supporting documents, pre-NCA settlement agreements, or post-NCA settlement agreements, are public record unless expressly exempt under the Inspection of Public Records Act. Final pre-NCA settlement agreements and final orders issued by the superintendent may be posted on the department's website.

[16.48.9.15 NMAC – N, 12/28/2021]

**16.48.9.16 UNIFORM LICENSING ACT PROTECTION FROM LIABILITY FOR COMPLAINANT:**

Pursuant to Subsection G of Section 61-1-7 NMSA 1978, There shall be no liability on the part of, and no action for damages against, a person who provides information to the department in good faith and without malice in the reasonable belief that such information is accurate. An applicant, a licensee or registrant, who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the department shall be subject to disciplinary action.

[16.48.9.16 NMAC – N, 12/28/2021]

## **CHAPTER 49-59: [RESERVED]**

## **CHAPTER 60: PUBLIC ACCOUNTANTS**

### **PART 1: GENERAL PROVISIONS**

**16.60.1.1 ISSUING AGENCY:**

State of New Mexico Public Accountancy Board.

[16.60.1.1 NMAC - Rp 16 NMAC 60.1.1, 2/14/2002]

**16.60.1.2 SCOPE:**

General public, all individuals certified/licensed as a certified public accountant (CPA) or registered public accountant (RPA), individuals seeking to be a CPA and all CPA/RPA business entities registered as a firm or seeking registration as a CPA/RPA firm with the board.

[16.60.1.2 NMAC - Rp 16 NMAC 60.1.2, 2/14/2002]

**16.60.1.3 STATUTORY AUTHORITY:**

Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.1.3 NMAC - Rp 16 NMAC 60.1.3, 2/14/2002]

**16.60.1.4 DURATION:**

Permanent.

[16.60.1.4 NMAC - Rp 16 NMAC 60.1.4, 2/14/2002]

**16.60.1.5 EFFECTIVE DATE:**

February 14, 2002, unless a later date is cited at the end of a section.

[16.60.1.5 NMAC - Rp 16 NMAC 60.1.5, 2/14/2002]

**16.60.1.6 OBJECTIVE:**

The objective of Chapter 16, Part 1 is to establish the general provisions for the rules filed in this chapter; provide definitions of terms for rules filed in this chapter; delineate the headquarters location of the board and board operations; and prescribe board fees for public accountancy board certification, licensing and firm registration actions, and board services.

[16.60.1.6 NMAC - Rp 16 NMAC 60.1.6, 2/14/2002]

**16.60.1.7 DEFINITIONS:**

**A. "Acceptance letter"** means a document issued by the sponsoring organization indicating the peer review report has been accepted and, if applicable, any remedial/corrective actions to be agreed to and completed by the firm.

**B. "Accounting and auditing services"** for peer review purposes means providing any one or more of the following:

(1) engagements performed in accordance with the "statements on auditing standards";

(2) engagements, other than preparation services, performed in accordance with the "statements on standards for accounting and review services";

(3) examination, review or agreed upon procedures engagements performed in accordance with the "statements on standards for attestation engagements"; or

(4) engagements performed in accordance with public company accounting oversight board (PCAOB) standards that are not subject to PCOAB permanent inspection.

C. "**Act**" means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA1978.

D. "**Agreed upon procedures**" are those which are to be performed in accordance with applicable attestation standards. They are also those in which a license is engaged to issue a written finding that is based on specific procedures that the specified parties agreed are sufficient for their purpose, is restricted to the specified parties, and does not provide an opinion or negative assurance.

E. "**Attest**" means to provide the following services:

(1) An audit or other engagement performed in accordance with the statements on auditing standards;

(2) a review of a financial statement performed in accordance with the statement on standards for accounting and review services;

(3) an engagement performed in accordance with the statements on standards for attestation engagements adopted by the board; and

(4) an engagement to be performed in accordance with the auditing standards of the public company accounting oversight board.

F. "**Blended learning**" is an educational program incorporating different learning or instructional delivery methods, both asynchronous and synchronous learning activities, or different levels of guidance.

G. "**Client**" means the person or entity who retains a licensee for the performance of professional services.

H. "**Completion letter**" means a document issued by the sponsoring organization after a firm has provided evidence of remedial/corrective actions taken, which were specified in the acceptance letter, and its peer review committee has determined no further actions are required.

I. "**Disqualifying criminal conviction**" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

J. "**Electronic mail or an Email**" means an electronic mail message created in or received through an electronic mail system, including all attachments that are sent over a communications network, using a computer or other electronic device.

**K. "Electronic Signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**L. "Enterprise"** means any person or entity who retains a licensee for the performance of professional services.

**M. "Financial statements"** means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

**N. "He, his, him"** means masculine pronouns when used herein also include the feminine and the neuter.

**O. "Holding out to the public as a permit holder or registered firm"** means the phrase "holding himself out to the public as a permit holder or registered firm" as used in the definition of "practice of public accountancy" in Section 3L of the act, and in these rules it means any representation, other than by an individual holding a certificate or firm registration issued by this board pursuant to the 1999 Public Accountancy Act, Sections 61-28B-7 thru 61-28B-9, 61-28B-1 or 61-28B-13 NMSA 1978, of the fact that a certificate holder holds a permit, certificate or is a registered firm in connection with the performance of, or an offer to perform, services for the public, except as allowed under the practice privilege pursuant to the 1999 Public Accountancy Act, Sections 61-28B-26 NMSA 1978. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

**P. "License"** has the same meaning as defined in Subsection C of Section 61-1-2 NMSA 1978.

**Q. "Licensing fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

**R. "Mail"** as used in the rules shall include mail sent by the United States Postal Service or commercial courier.

**S. "Manager"** has, when used in these rules, the same meaning as the term "manager" in a limited liability company.

**T. "Member"** has, when used in these rules, the same meaning as the term "member" in a limited liability company.

**U. "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**V. "Nano learning program"** is a program designed to permit a participant to learn a given subject in a minimum of 10 minutes and less than 20 minutes through the use of electronic media (including technology applications and processes and computer-based or web-based technology) and without interaction with a real-time instructor. A nano learning program differs from a self-study program in that it is typically focused on a single learning objective and is not paper-based. A nano learning program is not a group program. Nano learning is not a substitute for comprehensive programs addressing complex issues.

**W. "Non-technical"** fields of study are subjects that contribute to the maintenance and/or improvement of the competence of a CPA in areas that indirectly relate to the CPA's field of business and subject to board determination. These fields of study include, but are not limited to:

- (1) Behavioral ethics
- (2) Business management & organization
- (3) Communications and marketing
- (4) Computer software and applications
- (5) Personal development
- (6) Personnel/human resources;
- (7) Production

**X. "PCAOB"** means the public company accounting oversight board.

**Y. "Peer review program"** means the sponsoring organization's entire peer review process, including but not limited to the standards for administering, performing and reporting on peer reviews, oversight procedures, training, and related guidance and materials.

**Z. "Peer review committee"** means a committee comprised exclusively of CPAs practicing public accountancy and formed by a sponsoring organization for the purpose of overseeing the administration, acceptance, and completion of peer reviews.

**AA. "Peer review oversight committee"** means a board appointed committee to provide oversight of the sponsoring organization in order to provide reasonable assurance that peer reviews are being administered, conducted, and reported on in accordance with the minimum standards for performing and reporting on peer reviews.

**BB. "Practice"** means performing or offering to perform public accountancy for a client or potential client by a person who makes a representation to the public as a certified public accountant or a registered firm.

**CC. "Public Accountancy"** means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters.

**DD. "Practice Privilege"** as defined in the 1999 Public Accountancy Act, Section 61-28B-26, a person whose principal place of business or residence is not in New Mexico shall be presumed to have qualifications substantially similar to New Mexico's requirements, may exercise all the practice privileges of certificate holders of New Mexico without the need to obtain a certificate pursuant to the 1999 Public Accountancy Act, Sections 61-28B-9 NMSA 1978, if the individual meets the requirements of the 1999 Public Accountancy Act, Section 61-28B-26.

**EE. "Professional engagement"** means a written or oral agreement between a client and a licensee relative to the performance of professional services and the services performed under this agreement. Oral agreements may only be used when allowed by professional standards.

**FF. "Professional services"** means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

**GG. "Public communication"** means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

**HH. "Quality review"** means an interchangeable term for peer review.

**II. "Report"** As provided in Section 61-28B-3 N of the act, the term "report" includes the issuance of reports in conjunction with an accounting and auditing practice using the forms of language set out in the American institute of certified public accountants (AICPA) "statements on auditing standards," "statements on standards of accounting and review services," "statements on standards for attestation engagements," and PCOAB standards.

**JJ. "Services involving accounting or auditing skills"** means "services involving accounting or auditing skills" as used in the definition of "practice of public accountancy" in Sections 3K and L of the act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

**KK. "Sponsoring Organization"** means a board approved professional society, or other organization responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards.

**LL. "Statement of compliance"** means a certified statement from the human services department (HSD) stating that an applicant or licensee is in compliance with a judgment and order for support.

**MM. "Statement of non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

**NN. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Act.

**OO. "Technical"** fields of study are technical subjects that contribute to the maintenance and/or improvement of the competence of a CPA in the profession of accountancy and that directly relate to the CPA's field of business. These fields of study include, but are not limited to:

- (1) Accounting
- (2) Government accounting
- (3) Auditing
- (4) Government auditing
- (5) Business law
- (6) Economics
- (7) Finance
- (8) Information technology
- (9) Management services

- (10) Regulatory ethics
- (11) Specialized knowledge
- (12) Statistics
- (13) Taxes

**PP.** "Veteran" has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.60.1.7 NMAC - Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 2/14/2002; A, 11/30/2007; A, 4/15/2008; A, 6/30/2008; A, 1/17/2013; A, 9/15/2015; A, 10/1/2016; A, 10/1/2020; A, 12/12/2021]

#### **16.60.1.8 HEADQUARTERS OF THE BOARD:**

The headquarters, administrative offices, and staff of the board shall be physically located at 5500 San Antonio Dr. NE, Suite A, Albuquerque, New Mexico, 87109 or a subsequent location subject to the board's approval and ratification.

[16.60.1.8 NMAC - Rp 16 NMAC 60.1-8, 2/14/2002; A, 12/30/2004; A, 3/3/2017]

#### **16.60.1.9 BOARD OPERATION:**

**A.** The board may meet at least 6 times each year. The chair or a quorum of the board shall have the authority to call meetings of the board. The board shall follow and apply the rules of procedure of the State of New Mexico Open Meetings Act, Sections 10-15-1 to 10-15-4, as regards notice and conduct of meetings.

**B.** The board shall elect annually from among its members a chair, vice-chair, secretary/treasurer and such other officers as the board may require. The officers shall assume the duties of their respective offices at the conclusion of the meeting at which they were elected. Board officers shall serve a term of 1 year but shall be eligible for reelection.

**C.** The chair or, in the event of the chair's absence or inability to act, the vice-chair shall preside at all meetings of the board. The board shall determine duties of other officers.

[16.60.1.9 NMAC - Rp 16 NMAC 60.1.9, 2/14/2002; A 10/1/2020]

#### **16.60.1.10 FEES AND OBLIGATIONS:**

Fees charged by the board shall be as follows.

**A.** Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

**B.** Initial examination qualification review under Section 27F of the act shall be \$75.

**C.** Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$100.

**D.** Certificate application under Section 27B of the act shall be: initial certificate, \$175; certificate renewal, \$130.

**E.** No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

**F.** Firm permit application or renewal fee under Section 27C of the act shall be \$75 for each firm, regardless of form of entity.

**G.** Firm permit renewal delinquency fee under Section 27C of the act shall be \$100 and includes all practitioners whose renewal applications are delinquent.

**H.** Certificate/license/ firm permit reinstatement fee under Section 27H of the act shall be \$175. For certificate/individual license reinstatements only, reinstatement fee and an additional fee of the current year's renewal fee. No delinquency fee shall be assessed.

**I.** Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

**J.** Administrative fees for services under Section 27F shall be:

- (1)** list of certificate or permit holders, \$250;
- (2)** duplicate or replacement certificate card or permit card, \$10 each;
- (3)** duplicate or replacement wall certificate, \$25 each;
- (4)** board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;
- (5)** certificate application package for reciprocity, \$20 each;
- (6)** grade transfer candidates, \$75 each;

(7) replacement packages for by-examination candidates, \$75 each;

(8) copies of combined Accountancy Act and board rules, \$10 each;

(9) copies of records and documents, \$.25 per page; and

(10) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

**K.** Fee for the transfer of licensure or examination information to a third party under Section 27E of the act shall be \$75.

**L.** Fee for criminal history background check under Section 8.1 of the act shall be the amount established by the department of public safety for the processing of criminal history background checks.

**M.** The board may waive charges as it deems appropriate.

**N.** All fees are non-refundable.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 2/14/2002; A, 1/15/2004; A, 4/29/2005; A, 11/30/2007; A, 6/30/2008; A, 5/29/2009; A, 11/13/2009; A, 9/15/2010; A, 1/17/2013, A, 12/1/2014; A, 9/15/2015; A, 10/1/2016; A 10/1/2020]

#### **16.60.1.11 PRESCRIBED FORMS:**

All requests for licensure transactions and all documentation for licensure purposes must be made on prescribed forms.

**A.** PAB 1 - Application for a New Mexico CPA Certificate by Examination.

**B.** PAB 2 - Application for a New Mexico CPA Certificate by Grade Transfer.

**C.** PAB 3 - Application for a New Mexico CPA Certificate by Reciprocity.

**D.** PAB 4 - Application for Renewal of a Current New Mexico CPA Certificate.

**E.** PAB 5 - Application for Reinstatement of a Cancelled New Mexico CPA Certificate.

**F.** PAB 6 - Application for Change of Certificate Status.

**G.** PAB 7 - Application for Firm Permit.

**H.** PAB 8 - Firm Permit Renewal Application.

- I. PAB 9 - Application for Reinstatement of an Expired Firm Permit.
- J. PAB 11 - Interstate Exchange of Information Form.
- K. PAB 12 - Work Experience Verification Form.
- L. PAB 13 - Interstate Notification of Verifying CPA's License.
- M. PAB 14 - Report of Continuing Professional Education.
- N. PAB 15 - Interstate Verification of Examination Scores.

[16.60.1.11 NMAC - N, 7/30/2004; A, 5/15/2006; A, 6/30/2008]

## **PART 2: CERTIFIED PUBLIC ACCOUNTANT (CPA) EXAMINATION REQUIREMENTS**

### **16.60.2.1 ISSUING AGENCY:**

State of New Mexico Public Accountancy Board.

[16.60.2.1 NMAC - Rp 16 NMAC 60.3.1, 2/14/2002]

### **16.60.2.2 SCOPE:**

General public: all individuals seeking to become a certified public accountant.

[16.60.2.2 NMAC - Rp 16 NMAC 60.3.2, 2/14/2002]

### **16.60.2.3 STATUTORY AUTHORITY:**

Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.2.3 NMAC - Rp 16 NMAC 60.3.3, 2/14/2002]

### **16.60.2.4 DURATION:**

Permanent.

[16.60.2.4 NMAC - Rp 16 NMAC 60.3.4, 2/14/2002]

### **16.60.2.5 EFFECTIVE DATE:**

February 14, 2002, unless a later date is cited at the end of a section.

[16.60.2.5 NMAC - Rp 16 NMAC 60.3.5, 2/14/2002]

#### **16.60.2.6 OBJECTIVE:**

To delineate uniform CPA examination application procedures, education requirements, examination administration, and board procedures for dealing with cheating on the CPA examination.

[16.60.2.6 NMAC - Rp 16 NMAC 60.3.6, 2/14/2002]

#### **16.60.2.7 DEFINITIONS:**

**[RESERVED]**

[16.60.2.7 NMAC - Rp 16 NMAC 60.3.7, 2/14/2002]

#### **16.60.2.8 APPLICATION PROCEDURES:**

**A.** The board may contract as its agent CPA examination services (CPAES), the national association of state boards of accountancy (NASBA), or the American institute of certified public accountants (AICPA) or other entities it deems appropriate to undertake any aspects of examination development, delivery, administration, qualification, or application that the board considers necessary and appropriate in its oversight and administration of the uniform CPA examination.

**B.** Applicants for the CPA examination shall meet the requirements of Section 8 of the act and the provisions set forth in this rule.

**C.** An application will not be considered filed until all application/qualification fees and examination fees required by these rules and all required supporting documents have been received, including photographs, official transcripts, and proof that the applicant has completed the education requirement.

**D.** An applicant who fails to appear for the examination shall forfeit all fees charged for both the application and the examination.

**E.** Prospective applicants for the CPA examination shall demonstrate to the board's satisfaction that all education requirements are met.

**F.** The board or its designee shall forward notification of eligibility to NASBA's national candidate database.

**G.** Upon registering for any section of the examination, an applicant must sit for that section of the examination within six months from the date on which he is deemed eligible to sit for that section.

[16.60.2.8 NMAC - Rp 16 NMAC 60.3.9.1, 16 NMAC 60.3.9.2, & 16 NMAC 60.3.9.3, 2/14/2002; A, 1/15/2004; A, 12/30/2004; A, 6/30/2008]

### **16.60.2.9 EDUCATION REQUIREMENTS:**

**A.** After July 1, 2008, Section 8C of the act requires an applicant for the uniform CPA examination to hold a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with 30 semester hours in accounting or the equivalent as determined by the board.

**B.** After July 1, 2008, Section 8C of the act requires an applicant for a certificate to have at least 150 semester hours of college education or its equivalent earned at a college or university acceptable to the board. Any course for which credit has been awarded by the institution will be accepted toward meeting the 150-semester hour requirement.

**C.** The board will accept not fewer than 30 semester hours of accounting or audit related courses (3 semester hours may be in business law), without repeat, from a board-recognized educational institution. The recognized educational institution must have accepted them for the purposes of obtaining a baccalaureate degree or equivalent, and they must be shown on an official transcript.

**D.** A prospective CPA examination or CPA certificate candidate is considered as graduating from an accredited college or university acceptable to the board if, at the time the educational institution grants the applicant's degree, it is accredited at the appropriate level as outlined in these rules. As used in these rules, "accreditation" refers to the process of quality control of the education process. There are 3 different levels of accreditation referred to in these rules, and the degree to which the board relies on accreditation differs according to the level at which the degree granting institution is accredited. In reviewing and evaluating a candidate's educational credentials, the board may rely on accreditation by an accrediting agency at 3 different levels.

**E.** Level 1 accreditation is associated with the four-year, degree-granting college or university itself. The institution must be accredited by 1 or more of the following board-recognized regional accrediting agencies (or successor agencies):

- (1) middle states association of colleges and secondary schools;
- (2) New England association of schools and colleges;
- (3) north central association of colleges and secondary schools;
- (4) northwest association of schools and colleges;
- (5) southern association of colleges and schools;
- (6) western states association of schools and colleges; and
- (7) accrediting council for independent colleges and schools.

**F.** Level 2 accreditation is associated with a business school or college of business. The unit must be accredited by a national accreditation agency recognized by the board, such as the American assembly of collegiate schools of business (AACSB), following a specific and comprehensive review of its faculty, resources, and curricula. In evaluating a candidate's credentials, the board may choose to rely on this accreditation as evidence that the institution's business school has met minimum overall standards of quality for such schools.

**G.** Level 3 accreditation is associated with an accounting program or department. The program or department must be accredited by a national accreditation agency recognized by the board such as the AACSB. Accounting programs or departments accredited in this manner have met standards substantially higher and much more specific than those required for level 1 or level 2 accreditation. For level 3 accreditation, the accounting program or department must meet a stringent set of standards that addresses faculty credentials, student quality, physical facilities, and curricula. Graduates who submit transcripts from accredited accounting programs may be deemed to have met the board's specific accounting and business course requirements.

**H.** If an educational institution was not accredited at the time an applicant's degree was received but is so accredited at the time the application is filed with the board, the institution will be deemed to be accredited for the purposes of this rule provided that it:

(1) certifies that the applicant's total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(2) furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the pre-accrediting courses used to qualify the applicant as an accounting major are substantially equivalent to post-accrediting courses.

**I.** If an applicant's degree was received at an accredited educational institution as defined in this rule, but the educational program which was used to qualify the applicant as an accounting major included courses taken at non-accredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which applicant's degree was received, provided the accredited institution either:

(1) has accepted such courses by including them in its official transcript; or

(2) certifies to the board that it will accept such courses for credit toward graduation.

**J.** A graduate of a four-year, degree-granting institution not accredited at the time the applicant's degree was received or at the time the application was filed will be deemed to be a graduate of a four-year accredited educational institution if:

(1) either the NASBA international evaluation service or a credentials evaluation service that is a member of the national association of credential evaluation services certifies that the applicant's degree is equivalent to a degree from an accredited educational institution defined in this rule; or if

(2) an accredited educational institution as defined in this rule accepts the applicant's non-accredited baccalaureate degree for admission to a graduate business degree program; the applicant satisfactorily completes at least 15 semester hours or the equivalent in post-baccalaureate education at the accredited educational institution, of which at least 9 semester hours, or the equivalent, shall be in accounting; and the accredited educational institution certifies that the applicant is in good standing for continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

**K.** Advanced subjects completed to qualify under the above section may not be used to satisfy education requirements.

**L.** The board may provide a mechanism to recognize educational institutions that are not accredited at the institutional, business school, accounting program, or department level.

**M.** The accounting education concentration or equivalent contemplated by the act shall consist of semester hours of credit earned as in a conventional college semester. Quarter hours will be converted by multiplying the quarter hours earned by two-thirds to determine semester hours earned. No more than 30 semester hours will be recognized for internships or life experience.

[16.60.2.9 NMAC - Rp 16 NMAC 60.3.8, 2/14/2002; A, 6/15/2004; A, 6/30/2008; A, 1/17/2013]

#### **16.60.2.10 EXAMINATION ADMINISTRATION:**

**A.** Time and place of examination: Eligible applicants shall independently contact a test center operator identified by the board to schedule the time and place for the examination at an approved test site. Candidates may retake a test section once their score for any previous attempt of that same test section has been released.

**B.** Examination subjects: The examination required by the act shall test the knowledge and skills required for performance as an entry-level certified public accountant and shall include the subject areas of accounting and auditing and such related subjects as the board may require.

**C.** Provisional scores shall be released to the candidate following each test. All examination scores shall be considered provisional until approved by the board's administrative staff. Scores must be approved by the board's administrative staff prior to the issuance of certificates requiring such scores.

**D.** Pursuant to paragraph 1 of subsection D of 1.18.420.431 NMAC, once provisional scores have been approved by the board, they shall remain on file for 10 years beyond the date on which the final section of the examination was passed. If the candidate does not apply for an initial license within five years of passing the final section of the examination, the scores will be presented to the Board to determine validity.

[16.60.2.10 NMAC - Rp 16 NMAC 60.3.9.3, 2/14/2002; A, 1/15/2004; A, 6/30/2008; A, 12/1/2014; A 10/1/2020]

**16.60.2.11 [RESERVED]**

[16.60.2.11 NMAC - N, 2/14/2002; Repealed, 6/30/2008]

**16.60.2.12 CPA EXAMINATION CHEATING:**

Cheating by an applicant in applying for or taking the examination will be deemed to invalidate any grade otherwise earned by a candidate on any part of the examination and may warrant summary expulsion from the examination and disqualification from taking the examination for a specified number of subsequent sittings.

**A.** For purposes of this rule, the following actions, among others, may be considered cheating:

(1) falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(2) communication between candidates inside or outside the examination room while the examination is in progress;

(3) communication with others outside the examination room while the examination is in progress;

(4) substitution of another person to sit in the examination room in the stead of a candidate and write one or more of the examination papers;

(5) possession of or reference to crib sheets, textbooks, electronic devices or other material inside or outside the examination room while the examination is in progress;

(6) copying or attempting to copy another candidate's answers;

(7) failure to cooperate with testing officials;

(8) any conduct that violates the standards of test administration or violates the verbal or written instructions given by examination administrators; or

**(9)** bringing prohibited items into the examination site.

**B.** In any case where it appears to a member of the board or its representative, while the examination is in progress, that cheating has or is occurring, the board may summarily expel the candidate involved from the examination.

**C.** In any case where the board believes that it has evidence that a candidate has cheated on the examination, and in every case where a candidate has been expelled from the examination, the board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and, if so, what remedy should be applied. In such hearings, the board shall decide:

**(1)** whether the candidate shall be given credit for the section of the examination completed in that testing session;

**(2)** whether the candidate shall be allowed to take additional sections of the examination in that same testing window; and

**(3)** whether the candidate shall be barred from taking the examination in future testing windows, and if so, for how many testing windows.

**D.** In any case where the board permits a candidate to continue taking the examination, it may, depending on the circumstances:

**(1)** admonish the candidate; and

**(2)** notify the national candidate database, the AICPA, and the test center of the circumstances so that the candidate may be more closely monitored in future examinations.

**E.** In any case where a candidate is refused credit for parts of the examination taken or is expelled from the examination or disqualified from taking other parts, the board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the board, with right of appeal, pursuant to the procedures provided in the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, and Section 8B of the act.

**F.** In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the board will provide information as to its findings and actions taken to the board of accountancy of any other state to which the candidate may apply for the examination.

[16.60.2.12 NMAC - Rp 16 NMAC 60.3.9, 2/14/2002; A, 9/16/2002; A, 1/15/2004; A, 6/30/2008]

**16.60.2.13 [RESERVED]**

[16.60.2.13 NMAC - N, 1/15/2004; A, 7/30/2004; A, 1/17/2013; Repealed, 12/1/2014]

**PART 3: LICENSURE AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS**

**16.60.3.1 ISSUING AGENCY:**

State of New Mexico Public Accountancy Board.

[16.60.3.1 NMAC - Rp 16 NMAC 60.4.1 & 16 NMAC 60.6.1, 2/14/2002]

**16.60.3.2 SCOPE:**

General public: Individuals seeking to become certified public accountants (CPAs) CPAs and registered public accountants (RPAs) seeking to maintain their New Mexico certificate/license status through continuing professional education (CPE).

[16.60.3.2 NMAC - Rp 16 NMAC 60.4.2 & 16 NMAC 60.6.2, 2/14/2002]

**16.60.3.3 STATUTORY AUTHORITY:**

1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.3.3 NMAC - Rp 16 NMAC 60.4.3 & 16 NMAC 60.6.3, 2/14/2002]

**16.60.3.4 DURATION:**

Permanent.

[16.60.3.4 NMAC - Rp 16 NMAC 60.4.4 & 16 NMAC 60.6.4, 2/14/2002]

**16.60.3.5 EFFECTIVE DATE:**

February 14, 2002, unless a later date is cited at the end of a section.

[16.60.3.5 NMAC - Rp 16 NMAC 60.4.5 & 16 NMAC 60.6.5, 2/14/2002]

**16.60.3.6 OBJECTIVE:**

Protect the public interest by implementing provisions of the 1999 Public Accountancy Act (act) which provide for initial application issuance and renewal of CPA and RPA certificates/licenses; reinstatement of expired, cancelled, suspended or revoked CPA/RPA certificates; application and issuance of CPA certificates through interstate and international reciprocity; establishment of intent to practice privilege under

substantial equivalency; maintenance of professional competency through continuing professional education (CPE) of CPA and RPA certificate/license holders; and change of status application procedures between active/inactive or retired status.

[16.60.3.6 NMAC - Rp 16 NMAC 60.4.6 & 16 NMAC 60.6.6, 2/14/2002]

#### **16.60.3.7 DEFINITIONS:**

**[RESERVED]**

[16.60.3.7 NMAC - Rp 16 NMAC 60.4.7 & 16 NMAC 60.6.7, 2/14/2002]

#### **16.60.3.8 APPLICATION REQUIREMENTS:**

All certificate/license applications and renewals shall be made on and meet all information requirements contained in board prescribed forms. Applications will not be considered complete and filed with the board until all required information and board prescribed fees have been received. Electronic signatures are acceptable for applications submitted pursuant to 16.60.1 NMAC through 16.60.50 NMAC.

[16.60.3.8 NMAC - Rp. 16 NMAC 60.4.8.1, 2/14/2002; A, 10/1/2020]

#### **16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:**

**A.** An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

- (1)** lacks a history of dishonest or felonious acts;
- (2)** meets the education, experience and examination requirements of the board; and
- (3)** passes the American institute of certified public accountants ethics examination with a score of ninety percent or higher.

**B.** Integrity requirement: The board may assess integrity based upon applicant-provided references and background checks to determine an applicant's history of dishonest or felonious acts. The board may request the presence at a board meeting of an applicant for whom it has unanswered questions.

**C.** Criminal history background check: Pursuant to Section 61-28B-8.1 of the act, all applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. Applicants can submit fingerprints through the board approved live scan location prescribed by the New Mexico Department of Public Safety (DPS).

**(1)** The applicant will register online, through the approved live scan website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

**(2)** The applicant shall take their registration confirmation to an approved live scan facility and conduct the electronic fingerprinting process.

**(3)** Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**(4)** Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**D. Education and examination requirements:** Education and examination requirements are specified in Section 8 of the act and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

**E. Experience required:** Applicants documenting their required experience for issuance of an initial certificate pursuant to Subsection H of Section 7 of the act, and after July 1, 2004 Subsection H of Section 8 of the act shall:

**(1)** provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

**(2)** have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

**(a)** one year of experience or it's 2,000 hour equivalent shall consist of full or part-time employment that extends over a period of no more than three years and includes no fewer than 2,000 hours of performance of services described above;

**(b)** the CPA verifying an applicant's experience must be employed by, or a consultant to, or provide professional services to, the same organization as the applicant;

**(c)** experience documented in support of an initial application must be obtained within the seven years immediately preceding passing of the examination or within seven years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

**(d)** any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

**(e)** the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

**F.** Certificate and license issuance: upon receipt of a complete application packet and successful completion of a fingerprint background check, board staff are authorized to approve and issue a certificate and license to an applicant for whom no licensing issues are present. Pursuant to Section I of 16.60.2.13 NMAC, uniform CPA examination scores must be approved by the board's administrative staff prior to the issuance of a certificate and license to an applicant who sat for the uniform CPA examination as a New Mexico candidate.

**G.** Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license. Swearing in ceremonies may be held two times per year in locations to be determined by the board or the board's administrative staff. Upon good cause presented in writing prior to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board's administrative staff to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as deemed appropriate by the board.

**H.** Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a statement describing the occurrence that necessitated the replacement certificate or license.

**I.** Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

**(1)** The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

**(2)** Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

**(3)** Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Subsection E of Sections 9 and Subsection A of Section 12 of the act and of these rules.

**(4)** The board shall send renewal application notices no less than 30 days prior to the renewal deadline.

**J.** The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to Section 61-1-34 NMSA 1978.

**(1)** Applications for registration shall be completed on a form provided by the board.

**(2)** The applicant shall provide a complete application that includes the following information:

**(a)** applicant's full name;

**(b)** current mailing address;

**(c)** current electronic mail address, if any;

**(d)** date of birth;

**(e)** background check, if required; and

**(f)** proof as described in subsection (3) below.

**(3)** The applicant shall provide the following satisfactory evidence as follows:

**(a)** applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

**(b)** applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

**(c)** the following documentation:

**(i)** for military service member: copy of military orders;

**(ii)** for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

**(iii)** for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

**(iv)** for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

**(v)** for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

**(4)** The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

**(5)** Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**(6)** A license issued pursuant to this section shall be valid for the time period that is specified in the Act.

**(7)** A license issued pursuant to this section shall not be renewed automatically, and shall be renewed only if the licensee satisfies all requirements for the issuance and renewal of a license pursuant to the 1999 Public Accountancy Act, including Section 61-28B-9 NMSA 1978 and Subsection I of 16.60.3.9 NMAC.

**(8)** As a courtesy, the board, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification

shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 2/14/2002; A, 1/15/2004; A, 6/15/2004; A, 12/30/2004; A, 4/29/2005; A, 7/29/2005; A, 11/30/2007; A, 6/30/2008; A, 2/27/2009; A, 1/17/2013; A, 12/1/2014;A, 9/15/2015; A, 10/1/2020; A, 12/12/2021]

### **16.60.3.10 BOARD ACCEPTANCE OF GRADE TRANSFER CERTIFICATE APPLICANTS:**

**A.** The board will only accept grade transfers from applicants passing the uniform CPA examination in other jurisdictions/states for an initial CPA certificate application under the following situations:

(1) temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the grade transfer applicant was a student;

(2) temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the grade transfer applicant was on military duty;

(3) temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the candidate was on a temporary work assignment;

(4) presentation of documented evidence demonstrating current resident status in the state of New Mexico; or

(5) presentation of documented evidence demonstrating anticipated employment and residency in the state of New Mexico within 6 months of the application's date.

**B.** An applicant who resides in New Mexico and was issued a certificate in another state based upon passage of the examination but never received a license to practice will be considered for licensure by grade transfer.

**C.** The board may waive the above requirements due to hardship exceptions presented by a grade transfer certificate applicant.

[16.60.3.10 NMAC - N, 2/14/2002; A, 6/15/2004]

### **16.60.3.11 RELINQUISHING A CERTIFICATE/LICENSE:**

**A.** Any individual certificate/license holder may at any time and for any reason, subject to the approval of the board, relinquish that certificate/license to the board. An

individual relinquishing his certificate/license during the course of a disciplinary investigation or proceeding may not apply for reinstatement but may apply for the issuance of a new certificate/license upon completion of all requirements for the issuance of such certificate, including meeting all education, examination, experience, and ethics examination requirements of the act and board rules in effect at the time of the new application. This includes sitting for and passing the uniform CPA examination, meeting current experience requirements, and passing a current ethics examination.

**B.** This rule does not apply to a licensee who relinquished their license while in good standing and was not the subject of a board investigation or disciplinary proceeding at the time they relinquished their license. If an individual relinquishes their certificate/license during the course of a board disciplinary investigation or proceeding, this fact shall be disclosed in any later application for a new certificate and shall be considered before the issuance of a new certificate.

[16.60.3.11 NMAC - N, 2/14/2002]

### **16.60.3.12 REINSTATEMENT REQUIREMENTS:**

**A.** Requests to reinstate a certificate/license that lapsed or expired as a result of non-renewal shall meet all board prescribed requirements for reinstatement including the current year's renewal fee and continuing professional education. An individual whose certificate/license has been subject to board disciplinary action pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, may, upon application in writing and for good cause, request reinstatement of the certificate/license after completion of all requirements contained in the board's original order or agreement.

**B.** A reinstatement application pursuant to Section 21 of the act and this rule will be processed by the board upon the basis of the materials submitted in support thereof and supplemented by such additional inquiries as the board may require. Upon receipt of a complete reinstatement application packet and successful completion of a fingerprint background check, board staff are authorized to reinstate a certificate and license to an applicant for whom no licensing issues are present. If the individual has not held an active license in any jurisdiction within the five years preceding the date of application for reinstatement, the approval of the board will be required. For reinstatement of a certificate/license, a hearing may be held, and the board may, at its discretion, impose terms and conditions on an application following procedures the board may find suitable for the particular case.

**C.** The reinstatement request shall set out in writing the reasons constituting good cause for the relief sought and shall be accompanied by at least two supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since board disciplinary action was imposed. In considering a reinstatement application, the board may consider all activities of the applicant since the disciplinary action from which relief is sought was imposed; the offense for which the applicant was disciplined; the applicant's activities during the time the certificate/license

was in good standing; the applicant's rehabilitative efforts; restitution to damaged parties in the matter for which the penalty was imposed; and the applicant's general reputation for trust and professional probity.

**D.** No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court-imposed probation or parole.

[16.60.3.12 NMAC - Rp 16 NMAC 60.4.11, 2/14/2002; A, 12/30/2005; A, 1/17/2013; A 10/1/2020; A, 12/12/2021]

### **16.60.3.13 RECIPROCITY REQUIREMENTS:**

**A.** Interstate reciprocity: The board may issue a certificate/license to the holder of a certificate issued by a state other than New Mexico as defined under Sections 3O, 11B and D, and 26A of the act provided that the license from the other state is valid and in good standing and that the applicant:

(1) provides proof from a board-approved national qualifications service that their CPA qualifications are substantially equivalent to the CPA requirements of the act; or

(2) successfully completed the CPA examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate; and

(3) meets the experience requirements under the act and these rules for issuance of the initial certificate; and

(4) has met the CPE requirement of the state in which he is currently licensed pursuant to the act and board rules.

**B.** All applicants for licensure by reciprocity shall have passed either the American institute of certified public accountants ethics examination with a score of 90 percent or higher or an ethics examination of another state board of accountancy with a score of 90 percent or higher.

**C.** An applicant who holds a certificate from another state based upon passage of the examination but who does not hold a license to practice shall not be eligible for licensure by reciprocity.

**D.** The board may rely on the national association of state boards of accountancy (NASBA), the American institute of certified public accountants (AICPA), or other professional bodies deemed acceptable to the board for evaluation of other state's CPA qualification requirements in making substantial equivalency determinations.

**E. International reciprocity:** The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a New Mexico CPA certificate and may issue a certificate/license to the holder of a professional accounting credential issued in a foreign country.

**(1)** The board may rely on NASBA, AICPA, or other professional bodies deemed acceptable to the board for evaluation of foreign credentials in making equivalency determinations.

**(2)** The board may satisfy itself through qualifying examination(s) that the holder of a foreign country credential deemed by the board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards and the board's rules. The board will specify the qualifying examination(s) and may rely on NASBA, AICPA, or other professional bodies to develop, administer, and grade such qualifying examination(s).

**(3)** The board recognizes the existence of the international qualifications appraisal board (IQAB), a joint body of NASBA and AICPA, which is charged with:

**(a)** evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

**(b)** negotiating principles of reciprocity agreements with the appropriate professional and governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

**(4)** The board shall honor the terms of all principles of reciprocity agreements issued by IQAB.

**(5)** The board recognizes the international uniform CPA qualification examination (IQEX), written and graded by AICPA, as a measure of professional competency satisfactory to obtain a New Mexico certificate by reciprocity.

**(6)** The board may accept a foreign country accounting credential in partial satisfaction of its certificate/license requirements if:

**(a)** the holder of the foreign country accounting credential meets the issuing body's education requirement and has passed the issuing body's examination used to qualify its own domestic candidates; and

**(b)** the foreign country credential is valid and in good standing at the time of application for a certificate/license.

**(7)** The board shall accept the following foreign credentials in partial satisfaction of its certificate/license requirements:

- (a) Canadian chartered accountant;
- (b) Australian chartered accountant;
- (c) Hong Kong institute of CPAs;
- (d) Mexican contador publicos certificado;
- (e) chartered accountants in Ireland;
- (f) New Zealand chartered accountant.

**F.** An applicant for renewal of a CPA certificate/license originally issued in reliance on a foreign country accounting credential shall:

- (1) meet all board prescribed certificate/license renewal requirements; and
- (2) present documentation from the foreign country accounting credential issuing body that the applicant's foreign country credential has not been suspended or revoked and is not the subject of a current investigation; and
- (3) report any investigations undertaken or sanctions imposed by a foreign country credential body against the CPA's foreign country credential.

**G.** If the foreign country credential has lapsed, expired, or been cancelled, the applicant must present proof from the foreign country credentialing body that the certificate holder/licensee was not the subject of any disciplinary proceedings or investigations at the time the foreign country credential lapsed.

**H.** Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential by the foreign credentialing body shall be considered evidence of conduct reflecting adversely upon the CPA's fitness to retain the certificate and may be a basis for board action.

**I.** Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely on the CPA's fitness to retain a certificate/license and is a basis for board action.

**J.** The board shall notify the appropriate foreign country credentialing authorities of any sanctions imposed against a CPA. The board may participate in joint investigations with foreign country credentialing bodies and may rely on evidence supplied by such bodies in disciplinary hearings.

[16.60.3.13 NMAC - Rp 16 NMAC 60.4.9, 2/14/2002; A, 9/16/2002; A, 1/15/2004; A, 6/15/2004; A, 12/30/2004; A, 4/29/2005; A, 6/30/2008; A, 11/13/2009; A, 1/17/2013]

**16.60.3.14 SUBSTANTIAL EQUIVALENCY/INTENT TO PRACTICE REQUIREMENTS:**

**A.** Effective July 1, 2008, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Subsection A of Section 26 of the act.

**B.** The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.

**C.** A person exercising the practice privilege afforded by Section 26 of the act shall be deemed to have:

(1) submitted to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) agreed to full compliance with the act and related board rules; and

(3) consented to appointment of the state board that issued the license as agent upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against the licensee.

**D.** A person exercising the practice privilege afforded by Section 26 of the act shall cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid.

**E.** An individual who qualifies for practice privileges pursuant to Section 26 of the act may offer or render professional services whether in person or by mail, telephone, or electronic means without the need to notify the board or remit a fee.

**F.** Pursuant to the Uniform Accountancy Act, an individual entering into an engagement to provide professional services via a web site pursuant to Section 23 shall disclose, via any such web site, the individual's principal state of licensure, license number, and an address as a means for regulators and the public to contact the individual regarding complaints, questions, or regulatory compliance.

**G.** Reporting integrity violations.

(1) Any individual using practice privileges in New Mexico shall notify the board within 30 days of any occurrence described in board rule Subsection B of 16.60.5.11 NMAC.

**(2)** Any licensee of New Mexico using practice privileges in another state shall notify the New Mexico board and the state board of any other state in which said licensee uses practice privileges within 30 days of any occurrence described in board rule Subsection B of 16.60.5.11 NMAC, which includes Subsection A of 16.60.5.14 NMAC.

[16.60.3.14 NMAC - N, 2/14/2002; A, 7/30/2004; A, 7/29/2005; A, 6/30/2008; A, 1/17/2013; A, 12/12/2021]

**16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:**

**A.** The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Subsection E of Sections 9 and Subsection A of Section 12 of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period ending on the last day of the certificate/license holder's birth month.

**(1)** Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board. An initial license is the first license issued to an individual. CPE reporting will begin on the first day following the licensee's initial expiration date (birth month) for license renewal. No CPE will be required for the period between issue date and first expiration date (birth month).

**(2)** Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each reporting year. For any CPE reporting period which begins on or after January 1, 2010, continuing professional education must include a minimum of four hours of ethics education during the 36-month period after January 1, 2010. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

**(3)** The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

**(4)** Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be

postmarked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

**(5)** In the event that renewal applicants have not completed the requisite CPE by the renewal deadline, he may provide a written explanation for failure to complete CPE and may submit a written request for an extension for completion of the required CPE prior to license expiration date.

**(a)** The approval of an extension request is not automatic. The board has the discretion to grant or deny a request.

**(b)** The request for extension shall include documentation of the extenuating circumstances that prevented him from completing the CPE. A written plan of action to remediate the deficiency must accompany the renewal application and extension request.

**(c)** If a request for extension is received in the board office after the expiration date of the license, the license shall be renewed, and the file shall be referred to the board for possible disciplinary action.

**(d)** An extension up to 60 days beyond the expiration date of the license may be granted by board staff; extenuating circumstances beyond the control of the licensee necessitating an extension beyond 60 days requires the approval of the board.

**(e)** The board may waive a fine for good cause or require community service acceptable to the board.

**(f)** If all CPE requirements are not met by the expiration date of the license or granted extension date, the license shall be subject to disciplinary action.

**(6)** Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

**(7)** Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Subsection E of Sections 9 and Subsection A of Section 12 of the act and of these rules.

**(8)** Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was expired, the continuing professional education must include a minimum of four hours of ethics education during the 36 months preceding reinstatement.

**(a)** The length of expiration shall be calculated from the date the license expired to the date the application for reinstatement was received by the board office.

**(b)** If the license was expired for less than one year, documented evidence of 40 hours of CPE earned within the 12 months immediately preceding the date of application for reinstatement must be provided.

**(c)** If the license was expired for longer than one year, for the purpose of determining the number of CPE hours required, the length of expiration shall be rounded down to the last full year if the partial year was less than six months and rounded up to the next full year if the partial year was more than six months.

**B.** Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status.

**(1)** Licensees granted an exception by the board must place the word "inactive" adjacent to their CPA title on any business card letterhead, or any other document or device, with the exception of their CPA certificate, on which their CPA title appears. Licensees granted the exception who are at least 55 years of age may replace "inactive" with "retired". Any of these terms must not be applied in such a manner that could likely confuse the public as to the current status of the licensee.

**(2)** Licensees granted the use of "inactive" or "retired" may volunteer their time to nonprofit or governmental organizations, to the extent provided in the statute. Licensees may not be compensated for such volunteer work other than through reimbursement of actual expenses.

**(3)** Licensees have the responsibility to maintain professional competence relative to the volunteer services they provide even though exempt from specific CPE requirements of 16.60.3.15 NMAC.

**C.** Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

**(1)** complete board-prescribed change-of-status forms and remit related fees; and

**(2)** provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was inactive, the continuing professional education must include a minimum of four hours of ethics education during the 36 months preceding application for change of status to "active".

**(3)** If an individual has not held an active license within five years preceding the date of the application for "change of status", the approval of the board will be required.

**D. Hardship exceptions:** The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

**E. Programs qualifying for CPE credit:** A program qualifies as acceptable CPE for purposes of Subsection E of Sections 9 and Subsection A of Section 12 of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

**(1)** The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

- (a)** an hour is considered to be a 50-minute period of instruction;
- (b)** a full one day program will be considered to equal eight hours;
- (c)** only class hours or the equivalent (and not student hours devoted to preparation) will be counted;
- (d)** one-half credit increments are permitted after the first credit has been earned in a given learning activity;
- (e)** Nano-learning – The credit to be earned for a single nano-learning program is one fifth-credit. Only a total of eight CPE credit hours can be reported in a three year reporting cycle using nano-learning credits;
- (f)** for blended learning programs included in rule 16.60.3.15, the CPE credit must equal the sum of the CPE credit determination for the various completed components of the program;
- (g)** for reporting periods on or after January 1, 2010, acceptable ethics topics may include, but are not limited to, instruction focusing on the AICPA code of professional conduct, the New Mexico occupational and professional licensing code of professional conduct applicable to certified public accountants, Treasury Circular 230, malpractice avoidance, organization ethics, integrity, and the duties of the CPA to the

public, clients, and colleagues; ethics hours may be earned as part of any professional development program otherwise qualifying under this rule, provided the ethics content and the time devoted to such content are separately identifiable on the program agenda.

**(2)** Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence in accountancy.

**(3)** Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

**(4)** Credit allowed as a lecturer, discussion leader, speaker or university professor/instructor will be on the basis of one hour of preparation and one hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

**(5)** Authors of published articles, books and other publications may receive credit for their research and writing time to the extent it maintains or improves their accountancy professional competence. For the author to receive CPE credit the article, book or CPE program must be formally reviewed by an independent subject matter expert or reviewed and approved by the board. Not more than fifty percent of the total CPE credits required for the CPE reporting period can be claimed for author CPE credit. The board will determine the amount of credit awarded.

**(6)** Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a three year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

**(7)** For a continuing education program to qualify under this rule, the following standards must be met:

**(a)** an outline of the program is prepared in advance and preserved;

**(b)** the program is at least one hour in length;

**(c)** a qualified instructor conducts the program; and

**(d)** a record of registration or attendance is maintained.

**(8)** The following programs are deemed to qualify, provided the above are met:

**(a)** professional development programs of recognized national and state accounting organizations;

**(b)** technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

**(c)** no more than four hours CPE annually may be earned for board meeting attendance.

**(9)** University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

**(10)** Non-credit short courses - each class hour shall equal one hour toward the requirement and may include the following:

**(a)** formal, organized in-firm educational programs;

**(b)** programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

**(c)** formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

**(11)** The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

**(12)** For each three year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical fields of study. Technical fields of study are technical subjects that contribute to the maintenance and improvement of the competence of a CPA in the profession of accountancy and that directly relate to the CPA's field of business. Definitions of technical fields of study and non-technical fields of study can be found in section 16.60.1.17 NMAC.

**(13)** Effective for CPE reporting periods ending on or after July 31, 2007, for each three year reporting period, at least 24 of the hours reported shall not include CPE sponsored by the licensee's firm, agency, company, or organization but may include all methods of CPE delivery, provided that each hour meets the standards specified in paragraphs (1) through (10) of this Subsection.

**(14)** For each three year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

**F.** Programs not qualifying for CPE:

- (1)** CPA examination review or "cram" courses;
- (2)** industrial development, community enhancement, political study groups or similar courses, programs or seminars;
- (3)** courses, programs or seminars that are generally for the purpose of learning a foreign language;
- (4)** partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

**G.** Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

**(1)** Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

**(2)** Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of five years after program completion and at minimum shall consist of the following:

**(a)** copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

**(b)** for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

**(3)** Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

**(4)** The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are

required to provide supporting documentation or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of five years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

**(5)** In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

**(6)** An individual who has submitted records of completion, or a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum \$250.00 fine and any other penalties deemed appropriate by the board as permitted by Subsection B of Section 20 of the act.

**(7)** The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of five years after program completion.

**(8)** Licensees reporting of CPE must document their participation and retain evidence for a period of five years after course completion. Documentation and/or evidence must include, at minimum:

- (a)** sponsor name and identification number;
- (b)** title and description of content;
- (c)** date(s) of completion;
- (d)** location;
- (e)** number of credit hours; and
- (f)** name of the registered licensee who completed the course.

**(9)** The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 2/14/2002; A, 9/16/2002; A, 6/15/2004; A, 7/30/2004; A, 12/30/2004; A, 4/29/2005; A, 12/30/2005; A, 5/15/2006; A, 7/29/2007; A, 2/27/2009; A, 9/15/2010; A, 1/17/2013; A, 12/01/2014; A, 9/15/2015; A, 3/3/2017; A, 10/1/2020; A, 12/12/2021]

## **PART 4: FIRM PERMIT, PEER REVIEW REQUIREMENTS AND BUSINESS NAME PROHIBITIONS**

### **16.60.4.1 ISSUING AGENCY:**

State of New Mexico Public Accountancy Board.

[16.60.4.1 NMAC - Rp 16 NMAC 60.11.1, 2/14/2002]

### **16.60.4.2 SCOPE:**

General Public - All certified public accountant (CPA) and registered public accountant (RPA) business entities seeking authority to practice as a CPA or RPA firm.

[16.60.4.2 NMAC - Rp 16 NMAC 60.11.2, 2/14/2002]

### **16.60.4.3 STATUTORY AUTHORITY:**

1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.4.3 NMAC - Rp 16 NMAC 60.11.3, 2/14/2002]

### **16.60.4.4 DURATION:**

Permanent.

[16.60.4.4 NMAC - Rp 16 NMAC 60.11.4, 2/14/2002]

### **16.60.4.5 EFFECTIVE DATE:**

February 14, 2002, unless a later date is cited at the end of a section.

[16.60.4.5 NMAC - Rp 16 NMAC 60.11.5, 2/14/2002]

### **16.60.4.6 OBJECTIVE:**

To prescribe requirements for firm permit application, renewal and reinstatement, business name prohibitions and peer review program implementation, administration and oversight.

[16.60.4.6 NMAC - Rp 16 MAC 60.11.6, 2/14/2002]

#### **16.60.4.7 DEFINITIONS:**

**[RESERVED]**

[16.60.4.7 NMAC - Rp 16 NMAC 60.11.7, 2/14/2002]

#### **16.60.4.8 FIRM PERMIT APPLICATION, RENEWAL, REINSTATEMENT AND NOTIFICATION REQUIREMENTS:**

**A.** Pursuant to Subsection B of Section 12 and Subsections A, B, E, F and L of Section 13 of the act, any CPA or RPA acting as the sole proprietor, partner, shareholder or member of a legal business entity who performs or offers to perform accountancy for a client or potential client by holding themselves out to the public must obtain a firm permit to be granted authority to practice public accountancy as a CPA or RPA firm. Pursuant to Subsection I of Section 13 of the act, each office of the firm within New Mexico must obtain a firm permit. All firm permit applications for initial issue, renewal, or reinstatement shall be made on board-prescribed forms and meet all information and fee requirements to be considered complete and filed with the board.

**B.** Renewal requirements: Deadline for receipt of firm permit renewal applications is no later than prior to the expiration date printed on the firm permit. The board shall send firm permit renewal notices to firm permit holders no less than 30 days prior to the renewal deadline date.

**C.** Reinstatement requirements:

**(1)** Reinstatement due to non-renewal/expiration: Requests to reinstate a firm permit that lapsed or expired as a result of non-renewal shall be made on board-prescribed forms and meet all board-prescribed requirements for reinstatement including the current year's renewal fee and peer review program requirements. This rule shall not apply to firms whose permits lapsed or expired for a period of three years or more.

**(2)** Reinstatement applications for relief from disciplinary penalties: A firm whose permit to practice has been subject to board disciplinary action may apply to the board for modification of the board action after completion of all requirements contained in the board's original order:

**(a)** the application shall be in writing and substantiate the reasons constituting good cause for the relief sought; and

**(b)** shall be accompanied by at least two supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since the board action was imposed.

**D. Action by the board:** An application pursuant to Section 21 of the act will be processed by the board upon the basis of the application materials submitted, supplemented by such additional inquiries the board may require. At the board's discretion, a hearing may be held on an application following procedures the board may find suitable for the particular case.

**(1)** The board may impose appropriate terms and conditions for firm permit reinstatement or modification of board disciplinary action.

**(2)** In considering a reinstatement application, the board may consider:

**(a)** all activities of the applicant since the disciplinary penalty from which relief is sought was imposed;

**(b)** the offense for which the applicant was disciplined;

**(c)** the applicant's activities during the time the firm permit was in good standing;

**(d)** the applicant's rehabilitative efforts;

**(e)** restitution to damaged parties in the matter for which the penalty was imposed; and

**(f)** the applicant's general reputation for trust and professional probity.

**(3)** No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.

**E. Notification requirements:** A firm registered pursuant to Section 13 of the act shall file written notification with the board of any of the following events concerning the practice of public accountancy within this state within 30 days of occurrence:

**(1)** formation of a new firm;

**(2)** change in legal form or name of a firm;

**(3)** firm termination;

**(4)** establishment of a new branch office, (register by obtaining a new firm permit for the new branch office, pursuant to Subsection I of Section 61-28B-13, NMSA 1978) or the closing or change of address of a branch office in this state; or

**(5)** the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the act or these rules.

**F.** Unregistered firm compliance with applicable compliance assurance requirements: Any firm not required to register in this state, but which provides attest services as permitted under section Subsection C and D of Section 13 of the Act, shall maintain records as prescribed by 16.60.4.10 NMAC regarding its participation in a comparable compliance assurance program for any period in which the firm provided attest services in this state and shall provide copies of such records upon this board's written request; provided, however, the board shall not make such a request except upon probable cause and in accordance with the firm mobility regulations.

**G.** Electronic signature will be acceptable for applications submitted pursuant to 16.60.1 NMAC through 16.60.5 NMAC.

[16.60.4.8 NMAC - Rp 16 NMAC 60.4.11, 2/14/2002; A, 4/29/2005; A, 5/15/2006; A, 6/30/2008; A, 9/15/2015; A, 10/1/2020; A, 12/12/2021]

#### **16.60.4.9 FIRM BUSINESS NAMES PROHIBITIONS:**

**A.** Misleading firm names: A firm name or trade name is misleading pursuant to Section 19 of the act if, among other things, the firm name or trade name:

- (1) is not the lawful and registered name of the firm;
- (2) implies the existence of a corporation when the firm is not a corporation such as through the use of the words "corporation", "incorporated", "Ltd.", "professional corporation", or an abbreviation thereof as part of the firm name if the firm is not incorporated or is not a professional corporation;
- (3) implies the existence of a partnership when there is not a partnership such as by use of the term "partnership", "limited liability partnership", the abbreviation "LLP", "limited liability company", or the abbreviation "LLC" if the firm is not such an entity;
- (4) includes the name of an individual who is not a CPA if the title "CPAs" is included in the firm name or trade name, except as provided for in Subsection B of 16.60.4.9 NMAC;
- (5) includes information about or indicates an association with persons who are not members of the firm, except as permitted pursuant to Section 14(i) of the Uniform Accountancy Act;
- (6) includes the terms "& company", "& associate", or "group", but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other licensee;
- (7) contains any representation that would be likely to cause a reasonable person to have a false or unjustified expectation of favorable results or capabilities, through the use of a false or unjustified statement of fact as to any material matter;

**(8)** claims or implies the ability to influence a regulatory body or official;

**(9)** includes the name of an owner whose certified public accountant license has been revoked for disciplinary reasons by the board, whereby the licensee has been prohibited from practicing public accountancy or prohibited from using the title CPA or holding himself out as a certified public accountant for more than 90 days after revocation of the license.

**B. Permissible firm names:** The following types of CPA firm names are not in and of themselves misleading and are permissible:

**(1)** a firm name or trade name that includes the names of one or more former or present owners;

**(2)** a firm name or trade name that excludes the names of one or more former or present owners;

**(3)** a firm name or trade name that uses the "CPA" title as part of the firm name when all named individuals are owners of the firm who hold such title or are former owners who held such title at the time they ceased to be owners of the firm;

**(4)** a firm name or trade name that includes the name of a non-CPA owner if the "CPA" title is not a part of the firm name.

**C. Name of firm formed as a single member limited liability company (LLC):** A firm which is organized as a single member LLC under the Limited Liability Company Act, Sections 53-19-1 to 53-19-74 NMSA 1978, or similar acts of other states may be required by the applicable LLC act to include the word "company" or "Co." in its name. For purposes of compliance with the act, the firm name shall not include more than one person's name and shall not include "and", "&" or a similar term with respect to "company" or "Co." in a manner which would imply that there was more than 1 owner of the firm.

**D. Network firms:** A network firm as defined in the AICPA code of professional conduct in effect July 1, 2011 may use a common brand name, or share common initials, as part of the firm name. Such a firm may use the network name as the firm's name, provided it also shares one or more of the following characteristics with other firms in the network:

**(1)** common control, as defined by generally accepted accounting principles in the United States, among the firms through ownership, management, or other means;

**(2)** profits or costs, excluding costs of operating the association, costs of developing audit methodologies, manuals and training course, and other costs that are immaterial to the firm;

(3) common business strategy that involves ongoing collaboration among the firms whereby the firms are responsible for implementing the association's strategy and are held accountable for performance pursuant to that strategy;

(4) significant part of professional resources;

(5) common quality control policies and procedures that participating firms are required to implement and that are monitored, as defined by peer review standards, by the association.

[16.60.4.9 NMAC - Rp 16 NMAC 60.4.10, 2/14/2002; A, 6/30/2008; A, 1/17/2013]

#### **16.60.4.10 PEER REVIEW REQUIREMENTS:**

**A. Participation:** A firm seeking to obtain or renew a firm permit to provide accounting and auditing services in New Mexico must be enrolled in a peer review program and undergo a peer review pursuant to Section 6.60.4.10 B of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], Peer review program objectives are established pursuant to Section 13L of the act to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. Emphasis is on education, including appropriate education programs or remedial procedures that may be recommended or required where reporting does not comply with appropriate professional standards.

(1) Firms contracting to perform audits of state agencies as defined in the audit act must also comply with peer review standards applicable to those audits.

(2) Participation is required of each firm registered with the board who provides accounting or auditing services pursuant to Subsection 13L of the act.

#### **B. Timing of peer reviews:**

(1) Each holder of a board-issued firm permit shall enroll in a board approved peer review program and arrange, schedule, complete and allow time for the sponsoring organization to consider their peer reviews for acceptance prior to the June 30 renewal period.

(a) Firms need to ensure that their peer review year ends and corresponding due dates allow for compliance with Subsection 13E of the act.

(b) Firms may need to consider changing their current peer review year ends and the timing of when their peer reviews are performed in order to comply.

(2) When a firm performs its first engagement requiring its initial peer review, the firm shall be enrolled in a board approved peer review program by the report date of

the first engagement, and the due date ordinarily will be 18 months from the report date of that engagement.

- (a)** The initial peer review must report on the firm's practice for a full year.
- (b)** The requirements of Subsection 13L of the act regarding permit renewal are initially applicable to the firm the first June 30 renewal period after the 18 month due date.
- (c)** Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than six months prior to expected completion date of the peer review.

**(4)** The board may grant extensions up to 180 days from the original due date in order for the firm to comply with the peer review requirements in Subsection 13E and 13L of the act. All requests for extensions shall be submitted to the board in writing by the firm no later than 30 days prior to renewal date and should include any extensions approved by the sponsoring organization. The board may recognize extensions granted by the sponsoring organization. The board has the authority at its sole discretion to grant any reasonable extensions that it deems necessary and extensions are ordinarily granted for the following reasons:

- (a)** health;
- (b)** military service; or
- (c)** other good cause clearly outside the control of the firm.

**C.** Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than six months prior to expected completion date of the peer review.

**D.** Exemptions: A firm which does not perform accounting or auditing engagements, including but not limited to audits, reviews, compilations, attestations, forecasts, or projections is exempt from the peer review program and shall re-certify annually to the board as to this exempt status as part of the firm permit renewal process. A previously exempt firm which begins providing the above described services must initiate and complete a review within 18 months of the date the services were first provided.

**E.** Reporting to the board: Firms are required to submit a copy of the following documents related to its most recently accepted peer review to the board:

- (1)** peer review report which has been accepted by the sponsoring organization;

(2) the firm's letter of response (accepted by the sponsoring organization), if applicable;

(3) the acceptance letter from the sponsoring organization;

(4) letter(s) signed by the firm acknowledging that the firm agrees to take any actions required by the sponsoring organization, if applicable;

(5) the completion letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.

(6) Upon request of the board, any correspondence from the sponsoring organization regarding the scheduling or completion of a peer review.

**F.** Submission of documents: the above documents shall be submitted by the firm to the board via mail, or electronically or digitally as follows:

(1) The documents in Paragraph (1) through (3) of Subsection E of 16.60.4.10 NMAC shall be submitted within 30 days of the sponsoring organization's acceptance.

(2) The documents in Paragraph (4) of Subsection E of 16.60.4.10 NMAC within 30 days from the date the letter is signed by the firm, or with submission of firm renewal application, whichever occurs first.

(3) The documents in Paragraph (5) of Subsection E of 16.60.4.10 NMAC shall be submitted to the board within 30 days of the date of the letter.

(4) The documents in Paragraph (6) of Subsection E of 16.60.4.10 NMAC shall be submitted to the board within 30 days of receiving the documents by the firm or upon request by the board.

(5) If the firm cannot submit the documents in Paragraphs (1) through (5) of Subsection E of 16.60.4.10 NMAC within the stated timeframe or, at the maximum, 180 days after the scheduled due date of the peer review, the firm must submit a letter to the board via mail, electronically or digitally explaining its failure to comply. The board may take disciplinary action for failure to comply.

(6) Firms may also satisfy this document submission requirement by having the sponsoring organization make the documents described in Paragraphs (1) through (5) of Subsection E of 16.60.4.10 NMAC available to the board within the stated time frames via the AICPA facilitated state board access (FSBA) secure website process.

**G.** Additional information to be provided by firms or the sponsoring organization, upon request by the board, shall provide written permission for the sponsoring organization to provide information to the board. Permission may be granted annually

on the firm renewal form. Such information may include the following (or similar) types of objective information about a firm's review, if known:

- (1) the date the review is or was scheduled to take place;
- (2) the name of the reviewing firm, team captain or review captain;
- (3) if the field work on the peer review has commenced;
- (4) the date the exit conference was expected to or did occur;
- (5) a copy of any extension approval letters;
- (6) whether the peer review working papers have been received by the sponsoring organization;
- (7) whether a must select engagement was included in the scope of engagements reviewed;
- (8) if a technical review is in progress;
- (9) whether the review has been presented to a report acceptance body (RAB);
- (10) the date the review is expected to be presented to the report acceptance body;
- (11) if the firm is going through fair procedures to determine whether it is cooperating with the peer review.

**H.** Approved peer review sponsoring organizations, programs and peer review standards:

- (1) The board shall approve sponsoring organizations, peer review program(s) and standards.
- (2) The board adopts the American institute of certified public accountants (AICPA) as an approved sponsoring organization and its peer review program and the New Mexico society of CPAs (NMSCPA) or its successor and other peer review programs administered by entities fully involved in the administration of the AICPA peer review program. These organizations are not required to submit a plan of administration to the board for approval. The board may approve other sponsoring organizations and peer review programs.
- (3) Any board approved peer review program and any peer reviewer performing a peer review under this section shall utilize standards for performing and

reporting on peer reviews by a recognized national accountancy organization whose standards are generally accepted by other regulatory authorities in the United States, including but not limited to the AICPA *Standards for Performing and Reporting on Peer Review*.

**(4)** The board may terminate its approval of a sponsoring organization for cause following notice and opportunity for hearing. For purposes of this paragraph, "cause" includes but is not limited to failure to maintain an ongoing compliance with the requirements.

**(5)** For an organization, not specifically identified in these rules as board-approved, to receive board approval for its peer review program and standards, the organization must submit evidence to the satisfaction of the board. At a minimum, the evidence shall include the standards, procedures, guidelines, oversight process, training materials and related documents used to administer, perform, and accept peer reviews. The board has the authority to request any other documents/ information from an organization about its peer review program in determining whether to grant approval.

**(6)** For firms required to be registered with an inspected by the public company accounting oversight board (PCAOB), the board approves the PCAOB's inspection process for reviewing practices subject to its authority (which are not included in the scope of peer review programs). Firms receiving inspections under the PAOB are also required to meet the peer review requirements under a board-approved peer review program that covers the portion of the firm's practice not subject to the PCAOB inspection process, should the firm have such a practice.

**I. Authority and function of peer review oversight committee:**

**(1)** The board may appoint up to five individuals licensed in this or another state to a peer review oversight committee to monitor programs administered by the sponsoring organization and report periodically to the board. Peer review oversight committee members shall not be current members of the board or perform any enforcement related work for regulator or governmental bodies, professional organizations (including but not limited to an AICPA ethics committee, AICPA joint trial board or state professional ethics committee) or similar groups or subgroups, including consultants and other similar arrangements for the board; and may be removed or replaced by the board at its discretion.

**(2)** Each committee member shall annually sign a confidentiality statement indicating they will not divulge any information to the board or any other person or entity that would identify any firm, licensee, or peer reviewer/reviewing firm.

**(3)** The peer review oversight committee may conduct oversight of approved sponsoring organization to provide reasonable assurance that the program it is administering is complying with the minimum standards for performing and reporting on peer reviews. The committee shall report to the board any modifications to the

sponsoring organization and shall make the recommendations regarding their continued approval.

**(a)** Oversight procedures to be performed by the peer review oversight committee may consist of, but are not limited to, the following activities:

- (i)** visit the sponsoring organization for the approved peer review program;
- (ii)** review the sponsoring organization's procedures for administering the program;
- (iii)** meet with the sponsoring organization's RAB during consideration of peer review documents;
- (iv)** review the sponsoring organization's compliance with their programs.

**(b)** The peer review oversight committee shall verify that firms comply with peer review requirements as follows:

- (i)** verification may include review of the peer review report, the firm's response to the matters discussed in the peer review report, and the acceptance letter outlining any additional corrective or monitoring procedures, and the letter(s) signed by the sponsoring organization notifying the firm that required actions have been appropriately completed;
- (ii)** any other actions deemed necessary by the peer review oversight committee to assure compliance with peer review standards.

#### **J.** Disciplinary action:

**(1)** The board shall take disciplinary action against a firm for failure to comply with peer review requirements. Actions may include, but are not limited to, remedial and corrective procedures, fines, and denial of firm registration.

**(2)** In the event a firm is unwilling or unable to comply with established standards, or a firm's professional work is so egregious as to warrant disciplinary action, the board shall take appropriate action to protect the public interest.

**(3)** Peer review documents must be submitted to the board office in accordance with Subsection F of 16.60.4.10 NMAC.

**(a)** For each day the firm is delinquent in submitting the documents, the board may assess a fine of \$10 per day not to exceed \$1,000.

(b) If peer review documents are submitted more than 100 days late, a notice of contemplated action may be issued against all licensees listed on the most recent firm permit renewal application as owners of the firm.

(4) Requests for extensions must be submitted no later than 30 days prior to renewal date as required by Paragraph (4) of Subsection B of 16.60.4.10 NMAC.

**K.** Privileged information: A report, statement, memorandum, transcript, funding record, or working paper prepared for and an opinion formulated in connection with any positive enforcement or peer review is privileged information held by the sponsoring organization and may not be subject to discovery, subpoena, or other means of legal compulsion for release to any person and is not admissible as evidence in any judicial or administrative proceeding except for a board hearing.

**L.** In the event a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered to be the succeeding firm, if any. The succeeding firm shall retain its peer review status and the review due date.

[16.60.4.10 NMAC - Rp 16 NMAC 60.11.8 & 16 NMAC 60.11.9, 2/14/2002; A, 6/15/2004; A, 12/30/2005; A, 6/30/2008; A, 9/15/2015; A, 10/1/2016]

#### **16.60.4.11 [RESERVED]**

[16.60.4.11 NMAC - Rp 16 NMAC 60.4.10 through 60.4.16, 2/14/2002; A, 1/15/2004; A, 9/15/2015; Repealed, 10/1/2016]

### **PART 5: CODE OF PROFESSIONAL CONDUCT**

#### **16.60.5.1 ISSUING AGENCY:**

State of New Mexico Public Accountancy Board.

[16.60.5.1 NMAC - Rp 16 NMAC 60.7.1, 2/14/2002]

#### **16.60.5.2 SCOPE:**

This part applies to the code of professional conduct as promulgated under the authority granted by applicable New Mexico statutes, which delegates to the State of New Mexico Public Accountancy Board the power and duty to prescribe rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accountancy.

[16.60.5.2 NMAC - Rp 16 NMAC 60.7.2, 2/14/2002]

#### **16.60.5.3 STATUTORY AUTHORITY:**

Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.5.3 NMAC - Rp 16 NMAC 60.7.3, 2/14/2002]

**16.60.5.4 DURATION:**

Permanent.

[16.60.5.4 NMAC - Rp 16 NMAC 60.7.4, 2/14/2002]

**16.60.5.5 EFFECTIVE DATE:**

February 14, 2002, unless a later date is cited at the end of a section.

[16.60.5.5 NMAC - Rp 16 NMAC 60.7.5, 2/14/2002]

**16.60.5.6 OBJECTIVE:**

The code of professional conduct prescribes the obligation that persons engaged in the practice of public accountancy have to their clients and to the public to maintain independence of thought and action; to strive continuously to improve one's thought and action; to strive continuously to improve one's professional skills; to observe, where applicable, generally accepted accounting principles and generally accepted auditing standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; to uphold the standards of the public accountancy profession; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

[16.60.5.6 NMAC - Rp 16 NMAC 60.7.6, 2/14/2002]

**16.60.5.7 DEFINITIONS:**

[RESERVED]

[16.60.5.7 NMAC - Rp 16NMAC 60.7.7, 2/14/2002]

**16.60.5.8 DUTY TO ABIDE BY CODE OF PROFESSIONAL CONDUCT:**

**A.** In addition to its own rules of conduct, the board adopts the American institute of certified public accountants' (AICPA) professional standards: code of professional conduct. All certified public accountants and registered public accountants holding a current certificate and all holders of firm permits shall comply with the board's rules of conduct and the AICPA code of professional conduct or any successor code of professional conduct promulgated by AICPA in meeting and maintaining their responsibilities and requirements of ethical and professional conduct in the practice of

public accountancy. This code of professional conduct is on file and available for review at the offices of the board and is available from AICPA.

**B.** By accepting licensure to engage in the practice of public accountancy or to use titles which imply a particular competence so to engage, the licensee also accepts the obligations of the profession and the duty to abide by the board's rules of conduct and the AICPA code of professional conduct.

**C.** Any departure from either the rules of conduct or the code of conduct must be justified, and individuals who do not adhere to them may be subject to board disciplinary action.

[16.60.5.8 NMAC - Rp 16 NMAC 60.7.6, 2/14/2002]

#### **16.60.5.9 BOARD DISCIPLINARY ACTION:**

**A.** Any licensee whose certificate or firm permit issued by the board is subsequently suspended or revoked shall promptly return such certificate/license to be board.

**B.** Decisions by the board following hearings under the Uniform Licensing Act and the Public Accountancy Act will, if a charge is sustained, be made public.

**(1)** Decisions that do not sustain a charge or are subject to agreement in lieu of a hearing may be made public at the board's discretion.

**(2)** A list of all individuals whose licenses have been suspended or revoked will be published on quarterly basis in a newspaper of general circulation as well as in the newspaper of circulation closest to the individual's place of business.

[16.60.5.9 NMAC - N, 2/14/2002; A, 1/15/2004]

#### **16.60.5.10 BOARD AUTHORITY TO REVIEW DOCUMENTS:**

The board may solicit and receive publicly available reports and related financial statements from clients, public agencies, banks, and other users of financial statements of certificate holders/licensees and firm-permit holders and individuals with privileges under the act on a general and random basis without regard to whether an application for renewal of the particular licensee is then pending or whether there is any formal complaint or suspicion of impropriety on the part of any particular licensee or individual. The board may review such reports and otherwise proceed with respect to the results of any such review under provisions, authorities, and remedies of the act.

[16.60.5.10 NMAC - N, 2/14/2002]

#### **16.60.5.11 RULES OF CONDUCT:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(7)** Conviction or plea of no contest to which the licensee is a defendant if the crime is: a criminal conviction listed in Subsection A of 16.60.5.14 NMAC.

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

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

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

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

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

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

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

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

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

#### **16.60.5.12 CONFLICT OF INTEREST PROVISIONS:**

A. A licensee shall not perform services for a client if the performance of such services will be directly or substantially adverse to another client unless:

(1) the licensee reasonably believes the performance of such services for one client will not adversely affect the relationship with the other client; and

(2) after consultation, each client consents in writing to allow the licensee to provide services to the other client.

**B.** Divorce proceedings, business dissolutions, and similar transactions are deemed to be directly or substantially adverse to a client.

**C.** A licensee shall not perform services for a client if the licensee's ability to perform such services may be materially limited by his responsibilities to another client or a third person or by his own interests unless:

(1) the licensee reasonably believes the performance of services will not adversely affect the relationship with the client;

(2) the relationship is disclosed to the client; and

(3) the client consents in writing after consultation.

**D.** A licensee shall not enter into a business transaction with a client for services other than public accountancy or knowingly acquire an ownership, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the licensee acquires the interest are fair and reasonable to the client;

(2) the terms are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(3) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(4) the client consents in writing thereto.

**E.** A licensee shall not use information relating to the performance of services for a client to the disadvantage of the client.

**F.** A licensee who performs services for two or more clients involved in a dispute shall not participate in making an aggregate settlement of the claims of or against the clients unless each client consents in writing after consultation. Consultation shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each party involved in the settlement.

[16.60.5.12 NMAC - N, 5/15/2006; A, 1/1/2007]

#### **16.60.5.13 UNAUTHORIZED USE OF THE CPA TITLE:**

**A.** Pursuant to Section 61-28B-26 and 61-28B-13 NMSA 1978, a person whose principal place of business is not in New Mexico can use the term CPA while serving clients in New Mexico as long as the CPA is actively licensed in good standing in his principal place of business and is eligible for practice privileges in New Mexico.

**B.** A person licensed as a CPA in another jurisdiction who moves to New Mexico with the intention of using the CPA title (whether in public practice, industry, government, or education) must obtain a certificate of from the board prior to using the CPA title in any way in this state. Oral or written statements such as "I am a licensed CPA in another jurisdiction" when used in connection with the individual's name on all reports, letters of transmittal, or advice, and on all stationery and documents used in connection with the individual's services as an accountant do not exempt the individual from obtaining a certificate of qualification from the board. Non-resident CPAs who wish to practice in New Mexico may do so only in accordance with Section 61-28B-26 NMSA 1978.

[16.60.5.13 NMAC - N, 9/15/2015; A, 10/1/2020]

#### **16.60.5.14 CRIMINAL CONVICTIONS:**

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

- (1)** Crimes involving homicide, murder, manslaughter, or resulting in death;
- (2)** crimes involving human trafficking, or trafficking in controlled substances;
- (3)** kidnapping, false imprisonment, assault, aggravated assault, battery or aggravated battery;
- (4)** rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;
- (5)** crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, injury to pregnant woman, custodial interference, breaking and entering, sabotage, property damage, or financial exploitation;
- (6)** crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud or unauthorized use of a credit card; receiving stolen property, money laundering, burglary tools, or stolen vehicles;
- (7)** crimes involving arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;
- (8)** crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;

**(9)** violation of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act;

**(10)** violations of the Model State Commodity Code, the New Mexico Uniform Securities Act, the Mortgage Loan Company Act, Uniform Money Services Act, or the New Mexico Mortgage Loan Originator Licensing Act;

**(11)** crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;

**(12)** crimes involving jury tampering;

**(13)** crimes involving escape from custody, jail or penitentiary;

**(14)** crimes involving harboring or aiding a felon;

**(15)** crimes involving tax evasion or tax fraud;

**(16)** willful failure to collect and pay over taxes;

**(17)** crimes involving attempts to evade or defeat any tax;

**(18)** crimes involving violations of officers or employees engaging in the administration of the property tax who buy property sold for delinquent property taxes that is unlawful;

**(19)** crimes involving paying or receiving public money for services not rendered;

**(20)** crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;

**(21)** crimes involving violations of the Cigarette Enforcement Act;

**(22)** crimes involving the Savings and Loan or the Credit Union Act;

**(23)** crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

- (24)** Medicaid fraud;
- (25)** an act or omission , with intent to defraud, expressly declared to be unlawful by the Banking Act;
- (26)** crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;
- (27)** crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;
- (28)** crimes involving altering or changing engine or other number of a vehicle or motor vehicle;
- (29)** crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom they contracted;
- (30)** crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;
- (31)** crimes involving making or permitting a false public voucher;
- (32)** crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;
- (33)** crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so, or violations of the New Mexico Uniform Securities Act;
- (34)** crimes involving extortionate extensions of credit or racketeering;
- (35)** crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;
- (36)** crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of and official act, or illegal kickbacks;
- (37)** failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

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

**(39)** fourth or subsequent driving under the influence of intoxicating liquor or drugs;

**(40)** crimes involving controlled substances, including violations of the Controlled Substances Act;

**(41)** crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;

**(42)** crimes involving violations of the New Mexico Subdivision Act or the Mortgage Foreclosure Consultant Prevention Act;

**(43)** misuse of funds;

**(44)** intent to defraud uses on a public security or instrument of payment;

**(45)** crimes involving a violation of the Governmental Conduct Act; or

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

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

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

## **CHAPTER 61: REAL ESTATE BROKERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.61.1.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.1.1 NMAC - Rp, 16.61.1.1 NMAC, 1-1-2012]

#### **16.61.1.2 SCOPE:**

The provisions in Part 1 apply to all parts of Title 16, Chapter 61 and provide relevant information to brokers, applicants, other agencies, professional associations, and any member of the general public affected by or interested in Chapter 61 of Title 16.

[16.61.1.2 NMAC - Rp, 16.61.1.2 NMAC, 1-1-2012]

#### **16.61.1.3 STATUTORY AUTHORITY:**

Part 1 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.

[16.61.1.3 NMAC - Rp, 16.61.1.3 NMAC, 1-1-2012]

#### **16.61.1.4 DURATION:**

Permanent.

[16.61.1.4 NMAC - Rp, 16.61.1.4 NMAC, 1-1-2012]

#### **16.61.1.5 EFFECTIVE DATE:**

1-1-2012, unless a later date is cited at the end of a section.

[16.61.1.5 NMAC - Rp, 16.61.1.5 NMAC, 1-1-2012]

#### **16.61.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 61 is to set forth the provision, which apply to all of Chapter 61, and to all persons and entities affected by Chapter 61 of Title 16, and to define the terms and terminology related to real estate qualifying brokers and associate brokers used throughout Chapter 61 of Title 16.

[16.61.1.6 NMAC - Rp, 16.61.1.6 NMAC, 1-1-2012]

#### **16.61.1.7 DEFINITIONS:**

**A. "Acceptable financial institution":** is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

**B. "Agency":** the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

**C. "Agent":** the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker. In the case of residential property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement. In the case of commercial property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) pursuant to a property management agreement if the property management agreement specifically creates an agency relationship.

**D. "Associate broker":** a person holding a New Mexico associate broker's license who is affiliated with a New Mexico qualifying broker.

**E. "Broker":** any person holding a current New Mexico associate broker's or qualifying broker's real estate license.

**F. "Brokerage":** a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

**G. "Brokerage relationship":** the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

**H. "Brokerage trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

**I. "Broker duties":** certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligation to other brokers as set forth in Part 16.61.19.8 NMAC.

**J. "Broker in charge":** a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

**K. "Client":** a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

**L. "Commercial real estate":** real estate that is zoned for business or commercial use by a city or county; or designated by a city or county to allow five or more multi-family units; provided that all units are located on a single parcel of land with a single legal description.

**M. "Core course":** the four-hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.

**N. "Core elective course":** commission-approved advanced continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, core elective courses advance the broker's practice of real estate by one or more of the following:

(1) improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills;

(2) improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties;

(3) improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or

(4) increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.

**O. "Credit hours(s)":** credits toward education requirements as assigned by the real estate commission for each commission-approved course.

**P. "Custodial account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner's name under the qualifying broker's control. This account may be interest bearing.

**Q. "Customer":** a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

**R. "Designated agent":** a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

**S. "Designated agency":** a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another as agent of the seller in the same transaction.

**T. "Distance education":** distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

**U. "Dual agency":** an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

**V. "Dual agent":** the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

**W. "Elective Course":** a commission approved elective course not considered as intensive in focus as a core elective course in a broad array of topics directly and indirectly related to the practice of real estate or the skills necessary to practice real estate including: real estate law and practice; real estate financing, mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes courses associated with various national and state designations and certifications not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other

technologies to enhance the broker's service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

**X. "Employee":** for the purposes of Paragraph (1) of Subsection C of Section 61-29-2 NMSA 1978 of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

- (1) does the employer withhold income tax from the person's wages, salary, or commission;
- (2) does the employer pay a portion of the person's FICA tax;
- (3) is the person covered by workers' compensation insurance;
- (4) does the employer make unemployment insurance contributions on behalf of the person.

**Y. "Errors and omissions insurance":** a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverage's, limitations, and exclusions of the specific insurance policy or policies in place.

**Z. "Exclusive agency":** an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, subagency, residential property management, and may include commercial property management.

**AA. "Expired license":** an associate broker's or qualifying broker's license that has not been renewed as of the last day of the month following the broker's birth month at the end of the broker's three-year licensing cycle.

**BB. "Express written agreement":** any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

**CC. "Facilitator":** the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

**DD. "Foreign broker":** a real estate broker who does not hold a real estate license issued by the New Mexico real estate commission, but who holds a current and valid real estate broker's license issued by another state in the United States, a province of Canada, or any other sovereign nation.

**EE. "Honesty and reasonable care and ethical and professional conduct":** conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

**FF. "Inactive broker":** a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

**GG. "In house transaction":** a transaction in which both sides of the transaction occur under the supervision of one qualifying broker in the same brokerage.

**HH. "Land title trust account":** a pooled interest-bearing account subject to the land title trust fund act.

**II. "Military service member":** a person, the spouse of a person, or the dependent children of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard. For purposes of this definition, any dependent child must be a dependent for federal income tax purposes.

**JJ. "Owner or property owner":** a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten percent or more.

**KK. "Party to the transaction":** a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

**LL. "Person":** any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

**MM. "Post-licensing course":** the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

**NN. "Principal":** any person who authorizes or employs another to do certain acts on behalf of that person.

**OO. "Property ledger":** a record of deposits and disbursements within a trust account or custodial account that are associated with the same property or owner.

**PP. "Property management":** real estate services as specified by a written management agreement between a property owner and a third party property management company; which includes, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners; the supervision of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports, disclosure certificates, resale certificates, and other documents. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management. Advertising and taking reservations for vacation rental properties shall not be considered property management.

**QQ. "Property management trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

**RR. "Property manager":** a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others. A residential property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the Uniform Owner-Resident Relations Act and under the rental or lease agreement. A commercial property manager may be an agent of the owner(s) as determined by the contract with the owner(s).

**SS. "Qualifying broker":** a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

**TT. "Recent veteran":** a person who has received an honorable discharge or separation from military service within the three years immediately preceding the date the person applied for a real estate broker's license.

**UU. "Reconciliation":** the process by which the property ledgers within a trust account or custodial account are balanced with the trust account or custodial account and the account or custodial account is balanced with the bank statement.

**VV. "Referral":** the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

**WW. "Responsible person":** the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible

person. Each responsible person will be subject to the provisions of Paragraph (7) of Subsection A of Section 61-29-12 NMSA 1978.

**XX. "Residential real estate":** real estate which is zoned for private use as a living facility by a city or county; or designated by a city or county to allow four or less multi-family units on a single parcel of land with a single legal description.

**YY. "Scope of authority":** the range of authority granted by the principal to act on behalf of that principal.

**ZZ. "Special trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

**AAA. "Sponsor":** an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

**BBB. "Subagent":** an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

**CCC. "Transaction coordinator":** a person engaged by a broker who assists the broker in the processing of the real estate transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing. A transaction coordinator involved in real estate transactions in New Mexico must have a New Mexico broker's license. A person assisting with real estate transactions who is not licensed is an unlicensed assistant.

**DDD. "Transaction":** any real estate activity subject to the jurisdiction of the commission.

**EEE. "Transaction broker":** a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

**FFF. "Trust account":** an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account or special trust account.

**GGG. "Unlicensed assistant":** a person who does not hold an active New Mexico broker's license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

**HHH. "Vacation rental":** With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances, bedding, towels, utensils, plates, and silverware.

**III. "Virtual office":** A real estate brokerage office that provides communication and address services without providing dedicated office space.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/1/2019; A, 1/3/2021; A, 2/25/2022]

**16.61.1.8 OFFICES:**

The offices of the New Mexico real estate commission will be located in Albuquerque, New Mexico.

[16.61.1.8 NMAC - Rp, 16.61.1.8 NMAC, 1-1-2012]

**16.61.1.9 TELEPHONIC MEETING ATTENDANCE:**

Commission members may participate in a meeting of the commission by means of a conference telephone or similar communications equipment and participation by telephone may only occur when it is difficult or impossible for commission members to attend a meeting of the commission, i.e. when circumstances beyond the member's control would make attendance in person extremely burdensome.

[16.61.1.9 NMAC - Rp, 16.61.1.9 NMAC, 1-1-2012]

**PART 2: LICENSE AND OTHER FEES**

**16.61.2.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.2.1 NMAC - Rp, 16 NMAC 61.2.1, 1-1-2002]

**16.61.2.2 SCOPE:**

The provisions in Part 2 of Chapter 61 apply to all licensed brokers; applicants for broker licensure in New Mexico; anyone wishing to purchase broker mailing lists, mailing labels, or license law and rules booklets; anyone who requests a written verification of licensure to be completed by the commission; or anyone seeking commission approval as a sponsor or instructor to offer courses for real estate pre-licensing or continuing education credit.

[16.61.2.2 NMAC - Rp, 16 NMAC 61.2.2, 1-1-2002; A, 1-1-2006]

**16.61.2.3 STATUTORY AUTHORITY:**

Part 2 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.

[16.61.2.3 NMAC - Rp, 16 NMAC 61.2.3, 1-1-2002]

**16.61.2.4 DURATION:**

Permanent.

[16.61.2.4 NMAC - Rp, 16 NMAC 61.2.4, 1-1-2002]

**16.61.2.5 EFFECTIVE DATE:**

1-1-2000, unless a later date is cited at the end of a section.

[16.61.2.5 NMAC - Rp, 16 NMAC 61.2.5, 1-1-2002]

**16.61.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 61 is to establish the fees to generate sufficient revenues required by the commission to carry out its administrative functions.

[16.61.2.6 NMAC - Rp, 16 NMAC 61.2.6, 1-1-2002]

**16.61.2.7 DEFINITIONS:**

Refer to Definitions, 16.61.1.7 NMAC.

[16.61.2.7 NMAC - Rp, 16 NMAC 61.2.7, 1-1-2002]

**16.61.2.8 FEES:**

- A.** For each examination, a fee not to exceed ninety-five dollars (\$95.00).
- B.** For each broker's license issued, and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270.00).
- C.** For each license transferred, a fee not to exceed twenty dollars (\$20.00). If there are eleven or more affected licenses in the brokerage, the total transfer fee paid shall not exceed two hundred dollars (\$200.00).

**D.** For each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00).

**E.** For each license history, a fee not to exceed twenty-five dollars (\$25.00).

**F.** For copying of documents by the commission a fee not to exceed one dollar (\$1.00) per copy.

**G.** For each state of New Mexico real estate license law and rules manual a fee not to exceed ten dollars (\$10.00).

**H.** For each hard copy or electronic list of licensed real estate brokers, a fee not to exceed fifty dollars (\$50.00).

**I.** For each initial broker's license, and for the renewal thereof, a fee not to exceed ten dollars (\$10.00) shall be credited to the real estate recovery fund pursuant to Section 61-29-22 NMSA 1978 if in the commission's judgment the assessment of such fee is necessary to maintain the fund at its statutory minimum level.

**J.** For each application to the commission to become an approved sponsor of real estate pre-licensing and continuing education courses, a fee not to exceed five hundred dollars (\$500.00) and for each renewal thereof a fee not to exceed five hundred dollars (\$500.00).

**K.** For each application to the commission to become approved to instruct a currently approved pre-licensing or continuing education course, a fee not to exceed seventy dollars (\$70.00) per course. For each application to the commission to renew certification as a commission approved instructor of real estate pre-licensing or continuing education courses, a fee not to exceed one hundred dollars (\$100.00).]

**L.** For each application to the commission for approval of a new pre-licensing and continuing education course, a fee not to exceed fifty dollars (\$50.00) plus two dollars (\$2.00) for each credit hour up to a maximum of 10 credit hours. For applications to the commission for bulk course approval, defined as five or more courses at a single committee meeting, a reduced fee not to exceed twenty-five dollars (\$25.00) per course plus one dollar (\$1.00) for each credit hour up to a maximum of 10 credit hours.

[16.61.2.8 NMAC - Rp, 16 NMAC 61.2.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 1-1-2012; A, 1-1-2019]

#### **16.61.2.9 FEES NON-REFUNDABLE:**

Fees paid to the commission pursuant to 16.61.2 NMAC Section 8 of the commission rules are non-refundable.

[16.61.2.9 NMAC - Rp, 16 NMAC 61.2.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006]

## **PART 3: REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS**

### **16.61.3.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.3.1 NMAC – Rp. 16.61.3.1, 1-15-2018]

### **16.61.3.2 SCOPE:**

The provisions in Part 3 of Chapter 61 apply to all applicants for real estate broker licensure in New Mexico.

[16.61.3.2 NMAC – Rp. 16.61.3.2, 1-15-2018]

### **16.61.3.3 STATUTORY AUTHORITY:**

Part 3 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.

[16.61.3.3 NMAC – Rp. 16.61.3.3, 1-15-2018]

### **16.61.3.4 DURATION:**

Permanent.

[16.61.3.4 NMAC – Rp. 16.61.4.1, 1-15-2018]

### **16.61.3.5 EFFECTIVE DATE:**

1-15-2018, unless a later date is cited at the end of a section.

[16.61.3.5 NMAC – Rp. 16.61.3.5, 1-15-2018]

### **16.61.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico real estate broker's license.

[16.61.3.6 NMAC – Rp. 16.61.3.6, 1-15-2018]

### **16.61.3.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.3.7 NMAC – Rp. 16.61.3.7, 1-15-2018]

### **16.61.3.8 TYPES OF LICENSES:**

The New Mexico real estate commission issues two types of real estate broker's licenses; an associate broker's license and a qualifying broker's license. Both types of licenses are issued only to individuals. The requirements for obtaining both types of licenses are described below.

[16.61.3.8 NMAC – Rp. 16.61.3.8, 1-15-2018]

### **16.61.3.9 EXAMINATION AND LICENSING REQUIREMENTS:**

**A.** Associate broker's license: prior to applying for an associate broker's license, an applicant must pass both a national broker examination prescribed by the commission, and the New Mexico real estate broker's examination prescribed by the commission.

**B.** Examination application.

**(1)** Applications to take the prescribed broker's examination(s) are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30-hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the examinations. Exam candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

**(2)** Exam candidates originally licensed as real estate salespersons or brokers or licensees in other states or jurisdictions may apply for waivers from completing the real estate principles and practice and real estate law courses in New Mexico and from taking the national portion of the broker's examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico associate broker upgrading to qualifying broker will be exempt from taking the national portion of the broker's exam.

**(3)** Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30-hour broker basics course.

**(4)** License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of

the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

**(5)** Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30-hour broker basics course.

**(6)** All other applicants for the examination shall attach to their license examination application certificates documenting completion of one 30-hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

**(7)** At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

**(8)** Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

### **C. Associate Broker License application.**

**(1)** Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

**(2)** An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

**(3)** An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

**(4)** Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that the applicant has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

Recent veteran applicants and military service members, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

**D.** Qualifying broker's license examination: there is no separate qualifying broker's examination.

**E.** Expedited licensure for military service members, spouses, children, and veterans.

**(1)** Applicants for licensure shall meet the following requirements:

**(a)** complete an application on a form provided by the real estate commission.

**(b)** include on the application the applicant's full name, current mailing address, and email address if any, date of birth, and proof of a criminal background check obtained through fingerprinting.

**(2)** The applicant shall also provide documentation that they are licensed and in good standing in another jurisdiction, including a branch of the United States armed forces, and have met the minimum licensing requirements in a jurisdiction with requirements that are substantially equivalent to New Mexico licensing requirements.

**(3)** The applicant shall provide documentation as follows:

**(a)** for a military service member, a copy of military orders;

**(b)** for a spouse of military service member, a copy of military service member's military orders, and a copy of the marriage license;

**(c)** for spouses of deceased military service members, a copy of decedent's form DD 214 and a copy of the marriage license;

**(d)** for dependent children of military service members, a copy of military service member's orders listing dependent children, or a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

**(e)** for veterans (retired or separated): a copy of form DD 214 showing proof of honorable discharge.

**(4)** The license shall be issued by the real estate commission as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application, and provides proof a criminal background check obtained by fingerprinting.

(5) Military service members and veterans shall not pay and the real estate commission shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

(6) A license issued pursuant to this section shall be valid for a period of three years from the date of issuance to the last day of the month following the licensee's birth month.

**F. License renewal requirements.**

(1) A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.61.11.8 NMAC pursuant to Chapter 61, Article 61-29-11 D NMSA 1978.

(2) As a courtesy, the real estate commission will send via electronic mail license renewal notifications to licensees before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of timely renewal on or before the expiration date.

[16.61.3.9 NMAC – Rp, 16.61.3.9, 1/15/2018; A, 1/3/2021; A, 2/25/2022]

**16.61.3.10 QUALIFYING BROKER LICENSING REQUIREMENTS:**

To be eligible to apply for a New Mexico qualifying broker's license, an applicant must furnish the commission satisfactory evidence of completing the following:

**A.** Passage of the broker's examination pursuant to Subsection D of 16.61.3.9 NMAC.

**B.** At least four years active experience as a licensed associate broker during the 60-month period, immediately preceding the filing of the application.

**C.** In the case of a qualifying broker who will not be supervising or managing other brokers, at least two years of active experience as a licensed associate broker during the 60-month period immediately preceding the filing of the application.

**D.** Qualifying brokers who have qualified for qualifying broker status under the exception provided in subsection C, must document at least four years of active experience as an associate broker and qualifying broker before being eligible to supervise other brokers.

**E.** If licensed in another state, not less than four years' experience as the equivalent of an associate broker during the 60-month period immediately preceding the filing of the application with verification in writing by the applicant's qualifying broker(s) or the state's applicable equivalent to a qualifying broker. A candidate for a qualifying broker

license from another state will, in all circumstances, be required to fulfill all the remaining requirements, including experience, education and acknowledgement of responsibilities.

**F.** Documented qualifying transactional experience totaling 100 points, with at least one transaction accomplished during each of the four years prior to filing of the application. These transactions are to be verified in writing by the applicant's qualifying broker. Transactions involving property owned by the applicant do not count toward the required total. Points are awarded as follows and can be accumulated through any combination of the following activities:

**(1)** Each sale or lease transaction is deemed to have two sides; one side working with the buyer/tenant and the other side working with the seller/owner. Both transaction sides receive points.

**(2)** In the event of transactions handled by teams comprised of more than one associate broker the qualifying broker shall monitor the transactions to determine which associate broker is deserving of earning the points allowed, or the division of the allowable points among team members.

**(3)** Real estate and property management transactions; total points available per transaction side:

- |  |              |
|--|--------------|
| <b>(a)</b> Residential sales transactions:                 | five points  |
| <b>(b)</b> Residential lot sale transactions:              | three points |
| <b>(c)</b> Residential lease transactions:                 | four points  |
| <b>(d)</b> Commercial improved property sale transactions: | eight points |
| <b>(e)</b> Commercial unimproved lot sale transactions:    | six points   |
| <b>(f)</b> Commercial lease transactions:                  | six points   |

**(g)** Property management points are accumulated as follows: Points are awarded for each location for which the broker has direct responsibility. Direct responsibility means acting as an agent for the owner and is not just collecting rent. Property management points are accumulated as follows:

**(i)** Residential property management: Each property receives three points, plus one point for each additional unit in that property to a maximum of 25 points per property per year. A unit is defined as a separate residence with its own postal address.

(ii) Commercial property management: Each property receives four points, plus one point for each individual tenant space in that property to a maximum of 25 points per property per year. A space is defined as a commercial location that has its own postal address.

(h) Farm and ranch/vacant land - For the purposes of this paragraph a farm or a ranch is defined as a property which is used for commercial agricultural purposes. Farm and ranch points are awarded as follows:

(i) Less than 100 acres, eight points.

(ii) 100 acres or more, 10 points.

(i) Limited waiver: A waiver may be granted by the commission to an associate broker who can demonstrate that their particular circumstance, i.e. size of market, lack of property types, health issues, force majeure, make it very difficult to obtain 100 points. The commission may waive up to 30 points and the transaction per year requirement. Written documentation and statements of proof shall be submitted with the application for waiver.

[16.61.3.9 NMAC – Rp. 16.61.3.10, 1/15/2018; A, 1/3/2021]

### **16.61.3.11 QUALIFYING BROKER CANDIDATE EDUCATION REQUIREMENTS FOR APPLICATION:**

An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of:

**A.** Completion of the commission approved 30-hour brokerage office administration course, with an in-course instructor-created exam administered by the instructor at the end of the course.

**B.** Completion of the eight-hour understanding and using RANM forms course or at least eight hours of other commission-approved contract course(s).

**C.** Completion of a minimum of eight hours of core elective courses.

**D.** Attendance at one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission meeting goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to attendance at a commission meeting by an online download, attendance at any approved equivalent, or by other approved participation.

[16.61.3.9 NMAC – Rp. 16.61.3.11, 1-15-2018; A, 1-1-2019]

### **16.61.3.12 QUALIFYING BROKER APPLICATION REQUIREMENTS:**

An associate broker or salesperson licensed in another state who is applying for a qualifying broker license shall furnish the commission satisfactory evidence of the following:

**A.** A notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the qualifying broker. Supervision shall be defined in the affidavit as follows:

**(1)** Review and maintain all records and documents required for real estate related matters processed by personnel supervised by the qualifying broker.

**(2)** Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker for compliance with the real estate license law and commission rules.

**(3)** Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

**(4)** Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

**B.** A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit this affidavit.

**C.** A supervisory plan which will outline the qualifying broker's schedule of training and education provided or promoted. The supervisory plan will be applicable to the broker applying to be a qualifying broker and to all other brokers affiliated with them, if any. A broker applying to be licensed as a qualifying broker supervised by another qualifying broker is not required to submit a supervisory plan.

**D.** Applicants with current licenses who can document that they were New Mexico qualifying brokers on or before December 31, 2005, are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

**E.** Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the broker's examination prior to being issued a qualifying broker's license.

**F.** An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied with documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-refundable license application fee not to exceed \$270.

**G.** Military service members and recent veterans:

**(1)** The commission shall, as soon as practicable after a military service member, the spouse of a military service member or a recent veteran files an application for an associate broker's or qualifying broker's license, process the application and issue a license to a qualified applicant who submits satisfactory documentation that the applicant holds a real estate license issued by another licensing jurisdiction, including a branch of the armed forces of the United States, that is current and in good standing, and that has licensing requirements that are substantially equivalent to New Mexico requirements.

**(2)** A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

**(3)** The commission shall, process the application and issue a license to the spouse of a military service member, a dependent child of a military service member, or a recent veteran that meet all the requirements for licensure as a real estate broker in New Mexico.

**(4)** A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission.

**(5)** A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal.

**(6)** Military service members and recent veteran applicants, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

[16.61.3.9 NMAC - Rp. 16.61.3.12, 1/15/2018; A, 1/1/2019; A, 1/3/2021]

### **16.61.3.13 QUALIFYING BROKER LICENSE RENEWAL REQUIREMENTS:**

A qualifying broker applying for renewal of their license shall furnish the commission satisfactory evidence of successful completion of:

**A.** The qualifying broker refresher course.

**B.** A minimum of 42 hours of commission-approved courses, including

- (1)** The four-hour core course in each year of the broker's licensing cycle
- (2)** Eight hours of core elective courses.
- (3)** The qualifying broker refresher course (6 hours)
- (4)** Four hours of ethics.

**C.** Attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

**D.** An application for renewal of a qualifying broker's license shall include a notarized affidavit of the applicant's acknowledgement of the responsibilities of a qualifying broker, including the direct supervision of all brokers affiliated with the brokerage, including but not limited to:

**(1)** Review and maintain all records and documents required for real estate related matters processed by the brokerage.

**(2)** Provide or promote appropriate training of all brokers and staff affiliated with the qualifying broker to ensure compliance with the Real Estate License Law and commission rules.

**(3)** Supervise advertising of real estate or real estate services conducted on behalf of others by anyone affiliated with the qualifying broker.

**(4)** Execute and maintain current written employment agreements or independent contractor agreements with associate brokers affiliated with the qualifying broker.

**E.** A qualifying broker applying for license renewal who will be supervised by another qualifying broker will not be required to submit this affidavit.

**F.** An application for renewal of a qualifying broker's license shall include a statement affirming that the qualifying broker substantially fulfilled the supervisory plan filed with the initial application, and a plan outlining the schedule of training and

education to be provided or promoted and the policies for supervision in the next licensing cycle. The supervisory plan will be applicable to the applicant for renewal of the qualifying broker's license and all affiliated brokers, if any. A qualifying broker who is supervised by another qualifying broker is not required to submit a supervisory plan.

[16.61.3.9 NMAC – Rp. 16.61.3.13, 1/15/2018; A, 1/1/2019; A, 1/3/2021]

#### **16.61.3.14 PROPERTY MANAGEMENT EDUCATIONAL REQUIREMENTS:**

Qualifying brokers or associate brokers intending to offer property management services for others, shall as a condition of offering property management services complete the following education requirements:

**A.** Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services, and during every subsequent three-year licensing cycle.

**B.** As a condition of offering property management services, in addition to the course requirement in paragraph A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

**C.** Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Section A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, during each three-year licensing cycle.

**D.** While qualifying brokers are already subject to the meeting attendance renewal requirements listed in Section 13 C of 16.61.3 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements in Section 13 C of 16.61.3 NMAC, namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

[N, 1-01-2019]

#### **16.61.3.15 FELONY CRIMINAL CONVICTIONS:**

**A.** Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying felony criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the real estate commission. This includes a felony conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon, or an appeal of the conviction has been sought. These felony convictions include:

- (1) homicide, voluntary or involuntary manslaughter;
- (2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;
- (3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect, or financial exploitation;
- (6) crimes involving child abuse or neglect;
- (7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous uses of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property; and,
- (8) financial crimes involving fraud, forgery, embezzlement, and credit card fraud.

**B.** The real estate commission shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The real estate commission shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule, and without a hearing as provided in the uniform licensing act.

**D.** Nothing in this rule prevents the real estate commission from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the real estate license law, regardless of whether the individual was convicted of a felony crime for such conduct or whether the felony crime

for which the individual was convicted is listed as one of the disqualifying felony criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the real estate commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying felony criminal convictions listed in Subsection A of this rule.

[16.61.3.15 NMAC - N, 2/25/2022]

## **PART 4: SALESPERSON'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS [REPEALED]**

[This part was repealed on January 1, 2006.]

## **PART 5: ERRORS AND OMISSIONS INSURANCE**

### **16.61.5.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.5.1 NMAC - N, 1-1-2002]

### **16.61.5.2 SCOPE:**

The provisions in Part 5 of Chapter 61 apply to all applicants for and holders of active New Mexico real estate broker's licenses.

[16.61.5.2 NMAC - N, 1-1-2002; A, 1-1-2006]

### **16.61.5.3 STATUTORY AUTHORITY:**

Part 5 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.2.

[16.61.5.3 NMAC - N, 1-1-2002]

### **16.61.5.4 DURATION:**

Permanent.

[16.61.5.4 NMAC - N, 1-1-2002]

**16.61.5.5 EFFECTIVE DATE:**

1-1-2002, unless a later date is cited at the end of a section.

[16.61.5.5 NMAC - N, 1-1-2002]

**16.61.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 61 is to set forth the errors and omissions insurance coverage requirements for all applicants for and holders of active New Mexico real estate broker's licenses.

[16.61.5.6 NMAC - N, 1-1-2002; A, 1-1-2006]

**16.61.5.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.5.7 NMAC - N, 1-1-2002]

**16.61.5.8 GROUP ERRORS AND OMISSIONS INSURANCE POLICY:**

Effective January 1, 2002 every active New Mexico real estate broker shall have in effect a policy of errors and omissions insurance. The commission shall enter into a contract with a qualified insurance carrier or its agent or broker to make available to all New Mexico real estate brokers and broker applicants a group policy of insurance under the following terms and conditions:

- A.** the insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in New Mexico;
- B.** the insurance carrier maintains an A.M. Best rating of "B" or better;
- C.** the insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the commission on a timely basis and at no expense to the state;
- D.** the insurance carrier has been selected through a competitive bidding process;
- E.** the contract and policy are in conformance with Part 5 and all relevant New Mexico statutory requirements.

[16.61.5.8 NMAC - N, 1-1-2002; A, 1-1-2006]

**16.61.5.9 TERMS OF COVERAGE:**

The group policy shall provide, at a minimum, the following terms of coverage:

**A.** coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;

**B.** an annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;

**C.** that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;

**D.** pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;

**E.** not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;

**F.** an aggregate limit of \$500,000 per licensed individual or entity;

**G.** a deductible amount for each claim of not more than \$1,000 per claim and no deductible for legal expenses and defense;

**H.** payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible;

**I.** the obligation of the insurance carrier to defend all covered claims with payment of defense costs outside of policy limits;

**J.** coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim;

**K.** the ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;

**L.** that coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;

**M.** an extended reporting period of not less than 365 days;

**N.** a conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.

[16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2017]

#### **16.61.5.10 EQUIVALENT ERRORS AND OMISSIONS INSURANCE POLICIES:**

New Mexico real estate associate broker or qualifying broker applicants may obtain errors and omissions coverage equivalent to the group plan from any insurance carrier subject to the following terms and conditions.

**A.** The insurance carrier is licensed and authorized by the New Mexico department of insurance to write policies of errors and omissions insurance in this state and is in conformance with all New Mexico statutes.

**B.** The insurance provider maintains an A.M. Best rating of "B" or better.

**C.** The policy, at a minimum, complies with all relevant conditions set forth in this rule and the insurance carrier so certifies in a certificate issued to the insured real estate broker or broker applicant in a form acceptable to the commission and agrees to immediately notify the commission of any cancellation or lapse in coverage. The commission will make no independent determination of whether equivalent policies meet the requirements of Part 5.

**D.** Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

**E.** Coverage cannot be cancelled by the insurance provider except for nonpayment of premium or in the event a broker becomes inactive or the license is revoked, or in the event an applicant is denied a license.

**F.** Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim and not less than a \$500,000 aggregate limit per licensed individual or entity.

**G.** A deductible amount for each claim of not more than \$1,000.

**H.** Payment of claims by the provider shall be on a first dollar basis and the provider shall look to the insured for payment of any deductible.

**I.** The obligation of the insurance carrier to defend all covered claims with defense costs outside of policy limits.

**J.** Coverage of a broker's use of lock boxes which may include a sublimit of not less than \$5,000 per claim for property damage or loss of use of property arising from a lock box claim.

**K.** Real estate brokers or broker applicants who obtain equivalent coverage and wish to be on active status must present to the commission the certificate referred to in 16.61.5.10 NMAC:

- (1) when renewing an active license, no later than at the time of renewal; or
- (2) upon any request for reinstatement or activation of a license; or
- (3) upon application for an active license.

**L.** An automatic 90-day extended reporting period with the ability of the broker, upon payment of an additional premium, to obtain an optional extended reporting period of one, two, or three years.

[16.61.5.10 NMAC - N, 1-1-2002; A, 1-1-2017]

#### **16.61.5.11 BROKER COMPLIANCE:**

Applicants for licensure, transfer, and renewal shall certify compliance with this rule by submitting along with the license, transfer, or renewal application a copy of a certificate from their insurance company certifying current coverage. The commission will not issue an active license to a first time applicant who fails to provide proof of current coverage, and the license of any active New Mexico broker who fails to provide a certificate certifying current errors and omissions coverage will not be renewed or transferred until such certificate is received in the commission office

[16.61.5.11 NMAC - N, 1-1-2002; A, 1-1-2006]

#### **16.61.5.12 INSURANCE REQUIREMENTS SUSPENDED:**

The requirements of 16.61.5 NMAC shall be suspended if the commission through a competitive bidding and contract award process is not able to enter into a contract with a qualified insurance carrier to make available to all applicants for or holders of active New Mexico real estate broker's licenses a group policy of insurance under the terms and conditions described in Part 5.

[16.61.5.12 NMAC - N, 1-1-2002; A, 1-1-2006]

#### **16.61.5.13 PENALTIES FOR VIOLATION:**

Brokers who fail to obtain and maintain an errors and omissions insurance policy as specified herein are guilty of violating NMSA 1978 Section 61-29-4.2 of the Real Estate

License Law and are subject to license suspension and revocation as provided in Section 61-29-12 A (10).

[16.61.5.13 NMAC - N, 1-1-2006]

## **PART 6: DESIGNATION OF A QUALIFYING BROKER TO QUALIFY A REAL ESTATE BROKERAGE**

### **16.61.6.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.6.1 NMAC - Rp, 16.61.6.1 NMAC, 1-1-2012]

### **16.61.6.2 SCOPE:**

The provisions in Part 6 of Chapter 61 apply to all persons wishing to qualify a corporation, partnership, or association as a real estate brokerage.

[16.61.6.2 NMAC - Rp, 16.61.6.2 NMAC, 1-1-2012]

### **16.61.6.3 STATUTORY AUTHORITY:**

Part 6 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.6.3 NMAC - Rp, 16.61.6.3 NMAC, 1-1-2012]

### **16.61.6.4 DURATION:**

Permanent.

[16.61.6.4 NMAC - Rp, 16.61.6.4 NMAC, 1-1-2012]

### **16.61.6.5 EFFECTIVE DATE:**

1-1-2012, unless a later date is cited at the end of a section.

[16.61.6.5 NMAC - Rp, 16.61.6.5 NMAC, 1-1-2012]

### **16.61.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 61 is to set forth policies for qualifying a corporation, partnership, or association as a real estate brokerage.

[16.61.6.6 NMAC - Rp, 16.61.6.6 NMAC, 1-1-2012]

#### **16.61.6.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.6.7 NMAC - Rp, 16.61.6.7 NMAC, 1-1-2012]

#### **16.61.6.8 REQUIREMENTS:**

**A.** A corporation, partnership, association, proprietorship, limited liability company, or any other business entity engaged in real estate brokerage in New Mexico, except as otherwise provided in Subsection C of Section 61-29-2 NMSA 1978, must employ or enter into an independent contractor agreement with a qualifying broker(s) to qualify such entity to engage in real estate brokerage in the state.

**B.** Upon compliance with all requirements set out in the real estate license law and the real estate commission rules for licensure as a New Mexico qualifying broker, the commission shall issue a New Mexico qualifying broker's license to the applicant. Such license shall bear the name of the qualifying broker, the trade name of the brokerage that the qualifying broker has qualified to conduct real estate brokerage business and under which the brokerage will be conducting business and the address as registered with the commission from which the brokerage will be conducting business.

**C.** In the event a qualifying broker is unable for any reason to perform their qualifying broker duties, a corporate officer, family member or other responsible persons shall designate a broker in charge to conduct the brokerage business and supervise brokers affiliated with the brokerage until such time as an individual files a trade name registration form or additional license application form with the commission designating that individual as the qualifying broker.

[16.61.6.8 NMAC - Rp, 16.61.6.8 NMAC; A, 1-1-2017]

### **PART 7: FINGERPRINTING AND ARREST RECORD CHECKS**

#### **16.61.7.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.7.1 NMAC - Rp, 16.61.7.1 NMAC, 1-1-2012]

#### **16.61.7.2 SCOPE:**

The provisions in Part 7 apply to Title 16, Chapter 16 and provide relevant information about criminal background check requirements for a first-time or renewal applicant for a New Mexico real estate broker's license.

[16.61.7.2 NMAC - Rp, 16.61.7.2 NMAC, 1-1-2012]

**16.61.7.3 STATUTORY AUTHORITY:**

Part 7 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978, Section 61-29-4.4.

[16.61.7.3 NMAC - Rp, 16.61.7.3 NMAC, 1-1-2012]

**16.61.7.4 DURATION:**

Permanent.

[16.61.7.4 NMAC - Rp, 16.61.7.4, NMAC, 1-1-2012]

**16.61.7.5 EFFECTIVE DATE:**

1-1-2012, unless a later date is cited at the end of a section.

[16.61.7.5 NMAC - Rp, 16.61.7.5 NMAC, 1-1-2012]

**16.61.7.6 OBJECTIVE:**

The objective of Part 7 is to ensure that first-time or renewal applicants for a New Mexico real estate broker's license are of good repute and competent to transact the business of a qualifying broker or associate broker in a manner that safeguards the interests of the public.

[16.61.7.6 NMAC - Rp, 16.61.7.6, NMAC, 1-1-2012]

**16.61.7.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.7.7 NMAC - Rp, 16.61.7.7 NMAC, 1-1-2012]

**16.61.7.8 REQUIREMENTS:**

**A.** All persons applying for a New Mexico real estate broker's license or upgrading an associate broker's license to a qualifying broker's license must be fingerprinted as a condition of licensure.

**B.** Applicant fingerprints and processing fees are submitted electronically to the New Mexico department of public safety from approved live scan vendor sites for the purpose of matching applicant fingerprints with fingerprints in state and national arrest record databases. Applicants must register on the vendor web site prior to being fingerprinted. The vendor web site address and a list of approved live scan sites are available on the real estate commission web site at [www.rld.state.nm.us](http://www.rld.state.nm.us).

**C.** To verify compliance with the fingerprinting requirement, applicants for licensure shall submit to the commission along with their license application a copy of the commission-approved fingerprint certification form completed by the vendor. To ensure that the commission is receiving the most current information available, fingerprinting shall be done no earlier than 21 days prior to submitting documents to apply for a license. The commission cannot accept fingerprints that are older than 21 days.

**D.** Background checks: The commission will conduct a background check on all applications including renewal applications and may use that information in determining the applicant's eligibility for licensure or renewal.

[16.61.7.8 NMAC - Rp, 16.61.7.8 NMAC, 1/1/2012; A, 1/1/2017; A, 1/3/2021]

## **PART 8: LICENSE TRANSFER**

### **16.61.8.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[8-15-97; 16.61.8.1 NMAC - Rn & A, 16 NMAC 61.8.1, 1-1-2002]

### **16.61.8.2 SCOPE:**

The provisions in Part 8 of Chapter 61 apply to all licensed New Mexico real estate brokers.

[8-15-97; 16.61.8.2 NMAC - Rn, 16 NMAC 61.8.2, 1-1-2002; A, 1-1-2006]

### **16.61.8.3 STATUTORY AUTHORITY:**

Part 8 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[8-15-97; 16.61.8.3 NMAC - Rn, 16 NMAC 61.8.3, 1-1-2002]

### **16.61.8.4 DURATION:**

Permanent.

[8-15-97; 16.61.8.4 NMAC - Rn, 16 NMAC 61.8.4, 1-1-2002]

### **16.61.8.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[8-15-97; 16.61.8.5 NMAC - Rn & A, 16 NMAC 61.8.5, 1-1-2002]

#### **16.61.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 61 is to set forth the requirements and procedures for the transfer of a broker's license whenever a broker is no longer transacting business at the office designated on that broker's license.

[8-15-97; 16.61.8.6 NMAC - Rn, 16 NMAC 61.8.6, 1-1-2002; A, 1-1-2006]

#### **16.61.8.7 DEFINITIONS:**

Refer to Definitions 16.61.1.7 NMAC.

[1-1-2000; 16.61.8.7 NMAC - Rn, 16 NMAC 61.8.7, 1-1-2002]

#### **16.61.8.8 REQUIREMENTS:**

An associate broker may request that their license be transferred to a new qualifying broker. The transfer is effective on the date that the transfer fee, transfer form, and the current license are received and stamped at the commission office. When an associate broker requests that their license be transferred the qualifying broker or the broker in charge shall within 48 hours return the license to the commission. If a license transfer form is not accompanied by a certificate certifying that the associate broker or qualifying broker has current errors and omissions insurance coverage, the license will not be transferred until the certificate is received in the commission office.

A. When a qualifying broker returns his or her own license to the commission for transfer they shall within 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application from a new qualifying broker, along with transfer forms and appropriate fees for each license, shall also be included.

B. RESERVED

[8-15-97; 1-1-2000; 16.61.8.8 NMAC - Rn, 16 NMAC 61.8.8, 1-1-2002; A, 1-1-2006; A 1-1-2012]

### **PART 9: LICENSE INACTIVATION AND REACTIVATION**

#### **16.61.9.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[8-15-97; 16.61.9.1 NMAC - Rn & A, 16 NMAC 61.9.1, 1-1-2002]

#### **16.61.9.2 SCOPE:**

The provisions in Part 9 of Chapter 61 apply to all licensed salespersons and brokers in New Mexico.

[8-15-97; 16.61.9.2 NMAC - Rn, 16 NMAC 61.9.2, 1-1-2002]

**16.61.9.3 STATUTORY AUTHORITY:**

Part 9 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[8-15-97; 16.61.9.3 NMAC - Rn, 16 NMAC 61.9.3, 1-1-2002]

**16.61.9.4 DURATION:**

Permanent.

[8-15-97; 16.61.9.4 NMAC - Rn, 16 NMAC 61.9.4, 1-1-2002]

**16.61.9.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[8-15-97; 16.61.9.5 NMAC - Rn & A, 16 NMAC 61.9.5, 1-1-2002]

**16.61.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 61 is to set forth the requirements and procedures for the surrender/inactivation of a salesperson or broker's license whenever a licensee is no longer transacting business.

[8-15-97; 16.61.9.6 NMAC - Rn, 16 NMAC 61.9.6, 1-1-2002]

**16.61.9.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[8-15-97; 16.61.9.7 NMAC - Rn, 16 NMAC 61.9.7, 1-1-2002; A, 1-1-2012]

**16.61.9.8 REQUIREMENTS:**

A. When a broker requests that their license be placed on inactive status, the qualifying broker or broker in charge shall within 48 hours return the license to the commission. The license shall be inactivated and all real estate activity on the part of the broker shall cease.

B. When a qualifying broker returns their license to the commission for inactivation, they shall within 48 hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application for a new qualifying broker, along with transfer applications and appropriate fees for each license, shall also be included.

C. Inactivation of a license shall take place at the time a license is received and stamped at the commission office. In the event that a license is lost, or otherwise unavailable for delivery by the qualifying broker to the commission office, inactivation of the license will take place at the time the commission receives and stamps a written notification from the qualifying broker that the associate broker is no longer affiliated with the brokerage. The qualifying broker may pay a commission to an associate broker whose license is on inactive status if the transaction was under contract while the broker was on active status. Payment of the commission is subject to the terms and conditions of the independent contractor agreement between the associate broker and the qualifying broker.

D. The voluntary inactivation of a license will not prevent the commission from taking disciplinary action against that license as provided in Section 61-29-1 through 61-29-29, NMSA, 1978.

E. Brokers whose licenses are inactive are required to fulfill the following requirements of licensure.

- (1) The payment of triennial renewal fees.
- (2) Documentation of having been fingerprinted for purposes of matching with state and national arrest record databases.
- (3) Completion of continuing education requirements.
- (4) During the course of advertising personally owned property for sale, lease, or auction, disclosure that they are a licensed broker.

F. Brokers whose licenses are on inactive status are not required to have an errors and omissions insurance policy in effect while on inactive status. Inactive brokers are required to produce a certificate of current errors and omissions insurance as a condition of license activation.

G. If a license has been placed in inactive status and is not renewed at the time of next renewal, that license shall expire.

[8-15-97; 16.61.9.8 NMAC - Rn & A, 16 NMAC 61.9.8, 1-1-2002; A, 12-31-08; A, 1-1-2012]

**PART 10: [RESERVED]**

## **PART 11: LICENSE EXPIRATION AND RENEWAL**

### **16.61.11.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[8-15-97; 16.61.11.1 NMAC - Rn & A, 16 NMAC 61.11.1, 1-1-2002]

### **16.61.11.2 SCOPE:**

The provisions in Part 11 of Chapter 61 apply to all currently licensed New Mexico real estate brokers.

[8-15-97; 16.61.11.2 NMAC - Rn, 16 NMAC 61.11.2, 1-1-2002; A, 1-1-2006]

### **16.61.11.3 STATUTORY AUTHORITY:**

Part 11 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.

[8-15-97; 16.61.11.3 NMAC - Rn, 16 NMAC 61.11.3, 1-1-2002]

### **16.61.11.4 DURATION:**

Permanent.

[8-15-97; 16.61.11.4 NMAC - Rn, 16 NMAC 61.11.4, 1-1-2002]

### **16.61.11.5 EFFECTIVE DATE:**

August 15, 1997, unless a later date is cited at the end of a section.

[8-15-97; 16.61.11.5 NMAC - Rn & A, 16 NMAC 61.11.5, 1-1-2002]

### **16.61.11.6 OBJECTIVE:**

The objective of Part 11 of Chapter 61 is to set forth the requirements and procedures for the renewal of a real estate broker's license.

[8-15-97; 16.61.11.6 NMAC - Rn, 16 NMAC 61.11.6, 1-1-2002; A, 1-1-2006]

### **16.61.11.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.11.7 NMAC - Rn, 16 NMAC 61.11.7, 1-1-2002]

#### **16.61.11.8 REQUIREMENTS:**

**A. Renewal period:** Every real estate license expires every three years on the last day of the month following the broker's birth month unless it is renewed on or before that date. Renewal of a license is the sole responsibility of each broker.

**B. Late renewal fee penalty:** A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a renewal/reinstatement fee three times the regular \$270 license renewal fee.

**C. Exemption from late fee penalty for documentable medical or military reasons:** Pursuant to Section 61-29-8 NMSA 1978, a broker may be excused from paying a late license renewal/reinstatement fee of three times the normal \$270 renewal fee if the broker by reason of (1) active duty military service; or (2) due to impairment by illness or injury, cannot complete renewal requirements. In these cases the broker may make application for a license renewal/reinstatement if the application is submitted within the one-year period after license expiration. A broker may apply for an exemption from the late fee under the following conditions and procedures:

**(1) Active military/reserve duty:** The broker or their spouse must have been placed on active military/reserve duty, and can document military orders.

**(2) Medically related impairment or incapacitation:** The broker, spouse or a member of the broker's immediate family is placed under a doctor's care, suffering from an illness or injury of such severity that the broker is physically or mentally incapable or otherwise deterred of completing renewal requirements on time, and deterred from submitting an application for license renewal prior to license expiration. This exemption includes brokers who are temporarily deterred from completing renewal requirements due to parental or immediate family caregiving as documentable by sufficient medical affidavit.

**(3) Documentation:** The broker's late renewal/reinstatement application must contain documentable medical evidence, or in the case of military service, a document that shows the effective date of return from active military duty. Nevertheless, in all cases, the license will be considered expired and the broker may not practice real estate until the broker, within the one year from expiration, renews/reinstates his/her license. In all cases, brokers renewing/reinstating late must meet all continuing education requirements due during the expired cycle in question.

**(4) Procedure:** Brokers seeking the late fee exemption under the above conditions must first contact commission staff prior to submittal of the late renewal application, and must submit a letter of explanation along with the pertinent documentation supporting late fee exemption request. Following commission staff review of the documentation, commission staff will determine the validity of the documentation. If a late fee exemption is granted, the commission staff will notify the broker to submit the late renewal application. If an exemption from the late fee is not

granted, the broker may still submit the late renewal, but be subject to the late fee penalty at the time of submission.

**D. Forfeiture of license renewal/reinstatement:** After the time period of one year from the date of license expiration, the broker will not be able to renew or reinstate their license, and the broker would have to undergo all prelicensure requirements to become licensed in the future.

**E. Multiple license circumvention of late fees disallowed:** A qualifying broker with multiple licenses cannot avoid paying the late fee on an expired license by allowing the license to expire and subsequently applying for an additional license. An application for an additional license within one year of the broker's license expiration date will only be accepted if the qualifying broker brings all other licenses current with respect to fees, continuing education, and other renewal requirements. In addition to paying a license renewal/reinstatement fee, the broker will be required, as a condition of license renewal/reinstatement, to provide documentation of the completion of the necessary 42 hours of continuing education required for a qualifying broker.

**F. On-line renewal forms:** The commission shall email online license renewal forms and all related web links to brokers at the broker's email of record on file at the commission, and if possible, in the case of active associate brokers, send a copy of said email renewal notice to the applicable qualifying broker.

**G. Phone number of record and email of record address changes:** Brokers are responsible for providing the commission with a current email address, and phone number; and, for notifying the commission within 10 days of a change of email address. Brokers must also maintain a current residential address with the commission and notify the commission within 10 days of a residential address change.

**H. Payment of commissions to brokers with expired license:** The qualifying broker may pay a commission to a broker whose license is expired or to the estate of a deceased broker only if the transaction was under contract while the broker's license was current.

**I. Background checks:** The commission will conduct a background check on all renewal applicants and may use that information in determining their eligibility for renewal.

[8/15/1997; A, 1/1/2000; 16.61.11.8 NMAC - Rn & A, 16 NMAC 61.11.8, 1/1/2002; A, 1/1/2004; A, 1/1/2006; A, 12/31/2008; A, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

## **PART 12: LICENSE SUSPENSION AND REVOCATION**

### **16.61.12.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.12.1 NMAC - Rp, 16 NMAC 61.12.1, 1-1-2002]

**16.61.12.2 SCOPE:**

The provisions in Part 12 of Chapter 61 apply to brokers whose licenses have been suspended or revoked by the commission.

[16.61.12.2 NMAC - Rp, 16 NMAC 61.12.2, 1-1-2002; A, 1-1-2006]

**16.61.12.3 STATUTORY AUTHORITY:**

Part 12 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-1.

[16.61.12.3 NMAC - Rp, 16 NMAC 61.12.3, 1-1-2002]

**16.61.12.4 DURATION:**

Permanent.

[16.61.12.4 NMAC - Rp, 16 NMAC 61.12.4, 1-1-2002]

**16.61.12.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[16.61.12.5 NMAC - Rp, 16 NMAC 61.12.5, 1-1-2002]

**16.61.12.6 OBJECTIVE:**

The objective of Part 12 of Chapter 61 is to set forth the procedures for license suspension and revocation for violation of the real estate license law or the commission rules.

[16.61.12.6 NMAC - Rp, 16 NMAC 61.12.6, 1-1-2002; A, 1-1-2006]

**16.61.12.7 DEFINITIONS:**

Refer to Definitions 16.61.1.7 NMAC.

[16.61.12.7 NMAC - Rp, 16 NMAC 61.12.7, 1-1-2002]

**16.61.12.8 DISCIPLINARY ACTIONS:**

Violation of any provision of the real estate license law or commission rules may be cause for disciplinary action against any person who engages in the business or acts in the capacity of a real estate broker in New Mexico with or without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico, and other penalties as provided by law, commission rules, or policies, in the case of an unlicensed person. A person found by the commission to be engaging in unlicensed real estate activity has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of the real estate license law Chapter 61, Article 29 NMSA 1978 and the commission rules, Title 16 Chapter 61 NMAC. Nothing herein contained shall be deemed to be a restriction on any other penalty or provision provided by law.

[16.61.12.8 NMAC - Rp, 16 NMAC 61.12.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

#### **16.61.12.9 LICENSE SURRENDER:**

A. Any qualifying broker's or associate broker's license suspended or revoked by an order, stipulated agreement or settlement agreement approved by the commission shall be surrendered to the commission by the broker upon the delivery of the order to the broker by the commission, or on the effective date of the order.

B. All real-estate-related activity conducted under such license shall cease for the duration of the license suspension or revocation, and the license of any associate broker affiliated with a qualifying broker whose license is suspended or revoked shall be automatically placed on inactive status until a new qualifying broker or broker in charge is designated.

[16.61.12.9 NMAC - Rp, 16 NMAC 61.12.9, 1-1-2002; A, 1-1-2006; A, 1-1-2014]

### **PART 13: CONTINUING EDUCATION REQUIREMENTS**

#### **16.61.13.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[1-1-2000; 16.61.13.1 NMAC - Rn & A, 16 NMAC 61.13.1, 1-1-2002]

#### **16.61.13.2 SCOPE:**

The provisions in Part 13 of Chapter 61 apply to all brokers intending to renew or reactivate their New Mexico broker license.

[1-1-2000; 16.61.13.2 NMAC - Rn, 16 NMAC 61.13.2, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

**16.61.13.3 STATUTORY AUTHORITY:**

Part 13 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[1-1-2000; 16.61.13.3 NMAC - Rn, 16 NMAC 61.13.3, 1-1-2002]

**16.61.13.4 DURATION:**

Permanent.

[1-1-2000; 16.61.13.4 NMAC - Rn, 16 NMAC 61.13.4, 1-1-2002]

**16.61.13.5 EFFECTIVE DATE:**

January 1, 2000, unless a later date is cited at the end of a section.

[1-1-2000; 16.61.13.5 NMAC - Rn & A, 16 NMAC 61.13.5, 1-1-2002]

**16.61.13.6 OBJECTIVE:**

The objective of Part 13 of Chapter 61 is to set forth continuing education requirements for New Mexico real estate brokers.

[1-1-2000; 16.61.13.6 NMAC - Rn, 16 NMAC 61.13.6, 1-1-2002; A, 1-1-2006]

**16.61.13.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.13.7 NMAC - Rn, 16 NMAC 61.13.7, 1-1-2002]

**16.61.13.8 REQUIREMENTS:**

Except for brokers who are exempt from continuing education by virtue of having attained 65 years of age and a minimum of 20 years of continuous licensure prior to July 1, 2011, the following requirements apply:

**A.** All active and inactive associate brokers shall successfully complete a minimum of 36 credit hours of continuing education in courses approved by the commission during each licensing cycle. All active and inactive qualifying brokers shall successfully complete a minimum of 42 credit hours of continuing education in courses approved by the commission during each licensing cycle, which includes the qualifying broker refresher course.

**B.** For each three-year licensing cycle, required courses include: the four-hour New Mexico real estate commission (NMREC) core course to be completed annually; four hours of commission-approved core elective course(s) to be completed during each three-year licensing for associate brokers; eight hours of commission-approved core elective course(s) to be completed during each three-year licensing cycle for qualifying brokers; and for all brokers, four hours of commission-approved ethics courses to be completed during each three-year licensing cycle. Property managers have additional continuing education requirements as specified in Subsection M of this section.

**C.** All remaining credit hours may be earned toward the cumulative continuing education renewal requirement from commission-approved elective category courses, additional core elective category courses or additional ethics category courses.

**D.** Each annual iteration of the NMREC core course title will contain the calendar year in which it is to be presented. The commission shall ensure that the content of each annual iteration is unique for each year's course to ensure that brokers are not receiving identical information in more than one course.

**E.** Pursuant to 16.61.11.8 NMAC, the broker's license will expire and can only be renewed within one year of expiration by payment of a late fee, notwithstanding any exemptions by law or rule, and successful completion of all renewal requirements; including all applicable annual core course requirements. If a broker fails to meet the core course requirements at the time of renewal, and is not exempt under 16.61.13.8 NMAC, the following policy will be in effect:

**(1)** If a broker failed to complete the core course required for, the third calendar year of their license renewal cycle, the broker must complete that core course with a core course instructor, in a regular core course class setting, or another format that has been approved by the commission within one year of expiration.

**(2)** If a broker failed to complete an annual core course required for the first or second years of their three-year license renewal cycle, and is unable to complete a make-up of the missed course(s) with an approved core course instructor prior to license expiration, the broker will be required to successfully complete the 30-hour broker basics course prior to expiration or as a condition of expired license renewal/reinstatement. The broker will be given credit for renewal purposes, but will not be given any continuing education credit.

**(3)** If a broker failed to complete any one of the three annual core course requirements within the context of their three-year cycle due to medical reasons and can present documentation to the commission of such medical reasons or active military deployment, the commission may authorize the broker to take the missed core course iteration by repeating, preferably under different instructors, the most recent core course iteration the number of annual core courses they missed prior to license expiration. Such medical reasons may include documentation (i.e., doctor's affidavit/ letter)

indicating the necessity of the broker to serve as a parental or immediate family caregiver.

**F.** Commission-approved pre-licensing courses may count for up to 10 credit hours toward continuing education credit for license renewal. The commission approved 30-hour post-licensing course may also count for up to 10 credit hours toward continuing education.

**G.** No individual commission-approved continuing education course will be granted more than 10 credit hours of continuing education credit.

**H.** Continuing education credit hours generally cannot be carried forward to the next licensing cycle except for new calendar year iterations of the annual core courses in excess of 12 core course hours normally sufficient for the cycle. If the broker renews their license early within their on-line renewal two-month window, and they meet the 36-hour minimum for that renewal for an associate broker and the 42-hour minimum for that renewal for a qualifying broker, and the broker takes a core course between the date of the renewed license, and the end of the cycle's date of expiration, they may carry a fourth four-hour core course credit forward to the next cycle.

**I.** The same continuing education course may not be repeated for credit in the same three-year renewal cycle.

**J.** Brokers may receive up to a maximum of four approved elective course credit hours during each licensing cycle for attending commission meetings, rule hearings, disciplinary hearings, or meetings of the education advisory committee (EAC). Brokers are prohibited from receiving credit for attending a disciplinary hearing in which they are a respondent.

**K.** Approved instructors may use up to 28 credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses. Teaching documentation must be provided by the course sponsor. Instructors may not use the same course for credit during any three-year licensing cycle.

**L.** Classes required by the commission for disciplinary reasons cannot be counted towards the continuing education requirements for license renewal.

**M.** Pursuant to 16.61.3.14 NMAC, all brokers who intend to offer property management services for others, shall as a condition of offering property management services complete the education requirements as listed below:

**(1)** Completion of the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering property management services and every subsequent three-year licensing cycle.

**(2)** As a condition of offering property management services, in addition to the course requirement in subsection A above, associate brokers shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

**(3)** Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

**(4)** While qualifying brokers are already subject to the meeting attendance requirements for license renewal under Subsection C of 16.61.3.13 NMAC, associate brokers who offer or intend to offer property management services shall also be subject to the same meeting attendance requirements namely, the attendance at one commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first. Attendance may be live meeting/hearing or by live or recorded distance broadcast, but must be documented by signing into and out of the meeting/hearing. In the event of broker hardship, approved by the commission, the real estate commission may authorize an equivalent to the attendance of a commission meeting either by an online download, attendance at any approved equivalent, or by other approved participation.

**N.** In recognition of the volunteer service to the real estate commission and subject to Subsection J of 16.61.13.8 NMAC, the following is in effect:

**(1)** Effective with the appointment of new commissioners after January 1, 2021, a broker currently serving their appointed term as a real estate commissioner may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve.

**(2)** A broker currently serving their appointed term as an education advisory committee member may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve upon written request to the commission at least two months prior to the date of license expiration.

**(3)** A broker currently serving their appointed term as a member of any other real estate commission task force or ad-hoc committee may receive up to a maximum of 16 elective credit hours during each three-year licensing cycle for which they serve upon written request to the commission at least two months prior to the date of license expiration.

**(4)** All those seeking volunteer service credit must submit a summary of such service to commission staff.

[1/1/2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1/1/2002; A, 1/1/2006; A, 1/1/2007; A, 12/31/2008; A, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

#### **16.61.13.9 VERIFICATION OF COMPLETION OF COURSE WORK:**

At the time of license renewal, associate brokers and qualifying brokers shall submit to the real estate commission verification of completion of continuing education course work.

[1-1-2000; 16.61.13.9 NMAC - Rn, 16 NMAC 61.13.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008; A, 1-1-2012]

### **PART 14: EDUCATION AND TRAINING FUND**

#### **16.61.14.1 ISSUING AGENCY:**

New Mexico real estate commission, information to the commission real estate brokers and to public or private persons involved in, interested in, or affected by the commission's broker education programs.

[16.61.14.1 NMAC - N, 01/01/07]

#### **16.61.14.2 SCOPE:**

The provisions in Part 14 apply to Title 16, Chapter 16 and provide relevant information to the commission real estate brokers and to public or private persons involved in, interested in, or affected by the commission's broker education programs.

[16.61.14.2 NMAC - N, 01/01/07]

#### **16.61.14.3 STATUTORY AUTHORITY:**

Part 14 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA, Section 61-29-20.

[16.61.14.3 NMAC - N, 01/01/07]

#### **16.61.14.4 DURATION:**

Permanent.

[16.61.14.4 NMAC - N, 01/01/07]

#### **16.61.14.5 EFFECTIVE DATE**

1-1-2007, unless a later date is cited at the end of a section.

[16.61.14.5 NMAC - N, 01/01/07]

**16.61.14.6 OBJECTIVE:**

The objective of Part 14 of Chapter 61 is to set forth to all affected persons the manner in which the education and training fund will be administered by the commission.

[16.61.14.6 NMAC - N, 01/01/07]

**16.61.14.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.14.7 NMAC - N, 01/01/07]

**16.61.14.8 PROVIDERS:**

The New Mexico real estate commission may enter into contracts with public or private institutions or individuals to establish, continue, or expand educational programs or research programs which will benefit real estate brokers and the public in its potential dealings with real estate brokers. Priority will be given to those programs that enhance educational opportunities for New Mexico-licensed real estate associate brokers and qualifying brokers, and further the real estate commission's mission of protecting the public and increasing the professional competence of real estate brokers.

[16.61.14.8 NMAC - N, 01/01/07]

**16.61.14.9 AMOUNTS AND TERMS OF CONTRACTS FOR EDUCATION OR RESEARCH:**

The amount to be paid and the duration of any contract shall be as provided for in each contract. Any amendment to a contract to increase the payment or extend the time of performance shall be at the discretion of the commission. No provision of any contract shall be construed as obligating the commission to make any payment beyond the fiscal year in which the commission enters into the contract, unless otherwise provided for in the contract.

[16.61.14.9 NMAC - N, 01/01/07]

**16.61.14.10 PROPOSALS:**

Proposals to enter into contracts for education or research with the commission will be required to contain the following:

- A. a statement of the educational objective of the proposed program or research;

B. a statement of how the program will benefit associate brokers or qualifying brokers or the public who may deal with them;

C. if applicable, a detailed course outline, the number of educational hours in the program, length of course, schedule of instruction, location, and anticipated number of participants;

D. if applicable, the purpose, scope, length, and place of research work;

E. a detailed cost analysis of the entire course or project including, but not limited to such items as source(s) of other funding for the program, cost of advertising, administration, instructors, materials, and physical facilities, and fees proposed to be charged to participants;

F. if applicable, a list of instructors who may be used and their credentials;

G. any academic, real estate, or other professional credit proposed to be awarded, subject to the approval of the commission;

H. such other information as the commission may require at the time of submission of the proposal or after reviewing the proposal.

[16.61.14.10 NMAC - N, 01/01/07]

#### **16.61.14.11 COMMISSION ACTION ON PROPOSALS:**

A. The commission shall act on all proposals within sixty (60) days of receipt of a written original or amended proposal and shall notify the applicant in writing of:

- (1) the terms of acceptance of the proposal;
- (2) the reason or reasons for rejection of the proposal;
- (3) any further information needed to accept or reject the proposal;

B. Decisions of acceptance and rejection by the commission shall be final.

[16.61.14.11 NMAC - N, 01/01/07]

#### **16.61.14.12 REPORTS:**

Within thirty (30) days of the end of the term of the contract or at such other time as the commission may require, the provider under contract shall provide to the commission a report of the expenditure of funds under the contract, and a written report explaining how the program benefited New Mexico real estate brokers and consumers. Whenever a contract for education or research requires that the provider conduct courses,

seminars, or other educational venues, the provider shall issue to each participant who successfully completes the program a certificate of course completion that includes the participant's name, the course name, the number of approved credit hours, and whether the course is in the education or training category of approved commission courses. Within fourteen (14) days of the end of the program, the provider shall send to the commission a list of all real estate brokers who successfully completed the program. The commission may direct its employees or representatives to monitor any contracted program at any time and the providers shall be required to supply to such representatives requested reasonable data upon reasonable notice.

[16.61.14.12 NMAC - N, 01/01/07]

**16.61.14.13 USE OF COMMISSION NAME:**

Any advertising of a program or project funded by the education and training fund must indicate that the New Mexico real estate commission underwrites a portion or all of the cost of the program. Any publication or any other educational materials produced as a result of a contract must include indication that the New Mexico real estate commission underwrites a portion or all of the cost of producing the material. All participants in any program underwritten totally or in part by the New Mexico real estate commission must be clearly and affirmatively made aware of the participation of the New Mexico real estate commission and how they may forward comments on the program to the commission. No other use of the name of the commission shall be permitted without the commission's prior approval.

[16.61.14.13 NMAC - N, 01/01/07]

**16.61.14.14 PRODUCT OF SERVICE - COPYRIGHT:**

All materials developed or acquired by a Contractor providing educational and research services funded in whole or in part by the Education and Training Fund shall become the property of the New Mexico real estate commission and shall be delivered to the Commission no later than the termination date of the contract. Nothing produced, in whole or in part, by the Contractor shall be the subject of an application for copyright other claim of ownership by or on behalf of the Contractor.

[16.61.14.14 NMAC - N, 01/01/07]

**16.61.14.15 CHANGES:**

No substantive changes, including schedule of programs, may be made in a program under a contract for education and research without the prior approval of the commission. The commission at a regularly scheduled meeting may make emergency changes on a temporary basis with the prior approval of the administrator of the commission subject to review and final approval. All requests for changes and authorizations of changes must be made in writing before they may be implemented.

[16.61.14.15 NMAC - N, 01/01/07]

**16.61.14.16 PARTICIPANTS:**

Any courses offered to New Mexico licensed associate brokers and qualifying brokers which the commission has underwritten in part or in total must be made available to all persons regardless of race, color, religion, sex, handicap, familial status, national origin, age, or membership in any organization.

[16.61.14.16 NMAC - N, 01/01/07]

**16.61.14.17 EXPENDITURES:**

Any funds not expended in the implementation of a contract for education or research shall be returned to the commission within thirty (30) days of the termination date of the contract or at such other time as the commission approves.

[16.61.14.17 NMAC - N, 01/01/07; A, 12-31-2008]

**16.61.14.18 REVENUES:**

The Real Estate Education and Training Fund shall consist of an initial transfer of the balance in the Real Estate Recovery Fund in excess of the \$150,000 statutory minimum balance; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses, and instructors; gifts, grants, donations, and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

[16.61.14.18 NMAC - N, 01/01/07; A, 1-1-2014]

**16.61.14.19 VIOLATIONS:**

Any violation of the provisions of this part, any falsification or misrepresentation in a proposal for a contract for education and research, or violation of any written agreement entered into with the commission under this part may result in a termination of the contract and the requirement that all funds paid by the commission be returned. Any provider under a contract for education and research found to have not properly accounted for or improperly expended all funds shall repay said funds plus interest at 6 percent per annum to the commission and said recipient shall be ineligible to enter into any contract for education and research with the commission until said recipient first repays the fund plus interest. Should the commission allege any violation under this rule, it shall provide the respondent with a formal hearing under the provisions of the Uniform Licensing Act.

[16.61.14.19 NMAC - N, 01/01/07; A, 12-31-2008]

## **PART 15: APPROVAL OF REAL ESTATE COURSES, SPONSORS, AND INSTRUCTORS**

### **16.61.15.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.15.1 NMAC - Rp, 16.61.15.1 NMAC, 1-1-2012]

### **16.61.15.2 SCOPE:**

The provisions in Part 15 of Chapter 61 apply to all real estate pre-licensing and continuing education course sponsors and instructors wishing to obtain accreditation to offer and teach real estate pre-licensing and continuing education courses to New Mexico real estate brokers.

[16.61.15.2 NMAC - Rp, 16.61.15.2 NMAC, 1-1-2012]

### **16.61.15.3 STATUTORY AUTHORITY:**

Part 15 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.

[16.61.15.3 NMAC - Rp, 16.61.15.3 NMAC, 1-1-2012]

### **16.61.15.4 DURATION:**

Permanent.

[16.61.15.4 NMAC - Rp, 16.61.15.4 NMAC, 1-1-2012]

### **16.61.15.5 EFFECTIVE DATE:**

January 1, 2012, unless a later date is cited at the end of a section.

[16.61.15.5 NMAC - Rp, 16.61.15.5 NMAC, 1-1-2012]

### **16.61.15.6 OBJECTIVE:**

The objective of Part 15 of Chapter 61 is to set forth the procedures and requirements for the accreditation of real estate continuing education and pre-licensing sponsors, courses, and instructors.

[16.61.15.6 NMAC - Rp, 16.61.15.6 NMAC, 1-1-2012]

### **16.61.15.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.15.7 NMAC - Rp, 16.61.15.7 NMAC, 1-1-2012]

#### **16.61.15.8 EDUCATION ADVISORY COMMITTEE:**

The commission shall appoint an education advisory committee (EAC), hereinafter referred to as the committee, with the goal of upgrading and improving the real estate education program in order to carry out the commission's mission of protecting the public and increasing the professional competence of real estate brokers. The committee shall advise the commission on all matters related to broker education.

**A.** The committee shall meet monthly or as required for the purpose of evaluating applications for real estate course sponsors, courses, and instructors and shall make recommendations to the commission as to its findings.

**(1)** The committee shall use specific criteria to evaluate a course, an instructor or course sponsor for approval. These specific criteria shall consider both the instructor's depth of knowledge of the subject and the instructor's ability to convey that knowledge.

**(2)** The committee shall clearly state in writing to the applicant the reasons for which a course, an instructor or course sponsor are not approved.

**(3)** A sponsor or instructor applicant not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

**B.** The committee shall consist of up to nine non-instructor members and no fewer than three instructor members. A committee chair and a vice chair shall be elected by the committee. All members shall be appointed to three-year terms.

**C.** Members shall serve a maximum of two consecutive terms, but may reapply for membership on year after the expiration of their second term. The commission shall appoint members to fill vacancies until the end of the term of the vacant position.

[16.61.15.8 NMAC - Rp, 16.61.15.8 NMAC, A, 1/15/2018; A, 1/3/2021]

#### **16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:**

**A.** Courses offered for New Mexico real estate commission approved credit must be offered by sponsors approved by the New Mexico real estate commission and be taught by instructors approved by the commission.

**B.** Applications for sponsor, instructor and course approvals must be filled in completely and accompanied with the necessary supporting documentation (i.e. timed

outlines, power point slides electronic links, course review access information, etc.). Any fees as specified in 16.61.2.8 NMAC will be due to the commission following final approval. Course applications must request one of the following course categories: Core elective, or elective. If a core elective category designation is requested, the application must clearly state the reason the course meets the requirements for the core elective category designation. The course category definitions are as follows:

**(1)** A core elective category course shall consist of an advanced course offered by a commission approved sponsor in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, and which advance the broker's practice of real estate by one or more of the following: improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills; improves broker business practices and professionalism focusing on, but not limited to, broker responsibilities and duties; improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.

**(2)** An elective category course shall consist of a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, and ethical practice of real estate; and real estate related local, state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes some national designation and certifications offerings not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

**(3)** With the exception of courses taken in states with which New Mexico has a written license recognition agreement, non-acceptable continuing education classes shall include courses taken in fulfillment of another state's continuing education requirements. Other non-acceptable courses include mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar courses.

**C.** The committee shall review instructor candidates:

- (1) to determine the candidate's knowledge of the subject matter;
- (2) to determine the candidate's ability to communicate his/her knowledge to students;
- (3) to determine if the candidate uses appropriate teaching delivery skills;
- (4) to determine if the candidate is honest, truthful, reputable, professional, and competent.

[16.61.15.9 NMAC - Rp, 16.61.15.9 NMAC, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

#### **16.61.15.10 APPROVAL OF SPONSORS AND RESPONSIBILITIES:**

**A.** All sponsors wishing to offer commission approved courses for credit must be approved by the commission before the course being offered for credit.

**B.** Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

**C.** The commission will maintain a list of approved sponsors.

**D.** An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) permit all New Mexico real estate brokers to attend all classes offered by the sponsor for which continuing education credit is awarded;

(3) document electronically to the real estate commission that the student has completed the course;

(a) certify no candidate as successfully completing the broker basics or brokerage office administration course unless the student has attended at least ninety percent of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing a commission approved course unless the broker has attended 50 minutes of each hour, or successfully completed a distance education course approved by the New Mexico real estate commission.

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is a core elective, an elective, or ethics course;

(7) in the event a sponsor determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days before cessation;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be maintained by the sponsor for not less than one year and shall be made available to the commission, or any duly authorized commission representative, upon request;

(10) renew sponsorship approval every three years by submitting a sponsor renewal form and renewal fee to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

**E.** Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule.

[16.61.15.10 NMAC - Rp, 16.61-15.10 NMAC, 1/1/2012; A, 1/1/2019; A, 1/3/2021]

#### **16.61.15.11 APPROVAL OF COURSES:**

**A.** Any pre-licensing or continuing education course must have been approved by the commission before the course being offered for credit. Courses must incorporate New Mexico law and rules when relevant. A course application form must be completed and submitted to the commission before consideration of a course for approval by the committee.

**(1)** Before course approval, the instructor teaching the course shall make a presentation before the committee according to presentation criteria established by the committee.

**(2)** The committee shall assign the number of credit hours to each course and determine whether the course is in the core elective, elective, or ethics categories.

**(3)** Commission approved pre-licensing courses may count for up to ten credit hours toward continuing education requirements for license renewal.

**B.** The committee may waive a course presentation appearance by a nationally recognized professional real estate organization that provides professional designations if the organization can document to the committee's satisfaction that the course instructor received training in the course subject matter in addition to attending a train the trainer class.

**C.** The commission must approve any continuing education course offered for one-time credit before the course being offered.

**(1)** A commission approved application form for one-time credit approval must be completed and submitted to the committee before consideration of the course for credit. Applications must contain all the necessary supporting materials regarding the instructors and the venue and date(s) the course will be offered.

**(2)** Approved sponsors are limited to 10 course submittals for one-time credit during each calendar year.

**(3)** The sponsor, or its representative, requesting one-time course credit, shall make a presentation before the committee according to presentation criteria established by the committee.

**D.** All courses shall conform to the generally accepted principles of education as prescribed by the real estate educators association (REEA) and shall comply with commission approved course content requirements. The minimum length of a course shall be one hour.

**E.** The commission will maintain a list of courses that have been approved for credit.

**F.** If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last three years the committee may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

**G.** Distance education: For purposes of this part, distance learning is approved course activity that takes place outside of the traditional classroom setting and in which non-traditional instructional media are used because the teacher and student are separated by distance or time. Distance education sponsors seeking continuing education credit for their courses will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee review and approval:

(1) course syllabus which clearly states the course objectives and the specific learning objectives for desired student competencies;

(2) instructions for accessing, using and testing the online materials for committee auditing purposes including everything necessary for evaluating course content materials, duration, accuracy and timeliness;

(3) reference materials appropriate to the course;

(4) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(5) description of the method, such as examination and quizzes, by which student progress and mastery of the subject matter are measured, and for determining what is required for a student to successfully complete the course;

(6) description of the method by which student identity is verified, such as user name and password;

(7) the names, telephone numbers and email addresses of individuals, web-sites or other resources that students can contact for technical assistance;

(8) the name and contact information of the New Mexico instructor approved to teach the course who will be available to answer subject matter questions during regularly posted hours;

(9) a description of the methodology used by the sponsor in determining the classroom hour equivalency of each distance education course.

**H.** Live distance education is distance education in which the teacher and student are separated by distance, but not time. In addition to the requirements of subsection G, the following regulations will apply to live distance education. Live distance education sponsors and instructors seeking approval to offer continuing education credit will be required to designate a New Mexico approved instructor to make a presentation to the committee and shall submit for committee approval the following:

(1) The technology a sponsor intends to use to provide live distance education will be in place, at the place of instruction and at student location(s), and

demonstrated to the committee in a situation as near to the actual proposed class setting as possible.

(2) The sponsor or instructor will provide technical support sufficient to rectify minor technical problems. If there are interruptions that exceed the regulatory mandate of 50 minutes of instruction per hour, no credits will be issued to students.

(3) At live distance education locations where there is a proctor provided by the sponsor or the instructor, a final examination is not required. At locations where there is no proctor, a final examination is required.

(4) Live distance education core course instruction will be proctored, will have a maximum of 40 students total, and a minimum of five students at each location, unless there is a one teacher to one student instruction.

[16.61.15.11 NMAC - Rp, 16.61.15.11 NMAC, 1/1/2012; A, 1/1/2017; A, 1/1/2019; A, 1/3/2021]

#### **16.61.15.12 APPROVAL OF INSTRUCTORS:**

**A.** Commission approved course instructors. Instructors must be approved by the commission before teaching courses. The following requirements apply to all commission approved instructors.

- (1) Be honest, truthful, reputable, professional, and competent.
- (2) Submit a commission-approved application before presenting the course to the committee.
- (3) Complete a commission approved instructor training course within one year of being initially approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.
- (4) Provide copies of student handouts during their course presentation.
- (5) Make a minimum 15 minute presentation to the committee exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions. Presentations must conform to the generally accepted principles of education (GAPE) as established by the real estate educators' association (REEA).

**B.** Pre-licensing instructors. Pre-licensing courses include: real estate law, real estate principles and practices, broker basics and brokerage office administration. In addition to Subsection A. above, these instructor candidates must:

(1) pass the New Mexico broker's examination with a minimum score of 84 within the previous three years from the date of application;

(2) audit the course they wish to teach before being approved as an instructor for that course; documentation of having audited the course must be submitted with the candidate's application;

(3) broker basics: be approved to teach real estate law and real estate principles and practice;

(4) brokerage office administration: be approved to teach real estate law and real estate principles and practice and broker basics; in addition, candidates must also have two-year's experience as a qualifying broker in New Mexico or another licensing jurisdiction.

**C. Core course instructors.** In addition to Subsection A. above core course instructor candidates must:

(1) Successfully complete a core course training class recommended by the committee and approved by the commission; and

(2) Teach the current core course twice for no compensation; teamed with two different approved core course instructors designated by the commission executive secretary or commission education administrator; and receive "above average" evaluations in both courses, and

(3) Appear before and be approved by the committee, including presentation to the committee of a component of the current year's core class; and

(4) Appear before the commission, and be sworn in, and

(5) Ensure that the core course materials the applicant presents includes the materials approved by the commission for the current calendar year that is being taught.

**D. Qualifying broker refresher course instructors.** In addition to Subsection A above, qualifying broker refresher course instructor candidates must comply with one of the following:

(1) be a currently approved instructor for real estate law and real estate principles and practice and broker basics and be a qualifying broker or would qualify to be one; or

(2) be approved to teach the core course and be a qualifying broker.

**E. New broker business practices post-licensing course instructors.** In addition to Subsection A above, new broker business practices course instructors must:

(1) have two years' experience as an active qualifying broker with supervisory responsibilities or two years actively licensed as an associate broker and served in the capacity as a trainer for the brokerage, or two years actively licensed as an associate broker and be approved as a continuing education instructor;

(2) attend, when offered, a commission approved train-the-trainer on how to instruct the post-licensing course and attend, when offered, a periodic update of the course offered by the commission or the commission contractor; and

**F. Committee approval process.** The committee will make its recommendation to the commission to grant or deny instructor approval. If the application is denied, a written evaluation to the candidate will provide specific reasons for denial and recommendations for improvement. An instructor candidate not recommended for approval by the committee may ask the commission to review the committee's unfavorable recommendation.

**G. Post-approval requirements.** After approval all instructors must comply with the following:

- (1) pay applicable fee(s);
- (2) conduct all classes in accordance with commission rules and educational policies;
- (3) ensure all instruction is free from all misrepresentation, solicitations of products and recruitment;
- (4) conform to commission-approved course content requirements; and
- (5) allow access to any class to any duly appointed representative of the commission.

**H. Instructor approval expiration and re-certification.**

(1) **Expiration.** Instructor approvals expire on the same three-year cycle as the instructor's broker's license. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

- (2) **Re-certification.** Instructors seeking re-certification shall:
- (a) submit the commission-approved form;
  - (b) submit documentation of having completed a commission-approved instructor training course;

(c) an instructor who has not taught a course in the preceding three year instructor renewal cycle will not be recertified to teach that course; an instructor may submit at the time of renewal, a written request to the committee to be re-certified to teach that course; the written request must specify how the instructor has remained current on the course material, and must include the course outline and course material.

I. Failure to comply with this part may result in the loss of instructor approval.

[16.61.15.12 NMAC - Rp, 16.61.15.12 NMAC, A 1-1-2017; A, 1-1-2019]

## **PART 16: QUALIFYING BROKER: AFFILIATION AND RESPONSIBILITIES**

### **16.61.16.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.16.1 NMAC - Rp, 16.61.16.1 NMAC, 1-1-2012]

### **16.61.16.2 SCOPE:**

The provisions in Part 16 of Chapter 61 apply to all New Mexico qualifying brokers.

[16.61.16.2 NMAC - Rp, 16.61.16.2 NMAC, 1-1-2012]

### **16.61.16.3 STATUTORY AUTHORITY:**

Part 16 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.16.3 NMAC - Rp, 16.61.16.3 NMAC, 1-1-2012]

### **16.61.16.4 DURATION:**

Permanent.

[16.61.16.4 NMAC - Rp, 16.61.16.4 NMAC, 1-1-2012]

### **16.61.16.5 EFFECTIVE DATE:**

1-1-2012, unless a later date is cited at the end of a section.

[16.61.16.5 NMAC - Rp, 16.61.16.5 NMAC, 1-1-2012]

### **16.61.16.6 OBJECTIVE:**

The objective of Part 16 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of a qualifying broker.

[16.61.16.6 NMAC - Rp, 16.61.16.6 NMAC, 1-1-2012]

**16.61.16.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.16.7 NMAC - Rp, 16.61.16.7 NMAC, 1-1-2012]

**16.61.16.8 AFFILIATION:**

A qualifying broker is responsible for all real estate activities within the brokerage. A qualifying broker may serve concurrently as a qualifying broker for more than one brokerage. A qualifying broker may by written agreement engage the services of associate brokers and qualifying brokers, provided that the terms of such agreements are consistent with the responsibilities of associate brokers and qualifying brokers as set forth in parts 16.61.16.9 NMAC and 16.61.17.9 NMAC. A qualifying broker may serve as qualifying broker and associate broker for different brokerages simultaneously provided that there are written agreements executed specifying the responsibilities and scope of authority that the broker has for each brokerage. For purposes of this section "broker" means any licensee in a brokerage who is not acting in the capacity of a supervising qualifying broker.

[16.61.16.8 NMAC - Rp, 16.61.16.8 NMAC, 1/1/2012; A, 1/3/2021]

**16.61.16.9 RESPONSIBILITIES:**

A qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

**A.** Conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission.

**B.** Prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office; in the event of a virtual office, this requirement is met by displaying a legible photo or scanned image of the licenses on the brokerage's web site through a link labeled "real estate licenses.

**C.** Have in the brokerage office and available to all affiliated associate brokers and qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual.

**D.** Notify the commission in writing within 10 days of a change of the brokerage office address or telephone number.

**E.** Supervise trust account management by brokerage owners whether or not the brokerage owners are licensed real estate brokers. Such trust account management will conform to other trust account requirements in the commission rules.

**F.** Maintain all transaction records for six years if not performing property management, and for the full term of the assignment if performing property management. All such records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office. Records may be in paper or electronic format. In the case of property managers, all records shall be retained for the full term of any agreement and for six years from the termination of the management agreement;

**G.** Develop written office policies describing duties and responsibilities of brokers within the brokerage and guidance to brokers in avoiding violations of state or federal laws regarding real estate or rules of the real estate commission. Qualifying brokers who do not supervise are not required to develop written office policies. Office policies shall:

**(1)** Be provided to each broker within the brokerage and must include a signed acknowledgement by broker that policies were received and read and that broker agrees to follow the policies;

**(2)** Be available for inspection, upon request, by any authorized representative of the commission;

**(3)** Include obligations for brokers to inform the qualifying broker of any situation in which the broker is unsure, untrained, or concerned;

**(4)** Include obligations for the broker to be competent;

**(5)** Include obligations of the qualifying broker to make reasonable attempts to resolve issues that arise;

**(6)** Include a requirement to follow the state and federal laws regarding real estate and the rules of the real estate commission;

**(7)** Include a requirement for broker to present all advertising drafts not prepared by the brokerage to the qualifying broker for approval; and,

**(8)** Include a requirement for brokers to renew their license on time, and to be responsible for completing continuing education as required by the commission rules for renewal.

**H.** Provide guidance to newly licensed brokers throughout their first six transactions or more if deemed necessary by the qualifying broker. Provide guidance for all new and experienced brokers including but not limited to:

- (1)** Review of the office policies;
- (2)** Provide consultation, ongoing training and education to help the brokers avoid violations of local, state, and federal laws regarding real estate and rules of the real estate commission;
- (3)** Timely take action to mitigate potential or actual violations of which qualifying broker is made aware;
- (4)** Respond to broker promptly regarding any issues on the previous list;
- (5)** Provide assistance in preparing contracts as necessary;
- (6)** Monitor transactions as necessary;
- (7)** Instruct the associate broker to review closing documents and attend closing or have an experienced substitute attend closing (unless restricted by the title company); and,
- (8)** The qualifying broker may require review of all transaction documents.

**I.** Require all brokers to provide drafts of advertising not drafted by the brokerage to the qualifying broker for review and approval.

**J.** Execute and maintain written independent contractor agreements with brokers affiliated with qualifying broker. This section shall not be construed to mean that an employer/employee relationship is required between the qualifying broker and any broker.

**K.** Deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing the signatures of all parties to the transaction on the documents;

**L.** Receive and disburse or authorize the disbursement of all commissions, referral fees, and other considerations to a broker affiliated with the qualifying broker, or broker who had been affiliated with the qualifying broker at the time the transaction went under contract; the qualifying broker may also disburse or authorize the disbursement of such commissions and fees to any entity entitled by law to receive same, including the estate of a deceased broker, the deceased brokers surviving spouse, or any legally recognized entity wholly owned by an associate broker and their spouse. Such partnership, corporation, or limited liability company (LLC) shall not be required to have a qualifying broker for purposes of this subpart;

**M.** When the brokerage cooperates with, in expectation of compensation, or makes a referral to, or receives a referral from any broker, there must be a transaction specific written co-brokerage or referral agreement or for corporate or network referrals, a general referral agreement or contract signed by the qualifying broker;

**N.** Designate a broker in charge in the event actual supervision by the qualifying broker is not possible, and inform the commission of such designation in writing. During this period of time, the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

**O.** Return broker's license to the commission within 48 hours of termination or discharge;

**P.** Require each broker affiliated with the brokerage to obtain and maintain a current errors and omissions policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5 NMAC of the commission rules;

**Q.** Successfully complete the commission-approved qualifying broker refresher course as a condition of license renewal or as a condition of reinstatement of qualifying broker status;

**R.** Require each broker affiliated with their brokerage to complete the commission-approved new broker business practices course, or the CCIM 101 course within their first year of licensure;

**S.** Require brokers to include the qualifying broker's name and contact information, including license number, clearly and conspicuously on any written document generated by the brokerage or presented to a prospective customer or client, and that has the potential to become an express written agreement;

**T.** Identify oneself on real estate related phone calls, texts or emails as a licensed New Mexico real estate broker.

**U.** Disclose, when buying, selling or leasing real property on broker's own behalf, that broker holds a New Mexico real estate license.

[16.61.16.9 NMAC - Rp, 16.61.16.9 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/3/2021]

#### **16.61.16.10 MITIGATING FACTORS TO QUALIFYING BROKER RESPONSIBILITIES:**

Any of the following may be considered by the commission as mitigating factors regarding an alleged violation of the responsibilities named in 16.61.16.9 NMAC, above:

**A.** The qualifying broker has written policies guiding brokers from violating state or federal laws regarding real estate or rules of the real estate commission as demonstrated by all of the following:

(1) The qualifying broker demonstrates the broker received written policies and an acknowledgment that broker read and agreed to follow the policies;

(2) The qualifying broker can demonstrate access was provided to associate brokers to any of the following:

(a) Ongoing training or education sessions for associate brokers;

(b) Ongoing discussions regarding real estate practice, procedures and law, the rules of the commission;

(c) Ongoing discussions regarding completing real estate forms correctly;

(d) Ongoing discussions regarding changes to forms, rules and regulations, statutes and any other commission regulations

**B.** Any violation of the provisions of the New Mexico Real Estate License Act by any licensee associated with qualifying broker shall not be cause for suspension or revocation of a qualifying broker license unless the qualifying broker had guilty knowledge of the act or rule violation.

**C.** The qualifying broker's failure to provide an appropriate written company policy may be cause for discipline, including suspension or revocation of the qualifying broker's license.

[16.61.16.10 NMAC - N, 1/3/2021]

## **PART 17: ASSOCIATE BROKER: AFFILIATION AND RESPONSIBILITIES**

### **16.61.17.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[1-1-2000; 16.61.17.1 NMAC - Rn & A, 16 NMAC 61.17.1, 1-1-2002]

### **16.61.17.2 SCOPE:**

The provisions in Part 17 of Chapter 61 apply to all New Mexico associate brokers.

[1-1-2000; 16.61.17.2 NMAC - Rn, 16 NMAC 61.17.2, 1-1-2002; A, 1-1-2006]

### **16.61.17.3 STATUTORY AUTHORITY:**

Part 17 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 61-29-4.

[1-1-2000; 16.61.17.3 NMAC - Rn, 16 NMAC 61.17.3, 1-1-2002]

**16.61.17.4 DURATION:**

Permanent.

[1-1-2000; 16.61.17.4 NMAC - Rn, 16 NMAC 61.17.4, 1-1-2002]

**16.61.17.5 EFFECTIVE DATE:**

January 1, 2002, unless a later date is cited at the end of a section.

[1-1-2000; 16.61.17.5 NMAC - Rn & A, 16 NMAC 61.17.5, 1-1-2002]

**16.61.17.6 OBJECTIVE:**

The objective of Part 17 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of associate brokers.

[1-1-2000; 16.61.17.6 NMAC - Rn, 16 NMAC 61.17.6, 1-1-2002; A, 1-1-2006]

**16.61.17.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.17.7 NMAC - Rn, 16 NMAC 61.17.7, 1-1-2002]

**16.61.17.8 AFFILIATION:**

An associate broker must be affiliated with a qualifying broker in order to engage in real estate brokerage business. An associate broker may have only one associate broker's license and be affiliated with only one qualifying broker at a time. If specified in the independent contractor agreement between the brokerage and the associate broker, an associate broker may perform brokerage services for different qualifying brokers within the same brokerage with the same ownership. A broker performing brokerage related services in the capacity of a transaction coordinator for multiple brokerages must have a qualifying broker's license issued by the commission.

[1-1-2000; 16.61.17.8 NMAC - Rn, 16 NMAC 61.17.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012; A, 1-1-2019]

**16.61.17.9 RESPONSIBILITIES:**

An active associate broker shall:

**A.** complete within their first year of licensure, the commission-approved new broker business practices course or the CCIM 101 course. Associate brokers who have been on inactive status since their initial licensure shall complete the new broker business practices course or the CCIM 101 course prior to activation of their license;

**B.** be affiliated with only one qualifying broker license at a time;

**C.** not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom the broker is affiliated;

**D.** Notify the qualifying broker immediately and seek counsel and advice of the qualifying broker if the associate broker has questions or concerns about a transaction or process, including but not limited to, possible violations of office policies and procedures, local, state and federal laws regarding real estate and rules of the real estate commission, and must seek help with contract creation and completion when unsure.

**E.** Ensure associate broker's own competence and knowledge of the profession by taking continuing education courses in areas where associate broker is lacking skill or knowledge in those areas.

**F.** Read, understand and follow the written policies provided by qualifying broker.

**G.** not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker;

**H.** not engage in any real estate activities on their own behalf outside the knowledge of the qualifying broker with whom the broker is affiliated;

**I.** not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom the broker is affiliated;

**J.** not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom the broker was affiliated with at the time the transaction went under contract, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

**K.** when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom the broker is affiliated;

**L.** remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

**M.** deliver in a timely manner to their qualifying broker all records required to be maintained by their qualifying broker under 16.61.16 NMAC; and

**N.** maintain a current errors and omissions insurance policy as provided in Section 61-29-4.2 NMSA 1978 of the Real Estate License Law and 16.61.5.8 NMAC of the commission rules, and provide documentation of such policy to their qualifying broker.

**O.** Disclose, when buying, selling or leasing real property on broker's own behalf, that broker holds a New Mexico Real Estate License.

**P.** Identify oneself on real estate related phone calls, texts or emails as a licensed New Mexico real estate broker.

**Q.** Renew the real estate license timely and take all required continuing education courses in order to renew the license. Notify qualifying broker immediately if the license cannot be renewed or has expired.

**R.** Submit all advertising not prepared by the brokerage to the qualifying broker for review and approval prior to public release.

[1/1/2000, A, 2/14/2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1/1/2002; A, 1/1/2006; A, 12/31/2008; A, 1/1/2012; A, 1/1/2014; A, 1/1/2017; A, 1/3/2021]

## **PART 18: [RESERVED]**

## **PART 19: BROKER DUTIES AND BROKERAGE RELATIONSHIPS**

### **16.61.19.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.19.1 NMAC - Rp, 16.61.19.1 NMAC, 1-1-2004]

### **16.61.19.2 SCOPE:**

The provisions in Part 19 of Chapter 61 apply to all licensed associate brokers and qualifying brokers in New Mexico.

[16.61.19.2 NMAC - Rp, 16.61.19.2 NMAC, 1-1-2004; A, 1-1-2006]

### **16.61.19.3 STATUTORY AUTHORITY:**

Part 19 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.

[16.61.19.3 NMAC - Rp, 16.61.19.3 NMAC, 1-1-2004]

**16.61.19.4 DURATION:**

Permanent.

[16.61.19.4 NMAC - Rp, 16.61.19.4, 1-1-2004]

**16.61.19.5 EFFECTIVE DATE:**

1-1-2004, unless a later date is cited at the end of a section.

[16.61.19.5 NMAC - Rp, 16.61.19.5 NMAC, 1-1-2004]

**16.61.19.6 OBJECTIVE:**

The objective of Part 19 of Chapter 61 is to define the duties of real estate associate brokers and qualifying brokers, to define the various potential brokerage relationships and to define the disclosures associate brokers and qualifying brokers are required to make when working with consumers.

[16.61.19.6 NMAC - Rp, 16.61.19.6 NMAC, 1-1-2004; A, 1-1-2006]

**16.61.19.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.19.7 NMAC - Rp, 16.61.19.7 NMAC, 1-1-2004]

**16.61.19.8 BROKER DUTIES; DISCLOSURE:**

Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth herein, 16.61.19.8 NMAC. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth herein, 16.61.19.8 NMAC, prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. Brokers shall perform all duties established for brokers by the commission. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

**A.** Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

- (1)** Honesty and reasonable care and ethical and professional conduct.

**(2)** Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations.

**(3)** Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant.

**(4)** Written disclosure of any potential conflict of interest that the broker has in the transaction including but not limited to:

**(a)** Any written brokerage relationship the broker has with any other parties to the transaction,

**(b)** Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction, or;

**(c)** Any written agreement the broker has with a transaction coordinator who will be providing brokerage services related to the transaction.

**(5)** Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

**B.** In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, Brokers owe the following broker duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; brokers working as property managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:

**(1)** Assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:

**(a)** Timely presentation of and response to all written offers or counter-offers;  
and

**(b)** Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction;

If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such

service, advice or assistance. The broker shall disclose the existence of such agreement in writing to the other brokers involved in the transaction.

**(2)** Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters.

**(3)** Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

**(4)** Prompt accounting for all money or property received by the broker;

**(5)** Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

**(6)** Written disclosure of brokerage relationship options available in New Mexico;

**(7)** Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:

**(a)** That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;

**(b)** That the seller/owner will agree to financing terms other than those offered;

**(c)** The seller/owner's motivations for selling/leasing; or

**(d)** Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law.

**(8)** Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

**(a)** That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;

**(b)** The buyer/tenant's motivation for buying/leasing; or

**(c)** Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.

**(9)** In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

**C.** In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, brokers working as property managers for a landlord (owner) owe the following duties to tenants:

**(1)** Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;

**(2)** If a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the landlord (owner).

**D.** Broker obligations to other brokers. Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations.

**(1)** Honesty, reasonable care, and ethical and professional conduct;

**(2)** Timely presentation of all written offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

**(3)** Active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;

**(4)** Compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;

**(5)** Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;

**(6)** Written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the

transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;

**(7)** Non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1/1/2004; A, 1/30/2004; A, 3-27-2004; A, 1/1/2006; A, 1/1/2006, A, 1/1/2007; A, 12/31/2008; A, 1/1/2012; A, 1/1/2014. A, 1/15/2018; A, 1/1/2019; A, 1/3/2021]

### **16.61.19.9 BROKERAGE RELATIONSHIPS:**

Brokerages working with consumers either as customers or clients may do so through a variety of brokerage relationships. These relationships include but are not limited to a transaction broker relationship, an exclusive agency relationship or a dual agency relationship. For all regulated real estate transactions, a customer or client may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

**A.** Transaction broker: a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

**B.** Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

**C.** Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

[16.61.19.9 NMAC - Rp, 16.61.19.9 NMAC, 1-1-2004; A, 12-31-2008; A. 1-1-2012]

### **16.61.19.10 DUAL AGENCY RELATIONSHIP:**

**A.** Dual agency occurs when:

(1) an associate broker or qualifying broker is agent for both a seller client and a buyer client in the same transaction;

(2) an associate broker is agent for either a seller client or a buyer client, and the agent's qualifying broker is agent for the other client in the transaction; and,

(3) in a transaction where a buyer client and a seller client are each served by different associate brokers in an agency relationship supervised by the same qualifying

broker, and the qualifying broker does not choose the designated agency option, both the associate brokers and the qualifying broker are dual agents in the transaction.

**B.** In all situations, a dual agent shall act in the capacity of a facilitator rather than as an exclusive agent of either party to the transaction.

**C.** Prior to writing or presenting offers, a dual agent shall obtain written authority from the buyer client and the seller client in the form of a separate dual agency agreement.

**D.** Information obtained by an associate broker or qualifying broker prior to the time that written authority for dual agency was granted shall not be disclosed to the other party unless required by law or rules or permitted by the client who originally disclosed the confidential information.

[16.61.19.10 NMAC - Rp, 16.61.19.11 NMAC, 1-1-2004; A, 1-1-2006]

## **PART 20: TRANSACTION COORDINATOR**

### **16.61.20.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.20.1 NMAC - N, 01-01-2019]

### **16.61.20.2 SCOPE:**

The provisions in Part 20 of Chapter 61 apply to all New Mexico brokers.

[16.61.20.2 NMAC - N, 01-01-2019]

### **16.61.20.3 STATUTORY AUTHORITY:**

Part 20 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 61-29-4.

[16.61.20.3 NMAC - N, 01-01-2019]

### **16.61.20.4 DURATION:**

Permanent.

[16.61.20.4 NMAC - N, 01-01-2019]

### **16.61.20.5 EFFECTIVE DATE:**

January 1, 2019, unless a later date is cited at the end of a section.

[16.61.20.4 NMAC - N, 01-01-2019]

**16.61.20.6 OBJECTIVE:**

The objective of Part 20 of Chapter 61 is to set forth the responsibilities, in addition to all other requirements imposed by law, of all brokers.

[16.61.20.6 NMAC - N, 01-01-2019]

**16.61.20.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.20.7 NMAC - N, 01-01-2019]

**16.61.20.8 REQUIREMENTS.**

**A.** Any transaction coordinators involved in real estate transactions in New Mexico including transaction coordinators from other states must have a New Mexico broker's license.

**B.** A transaction coordinator performing activities for a brokerage under one ownership is not required to have a qualifying broker's license provided that the transaction coordinator is under the direct supervision of a qualifying broker of that same brokerage.

**C.** Any transaction coordinator providing services for multiple brokerages other than the transaction coordinator's own brokerage must hold a current New Mexico qualifying broker's license.

**D.** Any transaction coordinator providing services for a brokerage other than the transaction coordinator's own brokerage must have a written agreement with the qualifying broker of the brokerage for which those transaction coordinator services are being provided that details the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those services.

**E.** A broker who engages the services of a transaction coordinator whether within the broker's brokerage or outside the broker's brokerage, shall be responsible for disclosing the name(s) of the transaction coordinator, in writing, to the buyer, seller and brokers in the transaction.

**F.** A broker who hires a transaction coordinator must have a written agreement with that broker's qualifying broker detailing the services being provided by the transaction coordinator and any compensation being paid to the transaction coordinator for those

services, including written authorization that the transaction coordinator may be paid by the associate broker who has hired him or her.

**G.** A broker who hires a transaction coordinator remains responsible for the transaction; the hiring of a transaction coordinator in no way eliminates or mitigates the broker's responsibilities or obligations to the broker's customer or client or to other brokers and parties to the transaction.

**H.** A transaction coordinator owes broker duties as delineated in 16.61.19.8 NMAC.

**(1)** The broker shall maintain any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;

**(2)** Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/occupant in a transaction:

**(a)** That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;

**(b)** That the seller/owner will agree to financing terms other than those offered;

**(c)** The seller/owner's motivations for selling/leasing; or

**(d)** Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;

**(3)** Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:

**(a)** That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;

**(b)** The buyer/tenant's motivation for buying/leasing.

[16.61.20.8 NMAC - N, 1/1/2019; A, 1/3/2021]

## **PART 21: UNLICENSED ASSISTANTS**

### **16.61.21.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[8-15-97; 16.61.21.1 NMAC - Rn & A, 16 NMAC 61.21.1, 1-1-2002]

**16.61.21.2 SCOPE:**

The provisions in Part 21 of Chapter 61 apply to all persons defined as unlicensed assistants in New Mexico.

[8-15-97; 16.61.21.2 NMAC - Rn, 16 NMAC 61.21.2, 1-1-2002]

**16.61.21.3 STATUTORY AUTHORITY:**

Part 21 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[8-15-97; 16.61.21.3 NMAC - Rn, 16 NMAC 61.21.3, 1-1-2002]

**16.61.21.4 DURATION:**

Permanent.

[8-15-97; 16.61.21.4 NMAC - Rn, 16 NMAC 61.21.4, 1-1-2002]

**16.61.21.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[8-15-97; 16.61.21.5 NMAC - Rn & A, 16 NMAC 61.21.5, 1-1-2002]

**16.61.21.6 OBJECTIVE:**

The objective of Part 21 of Chapter 61 is to establish the activities in which an unlicensed assistant is permitted/not permitted to participate.

[8-15-97; 16.61.21.6 NMAC - Rn, 16 NMAC 61.21.6, 1-1-2002]

**16.61.21.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[8-15-97, 12-15-99; 16.61.21.7 NMAC - Rn, 16 NMAC 61.21.7, 1-1-2002]

**16.61.21.8 PERMITTED ACTIVITIES:**

An unlicensed assistant is permitted to engage in the following activities:

A. obtaining information pursuant to written instructions from the responsible person from public records, a multiple listing service, listing exchange or from third party sources including, but not limited to, surveyors, banks, appraisers and title companies;

B. hosting and/or distributing literature at an open house under the following conditions:

(1) an unlicensed assistant does not discuss, negotiate or solicit offers for the property or provide any information other than printed material prepared and approved by the responsible person; and

(2) the responsible person is present at the open house where the unlicensed assistant is located;

(3) all inquiries are referred to the responsible person or other associate brokers or qualifying brokers;

C. disseminating and distributing information prepared and approved by the responsible person;

D. picking up and delivering paperwork to associate brokers or qualifying brokers other than the responsible person;

E. picking up and delivering paperwork to sellers or purchasers after a contract has been executed if the paperwork has already been reviewed and approved by the responsible person, without answering any questions or providing any opinions or advice to the recipient of the paperwork; all substantive questions must be referred to the responsible person;

F. writing advertisements, flyers, brochures, and other promotional materials for the approval of the responsible person, and placing classified advertisements approved by the responsible person;

G. placing or removing signs on real property as directed by the responsible person;

H. ordering repairs as directed by the responsible person;

I. receiving and depositing funds, maintaining books and records, while under the supervision of the responsible person;

J. typing or word processing documents, including purchase and listing agreements, prepared by the responsible person.

[Rn, 16.61.21.8.9, 1-1-2000, A, 1-1-2000; 16.61.21.8 NMAC - Rn, 16 NMAC 61.21.8, 1-1-2002; A, 1-1-2006]

### **16.61.21.9 PROHIBITED ACTIVITIES:**

An unlicensed assistant is not permitted to engage in the following activities in connection with the purchase, sale or exchange of real property:

- A. preparing legal documents such as listing and sales contracts;
- B. interpreting documents, offering opinions or advice;
- C. disseminating and distributing information, unless the information is in writing and is prepared and approved by the responsible person;
- D. obtaining personal or property information from a client or customer of the responsible person except when acting as a coordinator directed by the responsible person by gathering and following up on information and the status of matters pertaining to the transaction after a contract has been executed;
- E. picking up from or delivering to customers or clients financial documents prepared by title companies, lenders or other third persons for the purpose of obtaining signatures;
- F. attending a closing without the responsible person present;
- G. representing himself or herself as being an associate broker or a qualifying broker or as being engaged in the business of buying, selling, exchanging, renting, leasing, managing, auctioning or dealing with options on any real estate or the improvements thereon for others;
- H. telephone solicitation of any kind designed to procure transactions requiring licensure under Section 61-29-1 et. Seq. NMSA 1978, including, but not limited to, procuring buyers, sellers, listings or appointments for listing presentations.

[8-15-97; 16.61.21.9 NMAC - Rn & A, 16 NMAC 61.21.9, 1-1-2002; A, 1-1-2006]

### **16.61.21.10 DISABILITY:**

Notwithstanding the foregoing, if an associate broker or qualifying broker is a person with a disability as defined in the Americans with Disabilities Act or regulations promulgated hereunder, an unlicensed assistant may provide such additional services normally requiring a license to or on behalf of the associate broker or qualifying broker as would constitute a reasonable accommodation so long as the unlicensed assistant is under the direct control of the associate broker or qualifying broker, the associate broker or qualifying broker is as close as is practical to the activity, and the unlicensed assistant is not represented as being or having the authority to act as an associate broker or qualifying broker. The associate broker or qualifying broker shall notify the commission of the identity of all unlicensed assistants who perform services normally

requiring a license for the associate broker or qualifying broker pursuant to this rule prior to performance of these services.

[8-15-97, A, 1-1-2000; 16.61.21.10 NMAC - Rn, 16 NMAC 61.21.10, 1-1-2002; A, 1-1-2006]

**16.61.21.11 PENALTIES:**

Unlicensed assistants are subject to the penalties of Section 61-29-17 and 61-29-17.2 NMSA 1978.

[8-15-97, A, 1-1-2000; 16.61.21.11 NMAC - Rn & A, 16 NMAC 61.21.11, 1-1-2002]

**PART 22: [RESERVED]**

**PART 23: TRUST ACCOUNTS**

**16.61.23.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.23.1 NMAC - Rp, 16.61.23.1 NMAC, 1-1-2012]

**16.61.23.2 SCOPE:**

The provisions in Part 23 of Chapter 61 apply to all licensed qualifying brokers in New Mexico.

[16.61.23.2 NMAC - Rp, 16.61.23.2 NMAC, 1-1-2012]

**16.61.23.3 STATUTORY AUTHORITY:**

Part 23 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, Section 61-29-4 NMSA 1978.

[16.61.23.3 NMAC - Rp, 16.61.23.3 NMAC, 1-1-2012]

**16.61.23.4 DURATION:**

Permanent.

[16.61.23.4 NMAC - Rp, 16.61.23.4 NMAC, 1-1-2012]

**16.61.23.5 EFFECTIVE DATE:**

January 1, 2012, unless a later date is cited at the end of a section.

[16.61.23.5 NMAC - Rp, 16.61.23.5 NMAC 1-1-2012]

**16.61.23.6 OBJECTIVE:**

The objective of Part 23 of Chapter 61 is to set forth the requirements and procedures for the description, establishment, maintenance, retention of, and deposits to and disbursement from, trust accounts by qualifying brokers.

[16.61.23.6 NMAC - Rp, 16.61.23.6 NMAC, 1-1-2012]

**16.61.23.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.23.7 NMAC - Rp, 16.61.23.7 NMAC, 1-1-2012, A, 1-1-2017]

**16.61.23.8 DESCRIPTION, DESIGNATION AND RECONCILIATION:**

**A. Funds of others.** A qualifying broker who receives money belonging to others related to a real estate transaction shall deposit same only in a trust account in an acceptable financial institution, title company or with a qualifying broker also involved in the transaction.

**B. Designation.** All trust accounts shall be designated on the institution's records as "trust account" and include the trade name of the brokerage as registered with the commission.

**C. Electronic transactions.** Online payments, direct deposits and other electronic transactions are permitted as long as each transaction can be tracked on the bank statement and on the property ledger.

**D. Reconciliation.** As defined in Subsection VV of 16.61.1 NMAC Section 1 of the commission rules, trust account reconciliation must be performed monthly and verified by the qualifying broker.

**E. Property ledgers.** Each trust account transaction shall be assigned to and properly accounted for in relation to the managed property to which it belongs (e.g. single family home, apartment complex or commercial property).

**F. Number of trust accounts.** A brokerage may have more than one trust account.

[16.61.23.8 NMAC - Rp, 16.61.23.8 NMAC, 1/1/2012; A, 1/1/2017; A, 1/3/2021]

**16.61.23.9 TYPES OF TRUST ACCOUNTS:**

A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

**A. Brokerage trust account.** This account shall be used for money belonging to others related to a real estate sales transaction. Property management funds may not be placed in this trust account. In lieu of a brokerage trust account, a broker may deposit funds with a title company authorized to do business in the state of New Mexico. If a title company is used in lieu of a brokerage trust account, then receipt and deposit records shall be kept as outlined in this section.

**B. Property management trust account.** This account shall be used for money belonging to others received by a qualifying broker related to managing properties for others. All management commissions and fees may be deposited, withdrawn and tracked through the property management trust account as long as those commissions and fees are specified in the agreement between the property owner and brokerage.

**C. Special trust account.** In the event the principals to a sale transaction agree in writing that an interest bearing special trust account is to be established, a written agreement shall be prepared stating as a minimum the following:

- (1) the qualifying broker shall be named as sole trustee;
- (2) name of the acceptable financial institution wherein the funds are to be deposited;
- (3) the amount of interest to be paid on the funds and to whom the interest shall accrue;
- (4) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and
- (5) the signatures of all parties to the transaction and the qualifying broker as trustee.

**D. Custodial account.** Funds designated to be deposited in a custodial account shall first be placed in a brokerage trust account or a property management trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any funds other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agreement signed by all principals as to the establishment and operational details of each custodial account.

[16.61.23.9 NMAC - Rp, 16.61.23.8 & 9 NMAC, 1/1/2012; A, 1/3/2021]

#### **16.61.23.10 RECORD ACCESSIBILITY, RETENTION AND INSPECTION:**

Every qualifying broker shall keep bank and office records of all funds related to all trust and custodial accounts under the qualifying broker's control, as set forth below.

**A. Accessibility.** Records shall be maintained at or accessible from the brokerage office as registered with the commission.

**B. Retention.** All trust and custodial account records shall be retained for six years after the completion of a transaction.

**C. Property management.** All trust and custodial account records shall be retained for the full term of any agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

**D. Inspection.** All financial documents shall be subject to inspection by the commission or its duly authorized representative at the designated location of such records or at the offices of the commission. The records shall include, at a minimum, clear indication of all funds received and disbursed on behalf of others in all real estate transactions wherein the qualifying broker is involved.

**E.** The qualifying broker is responsible for the maintenance and safekeeping of all trust and custodial account records.

[16.61.23.10 NMAC - Rp, 16.61.23.9 NMAC, 1/1/2012; A, 1/3/2021]

#### **16.61.23.11 DEPOSITS, DISBURSEMENTS AND COMMINGLING:**

**A. Deposits.** All trust account deposits shall conform to the following requirements.

**(1) Timeliness.** All funds of others pertaining to a real estate transaction shall be deposited into the proper trust or custodial account per written agreement of the parties to the transaction.

**(2) Receipt records.** A detailed record of all funds received shall be maintained by the qualifying broker and shall clearly indicate the following:

- (a)** date received;
- (b)** date deposited;
- (c)** from whom received;
- (d)** amount of deposit;
- (e)** property address or legal description including unit number (if unit number is applicable); and

(f) category or purpose of receipt (e.g., earnest money, rent, security deposit, funds from owner, etc.).

(3) Wrongful deposits. The following actions involving any trust account shall be improper and shall constitute commingling:

(a) depositing a broker's own funds into a trust or custodial account without disclosure to the owner of a managed property and the real estate commission;

(b) depositing funds in a trust or custodial account that are not directly related to a real estate transaction or a managed property except as allowed by law; and

(c) depositing funds of others in an account that is not a properly designated trust account.

**B. Disbursements.** All trust account disbursements shall conform to the following requirements.

(1) Timeliness. All funds of others pertaining to a real estate transaction shall be disbursed as soon as reasonably possible after receipt of the funds.

(2) Disbursement records. A detailed record of all funds disbursed shall be maintained by the qualifying broker and shall clearly indicate the following:

(a) check number or unique transaction identification number;

(b) date of disbursement;

(c) payee;

(d) category or purpose of disbursement;

(e) amount of disbursement;

(f) property address or legal description including unit number (if unit number is applicable).

(3) Fees due broker. Fees as determined by written agreement may be disbursed as soon as the basis for calculation can be determined and funds are available.

(4) Wrongful disbursements. The following actions involving any trust or custodial account shall be improper and shall constitute commingling:

(a) disbursing trust funds or custodial funds for personal use of the qualifying broker, an associate broker or the broker's designee;

**(b)** disbursing commission or commission splits from any trust or custodial account to any entity other than the qualifying broker.

**(c)** disbursing New Mexico gross receipts tax or other non-property related business expenses directly from a trust or custodial account;

**(d)** disbursing funds before the completion of the related transaction, except upon court order; this provision does not prevent a broker from transferring funds from one properly designated trust or custodial account to another properly designated trust or custodial account within the same brokerage;

**(e)** disbursing funds in excess of the trust or custodial account balance or in excess of a specific property or client ledger balance; and

**(f)** trust or custodial account overages can only be disbursed in accordance with the Unclaimed Property Act with written notification to the commission.

**C. Commingling.** Commingling of trust or custodial account funds is not permitted. Commingling shall include, but is not limited to, the following actions:

- (1)** wrongful deposits as described in this section;
- (2)** wrongful disbursements as described in this section;
- (3)** allowing a property or client ledger within a trust or custodial account to be in deficit;
- (4)** placing funds derived from the management of the qualifying broker's personally owned properties, or properties owned by any legally recognized entity in which the qualifying broker has any interest in a trust account containing funds of others;
- (5)** failing to withdraw from the trust or custodial account within a reasonable time, funds to which the qualifying broker is entitled;
- (6)** allowing money designated to one property or transaction to be used for the benefit of another property or transaction.

**D. Exceptions to commingling.**

**(1)** Non-trust funds may be placed in a trust or custodial account in an amount not to exceed the required minimum balance requirements of a financial institution necessary to maintain the account and avoid charges.

**(2)** Non-trust funds may be placed in a trust or custodial account in order to pay fees for credit card transactions and bank fees.

**(3)** Depositing a broker's own funds in a trust or custodial account with full disclosure to the owner of a managed property and with specific, prior written approval of the commission followed immediately by written documentation to the owner and to the commission of the deposit transaction.

**(4)** If a written sharing agreement specifies, funds of one property may be used for the benefit of another property owned by the same person or entity.

**(5)** Funds received from an owner for the benefit of all their managed properties may be credited to an owner's ledger.

[16.61.23.11 NMAC - Rp, 16.61.23.10 NMAC, 1/1/2012; A. 1/1/2014; A, 1/3/2021]

#### **16.61.23.12 TRUST ACCOUNT DECLARATION AND RECORD KEEPING:**

Qualifying brokers who offer property management services for others shall:

**A.** Execute and submit to the commission, on a form provided by the commission, a declaration of intent to offer such services. Such declaration will acknowledge the qualifying broker's responsibility for all property management services provided by the brokerage including maintenance of the records described below.

**B.** Maintain records of such services as provided in 16.61.23 NMAC and 16.61.24 NMAC, including:

**(1)** A list of all property management trust and custodial accounts maintained by the brokerage;

**(2)** The name of the bank(s) at which such trust or custodial accounts are maintained;

**(3)** Monthly trust or custodial account reconciliation(s) demonstrating a three-way reconciliation between the trust or custodial account, the bank statement, and the property ledger;

**(4)** Trust or custodial account year-end balances.

**C.** Qualifying brokers who offer property management services for others shall review 16.61.23 NMAC and 16.61.24 NMAC of the commission rules with licensed and unlicensed personnel performing property management services at the brokerage.

**D.** Qualifying brokers offering property management services for others shall make the records and information delineated in this part available to the commission upon request.

E. Failure of a qualifying broker to comply with the provisions of 16.61.23.12 NMAC, shall subject the qualifying broker to disciplinary action.

[16.61.23.12 NMAC – N, 1/1/2019; A, 1/3/2021]

## **PART 24: PROPERTY MANAGEMENT**

### **16.61.24.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.24.1 NMAC - Rp, 16.61.24.1 NMAC, 1-1-2012]

### **16.61.24.2 SCOPE:**

The provisions in Part 24 of Chapter 61 apply to all licensed New Mexico associate brokers and qualifying brokers engaged in property management.

[16.61.24.2 NMAC - Rp, 16.61.24.2 NMAC, 1-1-2012]

### **16.61.24.3 STATUTORY AUTHORITY:**

Part 24 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.24.3 NMAC - Rp, 16.61.24.3 NMAC, 1-1-2012]

### **16.61.24.4 DURATION:**

Permanent.

[16.61.24.4 NMAC - Rp, 16.61.24.4 NMAC, 1-1-2012]

### **16.61.24.5 EFFECTIVE DATE:**

January 1, 2012, unless a later date is cited at the end of a section.

[16.61.24.5 NMAC - Rp, 16.61.24.5 NMAC, 1-1-2012]

### **16.61.24.6 OBJECTIVE:**

The objective of Part 24 of Chapter 61 is to establish the requirements, policies and procedures that must be met by a New Mexico real estate associate broker or qualifying broker engaged in property management for others.

[16.61.24.6 NMAC - Rp, 16.61.24.6 NMAC, 1-1-2012]

#### **16.61.24.7 DEFINITIONS:**

Refer to Definitions 16.61.1.7 NMAC.

[16.61.24.7 NMAC - Rp, 16.61.24.7 NMAC, 1-1-2012]

#### **16.61.24.8 PROPERTY MANAGEMENT ADVISORY COMMITTEE:**

The commission may appoint a property management advisory committee (PMAC) with the goal of enhancing the professional competence of property managers and reducing violations and complaints about property management services.

[16.61.24.8 NMAC - N, 1-1-2012]

#### **16.61.24.9 DECLARATION OF INTENT:**

At any time that a qualifying broker or associate broker offers or intends to offer property management services for others, the broker shall declare that intent on a form approved by the commission, and shall be subject to education and meeting attendance requirements pursuant to 16.61.3.14 NMAC, and delineated as follows:

**A.** Qualifying brokers and associate brokers who offer or intend to offer property management services for others, shall as a condition of offering property management services, first complete the commission approved course, Uniform Owner-Resident Relations Act, or a commission approved equivalent property management related course, prior to offering such services, and in every subsequent three-year licensing cycle.

**B.** Associate brokers who offer or intend to offer property management services for others, shall do so only with the knowledge, written permission and under the supervision of their qualifying broker. As a condition of offering property management services, in addition to the course requirement in Subsection A above, the broker shall complete a minimum of six hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue during each three-year licensing cycle.

**C.** Qualifying brokers who offer or intend to offer property management services for others, shall as a condition of offering such services, in addition to the course requirement in Subsection A above, complete a minimum of 12 hours of approved continuing education courses in property management selected from the commission's most current approved course catalogue, each three-year licensing cycle.

**D.** Qualifying brokers and associate brokers offering property management services shall attend at least one New Mexico real estate commission meeting, rule hearing, or disciplinary hearing for at least three hours, or until the commission goes into executive session, or the hearing/meeting ends, whichever comes first, in each three-year

licensing cycle. Attendance may be at a live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing.

[16.61.24.9 NMAC - N, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/3/2021]

#### **16.61.24.10 COMPLIANCE WITH APPLICABLE LAW:**

Brokers shall comply with applicable local, state and federal laws and ordinances concerning managing and leasing, and maintaining property for others, including but not limited to the following:

**A.** Federal fair housing law

**B.** New Mexico Uniform Owner-resident Relations Act

**C.** Federal lead-based paint regulations, including provisions of the federal Environmental Protection Agency's lead-based paint renovation, repair and painting rule

**D.** Construction Industries Licensing Act (CILA NMSA Chapter 60 Article 13), The Manufactured Housing Act (MHA NMSA chapter 60 Article 14), and the LPG and CNG Act (NMSA chapter 70 Article 5).

[16.61.24.10 NMAC - N, 1/1/2012; A, 1/1/2019; A, 1/3/2021]

#### **16.61.24.11 PROPERTY MANAGEMENT TRUST AND CUSTODIAL ACCOUNTS:**

In addition to the rules set forth in 16.61.23 NMAC, the following also apply to property management trust and custodial accounts.

**A.** A property management trust account shall only contain funds derived from the management of property for others and shall be clearly identified with the banking institution as well as the public as a property management trust account.

**B.** A custodial account utilized for property management shall contain funds derived from the management of property for only one property owner and the account will be in the name of that property owner and will be under the care and direction of the qualifying broker. The property owner may have signatory or viewing rights to this account.

**C.** All funds received by the qualifying broker which are received in association with managed properties, shall be deposited into the property management trust account, excepting funds which are received for the management of property which in whole or part belongs to the qualifying broker, prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement.

**D.** Unless the tenant occupies a property owned by the qualifying broker, deposits shall be placed in a property management trust account. Deposits may be held in a property management trust account, or may be disbursed to the owner as specified in the property management agreement and agreed to by the tenant.

**E.** Commingling of funds is not permitted. No funds may be deposited in a property management trust account that are not received in connection with a managed property except as provided for in 16.61.23 NMAC Exceptions to commingling.

**F.** Property ledgers. When the property management trust account contains funds from the rental or lease of more than one property, separate accounting records shall be maintained on each property.

[16.61.24.11 NMAC - Rp, 16.61.24.8 NMAC, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/3/2021]

#### **16.61.24.12 REPORTS AND DOCUMENTS TO OWNERS:**

**A.** Owner statements. The qualifying broker shall provide the owner with a report of receipts and disbursements monthly or as required by the management agreement, showing the following:

- (1) previous balance;
- (2) funds deposited by category;
- (3) funds disbursed by category; and
- (4) ending balance.

**B.** Additional reports may be provided as set forth in the property management agreement.

**C.** Documents. Fully executed copies of the management agreement shall be provided to the owner after obtaining all signatures. Signed leases or other documents related to the management agreement shall be provided to the owner upon request, except for documents that the property manager is prohibited by law or contract from disclosing, which may include but are not limited to criminal background checks and credit reports.

**D.** Final statement after termination. Final accounting of trust account or custodial account funds shall be provided to the owner within 60 days of the effective date of termination of a management agreement.

[16.61.24.12 NMAC - Rp, 16.61.24.12 NMAC, 1/1/2012; A, 1/1/2014; A, 1/1/2019; A, 1/3/2021]

### **16.61.24.13 MANAGEMENT AGREEMENTS:**

**A.** There shall be a signed written management agreement between the brokerage and the owner for each property managed. The agreement shall be executed prior to acting on behalf of the owner and shall specify the brokerage relationship.

**B.** The agreement shall define the duties and responsibilities of the brokerage and the owner including, but not limited to, the following:

- (1) duties to be provided by the brokerage;
- (2) disclosure of all fees to be charged to owner;
- (3) disclosure of all fees to be charged to tenant that are retained by the brokerage; and
- (4) a question asking the owner to disclose the status of any foreclosure or other financial situation that could affect the tenant's occupancy.

**C.** If the property manager is prohibited by law or contract from providing the owner with a given document, such as a tenant's criminal background check or credit report, the property management agreement shall include the following:

- (1) a written disclosure to the owners that the property manager is prohibited by law or contract from providing such documents to the owner; or
- (2) the owner's written consent that such documents will not be provided.

**D.** The qualifying broker shall include with every written residential management agreement a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act. The qualifying broker shall obtain separate written confirmation from each client that the client has received such a copy of the act. The qualifying broker shall make this confirmation available to the New Mexico real estate commission if requested.

**E.** Before the brokerage transfers any management agreement to another brokerage, both the qualifying broker assigning the contract and the qualifying broker receiving the contract shall execute an assignment of contract. Because the management agreement is a personal services contract, the qualifying broker must have the property owner's written consent to assign the contract to another brokerage. If there is no assignment of contract, the qualifying broker receiving the contract must execute a new management agreement.

[16.61.24.13 NMAC - Rp, 16.61.24.13 NMAC, 1-1-2012; A, 1-1-2017;\_A, 1-1-2019]

### **16.61.24.14 RESIDENTIAL TENANCY AGREEMENTS:**

There shall be a signed written tenancy agreement for each property or rental unit.

**A.** Tenancy agreements shall include, but not be limited to, the following:

- (1) name of tenant;
- (2) property address or legal description including unit number (if unit number is applicable);
- (3) rent amount;
- (4) security deposit and other deposit amounts;
- (5) when and where rent is to be paid;
- (6) date property possession began;
- (7) date property possession ends;
- (8) all fees charged to the tenant; and
- (9) how payments are to be applied to outstanding expenses/charges.

**B.** The qualifying broker shall include a copy, either in hard copy form or electronically, of the New Mexico Uniform Owner-Resident Relations Act, with every written residential tenancy agreement. The qualifying broker shall obtain separate written or electronic confirmation from each tenant that the tenant has received such copy of the act. The qualifying broker shall make this confirmation available to the commission if requested.

**C.** If the property manager's name is on a lease as the agent of the property owner, and a new property manager takes over management of the property, the lease shall be assigned to the new property manager. The owner of the property must give written consent for assignment of the lease and the assignment must be acknowledged in writing by the qualifying broker.

[16.61.24.14 NMAC - Rp, 16.61.24.14 NMAC, 1-1-2012; A, 1-1-2019]

#### **16.61.24.15 RECORD ACCESSIBILITY, RETENTION AND INSPECTION:**

The property management brokerage shall maintain office records of all properties managed for others.

**A.** Accessibility. Records shall be maintained at or accessible from the brokerage office at the location as registered with the commission.

**B. Retention.** All property management records shall be retained for the duration of the contract and six years during a management agreement. At the termination of a management agreement, records shall be retained for six years from the date of termination.

**C. Inspection.** All records are subject to inspection by the commission or its duly appointed representative at or accessible from the brokerage office or at the offices of the commission.

**D.** The qualifying broker is responsible for the maintenance and safe-keeping of all property management records.

[16.61.24.15 NMAC - Rp, 16.61.24.15 NMAC, 1/1/2012; A, 1/3/2021]

#### **16.61.24.16 VACATION RENTALS:**

In addition to the provisions set forth above, the following special provisions apply only with respect to the management of vacation rentals.

**A.** If gross receipts taxes and/or lodgers' taxes are due, the management agreement shall specify who or what entity is responsible for collection, reporting and/or remitting of such taxes. If the taxes are to be collected from the tenant by the broker or a third party, the management agreement shall authorize the broker or third party entity to collect and remit the applicable taxes from the renter.

**B.** Management agreements shall disclose if the broker is using a third party advertising or reservation service (such as AirBnB, VRBO, etc.)

**C.** Compensation retained by or paid to third parties who engage in advertising and/or taking reservations for vacation rental properties shall not be considered to be in violation of Subsection (3) of Section 61-29-12 A NMSA 197 of the New Mexico real estate license law which prohibits real estate brokers from paying or receiving rebate, profit, compensation or commission to or from any unlicensed person.

**D.** If a broker uses an online travel agent or third party advertising entity which prohibits disclosure of the brokerage name and/or telephone number as registered with the commission, such displays are exempt from the disclosure requirement in Subsection B of 16.61.32.8 NMAC. In this event, the broker shall ensure that the renter receives this disclosure promptly upon completing a rental reservation.

**E.** The broker shall not be required to deliver a copy of the Uniform Owner-Resident Relations Act to a renter of a vacation rental.

**F.** A rental agreement shall also include the following:

- (1) arrival and departure dates;

- (2) check-in and check-out times;
- (3) nightly rental rate;
- (4) rental deposit;
- (5) security deposit;
- (6) disclosure of all fees charged to [tenant] the renter (e.g. cleaning, hot tub, phone, cable internet, resort, etc.);
- (7) accommodation rules (e.g. occupancy, parking, smoking, pets, noise, etc.); and
- (8) cancellation policy.

**G.** Reports to owners. In the monthly statement to the owner, qualifying broker shall also list rental income, credit card fees, maintenance charges and amount paid in commission to the brokerage office.

**H.** Renter security deposits. Funds collected as a tenant security deposit shall be deposited into the property management trust account.

**I.** Rental deposits. Funds collected as a rental deposit shall be deposited into the property management trust account to secure a reservation.

**J.** Employees of the brokerage handling short term or vacation rentals or third parties who engage only in taking reservations for short term or vacation rentals shall not be required to be licensed.

[16.61.24.16 NMAC - Rp, 16.61.24.16 NMAC, 1-1-2012; A, 1-1-2019]

#### **16.61.24.17 VENDORS:**

All property managers hiring vendors or employees to perform maintenance, repair or renovation activities on behalf of property owners which may require a permit issued by the Construction Industries Division or an equivalent local or municipal permitting agency shall only use vendors and employees who are:

**A.** certified or licensed as required by local, state or federal law; and,

**B.** insured or bonded.

[16.61.24.17 NMAC - N, 1/1/2019; A, 1/3/2021]

## **PART 25: TIME SHARE REGISTRATION**

**16.61.25.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[8-15-97; 16.61.25.1 NMAC - Rn & A, 16 NMAC 61.25.1, 1-1-2002]

**16.61.25.2 SCOPE:**

The provisions in Part 25 of Chapter 61 apply to developers of time shares and individuals who perform duties outlined in this Part.

[8-15-97; 16.61.25.2 NMAC - Rn, 16 NMAC 61.25.2, 1-1-2002]

**16.61.25.3 STATUTORY AUTHORITY:**

Part 25 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[8-15-97; 16.61.25.3 NMAC - Rn, 16 NMAC 61.25.3, 1-1-2002]

**16.61.25.4 DURATION:**

Permanent.

[8-15-97; 16.61.25.4 NMAC - Rn, 16 NMAC 61.25.4, 1-1-2002]

**16.61.25.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[8-15-97; 16.61.25.5 NMAC - Rn & A, 16 NMAC 61.25.5, 1-1-2002]

**16.61.25.6 OBJECTIVE:**

The objective of Part 25 of Chapter 61 is for carrying into effect the provisions of the New Mexico Time Share Act Section 47-11-1 through 47-11-13, NMSA 1978, and to assist the New Mexico real estate commission in the administration and performance of its duties and functions.

[8-15-97, A, 1-1-2000; 16.61.25.6 NMAC - Rn, 16 NMAC 61.25.6, 1-1-2002]

**16.61.25.7 DEFINITIONS:**

A. "Commission" means the New Mexico real estate commission.

B. "Developer" means any person creating or engaged in the business of selling ten or more of its own time shares and includes any person who controls, is controlled by or is in common control with the developer and who is engaged in creating or selling time shares for the developer;

C. "Exchange company" means any person operating an exchange program;

D. "Purchaser" means any person, other than a developer or lender, who owns or acquires an interest or proposes to acquire an interest in a time share;

E. "Time share salesperson" means a person, other than a person who has at least a fifteen (15) percent interest in the developer, who sells or offers to sell on behalf of a developer a time share to a purchaser; and

[8-15-97, A, 2-14-2000; 16.61.25.7 NMAC - Rn & A, 16 NMAC 61.25.7, 1-1-2002]

[Refer to 16.61.1.7 NMAC]

#### **16.61.25.8 APPLICATION FOR REGISTRATION:**

Every application for time share project registration shall be filed at the commission office upon form TS-1 (questionnaire and application for registration of time share project) and shall contain all information requested by form TS-1 applicable to the time share project.

A. Registration fee: Every application for time share project registration must be accompanied by a certified check made payable to the New Mexico real estate commission in the amount of twenty dollars (\$20.00) per time share interest to be sold, to a maximum of one thousand five hundred dollars (\$1,500.00). Applications for registration not accompanied by the appropriate fee shall not be considered by the commission. In the event a properly completed application filed with the commission is denied for any reason, the amount of two hundred fifty dollars (\$250.00) shall be retained by the commission from the application fee and the balance refunded to the applicant developer.

B. A developer shall obtain a separate certificate of registration for each time share program. Noncontiguous time share projects created by the same developer may be treated for registration purposes as one time share program only if such projects are (1) marketed and otherwise held out to the public as one program, and (2) offered for sale by a single staff of time share salespersons.

C. A developer shall file an amendment to the time share project registration with the commission within a reasonable time after the occurrence of any event or change in plans which materially affects the operation or status of the time share project, including but not limited to the following:

- (1) a material change in ownership of the developer;
- (2) an increase or decrease in the number of time shares to be offered;
- (3) any material alteration of the physical plant and amenities, or of plans for development thereof;
- (4) any material change in the exchange rights offered to purchasers;
- (5) the appearance of new hazards or other unusual conditions near the time share project;
- (6) any material amendment to the documents governing rights and restrictions of time share ownership
- (7) the recording of any new lien or encumbrance against the time share project;
- (8) any change in management of the time share project;
- (9) any material change in the developer's arrangement for the escrow of purchaser's funds; and,
- (10) any other change requiring a material amendment to the disclosure statement for the project.

D. Amendments to the time share project registration shall be made in writing to the commission. Every amendment shall identify the section of the project registration to be amended and shall contain a summary of the amendment and a brief statement of the reasons for the amendment. The amendment shall include either the text of the project registration section to be substituted or a copy of the document to be modified.

E. The commission may, in its discretion, require the developer to file a new time share project registration application in the place of an amendment form. Such refiling shall be without a fee.

F. If a developer files an amendment to increase the number of time shares to be offered for sale, a registration fee of twenty dollars (\$20.00) per additional time share interest, subject to the overall maximum of one thousand five hundred dollars (\$1,500.00), shall accompany the amendment.

[8-15-97; 16.61.25.8 NMAC - Rn, 16 NMAC 61.25.8, 1-1-2002]

#### **16.61.25.9 DISCLOSURE STATEMENTS:**

A. In addition to the disclosures required by Section 5 of the act, each developer shall fully and conspicuously disclose to each purchaser in the disclosure statement the following information:

- (1) if any part of the project is not completely constructed at the time of sale, what financial arrangements have been made to secure the completion of each portion.
- (2) if the unit sold to the purchaser is not completely constructed and furnished at the time of sale, the projected date the unit will be ready for occupancy; any limitations upon the purchaser's exchange rights until the unit is ready for occupancy; any limitations upon the effectiveness of title insurance obtained by the purchaser prior to the time the unit is ready for occupancy;
- (3) a complete description of the project, including: the total number of time shares sold and to be sold in the project; the number and types of units available; the types of facilities and amenities available;
- (4) a description of all terms and conditions of each charter membership, owner referral, rental, resale, in-house exchange or other program offered to time share owners; provided, however, if no reference to the program will be made to the purchaser prior to the expiration of the purchaser's 7-day right of rescission, the developer may provide such description, by separate letter to the purchaser, after the expiration of such period; and
- (5) any other information contained in the questionnaire and application for registration of time share project which the commission may require to be disclosed.

B. Every disclosure statement shall contain an introductory summary prescribed by the commission and completed by the developer entitled "summary of disclosures." The "summary of disclosures" shall appear on the cover, or immediately following the cover of the disclosure statement, and shall be on the form prescribed by the commission. "Summary of disclosures" forms are available upon request at the commission office.

C. Information contained in a disclosure statement shall be accurate on the date it is supplied to a purchaser.

[8-15-97; 16.61.25.9 NMAC - Rn, 16 NMAC 61.25.9, 1-1-2002]

**16.61.25.10 DESCRIPTION OF INTEREST IN TIME SHARE PROPERTY;  
RECORDATION:**

All contracts and deeds conveying an interest in a time share must contain a legal description of the time share project, time share unit and interval number for which the interest is being conveyed, if applicable. The developer shall not record a conveyance instrument until after the expiration of the purchaser's 7-day right of rescission.

[8-15-97; 16.61.25.10 NMAC - Rn, 16 NMAC 61.25.10, 1-1-2002]

#### **16.61.25.11 QUESTIONNAIRE AND APPLICATION:**

The "questionnaire and application for registration of time share project" (form TS-1) shall be made on the form prescribed by the commission. Questionnaire and application forms are available upon request at the commission office.

[8-15-97; 16.61.25.11 NMAC - Rn, 16 NMAC 61.25.11, 1-1-2002]

#### **16.61.25.12 LICENSE REQUIREMENTS:**

Any individual, including a tour guide, who shows time share units or facilities to prospective purchasers, shall hold a New Mexico real estate associate broker's or qualifying broker's license. No person except the developer may participate in any part of a time share sales presentation unless that person holds a New Mexico real estate associate broker or qualifying broker license.

[8-15-97, A, 2-14-2000; 16.61.25.12 NMAC - Rn, 16 NMAC 61.25.12, 1-1-2002; A, 1-1-2006]

#### **16.61.25.13 DEVELOPERS:**

Every developer of a time share project registered in this state shall, in addition to any other requirements by law:

A. Maintain a full and complete record of all transactions wherein that developer or any real estate associate broker or qualifying broker representing said developer are engaged. All records shall contain, but are not limited to:

- (1) record of all purchases, sales, leases or exchanges of time share interests in the registered time share project;
- (2) the name or names of the buyer and seller, or in the case of exchanges, the names of the parties thereto;
- (3) the date or dates of such transactions;
- (4) the amount, if any, of the commission earned in such transaction; and,
- (5) the amount, if any, of the commission or commissions paid by the qualifying broker or the developer to an associate broker and the amount, if any, of the commission or commissions retained by the qualifying broker or developer.

B. All sales of time share interests by associate brokers must be through the qualifying broker of the time share project, and all commissions to such associate

brokers must be disbursed by the qualifying broker. If a qualifying broker transfers his license from a time share project and all commissions earned by associate brokers have not been disbursed, those commissions must be accounted for and remitted within a reasonable time by the time share developer.

C. The records required to be maintained by these regulations will be available to the commission or its duly authorized representative at the location of the registered time share project in New Mexico, at the location of the time share sales office in New Mexico, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.13 NMAC - Rn & A, 16 NMAC 61.25.13, 1-1-2002; A, 1-1-2006]

#### **16.61.25.14 TRUST ACCOUNTS:**

Records to be maintained. Every developer of a time share project registered in New Mexico shall, within a reasonable time, account for and remit any money coming into his possession which belongs to others during the sale of a time share interest. Such developer shall keep such funds of others in an escrow or trust account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state. Such developer shall not commingle funds of others with his own. Every developer of a time share project registered in this state shall maintain full and complete records of all funds deposited in his trust account. Such records shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, and any other pertinent information concerning the transaction. The records shall clearly show for whose account the money is deposited and to whom the money belongs. All such records and funds shall be subject to inspection by the commission or its duly authorized representative at the location in New Mexico of the registered time share project, the location in New Mexico of the time share sales office, or at the commission offices.

[8-15-97, A, 2-14-2000; 16.61.25.14 NMAC - Rn, 16 NMAC 61.25.14, 1-1-2002; A, 1-1-2006]

### **PART 26: LAND TITLE TRUST FUND ACT**

#### **16.61.26.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.26.1 NMAC - N, 1-1-2002]

#### **16.61.26.2 SCOPE:**

The provisions in Part 26 of Chapter 61 apply to all New Mexico associate brokers or qualifying brokers as defined herein.

[16.61.26.2 NMAC - N, 1-1-2002; A, 1-1-2006]

**16.61.26.3 STATUTORY AUTHORITY:**

Part 26 of Chapter 61 is promulgated pursuant to the Land Title Trust Fund Act, NMSA 1978 Section 58-18B-5.

[16.61.26.3 NMAC - N, 1-1-2002]

**16.61.26.4 DURATION:**

Permanent.

[16.61.26.4 NMAC - N, 1-1-2002]

**16.61.26.5 EFFECTIVE DATE:**

1-1-2002, unless a later date is cited at the end of a section.

[16.61.26.5 NMAC - N, 1-1-2002]

**16.61.26.6 OBJECTIVE:**

The objective of Part 26 of Chapter 61 is to set Land Title Trust Fund Act policies and procedures used to establish and operate pooled interest-bearing escrow accounts.

[16.61.26.6 NMAC - N, 1-1-2002]

**16.61.26.7 DEFINITIONS:**

Refer to 16 NMAC 1.1.7.

[16.61.26.7 NMAC - N, 1-1-2002]

**16.61.26.8 TRUST ACCOUNTS, ESCROW ACCOUNTS, SPECIAL ACCOUNTS, POOLED INTEREST-BEARING ACCOUNTS, AND DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS:**

A. Every real estate qualifying broker who maintains a trust or escrow account as required pursuant to the provisions of Subsection H of 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. The following procedures and forms should be used in establishing and operating pooled interest-bearing escrow accounts.

(1) Form 5828-1 instructions for financial institutions regarding processing land title trust fund act and low income housing trust fund act accounts.

(2) Form 5828-2 account enrollment and agreement between company and financial institution.

(3) Form 5828-3 financial institution report of interest remittance.

[16.61.26.8 NMAC - N, 1-1-2002; A, 1-1-2006]

## **PART 27: FOREIGN BROKERS**

### **16.61.27.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.27.1 NMAC - N, 1-1-2017]

### **16.61.27.2 SCOPE:**

The provisions of Part 27 of Chapter 61 apply to all real estate brokers who are licensed by a licensing jurisdiction other than the state of New Mexico.

[16.61.27.2 NMAC - N, 1-1-2017]

### **16.61.27.3 STATUTORY AUTHORITY:**

Part 27 of Chapter 61 is promulgated pursuant to the Real Estate License Law, NMSA 1978, Section 61.29.16.1.

[16.61.27.3 NMAC - N, 1-1-2017]

### **16.61.27.4 DURATION:**

Permanent.

16.61.27 NMAC, Foreign Brokers, filed 11-30-2001 - Repealed effective 1-1-2014.

[16.61.27.4 NMAC - N, 1-1-2017]

**16.61.27.5 EFFECTIVE DATE:**

January 1, 2017 unless a late date is cited at the end of a section.

[16.61.27.5 NMAC - N, 1-1-2017]

**16.61.27.6 OBJECTIVE:**

The purpose of Part 27 of Chapter 61 is to set forth the conditions under which real estate brokers licensed by licensing jurisdictions other than the state of New Mexico can engage in certain commercial real estate transactions in the state.

[16.61.27.6 NMAC - N, 1-1-2017]

**16.61.27.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.27.7 NMAC - N, 1-1-2017]

**16.61.27.8 FOREIGN BROKERS:**

A foreign broker may act in the capacity of a qualifying or associate broker with respect to commercial real estate located in New Mexico; provided that prior to performing any of the real estate activities of a qualifying or associate broker, the foreign broker enters into a transaction-specific written agreement with a New Mexico qualifying broker that includes, at a minimum:

**A.** a description of the parties, the commercial real estate and any additional information necessary to identify the specific transaction governed by the agreement;

**B.** the terms of compensation between the foreign broker and the New Mexico qualifying broker;

**C.** the effective date and definitive termination date of the agreement; and

**D.** a statement that the foreign broker agrees to:

(1) Cooperate fully with the New Mexico qualifying broker and all associate brokers designated by the New Mexico qualifying broker;

(2) Except for the foreign broker's interaction with the foreign broker's client, conduct all contact with parties, including the general public and other brokers, in association with the New Mexico qualifying broker or associate broker designated by the New Mexico qualifying broker;

(3) Conduct all marketing and solicitations for business in the name of the New Mexico qualifying broker;

(4) Timely furnish to the New Mexico qualifying broker, copies of all documents related to the transaction that are required by the laws of New Mexico to be retained by its licensees, including without limitation, agency disclosure, offers, counteroffers, purchase and sale contracts, leases and closing statements; and

(5) Comply with and be bound by and subject to New Mexico law and the regulations of the commission.

[16.61.27.7 NMAC - N, 1-1-2017]

#### **16.61.27.9 CONSENT TO SERVICE AND REFERRAL FEES:**

Foreign brokers agree to submit to the jurisdiction of the courts of New Mexico with respect to the transaction and any and all claims related thereto by service of process upon the secretary of state of New Mexico and upon the appropriate official of the state, province or nation of the foreign broker's real estate licensure. When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or any other consideration, the qualifying broker of the New Mexico brokerage and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral.

[16.61.27.9 NMAC - N, 1-1-2017]

### **PART 28: [RESERVED]**

### **PART 29: TRADE NAME**

#### **16.61.29.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.29.1 NMAC - Rp, 16 NMAC 61.29.1, 1-1-2002]

#### **16.61.29.2 SCOPE:**

The provisions in Part 29 of Chapter 61 apply to all New Mexico real estate brokers.

[16.61.29.2 NMAC - Rp, 16 NMAC 61.29.2, 1-1-2002; A, 1-1-2006]

#### **16.61.29.3 STATUTORY AUTHORITY:**

Part 29 of Chapter 61 is promulgated pursuant to the Real Estate Licensing law, NMSA 1978 Section 61-29-4.

[16.61.29.3 NMAC - Rp, 16 NMAC 61.29.3, 1-1-2002]

**16.61.29.4 DURATION:**

Permanent.

[16.61.29.4 NMAC - Rp, 16 NMAC 61.29.4, 1-1-2002]

**16.61.29.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[16.61.29.5 NMAC - Rp, 16 NMAC 61.29.5, 1-1-2002]

**16.61.29.6 OBJECTIVE:**

The objective of Part 29 of Chapter 61 is to establish the requirements for obtaining and using a trade name for the operation of a real estate brokerage office in New Mexico.

[16.61.29.6 NMAC - Rp, 16 NMAC 61.29.6, 1-1-2002; A, 1-1-2006]

**16.61.29.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.29.7 NMAC - Rp, 16 NMAC 61.29.7, 1-1-2002]

**16.61.29.8 REGISTRATION AND USE OF TRADE NAME:**

A. Prior to the use of any trade name for the operation of a brokerage, the qualifying broker shall register such trade name with the commission. A qualifying broker must conduct their real estate brokerage business under a trade name registered with the commission. A qualifying broker wishing to conduct real estate brokerage business under a different trade name must execute a new trade name registration form, provide verification of current errors and omission coverage and pay the required fee with the commission.

B. When a brokerage ceases using a trade name, the qualifying broker shall, within 10 days, return the qualifying broker's license and the licenses of all qualifying and associate brokers affiliated with the brokerage to the commission, advise the commission in writing that the trade name is no longer being used, and remove all signs and advertising using the trade name.

C. Use of a trade name in such a fashion as to mislead the public may be grounds for disciplinary action by the commission.

D. An associate broker executing a trade name registration form for the purposes of reinstating a qualifying broker status shall be required, as a condition of reinstatement, to provide documentation of having completed the commission-approved minimum four hour qualifying broker refresher course during the current license renewal cycle.

[16.61.29.8 NMAC - Rp, 16 NMAC 61.29.8, 1-1-2002; A, 1-1-2006; A, 1-1-2012]

## **PART 30: BRANCH OFFICE/TEMPORARY OFFICE [REPEALED]**

[This part was repealed on January 1, 2006.]

## **PART 31: SIGNAGE**

### **16.61.31.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[1-1-2000; 16.61.31.1 NMAC - Rn & A, 16 NMAC 61.31.1, 1-1-2002]

### **16.61.31.2 SCOPE:**

The provisions in Part 31 of Chapter 61 apply to all real estate brokers.

[1-1-2000; 16.61.31.2 NMAC - Rn, 16 NMAC 61.31.2, 1-1-2002; A, 1-1-2006]

### **16.61.31.3 STATUTORY AUTHORITY:**

Part 31 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[1-1-2000; 16.61.31.3 NMAC - Rn, 16 NMAC 61.31.3, 1-1-2002]

### **16.61.31.4 DURATION:**

Permanent.

[1-1-2000; 16.61.31.4 NMAC - Rn, 16 NMAC 61.31.4, 1-1-2002]

### **16.61.31.5 EFFECTIVE DATE:**

1-1-2000, unless a later date is cited at the end of a section.

[1-1-2000; 16.61.31.5 NMAC - Rn & A, 16 NMAC 61.31.5, 1-1-2002]

### **16.61.31.6 OBJECTIVE:**

The objective of Part 31 of Chapter 61 is to establish the requirements for placement and maintenance of licensed real estate brokers' signs.

[1-1-2000; 16.61.31.6 NMAC - Rn, 16 NMAC 61.31.6, 1-1-2002; A, 1-1-2006]

**16.61.31.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.31.7 NMAC - Rn, 16 NMAC 61.31.7, 1-1-2002]

**16.61.31.8 REQUIREMENTS:**

A. Each qualifying broker shall place and maintain a legible sign in a conspicuous place near the office entrance identifying them as the qualifying broker. The trade name of the brokerage as registered with the commission shall be clearly shown.

B. In the case of a qualifying broker whose office is located in an office building, the qualifying broker may comply with this regulation by listing their name on the directory of offices provided by the office building and by displaying the trade name on or near the office entrance.

[1-1-2000, A, 2-14-2000; 16.61.31.8 NMAC - Rn, 16 NMAC 61.31.8, 1-1-2002; A, 12-31-2008]

**PART 32: REAL ESTATE ADVERTISING**

**16.61.32.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[8-15-97; 16.61.32.1 NMAC - Rn & A, 16 NMAC 61.32.1, 1-1-2002]

**16.61.32.2 SCOPE:**

The provisions in Part 32 of Chapter 61 apply to all real estate brokers in New Mexico.

[8-15-97, A, 2-14-2000; 16.61.32.2 NMAC - Rn, 16 NMAC 61.32.2, 1-1-2002; A, 1-1-2006]

**16.61.32.3 STATUTORY AUTHORITY:**

Part 32 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[8-15-97; 16.61.32.3 NMAC - Rn, 16 NMAC 61.32.3, 1-1-2002]

#### **16.61.32.4 DURATION:**

Permanent.

[8-15-97; 16.61.32.4 NMAC - Rn, 16 NMAC 61.32.4, 1-1-2002]

#### **16.61.32.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[8-15-97; 16.61.32.5 NMAC - Rn & A, 16 NMAC 61.32.5, 1-1-2002]

#### **16.61.32.6 OBJECTIVE:**

The objective of Part 32 of Chapter 61 is to set forth the requirements governing the advertising of real property for others for sale, purchase, rent, lease or exchange in the state of New Mexico.

[8-15-97; 16.61.32.6 NMAC - Rn, 16 NMAC 61.32.6, 1-1-2002]

#### **16.61.32.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[1-1-2000; 16.61.32.7 NMAC - Rn, 16 NMAC 61.32.7, 1-1-2002]

#### **16.61.32.8 ADVERTISEMENTS:**

**A.** All real estate advertising shall be a true and factual representation of the property and real estate services being advertised and the brokerage providing the services and shall not be presented in such a manner that will confuse or mislead the public.

**B.** Every qualifying broker advertising real property for others for sale, purchase, lease, exchange or rent, including short-term or vacation rentals, or advertising real estate services, shall at a minimum, use in such advertising the trade name and current brokerage office telephone number as registered with the commission. Directional signs are exempt from these requirements. Additional telephone numbers may be used in such advertising.

**C.** Associate brokers, when advertising real property for others for sale, purchase, lease, exchange or rent, or when advertising real estate services, shall include in the advertisement the trade name and the current telephone number as registered with the commission of the brokerage with which they are affiliated. Effective January 1, 2017, the brokerage trade name and telephone number shall be prominently displayed in a

type size not less than thirty-three percent of the type size of the associate broker's name, or in the case of a team of associate brokers, the team name.

**D.** A broker advertising to buy, sell, lease, rent, or exchange real property which the broker owns, partially owns, will own or will partially own shall indicate within such advertising, including signs, that the broker owns or will own the real property. Disclosure of such ownership must also be made in the listing contract, purchase agreement, rental agreements, lease agreements, or exchange agreements. If an owner-broker engages a third party broker to list the owner-broker's property, the third party broker is not required to make an owner-broker disclosure in advertising and signs, but such disclosure is required in the listing contract, purchase agreement, rental agreement, lease agreement, or exchange agreement.

**E.** When advertising real property owned by a broker and the telephone number of the brokerage is used in the advertisement, the advertisement must also include the trade name of the brokerage as registered with the commission.

**F.** All advertising must be in compliance with all local, state and federal laws and regulations.

**G.** These requirements apply to all forms of advertising, including but not limited to print, audio and video recordings, computer presentations, online and electronic media. In the event that disclosure of the brokerage name and telephone number as registered with the commission is not practical in electronic displays of limited information, such as thumbnails, text messages, links and tweets of 200 characters or less, such displays are exempt from the disclosure requirement provided such displays are linked to a display that includes all of the required disclosures.

[N, 1/1/2000; 16.61.32.8 NMAC - Rn, 16 NMAC 61.32.8, 1/1/2002; A, 1/1/2006; A, 1/1/2007; A, 1/1/2017; A, 1/3/2021]

## **PART 33: DOCUMENT EXECUTION AND DELIVERY**

### **16.61.33.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.33.1 NMAC - Rp, 16 NMAC 61.33.1, 1-1-2002]

### **16.61.33.2 SCOPE:**

The provisions of Part 33 of Chapter 61 apply to all licensed real estate brokers in New Mexico.

[16.61.33.2 NMAC - Rp, 16 NMAC 61.33.2, 1-1-2002; A, 1-1-2006]

**16.61.33.3 STATUTORY AUTHORITY:**

Part 33 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.33.3 NMAC - Rp, 16 NMAC 61.33.3, 1-1-2002]

**16.61.33.4 DURATION:**

Permanent.

[16.61.33.4 NMAC - Rp, 16 NMAC 61.33.4, 1-1-2002]

**16.61.33.5 EFFECTIVE DATE:**

1-1-2000, unless a later date is cited at the end of a section.

[16.61.33.5 NMAC - Rp, 16 NMAC 61.33.5, 1-1-2002]

**16.61.33.6 OBJECTIVE:**

The objective of Part 33 of Chapter 61 is to set forth the requirements for documentation and delivery of documentation of transactions.

[16.61.33.6 NMAC - Rp, 16 NMAC 61.33.6, 1-1-2002]

**16.61.33.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.33.7 NMAC - Rp, 16 NMAC 61.33.7, 1-1-2002]

**16.61.33.8 EXECUTION OF DOCUMENTS:**

All transactions shall be documented and signed by all parties to the transaction.

[16.61.33.8 NMAC - Rp, 16 NMAC 61.33.8, 1-1-2002]

**16.61.33.9 DELIVERY OF DOCUMENTS:**

Except as otherwise provided by law, in all circumstances it shall be the responsibility of each broker engaged in a transaction to assure that all parties to the transaction receive legible copies of any and all documents they have signed and any documents that pertain to their respective interest in the transaction as soon as practicably possible, and copies of all fully executed documents thereafter.

[16.61.33.9 NMAC - Rp, 16 NMAC 61.33.9, 1-1-2002; A, 1-1-2006]

**PART 34: [RESERVED]**

**PART 35: CHILD SUPPORT ENFORCEMENT**

**16.61.35.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[8-15-97; 16.61.35.1 NMAC - Rn & A, 16 NMAC 61.35.1, 1-1-2002]

**16.61.35.2 SCOPE:**

The provisions in Part 35 of Chapter 61 apply to disciplinary proceedings by this issuing agency pursuant to the Parental Responsibility Act against a license, certificate, registration or permit required to engage in a profession or occupation. The material in this Part was derived from that previously filed with the State Records Center & Archives under: Title 16, Chapter 1, Part 1, Occupational and Professional Licensing, General Provisions, Parental Responsibility Act Compliance, filed November 3, 1995 by Regulation and Licensing Department.

[8-15-97; 16.61.35.2 NMAC - Rn, 16 NMAC 61.35.2, 1-1-2002]

**16.61.35.3 STATUTORY AUTHORITY:**

Part 35 of Chapter 61 is promulgated pursuant to the Parental Responsibility Act , NMSA 1978, Sections 40-50A-1 to 40-50A-13 (Ch. 25, Laws of 1995).

[8-15-97; 16.61.35.3 NMAC - Rn, 16 NMAC 61.35.3, 1-1-2002]

**16.61.35.4 DURATION:**

Permanent.

[8-15-97; 16.61.35.4 NMAC - Rn, 16 NMAC 61.35.4, 1-1-2002]

**16.61.35.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[8-15-97; 16.61.35.5 NMAC - Rn & A, 16 NMAC 61.35.5, 1-1-2002]

**16.61.35.6 OBJECTIVE:**

The objective of Part 35 of Chapter 61 is to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license required to engage in the profession by this agency under this part.

[8-15-97; 16.61.35.6 NMAC - Rn, 16 NMAC 61.35.6, 1-1-2002; A, 1-1-2006]

#### **16.61.35.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in Part 35 of Chapter 61 as used in Part 35.

A. "HSD" means the New Mexico human services department;

B. "license" means a license issued by the commission that a person is required to have to engage in the profession or occupation of real estate in New Mexico;

C. "statement of compliance" means a certified statement from HSD stating that an applicant or broker is in compliance with a judgment and order for support; and

D. "statement of non-compliance" means a certified statement from HSD stating that an applicant or broker is not in compliance with a judgment and order for support.

[8-15-97, A, 2-14-2000; 16.61.35.7 NMAC - Rn, 16 NMAC 61.35.7, 1-1-2002; A, 1-1-2006]

#### **16.61.35.8 DISCIPLINARY ACTION:**

If a license applicant or licensed broker is not in compliance with a judgment and order for support, the commission:

A. shall deny an application for a license;

B. shall deny the renewal of the license; and

C. has grounds for suspension or revocation of the license.

[8-15-97; 16.61.35.8 NMAC - Rn & A, 16 NMAC 61.35.8, 1-1-2002; A, 1-1-2006]

#### **16.61.35.9 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the commission shall match the certified list against the current list of commission brokers or broker applicants. Upon the later receipt of an application for license or renewal, the commission shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the commission shall report to HSD the names of commission brokers or broker applicants

who are on the certified list and the action the commission has taken in connection with such brokers or broker applicants.

[8-15-97, A, 2-14-2000; 16.61.35.9 NMAC - Rn & A, 16 NMAC 61.35.9, 1-1-2002; A, 1-1-2006]

#### **16.61.35.10 INITIAL ACTION:**

Upon determination that a broker or broker applicant appears on the certified list, the commission shall:

A. commence a formal proceeding as set forth in Section 11 of Part 35 to take the appropriate action under Section 8 of Part 35; or

B. for current brokers only, informally notify the broker that the broker's name is on the certified list, and that the broker must provide the commission with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed thirty (30) days. If the broker fails to provide this statement, the commission shall commence a formal proceeding as set forth in Section 11 of Part 35.

[8-15-97, A, 2-14-2000; 16.61.35.10 NMAC - Rn, 16 NMAC 61.35.10, 1-1-2002; A, 1-1-2006]

#### **16.61.35.11 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in Section 8 of Part 35, the commission shall serve upon the broker or broker applicant a written notice stating that:

A. the commission has grounds to take such action, and that the commission shall take such action unless the broker or broker applicant:

(1) mails a letter (certified, return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the commission, within thirty (30) days of the date of the notice, with a statement of compliance from HSD; and

B. if the broker or broker applicant disagrees with the determination of non-compliance, or wishes to come into compliance, the broker or broker applicant should contact the HSD child support enforcement division.

[8-15-97, A, 1-1-2000; 16.61.35.11 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

#### **16.61.35.12 EVIDENCE AND PROOF:**

In any hearing under Part 35 of Chapter 61, relevant evidence is limited to the following:

A. a statement of non-compliance is conclusive evidence that requires the commission to take the appropriate action under Section 8 of Part 35 of Chapter 61 unless;

B. the broker or broker applicant provides the commission a subsequent statement of compliance which shall preclude the commission from taking any action based solely on the prior statement of non-compliance.

[8-15-97; 16.61.35.12 NMAC - Rn & A, 16 NMAC 61.35.11, 1-1-2002; A, 1-1-2006]

#### **16.61.35.13 ORDER:**

When an action is taken under Part 35 of Chapter 61 solely because the broker or broker applicant is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The commission may also include any other conditions necessary to comply with commission requirements for reapplication or reinstatement of lapsed licenses.

[8-15-97, A, 1-1-2000; 16.61.35.13 NMAC - Rn & A, 16 NMAC 61.35.13, 1-1-2002; A, 1-1-2006]

#### **16.61.35.14 PROCEDURES:**

Proceedings under Part 35 of Chapter 61 shall be governed by the Uniform Licensing Act, Section 61-1-1, et seq., or any other adjudicatory procedures adopted by the commission.

[8-15-97; 16.61.35.14 NMAC - Rn, 16 NMAC 61.35.14, 1-1-2002]

### **PART 36: COMPLAINTS AND INVESTIGATIONS**

#### **16.61.36.1 ISSUING AGENCY:**

New Mexico Real Estate Commission.

[16.61.36.1 NMAC - Rp, 16 NMAC 61.36.1, 1-1-2002]

#### **16.61.36.2 SCOPE:**

The provisions in Part 36 of Chapter 61 apply to anyone violating the Real Estate License Law, NMSA 1978 Section 61-29-12. The provisions in Part 36 of Chapter 61 may be of interest to anyone who may wish to file a complaint against a broker licensed

by the commission, or against any person who acts as a real estate broker in this state with or without a New Mexico real estate license.

[16.61.36.2 NMAC - Rp, 16 NMAC 61.36.2, 1-1-2002; A, 1-1-2006]

**16.61.36.3 STATUTORY AUTHORITY:**

Part 36 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.

[16.61.36.3 NMAC - Rp, 16 NMAC 61.36.3, 1-1-2002]

**16.61.36.4 DURATION:**

Permanent.

[16.61.36.4 NMAC - Rp, 16 NMAC 61.36.4, 1-1-2002]

**16.61.36.5 EFFECTIVE DATE:**

8-15-97, unless a later date is cited at the end of a section.

[16.61.36.5 NMAC - Rp, 16 NMAC 61.36.5, 1-1-2002]

**16.61.36.6 OBJECTIVE:**

The objective of Part 36 of Chapter 61 is to set forth the procedure by which the real estate commission receives and investigates complaints against associate brokers or qualifying brokers or any other person who performs the acts of a real estate broker in this state with or without a New Mexico real estate license.

[16.61.36.6 NMAC - Rp, 16 NMAC 61.36.6, 1-1-2002; A, 1-1-2006]

**16.61.36.7 DEFINITIONS:**

Refer to 16.61.1.7 NMAC.

[16.61.36.7 NMAC - Rp, 16 NMAC 61.36.7, 1-1-2002]

**16.61.36.8 COMPLAINTS:**

The commission may file a complaint against any person who engages in the business or acts in the capacity of a real estate broker, real estate commission approved education sponsor or instructor, in this state with or without a New Mexico real estate license based on information indicating that there may have been a violation of the Real Estate License Law or the commission rules. The commission may also act on a

complaint made by a member of the commission, a member of the public, or another real estate broker. Upon receipt of a complaint the commission will determine if the complaint is within its jurisdiction. If the commission determines the complaint is within its jurisdiction, the complaint will be assigned for investigation.

[16.61.36.8 NMAC - Rp, 16 NMAC 61.36.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

#### **16.61.36.9 INVESTIGATIONS:**

In conducting an investigation, the commission shall give the person under investigation the opportunity to answer the complaint made against them in writing and to produce relevant documentary evidence, in accordance with the Uniform Licensing Act. If the person under investigation fails to respond within 10 working days of having been provided with a copy of the complaint and having been informed by the commission in writing that a complaint has been filed against him or her, the investigation may proceed without benefit of that person's response.

**A.** If the investigation reveals that the complaint does not involve a violation of the Real Estate License Law or the commission rules, the complaint will be dismissed by the commission, and the parties to the complaint will be so advised.

**B.** If the investigation reveals that the complaint does involve a violation of the Real Estate License Law or the commission rules, the commission may refer the complaint to the attorney general's office and request that a notice of contemplated action (NCA) be issued to the respondent, or offer the respondent a pre-NCA settlement with the understanding that if the respondent does not accept the settlement offer, the complaint will be referred to the attorney general's office for the issuance of an NCA.

**C.** Withdrawal of a complaint by a member of the commission, a member of the public, or another broker does not bind the commission to dismiss the complaint.

[16.61.36.9 NMAC - Rp, 16 NMAC 61.36.9, 1-1-2002; A, 1-1-2017]

## **CHAPTER 62: REAL ESTATE APPRAISERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.62.1.1 ISSUING AGENCY:**

Regulation and Licensing Department, NM Real Estate Appraisers Board.

[1/14/00; 16.62.1.1 NMAC - Rn, 16 NMAC 62.1.1, 09/13/2004; A, 01/01/2015]

#### **16.62.1.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[1/14/00; 16.62.1.2 NMAC - Rn & A, 16 NMAC 62.1.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

#### **16.62.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[1/14/00; 16.62.1.3 NMAC - Rn, 16 NMAC 62.1.3, 09/13/2004; A, 9/26/2023]

#### **16.62.1.4 DURATION:**

Permanent.

[1/14/00; 16.62.1.4 NMAC - Rn, 16 NMAC 62.1.4, 9/13/2004]

#### **16.62.1.5 EFFECTIVE DATE:**

January 14, 2000, unless a later date is cited at the end of a section.

[1/14/00; 16.62.1.5 NMAC - Rn & A, 16 NMAC 62.1.5, 9/13/2004]

#### **16.62.1.6 OBJECTIVE:**

This part provides definitions used in the regulations, adopts FIRREA and the uniform standards professional appraisal practice (USPAP), provides for inspection of board records and telephonic attendance at meetings by board members.

[1/14/00; 16.62.1.6 NMAC - Rn & A, 16 NMAC 62.1.6, 9/13/2004]

#### **16.62.1.7 DEFINITIONS:**

The following rules and regulations are for the purpose of implementing the provisions of the New Mexico Real Estate Appraisers Act.

##### **A.** Terms starting with the letter 'A' are defined as follows:

(1) **"Acceptable"** appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, review appraisal, market analysis, real estate counseling/consulting, highest and best use analysis and feasibility analysis. All experience claimed must be obtained after January 30, 1989, and must be in conformance with applicable national uniform standards of professional appraisal

practice (USPAP). Appraisal experience acceptable toward licensing or certification can be from any state but must have been gained under the supervision of an appraiser who is certified at a level equal to or greater than the license or certificate the applicant is seeking. Experience claimed from previous periods when an applicant was a trainee, licensed, or certified will be acceptable, provided the experience claimed was completed and in compliance with the applicable rules pertaining to acceptable experience in effect at the time the experience was gained.

(2) **"Appraisers act"** or **"act"** means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

(3) **"Appraisal management company (AMC)"** means:

(a) any external third party that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year to:

- (i) recruit, select and retain appraisers;
- (ii) contract with appraisers to perform appraisal assignments;
- (iii) manage the process of having an appraisal performed; or
- (iv) review and verify the work of appraisers; or

(b) any external third party that contracts with a qualifying licensed real estate broker or associate broker as defined in Chapter 61, Article 29 NMSA 1978 to provide broker price opinions.

(4) **"Appraisal management services"** means:

- (a) to recruit, select, and retain appraisers;
- (b) to contract with licensed and certified appraisers to perform appraisal assignments;
- (c) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or
- (d) to review and verify the work of appraisers.

(5) **"Appraisal review"** is the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, or an appraisal review assignment. The appraisal

reviewer must have certification that corresponds with or is higher than the level of licensure required to perform the initial appraisal.

(6) **"Assignment"** means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement for a specified number of properties.

(7) **"Appraiser"** means one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

**B.** Terms starting with the letter 'B' are defined as follows: **"Broker price opinion"** means: an opinion by a qualifying or associate broker of the price of real estate for the purpose of marketing, selling, purchasing, leasing or exchanging the real estate or any interest therein or for the purposes of providing a financial institution with a collateral assessment of any real estate in which the financial institution has an existing or potential security interest; provided that the opinion of the price shall not be referred to or construed as an appraisal or appraisal report and shall not be used as the primary basis to determine the value of real estate for the purpose of loan origination.

**C.** Terms starting with the letter 'C' are defined as follows:

(1) **"Complaint committee"** shall be appointed by the board. The chairperson of the committee shall be an appraiser board member. The board appointed complaint committee is for the purpose of review of complaints and shall make recommendations to the board as to its findings. No real estate appraiser organization shall have a majority membership on the committee.

(2) **"Complex"** means a one to four family residential property appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(3) **"Content approval for distance education"** non-academic credit college courses provided by a college shall be approved by the appraiser qualifications board (AQB) and the New Mexico real estate appraisers board.

**D.** Terms starting with the letter 'D' are defined as follows: **"Duly made application"** means an application to the New Mexico real estate appraisers board including Subparagraphs (a) through (g) set out below, in addition to any other requirements of the board:

(1) a completed application on the form provided by the board; the form must be signed by the applicant attesting to the truthfulness of the information provided in the application; electronic signatures shall be acceptable;

(2) transcripts or certificates or statements showing successful completion of the required appraisal courses;

(3) a check or money order or online payment for the fees set out in 16.62.12.8 NMAC;

(4) an appraiser experience log recorded on the forms approved by the board or on another approved form, if required.

**E. Terms starting with the letter 'E' are defined as follows:**

(1) **"Education advisory committee"** shall be appointed by the board for the purpose of review of applications for course approval and sponsorship approval of appraiser educational offerings and shall make recommendations to the board as to its findings. Membership in a professional organization or association shall not be a prerequisite to serve on the committee. No real estate appraiser organization shall have a majority membership on the committee.

(2) **"Ethics rule"** An appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standards of professional ethics. An appraiser must comply with USPAP when obligated by law or regulation, or by agreement with the client or intended users. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

(3) **"Experience"** is defined as verifiable time spent in performing tasks in accordance with the definition of "appraisal" and "appraisal assignment", as stated in the act, Section 61-30-3, NMSA 1978. Such tasks include inspecting and analyzing properties; assembling and analyzing relevant market data; forming objective opinions as to the value, quality or utility of such properties; and preparing reports or file memoranda showing data, reasoning and conclusions. Professional responsibility for the valuation function is essential for experience credit.

(4) **"Experience"** will be submitted to the board in the form of a log, which indicates assignment information and type, compensation status, time spent on the assignment and whether the applicant signed the report. Experience credit claimed on the log must be attested to by the supervising appraiser. Experience logs are subject to review and request for supporting documentation. As an alternative method of obtaining all required experience credits necessary for licensure as a licensed appraiser, the board will accept experience obtained from an appraisal qualification board-approved provider through a Practical Applications of Real Estate Appraisal (PAREA) program.

(5) **"Experience review process"** is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable national uniform standards of professional appraisal practice (USPAP) standards.

F. Term starting with the letter 'F' is defined as follows: "**FIRREA**" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

G. Terms starting with the letter "G". **[RESERVED]**

H. Terms starting with the letter "H". **[RESERVED]**

I. Terms starting with the letter "I". "**IDECC**" - international distance education certification center.

J. Terms starting with the letter "J". **[RESERVED]**

K. Terms starting with the letter "K". **[RESERVED]**

L. Terms starting with the letter "L" are defined as follows:

(1) "**Licensee**" means a trainee, license, residential certificate or general certificate.

(2) "**Location**" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe or Albuquerque, New Mexico.

M. Term starting with the letter "M" is defined as follows: "**Module**" is an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum. All modules identified in the required core curriculum for a specific classification must be successfully completed to satisfy the educational requirements as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

N. Term starting with the letter "N" is defined as follows: "**Nonresident appraiser**" for the purpose of 61-30-20 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current trainee registration, license, or certificate, and is in good standing, in another state.

O. Terms starting with the letter "O". **[RESERVED]**

P. Terms starting with the letter "P" are defined as follows:

(1) "**Practicing appraiser**" means a state licensed or certified appraiser in good standing, engaged in performing appraisal assignments.

(2) "**Primary business location**" means the geographical location of a business where the supervisor and trainee spend the majority of their time. A trainee may perform work only in areas where the supervising appraiser has competency pursuant to USPAP.

(3) **"Practical applications of real estate appraisal (PAREA)".** The appraisal foundation appraiser qualifications board adopted the Practical Applications of Real Estate Appraisal (PAREA) effective January 1, 2021. These new minimum criteria provide another pathway for aspiring appraisers to fulfill their experience requirements by taking advantage of innovative technology. PAREA is designed to offer practical experience in a virtual environment combining appraisal theory and methodology in real-world simulations. This experience can be provided through a wide range of online and virtual reality technologies.

**Q.** Terms starting with the letter "Q". **[RESERVED]**

**R.** Term starting with the letter "R" is defined as follows: **"Required core curriculum"** is a set of appraisal subject matter (known as 'modules') which require a specified number of educational hours at each credential level; as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

**S.** Term starting with the letter "S" is defined as follows: **"Supervisor"** means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last three years that affects the supervisor's legal ability to engage in appraisal practice.

**T.** Term starting with the letter "T" is defined as follows: **"Trainee"** means an individual taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

**U.** Term starting with the letter "U" is defined as follows: **"Uniform standards of professional appraisal practice"** (USPAP) means the uniform standard or the profession standard promulgated by the appraisal standards board of the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act and deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

**V.** Terms starting with the letter "V". **[RESERVED]**

**W.** Term starting with the letter "W" is defined as follows: **"Work file"** is documentation necessary to support an appraiser's analyses, opinions, and conclusions.

**X.** Terms starting with the letter "X". **[RESERVED]**

**Y.** Terms starting with the letter "Y". **[RESERVED]**

**Z.** Terms starting with the letter "Z". **[RESERVED]**

[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 11/15/08; A, 10/16/2009; A, 08/21/2010; A, 7/10/2011; A, 01/01/2015; A, 06/01/2015; A, 02/03/2019; A, 9/26/2023]

#### **16.62.1.8 STANDARDS OF PROFESSIONAL PRACTICE, CODE OF PROFESSIONAL RESPONSIBILITY AND ADOPTION OF FIRREA:**

**A.** The national uniform standards of professional appraisal practice (USPAP) as promulgated by the appraisal standards board of the appraisal foundation, and adopted and incorporated by reference are the minimum requirements. The appraisal standards board's code of professional responsibility and Ethics Rule, are the minimum professional and ethical standards that will govern appraisers practicing in New Mexico.

**B.** The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA, 12 U.S.C. 3351) and its current amendments are adopted and incorporated into these regulations by reference.

**C.** Pursuant to Title XI of FIRREA, as amended by the Dodd-Frank Act of 2010, the board shall:

(1) designate a high ranking officer, such as a board administrator, who will serve as the state's authorized registry official (SARO), and must ensure that non-public data is appropriately protected;

(2) provide to the ASC, in writing, information regarding the selected authorized registry official, and any individual(s) authorized to act on their behalf, and should ensure that the authorization information provided to the ASC is kept current; and

(3) adopt and implement a written policy to adequately protect the right of access.

[1/14/00; 16.62.1.8 NMAC - Rn & A, 16 NMAC 62.1.8, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 9/26/2023]

#### **16.62.1.9 INSPECTION OF BOARD RECORDS:**

Except as otherwise provided by law or protected by public records shall be available for inspection in accordance with the provisions of the Inspection of Publics Records Act (IPRA), Sections 14-2-1 through -12 NMSA 1978 (1974, as amended through 2009). Cost will be determined by regulation and licensing department standard IPRA fees.

[1/14/00; 16.62.1.9 NMAC - Rn, 16 NMAC 62.1.9, 09/13/2004; A, 10/16/2009]

#### **16.62.1.10 SEVERABILITY:**

The provisions of these regulations are severable. If any part of the regulations is held invalid by a court of competent jurisdiction, the remaining provisions shall remain in force and effect, unless otherwise determined by a court of competent jurisdiction.

[1/14/00; 16.62.1.10 NMAC - Rn, 16 NMAC 62.1.10, 09/13/2004]

#### **16.62.1.11 TELEPHONIC ATTENDANCE BY BOARD MEMBERS:**

**A.** Pursuant to the provisions of the Open Meetings Act, Sections 10-15-1 through - 4 NMSA 1978, (1974, as amended through 2009) board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment, and participation by such means shall constitute presence in person at the meeting. However, such participation by telephone may only occur when it is difficult or impossible, i.e., when circumstances beyond the member's control would make attendance in person extremely burdensome.

**B.** Each board member participating by conference telephone must be identified when speaking and all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the public who speaks during the meeting.

[1/14/00; 16.62.1.11 NMAC - Rn, 16 NMAC 62.1.11, 09/13/2004; A, 10/16/2009]

#### **16.62.1.12 SUPERVISING APPRAISER/TRAINEE:**

**[RESERVED]**

[16.62.1.12 NMAC - N, 06/13/08; A, 10/16/2009; A, 08/21/2010; Repealed, 01/01/2015]

#### **16.62.1.13 KNOWLEDGE OF THE RULES:**

All appraisers shall have knowledge of the board rules and by acceptance to licensure shall agree to abide by these rules.

[16.62.1.13 NMAC - N, 10/16/2009]

#### **16.62.1.14 APPRAISAL MANAGEMENT COMPANIES:**

**A.** An appraiser may not perform an appraisal for an appraisal management company (AMC) unless that company is registered pursuant to the Appraisal Management Company Registration Act 47-14-1 NMSA 1978.

**B.** In the body of an appraisal report completed for an AMC, the appraiser must include:

(1) the required minimum information contained within the engagement letter as set forth in AMC 16.65.2.12 NMAC; a copy of the engagement letter will meet this requirement;

(2) any additional scope of work requirements.

**C.** An appraiser engaged with an AMC must provide the AMC with their combined reporting system (CRS) identification number.

[16.62.1.14 NMAC - N, 08/21/2010; A, 01/16/2011]

## **PART 2: APPLICATION FOR TRAINEE**

### **16.62.2.1 ISSUING AGENCY:**

Regulation and Licensing Department, NM Real Estate Appraisers Board.

[1/14/00; 16.62.2.1 NMAC - Rn, 16 NMAC 62.2.1, 09/13/2004; A, 01/01/2015; A, 01/01/2017]

### **16.62.2.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[1/14/00; 16.62.2.2 NMAC - Rn & A, 16 NMAC 62.2.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[1/14/2000; 16.62.2.3 NMAC - Rn, 16 NMAC 62.2.3, 9/13/2004; A, 9/26/2023]

### **16.62.2.4 DURATION:**

Permanent.

[1/14/00; 16.62.2.4 NMAC - Rn, 16 NMAC 62.2.4, 09/13/2004]

### **16.62.2.5 EFFECTIVE DATE:**

January 14, 2000, unless a later date is cited at the end of a section.

[1/14/00; 16.62.2.5 NMAC - Rn & A, 16 NMAC 62.2.5, 09/13/2004]

#### **16.62.2.6 OBJECTIVE:**

This part provides requirements for making application for apprenticeship as a real estate appraiser trainee.

[1/14/00; 16.62.2.6 NMAC - Rn & A, 16 NMAC 62.2.6, 09/13/2004; A, 01/01/2015]

#### **16.62.2.7 DEFINITIONS:**

Prior to 09/13/2004, all "apprentice real estate appraisers" were designated as "registered real estate appraisers". After 01/01/2015, all "apprentice real estate appraisers" were designated "trainee real estate appraisers".

[1/14/00; 16.62.2.7 NMAC - Rn & A, 16 NMAC 62.2.7, 09/13/2004; A, 01/01/2015]

#### **16.62.2.8 TRAINEE:**

A holder of a trainee registration, but not a license or certificate, is authorized to prepare appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as "state licensed" or "state certified" and provided further, the trainee appraiser does not assume or use any title, designation or abbreviation likely to create the impression that he/she is a state-licensed or state-certified real estate appraiser. Trainees are not qualified to perform under FIRREA, Title XI. An applicant for trainee real estate appraiser registration in the state of New Mexico must:

**A. Criminal history background check:** All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(2) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(3) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**B.** have reached the age of majority;

**C.** within the five year period preceding the application, prove successful completion of real estate appraisal education of at least 75 board-approved creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; and the 15-hour national USPAP course or its equivalent;

**D.** comply with the competency rule of (USPAP).

**E.** courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

**F.** successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

**G.** pay the fees set out in 16.62.12.8 NMAC;

**H.** submit a duly made application to the board office;

**I.** declare a supervisor or provide proof of enrollment in Practical Applications of Real Estate Appraisal (PAREA) program; and

**J.** successfully complete a supervisor/trainee course, taught either in person or through distance education, consistent with AQB criteria, provided that successful completion of the course examination is required.

[1/14/2000; 16.62.2.8 NMAC - Rn & A, 16 NMAC 62.2.8, 9/13/2004; A, 11/25/2006; A, 6/13/2008; A, 8/21/2010; A, 7/10/2011; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021; A, 9/26/2023]

#### **16.62.2.9 SUPERVISING APPRAISER/TRAINEE:**

**A.** Supervision of trainees: An appraiser may engage a declared trainee to assist in the performance of real estate appraisals and related activities, provided the supervising real estate appraiser:

(1) has been state certified and in good standing for a period of at least three years, whether in New Mexico or another domestic jurisdiction of comparable real estate appraisal laws and regulations, prior to being eligible to become a supervising

appraiser. A supervising appraiser does not need to have been state-certified and in good standing in New Mexico for any specific minimum period of time;

(2) shall not have been subject to any disciplinary action in any jurisdiction within the last three years that affected the supervising appraiser's legal eligibility to engage in appraisal practice. A supervisory appraiser subject to a disciplinary action shall be considered to have been in good standing three years after the successful completion or termination of any and all sanctions imposed against the appraiser;

(3) has no more than three trainees working under his/her supervision at one time;

(4) actively supervises the trainee by either being physically present or by a form of electronic communication; and

(5) is competent pursuant to USPAP in all appraisals supervised.

**B.** Prior to the date any trainee begins performing real estate appraisal and related activities under his/her supervision, the supervisor must:

(1) inform the board of the name of the trainee on the declaration form prescribed by the board; the supervisor must also inform the board within 10 days when a trainee is no longer working under his/her supervision; and

(2) complete a supervisor/trainee education program, either in person or via distance education consistent with the AQB and approved by the board, regarding the role of a supervisor provided further that:

(a) if continuously supervising trainees, supervisors must complete the class at least every four years;

(b) successful completion of the examination is not required; and

(3) this class may be used as part of the continuing education requirements for the biennial renewal cycle.

**C.** When training for residential license or residential certification the supervisor must accompany the trainee on complete interior inspections of the subject property on the first 25 assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type.

**D.** When training for general certification the supervisor must accompany the trainee on inspections of the subject property on the first 25 non-residential assignments; after that point, the trainee may perform the inspections without the presence of the

supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type and market area.

**E.** The supervising appraiser shall:

- (1) review all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee are utilized;
- (2) certify that the report is in compliance with USPAP;
- (3) maintain an experience log jointly with the appraiser trainee to ensure the experience log is accurate, current and complies with the requirements of the trainee appraiser's credentialing jurisdiction;
- (4) sign the appraisal experience log at least every 30 days and use the title "supervising appraiser" when signing;
- (5) review the hours claimed on the log and address any discrepancies.

**F.** Appraisal experience logs shall include:

- (1) type of property;
  - (2) date of report;
  - (3) address of appraised property;
  - (4) description of work performed by the trainee appraiser and the scope of the review and supervision of the supervisory appraiser;
  - (5) number of actual work hours by the trainee appraiser on the assignment;
- and
- (6) the signature and state certification number of the supervising appraiser.

**G.** Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.

**H.** The supervising appraiser shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

**I.** Trainees: All trainees shall perform all real estate appraisal and related activities under the immediate, active, and personal supervision of a certified real estate appraiser through their declared supervisor or through the Appraiser Qualifications Boards approved Practical Applications of Real Estate Appraisal (PAREA) program.

(1) All appraisal reports must be signed by the trainee's declared supervisor. By signing the appraisal report, the certified appraiser accepts responsibility with the trainee for the content of and conclusions of the report.

(2) A trainee may assist in the performance of real estate appraisals and claim full credit for the actual hours worked on an appraisal, provided the trainee maintains a log on a form prescribed by the board.

(a) The log must detail all appraisals and related activities performed by the trainee. The hours claimed on the log must be verifiable by either signature on the report or by other written documentation in the work file.

(b) The log must be updated and signed by the supervisor at least every 30 days.

(c) The log must contain a statement affirming that both the supervising appraiser and trainee have competence as defined by USPAP.

(d) An experience log submitted from a jurisdiction located outside of New Mexico will be accepted, provided all of the following criteria are satisfied:

(i) the experience where the appraisal experience occurred fully complied with all requirements of that jurisdiction;

(ii) the experience log meets the requirements of the jurisdiction where the appraisal experience occurred; and

(iii) both the trainee and supervisor attest to the accuracy and validity of the experience log.

(3) Trainees must complete a supervisor/trainee education program, either in person or via distance education, approved by the appraisal board before supervision begins. The trainee shall not receive appraisal experience credit for appraisals performed until the class is completed.

(4) Trainees shall assure that the supervisor has properly completed and sent the declaration form to the appraisal board on or before the day the trainee begins assisting the supervising appraiser.

(5) Trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of this section.

**J. Notification of disciplinary complaint:** A supervising appraiser shall notify all declared trainees within 10 days of receiving written notification by the board that a complaint has been filed against the supervising appraiser.

[16.62.2.9 NMAC - N, 1/1/2015; A, 1/15/2017; A, 2/3/2019; A, 10/30/2021; A, 9/26/2023]

### **PART 3: APPLICATION FOR LICENSED RESIDENTIAL**

#### **16.62.3.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[10/1/97; 16.62.3.1 NMAC - Rn, 16 NMAC 62.3.1, 09/13/2004; A, 01/01/2015]

#### **16.62.3.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/97; 16.62.3.2 NMAC - Rn & A, 16 NMAC 62.3.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

#### **16.62.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[10/1/1997; 16.62.3.3 NMAC - Rn, 16 NMAC 62.3.3, 9/13/2004; A, 9/26/2023]

#### **16.62.3.4 DURATION:**

Permanent.

[10/1/97; 16.62.3.4 NMAC - Rn, 16 NMAC 62.3.4, 09/13/2004]

#### **16.62.3.5 EFFECTIVE DATE:**

October 1, 1997, unless a later date is cited at the end of a section.

[10/1/97; 16.62.3.5 NMAC - Rn & A, 16 NMAC 62.3.5, 09/13/2004]

#### **16.62.3.6 OBJECTIVE:**

This part provides requirements for making application for licensure as a real estate appraiser.

[10/1/97; 16.62.3.6 NMAC - Rn, 16 NMAC 62.3.6, 09/13/2004]

#### **16.62.3.7 DEFINITIONS:**

**[RESERVED]**

**16.62.3.8 LICENSED RESIDENTIAL:**

Licensed Residential real estate appraisers may appraise complex residential or nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. Licensed Residential real estate appraisers may not assume or use any title, designation or abbreviation likely to create the impression of certification.

**A.** For federally related transactions, the licensed residential real estate appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$400,000.

**B.** Complex one-to four-family residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical. For non-federally related transaction appraisals, transaction value shall mean market value.

**C.** All licensed residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP)

**D.** Applicants for licensed residential in the state of New Mexico must.

(1) Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(a) The applicant will register online, through the approved Department of Public Safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(b) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(c) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(2) have reached the age of majority;

(3) prove successful completion of real estate appraisal education of at least 150 board-approved creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules:

(a) basic appraisal principles	30 hours
(b) basic appraisal procedures	30 hours
(c) the 15 hour national USPAP course and examination	15 hours
(d) residential market analysis and highest and best use	15 hours
(e) residential appraiser site valuation and cost approach	15 hours
(f) residential sales comparison and income approaches	30 hours
(g) residential report writing and case studies	15 hours

(4) successfully complete the appraiser qualifications board (AQB) approved licensed residential real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months, and the applicant must meet the requisite experience requirement within 24 months;

(5) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(6) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(7) pay the fee set out in 16.62.12.8 NMAC;

(8) meet the minimum criteria for state licensure issued by the appraisers qualifications board of the appraisal foundation;

(9) submit a duly made application to the board office;

**E.** Appraisers holding a valid trainee appraiser credential may satisfy the educational requirements of 75 board-approved hours for the licensed residential real property appraiser credential by completing the following additional educational hours:

(1) residential market analysis and highest and best use	15 hours
(2) residential appraiser site valuation and cost approach	15 hours
(3) residential sales comparison and income approaches	30 hours
(4) residential report writing and case studies	15 hours

**F.** Appraisers holding a valid licensed residential or general certified appraiser credential satisfy the educational requirements for the licensed residential appraiser credential.

**G. Experience:**

(1) Except as provided by Paragraph (2) of Subsection (G) of this rule, applicants for state licensed residential must have a minimum of 1,000 hours of experience obtained in no fewer than six months in real property appraisal as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraisers under whose supervision the experience was obtained. Experience logs submitted from jurisdictions located outside of New Mexico will be accepted subject to the criteria provided in Subparagraph (d) of Paragraph (2) of Subsection I of 16.62.2.9 NMAC.

(2) As an alternative method of obtaining all required experience credits necessary for licensure as a Licensed Residential Appraiser, the board will accept experience obtained from an appraisal qualification board-approved provider through a Practical Applications of Real Estate Appraisal (PAREA) program, for Licensed Residential Appraisers.

[10/1/1997; 16.62.3.8 NMAC - Rn & A, 16 NMAC 62.3.8, 9/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021; A, 9/26/2023]

## **PART 4: APPLICATION FOR RESIDENTIAL CERTIFICATE**

### **16.62.4.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[10/1/97; 16.62.4.1 NMAC - Rn, 16 NMAC 62.4.1, 09/13/2004; A, 01/01/2015]

### **16.62.4.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/97; 16.62.4.2 NMAC - Rn & A, 16 NMAC 62.4.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[10/1/1997; 16.62.4.3 NMAC - Rn, 16 NMAC 62.4.3, 9/13/2004; A, 9/26/2023]

**16.62.4.4 DURATION:**

Permanent.

[10/1/97; 16.62.4.4 NMAC - Rn, 16 NMAC 62.4.4, 09/13/2004]

**16.62.4.5 EFFECTIVE DATE:**

October 1, 1997, unless a later date is cited at the end of a section.

[10/1/97; 16.62.4.5 NMAC - Rn & A, 16 NMAC 62.4.5, 09/13/2004]

**16.62.4.6 OBJECTIVE:**

This provides requirements for making application for certification as a residential certified real estate appraiser.

[10/1/97; 16.62.4.6 NMAC - Rn, 16 NMAC 62.4.6, 09/13/2004]

**16.62.4.7 DEFINITIONS:**

[RESERVED]

**16.62.4.8 RESIDENTIAL CERTIFICATION:**

A holder of a residential certificate is eligible to prepare appraisals of all residential real estate for federally related transactions or other uses. He/she may appraise nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a residential certificate may not assume or use any title, designation or abbreviation likely to create the impression of general certification.

**A.** The certified residential real estate appraiser classification qualifies the appraiser to appraise one to four residential units without regard to value or complexity. The classification includes the appraisal of vacant or unimproved land that is utilized for one to four family purposes or for which the highest and best use is for one to four family purposes. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

**B.** All certified residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP).

**C.** Applicants for certification in residential appraisal in the state of New Mexico must:

(1) Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(a) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(b) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(c) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(2) have reached the age of majority;

(3) prove successful completion of real estate appraisal education of at least 200 board-approved creditable class hours of qualifying education as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules:

(a) basic appraisal principles	30 hours
(b) basic appraisal procedures	30 hours
(c) the 15 hour national USPAP course and examination	15 hours
(d) residential market analysis and highest and best use	15 hours
(e) residential appraiser site valuation and cost approach	15 hours
(f) residential sales comparison and income approaches	30 hours
(g) residential report writing and case studies	15 hours
(h) statistics, modeling and finance	15 hours
(i) advanced residential applications and case studies	15 hours
(j) appraisal subject matter electives	20 hours

(4) complete college-level education experience under one of the following scenarios: (Effective May 1, 2018, the appraiser qualifications board of the appraisal foundation adopted changes of the real property appraiser qualification criteria);

(a) Option #1: hold a bachelor's degree or higher from an accredited college or university in any field of study;

(b) Option #2: hold an Associate's Degree in a field of study related to:

- (i) Business Administration
- (ii) Accounting
- (iii) Finance
- (iv) Economics; or
- (v) Real Estate

(c) Option #3; Successful completion of 30 semester hours of college-level courses in each of the following specific topic areas;

- (i) English Composition (three hours)
- (ii) Microeconomics (three hours)
- (iii) Macroeconomics (three hours)
- (iv) Finance (three hours)
- (v) Algebra, Geometry, or Higher Math (three hours)
- (vi) Statistics (three hours)
- (vii) Computer Science (three hours)
- (viii) Business Law or Real Estate Law (three hours)

(ix) Two elective courses in any of the above topics, or in Accounting, Geography, Agricultural Economics, Business Management, or Real Estate (three hours each).

(d) Option #4: Successful completion of at least 30 hours of College Level Examination Program® (CLEP)® examinations that cover each of the following specific topic areas:

<b>Equivalency Table</b>		
<b>CLEP Exams</b>	<b>CLEP Semester Hours Granted</b>	<b>Applicable College Classes</b>
College Algebra	3	Algebra, Geometry, Statistics, or higher mathematics
College Composition	6	English Composition

College Composition Modular	3	English Composition
College Mathematics	6	Algebra, Geometry, Statistics, or higher mathematics
Principles of Macroeconomics	3	Macroeconomics or Finance
Principles of Microeconomics	3	Microeconomics or Finance
Introductory Business Law	3	Business Law or Real Estate Law
Computer Science	3	Information Systems

(e) Option #5: any combination of Option #3 and Option #4 that includes all of the topics identified.

(f) Option #6: No college-level education required. This option only applies to appraisers who have held a Licensed Residential credential for a minimum of five years and have no record of any adverse, final, and non-appealable disciplinary action affecting the Licensed Residential appraiser's legal eligibility to engage in appraisal practice with five years immediately preceding the date of application for a Certified residential credential.

(5) pass examination: the appraiser qualifications board (AQB) approved certified real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination; the requisite experience requirement must be met within 24 months, successful completion of the examination is valid for a period of 24 months;

(6) assure courses taken in satisfying the qualifying education requirements are not repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(7) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(8) pay the fee set out in 16.62.12.8 NMAC;

(9) meet the minimum criteria for the state residential certificate classification issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

(10) submit a duly made application to the board office.

**D.** Trainee and licensed appraisers wishing to change to the residential certified appraiser classification must also satisfy the college degree requirement.

**E.** Appraisers holding a valid general certified appraiser credential satisfy the educational requirements for the residential certified appraiser credential.

**F.** Appraisers holding a valid trainee appraiser credential may satisfy the educational requirements of 125 board-approved hours for the certified residential real property appraiser credential by completing the following additional educational hours:

(1)	residential market analysis and highest and best use	15 Hours
(2)	residential appraiser site valuation and cost approach	15 Hours
(3)	residential sales comparison and income approaches	30 Hours
(4)	residential report writing and case studies	15 Hours
(5)	statistics, modeling and finance	15 Hours
(6)	advanced residential applications and case studies	15 Hours
(7)	appraisal subject matter electives	20 Hours

**G.** Appraisers holding a valid licensed residential real property appraiser credential may satisfy the educational requirements of 50 board-approved hours for the certified residential real property appraiser credential by completing the following additional educational hours:

(1)	statistics, modeling and finance	15 Hours
(2)	advanced residential applications and case studies	15 Hours
(3)	appraisal subject matter electives	20 Hours

**H.** Experience:

(1) Except as provided by Paragraph (2) of Subsection (H) of this rule, applicants for state residential certification must have a minimum of 1,500 hours of experience in real property appraisal obtained during no fewer than twelve (12) months as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraiser under whose supervision the experience was obtained. Experience logs submitted from jurisdictions located outside of New Mexico will be accepted subject to the criteria provided in Subparagraph (d) of Paragraph (2) of Subsection I of 16.62.2.9 NMAC.

(2) As an alternative method of obtaining all required experience credits necessary for licensure as a Residential Certified Appraiser, the board will accept experience obtained from an appraisal qualification board-approved provider through a Practical Applications of Real Estate Appraisal (PAREA) program, for Residential Certified Appraisers.

[10/1/1997; 16.62.4.8 NMAC - Rn & A, 16 NMAC 62.4.8, 9/13/2004; A, 11/25/2006; A, 6/13/2008; A, 8/21/2010; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021; A, 9/26/2023]

## **PART 5: APPLICATION FOR GENERAL CERTIFICATE**

**16.62.5.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[10/1/97; 16.62.5.1 NMAC - Rn, 16 NMAC 62.5.1, 09/13/2004; A, 01/01/2015]

**16.62.5.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/97; 16.62.5.2 NMAC - Rn & A, 16 NMAC 62.5.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[10/1/1997; 16.62.5.3 NMAC - Rn, 16 NMAC 62.5.3, 9/13/2004; A, 9/26/2023]

**16.62.5.4 DURATION:**

Permanent.

[10/1/97; 16.62.5.4 NMAC - Rn, 16 NMAC 62.5.4, 09/13/2004]

**16.62.5.5 EFFECTIVE DATE:**

October 1, 1997, unless a later date is cited at the end of a section.

[10/1/97; 16.62.5.5 NMAC - Rn & A, 16 NMAC 62.5.5, 09/13/2004]

**16.62.5.6 OBJECTIVE:**

This provides requirements for making application for certification as a general certified real estate appraiser.

[10/1/97; 16.62.5.6 NMAC - Rn, 16 NMAC 62.5.6, 09/13/2004]

**16.62.5.7 DEFINITIONS:**

[RESERVED]

**16.62.5.8 GENERAL CERTIFICATE:**

A holder of a general certificate may prepare appraisals on all real estate and may indicate that such appraisals are state certified.

**A.** All certified general real estate appraisers must comply with the competency rule of the national uniform standards of professional practice (USPAP).

**B.** Applicants for the general certificate in the state of New Mexico must:

(1) Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(a) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(b) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(c) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(2) have reached the age of majority;

(3) submit a duly made application to the board office.

(4) hold a bachelor's degree or higher from an accredited college or university;

(5) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(6) pay the fee set out in 16.62.12.8 NMAC;

(7) meet the minimum criteria for state general certification classification issued by the appraiser qualifications board (AQB) of the appraisal foundation; (Effective January 1, 2015, the appraiser qualifications board of the appraisal foundation adopted changes of the real property appraiser qualification criteria).

(8) successfully complete the appraisal qualifications board (AQB) approved general certified real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months; and

(9) successfully complete the real estate appraisal core curriculum educational requirements with a particular emphasis on non-residential properties.

**C.** Applicants shall successfully satisfy the core curriculum educational requirement of 300 board-approved courses by completing the following:

- |      |  |           |
|------|--|-----------|
| (1)  | basic appraisal principles                                 | 30 hours; |
| (2)  | Statistics, Modeling, and Finance                          | 15 hours; |
| (3)  | basic appraisal procedures                                 | 30 hours; |
| (4)  | the 15 hour national USPAP course and examination          | 15 hours; |
| (5)  | general appraiser market analysis and highest and best use | 30 hours; |
| (6)  | general appraiser sales comparison approach                | 30 hours; |
| (7)  | general appraiser site valuation and cost approach         | 30 hours; |
| (8)  | general appraiser income approach                          | 60 hours; |
| (9)  | general appraiser report writing and case studies          | 30 hours; |
| (10) | appraisal subject matter electives                         | 30 hours. |

**D.** Appraisers holding a valid trainee appraiser credential may satisfy the educational requirements of 225 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

- |     |  |           |
|-----|--|-----------|
| (1) | general appraiser market analysis and highest and best use | 30 hours; |
| (2) | statistics, modeling and finance                           | 15 hours; |
| (3) | general appraiser sales comparison approach                | 30 hours; |
| (4) | general appraiser site valuation and cost approach         | 30 hours; |
| (5) | general appraiser income approach                          | 60 hours; |
| (6) | general appraiser report writing and case studies          | 30 hours; |
| (7) | appraisal subject matter electives                         | 30 hours. |

**E.** Appraisers holding a valid licensed residential real property appraiser credential may satisfy the educational requirements of 150 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

- |     |  |           |
|-----|--|-----------|
| (1) | general appraiser market analysis and highest and best use | 15 hours; |
| (2) | statistics, modeling and finance                           | 15 hours; |
| (3) | general appraiser sales comparison approach                | 15 hours; |
| (4) | general appraiser site valuation and cost approach         | 15 hours; |
| (5) | general appraiser income approach                          | 45 hours; |
| (6) | general appraiser report writing and case studies          | 15 hours; |
| (7) | appraisal subject matter electives                         | 30 hours. |

**F.** Appraisers holding a valid certified residential real property appraiser credential may satisfy the educational requirements of 100 board-approved hours for the certified general real property appraiser credential by completing the following additional educational hours:

- |     |  |           |
|-----|--|-----------|
| (1) | general appraiser market analysis and highest and best use | 15 hours; |
| (2) | general appraiser sales comparison approach                | 15 hours; |
| (3) | general appraiser site valuation and cost approach         | 15 hours; |
| (4) | general appraiser income approach                          | 45 hours; |
| (5) | general appraiser report writing and case studies          | 10 hours. |

**G. Experience:**

(1) Except as provided by Paragraph (2) of Subsection (G) of this rule, applicants for state general certification must have a minimum of 3,000 hours of experience in real property appraisal obtained during no fewer than 18 months, of which, 1,500 hours must be in non-residential appraisal work, submitted on a form prescribed by the board and attested to by the duly certified general supervising appraiser under whose supervision the experience was obtained. Experience logs submitted from jurisdictions located outside of New Mexico will be accepted subject to the criteria provided in Subparagraph (d) of Paragraph (2) of Subsection I of 16.62.2.9 NMAC.

(2) Experience obtained from an appraisal qualification board approved provider through a Practical Applications of Real Estate Appraisal (PAREA) program may be accepted as an alternative method of obtaining a maximum of fifty percent of the required experience credits necessary for general certification. At least 1,500 hours of the 3,000 total hours required must be from non-residential appraisal work.

[10/1/1997; 16.62.5.8 NMAC - Rn & A, 16 NMAC 62.5.8, 9/13/2004; A, 11/25/2006; A, 8/21/10; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021; A, 9/26/2023]

## **PART 6: EXAMINATIONS**

### **16.62.6.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[1/14/00; 16.62.6.1 NMAC - Rn, 16 NMAC 62.61.1, 09/13/2004; A, 01/01/2015]

### **16.62.6.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[1/14/00; 16.62.6.2 NMAC - Rn & A, 16 NMAC 62.61.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[1/14/00; 16.62.6.3 NMAC - Rn, 16 NMAC 62.61.3, 09/13/2004; A, 9/26/2023]

**16.62.6.4 DURATION:**

Permanent.

[1/14/00; 16.62.6.4 NMAC - Rn, 16 NMAC 62.61.4, 09/13/2004]

**16.62.6.5 EFFECTIVE DATE:**

January 14, 2000, unless a later date is cited at the end of a section.

[1/14/00; 16.62.6.5 NMAC - Rn & A, 16 NMAC 62.6.5, 09/13/2004]

**16.62.6.6 OBJECTIVE:**

This part provides for a national examination on real estate appraisal as a requirement for licensure or certification and for a state examination on state law and rules as a requirement for registration, licensure or certification.

[1/14/00; 16.62.6.6 NMAC - Rn, 16 NMAC 62.61.6, 09/13/2004]

**16.62.6.7 DEFINITIONS:**

[RESERVED]

**16.62.6.8 EXAMINATION REQUIREMENTS:**

All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed uniform state certifications/licensing examination or its equivalent.

**A.** The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

**B.** Prior to issuance of an examination ticket, all credible education hours, qualifying experience credit, and the experience log, must be verified and found to be completed in full and acceptable to the board.

**C.** An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator, Hewlett Packard calculator 12C or its equivalent; the applicant gives or receives any kind of aid during the examination; or someone other than the applicant takes the test or attempts to take the test for the applicant.

**D.** All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

**E.** The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations known as the state board jurisprudence examination which will require a score of seventy percent or more for a passing grade. This jurisprudence examination shall be taken during initial application for no charge, the exam may be taken until a passing grade is achieved in order to proceed with the application process.

**F.** The applicant must take the examination prescribed by the board.

[1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004; A, 06/13/2008; A, 08/21/2010; A, 01/15/2017; A, 02/03/2019; A, 09/26/2023; A, 03/12/2024]

## **PART 7: ISSUANCE/RENEWAL OF APPRENTICE REGISTRATION/LICENSES/CERTIFICATES**

### **16.62.7.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[10/1/97; 16.62.7.1 NMAC - Rn, 16 NMAC 62.7.1, 09/13/2004; A, 01/01/2015; A, 01/01/2017]

### **16.62.7.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/97; 16.62.7.2 NMAC - Rn & A, 16 NMAC 62.7.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[10/1/97; 16.62.7.3 NMAC - Rn, 16 NMAC 62.7.3, 09/13/2004; A, 9/26/2023]

**16.62.7.4 DURATION:**

Permanent.

[10/1/97; 16.62.7.4 NMAC - Rn, 16 NMAC 62.7.4, 09/13/2004]

**16.62.7.5 EFFECTIVE DATE:**

October 1, 1997, unless a later date is cited at the end of a section.

[10/1/97; 16.62.7.5 NMAC - Rn & A, 16 NMAC 62.7.5, 09/13/2004]

**16.62.7.6 OBJECTIVE:**

This part establishes guidelines for the issuance of initial licenses, provides requirements for license renewal and license expiration, licensee requirements and responsibilities, establishes continuing education requirements and guidelines for reinstatement of an expired license.

[10/1/97; 16.62.7.6 NMAC - Rn, 16 NMAC 62.7.6, 09/13/2004]

**16.62.7.7 DEFINITIONS:**

[RESERVED]

[10/1/97; 16.62.7.7 NMAC - Rn & A, 16 NMAC 62.7.7, 09/13/2004; A, 11/25/06]

**16.62.7.8 INITIAL LICENSE ISSUANCE:**

Initial licenses expire on April 30 in the second year of licensure. No license will be issued for longer than 24 months. Applications for licensure are valid for one year from the date of receipt.

[10/1/97; 16.62.7.8 NMAC - Rn & A, 16 NMAC 62.7.8, 09/13/2004; A, 01/15/2017; A, 02/03/2019]

**16.62.7.9 RENEWAL PERIOD AND EXPIRATION:**

All licenses will expire every two years on April 30.

[10/1/97; 16.62.7.9 NMAC - Rn & A, 16 NMAC 62.7.9, 09/13/2004; A, 02/03/2019]

**16.62.7.10 RENEWAL PROCESS:**

**A.** A completed renewal application, accompanied by the required fee as defined in 16.62.12.8 NMAC and completion of 28 hours of continuing education, is required. Renewal applications may be submitted online or by mail, and must be completed, post-marked or delivered to the board office on or before April 30 of the renewal year.

**B.** Deferrals may not be granted to credential holders, except in the case of individuals returning from active military duty. Licensees returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements.

**C.** The board shall audit a percentage of renewal applications each renewal period to verify the continuing education requirement has been met. The licensee must maintain proof in the form of certificates issued by the education providers (transcripts not acceptable) of continuing education courses taken for the past four years. The board reserves the right to audit a licensee's continuing education records as it deems necessary.

**D.** As part of the renewal process, applicants are required to attest that they have reviewed and are familiar with Real Estate Appraisers rules 16.62.1 NMAC through 16.62.18 NMAC.

[10/1/97; 16.62.7.10 NMAC - Rn & A, 16 NMAC 62.7.10, 09/13/2004; A, 11/25/2006; A, 06/13/2008; A, 01/16/2011; A, 01/15/2017; A, 02/03/2019]

#### **16.62.7.11 LICENSEE RESPONSIBILITY:**

**A.** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make a timely request for the renewal form if one has not been received thirty days prior to license expiration.

**B.** It is the sole responsibility of the licensee to maintain records of the qualifying education they have completed.

[10/1/97; 16.62.7.11 NMAC - Rn & A, 16 NMAC 62.7.11, 09/13/2004; A, 11/25/06]

#### **16.62.7.12 REQUIRED CONTINUING EDUCATION:**

**A.** Twenty-eight hours as defined in 16.62.8.7 NMAC of continuing education in courses approved by the board, which must include the appraisal qualification board (AQB) approved seven-hour national uniform standards of professional appraisal practice (USPAP) update course, are required in each two-year renewal period.

**B.** For continuing education cycle periods of 185 days to 365 days, 14 hours of continuing education is required. For continuing education cycle periods of less than 185 days, no hours of continuing education are required.

**C.** Effective with the first biennial renewal period and each subsequent renewal, a seven hour class in the national uniform standards of professional appraisal practice update course is required as part of the continuing education requirement. Successful completion includes passing an exam, if required, by the appraiser qualifications board (AQB).

**D.** Educational offerings taken by an individual in order to fulfill the class hour requirement for a different classification than his/her current classification may be simultaneously counted towards the continuing education requirement of his/her current classification.

**E.** Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two hours.

[10/1/97; 16.62.7.12 NMAC - Rn & A, 16 NMAC 62.7.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 01/16/2011; A, 01/15/2017; A, 02/03/2019; A, 09/26/2023; A, 03/12/2024]

#### **16.62.7.13 RENEWAL AFTER DEADLINE:**

A license not renewed on the renewal date is expired.

[10/1/97; 16.62.7.13 NMAC - Rn, 16 NMAC 62.7.13, 09/13/2004; A, 01/16/2011]

#### **16.62.7.14 REINSTATEMENT OF EXPIRED LICENSE:**

An expired license may be reinstated within 30 days after expiration upon:

**A.** submission of an application,

**B.** payment of the required biennial renewal fee,

**C.** proof of completion of all required continuing education hours that would have been required if the credential holder were in an active status. The required hours must also include the most recent edition of the seven-hour national USPAP update course (or its AQB-approved equivalent),

**D.** payment of the administrative reinstatement fee,

**E.** Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(2) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(3) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**F.** The board may, in its discretion, treat the former trainee, license or certificate holder as a new applicant and further require that the applicant be reexamined as a condition to reissue a license or certificate.

[10/1/97; 16.62.7.14 NMAC - Rn & A, 16 NMAC 62.7.14, 09/13/2004; A, 01/01/2015; A, 01/15/2017; A, 9/26/2023]

#### **16.62.7.15 CHANGE OF MAILING ADDRESS, PHYSICAL BUSINESS ADDRESS AND E-MAIL ADDRESS:**

A trainee, license or certificate holder shall report to the board in writing any change of mailing, physical business, and e-mail address. Failure to do so within 30 days is grounds for trainee, license or certificate suspension.

[10/1/97; 16.62.7.15 NMAC - Rn & A, 16 NMAC 62.7.15, 09/13/2004; A, 06/13/08; A, 01/01/2015; A, 01/15/2017]

#### **16.62.7.16 EXEMPTION FROM ISSUANCE LICENSE OR CERTIFICATE;**

**A.** The process of analyzing, without altering, an appraisal report, except appraisal reviews as defined in the Definitions under Paragraph (5) of Subsection A of 16.62.1.7 NMAC of General Provisions AND The Uniform Standards of Professional Appraisal Practice, that is part of a request for mortgage credit, is a specialized service as defined in Subsection Q of Section 61-30-3 NMSA 1978 and is exempt from the requirements of licensing or certification.

**B.** The process of completing an appraisal review, as defined in the Definitions under Paragraph (5) of Subsection A of 16.62.1.7 NMAC of General Provisions AND as defined by the Uniform Standards of Professional Appraisal Practice, completed by a review appraiser holding a valid license or certification and completing the appraisal review from a location outside of New Mexico, is exempt from the requirements of

licensing or certification, provided the appraisal reviewer has a valid license or certification that corresponds with or is higher than the level of licensure or certification required to perform the appraisal under review.

[16.62.7.16 NMAC – N, 02/03/2019]

## **PART 8: EDUCATIONAL PROGRAMS/CONTINUING EDUCATION**

### **16.62.8.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[3/14/00; 16.62.8.1 NMAC - Rn, 16 NMAC 62.8.1, 09/13/2004; A, 01/01/2015]

### **16.62.8.2 SCOPE:**

All trainees, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/14/00; 16.62.8.2 NMAC - Rn & A, 16 NMAC 62.8.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[3/14/00; 16.62.8.3 NMAC - Rn, 16 NMAC 62.8.3, 09/13/2004; A, 9/26/2023]

### **16.62.8.4 DURATION:**

Permanent.

[3/14/00; 16.62.8.4 NMAC - Rn, 16 NMAC 62.8.4, 09/13/2004]

### **16.62.8.5 EFFECTIVE DATE:**

March 14, 2000, unless a later date is cited at the end of a section.

[3/14/00; 16.62.8.5 NMAC - Rn & A, 16 NMAC 62.8.5, 09/13/2004]

### **16.62.8.6 OBJECTIVE:**

This part provides requirements for approval of educational courses for pre-trainee, pre-licensing, and pre-certification and continuing education credit. It establishes

requirements for continuing education courses and sponsors. It establishes an education advisory committee to approve courses and sponsors.

[3/14/00; 16.62.8.6 NMAC - Rn, 16 NMAC 62.8.6, 09/13/2004; A, 11/25/06; A, 01/01/2015]

#### **16.62.8.7 DEFINITIONS:**

"Class Hours" for the purpose of fulfilling continuing education requirements includes approved courses offered over the internet or other distance learning modalities.

[3/14/00; 16.62.8.7 NMAC - Rn, 16 NMAC 62.8.7, 09/13/2004; A, 02/03/2019]

#### **16.62.8.8 ACCEPTABLE COURSEWORK:**

**A.** All coursework for original trainee registration, licensing and certification shall be given in 15-hour segments and have an examination administered at the end of the course.

**B.** Successful completion of the examination is a requirement to submit the course for original trainee registration, licensure or certification credit.

**C.** Courses taken in satisfying the qualifying education requirements shall not be repetitive in nature. Each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased.

[3/14/00; 16.62.8.8 NMAC - Rn, 16 NMAC 62.8.8, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 9/26/2023]

#### **16.62.8.9 RELEVANCE OF COURSEWORK:**

All coursework for original trainee, licensing or certification shall be in courses closely related to real estate appraisal. The board will not accept an applicant's completion of a course of a kind, which is designed to prepare students for examination, commonly known as a "cram course". All real estate appraisal coursework credited toward original trainee, shall have been completed no more than five years prior to the date of the application filed with the board.

[3/14/00; 16.62.8.9 NMAC - Rn & A, 16 NMAC 62.8.9, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 01/15/2017; A, 9/26/2023]

#### **16.62.8.10 DISTANCE EDUCATION:**

Is defined as any education process based on the geographical separation of student and instructor. A distance education course offered over the internet or other distance learning modality is acceptable to meet class hour requirements if:

**A.** the course provides interaction; interaction is a reciprocal environment where the student has verbal or written communication with the instructor;

**B.** content approval is obtained from the appraiser qualifications board, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. secretary of education; non-academic credit college courses provide by a college shall be approved by the appraiser qualifications board and state licensing jurisdiction; and

**C.** course delivery mechanism approval is obtained from one of the following sources:

(1) appraiser qualifications board approved organizations providing approval of course design and delivery;

(2) a college that qualifies for content approval in Subsection B above that awards academic credit for the distance education course; or

(3) a qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

[3/14/00; 16.62.8.10 NMAC - Rn & Repealed, 16 NMAC 62.8.10, 09/13/2004; 16.62.8.10 NMAC - N, 06/13/08]

#### **16.62.8.11 ACCEPTABLE CONTINUING EDUCATION:**

Courses approved for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of trainees, licensees and certificate holders. The primary objective of such courses shall be consistent with the board's charge to protect the public and to increase the professional competence of trainees, licensees and certificate holders.

[3/14/00; 16.62.8.11 NMAC - Rn & A, 16 NMAC 62.8.11, 09/13/2004; A, 11/25/06; A, 08/21/2010; A, 01/01/2015; A, 02/03/2019]

#### **16.62.8.12 CONTINUING EDUCATION REQUIREMENTS:**

Twenty-eight hours of continuing education are required each biennial renewal period. Continuing education requirements for initial trainees, licenses and certificates issued for less than two full years are pro-rated as defined in 16.62.7.12 NMAC.

**A.** Individuals must successfully complete the seven hour national uniform standards of professional appraisal practice (USPAP) update course, or its equivalent as approved by the appraiser qualifications board (AQB). Successful completion includes passing an exam if required by the appraiser qualifications board (AQB).

**B.** Successful completion of the AQB approved seven hour national USPAP update course will be required of every trainee, licensee and certificate holder as a condition of renewal in each biennial renewal.

[3/14/00; 16.62.8.12 NMAC - Rn & A, 16 NMAC 62.8.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 1/16/2011; A, 01/01/2015; A, 01/15/2017; A, 03/12/2024]

#### **16.62.8.13 EDUCATION ADVISORY COMMITTEE:**

The board will appoint an education advisory committee for the purpose of reviewing courses and sponsors of education.

**A.** A committee approval shall go into effect immediately upon the committee's decision.

**B.** The board maintains the ability to review all approvals or disapprovals made by the committee.

[3/14/00; 16.62.8.13 NMAC - Rn, 16 NMAC 62.8.13, 09/13/2004; A, 08/21/2010; A, 01/01/2015]

#### **16.62.8.14 APPROVAL OF SPONSORS:**

The board may approve individuals or organizations as course sponsors. Colleges and universities offering credit courses in real estate appraisal are also considered approved sponsors.

**A.** Requests for approval must be made on board approved forms and include an outline and a code of conduct for instructors.

**B.** The instructor selection and retention policy will include, at a minimum, the following requirements:

(1) instructors of qualifying education courses must be licensed by exam or certified at the same or a higher category than the level of classes they are engaged to teach.

(2) instructors engaged to teach the national uniform standards of professional appraisal practice (USPAP) course must qualify under the instructor evaluation policy for instructor selection for the national USPAP course developed by the appraisal foundation;

(3) instructors must teach only the appraisal foundation-approved national uniform standards of professional appraisal practice (USPAP) course;

(4) student critiques must be requested and maintained for each class given;

(5) a summary of the critiques and the pass rate of the class must be submitted to the board within 30 days after the course is completed;

(6) the sponsor shall provide a procedure for periodic monitoring of instructors in the classroom setting along with the sponsor application.

**C.** Approved sponsors shall comply with the following requirements to maintain approved status; the school must be conducted in accordance with these rules:

(1) to permit the board or its representative access to the school or classes being conducted and to make available to the board, upon request, all information pertaining to the activities of the school required for the administration of the rules and regulations, including its financial condition;

(2) to advertise the school at all times in a form and manner free from misrepresentation, deception or fraud;

(3) assure that all representations made by anyone authorized by the school to act as its agent or solicitor for prospective students are free from misrepresentation, deception or fraud;

(4) to maintain current, complete, and accurate student records and instructor critiques or summaries which shall be accessible at all times to the board or its authorized representative; these records shall include, in addition to other information, a record of payments made, a record of attendance, and a record of units of work completed;

(5) to conduct all courses in accordance with outlines submitted to and approved by the board;

(6) to only certify course completion for students who have successfully taken and passed the course; credit cannot be given for students who pass a course by challenging the course;

(7) sponsors will be subject to renewal of approval every three years or on a renewal period as determined by the AQB expiration date; the board assumes no

responsibility for renewal courses not received from the sponsor for any reason; it is the sponsor's responsibility to make timely request(s) for the renewal of course(s) for board approval;

(8) sponsors must assure that all instructors:

(a) conduct all classes in accordance with board rules;

(b) ensure that all instruction is free from misrepresentation;

(c) instruct only from board-approved outlines;

(d) allow access to any class being instructed to any duly appointed representative of the board; and

(e) certify to his/her sponsor a true and correct record of students' attendance in his/her classes;

(9) failure to comply with this rule may result in the loss of approval of the sponsor; and

(10) the board reserves the right to disapprove an instructor.

**D.** Sponsors may also be approved for seminars, conferences and one-time courses. Approval is limited to the dates of the course and may not be renewed.

[3/14/00; 16.62.8.14 NMAC - Rn, 16 NMAC 62.8.14, 09/13/2004; A, 11/25/2006; A, 01/16/2011; A, 01/01/2015; A, 02/03/2019; A, 9/26/2023]

#### **16.62.8.15 APPROVAL OF COURSES:**

**A.** All real estate appraisal courses except the appraisal qualifications board (AQB) approved 15-hour and seven-hour national USPAP courses, must have prior approval by the board if they are to be approved for credit towards continuing education or qualifying education. Beginning January 1, 2008, all qualifying education courses for pre-trainee, pre-licensing and pre-certification must have been approved through the AQB course approval program. The AQB approved 15-hour national USPAP course and the seven hour national USPAP update course do not require prior approval by the board with proof that the course was taught by an AQB certified national USPAP instructor who is also a residential or general certified appraiser. The course sponsor may certify in the form of a certificate provided to the student that the instructor meets the above board criteria.

**B.** All board approved real estate courses except the AQB approved 15-hour national USPAP course and the seven-hour national USPAP update course, as defined in Subsection A of this section, accepted for pre-trainee, pre-licensing and pre-

certification credit must: be a minimum length of at least 15 hours and include successful completion of an approved closed-book examination pertinent to that educational offering.

**C.** Application for course approval must be made to the board. No classes for credit may commence prior to board approval. The education advisory committee will review the application in accordance with 16.62.8.13 NMAC.

**D.** All course outlines approved by the board for pre-trainee, pre-licensing, pre-certification and continuing education credit shall become the property of the board and the outlines shall be available to all those board approved sponsors wishing to teach said courses.

**E.** All existing courses are subject to periodic review by the board. The board may at any time change the approval status of any course.

[3/14/00; 16.62.8.15 NMAC - Rn & A, 16 NMAC 62.8.15, 09/13/2004; A, 11/25/2006; A, 01/16/2011; A, 7/10/2011; A, 01/01/2015]

#### **16.62.8.16 ONE-ON-ONE APPROVAL:**

The education advisory committee may approve continuing education credit on a one-on-one basis for courses that do not conform fully with 16.62.8.14 NMAC or 16.62.8.15 NMAC.

[3/14/00; 16.62.8.16 NMAC - Rn, 16 NMAC 62.8.16, 09/13/2004 A, 01/01/2015]

#### **16.62.8.17 [RESERVED]**

[3/14/00; 16.62.8.17 NMAC - Rn & A, 16 NMAC 62.8.17, 09/13/2004; A, 11/25/06]

#### **16.62.8.18 EDUCATION CREDIT FOR TEACHING:**

Instructors who are also certified and licensed may receive up to one-half of their continuing education requirement from instruction of appraisal courses or seminars. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle.

[3/14/00; 16.62.8.18 NMAC - Rn & A, 16 NMAC 62.8.185, 09/13/2004]

### **PART 9: CERTIFICATE OF GOOD STANDING**

#### **16.62.9.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[3/15/00; 16.62.9.1 NMAC - Rn, 16 NMAC 62.9.1, 09/13/2004; A, 01/01/2015]

**16.62.9.2 SCOPE:**

All trainees, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/15/00; 16.62.9.2 NMAC - Rn & A, 16 NMAC 62.9.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.9.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[3/15/00; 16.62.9.3 NMAC - Rn, 16 NMAC 62.9.3, 09/13/2004; A, 9/26/2023]

**16.62.9.4 DURATION:**

Permanent.

[3/15/00; 16.62.9.4 NMAC - Rn, 16 NMAC 62.9.4, 09/13/2004]

**16.62.9.5 EFFECTIVE DATE:**

March 15, 2000, unless a later date is cited at the end of a section.

[3/15/00; 16.62.9.5 NMAC - Rn & A, 16 NMAC 62.9.5, 09/13/2004]

**16.62.9.6 OBJECTIVE:**

This part provides for the board office to issue a certificate of good standing, upon payment of a fee, certifying that an appraiser is duly licensed and not the subject of disciplinary action.

[3/15/00; 16.62.9.6 NMAC - Rn, 16 NMAC 62.9.6, 09/13/2004]

**16.62.9.7 DEFINITIONS:**

[RESERVED]

**16.62.9.8 CERTIFICATE OF GOOD STANDING/FEE:**

The board shall issue a certificate of good standing to any state trainee, licensed residential, or certified real estate appraiser who is currently or has been credentialed under the act by virtue of having met the following requirements.

**A.** The trainee, license, or certificate holder must pay the required fees in advance.

**B.** The applicant's appraiser trainee, license and certificate must not be under suspension or revocation as a result of disciplinary action by the board, and the trainee, license and certificate holder must not be the subject of a pending notice of contemplated action issued by the board.

**C.** The certificate of good standing shall specify the current license status and license history of the applicant. Verification of license history and good standing may also be obtained from the national registry of real estate appraisers.

**D.** The applicant must submit a written or online request and pay a fee set by the board for issuance of the certificate of good standing.

[2/28/94; 3/15/00; 16.62.9.8 NMAC - Rn & A, 16 NMAC 62.9.8, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 02/03/2019; A, 9/26/2023]

## **PART 10: TEMPORARY PRACTICE**

### **16.62.10.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[3/15/00; 16.62.10.1 NMAC - Rn, 16 NMAC 62.10.1, 09/13/2004; A, 01/01/2015]

### **16.62.10.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/15/00; 16.62.10.2 NMAC - Rn & A, 16 NMAC 62.10.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.10.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[3/15/00; 16.62.10.3 NMAC - Rn, 16 NMAC 62.10.3, 09/13/2004; A, 09/26/2023]

### **16.62.10.4 DURATION:**

Permanent.

[3/15/00; 16.62.10.4 NMAC - Rn, 16 NMAC 62.10.4, 09/13/2004]

**16.62.10.5 EFFECTIVE DATE:**

March 15, 2000, unless a later date is cited at the end of a section.

[3/15/00; 16.62.10.5 NMAC - Rn & A, 16 NMAC 62.10.5, 09/13/2004]

**16.62.10.6 OBJECTIVE:**

This part provides that the board will issue temporary practice permits to out of state licensed or certified appraiser who present evidence of qualification.

[3/15/00; 16.62.10.6 NMAC - Rn, 16 NMAC 62.10.6, 09/13/2004]

**16.62.10.7 DEFINITIONS:**

"Assignment" means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement for a specified number of properties.

[16.62.10.79 NMAC - N, 01/01/2015]

**16.62.10.8 TEMPORARY PRACTICE PERMITS:**

**A.** All persons who engage in the business of, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a state real estate appraiser must have a board license or permit.

**B.** A temporary permit may be issued to non-resident appraiser licensed and certified appraiser for the purpose of performing an appraisal or an appraisal review.

**C.** Temporary practice for an appraisal review of a New Mexico real property:

**(1)** The reviewing appraiser must have a New Mexico residential certification or general certification.

**(2)** The temporary permit holder must have an active license residential, residential certification or general certification from another issuing agency that corresponds with or is higher than the level of licensure required to perform the appraisal.

**(3)** In the case of a review appraiser with an opinion of value, the review appraiser must have national USPAP compliance with competency in the report.

**D. Temporary practice for an appraisal assignment of a New Mexico real property:**

- (1) Pursuant to Title XI, the board shall recognize, on a temporary basis, the certification or license of a real estate appraiser issued by another state.
- (2) The temporary permit may only be issued on an assignment basis. A single assignment may include one or more properties under a single contract with a single client.
- (3) The out of state appraiser must comply with the national USPAP and with the board's statutes and rules.
- (4) The out of state appraiser is subject to the board's jurisdiction.

**E. Applicants shall submit a form approved by the board to include the following:**

- (1) verification of license history and good standing as obtained from the national registry of real estate appraisers; the board may obtain verification and certification from the ASC website;
- (2) the classification of the license or certification they hold;
- (3) whether they are subject to disciplinary action in the state in which they are licensed or certified; if subject to disciplinary action, submittal of a final order and letter of closer should also be submitted;
- (4) a statement certifying that the applicant's business in New Mexico is temporary and will not exceed 180 days;
- (5) a statement and accompanying contract identifying the specific assignment to which the temporary permit will apply;
- (6) an irrevocable statement consenting that suits and actions may be commenced against him/her in the proper court of any county of New Mexico arising from the applicant's actions as a state licensed or certified appraiser;
- (7) the fee specified in 16.62.12 NMAC.

**F.** A temporary permit extension may be obtained upon the written request submitted to the board office by the temporary permit holder; a one-time 30-day extension will be granted to complete the specified assignment.

[3/15/00; 16.62.10.8 NMAC - Rn, 16 NMAC 62.10.8, 09/13/2004; A, 11/25/2006; A, 10/16/2009; A, 08/21/2010; A, 01/01/2015; A, 01/15/2017]

**16.62.10.9 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Licensed or certified real estate appraisers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed or certified in New Mexico during the four months following the declared disaster with the same level of licensure they currently hold at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.62.2.8 NMAC, trainee; 16.62.3.8 NMAC, licensed; 16.62.4.8 NMAC, residential; and 16.62.5.8 NMAC, general;

(3) other required verification will be to contact the applicant's prior licensing board by email, mail or telephone.

**B.** The board may waive the following requirements for licensure:

(1) application fees;

(2) taking and passing the NM state exam; the applicant will be required to take and pass the NM state exam within 60 days from the date the emergency license is issued.

**C.** The board may waive the specific forms required under 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D.** Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC.

**E.** Licenses issued under (the emergency provision) shall expire on April 30 following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before April 30 following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.62.10.9 NMAC - N/E, 11/10/2005; A, 11/25/2006; A, 01/01/2015; A, 02/03/2019]

#### **16.62.10.10 EMERGENCY LICENSE TERMINATION:**

**A.** The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under Sections 16.62.2.8, 16.62.3.8, 16.62.4.8 and 16.62.5.8 NMAC; or

(2) proof that the emergency license holder has engaged in fraud deceit, misrepresentation in procuring or attempting to procure a license under this section.

**B.** Termination of an emergency license shall not preclude application for permanent licensure.

[16.62.10.10 NMAC - N/E, 11/10/2005; Re-pr, 11/25/2006]

## **PART 11: APPLICATION FOR RECIPROCITY**

### **16.62.11.1 ISSUING AGENCY:**

Regulation and Licensing Department, NM Real Estate Appraisers Board.

[16.62.11.1 NMAC - N, 09/13/2004; A, 01/01/2015]

### **16.62.11.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[16.62.11.2 NMAC - N, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.11.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[16.62.11.3 NMAC - N, 09/13/2004; A, 9/26/2023]

### **16.62.11.4 DURATION:**

Permanent.

[16.62.11.4 NMAC - N, 09/13/2004]

### **16.62.11.5 EFFECTIVE DATE:**

09/13/2004, unless a later date is cited at the end of a section.

[16.62.11.5 NMAC - N, 09/13/2004]

**16.62.11.6 OBJECTIVE:**

This part provides requirements for making application for reciprocity.

[16.62.11.6 NMAC - N, 09/13/2004]

**16.62.11.7 DEFINITIONS:**

**[RESERVED]**

[16.62.11.7 NMAC - N, 09/13/2004]

**16.62.11.8 APPLICATION FOR RECIPROCITY:**

**A.** Applications for New Mexico state licensed residential appraiser, certified residential appraiser, or certified general appraisers must hold a current and valid appraisers license or certificate in another state at the time of application for reciprocity.

**B.** Applicants for reciprocity in the state of New Mexico must:

- (1) complete an application for New Mexico state licensed appraiser or certified appraiser;
- (2) verification of license history and good standing as obtained from the national registry of real estate appraisers;
- (3) submit copy of current license;
- (4) pay the appropriate fee by check or money order or online payment;
- (5) comply with all the New Mexico board of real estate appraisers statutes, rules and regulations; and
- (6) rely on a credential from a home state that complies with Title XI as determined by the appraisal subcommittee;
- (7) Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(a) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(b) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(c) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**C.** A reciprocal license shall expire on April 30 of the second calendar year after issuance.

**D.** Renewal requirements shall be in the same manner and with the same requirements as for the same classification of certified or licensed appraiser as stated in 16.62.7 NMAC

[16.62.11.8 NMAC - N, 09/13/2004; A, 11/25/2006; A, 01/01/2015; A, 02/03/2019; A, 9/26/2023]

## **PART 12: FEES**

### **16.62.12.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[2/29/96; 16.62.12.1 NMAC - Rn, 16 NMAC 62.12.1, 09/13/2004; A, 01/01/2015]

### **16.62.12.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[2/29/96; 16.62.12.2 NMAC - Rn & A, 16 NMAC 62.12.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.12.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[2/29/96; 16.62.12.3 NMAC - Rn, 16 NMAC 62.12.3, 09/13/2004; A, 9/26/2023]

### **16.62.12.4 DURATION:**

Permanent.

[2/29/96; 16.62.12.4 NMAC - Rn, 16 NMAC 62.12.4, 09/13/2004]

**16.62.12.5 EFFECTIVE DATE:**

February 29, 1996, unless a later date is cited at the end of a section.

[2/29/96; 16.62.12.5 NMAC - Rn & A, 16 NMAC 62.12.5, 09/13/2004]

**16.62.12.6 OBJECTIVE:**

This part lists the fees charged by the board.

[2/29/96; 16.62.12.6 NMAC - Rn, 16 NMAC 62.12.6, 09/13/2004]

**16.62.12.7 DEFINITIONS:**

[RESERVED]

**16.62.12.8 FEES:**

All fees required under the Real Estate Appraiser Act or these regulations are non-refundable unless otherwise noted.

- A.** Application fee for a trainee is \$200, which includes the initial trainee period.
- B.** Application fee for a licensed residential is \$300, which includes the initial licensing period.
- C.** Application fee for residential certification is \$300, which includes the initial licensing period.
- D.** Application fee for general certification is \$400, which includes the initial licensing period.
- E.** The fee for all examinations will be paid directly to the company who provides the exam.
- F.** The biennial renewal fee for trainee appraisers is \$200.
- G.** The biennial renewal fee for licensed residential appraisers is \$300.
- H.** The biennial renewal fee for residential certified appraisers is \$300.
- I.** The biennial renewal fee for general certified appraisers is \$355.

**J.** The current fee for listing on the federal registry as charged by the appraisal subcommittee (ASC).

**K.** The application fee for a temporary practice permit is \$200.

**L.** The fee for replacement of trainee, license or certificate is \$50.

**M.** The fee for a certificate of good standing is \$25.

**N.** Administrative reinstatement fee is \$200 for Retired and Inactive Status.

**O.** Administrative late fee is \$100.00 for Expired Status if renewed within 90 days of expiration.

**P.** Administrative fees as follows:

- (1) approved continuing education course is \$50;
- (2) approval of continuing education sponsorship is \$75;
- (3) licensee list is \$150;
- (4) miscellaneous is \$25 up to a max of \$100.

[2/29/96; 16.62.12.8 NMAC - Rn, 16 NMAC 62.12.8, 09/13/2004; A, 08/21/2010; A, 01/16/2011; A, 7/10/2011; A, 01/01/2015; A, 01/01/2015; A, 01/15/2017; A, 02/03/2019]

## **PART 13: DISCIPLINARY PROCEEDINGS**

### **16.62.13.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[10/1/97; 16.62.13.1 NMAC - Rn, 16 NMAC 62.13.1, 09/13/2004; A, 01/01/2015]

### **16.62.13.2 SCOPE:**

All applicants, trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[10/1/1997; 16.62.13.2 NMAC - Rn & A, 16 NMAC 62.13.2, 9/13/2004; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021]

### **16.62.13.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[10/1/1997; 16.62.13.3 NMAC - Rn, 16 NMAC 62.13.3, 9/13/2004; A, 9/26/2023]

**16.62.13.4 DURATION:**

Permanent.

[10/1/97; 16.62.13.4 NMAC - Rn, 16 NMAC 62.13.4, 09/13/2004]

**16.62.13.5 EFFECTIVE DATE:**

October 1, 1997, unless a later date is cited at the end of a section.

[10/1/97; 16.62.13.5 NMAC - Rn & A, 16 NMAC 62.13.5, 09/13/2004]

**16.62.13.6 OBJECTIVE:**

This part sets forth procedures applicable to application denials, disciplinary proceedings, and administrative proceedings against unlicensed practitioners.

[10/1/1997; 16.62.13.6 NMAC - Rn, 16 NMAC 62.13.6, 9/13/2004; A, 11/25/2006, A, 1/1/2015; A, 10/30/2021]

**16.62.13.7 DEFINITIONS:**

**A. "Complaint committee"** means the committee created and appointed by the board for the purposes of reviewing, evaluating, and making recommendations on disciplinary cases.

**B. "Board investigator"** means an investigator utilized by the board for the purposes of carrying out investigations into disciplinary complaints.

**C. "Administrative prosecutor"** means the attorney assigned to administratively prosecute cases pending before the board.

**D. "Disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978;

[10/1/1997; 16.62.13.7 NMAC - Rn & A, 16 NMAC 62.13.7, 9/13/2004; A, 1/1/2015; A, 10/30/2021]

**16.62.13.8 FILING COMPLAINT:**

Upon receipt of a sworn complaint against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the board may administratively evaluate the complaint to determine whether sufficient information of a potential violation of board statute or rules, or the national uniform standards of professional appraisal practice (USPAP) exists to pursue investigation and possible formal disciplinary action. Upon receipt of a complaint, the board may:

**A.** evaluate or investigate the alleged violations;

**B.** refer the matter to the complaint committee; or

**C.** dispose of a complaint if it determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous.

[10/1/1997; 16.62.13.8 NMAC - Rn & A, 16 NMAC 62.13.8, 9/13/2004; A, 1/1/2015; A, 10/30/2021]

#### **16.62.13.9 REVIEW OF COMPLAINT:**

The chairman of the board shall appoint at least one appraiser member of the board to evaluate each complaint filed with the board.

**A.** The board member appointee/evaluator shall also be chairperson of the complaint committee. The evaluation of complaints shall be completed by this person.

**B.** If the board member appointee or evaluator determines that there is insufficient information, lack of probable cause, lack of jurisdiction or if the complaint is determined to be frivolous, an investigation shall not be initiated and the complaint shall be referred to the board with a recommendation that the case be closed. If the chair of the complaint committee determines that the complaint merits further investigation, the complaint will be assigned to the complaint committee.

**C.** The complaint committee may perform a regulatory review of an appraisal that is the subject of a complaint. Complaint committee members shall be competent to perform a regulatory review of an appraisal.

**D.** The complaint committee may refer the appraisal that is the subject of a complaint to a peer committee to perform a Standard 3 review of the appraisal.

**E.** Upon completion and review of the investigation initiated pursuant to this regulation, the board member appointee/evaluator along with the complaint committee shall recommend to the board either action in lieu of disciplinary action, formal disciplinary action, or that the case be closed.

[10/1/1997; 16.62.13.9 NMAC - Rn & A, 16 NMAC 62.13.9, 9/13/2004; A, 1/1/2015; A, 2/3/2019; A, 10/30/2021]

#### **16.62.13.10 RESPONDING TO COMPLAINT:**

All disciplinary complaints shall be automatically forwarded to the licensee for a response.

**A.** In response to an investigation against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the respondent must respond within 10 business days of receipt as allowed by the Uniform Licensing Act.

**B.** Failure to respond within time frame specified may result in disciplinary action up to and including revocation of license at the discretion of the board.

[16.62.13.10 NMAC - N, 11/25/2006; A, 1/1/2015; A, 1/15/2017; A, 10/30/2021]

#### **16.62.13.11 INVESTIGATIONS OF DISCIPLINARY COMPLAINTS:**

To the maximum extent permitted by law, the board may conduct investigations of disciplinary complaints.

**A.** Should the board choose to employ one, the board may utilize the services of an investigator. The investigator may operate pursuant to a contract with the board, as the board's employee, or as the employee of a department to which the board is administratively attached, at the discretion of the board.

**B.** The board may issue investigative subpoenas as part of its review and investigation of disciplinary complaints. Each of the following individuals, acting independently, may approve and sign an investigative subpoena: the chairperson of the complaint committee, the board administrator, and, if utilized, the board investigator.

**C.** The board's staff, the members of the board's complaint committee, and, if utilized, the board investigator may carry out investigations on to disciplinary complaints. No board member other than the chairperson of the complaint committee shall carry out investigations into disciplinary complaints.

[16.62.13.11 NMAC – N, 10/30/2021]

#### **16.62.13.12 REPRIMAND PUBLIC RECORD:**

The fact that a trainee appraiser, license or certificate holder has received a letter of reprimand is a matter of public record.

[10/1/97; 16.62.13.12 NMAC - Rn & A, 16 NMAC 62.13.12, 09/13/2004; A, 01/01/2015]

#### **16.62.13.13 PRIVATE REMEDY:**

Action or non-action by the board on any complaint does not preclude any private remedy taken by the complainant.

[10/1/97; 16.62.13.13 NMAC - Rn, 16 NMAC 62.13.13, 09/13/2004]

**16.62.13.14 REFUSAL, SUSPENSION OR REVOCATION:**

**A.** Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, filed with the board.

**B.** In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any trainee, license or certificate held or applied for upon finding, after a hearing, that the trainee appraiser, licensee, certificate holder or applicant has violated any provision of the Real Estate Appraisers Act (Section 61-30-1 et seq., NMSA 1978) or regulations or continually or repeatedly or persistently or willfully violated any of the prohibitions found hereinafter:

(1) obtaining or attempting to obtain any fee through fraud, misrepresentation, or other dishonesty;

(2) impersonating another person trainee, licensed or certified to practice real estate appraisal or permitting or allowing any person to use his/her registration, license or certificate;

(3) aiding or abetting the practice of real estate appraisal by a person not a trainee, licensed or certified by the board;

(4) the suspension or revocation by another state of a trainee registration, license or certificate to practice real estate appraisal based upon acts by the trainee appraiser, certificate holder or licensee similar to acts described in the section;

(5) the solicitation of any person either by a trainee appraiser, licensee or certificate holder or by one in his/her employ or under his/her control under circumstances suggesting that the appraiser or other person was taking advantage of the person being solicited from making a rational independent decision as to whether or not to obtain the services of an appraiser, or any particular appraiser;

(6) falsifying of real estate appraisal records, whether or not for personal gain;

(7) practicing beyond the scope of the trainee, license or certificate as defined by state law and/or regulations;

(8) advertising in any manner that violates the board's regulation on advertising, as provided in 16.62.16 NMAC; or

(9) making false statements in any application for trainee, licensure or certification.

C. Constitutional due process principles require a board to conduct an administrative hearing at the timely request of a respondent who has been served with an NCA. The respondent is entitled to:

- (1) a statement of the charge(s);
- (2) notice of the time and place of the hearing;
- (3) a hearing before an impartial decision maker;
- (4) the right to cross-examine witnesses who testify against him/her;
- (5) the right to present his or her own witnesses, and
- (6) the right to be represented by an attorney or a licensed member of the profession or both.

[10/1/1997; 16.62.13.14 NMAC - Rn & A, 16 NMAC 62.13.14, 9/13/2004; A, 11/25/2006; A, 1/1/2015; A, 10/30/2021]

#### **16.62.13.15 HEARINGS AND DISCIPLINARY PROCEEDINGS:**

A. All disciplinary proceedings conducted by the board shall fully conform to the provisions of the Uniform Licensing Act, Sections 61-1-11 to 34 NMSA 1978 (1957, as amended through 2019).

B. If the board so votes, board staff will send a request for an NCA to the litigation division of the attorney general's office. The NCA request must include a description of the licensee's allegedly improper conduct, all supporting documentation and evidence, a written summary of the provisions in statute or rule that the conduct allegedly violated, and any other documentation that may be required by the litigation division. If the respondent is an applicant, the NCA request must also include an explanation as to why the board is contemplating denying licensure. After reviewing the file, the board's administrative prosecutor may draft an NCA, return the file to the board for additional investigation, propose a settlement agreement or other resolution to the case, or decline in writing to prosecute the case on behalf of the board. The administrative prosecutor is not required to be an investigator and shall not be requested to perform investigative work on behalf of the board.

C. If a respondent requests an evidentiary hearing in response to an NCA, the board administrator or compliance liaison may designate a hearing officer to preside over the hearing. Alternatively, at the discretion of the board chair or upon vote of the board, the entire board may preside over the hearing.

**D.** Upon the issuance of a notice of hearing, no motion for continuance, motion to vacate, or proposed settlement agreement may be filed with the board less than 10 days prior to the hearing except under extraordinary, unforeseen circumstances beyond the control of the movant. In the absence of such circumstances, a hearing officer may not continue or vacate a hearing in response to a motion submitted to the board later than 10 days prior to the hearing. Lack of knowledge or familiarity with this rule may not be considered extraordinary or unforeseen circumstances.

**E.** Parties to a disciplinary case may raise issues in the form of dispositive motions. Any such dispositive motion, when made at a hearing presided over by a hearing officer, shall be taken under consideration by the hearing officer and presented to the board along with the final hearing officer report.

[16.62.13.15 NMAC – N, 1/16/2021; A, 10/30/2021]

#### **16.62.13.16 SETTLEMENT AGREEMENTS:**

As a means of resolving disciplinary complaints against licensees, applicants, and unlicensed practitioners without the time and expense of formal hearings, settlement agreements are encouraged throughout the disciplinary process.

**A.** Prior to the board voting on a disciplinary complaint or the matter being referred to the office of the attorney general for administrative prosecution, the board staff may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement may take effect under any circumstances until the board so votes.

**B.** Prior to or after the Board has issued a notice of contemplated action to the respondent, the board's administrative prosecutor may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

**C.** Upon the issuance of a notice of hearing, settlement agreements may only be considered by the board if submitted to the board in written form and signed by the respondent. In the absence of extraordinary unforeseen circumstances beyond the control of both the administrative prosecutor and respondent, a hearing officer may not continue or vacate a hearing on the basis of a proposed settlement agreement if the proposed agreement is submitted to the board later than 10 days prior to the hearing.

**D.** No board member may be presumed to be biased or excused for cause based solely on the basis that the member considered, approved, or rejected a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case.

[16.62.13.16 NMAC – N, 10/30/2021]

### **16.62.13.17 DELEGATION OF AUTHORITY:**

The authority of the real estate appraisers board to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in 40-5A-1 NMSA 1978, et seq, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.62.13.17 NMAC - N, 10/30/2021]

### **16.62.13.18 CRIMINAL CONVICTIONS:**

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

- (1) homicide;
- (2) aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;
- (3) robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;
- (4) breaking and entering, criminal damage to property, arson, or other related crimes of violence against property;
- (5) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;
- (6) battery on a peace officer, assault on a peace officer, or other crimes against law enforcement;
- (7) trafficking controlled substances;
- (8) crimes involving child abuse or neglect;
- (9) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;

(10) making a false statement under oath or in any official document;

(11) evasion of a lawful debt or obligation, including but not limited to tax obligations; or

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

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Real Estate Appraisers Act or Appraisal Management Company Registration Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.62.13.18 NMAC - N, 10/30/2021]

## **PART 14: [RESERVED]**

## **PART 15: RETIREMENT AND REINSTATEMENT**

### **16.62.15.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[3/15/00; 16.62.15.1 NMAC - Rn, 16 NMAC 62.15.1, 09/13/2004; A, 01/01/2015]

**16.62.15.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/15/00; 16.62.15.2 NMAC - Rn & A, 16 NMAC 62.15.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

**16.62.15.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[3/15/00; 16.62.15.3 NMAC - Rn, 16 NMAC 62.15.3, 09/13/2004; A, 9/26/2023]

**16.62.15.4 DURATION:**

Permanent.

[3/15/00; 16.62.15.4 NMAC - Rn, 16 NMAC 62.15.4, 09/13/2004]

**16.62.15.5 EFFECTIVE DATE:**

March 15, 2000, unless a later date is cited at the end of a section.

[3/15/00; 16.62.15.5 NMAC - Rn & A, 16 NMAC 62.15.5, 09/13/2004]

**16.62.15.6 OBJECTIVE:**

This part provides for inactive status, retirement and reinstatement of a trainee, license or certificate under certain circumstances.

[3/15/00; 16.62.15.6 NMAC - Rn & A, 16 NMAC 62.15.6, 09/13/2004; A, 01/01/2015]

**16.62.15.7 DEFINITIONS:**

[RESERVED]

**16.62.15.8 RETIREMENT:**

Any appraiser who wishes to retire from practice shall notify the board in writing prior to the expiration of trainee, license or certificate. The notice will be recorded in the minutes

of the board. The appraiser shall be exempt from payment of the yearly renewal fees during the period of retirement.

**A.** No request for retirement status will be accepted if the appraiser is under investigation or facing disciplinary proceedings.

**B.** An appraiser does not have to meet an age requirement in order to request retirement status.

**C.** Licensees on retirement status will be reported to the national registry.

[3/15/00; 16.62.15.8 NMAC - Rn & A, 16 NMAC 62.15.8, 09/13/2004; A, 01/01/2015]

#### **16.62.15.9 REINSTATEMENT:**

Any appraiser who has retired as provided in 16.62.15.8 NMAC, may, within two years from the date the active trainee, license or certificate expired, apply to the board for reinstatement of license or certificate.

[3/15/00; 16.62.15.9 NMAC - Rn & A, 16 NMAC 62.15.9, 09/13/2004; A, 01/01/2015]

#### **16.62.15.10 APPLICATION FOR REINSTATEMENT FROM RETIREMENT STATUS:**

**A.** The application for the reinstatement of a license or certificate shall provide space for the applicant to provide the board the following information:

- (1) the license number of the former trainee, license or certificate;
- (2) the full name of the applicant;
- (3) the date of the original issue; and
- (4) the date of the applicant's retirement.

**B.** The application must be completed and returned to the board with a check or money order or online payment in an amount equivalent to all lapsed renewal fees. In addition, the applicant for reinstatement of trainee, license or certificate must offer proof sufficient to satisfy the board that he or she has taken in the calendar year immediately preceding the application for reinstatement, a minimum of 14 hours per year missed in refresher courses in addition to all required continuing education hours that would have been required if the credential holder was in an active status. Prior to reinstatement, the applicant must show proof that he or she is current with all continuing education hours required for each year in retirement status.

**C.** The application must be completed within two years from the date the active trainee, license or certificate expired. The application will be reviewed by the board at its

next regularly scheduled meeting. If the board finds the application in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

**D.** No appraiser who has retired shall reactivate his/her practice until a new trainee registration, license or certificate is received. The appraiser shall not prepare an appraisal while in retirement status.

[3/15/00; 16.62.15.10 NMAC - Rn & A, 16 NMAC 62.15.10, 09/13/2004; A, 06/13/2008; A, 01/01/2015; A, 01/15/2017; A, 02/03/2019; A, 9/26/2023]

#### **16.62.15.11 INACTIVE STATUS:**

**A.** The following criteria must be met for inactive status eligibility:

- (1)** the licensee must be in good standing; and
- (2)** the license must be current.

**B.** A licensee who fails to renew a license by April 30<sup>th</sup> of any year, shall renew the license in accordance with the Appraisal Act before the licensee can be considered for inactive status.

**C.** A licensee who wishes to be placed on inactive status shall notify the board office in writing prior to the expiration of the license or certificate. The notice will be recorded in the minutes of the board.

**D.** A licensee on inactive status shall not engage in any activity for which registration is required.

**E.** Rendering or offering to render in appraisal services or engaging in the any appraisal activity while on inactive status shall be considered sufficient grounds for disciplinary action by the board.

**F.** When an appraiser holds an inactive license and represents himself/herself in public statements that include but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations, must disclose that with an inactive license, and shall not provide appraisal consulting.

**G.** Licensees on inactive status will be reported to the national registry.

[16.62.15.11 NMAC - N, 01/01/2015; A, 01/15/2017]

#### **16.62.15.12 REINSTATEMENT FROM INACTIVE STATUS:**

**A.** The inactive licensee may apply for reinstatement to active status within three years after trainee, license or certificate has been placed on inactive status. The applicant shall complete an application for reinstatement to include the following:

- (1) the license number of the former apprentice/trainee, license or certificate;
- (2) the full name of the applicant;
- (3) the date of the original issue;
- (4) the date of the applicant's inactive status.

**B.** The application must be completed and returned to the board with a check or money order or online payment for the required biennial renewal fee and administrative reinstatement fee. In addition, the applicant for reinstatement of trainee, license or certificate must provide satisfactory proof of completion of the continuing education requirements that would have been required had the credential always been active described in 16.62.8 NMAC.

**C.** The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application is in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

**D.** No appraiser who has an inactive status shall reactivate his/her practice until a new trainee registration, license or certificate is received.

**E.** No application for inactive status will be accepted if the appraiser is under investigation or facing disciplinary proceedings.

**F.** If the inactive licensee applies for reinstatement to active status more than three years after trainee, license or certificate has been placed on inactive status, the applicant shall:

- (1) complete an application for reinstatement to include the following:
  - (a) the license number of the former trainee, license or certificate;
  - (b) the full name of the applicant;
  - (c) the date of the original issue;
  - (d) the date of the applicant's inactive status; and
- (2) take and pass the state examination.

**G.** The application must be completed and returned to the board with a check or money order or online payment in an amount described in 16.62.12 NMAC. In addition, the applicant for reinstatement of traineeship, license or certificate must provide satisfactory proof of completion of the continuing education requirements described in 16.62.8 NMAC in addition to classroom hours:

- (1) licensed and residential certified appraisers:
  - (a) 15 hour national USPAP;
  - (b) residential market analysis and highest and best use;
  - (c) residential appraiser site valuation and cost approach;
  - (d) residential sales comparison and income approaches;
  - (e) residential report writing and case studies.
- (2) general certified appraisers:
  - (a) 15 hour national USPAP;
  - (b) general appraiser market analysis and highest and best use;
  - (c) general appraiser site valuation and cost approach;
  - (d) general appraiser sales comparison and income approaches;
  - (e) general appraiser report writing and case studies;
  - (f) general appraiser income approach.

**H.** A licensee on inactive status shall not render or offer to render appraisal services or otherwise engage in the any appraisal practice until the board issues a new license.

[16.62.15.12 NMAC - N, 01/01/2015; A, 01/15/2017; A, 02/03/2019; A, 9/26/2023]

## **PART 16: ADVERTISING**

### **16.62.16.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[3/15/00; 16.62.16.1 NMAC - Rn, 16 NMAC 62.16.1, 09/13/2004; A, 01/01/2015]

### **16.62.16.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers and temporary licensed or certified real estate appraisers.

[3/15/00; 16.62.16.2 NMAC - Rn & A, 16 NMAC 62.16.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

#### **16.62.16.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[3/15/00; 16.62.16.3 NMAC - Rn, 16 NMAC 62.16.3, 09/13/2004; A, 09/26/2023]

#### **16.62.16.4 DURATION:**

Permanent.

[3/15/00; 16.62.16.4 NMAC - Rn, 16 NMAC 62.16.4, 09/13/2004]

#### **16.62.16.5 EFFECTIVE DATE:**

March 15, 2000, unless a later date is cited at the end of a section.

[3/15/00; 16.62.16.5 NMAC - Rn & A, 16 NMAC 62.16.5, 09/13/2004]

#### **16.62.16.6 OBJECTIVE:**

This part provides requirements for advertising by trainees, licensees and certificate holders.

[3/15/00; 16.62.16.6 NMAC - Rn & A, 16 NMAC 62.16.6, 09/13/2004; A, 01/01/2015]

#### **16.62.16.7 DEFINITIONS:**

[RESERVED]

#### **16.62.16.8 REQUIREMENTS/LIMITATIONS:**

**A.** No appraiser shall advertise or procure another to advertise, nor personally solicit or procure another to personally solicit on his/her behalf or on the behalf of another, in a manner that is false, fraudulent or misleading.

**B.** No firm, group or association may advertise as being a trainee, licensed or certified. The individual members of the firm, group or association must be listed along

with the scope of their trainee, licenses or certifications. Sole practitioners must include their name and the scope of their trainee, license or certificate in every advertisement.

**C.** Advertisement for appraiser individuals or firms shall conform to the ethics provisions of the uniform standards of professional appraisal practice.

[3/15/00; 16.62.16.8 NMAC - Rn & A, 16 NMAC 62.16.8, 09/13/2004; A, 01/01/2015; A, 01/15/2017]

## **PART 17: UNLICENSED PRACTICE/PENALTIES**

### **16.62.17.1 ISSUING AGENCY:**

Regulation and Licensing Department - NM Real Estate Appraisers Board.

[3/15/00; 16.62.17.1 NMAC - Rn, 16 NMAC 62.17.1, 09/13/2004; A, 01/01/2015]

### **16.62.17.2 SCOPE:**

All trainee real estate appraisers, licensed residential real estate appraisers, residential certified real estate appraisers, general certified real estate appraisers, temporary licensed or certified real estate appraisers and members of the general public.

[3/15/00; 16.62.17.2 NMAC - Rn & A, 16 NMAC 62.17.2, 09/13/2004; A, 01/01/2015; A, 02/03/2019]

### **16.62.17.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Real Estate Appraisers Act, Section 61-30-1 to Section 61-30-24, NMSA 1978.

[3/15/00; 16.62.17.3 NMAC - Rn, 16 NMAC 62.17.3, 09/13/2004; A, 9/26/2023]

### **16.62.17.4 DURATION:**

Permanent.

[3/15/00; 16.62.17.4 NMAC - Rn, 16 NMAC 62.17.4, 09/13/2004]

### **16.62.17.5 EFFECTIVE DATE:**

March 15, 2000, unless a later date is cited at the end of a section.

[3/15/00; 16.62.17.5 NMAC - Rn & A, 16 NMAC 62.17.5, 09/13/2004]

### **16.62.17.6 OBJECTIVE:**

This part provides for prosecution of unlicensed appraisal activity.

[3/15/00; 16.62.17.6 NMAC - Rn, 16 NMAC 62.17.6, 09/13/2004]

**16.62.17.7 DEFINITIONS:**

**[RESERVED]**

**16.62.17.8 PROHIBITION:**

Any person who violates the New Mexico Real Estate Appraisers Act is guilty of a misdemeanor and shall pay a fine of not more than \$500 or be imprisoned for not more than six months.

[3/15/00; 16.62.17.8 NMAC - Rn, 16 NMAC 62.17.8, 09/13/2004; A, 02/03/2019]

**16.62.17.9 HISTORY CONSIDERED:**

An applicant's appraiser history, including any unlicensed practice, shall be considered by the board in determining whether to grant or renew a license or certificate.

[3/15/00; 16.62.17.9 NMAC - Rn, 16 NMAC 62.17.9, 09/13/2004]

**16.62.17.10 PROSECUTION:**

The attorney general or appropriate district attorney may, with the board's recommendation, prosecute or seek to enjoin the unlicensed activities.

[3/15/00; 16.62.17.10 NMAC - Rn, 16 NMAC 62.17.10, 09/13/2004]

**PART 18: LICENSURE FOR MILITARY MEMBERS, SPOUSES AND VETERANS**

**16.62.18.1 ISSUING AGENCY:**

New Mexico Regulation and Licensing Department.

[16.62.18.1 NMAC - N, 01/01/2015]

**16.62.18.2 SCOPE:**

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to 61-1-34 NMSA 1978.

[16.62.18.2 NMAC - N, 1/1/2015; A, 10/30/2021]

### **16.62.18.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to Section 61-1-34 of the Uniform Licensing Act, NMSA 1978, Section 61-1-1 to 34 (1957, as amended through 2013) and the Real Estate Appraisers Act, Sections 61-30-1 to 24 NMSA 1978.

[16.62.18.3 NMAC - N, 01/01/2015]

### **16.62.18.4 DURATION:**

Permanent.

[16.62.18.4 NMAC - N, 01/01/2015]

### **16.62.18.5 EFFECTIVE DATE:**

January 1, 2015, unless a later date is cited at the end of a section.

[16.62.18.5 NMAC - N, 01/01/2015]

### **16.62.18.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, spouses and veterans pursuant to Chapter 61, Article 30 NMSA 1978.

[16.62.18.6 NMAC - N, 01/01/2015]

### **16.62.18.7 DEFINITIONS:**

**A. "License"** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

**B. "Licensing fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

**C. "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**D. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Real Estate Appraisers Act.

**E. "Veteran"** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.62.18.7 NMAC - N, 1/1/2015; A, 10/30/2021]

**16.62.18.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the board.

**B.** The applicant shall provide a complete application that includes the following information:

- (1)** applicant's full name;
- (2)** current mailing address;
- (3)** current electronic mail address, if any;
- (4)** date of birth;
- (5)** background check, if required; and
- (6)** proof as described in Subsection C below.

**C.** The applicant shall provide the following satisfactory evidence as follows:

**(1)** applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

**(2)** applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

**(3)** the following documentation:

**(a)** for military service member: copy of military orders;

**(b)** for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

**(c)** for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

**(d)** for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay, and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Real Estate Appraisers Act.

[16.62.18.8 NMAC - N, 1/1/2015; A, 10/30/2021]

#### **16.62.18.9 RENEWAL REQUIREMENTS:**

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.62.7 NMAC pursuant to Chapter 61, Article 30 NMSA 1978.

B. As a courtesy, the board, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.62.18.9 NMAC - N, 1/1/2015; A, 10/30/2021]

## **CHAPTER 63: SOCIAL WORKERS**

### **PART 1: GENERAL PROVISIONS**

#### **16.63.1.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[9/8/96; 16.63.1.1 NMAC - Rn, 16 NMAC 63.1.1, 06/19/02]

#### **16.63.1.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent/clinical social workers.

[9/8/96; 16.63.1.2 NMAC - Rn, 16 NMAC 63.1.2, 06/19/02; A, 09/01/14]

**16.63.1.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.1.3 NMAC - Rn, 16 NMAC 63.1.3, 06/19/02]

**16.63.1.4 DURATION:**

Permanent.

[9/8/96; 16.63.1.4 NMAC - Rn, 16 NMAC 63.1.4, 06/19/02]

**16.63.1.5 EFFECTIVE DATE:**

January 5, 1995, unless a different date is cited at the end of a section.

[9/8/96; 16.63.1.5 NMAC - Rn & A, 16 NMAC 63.1.5, 06/19/02]

**16.63.1.6 OBJECTIVE:**

To define terms relevant to social work licensing, public versus non-public records, license display, gender clause, and requirements for board members to attend meetings.

[9/8/96; 16.63.1.6 NMAC - Rn, 16 NMAC 63.1.6, 06/19/02]

**16.63.1.7 DEFINITIONS:**

A. Appropriate supervision:

(1) Supervision shall be provided by an individual qualified by the board of social work examiners. Applicants and supervisors will engage in the process of supervision in accordance with the guidelines established by the board.

(2) Supervision for licensed masters level social workers aspiring to achieve licensure at an independent clinical level shall be provided by an independent social worker licensed at the LISW or LCSW level who is engaged in direct clinical practice or by a licensed clinical professional approved by the board.

(3) Supervision for master level social workers practicing clinical social work, not aspiring to achieve licensure at the clinical independent level, shall be provided by an independent social worker licensed at the LISW or LCSW level who is engaged in direct clinical practice, or other supervision approved by the board.

(4) The relationship between the supervisor and supervisee must be designed to promote the development of professional social work skills for the delivery of social work services. These skills include the integration of theory and practice, the development and application of intervention techniques, the development and constant improvement of social work standards and ethics, and the continued acquisition of professional knowledge. Within the limits set forth by the board, teleconferencing and group supervision will be accepted.

(5) Supervisors shall evaluate and oversee the manner in which the above skills development is reflected in the supervisee's practice. The supervisor's responsibility insures that the supervisee acquires the necessary skills required for advanced and professional social work practice. Supervisors shall immediately notify the board if there is a problem in the supervisory process or if the supervisor sees the applicant as unsuitable for this highest level of licensure.

(6) Supervisors who are overseeing supervision of individuals licensed as masters social workers (LMSW) after May 1, 2015 and aspiring to achieve licensure at the independent clinical level must comply with the board's supervisory requirements as follows:

(a) Complete a three (3) hour administrative course on supervision that may be used as continuing education;

(b) Submit an application that includes a curriculum vitae (resume) to the board for approval, prior to commencing supervision of the applicant; and

(c) Submit a plan for supervision to the board to include the frequency of supervision and the type of supervision i.e., individual, group, teleconferencing that will be employed throughout the supervisory period.

(7) Direct supervision: means face to face supervision, which may include video-teleconferencing. At least 70 of the 90 required hours must be obtained through direct supervision.

(8) Group Supervision: means supervision rendered to no more than six (6) individuals per group at a time. No more than 20 hours of the 90 required hours may be obtained through group supervision.

(9) Interdisciplinary Supervision: upon a written request and a showing of extraordinary circumstances, the board may accept supervision by other licensed clinical professionals to include, clinical psychologists, psychiatrists and professional clinical counselors. The supervising individual must be in good standing with their own professional licensing board. Board approval must be received prior to the commencement of supervision and no more than 30 hours of the required 90 hours may be obtained through non LISW/LCSW supervision.

(10) When a LCSW applicant seeks board approval for supervision from either an LCSW at the place of employment or from an outside supervisor who is not employed at the same agency as the LMSW seeking licensure, a signed agreement must be made between all parties. The agreement must include a statement that all client information is to be confidential and recognize that the decisions regarding clinical care rests with the agency/organization. The employing agency shall be kept informed of any changes in the supervisory process.

B. Licensed Clinical Social Worker: an independent social worker with a clinical specialty is equivalent to an independent clinical social worker (LCSW). The LCSW title captures the intent of being able to practice "independently" in providing clinical services.

C. Qualified applicants:

(1) Means graduates from those programs having received accreditation by CSWE and those programs having candidacy status, conditional status, or under review status with CSWE.

(2) For those applicants who graduated from an institution of higher education before CSWE began to accredit programs (prior to 1974), the New Mexico board of social work examiners will require:

(a) a letter from the university's registrar's office stating that the applicant's course of study culminated in a degree which was the equivalent of an emphasis or major in social work;

(b) demonstrated social work experience;

(c) documentation of social work licensure in a previous state; and

(d) concurrence among the majority of professional members of the board that the transcripts reflect sufficient coursework in social work.

D. CSWE (council on social work education) accreditation: means those programs having received accreditation by CSWE and those programs having candidacy status or under review status with CSWE.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.1.7 NMAC - Rn, 16 NMAC 63.1.7, 06/19/02; A, 04/24/06; A, 01/17/08; A, 12/31/08; A, 09/01/14]

### **16.63.1.8 PUBLIC RECORDS:**

Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record as of the time of filing with

the board. Any information covered in this section may be released to the disciplinary action reporting system ("DARS") of the association of social work boards "ASWB".

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.1.8 NMAC - Rn & A, 16 NMAC 63.1.8, 06/19/02; A, 04/24/06]

#### **16.63.1.9 INSPECTION OF PUBLIC RECORDS:**

Any citizen of the state may examine all public records in the board's custody. People requesting inspection of public records shall provide reasonable notice to the board's administrator. When the records requested are in active use, the requestor must notify the administrator five (5) days in advance. The board may provide copies of public records upon request and upon payment of a reasonable copying fee. No person shall remove board documents from the board office. The board maintains files for all applicants. Information in the applicant's file is a matter of public record except for the following:

A. letters of reference;

B. medical reports and/or records of chemical dependency, physical or mental examinations or treatment as outlined in the Social Work Practice Act 61-31-19d.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.1.9 NMAC - Rn, 16 NMAC 63.1.9, 06/19/02]

#### **16.63.1.10 NON-PUBLIC RECORDS:**

All complaints against social workers, investigative files, and matters of opinion are confidential and are not subject to public inspection. Only board members and employees may access non-public records unless approved by board attorney and board chairman.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.1.10 NMAC - Rn, 16 NMAC 63.1.10, 06/19/02]

#### **16.63.1.11 LICENSE DISPLAY:**

The valid license must be displayed and must be visible to the public in the primary place of social work employment or business. A licensee must practice social work under the name inscribed on the license.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.1.11 NMAC - Rn, 16 NMAC 63.1.11, 06/19/02]

#### **16.63.1.12 BOARD GOVERNANCE:**

A. There is created the board of social work examiners.

B. The board shall be administratively attached to the regulation and licensing department.

C. The board shall consist of seven members who are representative of the geographic and ethnic groups within New Mexico, who are United States citizens and who have been New Mexico residents for at least five years prior to their appointment. Of the seven members:

(1) four shall have been engaged in social work practice for at least five years; at least two of the four shall hold a master's degree in social work; and at least two shall hold a bachelor's degree in social work from schools of social work that are accredited by the council on social work education; at least one of these members shall be engaged primarily in clinical social work practice; one member shall be engaged primarily in education; one member shall be engaged primarily in administration or research in social work practice; and at least one member shall be engaged primarily in community organization, planning and development; these members shall hold a current New Mexico social work license and shall not hold office in any professional organization of social workers during their tenure on the board; and

(2) three members shall represent the public; the public members shall not have been licensed or have practiced as social workers; public member shall not have any significant financial interest, whether direct or indirect, in social work practice.

D. Members of the board shall be appointed by the governor for staggered terms of three years. Each member shall hold office until his successor is appointed. Vacancies shall be filled for the unexpired term in the same manner as original appointments.

E. Except for the representatives of the public on the board, the governor shall appoint board members from a list of nominees submitted by social work organizations and individual social work professionals.

F. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

G. The board shall elect a chairman and other officers as deemed necessary to administer its duties.

H. A simple majority of the board members currently serving shall constitute a quorum of the board. A board member may participate in a board meeting by means of conference call or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that the member participating by conference call can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the

meeting are able to hear any member of the public body who speaks during the meeting.

I. The board shall meet at least once a year and at such other times as it deems necessary. Other meetings may be called by the chairman upon the written request of a quorum of the board.

J. The governor may remove any member from the board for the neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for any reason that would justify the suspension or revocation of his license to practice social work.

K. No board member shall serve more than two consecutive terms, and any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member, unless excused for reasons set forth in board regulation.

L. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor and the board of the vacancy and the reason for its occurrence to expedite the appointment of a new board member within a six-month period.

M. Board members may be excused from attending board meetings for any of the reasons set forth below:

- (1) illness;
- (2) death in the immediate family;
- (3) military service;
- (4) inclement weather;
- (5) any other reason deemed appropriate by the chairperson of the board.

[1/5/95, 5/1/99; 16.63.1.12 NMAC - Rn, 16 NMAC 63.1.12, 06/19/02]

#### **16.63.1.13 COOPERATION WITH THE BOARD:**

A. A social worker shall give full cooperation and assistance to the board of social work examiners and to its committees, functions and duties with respect to licensing and disciplinary matters. Applicants and licensees shall respond promptly to any matter or inquiry by the board.

B. Failure to cooperate with the board in an investigation as required by 16.63.13 NMAC herein will constitute unprofessional behavior and may result in disciplinary action, including but not limited to suspension, revocation or denial of license, as

provided by the Social Work Practice Act, Sections 61-31-1 through 61-31-25 NMSA 1978, as amended.

[6/22/92, 5/1/99; 16.63.1.13 NMAC - Rn, 16 NMAC 63.1.13, 06/19/02]

**16.63.1.14 [RESERVED]**

**PART 2: [RESERVED]**

**PART 3: APPLICATION FOR LICENSURE**

**16.63.3.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners

P.O. Box 25101, Santa Fe, NM 87504

[16.63.3.1 NMAC – Rp, 16.63.3.1 NMAC, 3/13/2022]

**16.63.3.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.3.2 NMAC - Rp, 16 63.3.2 NMAC, 3/13/2022]

**16.63.3.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Subsection J of Section 61-31-8 and 61-31-14 NMSA 1978.

[16.63.3.3 NMAC - Rp, 16.63.3.3 NMAC, 3/13/2022]

**16.63.3.4 DURATION:**

Permanent.

[16.63.3.4 NMAC - Rp, 16.63.3.4 NMAC, 3/13/2022]

**16.63.3.5 EFFECTIVE DATE:**

March 13, 2022, unless a different date is cited at the end of a section.

[16.63.3.5 NMAC – Rp, 16.63.3.5 NMAC, 3/13/2022]

**16.63.3.6 OBJECTIVE:**

To outline the application process, parameters of practice, and the renewal procedure.

[16.63.3.6 NMAC - Rp, 16.63.3.6 NMAC, 3/13/2022]

#### **16.63.3.7 DEFINITIONS:**

**[RESERVED]**

#### **16.63.3.8 APPLICATION FOR LICENSURE:**

Applicants, other than those applying for licensure by credentials, must submit or cause to be submitted the following documentation to the board:

- A.** completed application;
- B.** two personal character references;
- C.** one 2" x 2" original photograph of the applicant taken within the preceding six months affixed to the application;
- D.** license fee as provided in Part 8;
- E.** official transcripts directly from the university or college or by other means approved by the board verifying a bachelors or masters degree in social work;
- F.** verification of supervision must be received directly from the supervisor or by other means approved by the board;
- G.** if currently or previously licensed in another state you must submit verification of licensure, which must be sent directly to the board by the issuing jurisdiction;
- H.** official exam scores; proof of passing the licensure exam must be received directly from the association of social work boards or from the jurisdiction in which the applicant is licensed; and
- I.** verification the applicant has completed one of the following:
  - (1) a three credit hour course in New Mexico cultures listed on the applicants transcripts;
  - (2) a board approved course, workshop or seminar in New Mexico cultures;
  - (3) proof of previously passing the New Mexico cultural examination.
- J.** proof of passing the jurisprudence examination with a grade of no less than seventy percent;

**K.** provide proof of any disqualifying criminal convictions as defined in 16.63.13.9 NMAC.

[16.63.3.8 NMAC – Rp, 16.63.3.8 NMAC, 3/13/2022]

**16.63.3.9 PARAMETERS OF PRACTICE:**

The scope of practice for the independent social worker is set forth in 16.63.11.9 NMAC. The scope of practice for the master social worker is set forth in 16.63.10.9 NMAC. The scope of practice for the baccalaureate social worker is set forth in 16.63.9.9 NMAC.

[16.63.3.9 NMAC - Rp, 16.63.3.9 NMAC, 3/13/2022]

**16.63.3.10 INITIAL LICENSE/RENEWAL OF LICENSE:**

**A.** Initial license.

(1) Initial licenses issued between January 1 and June 30 shall expire on July 1 of the next calendar year.

(2) Initial licenses issued between July 1 and December 31 shall expire on July 1 of the second calendar year following the date of issuance.

**B.** No license will be issued for longer than 24 months.

**C.** Renewal of license.

(1) Each licensed social worker shall apply for license renewal and pay the renewal fee as set forth in Part 8.

(2) Licenses that expire July 1, 2007 will renew according to the following schedule.

(a) If the last digit of the license number ends in an even number the license will expire on July 1, 2008 and biennially thereafter. The renewal fee will be prorated.

(b) If the last digit of the license number ends in an odd number the license will expire on July 1, 2009 and biennially thereafter.

**D.** A 30-day grace period, running from July 1 - July 30, of the renewal year allows the social worker to submit a renewal without a late penalty fee. However the social worker's license shall be considered expired and the social worker will refrain from practicing.

**E.** From July 31 to September 29 of the renewal year the social worker may renew the license, however a penalty fee will be assessed (16.63.8.17 NMAC).

**F.** If revoked for non-renewal, the licensee will be required to pay previous penalties, complete a new application and pay another application fee. Licensees revoked for non-renewal may be reinstated if revocation was due to extenuating circumstances. These extenuating circumstances include serious, physician-verified illness and military service. The extenuating circumstances must be presented in writing for the board's consideration and will be handled on a case-by-case basis. Licenses will only be reinstated if licensees are up to date with all current continuing education requirements and pass an exam prescribed by the board.

**G.** Electronic signatures shall be accepted on all applications.

[16.63.3.10 NMAC - Rp, 16.63.3.10 NMAC, 3/13/2022]

#### **16.63.3.11 QUALIFIED APPLICANTS:**

As per 16.63.4.12 NMAC "Qualified applicants who fail to obtain the minimum required score may retake the (ASWB) exam an unlimited number of times. Applicants must pay the examination fee for each administration of the examination." Prior to the re-examination a new application must be submitted to the board by the applicant. A non-refundable application fee must accompany the new application. Qualifications for examination will be evaluated based on the most recent application. Initial applications are valid for a period of 12 months; additional, applications shall be valid for a period not to exceed 12 months from the date of initial submission.

[16.63.3.11 NMAC – Rp, 16.63.3.11 NMAC, 3/13/2022]

#### **16.63.3.12 EXAMINATION REQUIRED:**

No license, other than a provisional license, will be issued without passing exam scores for ASWB at the appropriate level. The scores of ASWB examination may be submitted by ASWB, or by the state board from which the applicant is currently licensed, directly to the New Mexico board of social work examiners.

[16.63.3.12 NMAC - Rp, 16.63.3.12 NMAC, 3/13/2022]

### **PART 4: EXAMINATIONS**

#### **16.63.4.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners.

P.O. Box 25101, Santa Fe, NM 87504

[9/8/96; 16.63.4.1 NMAC - Rn, 16 NMAC 63.4.1, 06/19/02]

**16.63.4.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[9/8/96; 16.63.4.2 NMAC - Rn, 16 NMAC 63.4.2, 06/19/02]

**16.63.4.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.4.3 NMAC - Rn, 16 NMAC 63.4.3, 06/19/02]

**16.63.4.4 DURATION:**

Permanent.

[9/8/96; 16.63.4.4 NMAC - Rn, 16 NMAC 63.4.4, 06/19/02]

**16.63.4.5 EFFECTIVE DATE:**

January 5, 1995, unless a different date is cited at the end of a section.

[9/8/96; 16.63.4.5 NMAC - Rn & A, 16 NMAC 63.4.5, 06/19/02]

**16.63.4.6 OBJECTIVE:**

To outline the examination requirements and process.

[9/8/96; 16.63.4.6 NMAC - Rn, 16 NMAC 63.4.6, 06/19/02]

**16.63.4.7 DEFINITIONS:**

**[RESERVED]**

**16.63.4.8 EXAMINATIONS:**

The board adopts as its examination the examination as administered by the association of social work boards at the appropriate license level.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.4.8 NMAC - Rn, 16 NMAC 63.4.8, 06/19/02; A, 4/24/06; A, 11/30/06]

#### **16.63.4.9 FREQUENCY:**

The board will administer the examinations at least twice a year or as frequently as is determined by the board.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.4.9 NMAC - Rn, 16 NMAC 63.4.9, 06/19/02]

#### **16.63.4.10 REQUIREMENTS:**

In order to sit for the ASWB examination, applicants must submit, to the board, a completed examination application and supporting documentation.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.4.10 NMAC - Rn & A, 16 NMAC 63.4.10, 06/19/02; A, 11/30/06]

#### **16.63.4.11 PASSING SCORES:**

For the examinations administered by the association of social work boards, ASWB, the board will accept as passing, scores of 70 or higher.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 16.63.4.11 NMAC - Rn & A, 16 NMAC 63.4.11, 06/19/02; A, 4/24/06]

#### **16.63.4.12 REPEATED EXAMINATIONS:**

Qualified applicants who fail to obtain the minimum required score may retake the exam an unlimited number of times. A new application must be submitted and applicants must pay the examination fee for each administration of the examination. Qualifications for examination will be evaluated based on the most recent application.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.4.12 NMAC - Rn, 16 NMAC 63.4.12, 06/19/02]

#### **16.63.4.13 SPECIAL ACCOMODATIONS:**

Applicants for examination may request special facilities to accommodate disabilities or additional time to allow for English as a second language. Special requests must be submitted in writing, to the New Mexico board of social work examiners at the time of application. The board will consider each request on a case-by-case basis.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.4.13 NMAC - Rn, 16 NMAC 63.4.13, 06/19/02]

#### **16.63.4.14 NOTIFICATION:**

The applicant will receive the results of the national exam immediately from ASWB.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.4.14 NMAC - Rn, 16 NMAC 63.4.14, 06/19/02; A, 11/30/06]

## **PART 5: EMERGENCY LICENSURE**

### **16.63.5.1 ISSUING AGENCY:**

Regulation and Licensing Department - Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[16.63.5.1 NMAC - N/E, 11/9/05]

### **16.63.5.2 SCOPE:**

An individual desiring to practice either as a baccalaureate social workers, or a master social workers, and independent social workers following a federally declared disaster.

[16.63.5.2 NMAC- N/E, 11/9/05]

### **16.63.5.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[16.63.5.3 NMAC - N/E, 11/9/05]

### **16.63.5.4 DURATION:**

Permanent.

[16.63.5.4 NMAC - N/E, 11/9/05]

### **16.63.5.5 EFFECTIVE DATE:**

November 9, 2005, unless a later date is cited at the end of a section.

[16.63.5.5 NMAC - N/E, 11/9/05]

### **16.63.5.6 OBJECTIVE:**

The objective of Part 5 is to outline requirements, procedures, and criteria for issuance of an emergency license.

[16.63.5.6 NMAC - N/E, 11/9/05]

### **16.63.5.7 DEFINITIONS:**

**[RESERVED]**

### **16.63.5.8 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Licensed social workers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure may be licensed in New Mexico during the six months following the declared disaster at no cost upon satisfying the following requirements:

**(1)** receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

**(2)** refer to 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC, Qualification of Licensure for licensure requirements;

**(3)** verification of licensure from the state in which the federal disaster has been declared; the verification of licensure must include the following information:

**(a)** copy of transcripts verifying a bachelors or masters degree from a program of social work accredited by the council on social work education;

**(b)** copy of supervision records;

**(c)** verification the applicant has passed the association of social work board (ASWB) exam at the appropriate level for which the applicant is applying; and

**(d)** verification that the license is in good standing with no pending disciplinary action.

**(4)** sworn affidavit that the applicant was personally or professionally effected by the disaster.

**B.** The board may waive the following requirements for licensure:

**(1)** application fees;

**(2)** taking and passing the NM cultural awareness exam prior to licensure; the applicant will be required to take and pass the NM cultural awareness exam within three months from the date the emergency license is issued; the emergency license will automatically expire if the applicant fails to take or fails to pass the NM cultural awareness exam within three months; and

(3) fee for the cultural awareness examination.

C. The board may waive the specific forms required under 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

(1) If the applicant is unable to obtain official transcripts, from a school located in a declared disaster area, the applicant may submit a sworn affidavit from the applicant verifying he has a bachelors or masters degree in social work.

(2) For LISW applicants who are unable to obtain verification of supervision from a supervisor located in a declared disaster area the applicant may submit a sworn affidavit from the applicant verifying he has 3600 hours of experience and a minimum of 90 hours of supervision.

D. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC.

E. Licenses issued under (the emergency provision) shall expire on July 1, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before July 1, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.63.5.8 NMAC - N/E, 11/9/05]

### **16.63.5.9 EMERGENCY LICENSE TERMINATION:**

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under sections 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC;

(2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or attempting to procure a license under this section, or failure to take and pass or failure to take the NM cultural awareness exam within three months; or

(3) violation of the Social Work Practice Act or the social work rules and regulations.

B. Termination of an emergency license shall not preclude application for permanent licensure under sections 16.63.9.8, 16.63.10.8, and 16.63.11.8 NMAC. The board may withhold or deny an application for licensure. In accordance with the procedures established by the Uniform Licensing Act [61-1-1 to 61-11-31 NMSA 1978],

the board may deny, suspend or revoke a license held or applied for under the Social Work Practice Act, may fine or reprimand a license or take any other action provided for in the Uniform Licensing Act.

[16.63.5.9 NMAC - N/E, 11/9/05]

## **PART 6: LICENSURE BY CREDENTIALS; RECIPROCITY**

### **16.63.6.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners

P.O. Box 25101, Santa Fe, NM 87504

[16.63.6.1 NMAC – Rp, 16.63.6.1 NMAC, 3/13/2022]

### **16.63.6.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.6.2 NMAC - Rp, 16.63.6.2 NMAC, 3/13/2022]

### **16.63.6.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Subsection A of Section 61-31-8, 14-2-1, 61-31-19 NMSA 1978.

[16.63.6.3 NMAC - Rp, 16.63.6.3 NMAC, 3/13/2022]

### **16.63.6.4 DURATION:**

Permanent.

[16.63.6.4 NMAC - Rp, 16.63.6.4 NMAC, 3/13/2022]

### **16.63.6.5 EFFECTIVE DATE:**

March 13, 2022, unless a different date is cited at the end of a section.

[16.63.6.5 NMAC – Rp, 16.63.6.5 NMAC, 3/13/2022]

### **16.63.6.6 OBJECTIVE:**

To state the minimum requirements for licensure by credentials.

[16.63.6.6 NMAC - Rp, 16.63.6.6 NMAC, 3/13/2022]

**16.63.6.7 DEFINITIONS:**

**[RESERVED]**

**16.63.6.8 QUALIFICATION FOR LICENSURE:**

A person seeking reciprocity in the state of New Mexico shall

**A.** possess a valid social worker license issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, which license has been held for a minimum of two and one-half years;

**B.** be in good standing with no disciplinary action pending or brought against the applicant within the past two and one-half years;

**C.** possess a bachelor's or master's degree in social work from a program of social work accredited by the CSWE;

**D.** verify that the applicant has taken and passed the ASWB examination;

**E.** verify the applicant has completed one of the following:

(1) a three credit hour course in New Mexico cultures listed on the applicants transcripts;

(2) a board approved course, workshop or seminar in New Mexico cultures;

(3) proof of previously passing the New Mexico cultural examination.

**F.** The applicant will not have to further verify the applicant's experience, schooling or degrees if the criteria pursuant to this section are met.

[16.63.6.8 NMAC – Rp, 16.63.6.8 NMAC, 3/13/2022]

**16.63.6.9 APPLICATION FOR LICENSURE:**

Applicants for licensure by credentials; reciprocity must submit or cause to be submitted the following documentation to the board:

**A.** completed application;

**B.** two personal character references;

**C.** a 2" x 2" photograph of the applicant taken within the preceding six months affixed to the application;

**D.** completed form titled "statement of registration, or certification of licensure in another state", to be submitted directly to the board from the conferring agency;

**E.** test scores from ASWB exam;

**F.** non-refundable license fee as set forth in Part 7 to be assessed at the time of application.

**G.** proof of any disqualifying criminal convictions as listed in 16.63.13.9 NMAC.

[16.63.6.9 NMAC – Rp, 16.63.6.9 NMAC, 3/13/2022]

## **PART 7: PROVISIONAL LICENSE**

### **16.63.7.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[9/8/96; 16.63.7.1 NMAC - Rn, 16 NMAC 63.7.1, 06/19/02]

### **16.63.7.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[9/8/96; 16.63.7.2 NMAC - Rn, 16 NMAC 63.7.2, 06/19/02]

### **16.63.7.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.7.3 NMAC - Rn, 16 NMAC 63.7.3, 06/19/02]

### **16.63.7.4 DURATION:**

Permanent.

[9/8/96; 16.63.7.4 NMAC - Rn, 16 NMAC 63.7.4, 06/19/02]

### **16.63.7.5 EFFECTIVE DATE:**

January 5, 1995, unless a different date is cited at the end of a section.

[9/8/96; 16.63.7.5 NMAC - Rn & A, 16 NMAC 63.7.5, 06/19/02]

**16.63.7.6 OBJECTIVE:**

To state the minimum requirements for a provisional license, the duration of the license, and the process to reapply.

[9/8/96; 16.63.7.5 NMAC - Rn, 16 NMAC 63.7.5, 06/19/02]

**16.63.7.7 DEFINITIONS:**

[RESERVED]

**16.63.7.8 APPLICABILITY:**

A. When an applicant has submitted all documentation required for the license sought and the application is complete except that the applicant has not completed the licensure exam or the required course in New Mexico cultures, the board may issue a provisional license to the applicant at the level sought.

B. The board will accept, in the absence of an official transcript, certification bearing official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.7.8 NMAC - Rn, 16 NMAC 63.7.8, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

**16.63.7.9 DURATION:**

The provisional license shall be valid for twelve (12) months.

A. The provisional license shall become immediately invalid if the provisional licensee fails to submit an official transcript of certification.

B. During this twelve (12) month period the provisional licensee must provide documentation that the individual has passed the national examination and provide documentation that verifies the individual has completed the required course in New Mexico cultures.

C. Only one provisional license will be issued for each level of licensure except in extenuating circumstances as defined in 16.63.7.10 NMAC.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.7.9 NMAC - Rn & A, 16 NMAC 63.7.9, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

#### **16.63.7.10 EXTENUATING CIRCUMSTANCES:**

A qualified provisional licensee may apply for an extension of a provisional license if the applicant:

A. fails to sit for the examination due to extenuating circumstances; these extenuating circumstances are defined as serious, physician-verified illness or death in immediate family, and military service; the extenuating circumstances must be presented for the board's administrator's consideration on a case-by-case basis;

B. should the applicant be granted an extension, the applicant must sit for the examination at the next available time it is offered; the extended provisional license will be in effect only until the next available test date and not to exceed under any circumstances 4 months.

[1/1/90, 5/15/91, 6/22/92, 1/5/95; 5/1/99; 16.63.7.10 NMAC - Rn, 16 NMAC 63.7.10, 06/19/02; A, 04/24/06]

#### **16.63.7.11 FEE:**

The applicant shall pay a license fee as set forth in Part 8.

[1/1/90, 5/15/91, 6/22/92, 1/5/95; 16.63.7.11 NMAC - Rn, 16 NMAC 63.7.11, 06/19/02]

### **PART 8: FEES**

#### **16.63.8.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners P.O. Box 25101, Santa Fe, NM 87504.

[9/8/96; 16.63.8.1 NMAC - Rn, 16 NMAC 63.8.1, 06/19/02]

#### **16.63.8.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[9/8/96; 16.63.8.2 NMAC - Rn, 16 NMAC 63.8.2, 06/19/02]

#### **16.63.8.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.8.3 NMAC - Rn, 16 NMAC 63.8.3, 06/19/02]

**16.63.8.4 DURATION:**

Permanent.

[9/8/96; 16.63.8.4 NMAC - Rn, 16 NMAC 63.8.4, 06/19/02]

**16.63.8.5 EFFECTIVE DATE:**

June 22, 1992, unless a different date is cited at the end of a section.

[9/8/96; 16.63.8.5 NMAC - Rn & A, 16 NMAC 63.8.5, 06/19/02]

**16.63.8.6 OBJECTIVE:**

To outline fees for examinations, application, renewal, late penalty fee, duplicate license, retired, and administrative fees.

[9/8/96; 16.63.8.6 NMAC - Rn, 16 NMAC 63.8.6, 06/19/02]

**16.63.8.7 DEFINITIONS:**

[RESERVED]

**16.63.8.8 EXAMINATIONS:**

The fee for the association of social work boards (ASWB) examinations at any level of licensure is determined and collected by ASWB.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 5/1/99; 16.63.8.8 NMAC - Rn, & A, 16 NMAC 63.8.8, 06/19/02; A, 09/01/14]

**16.63.8.9 APPLICATION: BACCALAUREATE:**

The fee for application as a baccalaureate social worker is seventy-five dollars (\$75.00), to be submitted with the application.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.9 NMAC - Rn, 16 NMAC 63.8.9, 06/19/02]

**16.63.8.10 APPLICATION: MASTER:**

The fee for application as a master social worker is one hundred dollars (\$100.00), to be submitted with the application.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.10 NMAC - Rn, 16 NMAC 63.8.10, 06/19/02]

**16.63.8.11 APPLICATION: INDEPENDENT:**

The fee for application as an independent social worker is one hundred twenty-five dollars (\$125.00), to be submitted with the application.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.11 NMAC - Rn, 16 NMAC 63.8.11, 06/19/02]

**16.63.8.12 APPLICATION BY CREDENTIALS:**

For licensure by credentials the fee is commensurate with license level.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.12 NMAC - Rn, 16 NMAC 63.8.12, 06/19/02]

**16.63.8.13 PROVISIONAL LICENSE:**

For a provisional license, the fee is commensurate for each license level as stated in Part 8, section 8, 9, 10 and 11.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.13 NMAC - Rn, 16 NMAC 63.8.13, 06/19/02]

**16.63.8.14 RENEWAL BACCALAUREATE:**

For renewal of license as a baccalaureate social worker, one hundred dollars (\$100.00).

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.14 NMAC - Rn, 16 NMAC 63.8.14, 06/19/02; A, 11/30/06]

**16.63.8.15 RENEWAL MASTERS:**

For renewal of a license as a master social worker, one hundred fifty dollars (\$150.00).

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.15 NMAC - Rn, 16 NMAC 63.8.15, 06/19/02; A, 11/30/06]

**16.63.8.16 RENEWAL INDEPENDENT:**

For renewal of a license as an independent social worker, two hundred dollars (\$200.00).

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.16 NMAC - Rn, 16 NMAC 63.8.16, 06/19/02; A, 11/30/06]

**16.63.8.17 LATE PENALTY FEE:**

License renewal deadline is July 1. Penalty fee for late renewal license is seventy-five dollars (\$75.00).

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.17 NMAC - Rn, 16 NMAC 63.8.17, 06/19/02; A, 01/17/08]

#### **16.63.8.18 DUPLICATE LICENSE:**

The fee for a duplicate license is twenty-five dollars (\$25.00). The fee for a duplicate pocket card is five dollars (\$5.00). The fee for a duplicate renewal certificate is five dollars (\$5.00).

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.18 NMAC - Rn, 16 NMAC 63.8.18, 06/19/02]

#### **16.63.8.19 APPLICATION RETIRED:**

The application fee for retired social workers is one half the regular fee.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.19 NMAC - Rn, 16 NMAC 63.8.19, 06/19/02]

#### **16.63.8.20 [RESERVED]**

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 5/1/99; 16.63.8.20 NMAC - Rn, 16 NMAC 63.8.20, 06/19/02; Repealed, 04/24/06]

#### **16.63.8.21 REASONABLE ADMINISTRATIVE FEES:**

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 5/1/99; 16.63.8.21 NMAC - Rn, 16 NMAC 63.8.21, 06/19/02]

#### **16.63.8.22 ALL FEES ARE NON REFUNDABLE:**

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.8.22 NMAC - Rn, 16 NMAC 63.8.22, 06/19/02]

### **PART 9: BACCALAUREATE SOCIAL WORKER**

#### **16.63.9.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners P.O. Box 25101, Santa Fe, NM 87504.

[16.63.9.1 NMAC - Rp, 16.63.9.1 NMAC, 3/13/2022]

#### **16.63.9.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.9.2 NMAC - Rp, 16.63.9.2 NMAC, 3/13/2022]

**16.63.9.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Subsection A of Section 61-31-8, 14-2-1, 61-31-19 NMSA 1978.

[16.63.9.3 NMAC - Rp, 16.63.9.3 NMAC, 3/13/2022]

**16.63.9.4 DURATION:**

Permanent.

[16.63.9.4 NMAC - Rp, 16.63.9.4 NMAC, 3/13/2022]

**16.63.9.5 EFFECTIVE DATE:**

March 13, 2022, unless a different date is cited at the end of a section.

[16.63.9.5 NMAC - Rp, 16.63.9.5 NMAC, 3/13/2022]

**16.63.9.6 OBJECTIVE:**

To state the minimum requirements for licensure as a social worker at the baccalaureate level, to outline the parameters of practice, and the procedure to renew a license.

[16.63.9.6 NMAC - Rp, 16.63.9.6 NMAC, 3/13/2022]

**16.63.9.7 DEFINITIONS:**

[RESERVED]

**16.63.9.8 QUALIFICATION OF LICENSURE:**

Applicants for licensure as baccalaureate social worker must possess the following minimum qualifications:

- A.** be at least 18 years of age;
- B.** possess a bachelor's degree in social work from a program accredited by the council on social work education;
- C.** successfully pass the association of social work board examination and the jurisprudence examination;
- D.** documents completion of the required course in New Mexico cultures.

E. provide proof of any disqualifying criminal convictions as defined in 16.63.13.9 NMAC.

[16.63.9.8 NMAC – Rp, 16.63.9.8 NMAC, 3/13/2022]

#### **16.63.9.9 PARAMETERS OF PRACTICE:**

A. This is the entry licensing level. The baccalaureate social worker ("LBSW") is prepared to assume the beginning level professional role in public and private social service agencies.

B. LBSWs are prepared through beginning professional knowledge in human behavior in the social environment, generalist social work practice, knowledge of the history of social policy, knowledge of how to utilize social research findings in their practice and having had supervised field practicum experience. Baccalaureate social work is basic generalist practice that includes assessment planning, intervention, evaluation, case management, information and referral, counseling, supervision, consultation, education, advocacy, community organization, and the development, implementation, of policies, programs and activities. LBSWs may work with individuals, families, communities, groups and organizations at a beginning level.

C. The LBSW utilizes the basic problem-solving process of gathering information, assessing that information at a beginning professional level, developing an intervention plan, implementing the plan and conducts follow-up. This process at the LBSW level requires the application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning.

D. The LBSW must not practice independently as a private practitioner.

[16.63.9.9 NMAC – Rp, 16.63.9.9 NMAC, 3/13/2022]

#### **16.63.9.10 RENEWAL OF LICENSE:**

Before July 1 of the renewal year, each baccalaureate social worker shall apply for license renewal and shall pay the renewal fee as set forth in Part 8.

[16.63.9.10 NMAC - Rp, 16.63.9.10 NMAC, 3/13/2022]

### **PART 10: MASTER SOCIAL WORKER**

#### **16.63.10.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners P.O. Box 25101, Santa Fe, NM 87504.

[16.63.10.1 NMAC - Rp, 16.63.10.1 NMAC, 3/13/2022]

**16.63.10.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.10.2 NMAC - Rp, 16.63.10.2 NMAC, 3/13/2022]

**16.63.10.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[16.63.10.3 NMAC - Rp, 16.63.10.3 NMAC, 3/13/2022]

**16.63.10.4 DURATION:**

Permanent.

[16.63.10.4 NMAC - Rp, 16.63.10.4 NMAC, 3/13/2022]

**16.63.10.5 EFFECTIVE DATE:**

March 13, 2022, unless a different date is cited at the end of a section.

[16.63.10.5 NMAC – Rp, 16.63.10.5 NMAC, 3/13/2022]

**16.63.10.6 OBJECTIVE:**

To state the minimum requirements for licensure as a social worker at the masters level, to outline the parameters of practice at this level, and the procedure to renew a license.

[16.63.10.6 NMAC - Rp, 16.63.10.6 NMAC, 3/13/2022]

**16.63.10.7 DEFINITIONS:**

[RESERVED]

**16.63.10.8 QUALIFICATION FOR LICENSURE:**

Applicants for licensure as master social worker must:

- A. be at least 18 years of age;

**B.** possess a master's degree in social work from a graduate program of social work accredited by the council on social work education;

**C.** successfully pass the association of social work board examination and the jurisprudence examination;

**D.** documents completion of the required course in New Mexico cultures.

**E.** provide proof of any disqualifying criminal convictions as defined in 16.63.13.9 NMAC.

[16.63.10.8 NMAC – Rp, 16.63.10.8 NMAC, 3/13/2022]

#### **16.63.10.9 PARAMETERS OF PRACTICE:**

**A.** The licensed master social worker ("LMSW") provides a wide range of services. The LMSW has preparation as a generalist social worker, as found in the LBSW level in addition to specialization in either direct or indirect services such as work in a field of practice or with a specific population.

**B.** The LMSW may provide diagnostic, preventive and treatment services. The practice of master's social work means the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's social work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, counseling, supervision, consultation, education, research, advocacy, community organization and the development, implementation and administration of policies, programs and activities. The practice of master's social work may include the practice of clinical social work under appropriate clinical social work supervision. The LMSW is able to explain and interpret the results of psychosocial evaluations in the problem-solving process. The LMSW is able to supervise LBSWs and practice in the areas of social work administration, community organization and policy analysis.

**C.** The LMSW may not practice independently as a private practitioner.

[16.63.10.9 NMAC - Rp, 16.63.10.9 NMAC, 3/13/2022]

#### **16.63.10.10 RENEWAL OF LICENSE:**

Before July 1 of the renewal year, each master social worker shall apply for license renewal and shall pay the renewal fee as set forth in Part 8.

[16.63.10.10 NMAC - Rp, 16.63.10.10 NMAC, 3/13/2022]

## **PART 11: INDEPENDENT SOCIAL WORKER**

### **16.63.11.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners P.O. Box 25101, Santa Fe, NM 87504.

[16.63.11.1 NMAC - Rp, 16.63.11.1 NMAC, 3/13/2022]

### **16.63.11.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.11.2 NMAC - Rp, 16.63.11.2 NMAC, 3/13/2022]

### **16.63.11.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Subsection A of Section 61-31-8, 14-2-1, 61-31-19 NMSA 1978.

[16.63.11.3 NMAC - Rp, 16.63.11.3 NMAC, 3/13/2022]

### **16.63.11.4 DURATION:**

Permanent.

[16.63.11.4 NMAC - Rp, 16.63.11.4 NMAC, 3/13/2022]

### **16.63.11.5 EFFECTIVE DATE:**

March 13, 2022, unless a different date is cited at the end of a section.

[16.63.11.5 NMAC – Rp, 16.63.11.5 NMAC, 3/13/2022]

### **16.63.11.6 OBJECTIVE:**

To state the minimum requirements for licensure as a social worker at the independent level, to outline the parameters of practice at this level, and procedure to renew a license.

[16.63.11.6 NMAC - Rp, 16.63.11.6 NMAC, 3/13/2022]

### **16.63.11.7 DEFINITIONS:**

Licensed Clinical Social Worker "LCSW": A licensed independent social worker who has demonstrated to the board's satisfaction, sufficient experience and expertise in the practice of clinical social work by meeting the qualifications as outlined in 16.63.11.8 NMAC.

[16.63.11.7 NMAC – Rp, 16.63.11.7 NMAC, 3/13/2022]

#### **16.63.11.8 QUALIFICATION FOR LICENSURE:**

Applicants for licensure as independent/clinical social workers must:

- A.** be at least 18 years of age;
- B.** possess an LMSW license;
- C.** complete not less than two years of post-graduate direct/ clinical social work experience, under appropriate supervision; as defined in 16.63.1.7 NMAC Applicants and supervisors will engage the process of supervision in accordance with the guidelines established by the board of social work examiners;
- D.** documents completion of the required course in New Mexico cultures; and
- E.** successfully pass the association of social work board examination, clinical or advanced, as determined by the board and the jurisprudence examination.
- F.** Individuals licensed as masters social workers (LMSW) and aspiring to achieve licensure at the independent clinical level must complete and document 3,600 hours of licensed masters level social work experience which has been accumulated over no more than a 60 month period.
- G.** Applicants for licensure must document 90 hours of supervision during this 3,600 hour period.
  - (1) One hour of supervision must be documented for every 40 hours worked,
  - (2) At least 70 of the 90 required hours must be obtained through direct supervision,
  - (3) No more than 20 hours of the 90 required hours may be obtained through group supervision and there shall be no more than six individuals per group at a time, and
  - (4) No more than 30 hours of the required 90 hours may be obtained through interdisciplinary supervision.

H. provide proof of any disqualifying criminal convictions as defined in 16.63.13.9 NMAC.

[16.63.11.8 NMAC – Rp, 16.63.11.8 NMAC, 3/13/2022]

**16.63.11.9 PARAMETERS OF PRACTICE:**

This is the highest level of licensure. The licensed clinical independent social worker (LCSW) / (LISW) is to function independently and demonstrate specialized knowledge and skills. The LISW must exercise independent judgment. The LCSW / LISW should be able to demonstrate skill and interventions directly related to individuals, couples, families, groups, communities or organizations. In at least one of these client groups, the LCSW / LISW shall demonstrate in-depth knowledge and skills. The LCSW / LISW should be able to employ practice theory and research findings in all aspects of their practice. The LCSW / LISW may supervise LBSWs, LMSWs and other LCSWs / LISWs.

[16.63.11.9 NMAC - Rp, 16.63.11.9 NMAC, 3/13/2022]

**16.63.11.10 AREAS OF SPECIALIZATION:**

Applicants for specialization will be handled by the board on a case by case basis.

[16.63.11.10 NMAC – Rp, 16.63.11.10 NMAC, 3/13/2022]

**16.63.11.11 RENEWAL OF LICENSE:**

Before July 1 of the renewal year, each independent social worker shall apply for license renewal and shall pay the renewal fee as set forth in Part 8.

[16.63.11.11 NMAC - Rp, 16.63.11.11 NMAC, 3/13/2022]

**PART 12: CONTINUING EDUCATION**

**16.63.12.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners P.O. Box 25101, Santa Fe, NM 87504.

[9/8/96; 16.63.12.1 NMAC - Rn, 16 NMAC 63.12.1, 06/19/02]

**16.63.12.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[9/8/96; 16.63.12.2 NMAC - Rn, 16 NMAC 63.12.2, 06/19/02]

**16.63.12.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.12.3 NMAC - Rn, 16 NMAC 63.12.3, 06/19/02]

**16.63.12.4 DURATION:**

Permanent.

[9/8/96; 16.63.12.4 NMAC - Rn, 16 NMAC 63.12.4, 06/19/02]

**16.63.12.5 EFFECTIVE DATE:**

June 22, 1992, unless a different date is cited at the end of a section.

[9/8/96; 16.63.12.5 NMAC - Rn & A, 16 NMAC 63.12.5, 06/19/02]

**16.63.12.6 OBJECTIVE:**

To inform licensees of continuing education hours required for license renewal, and the reporting process.

[9/8/96; 16.63.12.6 NMAC - Rn, 16 NMAC 63.12.6, 06/19/02]

**16.63.12.7 DEFINITIONS:**

**[RESERVED]**

**16.63.12.8 CONTINUING EDUCATION REQUIREMENT:**

Continuation of education is required for social workers to be re-licensed at any level. Continuing education is required by the New Mexico board of social work examiners to ensure that social workers in New Mexico are providing the highest quality professional services.

[5/15/91, 6/22/92, 16.63.12.8 NMAC - Rn, 16 NMAC 63.12.8, 06/19/02]

**16.63.12.9 CONTINUING EDUCATION CREDIT:**

Thirty (30) hours of continuing education will be required biennially. Six (6) of the thirty (30) hours must be in the subject area of cultural awareness. Proof of participation in or presentation of continuing education activity must be submitted with the license renewal

request if the licensee is audited. All continuing education hours must be earned during the current two (2) year renewal period of July 1 thru June 30.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.9 NMAC - Rn, 16 NMAC 63.12.9, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

**16.63.12.10 CONTINUING EDUCATION PARTICIPATION/FORMAL SOCIAL WORK EDUCATION:**

A three (3) hour college level course in social work or courses which are designed to enhance the skills relevant to the social worker's professional activity will be accepted as equivalent to thirty (30) hours. The social worker shall submit transcripts directly to the board with renewal.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.10 NMAC - Rn, 16 NMAC 63.12.10, 06/19/02; A, 01/17/08]

**16.63.12.11 CONTINUING EDUCATION AGENTS:**

The board may identify and authorize any continuing education agents. The agents will report directly to the board concerning continuing education activity.

[5/15/91, 6/22/92, 16.63.12.11 NMAC - Rn, 16 NMAC 63.12.11, 06/19/02]

**16.63.12.12 CONTINUING EDUCATION CREDIT CARRYOVER:**

All continuing education hours must be earned during the current two (2) year renewal period of July 1 thru June 30; no carryover will be permitted.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.12 NMAC - Rn, 16 NMAC 63.12.12, 06/19/02; A, 04/24/06; A, 01/17/08]

**16.63.12.13 DOCUMENTATION OF PARTICIPATION:**

The board shall audit a percentage of renewal applications each renewal period to verify the continuing education requirement. The licensee must maintain proof of continuing education courses taken for the past four (4) years.

A. If a notice of audit letter is received with the renewal form, evidence of continuing education hours earned during the renewal period must be submitted to the board as requested and as required in the Social Work Practice Act and by this rule.

B. If the licensee is not audited, all documentation of attendance and agendas must be retained by the licensee for a minimum of four (4) years immediately preceding the current renewal.

C. The board reserves the right to audit a licensee's continuing education records as it deems necessary.

[5/15/91, 6/22/92, 16.63.12.13 NMAC - Rn, 16 NMAC 63.12.13, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08]

#### **16.63.12.14 CONTINUING EDUCATION PROFESSIONAL DISCRETION:**

The social worker may choose up to ten (10) hours per renewal period which is self-directed. The social worker may select education programs, readings and audio or video-taped materials which are in the domain of social work. Preparation time, not to exceed the length of the presentation and time accumulated in presenting a social work seminar or workshop is included in this section. Documentation of discretionary continuing education hours will be in accordance with guidelines established by the board of social work examiners. Activities which include personal scope such as sports, hobbies, etc. are not acceptable for credit nor is personal therapy. The social worker seeking re-licensure shall report continuing education hours directly to the board upon application for license renewal. Approval of credit under this section is within the board's discretion.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.14 NMAC - Rn, 16 NMAC 63.12.14, 06/19/02; A, 01/17/08]

#### **16.63.12.15 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS:**

Failure to meet continuing education requirements will cause the board to refuse to renew the social work license in accordance with the Uniform Licensing Act.

[5/15/91, 6/22/92, 5/1/99; 16.63.12.15 NMAC - Rn, 16 NMAC 63.12.15, 06/19/02]

### **PART 13: DISCIPLINARY ACTION**

#### **16.63.13.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners P.O. Box 25101, Santa Fe, NM 87504.

[16.63.13.1 NMAC - Rp, 16.63.13.1 NMAC, 3/13/2022]

#### **16.63.13.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.13.2 NMAC - Rp, 16.63.13.2 NMAC, 3/13/2022]

**16.63.13.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Subsection A of Section 61-31-8, 14-2-1, 61-31-19 NMSA 1978.

[16.63.13.3 NMAC - Rp, 16.63.13.3 NMAC, 3/13/2022]

**16.63.13.4 DURATION:**

Permanent.

[16.63.13.4 NMAC - Rp, 16.63.13.4 NMAC, 3/13/2022]

**16.63.13.5 EFFECTIVE DATE:**

March 13, 2022, unless a different date is cited at the end of a section.

[16.63.13.5 NMAC – Rp, 16.63.13.5 NMAC, 3/13/2022]

**16.63.13.6 OBJECTIVE:**

To inform the licensees of the complaint procedure.

[16.63.13.6 NMAC - Rp, 16.63.13.6 NMAC, 3/13/2022]

**16.63.13.7 DEFINITIONS:**

"Disqualifying criminal conviction" has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.63.13.7 NMAC – Rp, 16.63.13.7 NMAC, 3/13/2022]

**16.63.13.8 PROCEDURES:**

Upon receipt of a complaint against any person licensed under the Social Work Practice Act, Sections 61-31-1 to 61-31-24 NMSA 1978 the board may refer the complaint to the complaint committee.

**A.** The complaint committee shall review and investigate or cause to be investigated all complaints received by the board. Complaints shall remain confidential while investigations are pending and shall not be a matter of public record until the board takes disciplinary action pursuant to N.M. State. Ann. Section 61-31-17 NMSA 1978, as amended, and this part.

**B.** Upon completion of the investigation initiated pursuant to this part, the complaint committee or the board shall submit to the board those matters it feels justify further disciplinary action.

**C.** The board may offer the licensee an informal type of discipline such as a letter of reprimand in lieu of initiating formal proceedings. The board shall notify the licensee:

- (1) that a letter of reprimand has been officially proposed;
- (2) that the respondent must accept or reject the offer in writing;
- (3) that if accepted, a copy of the reprimand will remain in the private files of the board; and
- (4) that if rejected, formal disciplinary action pursuant to the Uniform Licensing Act Sections 61-1-1 to 61-1-31 NMSA 1978 will be initiated.

**D.** If accepted, the letter of reprimand shall be personally issued to the licensee by the chairperson of the board at the next scheduled board meeting and served on the licensee by certified mail. Copies of the reprimand will be furnished to members of the board and to the board's attorney.

**E.** If a licensed social worker voluntarily surrenders their license or allows their license to expire in anticipation of, or during the course of an investigation, the complaint committee will complete its investigation and report the findings to the national database. Any publication or notification of action taken by the board of social work examiners will include the fact that the licensee voluntarily surrendered or allowed their license to expire during the investigation.

[16.63.13.8 NMAC - Rp, 16.63.13.8 NMAC, 3/13/2022]

#### **16.63.13.9. DISQUALIFYING CRIMINAL CONVICTIONS:**

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

- (1) homicide, manslaughter, great bodily harm, wounding, or maiming;
- (2) trafficking, trafficking in, unlawful distribution of, or possession of controlled substances;
- (3) human trafficking, stalking, kidnapping, false imprisonment, assault, aggravated assault, battery, or aggravated battery;

- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, sexual exploitation, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse, neglect, abandonment or solicitation;
- (7) crimes involving robbery, larceny, theft, extortion, burglary, bribery, fraud, forgery, embezzlement, breaking and entering, damage to property, identity theft, arson, perjury, false pretenses, credit card fraud, or receiving stolen property;
- (8) practicing medicine without a license;
- (9) failure to comply with a proclamation of the governor;
- (10) crimes involving the unlawful possession, use, discharge, or sale of a firearm, weapon, or explosives;
- (11) furnishing or bringing contraband or drugs into a prison, jail, or juvenile detention facility;
- (12) driving under the influence of intoxicating liquor, substances or drugs;
- (13) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Social Work Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.63.13.9 NMAC – Rp, 16.63.13.9 NMAC, 3/13/2022]

## **PART 14: INACTIVE STATUS**

### **16.63.14.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[9/8/96; 16.63.14.1 NMAC - Rn, 16 NMAC 63.14.1, 06/19/02]

### **16.63.14.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[9/8/96; 16.63.14.2 NMAC - Rn, 16 NMAC 63.14.2, 06/19/02]

### **16.63.14.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.14.3 NMAC - Rn, 16 NMAC 63.14.3, 06/19/02]

### **16.63.14.4 DURATION:**

Permanent.

[9/8/96; 16.63.14.4 NMAC - Rn, 16 NMAC 63.14.4, 06/19/02]

### **16.63.14.5 EFFECTIVE DATE:**

January 5, 1995, unless a different date is cited at the end of a section.

[9/8/96; 16.63.14.5 NMAC - Rn & A, 16 NMAC 63.14.5, 06/19/02]

### **16.63.14.6 OBJECTIVE:**

To inform the licensees of the procedure to change their license to inactive status, and the reinstatement process.

[9/8/96; 16.63.14.6 NMAC - Rn, 16 NMAC 63.14.6, 06/19/02]

**16.63.14.7 DEFINITIONS:**

**[RESERVED]**

**16.63.14.8 PROCEDURE:**

A. Any person licensed under the Social Work Practice Act (NMSA 1978 Sections 61-31-1 to 61-31-24) who wishes to assume inactive status in the practice of social work shall notify the board's administrator in writing postmarked on or before July 1<sup>st</sup> of the year the license expires. As part of the written request for inactive status, the licensee must show proof of having completed the required continuing education hours defined in Part 12 of these rules. If the licensee has not met the continuing education requirements, inactive status may be granted but the licensee will be subject to all rules related to continuing education if reinstatement of license is requested.

B. Upon approval by the board, the licensee shall assume inactive status. Any license in inactive status will be subject to an annual fee of fifteen dollars (\$15.00) for LBSW, twenty dollars (\$20.00) for LMSW and twenty-five dollars (\$25.00) for LISW.

C. The practice of social work in New Mexico under an inactive license is strictly prohibited.

D. Any person licensed under the Social Work Practice Act who has assumed inactive status as provided in this section, may notify the board, in writing, of his desire to resume active practice.

E. Upon receipt of the notice required in Subsection D of 16.63.14.8 NMAC, the administrator shall send to the licensee an application for reinstatement of license.

F. The fee for reinstatement of a license shall be in accordance with 16.63.8 NMAC, Sections 8, 9, 10 & 11.

G. The applicant must, in addition, provide satisfactory proof of:

(1) completion of no less than ten (10) hours of continuing education for each year of inactive status; such continuing education to be accumulated in accordance with Part 12.

(2) completion of all continuing education requirements determined to have been unmet at the time inactive status was granted.

H. If the board finds the application in order and is satisfied that the applicant has fulfilled his continuing education requirements as outlined in Subsection G of 16.63.14.8 NMAC, the board shall reinstate the applicant's license.

I. No person licensed under the Social Work Practice Act who has assumed inactive status shall reactivate his practice until he receives notification from the board that his license is active.

J. The board will not accept applications for inactive status from licensees who are under investigation for violations of the Social Work Practice Act or who have an active complaint pending with the board.

K. The board will accept applications under this section from any social worker who is impaired as further defined in this section and who is participating in a rehabilitation plan approved by the board.

(1) For purposes of this section, impaired means inability to practice social work with reasonable skill or safety to clients by reason of one or more of the following:

(2) mental illness;

(3) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act (NMSA Sections 30-31-1 to 30-31-40) or alcohol.

L. The board may, in its discretion, require that an applicant for reinstatement take and pass a written or oral examination as prescribed by the board.

[6/22/92, 1/5/95, 5/1/99; 16.63.14.8 NMAC - Rn & A, 16 NMAC 63.14.8, 06/19/02; A, 4/24/06; A, 09/01/14]

## **PART 15: RETIREMENT**

### **16.63.15.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[9/8/96; 16.63.15.1 NMAC - Rn, 16 NMAC 63.15.1, 06/19/02]

### **16.63.15.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[9/8/96; 16.63.15.2 NMAC - Rn, 16 NMAC 63.15.2, 06/19/02]

**16.63.15.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.15.3 NMAC - Rn, 16 NMAC 63.15.3, 06/19/02]

**16.63.15.4 DURATION:**

Permanent.

[9/8/96; 16.63.15.4 NMAC - Rn, 16 NMAC 63.15.4, 06/19/02]

**16.63.15.5 EFFECTIVE DATE:**

January 5, 1995, unless a different date is cited at the end of a section.

[9/8/96; 16.63.15.5 NMAC - Rn & A, 16 NMAC 63.15.5, 06/19/02]

**16.63.15.6 OBJECTIVE:**

To inform the licensees of the procedure to change their license to retirement status, and the reinstatement process.

[9/8/96; 16.63.15.6 NMAC - Rn, 16 NMAC 63.15.6, 06/19/02]

**16.63.15.7 DEFINITIONS:**

[RESERVED]

**16.63.15.8 PROCEDURE:**

A. Any person licensed under the Social Work Practice Act (NMSA 1978 Sections 61-31-1 to 61-31-24) who wishes to retire from practice shall notify the board's administrator in writing prior to the July 1 expiration of his current license. As part of the written request for retirement status, the licensee must show proof of having completed the required continuing education hours defined in Part 12 of these rules. If the licensee has not met the continuing education requirements, retirement status may be granted but the licensee will be subject to all rules related to continuing education if reinstatement of license is requested. The administrator shall acknowledge receipt of the request.

B. Upon approval by the board of the request, the licensee shall assume retirement status and shall be exempt from payment of the yearly renewal fees during the period of retirement.

C. The practice of social work in New Mexico under a retired license is strictly prohibited. Any person licensed under the Social Work Practice Act who has retired as provided in this section, may notify the board, in writing, of his desire to resume active practice.

D. Upon receipt of the notice required in Subsection C of 16.63.15.8 NMAC, the administrator shall send to the retired licensee an application for reinstatement of license.

E. The application must be completed and returned to the board's administrator with the appropriate fee as required in sections 8, 9, 10 and 11 of 16.63.8 NMAC.

F. The applicant must, in addition provide satisfactory proof of:

(1) completion of no less than ten (10) hours of continuing education for each year of retirement; such continuing education to be accumulated in accordance with Part 12;

(2) completion of all continuing education requirements determined to have been unmet at the time retirement status was granted.

G. The board may, in its discretion, require that an applicant for reinstatement take and pass a written examination as prescribed by the board.

H. If the board finds the application in order and is satisfied that the applicant has fulfilled his continuing education requirements as outlined in Subsection F of 16.63.15.8 NMAC, the board shall issue the applicant a new license.

I. No person licensed under the Social Work Practice Act who has retired shall reactivate his practice until he receives his new license certificate.

J. The board will not accept applications for retirement from licensees who are under investigation for violations of the Social Work Practice Act or who have an active complaint pending with the board.

K. The board will accept applications under this section from any social worker who is impaired as further defined in this section and who is participating in a rehabilitation plan approved by the board. For purposes of this section, impaired means inability to practice social work with reasonable skill or safety to clients by reason of one or more of the following:

(1) mental illness;

(2) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act (NMSA Sections 30-31-1 to 30-31-40) or alcohol.

[6/22/92, 1/5/95, 5/1/99; 16.63.15.8 NMAC - Rn, 16 NMAC 63.15.8, 06/19/02; A, 4/24/06; A, 11/30/06]

## **PART 16: CODE OF CONDUCT**

### **16.63.16.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[16.63.16.1 NMAC - Rp, 16.63.16.1 NMAC, 4/24/06]

### **16.63.16.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.16.2 NMAC - Rp, 16.63.16.2 NMAC, 4/24/06]

### **16.63.16.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[16.63.16.3 NMAC - Rp, 16.63.16.3 NMAC, 4/24/06]

### **16.63.16.4 DURATION:**

Permanent.

[16.63.16.4 NMAC - Rp, 16.63.16.4 NMAC, 4/24/06]

### **16.63.16.5 EFFECTIVE DATE:**

April 24, 2006, unless a later date is cited at the end of a section.

[16.63.16.5 NMAC - Rp, 16.63.16.5 NMAC, 4/24/06]

### **16.63.16.6 OBJECTIVE:**

To inform the licensees of the social work code of conduct.

[16.63.16.6 NMAC - Rp, 16.63.16.6 NMAC, 4/24/06]

### **16.63.16.7 DEFINITIONS:**

**[RESERVED]**

**16.63.16.8 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO CLIENTS:**

**A.** Commitment to clients. Social workers' primary responsibility is to promote the well being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients shall be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

**B.** Self-determination. Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

**C.** Professional disclosure statement. A social worker shall effectively communicate through handout or other means as appropriate for all clients and may display at the social worker's primary place of practice a statement that the client has the right to the following:

(1) to expect that the social worker has met the minimal qualifications of education, training, and experience required by the law;

(2) to examine public records maintained by the board which contain the social worker's qualifications and credentials;

(3) to be given a copy of the standards of practice upon request;

(4) to report a complaint about the social worker's practice to the board;

(5) to be informed of the cost of professional services before receiving the services;

(6) to privacy as allowed by law, and to be informed of the limits of confidentiality;

(7) limited access to client information; a social worker shall make reasonable efforts to limit access to client information in a social worker's agency to appropriate agency staff whose duties require access;

(8) supervision or consultation; a social worker receiving supervision shall inform the client that the social worker may be reviewing the client's case with the social worker's supervisor or consultant; upon request, the social worker shall provide the name of the supervisor and the supervisor's contact information;

**(9)** to be free from being the object of discrimination while receiving social work services; and

**(10)** to have access to records as allowed by law including retention and notification requirements in Paragraphs (4) and (5) of Subsection D of 16.63.16.10 NMAC.

**D. Informed consent.**

**(1)** Social workers shall provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.

**(2)** In instances when clients are not literate or have difficulty understanding the primary language used in the practice setting, social workers shall take steps to ensure clients' comprehension. This may include providing clients with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.

**(3)** In instances when clients lack the capacity to provide informed consent, social workers shall protect clients' interests by seeking consent from an appropriate third party, informing clients consistent with the clients' level of understanding. Social workers should take reasonable steps to enhance such clients' ability to give informed consent.

**(4)** In instances when clients are receiving services involuntarily, social workers shall provide information about the nature and extent of services and about the extent of clients' right to refuse service.

**(5)** Social workers who provide services via electronic media (such as computer, telephone, radio, and television) shall inform recipients of the limitations and risks associated with such services.

**(6)** Social workers shall obtain clients' informed consent before audiotaping or videotaping clients or permitting observation of services to clients by a third party. The written informed consent shall explain to the client the purpose of the taping or recording and how the taping or recording will be used, how it will be stored and when it will be destroyed.

**(7)** If the client, the legal guardian, or other authorized representative does not consent, the social worker shall discuss with the client that a referral to other resources may be in the client's best interest.

#### **E. Competence.**

**(1)** Social workers shall provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

**(2)** Social workers shall provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, or supervision from people who are competent in those interventions or techniques.

**(3)** When generally recognized standards do not exist with respect to an emerging area of practice, social workers shall exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm.

#### **F. Cultural competence and social diversity.**

**(1)** Social workers shall understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.

**(2)** Social workers shall have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.

**(3)** Social workers shall obtain education about and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

#### **G. Conflicts of interest.**

**(1)** Social workers shall be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers shall inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible. In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.

**(2)** Social workers shall not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.

**(3)** Social workers shall not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the

client. In instances when dual or multiple relationships are unavoidable, social workers shall take steps to protect clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries. (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.)

**(4)** When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers shall clarify with all parties which individuals will be considered clients and the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients) shall clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

#### **H. Privacy and confidentiality.**

**(1)** Social workers shall respect clients' right to privacy. Social workers shall not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.

**(2)** Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.

**(3)** Social workers shall protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person. In all instances, social workers shall disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made shall be revealed.

**(4)** Social workers shall inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.

**(5)** Social workers shall discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers shall review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This

discussion shall occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.

**(6)** When social workers provide counseling services to families, couples, or groups, social workers shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. Social workers shall inform participants in family, couples, or group counseling that social workers cannot guarantee that all participants will honor such agreements.

**(7)** Social workers shall inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.

**(8)** Social workers shall not disclose confidential information to third-party payers unless clients have authorized such disclosure.

**(9)** Social workers shall not discuss confidential information in any setting unless privacy can be ensured. Social workers shall not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.

**(10)** Social workers shall protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers shall request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection.

**(11)** Social workers shall protect the confidentiality of clients when responding to requests from members of the media.

**(12)** Social workers shall protect the confidentiality of clients' written and electronic records and other sensitive information. Social workers shall take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorized to have access.

**(13)** Social workers shall take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information shall be avoided whenever possible.

**(14)** Social workers shall transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with state statutes governing records and social work licensure.

**(15)** Social workers shall take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.

**(16)** Social workers shall not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.

**(17)** Social workers shall not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

**(18)** Social workers shall protect the confidentiality of deceased clients consistent with the preceding standards.

**I.** Access to records.

**(1)** Social workers shall provide clients with reasonable access to records concerning the clients. Social workers who are concerned that clients' access to their records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. Social workers shall limit clients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both clients' requests and the rationale for withholding some or all of the record shall be documented in clients' files.

**(2)** When providing clients with access to their records, social workers shall take steps to protect the confidentiality of other individuals identified or discussed in such records.

**J.** Sexual relationships.

**(1)** Social workers shall under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.

**(2)** Social workers shall not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain a personal relationship has the potential to be harmful to the client and may make it difficult for the social worker and client to maintain appropriate professional boundaries. Social workers--not their clients, their clients' relatives, or other individuals

with whom the client maintains a personal relationship--assume the full burden for setting clear, appropriate, and culturally sensitive boundaries.

**(3)** Social workers shall not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary circumstances, it is social workers--not their clients--who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally.

**(4)** Social workers shall not provide clinical services to individuals with whom they have had a prior sexual relationship. Providing clinical services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for the social worker and individual to maintain appropriate professional boundaries.

**K. Physical contact.** Social workers shall not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact (such as cradling or caressing clients). Social workers who engage in appropriate physical contact with clients are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.

**L. Sexual harassment.** Social workers shall not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

**M. Derogatory language.** Social workers shall not use derogatory language in their written or verbal communications to or about clients. Social workers shall use accurate and respectful language in all communications to and about clients.

**N. Payment for services.**

**(1)** A social worker who provides a service for fee shall inform a client of the fee at the initial session or meeting with the client. Payment must be arranged at the beginning of the professional relationship, and the payment arrangement must be provided to a client in writing. A social worker shall provide, upon request from a client, a client's legal guardian, or other authorized representative, a written explanation of the charges for any services rendered.

**(2)** When setting fees, social workers shall ensure that the fees are fair, reasonable, and commensurate with the services performed. Consideration should be given to clients' ability to pay.

**(3)** Social workers shall avoid accepting goods or services from clients as payment for professional services. Bartering arrangements, particularly involving services, create the potential for conflicts of interest, exploitation, and inappropriate boundaries in social workers' relationships with clients. Social workers shall explore and

may participate in bartering only in very limited circumstances when it can be demonstrated that such arrangements are an accepted practice among professionals in the local community, considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Social workers who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship.

**(4)** Social workers shall not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social workers' employer or agency.

**O.** Clients who lack decision-making capacity. When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers shall take reasonable steps to safeguard the interests and rights of those clients.

**P.** Interruption of services. Social workers shall make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death.

**Q.** Termination of services.

**(1)** Social workers shall terminate services to clients and professional relationships with them when such services and relationships are no longer required or no longer serve the clients' needs or interests.

**(2)** Social workers shall take reasonable steps to avoid abandoning clients who are still in need of services. Social workers should withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effects. Social workers should assist in making appropriate arrangements for continuation of services when necessary.

**(3)** Social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client.

**(4)** Social workers shall not terminate services to pursue a social, financial, or sexual relationship with a client.

**(5)** Social workers who anticipate the termination or interruption of services to clients shall notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences.

**(6)** Social workers who are leaving an employment setting shall inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.

[16.63.16.8 NMAC - Rp, 16.63.16.9 NMAC, 4/24/06; A, 12/31/08; A, 06/01/09; A, 09/01/14]

#### **16.63.16.9 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO COLLEAGUES:**

##### **A. Respect.**

**(1)** Social workers should treat colleagues with respect and should represent accurately and fairly the qualifications, views, and obligations of colleagues.

**(2)** Social workers should avoid unwarranted negative criticism of colleagues in communications with clients or with other professionals. Unwarranted negative criticism may include demeaning comments that refer to colleagues' level of competence or to individuals' attributes such as race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

**(3)** Social workers shall cooperate with social work colleagues and with colleagues of other professions when such cooperation serves the well-being of clients.

**B. Confidentiality.** Social workers shall respect confidential information shared by colleagues in the course of their professional relationships and transactions. Social workers should ensure that such colleagues understand social workers' obligation to respect confidentiality and any exceptions related to it.

##### **C. Interdisciplinary collaboration.**

**(1)** Social workers who are members of an interdisciplinary team shall participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the social work profession. Professional and ethical obligations of the interdisciplinary team as a whole and of its individual members shall be clearly established.

**(2)** Social workers for whom a team decision raises ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers shall pursue other avenues to address their concerns consistent with client well being.

##### **D. Disputes involving colleagues.**

**(1)** Social workers shall not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the social workers' own interests.

**(2)** Social workers shall not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion of conflicts between social workers and their colleagues.

**E. Consultation.**

**(1)** Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients.

**(2)** Social workers should keep themselves informed about colleagues' areas of expertise and competencies. Social workers should seek consultation only from colleagues who have demonstrated knowledge, expertise, and competence related to the subject of the consultation.

**(3)** When consulting with colleagues about clients, social workers should disclose the least amount of information necessary to achieve the purposes of the consultation.

**F. Referral for services.**

**(1)** Social workers shall refer clients to other professionals when the other professionals' specialized knowledge or expertise is needed to serve clients fully or when social workers believe that they are not being effective or making reasonable progress with clients and that additional service is required.

**(2)** Social workers who refer clients to other professionals shall take appropriate steps to facilitate an orderly transfer of responsibility. Social workers who refer clients to other professionals shall disclose, with clients' consent, all pertinent information to the new service providers.

**(3)** Social workers are prohibited from giving or receiving payment for a referral when no professional service is provided by the referring social worker.

**G. Sexual relationships.**

**(1)** Social workers who function as supervisors or educators shall not engage in sexual activities or contact with supervisees, students, trainees, or other colleagues over whom they exercise professional authority.

**(2)** Social workers shall avoid engaging in sexual relationships with colleagues when there is potential for a conflict of interest. Social workers who become involved in, or anticipate becoming involved in, a sexual relationship with a colleague

have a duty to transfer professional responsibilities, when necessary, to avoid a conflict of interest.

**H. Sexual harassment.** Social workers shall not sexually harass supervisees, students, trainees, or colleagues. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

**I. Impairment of colleagues.**

**(1)** Social workers who have direct knowledge of a social work colleague's impairment that is due to personal problems, psychosocial distress, substance abuse, or mental health difficulties and that interferes with practice effectiveness shall consult with that colleague when feasible and assist the colleague in taking remedial action.

**(2)** Social workers who believe that a social work colleague's impairment interferes with practice effectiveness and that the colleague has not taken adequate steps to address the impairment shall take action through appropriate channels established by employers, agencies, licensing and regulatory bodies, and other professional organizations.

**J. Incompetence of colleagues.**

**(1)** Social workers who have direct knowledge of a social work colleague's incompetence shall consult with that colleague when feasible and assist the colleague in taking remedial action.

**(2)** Social workers who believe that a social work colleague is incompetent and has not taken adequate steps to address the incompetence shall take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

**K. Unethical conduct of colleagues.**

**(1)** Social workers shall take adequate measures to discourage, prevent, expose, and correct the unethical conduct of colleagues.

**(2)** Social workers shall be knowledgeable about established policies and procedures for handling concerns about colleagues' unethical behavior. Social workers shall be familiar with national, state, and local procedures for handling ethics complaints. These include policies and procedures created by licensing and regulatory bodies, employers, agencies, and other professional organizations.

**(3)** Social workers who believe that a colleague has acted unethically shall seek resolution by discussing their concerns with the colleague when feasible and when such discussion is likely to be productive.

(4) Social workers who believe that a colleague has acted unethically shall take action through appropriate formal channels established by employers, agencies, licensing and regulatory bodies, and other professional organizations.

(5) Social workers should defend and assist colleagues who are unjustly charged with unethical conduct.

[16.63.16.9 NMAC - Rp, 16.63.16.10 NMAC, 4/24/06; A, 06/01/09]

#### **16.63.16.10 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES IN PRACTICE SETTINGS:**

##### **A. Supervision and consultation.**

(1) Social workers who provide supervision or consultation shall have the necessary knowledge and skill to supervise or consult appropriately and shall do so only within their areas of knowledge and competence.

(2) Social workers who provide supervision or consultation are responsible for setting clear, appropriate, and culturally sensitive boundaries.

(3) Social workers shall not engage in any dual or multiple relationships with supervisees in which there is a risk of exploitation of or potential harm to the supervisee. In instances where dual or multiple relationships are unavoidable social workers should take steps to protect supervisees and are responsible for setting clear, appropriate, and culturally sensitive boundaries.

(4) Social workers who provide supervision shall evaluate supervisees' performance in a manner that is fair and respectful.

##### **B. Education and training.**

(1) Social workers who function as educators, field instructors for students, or trainers shall provide instruction only within their areas of knowledge and competence and shall provide instruction based on the most current information and knowledge available in the profession.

(2) Social workers who function as educators or field instructors for students shall evaluate students' performance in a manner that is fair and respectful.

(3) Social workers who function as educators or field instructors for students shall take reasonable steps to ensure that clients are routinely informed when services are being provided by students.

(4) Social workers who function as educators or field instructors for students shall not engage in any dual or multiple relationships with students in which there is a

risk of exploitation or potential harm to the student. In instances where dual or multiple relationships are unavoidable social work educators and field instructors are responsible for setting clear, appropriate, and culturally sensitive boundaries.

**C. Performance evaluation.** Social workers who have responsibility for evaluating the performance of others shall fulfill such responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

**D. Client records.**

**(1)** Social workers shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

**(2)** Social workers shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.

**(3)** Social workers' documentation shall protect clients' privacy to the extent that is possible and appropriate and shall include only information that is directly relevant to the delivery of services.

**(4)** Social workers shall store records following the termination of services to ensure reasonable future access. These records shall be maintained by the licensee or agency employing the licensee at least for a period of seven years after the last date of service, or for the time period required by federal or state law if longer.

**(5)** Prior to the destruction of a client record for any reason including when a social worker or social work practice anticipates to cease or ceases operations as a result of a suspension, retirement or death of the owner, sale or other cause, including insolvency, the licensee or other individual responsible for supervising the disposition of the practice, should make reasonable effort to notify the clients of their right to retrieve current records for a period of six months. Should any client fail to retrieve the records within the six month period and unless otherwise required by law, the responsible party shall arrange the destruction of such documents in a manner to ensure confidentiality.

**E. Billing.** Social workers shall establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

**F. Client transfer.**

**(1)** When an individual who is receiving services from another agency or colleague contacts a social worker for services, the social worker shall carefully consider the client's needs before agreeing to provide services. To minimize possible confusion and conflict, social workers shall discuss with potential clients the nature of the clients' current relationship with other service providers and the implications,

including possible benefits or risks, of entering into a relationship with a new service provider.

**(2)** If a new client has been served by another agency or colleague, social workers shall discuss with the client whether consultation with the previous service provider is in the client's best interest.

#### **G. Administration.**

**(1)** Social work administrators shall advocate within and outside their agencies for adequate resources to meet clients' needs.

**(2)** Social workers shall advocate for resource allocation procedures that are open and fair. When not all clients' needs can be met, an allocation procedure shall be developed that is nondiscriminatory and based on appropriate and consistently applied principles.

**(3)** Social workers who are administrators shall take reasonable steps to ensure that adequate agency or organizational resources are available to provide appropriate staff supervision.

**(4)** Social work administrators shall take reasonable steps to ensure that the working environment for which they are responsible is consistent with and encourages compliance with the code of conduct. Social work administrators should take reasonable steps to eliminate any conditions in their organizations that violate, interfere with, or discourage compliance with the code.

**H. Continuing education and staff development.** Social work administrators and supervisors should take reasonable steps to provide or arrange for continuing education and staff development for all staff for whom they are responsible. Continuing education and staff development shall address current knowledge and emerging developments related to social work practice and ethics.

#### **I. Commitments to employers.**

**(1)** Social workers generally should adhere to commitments made to employers and employing organizations.

**(2)** Social workers should work to improve employing agencies' policies and procedures and the efficiency and effectiveness of their services.

**(3)** Social workers should take reasonable steps to ensure that employers are aware of social workers' ethical obligations as set forth in the code of conduct and of the implications of those obligations for social work practice.

(4) Social workers shall not allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work. Social workers should take reasonable steps to ensure that their employing organizations' practices are consistent with the code of conduct.

(5) Social workers shall act to prevent and eliminate discrimination in the employing organization's work assignments and in its employment policies and practices.

(6) Social workers should accept employment or arrange student field placements only in organizations that exercise fair personnel practices.

(7) Social workers should be diligent stewards of the resources of their employing organizations, wisely conserving funds where appropriate and never misappropriating funds or using them for unintended purposes.

**J. Labor-management disputes.**

(1) Social workers may engage in organized action, including the formation of and participation in labor unions, to improve services to clients and working conditions.

(2) The actions of social workers who are involved in labor-management disputes, job actions, or labor strikes should be guided by the profession's values, ethical principles, and ethical standards. Reasonable differences of opinion exist among social workers concerning their primary obligation as professionals during an actual or threatened labor strike or job action. Social workers should carefully examine relevant issues and their possible impact on clients before deciding on a course of action.

[16.63.16.10 NMAC - N, 4/24/06; A, 06/01/09]

**16.63.16.11 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES AS PROFESSIONALS:**

**A. Competence.**

(1) Social workers shall accept responsibility or employment only on the basis of existing competence or the intention to acquire the necessary competence.

(2) Social workers shall strive to become and remain proficient in professional practice and the performance of professional functions. Social workers should critically examine and keep current with emerging knowledge relevant to social work. Social workers should routinely review the professional literature and participate in continuing education relevant to social work practice and social work ethics.

(3) Social workers shall base practice on recognized knowledge, including empirically based knowledge, relevant to social work and social work ethics.

**B. Nondiscrimination.** A social worker shall not discriminate against a client, student or supervisee on the basis of age, gender, sexual orientation, race, color, national origin, religion, diagnosis, disability, political affiliation, or social or economic status. If the social worker is unable to offer services because of a concern about potential discrimination against a client, student or supervisee, the social worker shall make an appropriate and timely referral. When a referral is not possible the social worker shall obtain supervision or consultation to address the concerns.

**C. Private conduct.** Social workers shall not permit their private conduct to interfere with their ability to fulfill their professional responsibilities.

**D. Dishonesty, fraud, and deception.** Social workers shall not participate in, condone, or be associated with dishonesty, fraud, or deception.

**E. Impairment.**

**(1)** Social workers shall not allow their own personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional judgment and performance or to jeopardize the best interests of people for whom they have a professional responsibility.

**(2)** Social workers whose personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties interfere with their professional judgment and performance shall immediately seek consultation and take appropriate remedial action by seeking professional help, making adjustments in workload, terminating practice, or taking any other steps necessary to protect clients and others.

**F. Misrepresentation.**

**(1)** Social workers shall make clear distinctions between statements made and actions engaged in as a private individual and as a representative of the social work profession, a professional social work organization, or the social worker's employing agency.

**(2)** Social workers who speak on behalf of professional social work organizations should accurately represent the official and authorized positions of the organizations.

**(3)** Social workers shall ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or results to be achieved are accurate. Social workers should claim only those relevant professional credentials they actually possess and take steps to correct any inaccuracies or misrepresentations of their credentials by others.

**G. Solicitations.**

(1) Social workers shall not engage in uninvited solicitation of potential clients who, because of their circumstances, are vulnerable to undue influence, manipulation, or coercion.

(2) Social workers shall not engage in solicitation of testimonial endorsements (including solicitation of consent to use a client's prior statement as a testimonial endorsement) from current clients or from other people who, because of their particular circumstances, are vulnerable to undue influence.

**H. Acknowledging credit.**

(1) Social workers shall take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.

(2) Social workers shall honestly acknowledge the work of and the contributions made by others.

[16.63.16.11 NMAC - N, 4/24/06; A, 06/01/09]

**16.63.16.12 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO THE SOCIAL WORK PROFESSION:**

**A. Integrity of the profession.**

(1) Social workers shall work toward the maintenance and promotion of high standards of practice.

(2) Social workers shall uphold and advance the values, ethics, knowledge, and mission of the profession. Social workers shall protect, enhance, and improve the integrity of the profession through appropriate study and research, active discussion, and responsible criticism of the profession.

(3) Social workers should contribute time and professional expertise to activities that promote respect for the value, integrity, and competence of the social work profession. These activities may include teaching, research, consultation, service, legislative testimony, presentations in the community, and participation in their professional organizations.

(4) Social workers should contribute to the knowledge base of social work and share with colleagues their knowledge related to practice, research, and ethics. Social workers should seek to contribute to the profession's literature and to share their knowledge at professional meetings and conferences.

(5) Social workers should act to prevent the unauthorized and unqualified practice of social work.

## **B. Evaluation and research.**

**(1)** Social workers should monitor and evaluate policies, the implementation of programs, and practice interventions.

**(2)** Social workers should promote and facilitate evaluation and research to contribute to the development of knowledge.

**(3)** Social workers should critically examine and keep current with emerging knowledge relevant to social work and fully use evaluation and research evidence in their professional practice.

**(4)** Social workers engaged in evaluation or research shall carefully consider possible consequences and shall follow guidelines developed for the protection of evaluation and research participants. Appropriate institutional review boards shall be consulted.

**(5)** Social workers engaged in evaluation or research shall obtain voluntary and written informed consent from participants, when appropriate, without any implied or actual deprivation or penalty for refusal to participate; without undue inducement to participate; and with due regard for participants' well-being, privacy, and dignity. Informed consent shall include information about the nature, extent, and duration of the participation requested and disclosure of the risks and benefits of participation in the research.

**(6)** When evaluation or research participants are incapable of giving informed consent, social workers shall provide an appropriate explanation to the participants, obtain the participants' assent to the extent they are able, and obtain written consent from an appropriate proxy.

**(7)** Social workers shall never design or conduct evaluation or research that does not use consent procedures, such as certain forms of naturalistic observation and archival research, unless rigorous and responsible review of the research has found it to be justified because of its prospective scientific, educational, or applied value and unless equally effective alternative procedures that do not involve waiver of consent are not feasible.

**(8)** Social workers shall inform participants of their right to withdraw from evaluation and research at any time without penalty.

**(9)** Social workers shall take appropriate steps to ensure that participants in evaluation and research have access to appropriate supportive services.

**(10)** Social workers engaged in evaluation or research shall protect participants from unwarranted physical or mental distress, harm, danger, or deprivation.

(11) Social workers engaged in the evaluation of services shall discuss collected information only for professional purposes and only with people professionally concerned with this information.

(12) Social workers engaged in evaluation or research shall ensure the anonymity or confidentiality of participants and of the data obtained from them. Social workers shall inform participants of any limits of confidentiality, the measures that will be taken to ensure confidentiality, and when any records containing research data will be destroyed.

(13) Social workers who report evaluation and research results shall protect participants' confidentiality by omitting identifying information unless proper consent has been obtained authorizing disclosure.

(14) Social workers shall report evaluation and research findings accurately. They shall not fabricate or falsify results and shall take steps to correct any errors later found in published data using standard publication methods.

(15) Social workers engaged in evaluation or research shall be alert to and avoid conflicts of interest and dual relationships with participants, shall inform participants when a real or potential conflict of interest arises, and shall take steps to resolve the issue in a manner that makes participants' interests primary.

(16) Social workers shall educate themselves, their students, and their colleagues about responsible research practices.

[16.63.16.12 NMAC - Rp, 16.63.16.12 NMAC, 4/24/06; A, 06/01/09]

### **16.63.16.13 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO THE BROADER SOCIETY:**

**A. Social welfare.** Social workers should promote the general welfare of society, from local to global levels, and the development of people, their communities, and their environments. Social workers should advocate for living conditions conducive to the fulfillment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.

**B. Public participation.** Social workers should facilitate informed participation by the public in shaping social policies and institutions.

**C. Public emergencies.** Social workers should provide appropriate professional services in public emergencies to the greatest extent possible.

**D. Social and political action.**

**(1)** Social workers should engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs and to develop fully. Social workers should be aware of the impact of the political arena on practice and should advocate for changes in policy and legislation to improve social conditions in order to meet basic human needs and promote social justice.

**(2)** Social workers should act to expand choice and opportunity for all people, with special regard for vulnerable, disadvantaged, oppressed, and exploited people and groups.

**(3)** Social workers should promote conditions that encourage respect for cultural and social diversity within the United States and globally. Social workers should promote policies and practices that demonstrate respect for difference, support the expansion of cultural knowledge and resources, advocate for programs and institutions that demonstrate cultural competence, and promote policies that safeguard the rights of and confirm equity and social justice for all people.

**(4)** Social workers should act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.

[16.63.16.13 NMAC - Rp, 16.63.16.13 NMAC, 4/24/06]

## **PART 17: TEMPORARY LICENSE**

### **16.63.17.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners P.O. Box 25101, Santa Fe, NM 87504.

[16.63.17.1 NMAC - N, 11/30/06]

### **16.63.17.2 SCOPE:**

All baccalaureate social workers, master social workers, and independent social workers.

[16.63.17.2 NMAC - N, 11/30/06]

### **16.63.17.3 STATUTORY AUTHORITY:**

These parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[16.63.17.3 NMAC - N, 11/30/06]

**16.63.17.4 DURATION:**

Permanent.

[16.63.17.4 NMAC - N, 11/30/06]

**16.63.17.5 EFFECTIVE DATE:**

November 30, 2006, unless a later date is cited at the end of a section.

[16.63.17.5 NMAC - N, 11/30/06]

**16.63.17.6 OBJECTIVE:**

To state the minimum requirements for a temporary license, the duration of the license.

[16.63.17.6 NMAC - N, 11/30/06]

**16.63.17.7 DEFINITIONS:**

[RESERVED]

**16.63.17.8 APPLICABILITY:**

A temporary license may be issued only when an applicant has submitted an application for licensure, provide documentation of passing the national licensing exam for the level of licensure sought and has not fulfilled or is unable to adequately documented the completion of one or more of the requirements for licensure specified in 16.63.6, 16.63.10 and 16.63.11 NMAC. The applicant must fulfill the requirements within six months or less.

[16.63.17.8 NMAC - N, 11/30/06]

**16.63.17.9 DURATION:**

Six months or fulfillment of the requirements which ever comes first. Only one temporary license will be issued for each level of licensure sought by the applicant, except in extenuation circumstances as defined in 16.63.17.10 NMAC.

[16.63.17.9 NMAC - N, 11/30/06]

**16.63.17.10 EXTENUATING CIRCUMSTANCES:**

A qualified temporary licensed applicant may apply for an extension of a temporary

license or the issuance of an additional temporary license if they were unable to fulfill the requirement due to extenuating circumstances; these extenuating circumstances are defined as; serious physician-verified illness; death in immediate family; and military service. The extenuating circumstances must be presented for the board's administrator's consideration on a case-by-case basis.

[16.63.17.10 NMAC - N, 11/30/06]

**16.63.17.11 FEE:**

The applicant shall pay a license fee as set forth in Part 8.

[16.63.17.11 NMAC - N, 11/30/06]

**PART 18: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

**16.63.18.1 ISSUING AGENCY:**

The New Mexico Board of Social Work Examiners.

[16.63.18.1 NMAC - Rp, 16.63.18.1 NMAC, 08/15/2023]

**16.63.18.2 SCOPE:**

The provisions of Part 18 apply to all applicants for expedited licensure.

[16.63.18.2 NMAC - Rp, 16.63.18.2 NMAC, 08/15/2023]

**16.63.18.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to and in accordance with the Social Work Practice Act, Subsection A of Section 61-31-8, 14-2-1, 61-31-19 NMSA 1978 and the Uniform Licensing Act, Section 61-1-31.1 NMSA 1978.

[16.63.18.3 NMAC - Rp, 16.63.18.3 NMAC, 08/15/2023]

**16.63.18.4 DURATION:**

Permanent.

[16.63.18.4 NMAC - Rp, 16.63.18.4 NMAC, 08/15/2023]

**16.63.18.5 EFFECTIVE DATE:**

August 15, 2023, unless a later date is cited at the end of a section.

[16.63.18.5 NMAC - Rp, 16.63.18.5 NMAC, 08/15/2023]

**16.63.18.6 OBJECTIVE:**

To promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.63.18.6 NMAC - Rp, 16.63.18.6 NMAC, 08/15/2023]

**16.63.18.7 DEFINITIONS:**

**A. "Eligible jurisdiction" means:**

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.63.18.8 NMAC; and

(2) any foreign country included in 16.63.18.8 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board pursuant to Section 61-31-13 NMSA 1978.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**E. "Licensing Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.63.18.7 NMAC - Rp, 16.63.18.7 NMAC, 08/15/2023]

**16.63.18.8 LIST OF APPROVED AND DISAPPROVED LICENSING JURISDICTIONS; REASONS FOR DISAPPROVAL:**

**A.** Applicants for licensure as a licensed bachelor social worker (lbsw) in the following states and territories of the United States or the District of Columbia shall not

be eligible for expedited licensure pursuant to Section 61-31-4.4 NMSA 1978 of the Social Work Practice Act:

(1) California, Colorado, Connecticut, Florida, Georgia, New York, Rhode Island, Vermont, and Washington on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate bachelor level social workers; and

(2) American Samoa, Louisiana, Massachusetts (licensed social worker associate), Nebraska (certified social worker), New Hampshire (licensed social worker associate 1 and 2), New Jersey, Ohio (registered social work assistant), Puerto Rico (licensed social worker), South Dakota (social work associate), the US Virgin Islands (social worker associate), on the grounds that education, experience, and examination requirements cannot be determined or are not consistent with New Mexico.

**B.** Approved jurisdictions for expedited licensure as a licensed bachelor social worker (lbsw), with the jurisdictions equivalent license in parentheses, are: Alabama (lbsw), Alaska (lbsw), Arizona (lbsw), Arkansas (licensed social worker), Delaware (lbsw), District of Columbia (licensed social work associate), Guam (lbsw), Hawaii (lbsw), Idaho (licensed social worker), Illinois (licensed social worker 2), Indiana (lbsw), Iowa (lbsw), Kansas (lbsw), Kentucky (licensed social worker), Maine (licensed social worker 1), Maryland (lbsw), Massachusetts (licensed social worker), Michigan (lbsw), Minnesota (licensed social worker), Mississippi (licensed social worker), Missouri (lbsw), Montana (lbsw), Nevada (social worker), New Hampshire (licensed social worker), North Carolina (certified social worker), North Dakota (lbsw), Northern Mariana Islands (lbsw), Ohio (licensed social worker), Oklahoma (licensed social work associate), Oregon (registered bachelor of social work), Pennsylvania (lbsw), South Carolina (lbsw), South Dakota (licensed social worker), Tennessee (lbsw), Texas (lbsw), US Virgin Islands (social worker 1 and 2), Utah (social worker 1 and 2), Virginia (lbsw), West Virginia (licensed social worker), Wisconsin (certified social worker), Wyoming (certified social worker).

**C.** Applicants licensed as a licensed master social worker (lmsw) in the following states and territories of the United States or the District of Columbia shall not be eligible for expedited licensure pursuant to Section 61-31-4.3 NMSA 1978 of the Social Work Practice Act:

(1) Nebraska, New Hampshire, Rhode Island, Washington, and Wyoming on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate master level social workers; and

(2) American Samoa, California (associate clinical social worker – asw), Florida (registered clinical social worker intern), Louisiana (certified social worker), Michigan (limited license master’s social worker), and Puerto Rico on the grounds that education, experience, and examination requirements cannot be determined or are not consistent with New Mexico.

**D.** Approved jurisdictions for expedited licensure as a licensed master social worker (lmsw), with the jurisdictions equivalent license in parentheses, are: Alabama (lmsw), Alaska (lmsw), Arizona (lmsw), Arkansas (lmsw), Colorado (licensed social worker), Connecticut (lmsw), Delaware (lmsw), District of Columbia (licensed graduate social work), Georgia (lmsw), Guam (lmsw), Hawaii (licensed social worker), Idaho (lmsw), Illinois (licensed social worker 1), Indiana (licensed social worker 1), Iowa (lmsw), Kansas (lmsw), Kentucky (certified social worker), Louisiana (lmsw), Maine (lmsw), Maryland (lmsw), Massachusetts (licensed certified social worker), Minnesota (licensed graduate social worker), Mississippi (lmsw), Missouri (lmsw), Montana (lmsw), Nevada (lmsw), New Jersey (licensed social worker), New York (lmsw), North Carolina (certified master social worker), North Dakota (lmsw), Northern Mariana Islands (lmsw), Ohio (licensed social worker), Oklahoma (lmsw), Oregon (lmsw), Pennsylvania (licensed social worker), South Carolina (lmsw), South Dakota (certified social worker), Tennessee (lmsw), Texas (lmsw), US Virgin Islands (certified social worker), Utah (certified social worker), Vermont (lmsw), Virginia (lmsw), West Virginia (licensed graduate social worker), Wisconsin (advanced practice social worker).

**E.** Applicants licensed as a licensed clinical social worker (lcswh) in the following states and territories of the United States or the District of Columbia shall not be eligible for expedited licensure pursuant to Section 61-31-4.2 NMSA 1978 of the Social Work Practice Act:

(1) Ohio and Puerto Rico on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate clinical social workers; and

(2) American Samoa, North Carolina (licensed clinical social worker associate), and Rhode Island (licensed clinical social worker), on the grounds that education, experience, and examination requirements cannot be determined or are not consistent with New Mexico.

**F.** Approved jurisdictions for expedited licensure as a licensed clinical social worker (lcswh), with the jurisdictions equivalent license in parentheses, are: Alabama (licensed independent clinical social worker), Alaska (lcswh), Arizona (lcswh), Arkansas (lcswh), California (lcswh), Colorado (lcswh), Connecticut (lcswh), Delaware (lcswh), District of Columbia (licensed independent clinical social work), Florida (lcswh), Georgia (lcswh), Guam (lcswh), Hawaii (lcswh), Idaho (lcswh), Illinois (licensed clinical social worker 1 and 2), Indiana (lcswh), Iowa (licensed independent social worker), Kansas (licensed specialist clinical social worker), Kentucky (lcswh), Louisiana (lcswh), Maine (licensed clinical social worker 1 and 2), Maryland (licensed certified social worker - clinical), Massachusetts (licensed independent clinical social worker), Michigan (licensed master social worker – clinical), Minnesota (licensed independent clinical social worker), Mississippi (lcswh), Missouri (lcswh), Montana (lcswh), Nebraska (licensed mental health practitioner and licensed independent mental health practitioner), Nevada (clinical social worker), New Hampshire (licensed independent clinical social worker), New Jersey (lcswh), New York (lcswh), North Carolina (lcswh), North Dakota (lcswh), Northern Mariana Islands (lcswh), Oklahoma (lcswh), Oregon (lcswh), Pennsylvania (lcswh), Rhode Island

(licensed independent clinical social worker), South Carolina (licensed independent social worker-cp), South Dakota (certified social worker private independent practice), Tennessee (lcsw), Texas (lcsw), Utah (lcsw), US Virgin Islands (certified independent social worker), Utah (lcsw), Vermont (licensed independent clinical social worker), Virginia (lcsw), Washington (licensed independent clinical social worker), West Virginia (licensed independent clinical social worker), Wisconsin (lcsw), and Wyoming (lcsw).

**G.** Applicants licensed as a licensed independent social worker (lisw) in the following states and territories of the United States or the District of Columbia shall not be eligible for expedited licensure pursuant to Section 61-31-4.1 NMSA 1978 of the Social Work Practice Act:

(1) Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Montana, New Hampshire, New Jersey, New York, North Dakota, Northern Mariana Islands, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, US Virgin Islands, Utah, Vermont, Virginia, and Wyoming on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate licensed independent social workers; and

(2) American Samoa on the grounds that education, experience, and examination requirements cannot be determined or are not consistent with New Mexico.

**H.** Approved jurisdictions for expedited licensure as a licensed independent social worker (lisw), with the jurisdictions equivalent license in parentheses, are: District of Columbia (lisw), Florida (certified master social worker), Maryland (licensed certified social worker), Michigan (licensed master social worker – macro), Minnesota (lisw), Missouri (licensed advanced macro social worker), Nebraska (certified master social worker), Nevada (independent social worker), North Carolina (certified social work manager), Ohio (lisw), Oklahoma (licensed social worker), South Carolina (licensed independent social worker-advanced practice), Tennessee (licensed advanced practice social worker), Texas (licensed master social worker – advanced practice), Washington (licensed advanced social worker), West Virginia (licensed certified social worker), and Wisconsin (certified independent social worker).

[16.63.18.8 NMAC - Rp, 16.63.18.8 NMAC, 08/15/2023]

#### **16.63.18.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

**[RESERVED]**

#### **16.63.18.10 EXPEDITED LICENSURE APPLICATION REQUIREMENTS:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 and Section 61-31-13 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form;
- (2) proof of a current license in good standing in an eligible jurisdiction as defined; and
- (3) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-31-17 NMSA 1978 and 16.63.13.9 NMAC:

- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.63.18.10 NMAC - Rp, 16.63.18.10 NMAC, 08/15/2023]

#### **16.63.18.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61.1.34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) A completed and signed application form;
- (2) proof of a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and
- (3) submission of the following documentation:
  - (a) for military service member: a copy of military orders;
  - (b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e) for veterans (retired or separated): proof of honorable discharge such as a copy

of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other

cause to deny the application pursuant to Section 61-31-17 NMSA 1978 and 16.63.13.9 NMAC:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.63.18.11 NMAC - Rp, 16.63.18.11 NMAC, 08/15/2023]

#### **16.63.18.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board and must be renewed on or before July 1 of each year, as

provided by 16.63.3.8 NMAC. Initial licenses, including expedited licenses, may be issued for a period greater than twelve months, but less than twenty-four months, in order to align the license expiration date with the board's renewal cycle.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the Association of Social Work Boards (ASWB) examination for the appropriate license level, the licensee shall be required to pass the examination prior to renewing the license.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.63.18.12 NMAC - Rp, 16.63.18.12 NMAC, 08/15/2023]

## **PART 19: IMPAIRED SOCIAL WORKER**

### **16.63.19.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87504.

[9/8/96; 16.63.19.1 NMAC - Rn, 16 NMAC 63.19.1, 06/19/02]

### **16.63.19.2 SCOPE:**

All Baccalaureate Social Workers, Master Social Workers, and Independent Social Workers.

[9/8/96; 16.63.19.2 NMAC - Rn, 16 NMAC 63.19.2, 06/19/02]

### **16.63.19.3 STATUTORY AUTHORITY:**

These Parts are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/8/96; 16.63.19.3 NMAC - Rn, 16 NMAC 63.19.3, 06/19/02]

### **16.63.19.4 DURATION:**

Permanent.

[9/8/96; 16.63.19.4 NMAC - Rn, 16 NMAC 63.19.4, 06/19/02]

### **16.63.19.5 EFFECTIVE DATE:**

June 22, 1992, unless a different date is cited at the end of a section.

[9/8/96; 16.63.19.5 NMAC – Rn & A, 16 NMAC 63.19.5, 06/19/02]

**16.63.19.6 OBJECTIVE:**

To inform the licensees how impairment is determined, the process involved, what action may be taken, and the reinstatement requirements.

[9/8/96; 16.63.19.6 NMAC - Rn, 16 NMAC 63.19.6, 06/19/02]

**16.63.19.7 DEFINITIONS:**

**[RESERVED]**

**16.63.19.8 DETERMINATION OF IMPAIRMENT:**

A. Complaints will be reviewed in accordance with policies and procedures established by the Board.

If the complaint committee or the Board has reasonable cause to believe that a licensed social worker is unable to practice with reasonable skill and safety because of a mental disorder or habitual or excessive use of a controlled substance or alcohol, the committee or the Board shall report those findings and the Board shall cause an examination of the social worker to be made.

B. The Board shall appoint one or more people to evaluate the social worker in accordance with NMSA 1978 Section 61-31-19.

(1) The social worker shall bear all costs of the evaluation.

(2) The social worker shall sign all necessary releases and authorizations for release of medical or psychological records for the evaluator(s) to report to the Board.

(3) The evaluator(s) shall order the social worker to appear before the evaluator(s) for hearing or evaluation and shall give the social worker ten (10) days notice of the time and place of the evaluation/hearing.

(4) If the evaluator(s) determine a mental or physical examination is necessary, the evaluator(s) shall order the social worker to submit to such an examination.

(5) Any social worker who submits to diagnostic mental or physical examinations as ordered by the evaluator(s) shall have a right to designate another evaluator to be present at any examination and to make an independent report to the Board.

(6) Failure of the social worker to comply with any requests of the evaluator(s) including appearing for hearing or submitting to medical or physical evaluations shall be reported directly to the Board and shall be grounds for immediate and summary suspension of the social worker's license by the Board followed by proceedings initiated under the Uniform Licensing Act.

(7) The evaluator(s) shall report findings and recommendations to the Board.

C. The Board shall review the findings and recommendations of the evaluator(s). The Board may accept or reject the recommendations of the evaluation or may refer the matter back to the evaluator(s) for further examination and report.

D. Upon receipt of an evaluation indicating impairment of the social worker, the Board shall appoint an advisory committee. The advisory committee will review the evaluator(s) report and other relevant information and will develop and submit to the Board recommendation regarding the social worker's amenability to treatment and rehabilitation which will include a written treatment plan. The advisory committee will also consider any voluntarily submitted treatment plan and report it to the Board. In its report the advisory committee shall state its reasons for participation in the approved treatment plan and shall state any conditions for continued treatment or release from the program.

E. Upon receipt of the advisory committee's report and recommendations, the Board may place conditions and stipulations on the social worker's license reflecting the advisory committee's recommendations or any other conditions the Board deems appropriate. The conditions and/or stipulations will be provided in written format.

F. Any social worker who does not agree to the conditions and/or stipulations set forth pursuant to subsection E of 16.63.19.8 NMAC above, shall be entitled to a hearing before the Board in accordance with the Uniform Licensing Act.

G. Any social worker participating in a treatment program shall enter into a contract with the Board as a condition of participation in the Impaired Social Worker Program.

H. The advisory committee shall receive reports from the various treatment providers and shall submit a report to the Board on at least a quarterly basis.

I. The advisory committee shall report all violations of the treatment program rules, regulations and policies to the Board within five (5) days.

J. The advisory committee shall report statistical information to the Board including but not limited to:

- (1) names of social workers in treatment;
- (2) a description of the treatment program;

- (3) progress reports;
- (4) social worker's compliance with financial obligations;
- (5) attendance reports (of Alcoholics Anonymous, counseling sessions, etc.);
- (6) lab reports; and
- (7) any other reports requested by the Board.

[6/22/92; 16.63.19.8 NMAC - Rn, 16 NMAC 63.19.8, 06/19/02]

#### **16.63.19.9 SELF REPORTING:**

A social worker may request in writing to the Board a restriction of the social worker's license. The Board may grant such requests for restriction and shall have authority if deemed appropriate to attach conditions to the license of the social worker within specified limitations. The Board may waive commencement of any proceedings under this Part.

[6/22/92; 16.63.19.9 NMAC - Rn, 16 NMAC 63.19.9, 06/19/02]

#### **16.63.19.10 REINSTATEMENT:**

A social worker whose license has been restricted under this Part, voluntarily or by action of the Board shall have the right, at reasonable intervals, to petition for reinstatement of the license and to demonstrate that the social worker can resume the competent practice of social work with reasonable skill and safety to clients. Such petitions shall be in writing to the Board.

A. Action by the Board on such petitions shall be initiated by referral to an evaluator(s) in accordance with subsection B of 16.63.19.8 NMAC.

B. The Board may, upon written recommendation of the advisory committee, request final evaluation of the social worker. Upon receipt of a positive report by the evaluator(s) and agreement of the advisory committee, the social worker may be discharged from the Impaired Social Worker Program.

[6/22/92; 16.63.19.10 NMAC - Rn, 16 NMAC 63.19.10, 06/19/02]

## **PART 20: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

#### **16.63.20.1 ISSUING AGENCY:**

Regulation and Licensing Department, Board of Social Work Examiners, P.O. Box 25101, Santa Fe, NM 87505.

[9/11/96; 16.63.20.1 NMAC - Rn, 16 NMAC 63.20.1, 06/19/02]

**16.63.20.2 SCOPE:**

All Baccalaureate Social Workers, Master Social Workers, and Independent Social Workers.

[9/11/96; 16.63.20.2 NMAC - Rn, 16 NMAC 63.20.2, 06/19/02]

**16.63.20.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Social Work Practice Act, Section 61-31-8A, 14-2-1, 61-31-19 NMSA 1978.

[9/11/96; 16.63.20.3 NMAC - Rn, 16 NMAC 63.20.3, 06/19/02]

**16.63.20.4 DURATION:**

Permanent.

[9/11/96; 16.63.20.4 NMAC - Rn, 16 NMAC 63.20.4, 06/19/02]

**16.63.20.5 EFFECTIVE DATE:**

November 2, 1995, unless a different date is cited at the end of a section.

[9/11/96; 16.63.20.5 NMAC – Rn & A, 16 NMAC 63.20.5, 06/19/02]

**16.63.20.6 OBJECTIVE:**

This part establishes the requirements and possible penalties for non-compliance of the Parental Responsibility Act.

[11/2/95; 16.63.20.6 NMAC - Rn, 16 NMAC 63.20.6, 06/19/02]

**16.63.20.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this Section. As used in this Section:

A. "HSD" means the New Mexico Human Services Department;

B. "Statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and

C. "Statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and an order for support.

[11/2/95; 16.63.20.7 NMAC - Rn, 16 NMAC 63.20.7, 06/19/02]

**16.63.20.8 AUTHORITY:**

The board adopts this Section pursuant to the Parental Responsibility Act (Ch.. 25, Laws of 1995).

[11/2/95; 16.63.20.8 NMAC - Rn, 16 NMAC 63.20.8, 06/19/02]

**16.63.20.9 DISCIPLINARY ACTION:**

If an applicant or licensee is not in compliance with a judgment and order for support, the board:

- A. shall deny an application for a license;
- B. shall deny the renewal of a license; and
- C. has grounds for suspension or revocation of the license.

[11/2/95; 16.63.20.9 NMAC - Rn, 16 NMAC 63.20.9, 06/19/02]

**16.63.20.10 CERTIFIED LIST:**

Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board licensees and applicants. Upon the later receipt of an application for license or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

[11/2/95; 16.63.20.10 NMAC - Rn, 16 NMAC 63.20.10, 06/19/02]

**16.63.20.11 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the Board shall:

- A. commence a formal proceeding under 16.63.20.9 NMAC to take the appropriate action under subsection A or B of 16.63.20.9 NMAC

B. for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed thirty (30) days. If the licensee fails to provide this statement, the board shall commence a formal proceeding under subsection C of 16.63.20.9 NMAC.

[11/2/95; 16.63.20.11 NMAC - Rn, 16 NMAC 63.20.11, 06/19/02]

#### **16.63.20.12 NOTICE OF CONTEMPLATED ACTION:**

Prior to taking any action specified in 16.63.20.9 NMAC, the board shall serve upon the applicant or licensee a written notice stating that:

A. the board has grounds to take such action, and that the board shall take such action unless the licensee or applicant:

(1) mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the board, within thirty (30) days of the date of the notice, with a Statement of Compliance from HSD;

B. if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD Child Support Enforcement Division.

[11/2/95; 16.63.20.12 NMAC - Rn, 16 NMAC 63.20.12, 06/19/02]

#### **16.63.20.13 EVIDENCE OF PROOF:**

In any hearing under this Section, relevant evidence is limited to the following:

A. A statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under 16.63.20.9 NMAC of this section, unless:

B. The applicant or licensee provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this Section.

[11/2/95; 16.63.20.13 NMAC - Rn, 16 NMAC 63.20.13, 06/19/02]

#### **16.63.20.14 ORDER:**

When a disciplinary action is taken under this Section solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent

statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licensees.

[11/2/95; 16.63.20.14 NMAC - Rn, 16 NMAC 63.20.14, 06/19/02]

#### **16.63.20.15 PROCEDURES:**

Proceedings under this Section shall be governed by the Uniform Licensing Act, Section 61-1-1 et seq.

[11/2/95; 16.63.20.15 NMAC - Rn, 16 NMAC 63.20.15, 06/19/02]

## **CHAPTER 64: FUNERAL HOMES AND DISPOSERS**

### **PART 1 : GENERAL PROVISIONS**

#### **16.64.1.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6/15/1996, 1/22/1999; 16.64.1.1 NMAC - Rn & A, 16 NMAC 64.1.1, 9/15/2001; A, 8/8/2012]

#### **16.64.1.2 SCOPE:**

16.64.1 NMAC applies to the board, licensees, applicants for licensure, and the general public.

[6/15/1996; 16.64.1.2 NMAC - Rn & A, 16 NMAC 64.1.2, 9/15/2001]

#### **16.64.1.3 STATUTORY AUTHORITY:**

16.64.1 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-5, 61-32-6, 61-32-7, and 61-32-12, the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978, and the Open Meeting Act, Section 10-15-1 et seq. NMSA 1978.

[6/15/1996; 16.64.1.3 NMAC - Rn & A, 16 NMAC 64.1.3, 9/15/2001; A, 8/8/2012]

#### **16.64.1.4 DURATION:**

Permanent.

[6/15/1996; 16.64.1.4 NMAC - Rn, 16 NMAC 64.1.4, 9/15/2001]

#### **16.64.1.5 EFFECTIVE DATE:**

September 26, 1993, unless a different date is cited at the end of a section.

[6/15/1996; 16.64.1.5 NMAC - Rn & A, 16 NMAC 64.1.5, 9/15/2001]

**16.64.1.6 OBJECTIVE:**

16.64.1 NMAC is to establish the requirements for board meetings, display of certificates of licensure, inspection of public records, and minimum requirements for documents and contracts.

[6/15/1996; 16.64.1.6 NMAC - Rn & A, 16 NMAC 64.1.6, 9/15/2001]

**16.64.1.7 DEFINITIONS:**

- A. **"board"** means the board of funeral services;
- B. **"committal service"** means a service at a place of interment or entombment that follows a funeral conducted at another location;
- C. **"conspicuously displayed"** means certificate of licensure and inspection results notice are collectively posted in a location where a member of the general public within the licensee's place of business will be able to observe and read the certificate of licensure and inspection results notice.
- D. **"custody"** means the right to make all decisions, consistent with applicable laws, regarding the handling of a dead body, including, but not limited to, possession, at-need funeral arrangements, final disposition and disinterment.
- E. **"cremated remains"** means the remains of a dead human body which has been reduced by direct flame to a residue, which includes bone fragments;
- F. **"cremation"** means the reduction of a dead human body by direct flame to a residue, which includes bone fragments;
- G. **"crematory"** means every place or premises that is devoted to or used for cremation and pulverization of the cremated remains;
- H. **"crematory authority"** means the individual who is ultimately responsible for the operation of a crematory;
- I. **"department"** means the regulation and licensing department;
- J. **"direct disposer"** means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act;

**K. "direct disposition"** means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

**L. "direct supervision"** means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;

**M. "disposition"** means the final disposal of a dead human body, whether it be by earth interment, aboveground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;

**N. "embalmer"** means a person licensed to engage in embalming and preparing a dead human for funeral service at a funeral establishment that is licensed pursuant to the funeral service act;

**O. "embalming"** means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

**P. "ennichement"** means interment of cremated remains in a niche in a columbarium, whether in an urn or not;

**Q. "entombment"** means interment of a casketed body or cremated remains in a crypt in a mausoleum;

**R. "establishment"** means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

**S. "funeral"** means a period following death in which there is an organized, purposeful, time-limited, group centered ceremony or rite, whether religious or not, with the body of the deceased present;

**T. "funeral arranger"** means a person licensed to engage in arrangements and directing of funeral services at a funeral establishment that is licensed pursuant to the Funeral Services Act;

**U. "funeral merchandise"** means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or cremated remains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

**V. "funeral service intern"** means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

**W. "funeral service intern – direct supervision"** means a licensed funeral service intern who is under direct supervision and instruction of a licensed funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

**X. "funeral service intern – general supervision"** means a licensed funeral service intern who is under general supervision and instruction of a licensed funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

**Y. "funeral service practitioner"** means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

**Z. "funeral services"** means those immediate post-death activities related to a dead human body and its care and disposition, whether with or without rites or ceremonies; but 'funeral services' does not include disposition of the body by a school of medicine following medical study;

**AA. "general supervision"** means that the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained but is available for advice and assistance;

**BB. "graveside service"** means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

**CC. "jurisprudence examination"** means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

**DD. "licensee in charge"** means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees; or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

**EE. "make arrangements"** means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

**FF. "memorial service"** means a gathering of persons for recognition of a death without the presence of the body of the deceased;

**GG. "practice of funeral service"** means those activities allowed under the Funeral Services Act by the funeral service practitioner or funeral service intern; and

**HH. "pulverization"** means the process that reduces cremated remains to a granular substance.

**II. "retort"** means a vessel or chamber in which substances are distilled or decomposed by heat.

[6/15/1996; 16.64.1.7 NMAC - Rn & A, 16 NMAC 64.1.7, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

#### **16.64.1.8 GENERAL PROVISIONS:**

**A.** All certificates of licensure, and renewals thereof, issued by the board shall bear the license number, with a different series for each classification of license.

**B.** The current license, or renewal thereof, of each establishment and crematory and inspection results notice shall be conspicuously displayed in the establishment or crematory, together with the current license, or renewal thereof, of each licensee. The licensee must carry on their person the state issued wallet card license.

**C.** Any correspondence from the board will be mailed to a licensee at the last address shown in board records. It shall be incumbent on each licensee to notify the board of any change of address.

[2/7/1976...9/26/1993; 16.64.1.8 NMAC - Rn & A, 16 NMAC 64.1.8, 9/15/2001; A, 8/8/2012]

#### **16.64.1.9 BOARD MEETINGS:**

The board operates in compliance with the Open Meetings Act.

**A.** Election of officers shall be held at the first regular board meeting of each fiscal year, and may be held at any other regularly scheduled meeting of the board, or special or emergency meeting called for that purpose.

**B.** Any member of the board who, after proper notice, fails to attend three consecutive meetings of the board shall be recommended for removal as a board member unless such absences are considered excused. Absences will be considered excused if notice by the board member has been given in advance of any meeting to the chairman or board administrator, and the chairman or board administrator

announces at the meeting that notice by the board member was given in advance of his or her inability to attend the meeting.

[2/7/1976...9/26/1993, 1/22/1999; 16.64.1.9 NMAC - Rn & A, 16 NMAC 64.1.9, 9/15/2001]

#### **16.64.1.10 ADVERTISING:**

All advertising including but not limited to; signs, newspaper listings, business cards, television, radio and internet advertisements are controlled by an entity licensed by the New Mexico Board of Funeral Services and must operate as follows:

- A.** The licensed name of the entity must appear on the advertisement;
- B.** All advertising entities must be licensed by the New Mexico Board of Funeral Services and the establishment license number must appear on the contact information;
- C.** The entities physical address and phone number must be displayed on the contact information;
- D.** Irrespective of the name on the website, provisions must be made on an establishments website so the individual who wishes to enter into a funeral-related contract or transaction, must *not* be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the New Mexico Board of Funeral Services;
- E.** No funeral establishment, commercial establishment, crematory, or direct disposer shall advertise in a manner that is false, misleading, or deceptive;
- F.** A website belonging to a crematory society or funeral service society shall be linked with a licensed funeral establishment. The licensed funeral establishment and its location shall be provided on the website or advertising;

[9/27/1990...9/26/1993, 1/22/1999; 16.64.1.10 NMAC - Rn & A, 16 NMAC 64.1.10, 9/15/2001; A, 11/1/2019]

#### **16.64.1.11 DOCUMENTS AND CONTRACTS:**

**A.** All official documents and contracts of any establishment shall bear the signature of the licensee signing the document or contract as the representative of the establishment, together with the licensee's license classification and license number, and the date the document or contract was signed by the licensees. The following classification abbreviations shall be allowed:

- (1)** FSP - funeral service practitioner;

- (2) FSI - funeral service intern (– general);
- (3) Arranger;
- (4) Embalmer;
- (5) DD - direct disposer.

**B.** Each establishment and crematory shall maintain copies of all official documents and contracts for funeral, direct disposition, cremation, and any other services rendered for services that fall within the scope of the license held pursuant to Section 61-32-1 et seq NMSA 1978., documents shall include, but are not limited to:

- (1) contracts;
- (2) authorizations; which shall include names, dates and times of authorization as required by the authorizing agents;
- (3) permits;
- (4) death certificates;
- (5) embalming case reports; and
- (6) cremations.

**C.** Each establishment shall maintain documentation with dates and times of all services rendered by the establishment, or on behalf of the establishment by the crematory or other subcontractors, up to and including final disposition.

**D.** Each establishment shall maintain copies of all official documents and contracts outlined in 16.16.1.11 NMAC at the establishment for a period of not less than seven years, and shall make such documents and contracts available for inspection by the board or it's designee.

[5/15/1992...9/26/1993; 16.64.1.11 NMAC - Rn & A, 16 NMAC 64.1.11, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

#### **16.64.1.12 TELEPHONE CONFERENCES:**

Pursuant to the provisions of the Open Meetings Act, if it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through telephone conference. Each member participating by telephone conference must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[1/22/1999; 16.64.1.12 NMAC - Rn & A, 16 NMAC 64.1.12, 9/15/2001]

## **PART 2: FEES**

### **16.64.2.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6/15/1996, 1/22/1999; 16.64.2.1 NMAC - Rn & A, 16 NMAC 64.2.1, 9/15/2001; A, 8/8/2012]

### **16.64.2.2 SCOPE:**

16.64.2 NMAC applies to licensees, applicants for licensure, and the general public.

[6/15/1996; 16.64.2.2 NMAC - Rn, 16 NMAC 64.2.2, 9/15/2001]

### **16.64.2.3 STATUTORY AUTHORITY:**

16.64.2 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-9, 61-32-11, 61-32-21, 61-32-22 and 61-32-23.

[6/15/1996, 16.64.2.3 NMAC - Rn, 16 NMAC 64.2.3, 9/15/2001; A, 8/8/2012]

### **16.64.2.4 DURATION:**

Permanent.

[6/15/1996; 16.64.2.4 NMAC - Rn, 16 NMAC 64.2.4, 9/15/2001]

### **16.64.2.5 EFFECTIVE DATE:**

January 22, 1999, unless a different date is cited at the end of a section.

[6/15/1996, 1/22/1999; 16.64.2.5 NMAC - Rn & A, 16 NMAC 64.2.5, 9/15/2001]

### **16.64.2.6 OBJECTIVE:**

16.64.2 NMAC is to establish the fee schedule needed to generate sufficient revenues required to carry out the board's administrative functions.

[6/15/1996; 16.64.2.6 NMAC - Rn, 16 NMAC 64.2.6, 9/15/2001]

### **16.64.2.7 DEFINITIONS:**

**[RESERVED]**

[6/15/1996; 16.64.2.7 NMAC - Rn, 16 NMAC 64.2.7, 9/15/2001]

**16.64.2.8 FEE SCHEDULE:**

The following schedule shall be applicable for fees collected by the board under the Funeral Services Act:

**A. Funeral service practitioner license:**

(1)	application	\$50.00
(2)	licensure	\$150.00
(3)	renewal	\$150.00
(4)	penalty for late renewal	\$75.00

**B. Embalmer:**

(1)	application	\$50.00
(2)	licensure	\$150.00
(3)	renewal	\$150.00
(4)	penalty for late renewal	\$75.00

**C. Funeral Arranger:**

(1)	application	\$50.00
(2)	licensure	\$150.00
(3)	renewal	\$150.00
(4)	penalty for late renewal	\$75.00

**D. Funeral service intern license - direct supervision:**

(1)	Directing and arranging category:	
(a)	application	\$50.00
(b)	licensure	\$150.00
(c)	renewal	\$150.00

(d) penalty for late renewal \$75.00

**(2) Preparation/embalming category:**

(a) application \$50.00

(b) licensure \$150.00

(c) renewal \$150.00

(d) penalty for late renewal \$75.00

**E. Funeral service intern license - general supervision:**

**(1) Directing and arranging category:**

(a) application \$50.00

(b) licensure \$150.00

(c) renewal \$150.00

(d) penalty for late renewal \$75.00

**(2) Preparation/embalming category:**

(a) application \$50.00

(b) licensure \$150.00

(c) renewal \$150.00

(d) penalty for late renewal \$75.00

**F. Direct disposer license:**

(1) application \$50.00

(2) licensure \$150.00

(3) renewal \$150.00

(4) penalty for late renewal \$75.00

**G. Establishment license:**

- (1) application \$50.00
- (2) licensure \$350.00
- (3) renewal \$400.00
- (4) penalty for late renewal \$75.00

**H. Crematory license:**

- (1) application \$50.00
- (2) licensure \$350.00
- (3) renewal \$400.00
- (4) penalty for late renewal. \$75.00

**I. Establishments and crematories - re-inspection: Second non-compliance penalty (resulting from the first non-compliance. Third non-compliance, resulting from the second non-compliance, will be referred to the board with a recommendation for the issuance of a notice of contemplated action) \$500.00**

**J. Administrative fees:**

- (1) copying costs \$0.50/page
- (2) lists of licensees \$75.00
- (3) mailing labels of licensees \$25.00
- (4) return check \$100.00
- (5) reinstatement from inactive status (in addition to the renewal fee) \$175.00
- (6) Duplicate/replacement \$25.00
- (7) other (at the discretion of the board or its designee).

**K. Criminal background fee fees as currently charged by department of public safety.**

**L. The only fee that may be refunded is the licensure fee, as subscribed in each subsection of 16.64.2 NMAC, only if a temporary license, if applicable, has not been**

issued. The board office will refund any amount due through the state of New Mexico refund process.

[11/21/1986...9/26/1993; 1/22/1999; 16.64.2.8 NMAC - Rn & A, 16 NMAC 64.2.8, 9/15/2001; A, 4/2/2010; A, 8/8/2012; A, 11/1/2019]

### **PART 3: REQUIREMENTS FOR LICENSURE**

#### **16.64.3.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6/15/1996, 1/22/1999; 16.64.3.1 NMAC - Rn & A, 16 NMAC 64.3.1, 9/15/2001; A, 8/8/2012]

#### **16.64.3.2 SCOPE:**

16.64.3 NMAC applies to all applicants for licensure.

[6/15/1996; 16.64.3.2 NMAC - Rn, 16 NMAC 64.3.2, 9/15/2001]

#### **16.64.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

[6/15/1996; 16.64.3.3 NMAC - Rn, 16 NMAC 64.3.3, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

#### **16.64.3.4 DURATION:**

Permanent.

[6/15/1996; 16.64.3.4 NMAC - Rn, 16 NMAC 64.3.4, 9/15/2001]

#### **16.64.3.5 EFFECTIVE DATE:**

September 26, 1993, unless a different date is cited at the end of a section.

[6/15/1996; 16.64.3.5 NMAC - Rn & A, 16 NMAC 64.3.5, 9/15/2001]

#### **16.64.3.6 OBJECTIVE:**

16.64.3 NMAC establishes the requirements for professional licensure under the New Mexico Funeral Services Act.

[6/15/1996; 16.64.3.6 NMAC - Rn, 16 NMAC 64.3.6, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

### **16.64.3.7 DEFINITIONS:**

**A. "Accredited college or university"** means an institution that was accredited by the American board of funeral service education (ABFSE) at the time of the applicant's graduation or completion of the required funeral service education courses.

### **B. [RESERVED]**

[6/15/1996; 16.64.3.7 NMAC - Rn & A, 16 NMAC 64.3.7, 9/15/2001; A, 8/8/2012; A, 10/6/2012, A, 12/28/2021]

### **16.64.3.8 APPLICATIONS:**

**A.** An applicant applying for a funeral service intern license must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;
- (4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;
- (5) submit satisfactory proof of employment and proof of supervision;
- (6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;
- (7) submit a release of information form directly to the Department of public safety with fees as required by the Department of public safety; and
- (8) provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

**B.** An applicant applying for a direct disposer license in the state of New Mexico must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;

**(4)** successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

**(5)** submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

**(6)** submit a release of information form directly to the Department of public safety with fees as required by the Department of public safety; and

**(7)** provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

**C.** An applicant applying for an embalming license in the state of New Mexico must:

**(1)** submit a completed application form supplied by the board office;

**(2)** pay applicable fees as set forth in 16.64.2.8 NMAC;

**(3)** submit satisfactory evidence that the applicant is at least 18 years of age;

**(4)** submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

**(5)** submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

**(6)** submit satisfactory evidence that the applicant has passed the science section of the national board examination;

**(7)** successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

**(8)** submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and

**(9)** provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

**D.** An Applicant applying for a funeral arranger license in the state of New Mexico must:

- (1)** submit a completed application form supplied by the board office;
- (2)** pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3)** submit satisfactory evidence that the applicant is at least 18 years of age;
- (4)** submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in making of at least 50 funeral arrangements, and the directing of at least 50 funerals;
- (5)** submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;
- (6)** submit satisfactory evidence that the applicant has passed the arts section of the national board examination;
- (7)** successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;
- (8)** submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and
- (9)** provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

**E.** An applicant applying for a funeral service practitioner license must:

- (1)** submit a completed application form supplied by the board office;
- (2)** pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3)** submit satisfactory evidence that the applicant is at least 18 years of age;
- (4)** submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than 12 months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in embalming at least 50 bodies, making of at least 50 funeral arrangements, and the directing of at least 50 funerals;

**(5)** submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least 60 semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;

**(6)** submit satisfactory evidence that the applicant has passed both sections of the national board examination;

**(7)** successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

**(8)** submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and

**(9)** provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC.

**F.** An applicant applying for an embalmer, funeral arranger or funeral practitioner license based on credentials from another state must:

**(1)** submit a completed application form supplied by the board office;

**(2)** pay applicable fees as set forth in 16.64.2.8 NMAC;

**(3)** submit a verification of licensure and good standing;

**(4)** submit satisfactory evidence that the applicant has obtained an embalmer, funeral arranger or funeral practitioner license or one of the license equivalents, in a state or jurisdiction with equal or greater requirements than initial licensure in New Mexico;

**(5)** submit satisfactory evidence that the applicant has passed the national board examination;

**(6)** successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;

**(7)** submit a release of information form directly to the department of public safety with fees as required by the department of public safety; and

**(8)** provide proof of any disqualifying criminal convictions as defined in 16.64.11.14 NMAC;

**G.** The board, in its sole discretion, may require an applicant for licensure to present whatever evidence or affidavits as it deems necessary to establish that the applicant is qualified for licensure.

**H.** The board may require applicants for licensure to personally appear before the board at the time the application is scheduled to be considered.

**I.** The burden of knowing and complying with the requirements necessary for licensure rests entirely on the applicant.

**J.** Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

**(1)** funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five years prior to application; and

**(2)** funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five years.

**K.** If the application for licensure is deemed to be incomplete when 12 months has elapsed from the date stamped on the application or document the application and documents will be deemed null and void and any fees paid will be forfeited. Application and documents for licensure submitted to the board will be considered filed as of the date stamped on the application or documents by the board office, which shall be the date received by the board.

[2/7/1976...6/15/1996, 1/22/1999; 16.64.3.8 NMAC - Rn & A, 16 NMAC 64.3.8, 9/15/2001; A, 04/02/2010; A, 10/6/2012; A, 11/1/2019; A, 12/28/2021]

#### **16.64.3.9 [RESERVED]**

[5/15/1992...9/26/1996; 16.64.3.9 NMAC - Rn & A, 16 NMAC 64.3.9, 9/15/2001; Repealed, 8/8/2012]

#### **16.64.3.10 PROVISIONS FOR EMERGENCY LICENSURE:**

**A.** Funeral service practitioners currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of funeral services a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) requirements have been met as set forth in 16.64.3.8 NMAC, 16.64.3.9 NMAC, 16.64.5.9 NMAC, 16.64.6.8 NMAC, 16.64.6.9 NMAC and 16.64.6.10 NMAC.

(3) applicant shall provide a sworn affidavit that provides the name, address, years of employment and supervisors name;

(4) sworn affidavit that the applicant was personally and professionally affected by the disaster;

(5) verification of previous employment will be accepted from co-worker when it is impossible to obtain it from the employer;

(6) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.64.3 NMAC.

**B.** The board may waive the application fee of \$50.00, licensure fee of \$150.00 only, but not the \$50.00 examination fee.

**C.** The board may waive the specific forms required under Subsection A of 16.64.3.8 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

**D.** Emergency provisional license shall expire four months from date of issue. Application for initial license shall be made on or before June 30, 2007 following the date of issue of the emergency provisional license.

**E.** The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the initial license.

[16.64.3.10 NMAC - N/E, 11/10/2005; A, 8/8/2012]

#### **16.64.3.11 TERMINATION OF EMERGENCY LICENSE:**

**A.** The emergency license shall terminate upon the following circumstances:

(1) the issuance of an initial license under section 16.64.3 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit or misrepresentation in procuring or attempting to procure a license under this section.

**B.** Termination of an emergency license shall not preclude application for permanent licensure.

[16.64.3.11 NMAC - N/E, 11/10/2005]

## **PART 4: REQUIREMENTS FOR ESTABLISHMENTS AND CREMATORIES**

### **16.64.4.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6/15/1996, 1/22/1999; 16.64.4.1 NMAC - Rn & A, 16 NMAC 64.4.1, 9/15/2001; A, 8/8/2012]

### **16.64.4.2 SCOPE:**

16.64.4 NMAC applies to all licensees and applicants for establishment and crematory licensure.

[6/15/1996; 16.64.4.2 NMAC - Rn, 16 NMAC 64.4.2, 9/15/2001]

### **16.64.4.3 STATUTORY AUTHORITY:**

16.64.4 NMAC is adopted pursuant to the Funeral Services Act, Sections 61-32-2, 61-32-4, 61-32-6, 61-32-7, 61-32-8, 61-32-11, 61-32-13, 61-32-18, 61-32-20 and 61-32-21 NMSA 1978.

[6/15/1996; 16.64.4.3 NMAC - Rn, 16 NMAC 64.4.3, 9/15/2001; A, 8/8/2012]

### **16.64.4.4 DURATION:**

Permanent.

[6/15/96; 16.64.4.4 NMAC - Rn, 16 NMAC 64.4.4, 9/15/2001]

### **16.64.4.5 EFFECTIVE DATE:**

September 26, 1993, unless a different date is cited at the end of a section.

[6/15/1996; 16.64.4.5 NMAC - Rn & A, 16 NMAC 64.4.5, 9/15/2001]

### **16.64.4.6 OBJECTIVE:**

16.64.4 NMAC is to establish the minimum requirements for establishments and crematories, separate establishments, changes of establishment and crematory licenses and refrigeration of dead human bodies.

[6/15/1996; 16.64.4.6 NMAC - Rn, 16 NMAC 64.4.6, 9/15/2001]

**16.64.4.7 DEFINITIONS:**

**[RESERVED]**

[6/15/1996; 16.64.4.7 NMAC - Rn, 16 NMAC 64.4.7, 9/15/2001]

**16.64.4.8 GENERAL PROVISIONS:**

The following requirements pertain to all establishments and crematories:

**A.** The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable federal, state and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.

**B.** The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable state and local statutes, rules, ordinances and zoning provisions, and shall be in clean condition and good repair at all times.

**C.** There shall be some identification visible from the street identifying the name of the establishment as licensed by the board; provided, however, that crematories shall not be required to have visible identification.

**D.** Within this state there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the Funeral Services Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

[2/7/1976...6/15/1996; 16.64.4.8 NMAC - Rn & A, 16 NMAC 64.4.8, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

**16.64.4.9 MINIMUM REQUIREMENTS OF ESTABLISHMENTS:**

**A.** To be licensed by the board, each funeral services establishment shall have and maintain the following minimum requirements:

**(1)** a chapel/room specifically used for gatherings, rituals and ceremonies, which shall be at least 600 square feet (inside-wall-to-inside-wall) in size, and shall:

**(a)** have the capacity for seating not less than 60 persons and for the proper display of a casket containing the deceased;

**(b)** have good ventilation;

**(c)** be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and

**(2)** a casket display room which shall be not less than 450 square feet (inside-wall-to-inside-wall) in size and shall:

**(a)** contain burial caskets or a range of models and prices with not less than 12 different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and

**(b)** be adequately illuminated; and

**(c)** any rental casket considered for internment or cremation services shall have written disclosure as previously used merchandise; consent form shall be provided and signed by the surviving spouse or next of kin; and

**(3)** a preparation room which shall be not less than 150 square feet (inside-wall-to-inside-wall) in size and shall:

**(a)** be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

**(b)** be equipped with necessary drainage, lighting and ventilation;

**(c)** be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation including running hot and cold water, embalming table, head/arm/foot block, embalming machine, aspirator, arterial tubes, trocar with hose, cavity fluid injector, metal drain tubes or spring forceps, aneurysm needles/hooks, scissors, vascular clamps/locking forceps, hypo treatment needle, nasal aspirator, scalpel with sufficient blades, suture needles and suture thread, cotton, sufficient trocar buttons with applicator, razor, cosmetics, sealing powder, hardening compound, arterial and cavity fluid; and

**(d)** be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

**B.** To be licensed by the board, each commercial establishment shall have and maintain the following minimum requirements:

**(1)** a preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC; and

**(2)** an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and

**(3)** commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC, provided the licensee in charge certifies to the board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the Funeral Services Act.

**C.** To be licensed by the board, each direct disposition establishment shall have and maintain the following minimum requirements:

**(1)** a room for sheltering dead human bodies which shall:

**(a)** be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;

**(b)** be equipped with necessary drainage, lighting and ventilation;

**(c)** have a refrigeration unit thermostatically controlled with a minimum storage area of 12 and one-half cubic feet per body;

**(d)** be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors;

**(2)** an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and

**(3)** if the establishment contains burial caskets or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

**D.** To be licensed by the board, each funeral establishment shall: entirely complete a body tracking sheet which shall be kept in the deceased file; and obtain and maintain

body transport record log at the time of which the deceased is transported to the establishment which shall be kept in the deceased file; the log shall include:

- (1) name of deceased;
- (2) date of death;
- (3) time of death;
- (4) date and time placed in refrigeration;
- (5) date and time removed from refrigeration;
- (6) condition of body prior to transport;
- (7) condition of body at the time of delivery; and
- (8) weather conditions during time of transport.

[2/7/1976...9/26/1993, 1/22/1999; 16.64.4.9 NMAC - Rn & A, 16 NMAC 64.4.9, 9/15/2001; A, 4/2/2010; A, 8/8/2012; A, 11/1/2019]

#### **16.64.4.10 LICENSEE IN CHARGE AND SEPARATE ESTABLISHMENTS:**

**A.** Each establishment shall have in charge, full-time therein, a funeral service practitioner.

(1) The licensed funeral service practitioner for a funeral establishment shall live within 90 minutes by legal road travel of the establishment.

(2) The licensed funeral service practitioner of a commercial establishment shall live within 90 minutes by legal road travel of the establishment.

(3) The licensee in charge of a direct disposition establishment shall be a licensed direct disposer, and shall live 90 minutes by legal road travel of the establishment.

**B.** A licensee in charge may be licensee in charge of more than one establishment provided that the requirements outlined in Subsection A of 16.64.4.10 NMAC have been met, and:

(1) the establishments are within 50 miles by legal road travel of each other;

(2) the licensee in charge lives within 90 minutes by legal road travel of each establishment; and

(3) application is made in accordance with the requirements outlined in 16.64.4.11 NMAC for a change in the licensee in charge.

[2/7/1976...9/26/1993; 16.64.4.10 NMAC - Rn & A, 16 NMAC 64.4.10, 9/15/2001; A, 10/6/2012]

#### **16.64.4.11 CHANGES OF ESTABLISHMENT AND CREMATORY LICENSES:**

**A.** An establishment or crematory license is an authority granted to the person, firm partnership, corporation, association, joint venture, or other organization, or any combination thereof, and is not transferable. A change in business designation of an establishment or crematory or of a licensee in charge of an establishment may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes shall be filed with the board on an application form prescribed by the board, accompanied by the required fees, within 30 days following any such change.

(1) Incorporation creates a new legal entity which requires a new license even though one or more stockholders, officers or directors have been previously issued a license. A license to practice funeral service or direct disposition held by a stockholder, officer or director is not authority to the corporation to operate as a funeral or direct disposition establishment.

(2) The organization of a partnership or joint venture creates a new legal entity which requires a new license, even though one or more of the partners have previously been issued a license.

(3) The dissolution of a corporation or partnership which has been issued a license, operates to terminate the license and no individual or firm may operate under such a terminated license.

(4) The change of members of a general partnership, or in the general partner membership of a limited partnership, either the addition or withdrawal of a partner or partners, establishes a new legal entity which requires a new license and such partnership cannot operate on a license of the former partnership.

(5) The change of ownership of fifty percent or more of the stock in a corporation or shares in a partnership operates to terminate the license and a new license is required, even if the licensee in charge does not change.

(6) A change in the licensee in charge operates to terminate the establishment license and the establishment can continue to operate only under a new license granted by the board and designating the new licensee in charge. The revocation, suspension, lapse or other loss of the license of the licensee in charge shall likewise cause a termination of the existing establishment license.

**(7)** A change in location of an establishment or crematory shall require a new establishment or crematory license.

**(8)** A change in the name of an establishment or crematory shall require a new establishment or crematory license.

**(a)** Any change in name shall not be announced, used, or in any way conveyed to the public until the new license is issued by the board.

**(b)** All advertising, signs, listings, newspaper notices, as well as all stationery, business cards, etc., as well as those on the internet, of an establishment or crematory licensed by the board shall include the name, license number and address of the establishment or crematory, exactly as licensed by the board, and all references to the new name shall be changed within 30 days following the board meeting at which the new license was issued.

**B.** Prior to the issuance of a new license under Subsection A of 16.64.4.11 NMAC the board may require an inspection of the establishment or crematory, however an inspection of the establishment or crematory shall be required for a change under Paragraph (7) of Subsection A of 16.64.4.11 NMAC prior to the issuance of a new license.

**C.** Failure to file for a change of an establishment or crematory license within the 30 day period shall be grounds for termination of licenses of the establishment and the licensee in charge, or of the crematory license.

**D.** Upon filing for any change, the establishment or crematory shall continue to operate under its current license until the next board meeting, provided all other provisions of the Funeral Services Act are followed.

**E.** Re-inspections.

**(1)** The requirement for a re-inspection is based on the following:

**(a)** the inspector has attempted on two occasions to inspect the establishment or crematory to no avail, and would include the situation where the establishment or crematory is closed during normal business hours and that the licensee in charge is not available within one hour of contact made or attempted by the inspector; or

**(b)** the establishment or crematory is found to be in non-compliance with the board's inspection requirements.

**(2)** A re-inspection and penalty fee will be imposed on any establishment or crematory if a re-inspection is required. The licensee in charge of an establishment or a crematory authority will be informed that a re-inspection and penalty fee is being assessed and the reason for the re-inspection.

**(3)** If the board has good reason to believe that the Funeral Services Act or 16.64 NMAC, governing the inspection requirements have been violated, a re-inspection and penalty fee will be assessed only if a violation exists.

[2/7/1976...9/26/1993; 1/22/1999; 16.64.4.11 NMAC - Rn & A, 16 NMAC 64.4.11, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

**16.64.4.12 REFRIGERATION:**

All bodies which are refrigerated in lieu of, or prior to, embalming shall be stored at a temperature not to exceed 40 degrees fahrenheit {five degrees celsius} and shall not be taken out of refrigeration until such time as the dead human body is being prepared to be embalmed, upon final disposition, or for identification purposes only not to exceed 30 minutes.

[2/6/1982...9/26/1993; 16.64.4.12 NMAC - Rn & A, 16 NMAC 64.4.12, 9/15/2001]

**PART 5: EXAMINATIONS**

**16.64.5.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6-15-96, 16.64.5.1 NMAC - Rn & A, 16 NMAC 64.5.1, 09-15-01; A, 08-08-12]

**16.64.5.2 SCOPE:**

16.64.5 NMAC applies to applicants for licensure as a funeral service practitioner, associate funeral service practitioner, and direct disposer.

[6-15-96; 16.64.5.2 NMAC - Rn & A, 16 NMAC 64.5.2, 09-15-01]

**16.64.5.3 STATUTORY AUTHORITY:**

16.64.5 NMAC is adopted pursuant to the Funeral Services Act, NMSA 1978, Section 61-32-2, 61-32-6, 61-32-7, 61-32-9 and 61-32-10.

[6-15-96; 16.64.5.3 NMAC - Rn, 16 NMAC 64.5.3, 09-15-01; A, 08-08-12]

**16.64.5.4 DURATION:**

Permanent.

[6-15-96; 16.64.5.4 NMAC - Rn, 16 NMAC 64.5.4, 09-15-01]

**16.64.5.5 EFFECTIVE DATE:**

April 10, 1994, unless a different date is cited at the end of a section.

[6-15-96; 16.64.5.5 NMAC - Rn & A, 16 NMAC 64.5.5, 09-15-01]

**16.64.5.6 OBJECTIVE:**

16.64.5 NMAC is to establish the examination requirements for licensure. The examination(s) is to determine that each applicant for licensure possesses the minimum skills and knowledge to practice competently.

[6-15-96; 16.64.5.6 NMAC - Rn, 16 NMAC 64.5.6, 09-15-01]

**16.64.5.7 DEFINITIONS:**

[Reserved.]

[6-15-96; 16.64.5.7 NMAC - Rn, 16 NMAC 64.5.7, 09-15-01]

**16.64.5.8 GENERAL PROVISIONS:**

A. The examination outlined in Subsection A of 16.64.5.9 NMAC shall be given at such times and places as determined by the board.

B. The examination outlined in Subsection B of 16.64.5.9 NMAC may be given at any meeting of the board, or at such other times and places determined by the board.

C. No applicant may take any specific examination more than twice in any six (6) month period; and an applicant must wait a minimum of thirty (30) days from the examination date prior to retaking any examination. An applicant shall pay all costs and fees to retake any examination.

D. No applicant shall be permitted to take any examination until his or her application is complete, as determined by the board.

[2-7-76...4-10-94; 16.64.5.8 NMAC - Rn & A, 16 NMAC 64.5.8, 09-15-01; A, 08-08-12]

**16.64.5.9 EXAMINATIONS:**

A. Each applicant for a license as a funeral service practitioner shall take a written comprehensive examination, comparable to the examination taken by graduates of funeral service education. An applicant must answer not less than 75% of the questions correctly to successfully complete the examination. The candidate shall pay all costs of the examination charged by examining agency together with the administrative costs of the board. The pass/fail decision of the board shall be binding.

B. Each applicant for licensure, including any licensee who wishes to reinstate an inactive license, shall take a written jurisprudence examination prescribed by the board. An applicant must answer not less than 75% of the questions correctly to successfully complete the jurisprudence examination. An applicant who does not successfully complete the jurisprudence examination may protest to the board, not later than the following board meeting, if he or she feels the grading of the examination was incorrect or unfair. The decision of the board following a protest shall be binding.

[2-7-76...4-10-94; 16.64.5.9 NMAC - Rn & A, 16 NMAC 64.5.9, 09-15-01; A, 08-08-12]

## **PART 6: CONTINUING EDUCATION**

### **16.64.6.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6/15/1996, 16.64.6.1 NMAC - Rn & A, 16 NMAC 64.6.1, 9/15/2001; A, 8/8/2012]

### **16.64.6.2 SCOPE:**

16.64.6 NMAC applies to licensed funeral service practitioners, associate funeral service practitioners, assistant funeral service practitioners, direct disposers, and funeral service interns under general supervision.

[6/15/1996; 16.64.6.2 NMAC - Rn & A, 16 NMAC 64.6.2, 9/15/2001]

### **16.64.6.3 STATUTORY AUTHORITY:**

16.64.6 NMAC is adopted pursuant to the Funeral Services Act, Sections 61-32-2, 61-32-6, 61-32-7, 61-32-21 and 61-32-22 NMSA 1978.

[6/15/1996; 16.64.6.3 NMAC - Rn, 16 NMAC 64.6.3, 9/15/2001; A, 8/8/2012]

### **16.64.6.4 DURATION:**

Permanent.

[6/15/1996; 16.64.6.4 NMAC - Rn, 16 NMAC 64.6.4, 9/15/2001]

### **16.64.6.5 EFFECTIVE DATE:**

September 26, 1993, unless a different date is cited at the end of a section.

[6/15/1996; 16.64.6.5 NMAC - Rn & A, 16 NMAC 64.6.5, 9/15/2001]

### **16.64.6.6 OBJECTIVE:**

16.64.6 NMAC is to establish the continuing education requirements and procedures, to ensure that licensees provide the highest quality professional service. Therefore licensees should engage in education activities that foster this objective.

[6/15/1996; 16.64.6.6 NMAC - Rn, 16 NMAC 64.6.6, 9/15/2001]

#### **16.64.6.7 DEFINITIONS:**

**A. "Continuing education"** means that education which is obtained by a licensee to develop, maintain, improve or expand skills and knowledge. This education may be obtained through formal or informal education processes, school study, research and participation in professional, technical and occupational societies and by other similar means as authorized by the board.

**B. "Approved provider"** means any provider approved by the board or it's designee.

**C. "Renewal period"** means July 1<sup>st</sup> through June 30<sup>th</sup>.

[9/14/1988...9/26/1993; 16.64.6.7 NMAC - Rn & A, 16 NMAC 64.6.7, 9/15/2001]

#### **16.64.6.8 GENERAL PROVISIONS:**

**A.** Requests for approval of continuing education activities shall be submitted to the board on a form prescribed by the board. No license renewal shall be issued without board action if there exists any question by the board administrator as to the acceptance of a particular continuing education activity. The burden shall be on the licensee to ascertain from the board if a continuing education activity is acceptable, and to provide proof of completion of the continuing education activity for the renewal period.

**B.** 10 hours of continuing education, including 2 hours of ethics, shall equal one continuing education unit (CEU).

**C.** Regardless of what part of the year a person becomes licensed, there shall be no reduction or pro-rating of continuing education hours required for the next renewal period; provided however, that any person who was first licensed during the same renewal period as he or she graduated from an accredited school of funeral service education shall not be required to earn continuing education for the next renewal.

**D.** Any person who holds more than one license issued by the board may use the same continuing education hours for renewal of both licenses without having to earn separate continuing education hours for each license renewal.

[9/14/1988...9/26/1993; 16.64.6.8 NMAC - Rn & A, 16 NMAC 64.6.8, 9/15/2001; A, 4/2/2010; A, 11/1/2019]

### **16.64.6.9 CONTINUING EDUCATION:**

The board may, subject to Subsection A of 16.64.6.10 NMAC, recognize continuing education in the following areas related to funeral services.

#### **A. Academic activities:**

- (1)** completion of courses offered by accredited institutions of higher education; and
- (2)** completion of home study courses offered by approved sponsors of such courses.

#### **B. Professional activities:**

- (1)** attendance at workshops, conferences, seminars and institutions of approved funeral service educational opportunities;
- (2)** service on a board of directors of a funeral service organization, including the New Mexico board of funeral services; and
- (3)** published literary contributions.

#### **C. Public education and service:**

- (1)** conducting or participating as an instructor in school presentations and other related workshops, conferences, seminars and institutions;
- (2)** speeches on funeral service before religious or civic organizations; and
- (3)** attendance at meetings of the board.

[9/14/1988...9/26/1993; 16.64.6.9 NMAC - Rn & A, 16 NMAC 64.6.9, 9/15/2001; A, 8/8/2012]

### **16.64.6.10 LIMITATIONS:**

**A.** The amount of continuing education credit the board will recognize for any activity will be at the sole discretion of the board, provided however, that the board will grant credit for activities offered by any approved provider of continuing education subject to the limitation imposed in Subsection B of 16.64.6.10 NMAC.

**B.** No more than four hours {.4 CEU} of continuing education credit shall be granted in any renewal period for activities as outlined in Subsection C of 16.64.6.9 NMAC.

C. Upon application for renewal of a license, the applicant shall furnish evidence of having completed continuing education hours to the following extent.

(1) Funeral service practitioners shall be required to complete 10 hours, 2 of which must be in ethics for a total of {1.0 CEU}.

(2) Funeral service interns who are allowed to practice under the general supervision of a funeral service practitioner in any category shall be required to complete 10 hours, 2 of which must be in ethics for a total of {1.0 CEU}.

(3) Direct disposers shall be required to complete 10 hours, 2 of which must be in ethics for a total of {1.0 CEU}.

[11/21/1986...9/26/1993; 16.64.6.10 NMAC - Rn & A, 16 NMAC 64.6.10, 9/15/2001; A, 8/8/2012; A, 11/1/2019]

## **PART 7: LICENSE RENEWAL**

### **16.64.7.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6-15-96; 16.64.7.1 NMAC - Rn & A, 16 NMAC 64.7.1, 09-15-01; A, 08-08-12]

### **16.64.7.2 SCOPE:**

16.64.7 NMAC applies to all licensees.

[6-15-96; 16.64.7.2 NMAC - Rn, 16 NMAC 64.7.2, 09-15-01]

### **16.64.7.3 STATUTORY AUTHORITY:**

These rules are issued pursuant to the Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

[6/15/1996; 16.64.7.3 NMAC - Rn, 16 NMAC 64.7.3, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

### **16.64.7.4 DURATION:**

Permanent.

[6-15-96; 16.64.7.4 NMAC - Rn, 16 NMAC 64.7.4, 09-15-01]

### **16.64.7.5 EFFECTIVE DATE:**

September 26, 1993, unless a different date is cited at the end of a section.

[6-15-96; 16.64.7.5 NMAC - Rn & A, 16 NMAC 64.7.5, 09-15-01]

**16.64.7.6 OBJECTIVE:**

16.64.7 NMAC establishes the requirements for license renewal, placement of license on inactive status and reinstatement of an inactive license.

[6/15/1996; 16.64.7.6 NMAC - Rn, 16 NMAC 64.7.6, 9/15/2001; A, 12/28/2021]

**16.64.7.7 DEFINITIONS:**

[Reserved.]

[6-15-96; 16.64.7.7 NMAC - Rn, 16 NMAC 64.7.7, 09-15-01]

**16.64.7.8 GENERAL PROVISIONS:**

All licenses issued by the board expire June 30 of each year and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form prescribed by the board.

[2-7-76...9-26-93; 16.64.7.8 NMAC - Rn, 16 NMAC 64.7.8, 09-15-01]

**16.64.7.9 INACTIVE STATUS:**

**A.** Any licensee, excluding funeral service intern licensees, who wishes to place his or her license on inactive status shall notify the board in writing, on a form prescribed by the board, prior to the expiration of his or her current license.

**B.** A license placed on inactive status by the board may be renewed within a period not to exceed five years following the date the board granted the inactive status.

**C.** Upon approval by the board of an inactive request, the licensee shall be exempt from the payment of the annual renewal fee during the period of inactive status.

**D.** No license will automatically be placed on inactive status by failure of the licensee to renew his or her license.

**E.** No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

**F.** Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

**G.** Any licensee who has placed his or her license on inactive status shall notify the board of his or her desire to reinstate the inactive license. Upon receipt of such notice, the board administrator shall send to the inactive licensee an application for reinstatement.

**H.** A licensee may reactivate the license upon submission of the following:

- (1) a reinstatement application;
- (2) payment of the renewal and reinstatement fee listed in 16.64.2 NMAC;
- (3) proof of continuing education units listed in 16.64.6 NMAC; and
- (4) successful completion of the written jurisprudence examination listed in Subsection B of 16.64.7 NMAC.

**I.** Any person who, after five years of inactive status, desires to reinstate his or her license, must make application to the board and comply with the same requirements as any previously unlicensed applicant.

**J.** If a request for reinstatement of an inactive license occurs in the same renewal period, as defined in Subsection C of 16.64.6.7 NMAC, that the inactive status was granted, the applicant shall not be required to complete additional continuing education requirements or the jurisprudence exam in order for the inactive license to be reinstated.

[9/27/1990...9/26/1993; 16.64.7.9 NMAC - Rn & A, 16 NMAC 64.7.9, 9/15/2001; A, 4/2/2010; A, 8/8/2012, A, 12/28/2021]

#### **16.64.7.10 LICENSE RENEWAL:**

**A.** All licensees shall renew their license on or before June 30th of each year.

**B.** Application for renewal shall be completed on a form provided by the board.

**C.** A license may be renewed upon submission of the following:

- (1) a completed renewal application;
- (2) payment of the renewal and reinstatement fee outlined in 16.64.2 NMSA;
- (3) proof of continuing education units outlined in 16.64.6 NMAC.

**D.** A licensee who is age is 65 or above and who has been licensed by the board for at least 20 consecutive years shall not be required to meet continuing education requirements.

**E.** Failure to submit the required documents and fees by June 30th shall cause the license to expire and the license holder must refrain from practicing.

**F.** The licensee may renew within a sixty-day grace period, by submitting payment of the renewal fee and late fee outlined in 16.64.2 NMAC and compliance with all renewal requirements.

**G.** A license that has not renewed within the 60-day grace period shall be expired and invalid. A holder of an expired license shall be required to reapply as a new applicant.

**H.** The board will send by electronic mail, license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.64.7.10 NMAC, N, 12/28/2021]

## **PART 8: FUNERAL SERVICE INTERN PRACTICES**

### **16.64.8.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6/15/1996, 1/22/1999; 16.64.8.1 NMAC - Rn & A, 16 NMAC 64.8.1, 9/15/2001; A, 8/8/2012]

### **16.64.8.2 SCOPE:**

16.64.8 NMAC applies to funeral service intern licensees.

[6/15/1996; 16.64.8.2 NMAC - Rn, 16 NMAC 64.8.2, 9/15/2001]

### **16.64.8.3 STATUTORY AUTHORITY:**

16.64.8 NMAC is adopted pursuant to the Funeral Services Act, Sections 61-32-2, 61-32-6, 61-32-7 and 61-32-14 NMSA 1978.

[6/15/1996; 16.64.8.3 NMAC - Rn, 16 NMAC 64.8.3, 9/15/2001; A, 8/8/2012]

### **16.64.8.4 DURATION:**

Permanent.

[6/15/1996; 16.64.8.4 NMAC - Rn, 16 NMAC 64.8.4, 9/15/2001]

**16.64.8.5 EFFECTIVE DATE:**

September 26, 1993, unless a different date is cited at the end of a section.

[6/15/1996; 16.64.8.5 NMAC - Rn & A, 16 NMAC 64.8.5, 9/15/2001]

**16.64.8.6 OBJECTIVE:**

16.64.8 NMAC is to establish the scope of practice for funeral service interns.

[6/15/1996; 16.64.8.6 NMAC - Rn, 16 NMAC 64.8.6, 9/15/2001]

**16.64.8.7 DEFINITIONS:**

[RESERVED]

[6/15/1996; 16.64.8.7 NMAC - Rn, 16 NMAC 64.8.7, 9/15/2001]

**16.64.8.8 GENERAL PROVISIONS:**

**A.** Each funeral service intern shall inform the board, on quarterly reports prescribed by the board, of the work completed by the funeral service intern, and the name(s) of the funeral service practitioner(s) who supervised each activity, and shall be for the periods as follows, until such time as the minimum requirements are met, as determined by the board:

- (1) July 1 thru September 30, inclusive;
- (2) October 1 thru December 31, inclusive;
- (3) January 1 thru March 31, inclusive;
- (4) April 1 thru June 30, inclusive.

**B.** Original quarterly reports shall be due at the office of the board within 30 days of the close of the quarter (faxed reports will not be accepted). Any quarter for which a report is not received by the date due shall not count as time toward the internship.

**C.** A funeral service intern may be employed by, or receive training at, more than one funeral or commercial establishment concurrently provided that:

- (1) the establishments are part of the same company;
- (2) the establishments are within 50 miles by road travel of each other; and

**(3)** application is made, together with the application fee for each license held, 30 days prior to employment or training.

**D.** A funeral service intern shall make it known that he or she is a funeral service intern under the supervision of a funeral service practitioner, and that he or she is not licensed as a funeral service practitioner nor the licensee in charge.

**E.** A funeral service intern shall not use the title funeral director and shall use the title funeral service intern. The titles funeral practitioner, funeral director or mortician are reserved for fully licensed practitioners and licensed arrangers in order to prevent the general public from misunderstanding the terms.

**F.** A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

**(1)** when a funeral service intern has made arrangements for 50 funerals under direct supervision, he or she may request approval from the board to make arrangements under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (3) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required; and

**(2)** when a funeral service intern has assisted in embalming of 50 bodies under direct supervision, he or she may request approval from the board to embalm under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees; and

**(3)** when a funeral service intern has assisted in the directing of 50 funerals, committal services, grave side services or memorial services under direct supervision, he or she may request approval from the board to direct such services under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (1) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required.

**G.** A funeral service intern shall not practice funeral service in any category under general supervision until application is made, together with the required fees, and approval has been granted by the board.

**H.** A funeral service intern shall be required to make arrangements during his or her internship in order to qualify for a license as a funeral service practitioner.

**I.** A funeral service intern shall not be required to practice funeral service under general supervision in any category regardless of the amount of time served or work completed as a funeral service intern.

**J.** A funeral service intern who is practicing funeral service under general supervision in any category shall be subject to the continuing education requirements of 16.64.6 NMAC.

**K.** A funeral service intern may receive training under more than one licensed funeral service practitioner, provided the board is notified, in writing, of any changes within 30 days following a change.

**L.** Any time served, and properly reported to the board, as a resident trainee under prior law will be considered the same as time served as a funeral service intern.

**M.** A funeral service intern who is practicing funeral service under direct supervision in any category is required to have the licensed funeral service practitioner review and co-sign all contracts prepared by the funeral service intern.

**N.** A funeral service intern who has a change of employment shall:

(1) return the old license; and

(2) make application for each license held, together with the application fee for each license held as outlined in Subsection D or E of 16.64.2.8 NMAC, within 30 days of the change.

[9/14/1988...9/26/1993, 6/15/1996, 1/22/1999; 16.64.8.8 NMAC - Rn & A, 16 NMAC 64.8.8, 9/15/2001; A, 4/2/2010; A, 8/8/2012; A, 11/1/2019]

## **PART 9: DIRECT DISPOSITION PRACTICES**

### **16.64.9.1 ISSUING AGENCY:**

Regulation and licensing department, board of funeral services, P.O. Box 25101, Santa Fe, New Mexico 87504, (505) 827-7013.

[6/15/1996; 16.64.9.1 NMAC - Rn, 16 NMAC 64.9.1, 9/15/2001; A, 8/8/2012]

### **16.64.9.2 SCOPE:**

16.64.9 NMAC applies to all licensed direct disposers, and direct disposition establishments.

[6/15/1996; 16.64.9.2 NMAC - Rn, 16 NMAC 64.9.2, 9/15/2001]

### **16.64.9.3 STATUTORY AUTHORITY:**

16.64.9 NMAC is adopted pursuant to the Funeral Services Act, Sections 61-32-2, 61-32-6, 61-32-7 and 61-32-17 NMSA 1978.

[6/15/1996; 16.64.9.3 NMAC - Rn, 16 NMAC 64.9.3, 9/15/2001; A, 8/8/2012]

**16.64.9.4 DURATION:**

Permanent.

[6/15/1996; 16.64.9.4 NMAC - Rn, 16 NMAC 64.9.4, 9/15/2001]

**16.64.9.5 EFFECTIVE DATE:**

June 4, 1995, unless a different date is cited at the end of a section or paragraph.

[6/15/1996; 16.64.9.5 NMAC - Rn, 16 NMAC 64.9.5, 9/15/2001]

**16.64.9.6 OBJECTIVE:**

16.64.9 NMAC is to establish the scope of practice for direct disposers and direct disposition establishments.

[6/15/1996; 16.64.9.6 NMAC - Rn, 16 NMAC 64.9.6, 9/15/2001]

**16.64.9.7 DEFINITIONS:**

[RESERVED]

[6/15/1996; 16.64.9.7 NMAC - Rn, 16 NMAC 64.9.7, 9/15/2001]

**16.64.9.8 DIRECT DISPOSITION PRACTICES:**

**A.** Every direct disposer in this state shall give or cause to be given to the person or persons arranging for a direct disposition, prior to the time of direct disposition, in addition to any other disclosure required by any statute or regulations, a written statement disclosing:

**(1)** that prior to interment, entombment, or final disposition of a dead human body or cremated remains, the direct disposer cannot participate in any rites or ceremonies in connection with the final disposition of the remains;

**(2)** that prior to interment, entombment, or final disposition of a dead human body or cremated remains, the direct disposer cannot provide facilities for rites or ceremonies in connection with the final disposition of the remains;

**(3)** that a body cannot be embalmed unless embalming is required by the place of disposition, and then only by a person licensed to embalm;

(4) that there can be no viewing of the body except for the purpose of identification;

(5) that the purchase of any funeral merchandise, and the price thereof, from the direct disposer, does not include any rites or ceremonies or other use of facilities not inherent to the direct disposition; and

(6) that a direct disposer may transport, or cause transportation of, a body to a place where services will be conducted with the body present, provided the direct disposer or his agent obtains a signed release from the person accepting the body, which person shall be the person having the right to control the disposition of the body, that person's agent, and the direct disposer or his agent cannot thereafter transport, or cause transportation of, the body to any place; such signed release shall be kept on file at the direct disposition establishment for a period of not less than five years.

**B.** A direct disposer or direct disposition establishment shall not be listed in any listing, advertisement or newspaper notice which may give the impression to the public that the direct disposer or direct disposition establishment is, in any way, engaged in the practice of funeral service.

**C.** No direct disposer shall allow or cause his or her name or the name of the direct disposition establishment to be used in any obituary or death notice in which a ceremony or rite for the deceased is announced, unless such obituary or death notice makes it specifically clear that the direct disposer and direct disposition establishment are not connected in any way to the ceremony or rite.

[11/21/1986...6/15/1996; 16.64.9.8 NMAC - Rn, 16 NMAC 64.9.8, 9/15/2001; A, 11/1/2019]

## **PART 10: CREMATION PRACTICES**

### **16.64.10.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6/15/1996; 16.64.10.1 NMAC - Rn & A, 16 NMAC 64.10.1, 9/15/2001; A, 8/8/2012]

### **16.64.10.2 SCOPE:**

16.64.10 NMAC applies to licensed crematories and establishment.

[6/15/1996; 16.64.10.2 NMAC - Rn & A, 16 NMAC 64.10.2, 9/15/2001]

### **16.64.10.3 STATUTORY AUTHORITY:**

16.64.10 NMAC is adopted pursuant to the Funeral Services Act, Sections 61-32-2, 61-32-6, 61-32-7 and 61-32-19 NMSA 1978.

[6/15/1996; 16.64.10.3 NMAC - Rn, 16 NMAC 64.10.3, 9/15/2001; A, 8/8/2012]

**16.64.10.4 DURATION:**

Permanent.

[6/15/1996; 16.64.10.4 NMAC - Rn, 16 NMAC 64.10.4, 9/15/2001]

**16.64.10.5 EFFECTIVE DATE:**

September 26, 1993, unless a different date is cited at the end of a section.

[6/15/1996; 16.64.10.5 NMAC - Rn & A, 16 NMAC 64.10.5, 9/15/2001]

**16.64.10.6 OBJECTIVE:**

16.64.10 NMAC is to establish the scope of practice for crematories, cremation requirements and requirement of crematories and establishments for maintaining records and disposing of cremated remains.

[6/15/1996; 16.64.10.6 NMAC - Rn & A, 16 NMAC 64.10.6, 9/15/2001; A, 11/1/2019]

**16.64.10.7 DEFINITIONS:**

**A. "Cremation"** and **"calcination"** are considered synonymous, and means the final disposition of the dead human body to a residue of cremated remains.

**B. "Authorizing agent(s)"** means the person(s) legally entitled to order the cremation.

**C. "Cremated remains container"** means any container in which cremated remains may be enclosed which will avoid leakage and prevent the entrance of foreign substances.

**D. "Cremation container"** means an enclosure in which a dead human body is placed for delivery to a crematory and subsequently cremated with the body.

**E. "Crematory authority"** means an authorized representative of a crematory.

**F. "Urn"** means a cremated remains container considered to be decorative, that varies in size, styling and composition.

[11/21/1986...9/26/1993; 16.64.10.7 NMAC - Rn & A, 16 NMAC 64.10.7, 9/15/2001; A, 11/1/2019]

### **16.64.10.8 CREMATION PRACTICES:**

**A.** No cremation shall take place until all necessary documentation is obtained or a court order has been issued authorizing the cremation; such documentation shall include:

- (1)** signed authorization by the authorizing agent(s);
- (2)** signed permit from the office of the medical investigator of the state, or its equivalent if the death occurred outside this state; provided no such permit shall be required for the cremation of fetal deaths; and
- (3)** any other form(s) which may be required by the crematory in order for the cremation to take place.

**B.** For acceptance by the crematory, a dead human body must be enclosed in an acceptable cremation container and identification of the dead body must be noted on the outside of the cremation container.

**(1)** A cremation container is considered acceptable if it meets or exceeds the following minimum standards:

- (a)** is composed of a suitable combustible material;
- (b)** is rigid and secure for handling with ease, which includes a rigid bottom and full dome enclosure;
- (c)** provides for complete covering of the enclosed dead human body; and

**(2)** A cremation container is considered unacceptable if it is composed of any explosive material or such other material as fiberglass, plastic resin compound, or other synthetic material not suitable for combustion in a cremation retort.

**(3)** Any crematory may make its own requirements as to the acceptability of a cremation container, provided they are not less than outlined in 16.64.10 NMAC, and are not otherwise in any way in violation of any statute, ordinance or rule.

**C.** The crematory authority may require that all pacemakers, radium implants and all explosive devices implanted in the body, or attached thereto, be removed, at the expense of the authorizing agent(s), prior to the cremation.

**D.** The unauthorized simultaneous cremation of more than one dead human body within the same cremation retort is specifically prohibited.

**E.** A crematory may simultaneously cremate more than one dead human body in the same cremation retort upon receipt of written authorization to do so from the authorizing agent(s) of each dead human body. Such written authorization shall also exempt the crematory authority from all liability in commingling the cremated remains of simultaneous cremation.

**F.** No crematory authority shall be required to simultaneously cremate more than one dead human body even if authorized by the authorizing agent(s).

**G.** Immediately prior to placing a dead human body into the cremation retort, the identification of the cremation container shall be verified and identification of the body shall be placed on the cremation retort panel, where it shall remain in place until the cremation is completed.

**H.** To the extent that is reasonably practical, all residue of each cremation shall be removed from the cremation retort, and shall not be commingled with any other cremated remains unless directed by the authorizing agent(s) and agreed to by the crematory authority.

**I.** All body prosthetics, dental work or similar items separated from any cremated remains shall be disposed of by the crematory authority, unless otherwise ordered by the authorizing agent(s) at the time the cremation authorization is executed.

**J.** Properly identified cremated remains shall be placed in a cremated remains container as directed by the authorizing agent(s) or crematory authority. The crematory authority is required to provide cremated remains of adequate size to accommodate all the cremated remains from each cremation unless a cremated remains container is furnished by the authorizing agent(s). In either case, the crematory authority shall have a written agreement with the authorizing agent(s) if the cremated remains container is not of sufficient size to enclose the cremated remains.

**K.** Cremated remains may be disposed in any lawful manner by any establishment, crematory authority, cemetery or person having the right to control the disposition of the cremated remains, or that person's agent.

**L.** Establishments and crematories shall keep an accurate record of all cremations performed, and the place of disposition of the cremated remains, for a period of not less than seven years.

**M.** Any legal forms for cremation authorization shall contain wording that will hold harmless a crematory authority, or establishment from disposing of unclaimed cremated remains in any lawful manner after a period of one year.

[11/21/1986...9/26/1993; 16.64.10.8 NMAC - Rn & A, 16 NMAC 64.10.8, 9/15/2001; A, 11/1/2019]

## **PART 11: COMPLAINTS**

### **16.64.11.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[2-21-97, 1-22-99; 16.64.11.1 NMAC - Rn & A, 16 NMAC 64.11.1, 09-15-01; A, 08-08-12]

### **16.64.11.2 SCOPE:**

16.64.11 NMAC applies to licensees, applicants for licensure, and the general public.

[2/21/1997; 16.64.11.2 NMAC - Rn & A, 16 NMAC 64.11.2, 9/15/2001; A, 12/28/2021]

### **16.64.11.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

[2/21/1997; 16.64.11.3 NMAC - Rn, 16 NMAC 64.11.3, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

### **16.64.11.4 DURATION:**

Permanent.

[2-21-97; 16.64.11.4 NMAC - Rn, 16 NMAC 64.11.4, 09-15-01]

### **16.64.11.5 EFFECTIVE DATE:**

February 21, 1997, unless a different date is cited at the end of a section.

[2-21-97, A, 5-11-97; 16.64.11.5 NMAC - Rn & A, 16 NMAC 64.11.5, 09-15-01]

### **16.64.11.6 OBJECTIVE:**

16.64.11 NMAC establishes the procedures for filing and processing complaints, and for taking disciplinary action against licensees and applicants for licensure, for violations of provisions in the Funeral Services Act or any rule or regulation issued pursuant to the Act.

[2/21/1997; 16.64.11.6 NMAC - Rn, 16 NMAC 64.11.6, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

### **16.64.11.7 DEFINITIONS:**

**A. "Complaint"** means a complaint filed with the board.

**B. "Complainant"** means the complaining party of a complaint filed against a licensee(s), or applicant for licensure, who is/are governed under the Funeral Services Act.

**C. "disqualifying criminal conviction"** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

**D. "Respondent"** means an applicant for licensure, a licensee or other person subject to the provisions of the Funeral Services Act, and who is the subject of a complaint for claimed violations of the Act or any rule or regulation issued pursuant to the Act.

**E. "Notice of contemplated action"** means the administrative process used by the board for a licensee or applicant for licensure to be afforded notice and an opportunity to be heard in a formal hearing setting before the board has authority to take any action which would have the effect of denying, revoking, or suspending a license or application for licensure governed by the Uniform Licensing Act.

[2/21/1997; 16.64.11.7 NMAC - Rn, 16 NMAC 64.11.7, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

#### **16.64.11.8 GENERAL PROVISIONS:**

**A.** Any person, including any member of the board or board staff, may initiate a complaint in writing. Complaints should be submitted on a form prescribed by the board.

**B.** Complaints shall contain factual allegations constituting violations of any provisions of the Funeral Services Act or any rule or regulation issued pursuant to the Act.

[2/21/1997; 16.64.11.8 NMAC - Rn & A, 16 NMAC 64.11.8, 9/15/2001; A, 8/8/2012; A, 12/28/2021]

#### **16.64.11.9 PROCEDURES FOR RECEIPT OF A COMPLAINT:**

**A.** The board's designee will maintain a written log of all complaints received which records at a minimum, the date the complaint was received, and name, addresses of the complainant and respondent.

**B.** Upon receipt of a complaint the board's designee will:

- (1) log in the date the complaint was received;

(2) determine whether the respondent is licensed, or an applicant for licensure with the board;

(3) send the complainant written acknowledgment of receipt of the complaint; and

(4) immediately forward the complaint to the complaint committee; the complaint committee chair will be responsible for convening the complaint committee to review the complaint(s).

[2-21-97, 1-22-99; 16.64.11.9 NMAC - Rn, 16 NMAC 64.11.9, 09-15-01; A, 04-02-10]

#### **16.64.11.10 COMPLAINT COMMITTEE:**

**A.** The board chair will appoint a complaint committee consisting of at least one person, who will be a professional member on the board. The board chair may also appoint to the complaint committee the board administrator or a complaint manager.

**B.** The complaint committee will handle complaints in a confidential manner as required by law.

**C.** The complaint committee will review all complaints received by the board, conduct whatever action it deems necessary in the course of gathering information, and make recommendations for disposition of the complaint to the full board in executive session to maintain the confidentiality of the complaint.

**D.** No complaint committee meeting will be held without the presence of the professional board member.

**E.** A complaint committee member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate and another member will be appointed by the chair to serve on the committee if required.

**F.** For any complaint which the complaint committee reasonably anticipates may be referred to the board for consideration of the issuance of a notice of contemplated action, the respondent will be provided a copy of the complaint and will be allowed a reasonable time in which to respond to the allegations in the complaint. The foregoing notwithstanding, the complaint committee will not be required to provide the respondent with a copy of the complaint, or with notice of the filing of a complaint or any related investigation, prior to the issuance of a notice of contemplated action if the committee determines that disclosure may impair, impede or compromise the efficacy or integrity of the investigation.

**G.** If the complaint committee determines that further information is needed, it may issue investigative subpoenas, pursuant to the Uniform Licensing Act; employ an

investigator, or experts, or other persons whose services are determined to be necessary, in order to assist in the processing and investigation of the complaint. The complaint committee will have independent authority to employ such persons, without prior approval of the board. The board administrator will determine budgetary availability, and will contract for investigative services.

H. Upon completion of its review or investigation of a complaint, the complaint committee will present a summary of the case to the board for the purpose of enabling the board to decide whether to proceed with the case or to dismiss the case. The summary will be identified by complaint number without identifying the complainant(s) or respondent(s) by name.

[2/21/1997, 1/22/1999; 16.64.11.10 NMAC - Rn & A, 16 NMAC 64.11.10, 9/15/2001; A, 12/28/2021]

#### **16.64.11.11 BOARD ACTION:**

A. If the board determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case will be closed. The board's designee will send a letter of the board's decision to both the complainant and respondent. The letter will state the board's actions and the reasons for its decision.

B. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, the board may vote to issue a notice of contemplated action. The board's designee will forward a complete copy of the complaint file, including exhibits to the attorney general's office for assignment of an administrative prosecutor.

C. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings, or referrals to the attorney general and/or district attorney for prosecution of persons alleged to be practicing without a proper license.

D. Any board member who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of its own circumstances will not participate in the decision whether to issue a notice of contemplated action and will not participate in the hearing, deliberation, or decision of the board.

E. Members of the complaint committee will not participate in the decision whether to issue a notice of contemplated action, other than making a recommendation to the board whether to issue a notice of contemplated action, and will not participate in the hearing, deliberation, or decision of the board.

[2-21-97, 1-22-99; 16.64.11.11 NMAC - Rn, 16 NMAC 64.11.11, 09-15-01]

#### **16.64.11.12 SETTLEMENT AGREEMENT:**

The board may enter into a settlement agreement with the respondent as a means of resolving the complaint. Any proposed settlement agreement must be approved by the board, and must be approved further by the respondent, upon a knowing and intentional waiver by the respondent of his or her right to a hearing as provided by the Uniform Licensing Act. The settlement agreement must be signed by the respondent and respondent's attorney, if represented by an attorney. If the respondent is not represented by an attorney then the respondent must acknowledge that he/she has been advised to seek the advice of an attorney.

[2-21-97; 16.64.11.12 NMAC - Rn & A, 16 NMAC 64.11.12, 09-15-01]

### **16.64.11.13 NOTICE OF CONTEMPLATED ACTION:**

**A.** All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act.

**B.** The chair of the board, or its designee, will serve as hearing officer for disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The hearing officer will be fully authorized to make all necessary procedure decisions on behalf of the board, including, but not limited to, matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, and proposed findings of fact and conclusions of law.

**C.** The hearing officer may make such orders as deemed necessary to implement the authority conferred by Subsection B of 16.64.11.13 NMAC, including, but not limited to, discovery schedules, pleading schedules, and briefing schedules.

**D.** No party will engage in ex-parte communications with the hearing officer or any member of the board in any matter in which a notice of contemplated action has been issued.

**E.** Licensees and applicants for licensure who have been found culpable and sanctioned by the board will be responsible for the payment of all costs of the disciplinary proceedings.

**F.** Any license, including a wall certificate, issued by the board and subsequently suspended or revoked, will be promptly returned to the board office, in person or by registered mail, no later than 30 days of receipt of the board's order suspending or revoking the license.

[2/21/1997; 1/22/1999; 16.64.11.13 NMAC - Rn & A, 16 NMAC 64.11.13, 9/15/2001, A, 12/28/2021]

### **16.64.11.14 DISQUALIFYING CRIMINAL CONVICTIONS:**

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

- (1)** murder;
- (2)** manslaughter;
- (3)** assisting suicide;
- (4)** aggravated assault;
- (5)** assault with intent to commit a violent felony;
- (6)** aggravated battery inflicting great bodily harm or with deadly weapon;
- (7)** injury to a pregnant woman;
- (8)** aggravated assault upon a school employee;
- (9)** assault with intent to commit a violent felony upon a school employee;
- (10)** aggravated battery upon a school employee;
- (11)** aggravated battery upon a sports official;
- (12)** aggravated assault upon a health care worker;
- (13)** assault with intent to commit a violent felony upon a health care worker;
- (14)** battery upon a health care worker;
- (15)** aggravated battery upon a health care worker;
- (16)** assisting or being assisted by one or more other persons to commit a battery upon a health care worker;
- (17)** assault against a household member with intent to commit a violent felony;
- (18)** aggravated battery against a household member;
- (19)** 3rd or subsequent conviction for battery against a household member;
- (20)** 2nd or subsequent conviction for stalking;
- (21)** aggravated stalking;

- (22)** kidnapping;
- (23)** criminal use of ransom;
- (24)** abandonment of a child resulting in death or great bodily harm;
- (25)** abuse of a child;
- (26)** negligent abuse of a child resulting in death;
- (27)** intentional abuse of a child 12 to 18 years old resulting in death;
- (28)** intentional abuse of a child less than 12 years old resulting in death;
- (29)** sexual exploitation of children;
- (30)** sexual exploitation of children by prostitution;
- (31)** seizing or exercising control of a bus by force or violence or by threat of force or violence;
- (32)** intimidating, threatening or assaulting any driver, attendant, guard or passenger of a bus with the intent of seizing or exercising control of a bus;
- (33)** a felon in possession of a firearm;
- (34)** false reporting, causing great bodily harm, of a fire or explosion or the placement of any incendiary device;
- (35)** promoting prostitution;
- (36)** accepting the earnings of a prostitute;
- (37)** criminal sexual penetration;
- (38)** criminal sexual contact;
- (39)** criminal sexual contact of a minor;
- (40)** aggravated indecent exposure;
- (41)** incest;
- (42)** disturbing a marked burial ground;
- (43)** desecration of a church;

- (44)** larceny;
- (45)** robbery;
- (46)** burglary;
- (47)** aggravated burglary;
- (48)** fraud;
- (49)** unlawful dealing in federal food coupons or WIC checks;
- (50)** embezzlement;
- (51)** extortion;
- (52)** forgery;
- (53)** receiving stolen property;
- (54)** falsely obtaining services or accommodations;
- (55)** improper sale, disposal, removal or concealing of encumbered property;
- (56)** shoplifting;
- (57)** theft of identity;
- (58)** theft of a credit card by taking or retaining possession of card taken;
- (59)** fraudulent transfer or receipt of a credit card;
- (60)** dealing in credit cards of another;
- (61)** forgery of a credit card;
- (62)** fraudulent signing of credit cards or sales slips or agreements;
- (63)** fraudulent use of a credit card;
- (64)** certain fraudulent acts by merchants or their employees;
- (65)** possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;

**(66)** fraudulent acts to obtain or retain possession of rented or leased vehicle or other personal property;

**(67)** fraudulent refusal to return a leased vehicle or other personal property;

**(68)** unlawful taking of a vehicle or motor vehicle;

**(69)** embezzlement of a vehicle or motor vehicle;

**(70)** fraudulently obtaining a vehicle or motor vehicle;

**(71)** receiving or transferring a stolen vehicle or motor vehicle;

**(72)** altering or changing engine or other numbers of vehicle or motor vehicle;

**(73)** arson or negligent arson;

**(74)** aggravated arson;

**(75)** transporting stolen livestock;

**(76)** 3rd conviction for unlawful demonstrations or protests at funerals and memorial services;

**(77)** sabotage;

**(78)** escape from penitentiary;

**(79)** possession of deadly weapon or explosive by prisoner in lawful custody;

**(80)** assault with intent to commit a violent felony upon a peace officer;

**(81)** battery upon a peace officer;

**(82)** aggravated battery upon a peace officer;

**(83)** disarming a peace officer;

**(84)** paying or receiving public money for services not rendered;

**(85)** unlawful interest in a public contract;

**(86)** bribery of public officer or public employee;

**(87)** demanding or receiving bribe by public officer or public employee;

- (88)** bribery or intimidation of a witness;
- (89)** retaliation against a witness;
- (90)** acceptance of a bribe by a witness;
- (91)** perjury;
- (92)** tampering with public records;
- (93)** attempt to commit a felony;
- (94)** conspiracy;
- (95)** criminal solicitation;
- (96)** intentionally trafficking controlled substances;
- (97)** intentionally distributing a controlled substance to a person under the age of eighteen years;
- (98)** intentionally distributing or possessing with intent to distribute a controlled substance;
- (99)** manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;
- (100)** intentionally selling an imitation controlled substance to a person under the age of eighteen years;
- (101)** intentionally possessing an imitation controlled substance with the intent to distribute;
- (102)** issuing a worthless check;
- (103)** child solicitation by electronic communication device;
- (104)** criminal sexual communication with a child;
- (105)** 2nd or subsequent unauthorized distribution of sensitive images;
- (106)** failing to disclose facts or change of circumstances to obtain public assistance;
- (107)** unlawful use of food stamp identification card or medical identification card;

- (108)** misappropriating public assistance;
- (109)** making or permitting a false claim for reimbursement of public assistance services;
- (110)** failure to reimburse the human services department upon receipt of third party payment;
- (111)** soliciting or receiving illegal kickback;
- (112)** offering or paying illegal kickback;
- (113)** engaging in a pattern of racketeering activity;
- (114)** making, conspiring, or attempting to make an extortionate extension of credit;
- (115)** knowingly advancing money or property to any person with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced for the purpose of making extortionate extensions of credit;
- (116)** knowingly participating, conspiring, or attempting to participate in the use of any extortionate means to collect any extensions of credit or to cause harm to the person, reputation or property of any person for the nonpayment thereof;
- (117)** falsification of documents in connection with the Medicaid Fraud Act;
- (118)** obstruction of investigation in connection with the Medicaid Fraud Act;
- (119)** medicaid fraud;
- (120)** computer access with intent to defraud or embezzle;
- (121)** computer abuse;
- (122)** abuse of a care facility resident;
- (123)** neglect of a care facility resident;
- (124)** exploitation of a care facility resident's property;
- (125)** fraudulent telemarketing;
- (126)** money laundering;
- (127)** human trafficking;

**(128)** willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

**(129)** willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;

**(130)** homicide by vehicle;

**(131)** great bodily harm by vehicle;

**(132)** injury to pregnant woman by vehicle;

**(133)** 4th or subsequent driving under the influence of intoxicating liquor or drugs;

**(134)** practicing medicine without a license;

**(135)** making a false statement under oath, or submitting a false affidavit, in connection with the Medical Practice Act;

**(136)** knowingly and willfully obtain information on a consumer from a credit bureau under false pretenses; or knowingly and willfully provide information concerning a consumer from the credit bureau's files to a person or firm not authorized to receive that information;

**(137)** knowingly and willfully obtain information on a consumer from a credit bureau under false pretenses; or knowingly and willfully provide information concerning a consumer from the credit bureau's files to a person or firm not authorized to receive that information;

**(138)** offering a bribe connected with or incidental to any election;

**(139)** willful violation of any provision of the Model State Commodity Code;

**(140)** willful violation of the New Mexico Uniform Securities Act;

**(141)** an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act;

**(142)** knowing violation of any provision of the Savings and Loan Act, with intent to defraud;

**(143)** certain acts by credit union executive officer, director, committee member, employee or agent;

**(144)** maliciously and knowingly spreading false reports or uttering false statements about the management or finances of any credit union;

**(145)** making a false statement in writing for the purpose of obtaining credit union funds;

**(146)** the supervisor or any examiner, inspector, deputy, assistant or clerk appointed or acting under the provisions of the Savings and Loan Act who fails to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of the officer or employee requires him to report upon or take official action regarding the affairs of the association examined, or who willfully makes a false official report as to the condition of an association;

**(147)** any person who knowingly makes, utters, circulates or transmits to another, or others, any statement untrue in fact, derogatory to the financial condition of any association subject to the Savings and Loan Act or any federal association in this state with intent to injure the financial institution, or who counsels, aids, procures or induces another to originate, make, utter, transmit or circulate any such statement with like intent;

**(148)** any person who knowingly makes, utters, circulates or transmits to another, or others, any statement untrue in fact, derogatory to the financial condition of any association subject to the Savings and Loan Act or any federal association in this state with intent to injure the financial institution, or who counsels, aids, procures or induces another to originate, make, utter, transmit or circulate any such statement with like intent;

**(149)** certain violations of the Mortgage Loan Company Act;

**(150)** second or subsequent conviction for unlicensed activity contrary to the New Mexico Mortgage Loan;

**(151)** violation of the Endowed Care Cemetery Act;

**(152)** certain violations of the Mortgage Loan Company Act;

**(153)** certain violations of the Uniform Money Services Act;

**(154)** making an unauthorized withdrawal from the account of another person with a financial institution, or stealing the card of another, or making an unauthorized use of the card of another;

**(155)** use of a name or title containing the phrase "credit union" or any derivation thereof, representing a business or individual as a credit union or conducting business as a credit union except as permitted by law;

**(156)** practicing or attempting to practice dentistry without complying with the Dental Health Care Act and without holding license to practice dentistry in New Mexico;

**(157)** practicing, attempting or offering to practice osteopathic medicine with a suspended or revoked osteopathic medicine license;

**(158)** practicing or attempting to practice osteopathic medicine without complying with the Osteopathic Medicine Act and without holding a license;

**(159)** intent to defraud uses on a public security or instrument of payment;

**(160)** misuse of public funds;

**(161)** bribery of public officer or public employee;

**(162)** misuse of public funds;

**(163)** tax Fraud;

**(164)** requesting money, thing of value or promise in exchange for performance of official act;

**(165)** official act for personal gain;

**(166)** excavation of unmarked burials w/o permit;

**(167)** provides false information or violates provisions of Vital Statistics Act;

**(168)** intentionally falsifies, forges, conceals, defaces or obliterates a document of anatomical gift, an amendment or revocation of a document of an anatomical gift, or a refusal, for personal gain, commits a third degree felony;

**(169)** knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death;

**(170)** making false statement in claim for payment under Indigent Hospital and County Health Care Act;

**(171)** unauthorized obtain or use of DNA samples or DNA records;

**(172)** sex offender who fails to comply with SORNA re moving to another state;

**(173)** certain violations of the Hazardous Waste Act;

**(174)** certain violations of the Air Quality Control Act;

**(175)** certain violations of the Solid Waste Act;

**(176)** injuring or threatening to injure a customer's credit because the customer refuses to pay charges resulting from cramming or slamming (telecommunications services);

**(177)** giving false testimony or information as to any matter material to an examination by the Superintendent of Insurance;

**(178)** willfully making a false or fraudulent statement in any verified report or declaration under oath in connection with fraternal benefit societies;

**(179)** making a false entry in a book, report or statement of an insurer with intent to injure, defraud, or deceive;

**(180)** unlawfully removing or attempting to remove records, assets, or material from a domestic insurer;

**(181)** certain violations of the Sale of Insurance Securities Law;

**(182)** making a false statement in connection with insurance with the effect of causing a loss to the insurer;

**(183)** improper disposition of certain court funds;

**(184)** jury tampering;

**(185)** an officer of a company who certifies that a document is true and correct, knowing the same to be false, or any person who forges the name of an officer the seal of a company

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure or for renewal of licensure unless the conviction under consideration is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend, revoke, not renew a license or otherwise exclude from licensure a person on the sole basis of a criminal conviction unless the conviction under consideration is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule shall prevent the board from denying an application for licensure or for renewal of licensure, or from disciplining a licensee, on the basis of a person's conduct, to the extent that such conduct violated the Funeral Services Act, regardless of whether the person was convicted of a crime for such conduct or whether

the crime for which the person was convicted is listed as one of the disqualifying criminal convictions in Subsection A of this rule.

**E.** In connection with an application for licensure or for renewal of licensure, the board shall not use, distribute, disseminate, or admit into evidence at an administrative proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.64.11.14 NMAC, N, 12/28/2021]

## **PART 12: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

### **16.64.12.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[6-15-96; 16.64.12.1 NMAC - Rn, 16 NMAC 64.12.1, 09-15-01; A, 04-02-10; A, 08-08-12]

### **16.64.12.2 SCOPE:**

16.64.12 NMAC applies to all licensees and applicants for licensure under the New Mexico Funeral Services Act.

[6-15-96; 16.64.12.2 NMAC - Rn, 16 NMAC 64.12.2, 09-15-01; A, 08-08-12]

### **16.64.12.3 STATUTORY AUTHORITY:**

16.64.12 NMAC is adopted pursuant to the New Mexico Parental Responsibility Act, Section 40-5A-1 et seq., NMSA 1978 (Ch. 25, Laws of 1995), the New Mexico Funeral Services Act, Section 61-32-1 et seq., NMSA 1978 and the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

[6-15-96; 16.64.12.3 NMAC - Rn, 16 NMAC 64.12.3, 09-15-01; A, 08-08-12]

### **16.64.12.4 DURATION:**

Permanent.

[6-15-96; 16.64.12.4 NMAC - Rn, 16 NMAC 64.12.4, 09-15-01]

**16.64.12.5 EFFECTIVE DATE:**

June 15, 1996.

[6-15-96; 16.64.12.5 NMAC - Rn, 16 NMAC 64.12.5, 09-15-01]

**16.64.12.6 OBJECTIVE:**

16.64.12 NMAC is established to facilitate the operation of the Parental Responsibility Act as it pertains to licensees and applicants for licensure, by delegating authority to issue notices of contemplated action and to refer such cases for administrative prosecution to the board administrator.

[6-15-96; 16.64.12.6 NMAC - Rn, 16 NMAC 64.12.6, 09-15-01]

**16.64.12.7 DEFINITIONS:**

[Reserved.]

[6-15-96; 16.64.12.7 NMAC - Rn, 16 NMAC 64.12.7, 09-15-01]

**16.64.12.8 DELEGATION OF AUTHORITY:**

The authority of the board of funeral services to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, Section 40-5A-1, et seq., and as provided further in 16.1.1 NMAC, of the New Mexico Administrative Code, which is incorporated herein by reference, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the New Mexico board of funeral services. 16.64.12 NMAC shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[6-15-96; 16.64.12.8 NMAC - Rn, 16 NMAC 64.12.8, 09-15-01; A, 08-08-12]

**PART 13: LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS**

**16.64.13.1 ISSUING AGENCY:**

New Mexico Board of Funeral Services.

[16.64.13.1 NMAC - N, 04/30/15]

#### **16.64.13.2 SCOPE:**

This part sets forth application procedures to expedite licensure for military service members, their spouses, their dependent children, and for veterans pursuant to Section 61-1-34 NMSA 1978.

[16.64.13.2 NMAC - N, 4/30/2015, A, 12/28/2021]

#### **16.64.13.3 STATUTORY AUTHORITY:**

These rules are issued pursuant to Funeral Services Act, Chapter 61, Article 32 NMSA 1978.

[16.64.13.3 NMAC - N, 4/30/2015; A, 12/28/2021]

#### **16.64.13.4 DURATION:**

Permanent.

[16.64.13.4 NMAC - N, 04/30/15]

#### **16.64.13.5 EFFECTIVE DATE:**

April 30, 2015, unless a later date is cited at the end of a section.

[16.64.13.5 NMAC - N, 04/30/15]

#### **16.64.13.6 OBJECTIVE:**

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children, and for veterans pursuant to 61-1-34 NMSA 1978.

[16.64.13.6 NMAC - N, 4/30/2015, A, 12/28/2021]

#### **16.64.13.7 DEFINITIONS:**

**A. "License"** has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

**B. "Licensing fee"** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

**C. "Military service member"** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**D. "Substantially equivalent"** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Funeral Services Act.

**E. "Veteran"** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.64.13.7 NMAC - N, 4/30/2015; A, 12/28/2021]

#### **16.64.13.8 APPLICATION REQUIREMENTS:**

**A.** Applications for registration shall be completed on a form provided by the board.

**B.** The applicant shall provide a complete application that includes the following information:

- (1) applicant's full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (5) date of birth;
- (6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.
- (7) background check; and
- (8) proof as described in Subsection C below.

**C.** The applicant shall provide to the board the following satisfactory evidence:

- (1) applicant is currently licensed and in good standing in another jurisdiction;
- (2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and
- (3) the following documentation:
  - (a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

**D.** The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

**E.** Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

**F.** A license issued pursuant to this section shall be valid for the time period that is specified in the Funeral Services Act.

[16.64.13.8 NMAC - N, 4/30/2015; A, 12/28/2021]

#### **16.64.13.9 RENEWAL REQUIREMENTS:**

**A.** A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.64.7 NMAC pursuant to Chapter 61, Article 32 NMSA 1978.

**B.** The board will send by electronic mail, license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.64.13.9 NMAC - N, 4/30/2015; A, 12/28/2021]

## **CHAPTER 65: REAL ESTATE APPRAISAL MANAGEMENT COMPANIES**

### **PART 1: GENERAL PROVISIONS**

**16.65.1.1 ISSUING AGENCY:**

State of New Mexico Real Estate Appraisers Board.

[16.65.1.1 NMAC - N, 10/16/09]

**16.65.1.2 SCOPE:**

All real estate appraisal management companies registered and applying for registration with the board.

[16.65.1.2 NMAC - N, 10/16/09]

**16.65.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Appraisal Management Company Registration Act (NMSA 1978, Sections 47-14-1 through -23).

[16.65.1.3 NMAC - N, 10/16/09]

**16.65.1.4 DURATION:**

Permanent.

[16.65.1.4 NMAC - N, 10/16/09]

**16.65.1.5 EFFECTIVE DATE:**

October 16, 2009, unless a later date is cited at the end of a section.

[16.65.1.5 NMAC - N, 10/16/09]

**16.65.1.6 OBJECTIVE:**

The objective of Part 1 is to set forth the provisions, which apply to all of Chapter 65, and to all persons affected or regulated by Chapter 65 of Title 16.

[16.65.1.6 NMAC - N, 10/16/09]

**16.65.1.7 DEFINITIONS:**

All words and terms defined in the Appraisal Management Company Registration Act have the same meaning in these rules.

**A.** Terms starting with the letter 'A' are defined as follows:

**(1)** "Act" means the Real Estate Appraisal Management Company Registration Act.

**(2)** "Applicant" means a company who has submitted an application to the board seeking registration.

**(3)** "Appraisal" means the act or process of developing an opinion of the value of real property in conformance with the uniform standards for professional appraisal practice published by the appraisal foundation.

**(4)** "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, and which reference is made in the federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments."

**(5)** "Appraisal management company" (AMC) means;

**(a)** any external third party that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year to:

- (i)** recruit, select and retain appraisers;
- (ii)** contract with appraisers to perform appraisal assignments;
- (iii)** manage the process of having an appraisal performed; or
- (iv)** review and verify the work of appraisers; or

**(b)** any external third party that contracts with a qualifying licensed real estate broker or associate broker as defined in Chapter 61, Article 29 NMSA 1978 to provide broker price opinions.

**(6)** "Appraisal management services" means:

- (a)** to recruit, select, and retain appraisers;
- (b)** to contract with licensed and certified appraisers to perform appraisal assignments;
- (c)** to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

**(d)** to review and verify the work of appraisers.

**(7)** "Appraisal review" the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, or an appraisal review.

**(8)** "Appraisal review report" is a report that develops or communicates an opinion about the quality of another appraiser work that was performed as part of an appraisal.

**(9)** "Appraisers Act" means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

**(10)** "Assignment" means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement for a specified number of properties.

**B.** Terms starting with the letter 'B' are defined as follows:

**(1)** "Board" means the New Mexico real estate appraisers board.

**(2)** "Board file" means all documents that an AMC is required to create and maintain for the board.

**C.** Terms starting with the letter 'C' are defined as follows:

**(1)** "Client" means a person or entity that contracts with, or otherwise enters into an agreement with an appraisal management company for the performance of real estate appraisal services.

**(2)** "Complaint committee" is a board appointed committee that is composed for the purpose of reviewing complaints and making recommendation to the board as to its findings.

**(3)** "Controlling person" (CP) means:

**(a)** an owner, officer or director of a corporation, partnership, limited liability company or other business entity seeking to offer appraisal management services in this state;

**(b)** an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and that has the authority to enter into agreements with independent for the performance of real estate appraisal services; or

(c) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of appraisal management companies.

(4) "Clerical review" is a non-standard three review of the completeness of the appraisal.

D. Terms starting with the letter 'D'. **[RESERVED]**

E. Term starting with the letter 'E' is defined as follows:

(1) "Employee in charge (EIC)" means a designated employee of the appraisal management company, with the responsibilities and obligations to the board set forth with these rules.

(2) "Evaluation" is a valuation permitted by the board's appraisal regulations for transactions that qualify for the appraisal threshold exception, business loan exception, or subsequent transaction exception.

F. Term starting with the letter 'F' is defined as follows: "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

G. Terms starting with the letter 'G'. **[RESERVED]**

H. Terms starting with the letter 'H'. **[RESERVED]**

I. Terms starting with the letter 'I'. **[RESERVED]**

J. Terms starting with the letter 'J'. **[RESERVED]**

K. Terms starting with the letter 'K'. **[RESERVED]**

L. Terms starting with the letter 'L'. **[RESERVED]**

M. Terms starting with the letter 'M'. **[RESERVED]**

N. Term starting with the letter 'N' is defined as follows: "Nonresident appraiser" means an individual or entity that holds a current registration or license in another state.

O. Term starting with the letter 'O' is defined as follows: "Outsourced appraisal review" is an appraisal review conducted by a licensed appraiser who is not an employee of the AMC.

P. Terms starting with the letter 'P' are defined as follows.

(1) "Panel" means a group of independent appraisers that have been selected by an appraisal management company to perform real estate appraisal services for the appraisal management company.

(2) "Peer review" is an opinion as to the completeness of another appraiser's work; completed by a licensed appraiser of similar experience and qualifications for the purpose of making a recommendation to the board as to its findings.

**Q.** Terms starting with the letter 'Q'. **[RESERVED]**

**R.** Terms starting with the letter 'R'. **[RESERVED]**

**S.** Term starting with the letter 'S' is defined as follows: "Staff appraiser" is an appraiser hired by an AMC as an employee, who is licensed by the board, to act as an appraiser and is subject to these rules.

**T.** Terms starting with the letter 'T'. **[RESERVED]**

**U.** Term starting with the letter 'U' is defined as follows: "Uniform standards of professional appraisal practice (USPAP)" means the uniform standards or professional appraisal practice promulgated by the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act. USPAP deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

**V.** Terms starting with the letter 'V'. **[RESERVED]**

**W.** Term starting with the letter 'W' is defined as follows: "Work file" is documentation necessary to support an appraiser's analyses, opinions, and conclusions.

**X.** Terms starting with the letter 'X'. **[RESERVED]**

**Y.** Terms starting with the letter 'Y'. **[RESERVED]**

**Z.** Terms starting with the letter 'Z'. **[RESERVED]**

[16.65.1.7 NMAC - N, 10/16/09; A, 01/01/2015; A, 01/15/2017; A, 02/03/2019]

#### **16.65.1.8 PUBLIC RECORDS:**

Except as protected by law, public records shall be available for inspection in accordance with the provisions of the Inspection of Public Records Act (IPRA), Sections 14-2-1 through -12, NMSA 1978, (1974, as amended through 2009). Cost will be determined by regulation and licensing department.

[16.65.1.8 NMAC - N, 10/16/09]

**16.65.1.9 SEVERABILITY:**

The provisions of these regulations are servable. If any part of the regulations is held invalid by a court of competent jurisdiction, the remaining provisions shall remain in force and effect, unless otherwise determined by a court of competent jurisdiction.

[16.65.1.9 NMAC - N, 10/16/09]

**16.65.1.10 INCORPORATION:**

The rules and regulations of the New Mexico real estate appraisers board are hereby incorporated by reference and shall govern all appraisals conducted pursuant the Appraisal Management Company Registration Act.

[16.65.1.10 NMAC - N, 10/16/09]

**PART 2: REGISTRATION REQUIREMENTS**

**16.65.2.1 ISSUING AGENCY:**

State of New Mexico Real Estate Appraisers Board.

[16.65.2.1 NMAC - N, 10/16/2009]

**16.65.2.2 SCOPE:**

All real estate appraisal management companies registered and applying for registration with the board.

[16.65.2.2 NMAC - N, 10/16/2009]

**16.65.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the AMC Registration Act (NMSA 1978, Sections 47-14-1 through -23).

[16.65.2.3 NMAC - N, 10/16/2009]

**16.65.2.4 DURATION:**

Permanent.

[16.65.2.4 NMAC - N, 10/16/2009]

**16.65.2.5 EFFECTIVE DATE:**

October 16, 2009, unless a later date is cited at the end of a section.

[16.65.2.5 NMAC - N, 10/16/2009]

**16.65.2.6 OBJECTIVE:**

The objective of Part 2 is to set forth the requirements for registration, which apply to all persons affected or regulated by Chapter 65 of Title 16.

[16.65.2.6 NMAC - N, 10/16/2009]

**16.65.2.7 DEFINITIONS:**

Federally regulated financial institutions: An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency shall not be required to register with a state.

[16.65.2.7 NMAC - N, 01/15/2017]

**16.65.2.8 AMC REGISTRATION REQUIREMENTS:**

Each AMC applying to the board for registration shall:

- A.** designate one controlling person (CP) that will submit to service of process;
- B.** designate one employee in charge (EIC) that will be the main contact for all communication between the board and the AMC (CP may be designated as the EIC, if that person meets all qualifications required by the board);
- C.** specify all entities doing business as (DBA) under the AMC;
- D.** certify that all appraisers added to the panel of the AMC hold a New Mexico license and certificate in good standing as an appraiser;
- E.** the AMC shall evaluate all appraisers within the renewal period to ensure that the real estate appraisal services are being conducted in accordance with the uniform standards of professional appraisal practices and board rules;
- F.** maintains a board file, containing:
  - (1)** a detailed record of each appraisal assignment with the corresponding engagement letter and the independent appraiser that performs the real estate appraisal services for the AMC;
  - (2)** certification and evaluation of all appraisers, as required under Subsections C and D;

- (3)** list of all non-taxable transaction certificates issued;
- (4)** a detailed record of the process and criteria that the AMC has in place to review the work of appraisers; and
- (5)** written procedure for contracting with and paying appraisers.
- (6)** a list of all appraisers who performed an appraisal in connection with a transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets in New Mexico during the previous year.

**G.** maintain a bond or other equivalent means of surety:

**(1)** a bond of twenty-five thousand dollars (\$25,000) shall be underwritten by a corporate surety authorized to transact business in New Mexico; such bond shall meet the following conditions:

**(a)** payments from a bond required pursuant to this section shall only be used to cure violations caused by a registrant, confirmed by the board;

**(b)** claims against the bond shall be made within two years following the board's final decision and order, finding a violation;

**(c)** bonds shall be construed so that the corporate surety may pay claimants directly, upon approval by the board;

**(d)** the total aggregate liability of the surety for all claims shall be limited to the face amount of the bond;

**(e)** the bond carrier shall provide to the board and to the AMC thirty [day's] days prior written notice of intent to cancel a bond required pursuant to this section; the surety for such a bond shall remain liable under the provisions of the bond for all obligations of the principal pertaining to bond terms that occur before the bond is canceled, expires or otherwise becomes ineffective;

**(f)** failure to maintain the bond for the period required by law is cause for revocation of the AMC registration; and

**(g)** if the bond is canceled, expires or otherwise becomes ineffective during the period of the registration, the AMC shall immediately notify the board; if the AMC has not provided proof of a new bond before the fortieth day after the date on which the bond was canceled, expired or otherwise became ineffective, the AMC shall be subject to revocation of its registration for failure to maintain a bond;

**(2)** as an equivalent means of surety, an AMC may maintain an agreement of cash collateral assignment executed with a state or national bank or federally insured

savings association authorized to do business in New Mexico as trustee; interest, if any, accumulating on the cash collateral assignment shall accrue to the AMC.

[16.65.2.8 NMAC - N, 10/16/2009; A, 01/16/11; A, 01/01/2015; A, 02/03/2019]

#### **16.65.2.9 OWNER REGISTRATION REQUIREMENTS:**

**A.** An AMC applying for registration may not be owned by a person or have any principal of the company, who has had a license or certificate to practice as an appraiser refused, denied, canceled or revoked in this state or in any other state.

**B.** Each person that owns, is an officer of, or has a ten percent or more financial interest in an AMC shall:

(1) attest to an irrevocable consent to service of process

(2) submit to a criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(a) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(b) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(c) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

[16.65.2.9 NMAC - N, 10/16/2009; A, 9/26/2023]

#### **16.65.2.10 CONTROLLING PERSON (CP) REGISTRATION REQUIREMENTS:**

In order to serve as a CP of an AMC, a designee shall:

**A.** submit to a Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(2) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(3) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**B.** not have had a license to practice as an appraiser refused, denied, canceled or revoked in this state or in any other state; and

**C.** attest to an irrevocable consent to service of process.

[16.65.2.10 NMAC - N, 10/16/2009; A, 9/26/2023]

#### **16.65.2.11 EMPLOYEE IN CHARGE (EIC) REGISTRATION REQUIREMENTS:**

In order to serve as the EIC for a registered AMC, a designee shall:

**A.** not have had a license to practice as an appraiser refused, denied, canceled or revoked in this state or in any other state;

**B.** submit to Criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(2) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(3) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent

to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**C.** shall be responsible for;

(1) the selecting of appraisers for the performance of real estate appraisal services which includes: ensuring that each appraiser is licensed and provides a combined reporting system (CRS) identification number;

(2) have the responsibility of reviewing completed appraisals as part of the board file:

(a) shall ensure clerical review is conducted on all appraisals completed within the renewal period;

(b) shall randomly select a statistically significant number, but not less than five percent, all fractions rounded up, of outsource appraisal reviews on appraisals completed within the renewal period;

(c) outsource appraisal reviews shall be completed by an appraiser that is certified or licensed in good standing within their state of licensure at a level that corresponds with or is higher than the level of licensure required to perform the appraisal.

(3) maintaining required documentation as part of the board file.

**D.** For initial registration of any Employee In Charge (EIC), proof that a 15 hour USPAP course was completed (no limitation on date completed) must be submitted along with the application for registration. For subsequent renewals of an existing registered EIC, an appraisal qualification board (AQB) seven hour National USPAP Update course must have been taken within the past two years. The appraisal qualifications board (AQB) approved 15 hour national USPAP course and the seven hour national USPAP update course do not require prior approval by the board with proof that the course was taught by an AQB certified USPAP instructor who is also a residential or general certified appraiser; the course sponsor may certify in the form of a certificate provided to the student that the instructor meets AQB criteria; the instructor must be affiliated with a sponsor approved in at least one state of the United States.

[16.65.2.11 NMAC - N, 10/16/2009; A, 1/16/2011; A, 7/10/2011; A, 1/15/2017; A, 2/3/2019; A, 9/26/2023]

#### **16.65.2.12 LETTERS OF ENGAGEMENT:**

Prior to placing an assignment for real estate appraisal services, the AMC shall give the appraiser a written letter of engagement that shall include the following minimum requirements. The written letter may be in electronic format.

**A.** An AMC must clearly indicate on each engagement letter that it is a requirement for an appraiser to be both product and geographically competent to complete the assignment. The acceptance of an assignment will serve as the appraiser's attestation that they are competent to accept the assignment. An AMC must clearly disclose its registration number on each engagement letter sent to an appraiser.

**B.** An AMC must disclose the following fees within the engagement letter sent to an appraiser;

(1) the total fee that will be collected by the AMC for the assignment;

(2) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and

(3) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(a) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(b) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

**C.** An AMC shall provide an NTTC to New Mexico licensed appraisers who perform appraisal services for an AMC who will subsequently resell the appraiser services to lenders. In order to execute NTTC's to appraisers, an AMC must register with the New Mexico taxation and revenue department and obtain a combined reporting system (CRS) identification number for tax reporting purposes.

[16.65.2.12 NMAC - N, 10/16/2009; 16.65.2.12 NMAC - N, 01/16/2011; A, 01/01/2015]

#### **16.65.2.13 AUDITS:**

At the time of registration or renewal the board has the right to examine the books and records of an AMC operating in the state and require the AMC to submit reports, information, and documents to the state at any time after written notice has been sent to the EIC of the AMC. Any costs incurred by the board during an audit may be attributed to the AMC.

[16.65.2.12 NMAC - N, 10/16/2009; 16.65.2.13 NMAC - Rn & A, 16.65.2.12 NMAC, 01/16/2011; A, 01/15/2017]

#### **16.65.2.14 KNOWLEDGE OF THE RULES:**

All AMC's and designees shall have knowledge of the board rules, and by acceptance of registration shall agree to abide by these rules.

[16.65.2.13 NMAC - N, 10/16/2009; 16.65.2.14 NMAC - Rn & A, 1665.2.13 NMAC, 01/16/2011]

**16.65.2.15 "AMC NATIONAL REGISTRY":**

The Board's staff shall, as required by federal law, report all residential appraisal management companies to the AMC National Registry. For the purposes of this rule, "residential appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year.

[16.65.2.15 NMAC – N, 02/03/2019]

**16.65.2.16 NOTIFICATION OF DISCIPLINARY ACTION:**

A registrant shall notify the board in writing within 30 days after the registrant is notified of any denial, revocation, or suspension of its designation, registration, certificate, or license under any law of any jurisdiction, other than New Mexico, regulating appraisal management companies, the imposition of any other form of discipline under any such law, or the commencement of a disciplinary or enforcement action against the registrant under any such law. The board shall commence disciplinary proceedings and, at the conclusion of those proceedings, determine the extent of the final discipline to be imposed in New Mexico, which may be less or more severe than the discipline imposed by the other jurisdiction that imposed discipline.

[16.65.2.16 NMAC – N, 10/30/2021]

**PART 3: APPLICATION FOR REGISTRATION**

**16.65.3.1 ISSUING AGENCY:**

State of New Mexico Real Estate Appraisers Board.

[16.65.3.1 NMAC - N, 10/16/09]

**16.65.3.2 SCOPE:**

All real estate appraisal management companies registered and applying for registration with the board.

[16.65.3.2 NMAC - N, 10/16/09]

**16.65.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the AMC Registration Act (NMSA 1978, Sections 47-14-1 through 23).

[16.65.3.3 NMAC - N, 10/16/09]

**16.65.3.4 DURATION:**

Permanent.

[16.65.3.4 NMAC - N, 10/16/09]

**16.65.3.5 EFFECTIVE DATE:**

October 16, 2009, unless a later date is cited at the end of a section.

[16.65.3.5 NMAC - N, 10/16/09]

**16.65.3.6 OBJECTIVE:**

The objective of Part 3 is to set forth the provisions for registration, registration renewal and expiration of registration, which apply to all persons affected or regulated by Chapter 65 of Title 16.

[16.65.3.6 NMAC - N, 10/16/09]

**16.65.3.7 DEFINITIONS:**

[RESERVED]

**16.65.3.8 APPLICATION FOR REGISTRATION:**

Incomplete application and fees will be returned to the applicant for supplementation of necessary documentation. All applicants must submit the following documentation to the board:

- A.** a completed application on a form prescribed by the board;
- B.** registration fee as provided in Part 5;
- C.** For each person that owns, is an officer of or has a ten percent or more financial interest in the AMC, the controlling person, and the employee in charge must all submit to a criminal history background check: All applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be

fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) The applicant will register online, through the approved department of public safety website, with the board's Originating Agency Identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(2) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(3) Out-of-State applicants, who are unable to visit an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to the approved live scan fingerprinting facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**D.** attestation to an irrevocable consent to service of process completed by the CP;

**E.** proof that the EIC has successfully completed an AQB approved 15 hour USPAP course.

**F.** documentation showing any and all discipline imposed on the applicant in any jurisdiction under any law governing or regulating appraisers or appraisal management companies.

**G.** The board will register the AMC on the federal registry maintained by the ASC and pay the fee as collected during the application process.

**H.** Upon issuance an AMC license shall be valid for no fewer than 12 months.

[16.65.3.8 NMAC - N, 10/16/2009; A, 1/16/2011; A, 1/15/2017; A, 10/30/2021; A, 9/26/2023]

### **16.65.3.9 EXPIRATION:**

All registrations shall expire on September 30 of each year. Applications for initial licensure are valid for one year from the date of receipt.

[16.65.3.9 NMAC - N, 10/16/2009; A, 1/15/2017; A, 9/26/2023]

### **16.65.3.10 RENEWAL PROCESS:**

Incomplete applications will be returned to the applicant for supplementation of necessary documentation. All AMC's shall submit a renewal form on or before their expiration date.

**A.** Renewals shall submit proof that the EIC has successfully completed an AQB approved seven hour USPAP course.

**B.** Registrations shall be renewed on-line. If on-line renewal is a hardship the registrant must contact the board office and request an official renewal form.

**C.** On-line renewal must be completed on or before the expiration date. Completed renewal forms must be post-marked or delivered to the board office on or before the expiration date.

**D.** It is the registrant's responsibility to renew on or before the expiration date.

**E.** Incomplete renewal forms will be returned to the registrant. Returned renewal forms not completed and returned to the board office on or before the expiration date will be considered late and the registrant must pay a late fee.

**F.** Ten percent of all renewals will be audited and must submit all documentation requested by the board.

**G.** The board will register the AMC renewal with the ASC on their federal registry and pay the fee as collected during the renewal process.

[16.65.3.10 NMAC - N, 10/16/09; A, 01/16/11; A, 01/15/2017]

#### **16.65.3.11 RENEWAL AFTER EXPIRATION:**

**A.** An expired registration may not be renewed on-line. To renew after the expiration date the registrant must contact the board office and request an official renewal form.

**B.** An expired registration may be renewed within 30 days after expiration upon submission of an official renewal form with all necessary documentation, payment of the required renewal fee, and payment of a late fee.

**C.** Registrants that do not renew within 30 days after expiration must reapply for registration and must meet all the current requirements for initial registration.

[16.65.3.11 NMAC - N, 10/16/09]

#### **16.65.3.12 BOARD NOTIFICATION:**

**A.** Changes of address: registrant shall report immediately to the board in writing any change of business address. Failure to do so within 30 days is grounds for registration suspension.

**B.** Change of designees or ownership: registrant shall report immediately to the board in writing any change of ownership, CP or EIC. New designees shall comply with all application requirements. Failure to do so within 30 days is ground for registration suspension.

**C.** Notice of action on a panel member must be immediately submitted to the board.

**D.** Effective January 1, 2010 all AMC currently operating in New Mexico shall be registered by the board.

[16.65.2.12 NMAC - N, 10/16/09]

## **PART 4: DISCIPLINE**

### **16.65.4.1 ISSUING AGENCY:**

State of New Mexico Real Estate Appraisers Board.

[16.65.4.1 NMAC - N, 10/16/09]

### **16.65.4.2 SCOPE:**

All real estate appraisal management companies registered and applying for registration with the board.

[16.65.4.2 NMAC - N, 10/16/09]

### **16.65.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Appraisal Management Company Registration Act (NMSA 1978, Sections 47-14-1 through 23).

[16.65.4.3 NMAC - N, 10/16/09]

### **16.65.4.4 DURATION:**

Permanent.

[16.65.4.4 NMAC - N, 10/16/09]

### **16.65.4.5 EFFECTIVE DATE:**

October 16, 2009, unless a later date is cited at the end of a section.

[16.65.4.5 NMAC - N, 10/16/09]

**16.65.4.6 OBJECTIVE:**

The objective of Part 4 is to set forth the disciplinary provisions, which apply to all persons affected or regulated by the Appraisal Management Company Registration Act.

[16.65.4.6 NMAC - N, 10/16/09]

**16.65.4.7 DEFINITIONS:**

[RESERVED]

**16.65.4.8 DISCIPLINARY PROCEDURES:**

**A.** The board may initiate disciplinary action upon:

(1) complaint;

(2) audit finding;

(3) information that the applicant, registrant, exempt company, compliance person, or other key person is the subject of an order of the board or any other state appraisal management company regulatory agency denying, suspending, or revoking the person or entity's privilege to operate as an appraisal management company, or information as to any other disciplinary action by an agency of another jurisdiction responsible for regulating appraisers; and

(4) any other knowledge the board receives of an alleged violation.

**B.** Upon receipt of a complaint or knowledge of an alleged violation the board may:

(1) review or investigate the alleged violations;

(2) referred the matter to a complaint committee; or

(3) informally dispose of a complaint if it determines that there is insufficient information or lack of probable cause.

**C.** The registrant shall have an opportunity to response to the compliant in writing. Failure to respond may be deemed waiver of any defenses.

**D.** Based upon the review or investigations, the complaint committee or other board designee will make a recommendation to the board for action.

**E.** Every registration shall be afforded notice and an opportunity to be heard before the board uses its authority to take any action that would result in:

- (1) suspension;
- (2) revocation;
- (3) censure or reprimand; or
- (4) fine.

**F.** When the board is taking an action defined in Subsection E of this section, the board shall serve upon the registrant written notice of contemplated action (NCA) and indication an opportunity for hearing. The NCA shall be served by personnel service on the controlling person of the AMC.

**G.** If a registrant does not request a hearing within the time and in the manner required by the NCA, the board may take the action contemplated.

[16.65.4.8 NMAC - N, 10/16/2009; A, 10/30/2021]

#### **16.65.4.9 HEARING PROCEDURES:**

Hearings shall be conducted pursuant to the Uniform Licensing Act, NMSA 1978, Section 61-1-1 through -31.

[16.65.4.9 NMAC - N, 10/16/2009; A, 9/26/2023]

### **PART 5: FEES**

#### **16.65.5.1 ISSUING AGENCY:**

State of New Mexico Real Estate Appraisers Board.

[16.65.5.1 NMAC - N, 10/16/09]

#### **16.65.5.2 SCOPE:**

All real estate appraisal management companies registered and applying for registration with the board.

[16.65.5.2 NMAC - N, 10/16/09]

#### **16.65.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Appraisal Management Company Registration Act (NMSA 1978, Sections 47-14-1 through 23).

[16.65.5.3 NMAC - N, 10/16/09]

**16.65.5.4 DURATION:**

Permanent.

[16.65.5.4 NMAC - N, 10/16//09]

**16.65.5.5 EFFECTIVE DATE:**

October 16, 2009, unless a later date is cited at the end of a section.

[16.65.5.5 NMAC - N, 10/16/09]

**16.65.5.6 OBJECTIVE:**

The objective of Part 5 is to set forth the fees authorized pursuant to the Appraisal Management Company Registration Act.

[16.65.5.6 NMAC - N, 10/16/09]

**16.65.5.7 DEFINITIONS:**

**[RESERVED]**

[16.65.5.7 NMAC - N, 10/16/09]

**16.65.5.8 FEES:**

All fees are non-refundable.

<b>A.</b>	Initial application fee	\$1000.
<b>B.</b>	Renewal fee	\$550.
<b>C.</b>	Late renewal fee	\$250.
<b>D.</b>	Change of Management fee	\$50.
<b>E.</b>	Duplicate/replacement registration	\$25.
<b>F.</b>	Paper list of all registrants	\$150.
<b>G.</b>	Electronic list of all registrants	\$125.
<b>H.</b>	Administrative fee	\$50.
<b>I.</b>	Official verification of good standing	\$25.
<b>J.</b>	AMC federal registration fee as currently charged by the appraisal subcommittee for federal registry.	

[16.65.5.8 NMAC - N, 10/16/09; A, 01/15/2017; A, 9/26/2023]

**16.65.5.9 AUDIT:**

Any costs incurred by the board during an audit may be attributed to the AMC.

[16.65.5.9 NMAC - N, 10/16/09]

**16.65.5.10 DISCIPLINE:**

Registrant shall bear all cost of disciplinary proceeding unless they prevail at the hearing.

[16.65.5.10 NMAC - N, 10/16/09]

## **CHAPTER 66: HOME INSPECTOR LICENSING**

### **PART 1: GENERAL PROVISIONS**

**16.66.1.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.1.1 NMAC – N, 1/15/2021]

**16.66.1.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.1.2 NMAC – N, 1/15/2021]

**16.66.1.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.1.3 NMAC – N, 1/15/2021]

**16.66.1.4 DURATION:**

Permanent.

[16.66.1.4 NMAC – N, 1/15/2021]

#### **16.66.1.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.1.5 NMAC – N, 1/15/2021]

#### **16.66.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 66 is to set forth the provisions which apply to all of Chapter 66 of Title 16 and to define the terms and terminology related to home inspectors used through Chapter 66 of Title 16.

[16.66.1.6 NMAC – N, 1/15/2021]

#### **16.66.1.7 DEFINITIONS:**

These rules adopt, as if stated herein, all of the definitions contained in Section 61-24D-2 NMSA 1978.

##### **A. Definitions beginning with the letter "A":**

(1) **"Access panel"** means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person. Its edges and fasteners are not painted in place. Access panels are limited to those panels within normal reach at human height or from a stepladder, and those which are not blocked by stored items, furniture, or building components.

(2) **"Adverse condition"** means a condition which is producing, or which has the potential to produce, a detrimental effect on a system or component that either impairs the system or component's normally intended function or operation or which is inconsistent with generally established practice(s) regarding the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use.

(3) **"Alarm"** means a warning device that is either permanently installed or freestanding, including but not limited to smoke detectors and alarms, carbon-monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps, and smoke alarms.

(4) **"Ancillary services"** means a service or inspection provided by a licensee or other provider but beyond the scope of the Standards of Practice for Home Inspection provided in 16.66.7 NMAC including but not limited to Mold Inspection, Lead Paint Assessment, Commercial Building Inspection, Pool and Spa Inspection, Termite Inspection, and other Ancillary Services.

(5) **"Appliance"** means a permanently installed household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components.

(6) **"Architectural service"** means any practice involving the art and science of building design for construction of any structure or grouping of structures, and the use of space within and surrounding the structures or the design, design development, preparation of construction contract documents, and administration of the construction contract.

(7) **"Automatic safety controls"** means devices designed and installed to protect systems and components.

#### **B. Definitions beginning with the letter "B":**

(1) **"Board"** means the New Mexico home inspectors board.

(2) **"Board approved examination"** means an examination that has been third-party accredited as complying with the prevailing standards of the Standards for Educational and Psychological Testing as published in 2014 by the American educational research association et. al.

(3) **"Business relationship"** means a former, current or prospective relationship between a person or a person's licensed agent, a home inspection company and its clients, a home inspection company and the company providing ancillary services, and between a client and a company providing ancillary services. The business relationship is based upon a financial contract between a person and a consumer which is in force including those relationships in which the individual benefits by receiving a salary, royalty, intellectual property rights, consulting fee, honoraria, ownership interest (e.g., stocks, stock options or other ownership interest, excluding diversified mutual funds), or other financial benefit. A former relationship if it occurred within a 12-month time period of the contract, a current or prospective relationship shall be disclosed in writing to the client and the client must acknowledge in writing receipt and acceptance of the disclosure. The receipt and acceptance of the disclosure may be by electronic signature.

#### **C. Definitions beginning with the letter "C":**

(1) **"Component"** means a constituent element or part of a system.

(2) **"Concealed, latent, or intermittent condition"** means any condition affecting any system or component which occurs after the inspection or is intermittent or otherwise not reasonably detectable by a competent and professional home inspector for any reason during the inspection.

(3) **"Condition"** means the visible and conspicuous state of being of an object regarding its appearance, quality, or working order.

(4) **"Cooling and air conditioning"** means:

(a) designed to be permanently installed for central cooling and or heating (ducted) or modular (non-ducted) systems. Systems may include evaporator coil(s), condenser unit(s), heat pump(s), air handler(s) and furnace(s) or

(b) permanently installed evaporative cooling ducted systems. This definition does not include cooling units or appliances that are designed and intended to be portable, non-permanent and are designed for installation at windows.

(5) **"Cosmetic imperfection"** means an irregularity or imperfection which does not affect a component's normally intended function or operation, and which could but is not required to be repaired.

(6) **"Crawlspace"** or **"underfloor crawlspace"** means the area within the confines of the foundation and between the ground and the underside of the lowest floor's structural components.

#### **D. Definitions beginning with the letter "D":**

(1) **"Describe"** means to document in writing.

(2) **"Dismantle"** means the act of taking apart or removing any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and which would not otherwise be taken apart or removed by a homeowner in the course of normal household maintenance.

#### **E. Definitions beginning with the letter "E":**

(1) **"Electronic signature"** means an electronic sound, signal, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(2) **"Engineering"** means the application of scientific knowledge for the design, control, or use of building structures, equipment, or apparatus.

(3) **"Engineering service"** means any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

## **F. Definitions beginning with the letter "F":**

(1) **"Foundation"** means the base upon which a structure or wall rests, typically constituted by masonry, concrete, or stone, and typically located at least partially underground.

(2) **"Fuel burning appliance"** means any natural gas, LP gas, wood, coal, or other similar organic fuel burning device or appliance, including but not limited to fireplaces, whether masonry or factory built; fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of said devices or appliances.

(3) **"Function"** means the action for which an item, component, or system is specially fitted or used, or for which an item, component, or system exists.

(4) **"Functional"** means the ability of an item, component, or system to perform its function.

(5) **"Functional drainage"** means the act or ability of a drain to empty in a reasonable amount of time without overflowing when another fixture is drained simultaneously.

(6) **"Functional flow"** means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(7) **"Further evaluation"** means examination and analysis by a qualified professional, tradesman, or service technician beyond that provided by a home inspection. Further evaluation may provide additional clarification, provide needed repairs, or discover additional adverse conditions that need modifications or repairs for the component or system to perform its normally intended function or operation provided by an appropriately licensed or qualified individual.

**G. Definitions beginning with the letter "G": "Generally established practice"** means a practice of or pertaining to one or more of the following: the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use of residential systems and their related materials and components. Generally established practices may vary based on whether they were applicable at the time of construction or whether modifications to the property were made after the original construction.

## **H. Definitions beginning with the letter "H":**

(1) **"Home inspection"**, as defined by Subsection F of Section 61-24D-2 NMSA 1978, means a noninvasive, nondestructive examination by a person of the interior and exterior components of a residential real property, including the property's structural components, foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its attached

or detached carports, garages and reasonably accessible installed components. "Home inspection" includes the examination of the property's heating, cooling, plumbing and electrical systems, including the operational condition of the systems' controls that are normally operated by a property owner.

**(2) "Home inspector"**, as defined by Subsection G of Section 61-24D-2 NMSA 1978, means a person who performs home inspections for compensation.

**I. Definitions beginning with the letter "I":**

**(1) "Identify"** means to describe a specific system or component by its type and to distinguish it by characteristics such as general or specific materials, energy sources, etc., which differentiate that system of components from other similar systems and components.

**(2) "Inspected property"** means the readily accessible areas of the buildings, site, items, components and systems included in the Home Inspection.

**J. Definitions beginning with the letter "J": [RESERVED]**

**K. Definitions beginning with the letter "K": [RESERVED]**

**L. Definitions beginning with the letter "L":**

**(1) "Licensure by credentials"** means the process by which an individual applicant applies for a license as a home inspector in New Mexico on the basis of the applicant's pre-existing license in another jurisdiction.

**(2) "Licensure by training and examination"** means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant's education, training, and passage of a board approved examination.

**(3) "Licensure by experience and examination"** means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant's previous work in New Mexico as a home inspector in each of the 24 months immediately preceding January 1, 2020, the applicant's performance of at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020, and the applicant's passage of a board approved examination.

**M. Definitions beginning with the letter "M": [RESERVED]**

**N. Definitions beginning with the letter "N":**

(1) **"Normal operating controls"** means thermostats, switches, valves, and other devices intended by design and manufacture to be used by homeowners or occupants in the normal and regular day-to-day operation of systems or components.

(2) **"Normally intended function or operation"** means the customary or conventional purpose or use for which a system or component is installed and for which it is designed or intended by its manufacturer.

**O. Definitions beginning with the letter "O":**

(1) **"On-site water supply quality"** means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(2) **"On-site water supply quantity"** means the rate of flow of water.

**P. Definitions beginning with the letter "P":**

(1) **"Permanently installed"** means an item, system, or component designed or intended to remain where originally placed, not easily moved, and which is attached, connected, or set in place for use so as to render moving or removing the item, system, or component impossible without the use of tools or equipment.

(2) **"Pre-inspection agreement"** means a signed agreement between the home inspector and their client executed prior to the commencement of the inspection detailing the services that the home inspector will provide.

(3) **"Proctored examination"** means a test taken under the supervision of testing staff. The proctor's function is to ensure procedural integrity and security of the examination in a secure environment. Examination passage must be in writing and written by the organization or entity that administered the examination.

(4) **"Professional liability insurance"** means errors and omissions insurance.

**Q. Definitions beginning with the letter "Q":** **"Qualified"** means having the training, skills, knowledge, expertise, competence and any special tools or equipment necessary to address adverse conditions and routine maintenance conditions and, where applicable, holding all required licenses and meeting all applicable industry standards and all governmental and statutory requirements.

**R. Definitions beginning with the letter "R":**

(1) **"Reactivation"** means the process and board act of reactivating an inactive or expired license, thereby permitting the licensee to engage in the practice of home inspection.

**(2) "Readily accessible"** means visually observable and able to be examined without requiring destructive measures; without risk to the inspector or others; without risk of damage to any item of personal or real property; without requiring the inspector to move, remove, damage, or disturb any wall, floor, ceiling, or window coverings; or any interior or exterior claddings or finish treatments; to move, remove, damage, disturb, climb upon, climb over, or straddle any item of personal property; to move, remove, damage, or disturb any landscape elements; or to interrupt the business of occupants, and not requiring disassembly or the use of any special protective clothing or special tools or equipment.

**(3) "Readily openable access panel"** means a panel located within normal reach or from a four-foot stepladder, and which is not blocked by stored items, furniture, or building components, provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not painted in place, but not including electrical panel board enclosure dead front covers.

**(4) "Residential recreational facilities"** means residential spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground and other similar equipment, and associated accessories that are installed at the inspected property.

**(5) "Reinstatement"** means the process and board act of reinstating a suspended or revoked license, thereby permitting the licensee to engage in the practice of home inspection either with or without future conditions.

**(6) "Representative number"** means all readily accessible identical components such as windows, electric switches and electric receptacles that serve as a typical or characteristic example of the items or components inspected. When one or a number of components or systems has identified "adverse conditions," the report should indicate further evaluation of all identical components by qualified personnel.

**(7) "Roof drainage systems"** means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

**(8) "Routine maintenance"** means typical, regular, ongoing, and expected maintenance that is part of an ongoing and prudent overall property and building systems upkeep program.

#### **S. Definitions beginning with the letter "S":**

**(1) "Safety glazing"** means tempered glass, laminated glass, or rigid plastic.

**(2) "Shut down"** means a piece of equipment whose safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, or a system that cannot be operated by the device or control that a homeowner should normally use to operate it.

**(3) "Structural component"** means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls, and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.

**(4) "System"** means a permanently-installed group of interacting, interrelated, or interdependent components historically and conventionally designed and intended to perform one or more specific functions.

**T. Definitions beginning with the letter "T": "Technically exhaustive"** means a comprehensive and detailed examination beyond the scope of a real estate home inspection that would involve or include, but would not be limited to: dismantling, specialized knowledge or training, special equipment, measurements, calculations, testing, research, analysis, or other means.

**U. Definitions beginning with the letter "U": [RESERVED]**

**V. Definitions beginning with the letter "V": [RESERVED]**

**W. Definitions beginning with the letter "W":**

**(1) "Wall cladding"** means a protective or insulating layer fixed to the outside of a building such as aluminum, brick, EIFS, stone, stucco, vinyl, or wood.

**(2) "Wiring method"** means the identification of electrical conductors or wires by their general type, such as nonmetallic sheathed cable, armored cable, and knob and tube.

[16.66.1.7 NMAC – N, 1/15/2021; A, 1/14/2022; A, 4/23/2024]

#### **16.66.1.8 OFFICES:**

The office of the New Mexico home inspectors board will be located in Albuquerque, New Mexico.

[16.66.1.8 NMAC – N, 1/15/2021]

#### **16.66.1.9 TELEPHONIC MEETING ATTENDANCE:**

A board member may participate in a board meeting by means of a conference telephone or similar communications equipment only when it is difficult or impossible for the board member to physically attend the meeting.

[16.66.1.9 NMAC – N, 1/15/2021; A, 4/23/2024]

#### **16.66.1.10 ADVISORY COMMITTEES:**

To assist and advise the board in its functions and mission, the board may, at its discretion, utilize advisory committees consisting of board members, volunteers, or both. Any committee serving the board shall have a purely advisory role and shall not have any policymaking authority of any kind. The board has absolute discretion with respect to the number of individuals who may serve on a committee, provided that in no case shall a quorum of the members of the board serve on a committee. The committees the board may create and utilize include, but are not necessarily limited to, the following:

**A. Rules Committee:** The board may utilize a rules committee to study the board's rules and provide nonbinding recommendations as to future changes and improvements.

**B. Complaint Committee:** The board may utilize a complaint committee to review disciplinary complaints against licensees and unlicensed practitioners and provide recommendations as to the final disposition of those complaints.

**C. Application Committee:** The board may utilize an application committee to review applications for licensure and provide recommendations as to whether the board should grant or deny those applications;

**D. Continuing Education Committee:** The board may utilize a continuing education committee for the purpose of providing nonbinding recommendations as to whether to accept a proposed continuing education course towards licensees' continuing education requirements.

[16.66.1.10 NMAC – N, 1/15/2021]

#### **16.66.1.11 LISTS AND STATEMENTS:**

**A.** The board staff shall maintain a list of the names and addresses of all licensees.

**B.** The board staff shall maintain a list of all persons whose licenses have been suspended or revoked in that particular calendar year.

**C.** The board staff shall maintain a statement of all funds received and a statement of all disbursements.

[16.66.1.11 NMAC – N, 1/15/2021]

#### **16.66.1.12 SIGNATURES:**

A record, contract, or other document requiring a signature from an authorized person on behalf of the board may be signed by the Chair, Vice-Chair, or Board Administrator.

[16.66.1.12 NMAC – N, 1/15/2021]

**16.66.1.13 RULE IMPLEMENTATION PERIOD:**

**A.** Any individual engaged in the practice of home inspection in New Mexico shall be required to obtain a license issued by the board as a condition of engaging in the future practice of home inspection in New Mexico. Effective January 15, 2021, any individual engaged in the unlicensed practice of home inspection in New Mexico shall be subject to disciplinary action by the board. The board may also, as it deems appropriate, request the attorney general or district attorney of the judicial district in which the person resides or in which the violation is occurring or has occurred to maintain an action in the name of the state to prosecute the unlicensed practitioner or to enjoin the act or practice.

**B.** Nothing in this rule permits any person engaged in the practice of home inspection, whether licensed or unlicensed, to violate the code of ethics or standards of conduct as adopted by the board, nor does it permit such a person to violate the Home Inspector Licensing Act. Any action in violation of these rules or the Home Inspector Licensing Act may be considered by the board as part of an individual's application for licensure.

[16.66.1.13 NMAC – N, 1/15/2021; A, 4/23/2024]

**PART 2: FEES**

**16.66.2.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.2.1 NMAC – N, 1/15/2021]

**16.66.2.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.2.2 NMAC – N, 1/15/2021]

**16.66.2.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.2.3 NMAC – N, 1/15/2021]

**16.66.2.4 DURATION:**

Permanent.

[16.66.2.4 NMAC – N, 1/15/2021]

**16.66.2.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.2.5 NMAC – N, 1/15/2021]

**16.66.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 66 is to establish fees to generate revenues necessary for the home inspector licensing board to carry out its administrative functions.

[16.66.2.6 NMAC – N, 1/15/2021]

**16.66.2.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.2.7 NMAC – N, 1/15/2021]

**16.66.2.8 FEES:**

The board shall establish, charge and collect:

- A. For each initial application for a home inspector license, a fee of \$250;
- B. For an initial three-year license, a fee of \$1,000.
- C. For renewal of a three-year license, a fee of \$1,000;
- D. For reactivation of an inactive license, a fee of \$50;
- E. For reactivation of an expired license, a fee of \$100;
- F. For reinstatement of a suspended or revoked license, a fee of \$200;
- G. For each duplicate license issued because a license is lost or destroyed, a fee of \$50, provided that the licensee shall submit an affidavit attesting to the loss or destruction of the license before the board issues a duplicate license.
- H. Administrative Fee for Licensee List, a fee of \$100.

[16.66.2.8 NMAC – N, 1/15/2021; A, 4/23/2024]

**16.66.2.9 FEES NON-REFUNDABLE:**

Fees paid to the board pursuant to 16.66.2.8 NMAC of the board rules are non-refundable. Requests for refunds or exceptions to this rule shall not be considered by the board.

[16.66.2.9 NMAC – N, 1/15/2021]

**PART 3: APPLICATIONS AND LICENSES**

**16.66.3.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.3.1 NMAC – N, 1/15/2021]

**16.66.3.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.3.2 NMAC – N, 1/15/2021]

**16.66.3.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.3.3 NMAC – N, 1/15/2021]

**16.66.3.4 DURATION:**

Permanent.

[16.66.3.4 NMAC – N, 1/15/2021]

**16.66.3.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.3.5 NMAC – N, 1/15/2021]

**16.66.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 66 is to set forth provisions governing applications for licensure as a home inspector and examinations.

[16.66.3.6 NMAC – N, 1/15/2021]

**16.66.3.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.3.7 NMAC – N, 1/15/2021]

**16.66.3.8 APPLICATION FOR LICENSURE BY TRAINING AND EXAMINATION:**

**A.** The board shall issue a license to an applicant for licensure by training and examination if the applicant fulfills the following requirements and provides the following information and evidence:

- (1) Completion of the board-issued application form;
- (2) Payment of the non-refundable application fee in full as provided in Part 2;
- (3) Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age;
- (5) Completion of at least 80 hours of classroom training:

(a) The cumulative total of 80 hours of classroom training must include all of the following subjects:

- (i) Site characteristics and exterior;
- (ii) Structural components;
- (iii) Roofing;
- (iv) Plumbing;
- (v) Electrical;
- (vi) Heating, cooling, and air conditioning;
- (vii) Interiors, appliances, and garages;

- (viii) Insulation and ventilation;
- (ix) Fireplaces and fuel burning appliances;
- (x) New Mexico standards of practice and code of ethics;
- (xi) Business practices, including New Mexico rules and regulations, pre-inspection agreements, and report writing.

(b) All 80 hours of classroom training must be obtained through an educational course that satisfies one of the following criteria:

(i) The course is approved or accepted by another governmental state home inspector licensing authority;

(ii) The course is approved by the United States Department of Education or the New Mexico Department of Education; or

(iii) The course is designated as pre-licensing education and is certified or approved by any society, institute, council, or association of home inspectors;

(c) All 80 hours of classroom training may be completed online;

(6) Passage of a board approved examination.

(7) Completion of a total of at least 80 hours of field training spent conducting a minimum of 30 parallel home inspections, evidenced by documents including, but not necessarily limited to, a completed board-issued inspection log, pre-inspection agreements, notarized affidavits, and other similarly-reliable evidence;

(8) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.9.9 NMAC; and

(9) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9.10 NMAC.

**B.** For the purposes of this rule, parallel home inspections mean inspections that are either:

(1) Conducted in New Mexico prior to the effective date of this rule; or

(2) Those home inspections at which the applicant, for observational, experiential, and educational purposes, accompanied another home inspector who:

(a) Is legally engaged in the practice and profession of home inspection in the jurisdiction in which the home inspection is conducted;

(b) Has at least two years of experience in the profession of home inspection;  
and

(c) Has previously completed at least 100 home inspections for compensation.

[16.66.3.8 NMAC – N, 1/15/2021; A, 1/14/2022; A, 4/23/2024]

### **16.66.3.9 APPLICATION FOR LICENSURE BY EXPERIENCE AND EXAMINATION:**

**A.** An individual is eligible for licensure by experience and examination if the individual satisfies both of the following criteria:

(1) The applicant worked as a home inspector in each of the 24 months immediately preceding January 1, 2020; and

(2) The applicant performed at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020.

**B.** The board shall issue a home inspector license to applicant for licensure by experience and examination if the applicant fulfills the following requirements and provides the following information and evidence:

(1) Completion of the board-issued application form;

(2) Payment of the non-refundable application fee in full as provided in Part 2;

(3) Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;

(4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;

(5) Passage of a board approved examination, subject to the following limitations:

(a) Evidence of the applicant's examination passage must be in writing and written by the organization or entity that administered the examination; and

(b) The examination must have been proctored and the applicant must provide evidence as to this requirement.

(6) Satisfactory evidence that the applicant has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9 NMAC; and

(7) Provision to the board of sufficient documentation and evidence to establish the applicant's home inspector activities in the 24 months immediately preceding January 1, 2020. Such documentation may include, but is not limited to, tax records, notarized affidavits from persons other than the applicant, pre-inspection agreements, and other similarly reliable evidence of the applicant's home inspection activities in the 24 months immediately preceding January 1, 2020.

**C.** For the purposes of this rule, the phrase "worked as a home inspector in each of the 24 months immediately preceding January 1, 2020" means having personally conducted any business activity directly associated with the profession of home inspection but is not limited to having conducted an actual home inspection. To qualify for licensure by experience and examination, an individual does not need to have personally conducted a home inspection in each of the 24 months immediately preceding January 1, 2020, if that individual conducted another business activity directly associated with the profession of home inspection during each of the 24 months.

[16.66.3.9 NMAC – N, 1/15/2021; A, 1/14/2022; A, 4/23/2024]

#### **16.66.3.10 APPLICATION FOR LICENSURE BY CREDENTIALS:**

**A.** An applicant who holds a license in good standing to practice as a home inspector in another state may be granted a license by virtue of the applicant's credentials if the applicant's resident state license requirements are the same as or similar to the requirements set forth in the Home Inspector Licensing Act as determined by the board.

**B.** An applicant applying for licensure on the basis of the applicant's credentials as described in subsection A of this rule shall be required to provide to the board:

- (1) Completion of the board-issued application form;
- (2) Payment of the non-refundable application fee in full as provided in Part 2;
- (3) Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age;
- (5) A certificate, letter, or other documentation from the licensing authority in the applicant's resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state;

(6) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.9.9 NMAC; and

(7) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9.10 NMAC.

**C.** Pursuant to the Home Inspector Licensing Act, the board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. A license granted pursuant to a reciprocity agreement shall be issued upon:

(1) Completion of the board-issued application form;

(2) Payment of the non-refundable application fee in full as provided in Part 2;

(3) Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;

(4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age;

(5) The applicant's provision to the board of a certificate, letter, or other documentation from the licensing authority in the applicant's resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state.

(6) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.9.9 NMAC; and

(7) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9.10 NMAC.

[16.66.3.10 NMAC – N, 1/15/2021; A, 4/23/2024]

### **16.66.3.11 EXAMINATIONS:**

**A.** Licensure by training and examination: All applicants for licensure by training and examination must pass a board approved examination prior to the date of the applicant's application for licensure.

**B.** Licensure by experience and examination: All applicants for licensure by experience and examination must pass a board approved examination, subject to the following limitations:

(1) Evidence of the applicant's examination passage must be in writing and written by the organization or entity that administered the examination; and

(2) The examination must have been proctored and the applicant must provide evidence as to this requirement.

**C.** Licensure by credentials: Applicants for licensure by credentials are not required to provide the board with evidence as to prior examination passage. However, the board will consider whether the applicant's prior licensing jurisdiction requires the passage of a national examination in determining whether the prior licensing jurisdiction's standards are substantially equivalent to those in New Mexico.

**D.** It is the applicant's responsibility to make all arrangements to take a board approved examination.

**E.** The applicant shall send the applicant's examination score to the board, provided that the examination score must be in a document originally written by the organization or entity that administered the examination.

[16.66.3.11 NMAC – N, 1/15/2021; A, 1/14/2022; A, 4/23/2024]

### **16.66.3.12 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, CHILDREN, AND VETERANS:**

#### **A. Application requirements:**

(1) Applications for licensure shall be completed on a form provided by the Home Inspectors Board.

(2) The applicant shall provide a complete application that includes the following information:

(a) applicant's full name;

(b) current mailing address;

(c) current electronic mail address, if any;

(d) date of birth;

(e) background check, if required; and

(f) proof as described in subsection C below.

(3) The applicant shall provide the following satisfactory evidence as follows:

(a) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(b) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(c) the following documentation:

(i) for military service member: a copy of military orders;

(ii) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(iii) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(iv) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(v) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

(4) The license shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

(5) Military service members and veterans as defined in Subsection E of Section 61-1-34 NMSA 1978 shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

(6) A license issued pursuant to this section shall be valid for the time period that is specified in the Home Inspectors Licensing Act.

#### **B. Renewal requirements:**

(1) A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.66.4.8 NMAC pursuant to 61-24D-8 NMSA 1978.

(2) As a courtesy, the board will send via electronic mail license renewal notifications to licensees before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not

relieve the licensee of the responsibility of timely renewal on or before the expiration date.

[16.66.3.12 NMAC – N, 1/15/2021; A, 1/14/2022; A, 4/23/2024]

**16.66.3.13 [RESERVED]**

[16.66.3.13 NMAC – N, 1/15/2021; Repealed 1/14/2022]

**16.66.3.14 LICENSURE PROCEDURE:**

**A.** Upon receipt of a completed application, including all required documentation and fees, the Board's application committee, should the Board choose in its discretion to utilize such a committee, may provide a non-binding and purely advisory recommendation as to whether the Board should grant or deny the application.

**B.** No license may be issued until the applicant has paid the non-refundable initial license fee in full.

[16.66.3.14 NMAC – N, 1/15/2021; A, 4/23/2024]

**16.66.3.15 POTENTIALLY DISQUALIFYING CRIMINAL CONVICTIONS:**

**A.** Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board. This includes conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

- (1) homicide, voluntary or involuntary manslaughter;
- (2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;
- (3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect, or financial exploitation;
- (6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous uses of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property;

(8) financial crimes involving fraud, forgery, embezzlement, credit card fraud,

**B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

**D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Home Inspector Licensing Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

**E.** In connection with an application for licensure, the board/commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

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

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

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.66.3.15 NMAC – N, 1/14/2022; A, 4/23/2024]

## **PART 4: LICENSE RENEWALS AND REACTIVATIONS**

### **16.66.4.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.4.1 NMAC – N, 1/15/2021]

### **16.66.4.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.4.2 NMAC – N, 1/15/2021]

**16.66.4.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.4.3 NMAC – N, 1/15/2021]

**16.66.4.4 DURATION:**

Permanent.

[16.66.4.4 NMAC – N, 1/15/2021]

**16.66.4.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.4.5 NMAC – N, 1/15/2021]

**16.66.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 66 is to set forth provisions governing renewals of home inspector licenses and reactivation of expired and inactive licenses.

[16.66.4.6 NMAC – N, 1/15/2021]

**16.66.4.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.4.7 NMAC – N, 1/15/2021]

**16.66.4.8 LICENSE RENEWAL:**

**A.** An initial home inspector license shall be valid for three years. Once renewed, all licenses shall be for a duration of three years.

**B. Renewal Date:** A licensee may apply for renewal of the licensee's license no later than the date specified as the expiration date on the applicant's license.

**C.** A licensee seeking the renewal of the license shall provide to the board in accordance with the deadlines specified in this rule:

- (1) A completed renewal application;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Proof of completion of required continuing education as provided in Part 5;
- (4) Satisfactory evidence that the licensee has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9 NMAC.

**D.** The board office will send, either through electronic means or through postal mail, a renewal notice to each licensee no later than 45 days prior to the expiration of the license at the licensee's address on record. Timely renewal of a license is the full and complete responsibility of the licensee. If the licensee does not receive a renewal notification from the board, it is the responsibility of the licensee to contact the board office.

**E.** The licensee's failure to receive the board's renewal notification will not exempt the licensee from licensure expiration or late penalty fees.

**F.** Each licensee is responsible for submitting the required renewal fee by the expiration date irrespective of whether a renewal notice is received by the licensee, and licensees shall not practice on expired licenses under any circumstances.

[16.66.4.8 NMAC – N, 1/15/2021; A, 4/23/2024]

#### **16.66.4.9 INACTIVE STATUS:**

**A.** A license in good standing may, upon written request to the board by the licensee, be placed on inactive status prior to its expiration.

**B.** A licensee possessing an inactive license may not engage in the practice of home inspection in the State of New Mexico.

**C.** A license may remain on inactive status indefinitely.

**D.** A licensee must renew an inactive license no later than the expiration date specified on the license. A licensee seeking to renew an inactive license must complete all continuing education as would a full licensee as provided in Part 5 of these rules.

[16.66.4.9 NMAC – N, 1/15/2021]

#### **16.66.4.10 EXPIRED LICENSES:**

**A.** Former licensees may reactivate an expired license within 90 days of expiration. A licensee who fails to reactivate an expired license within 90 days of expiration must, to obtain licensure, reapply as a new applicant for licensure.

**B.** For the purposes of this rule, expired licenses include those that have expired after being placed on inactive status by the former licensee.

[16.66.4.10 NMAC – N, 1/15/2021]

#### **16.66.4.11 REACTIVATION OF EXPIRED OR INACTIVE LICENSES:**

Former licensees may reactivate an expired or inactive license within the deadlines provided in these rules. A former licensee seeking the reactivation of an expired or inactive license shall provide to the board in accordance with the deadlines specified in these rules:

**A.** A completed renewal application;

**B.** Payment of the non-refundable renewal fee in full as provided in Part 2;

**C.** Payment of the expired license reactivation fee in full as provided in Part 2;

**D.** Proof of completion of all required continuing education;

**E.** Satisfactory evidence that the licensee has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9 NMAC.

[16.66.4.11 NMAC – N, 1/15/2021; A, 4/23/2024]

### **PART 5: CONTINUING EDUCATION**

#### **16.66.5.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.5.1 NMAC – N, 1/15/2021]

#### **16.66.5.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.5.2 NMAC – N, 1/15/2021]

**16.66.5.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.5.3 NMAC – N, 1/15/2021]

**16.66.5.4 DURATION:**

Permanent.

[16.66.5.4 NMAC – N, 1/15/2021]

**16.66.5.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.5.5 NMAC – N, 1/15/2021]

**16.66.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 66 is to set forth provisions governing continuing education requirements.

[16.66.5.6 NMAC – N, 1/15/2021]

**16.66.5.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.5.7 NMAC – N, 1/15/2021]

**16.66.5.8 CONTINUING EDUCATION:**

As provided by the Home Inspector Licensing Act, all home inspectors shall be required to satisfy continuing education requirements in the interest of ensuring the highest quality professional services.

**A.** As a condition of license renewal, a home inspector licensee shall complete at least 60 hours of board-approved continuing education instruction that is related to the practice of home inspection during each three-year license period as outlined in 16.66.4.8 NMAC. This includes licensees holding initial licenses.

**B.** At least six hours of continuing education instruction during each three-year license period must be in ethics.

**C.** A licensee may take continuing education instruction online.

**D.** Initial licenses of a duration of less than three years: Those licensees possessing initial licenses of a duration of one or two years shall complete a pro-rated amount of continuing education as follows:

(1) For licensees possessing an initial one year license, 20 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least two hours of ethics;

(2) For licensees possessing an initial two year license, 40 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least four hours of ethics.

**E.** Attendance at one New Mexico home inspector board meeting, rule hearing, or disciplinary hearing for at least three hours, or until the board meeting goes into closed session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing. In the event of home inspector hardship, approved by the board, the home inspector board may authorize an equivalent to attendance at a board meeting by an online download, attendance at any approved equivalent, or by other approved participation.

[16.66.5.8 NMAC – N, 1/15/2021; A, 4/23/2024]

#### **16.66.5.9 APPROVAL OF CONTINUING EDUCATION HOURS:**

**A.** The Board shall automatically accept any educational course towards a licensee's continuing education requirements if the course satisfies one of the following criteria:

(1) The course is approved or accepted by another governmental state home inspector licensing authority;

(2) The course is approved by the United States Department of Education or the New Mexico Department of Education; or

(3) The course is certified or approved by any society, institute, council, or association of home inspectors.

**B.** A course that does not satisfy the criteria set forth in subsection A of this section may still be accepted by the board through the following process:

(1) A continuing education course may be submitted to the board for approval, by either the course instructor or the licensee, along with the following documentation:

(a) Course description, objectives, and goals;

(b) Course syllabus, including the number of educational hours, detailed timeline, provisions for make-up work, required text, and reading resources, instructional materials and handouts, requirements for successful completion and method of evaluation; and

(c) Documentation as to the course instructor's qualifications, background, and expertise.

(2) Any continuing education course submitted to the board for approval shall be reviewed, along with its supporting documentation, by the board's continuing education committee, which will make a non-binding recommendation to the board as to whether to approve or disapprove the course. The board shall vote on approval of the course, either as part of its consent agenda or otherwise, at its next regularly-scheduled meeting. In the event that the continuing education committee recommends the disapproval of a course, this information shall be conveyed to the course instructor, who may request in writing the opportunity to be heard at the next regularly-scheduled board meeting. Where the instructor has made a request to be heard and the board votes to deny the application, the board will issue a final written decision no later than 15 business days following the board's meeting.

(3) The board, and its application committee, shall consider the following criteria in determining whether to approve a continuing education course:

(a) Whether the content of the course is related to the practice of home inspection;

(b) Whether the instructor is qualified to teach the course; and

(c) Whether the instructor has violated the Home Inspector Licensing Act, the board's rules, or any criminal laws that are substantially related to the practice of home inspection or a failure to pay child support.

[16.66.5.9 NMAC – N, 1/15/2021]

#### **16.66.5.10 CONTINUING EDUCATION AUDITS:**

The board shall audit ten percent of renewal applications each year, selected anonymously and at random, to verify completion of continuing education.

**A.** If a notice of audit is received, the licensee must submit evidence of continuing education hours earned during the current renewal cycle to the board as required in the Home Inspector Licensing Act and the board's rules.

**B.** All licensees as a condition of renewal, attest to the completion of the required hours of continuing education. The licensee shall, throughout the period of each license, retain all documentation of continuing education attendance for the previous cycle of licensure.

**C.** The board may audit any licensee's continuing education attendance upon notification to the licensee.

**D.** Failure to comply with a notice of audit or submit evidence of continuing education hours earned during the current renewal cycle may result in disciplinary action by the board.

[16.66.5.10 NMAC – N, 1/15/2021; A, 04/23/2024]

## **PART 6: CODE OF ETHICS**

### **16.66.6.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.6.1 NMAC – N, 1/15/2021]

### **16.66.6.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.6.2 NMAC – N, 1/15/2021]

### **16.66.6.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.6.3 NMAC – N, 1/15/2021]

### **16.66.6.4 DURATION:**

Permanent.

[16.66.6.4 NMAC – N, 1/15/2021]

### **16.66.6.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.6.5 NMAC – N, 1/15/2021]

**16.66.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 66 is to set forth a code of ethics governing the professional obligations of all home inspector licensees.

[16.66.6.6 NMAC – N, 1/15/2021]

**16.66.6.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.6.7 NMAC – N, 1/15/2021]

**16.66.6.8 CODE OF ETHICS:**

All licensed home inspectors in New Mexico shall abide at all times by the Code of Ethics contained in this part.

**A.** This Code of Ethics rests on the fundamental principles of integrity, honesty, and objectivity. All provisions contained herein shall be interpreted at all times in the light of these principles which govern the New Mexico home inspection industry.

**B.** All licensees shall comply with this Code of Ethics, shall avoid association with any enterprise whose practices violate this Code of Ethics, and shall strive to uphold, maintain, and improve the integrity, reputation, and practice of home inspection.

[16.66.6.8 NMAC – N, 1/15/2021]

**16.66.6.9 CONFLICTS OF INTEREST:**

A licensee shall avoid conflicts of interest or activities that compromise, or appear to compromise, professional independence, objectivity, or inspection integrity. To that end, a licensee shall not:

**A.** Inspect a property for compensation in which the licensee has, or expects to have, a financial interest;

**B.** Inspect a property under a contingent arrangement whereby any compensation or future referral is dependent on reported findings or on the sale of the property;

**C.** Directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers, or similar arrangements;

**D.** Receive compensation for an inspection from more than one party unless the client consents in writing to the compensation arrangement;

**E.** Accept compensation, directly or indirectly, for recommending contractors, services, or products to clients or other parties having an interest in an inspected property; or

**F.** Perform, or offer to perform, for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair.

[16.66.6.9 NMAC – N, 1/15/2021]

**16.66.6.10 GOOD FAITH:**

A licensee shall act in good faith toward each client and other interested parties.

**A.** A licensee shall perform services and express opinions based on genuine conviction and only within the licensee's areas of education, training, or experience.

**B.** A licensee shall be objective in reporting and not knowingly understating or overstating the significance of reported adverse conditions.

**C.** A licensee shall not release any information about an inspection or a client to a third party unless doing so is necessary to protect the safety of others, to comply with a law or statute, or unless the client has provided intelligent, informed, and written consent to the home inspector for the release of the information.

**D.** A licensee shall be honest in all business dealings and professional conduct.

[16.66.6.10 NMAC – N, 1/15/2021]

**16.66.6.11 CONFIDENCE IN THE PROFESSION:**

A licensee shall avoid activities that may harm the public, bring disrepute upon the licensee, or reduce public confidence in the profession of home inspection.

**A.** A licensee shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the Home Inspector Licensing Act.

**B.** Advertising, marketing, and promotion of a licensee's services or qualifications shall not be fraudulent, false, deceptive, or misleading.

**C.** A licensee shall report a violation of this Code of Ethics to the Board.

[16.66.6.11 NMAC – N, 1/15/2021]

## **PART 7: STANDARDS OF PRACTICE**

### **16.66.7.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.7.1 NMAC – N, 1/15/2021]

### **16.66.7.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.7.2 NMAC – N, 1/15/2021]

### **16.66.7.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.7.3 NMAC – N, 1/15/2021]

### **16.66.7.4 DURATION:**

Permanent.

[16.66.7.4 NMAC – N, 1/15/2021]

### **16.66.7.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.7.5 NMAC – N, 1/15/2021]

### **16.66.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 66 is to set forth minimum and uniform standards of practice governing all home inspector licensees.

[16.66.7.6 NMAC – N, 1/15/2021]

### **16.66.7.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.7.7 NMAC – N, 1/15/2021]

**16.66.7.8 STANDARDS OF PRACTICE:**

This Part sets forth the minimum and uniform standards of practice applicable to all New Mexico home inspector licensees.

[16.66.7.8 NMAC – N, 1/15/2021]

**16.66.7.9 HOME INSPECTIONS DO NOT DETERMINE CONFORMITY WITH STATE AND LOCAL BUILDING CODE REQUIREMENTS:**

A licensee shall not, as part of a home inspection, determine whether the home or components and/or systems of the home that have been inspected conform to local or state building code requirements. A home inspection report shall not contain a determination of whether the home or components and/or systems of the home that have been inspected conform to local or state building code requirements.

[16.66.7.9 NMAC – N, 1/15/2021]

**16.66.7.10 PRE-INSPECTION AGREEMENTS:**

Prior to the commencement of any home inspection, a licensee shall enter into a pre-inspection agreement with the client. Any pre-inspection agreement must contain, at a minimum, all of the following:

- A.** The date and time of the inspection;
- B.** The name and license number of the licensee home inspector who will be conducting the home inspection;
- C.** The compensation fee and terms of payment for services;
- D.** A statement that the inspection shall be performed in accordance with the Board's rules and standards of practice;
- E.** A statement summarizing the scope of work to be performed by the licensee, provided that this scope of work may be modified by subsequent written agreement executed by the licensee and client prior to commencement of the home inspection;
- F.** The date upon which the licensee shall deliver the home inspection report to the client;
- G.** The following statement, in its entirety and in all capital letters: "THE HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A

DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

[16.66.7.10 NMAC – N, 1/15/2021]

**16.66.7.11 HOME INSPECTIONS:**

The licensee shall, as part of any home inspection, inspect all of the readily accessible and permanently installed systems and components listed in 16.66.7.12 NMAC, 16.66.7.13 NMAC, 16.66.7.14 NMAC, 16.66.7.15 NMAC, 16.66.7.16 NMAC, 16.66.7.17 NMAC, 16.66.7.18 NMAC, 16.66.7.19 NMAC, 16.66.7.20 NMAC, 16.66.7.21 NMAC, 16.66.7.22 NMAC, and 16.66.7.23 NMAC.

**A.** Home inspections must be conducted by a licensee. A trainee may conduct parallel inspections and write portions of a home inspection report alongside and under the supervision of a licensee, provided that the licensee shall be responsible for compliance with these rules and regulations in all circumstances. Only a licensee may sign a home inspection report. Office staff may conduct scheduling and bookkeeping functions without a license.

**B.** Recommendations: Any decision to seek repair, further evaluation, or cost estimates for repair of any reported adverse condition observed and described in a home inspection report is reserved to the parties to the contract for sale and purchase of the home. All such repairs, evaluations, and cost estimates must be provided by a qualified and, if required, licensed contractor and may include tests, measurements, and adjustments outside of the scope of a normal home inspection and may lead to the discovery of additional adverse conditions which may have additional repair costs that may not have been obvious to the home inspector. Any individual engaged in construction or a trade related to contracting or making code determinations in New Mexico must be licensed by the appropriate state agency, if required.

[16.66.7.11 NMAC – N, 1/15/2021]

**16.66.7.12 SITE CHARACTERISTICS AND EXTERIOR:**

**A.** The licensee shall inspect:

- (1)** Wall cladding materials, flashing, and trim;
- (2)** eaves, soffits, and fascia where accessible and observable from the ground level;
- (3)** exterior doors and windows;

**(4)** attached and adjacent decks, balconies, stairs, steps, stoops, stairways, and porches and the associated railings, guards, and handrails;

**(5)** vegetation, grading, surface drainage, and retaining structures that, as determined by the licensee, adversely affect the building;

**(6)** attached and adjacent walkways and exterior stoops, landings, and patios;

**(7)** adjacent driveways and other paved, masonry, or hardscape areas;

**(8)** attached portals and ramadas;

**(9)** garages and carports.

**B.** In the home inspection report, the licensee shall describe at least the wall cladding.

**C.** The licensee is not required to inspect:

**(1)** Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;

**(2)** items that are not visible or readily accessible from the ground, including window and door flashing;

**(3)** fencing, privacy walls, and retaining walls, unless as determined by the licensee to adversely affect the subject building.

**(4)** erosion control and other earth stabilization measures;

**(5)** soil or geological conditions, site engineering, property boundaries, encroachments, or easements;

**(6)** adequacy of retaining walls, sea walls, waterfront bulkhead, docks, and piers;

**(7)** ponds, fountains, or decorative water features;

**(8)** safety glazing;

**(9)** integrity of multiple-pane window glazing or thermal window seals;

**(10)** recreational facilities;

(11) Additional structures other than attached garages and carports; and one detached garage or carport utilized as the primary vehicle structure in proximity to the subject home;

(12) swimming pools and spas.

[16.66.7.12 NMAC – N, 1/15/2021; A, 1/14/2022]

### **16.66.7.13 STRUCTURAL COMPONENTS:**

**A.** The licensee shall inspect all structural components, including but not limited to foundation and framing.

**B.** In the home inspection report, the licensee shall describe at least the following:

- (1) Methods used to inspect basements, underfloor crawlspaces and attics;
- (2) foundation;
- (3) floor structures;
- (4) wall structures;
- (5) ceiling structures; and
- (6) roof structures.

**C.** The licensee is not required to:

- (1) Provide engineering or architectural services or analysis;
- (2) offer an opinion about the adequacy of structural systems and components;
- (3) enter underfloor crawlspace areas that have less than 24 inches of vertical clearance between components and the ground or that have an access opening smaller than 16 inches by 24 inches;
- (4) enter attics or crawlspaces when access is obstructed or when entry could damage the property;
- (5) traverse attic load-bearing components that are concealed by insulation or by other materials;
- (6) move insulation.

[16.66.7.13 NMAC – N, 1/15/2021; A, 1/14/2022]

**16.66.7.14 ROOFING:**

**A.** The licensee shall inspect:

- (1) Roofing covering materials;
- (2) roof drainage systems;
- (3) flashing;
- (4) skylights, chimneys, and roof penetrations.

**B.** In the home inspection report, the licensee shall describe at least the following:

- (1) roof materials; and
- (2) methods used to examine the roof as well as any general area of the roof that was not examined and the reason the area was not examined.

**C.** The licensee is not required to:

- (1) Perform a water test;
- (2) warrant or certify the roof or predict the service life expectancy;
- (3) remove snow, ice, debris, or other conditions that prohibit the observation of the roof surfaces;
- (4) inspect antennae, satellite dishes, lightning arresters, de-icing equipment, or similar attachments;
- (5) confirm proper fastening or installation of any roof-covering material.

[16.66.7.14 NMAC – N, 1/15/2021; A, 1/14/2022]

**16.66.7.15 PLUMBING:**

**A.** The licensee shall inspect:

- (1) Interior water supply and distribution systems, including fixtures and fixture trim components (faucets, valves, drain stops, shower arms and showerheads, flush handles, etc.);
- (2) interior drain, waste, and venting systems, including fixtures;

(3) domestic potable water heating equipment and hot water distribution systems;

(4) vent systems, flues, and chimneys;

(5) fuel storage and fuel distribution systems;

(6) sewage ejectors, sump pumps, and related piping; and

(7) functional flow at each fixture group.

**B.** In the home inspection report, the licensee shall describe at least the following:

(1) Interior water supply, drain, waste, and vent piping materials;

(2) water heating equipment, including energy sources;

(3) location of main water supply shut-off valve; and

(4) location of main fuel supply shut-off valve.

**C.** The licensee is not required to inspect:

(1) Interiors of vent systems, flues, and chimneys that are not readily accessible;

(2) sewage drain waste systems;

(3) on-site (septic) waste disposal systems;

(4) wells, well pumps, and water storage related equipment;

(5) on-site (well) water supply quantity and quality;

(6) water conditioning systems;

(7) solar, geothermal, and other renewable energy water heating systems;

(8) manual and automatic fire extinguishing and sprinkler systems;

(9) landscape irrigation systems;

(10) clothes-washing machine connections;

(11) refrigerator or ice maker water connections.

**D.** The licensee is not required to:

- (1) Light or ignite pilot flames;
- (2) operate any shut-off or manual stop valves, except water closet flush valves and fixture valves;
- (3) test shower pans, tub, and shower surrounds or enclosures for leakage or functional overflow protection;
- (4) operate automatic safety controls;
- (5) inspect or test for gas or fuel leaks or indications thereof.

**E.** The licensee is not required to determine:

- (1) capacity, temperature, life expectancy, or adequacy of the water heater;
- (2) adequacy of combustion air components;
- (3) whether water supply and waste disposal systems are public or private;
- (4) water supply with respect to flow rate, volume, pressure, temperature, quantity, and quality;
- (5) effectiveness of anti-siphon devices.

[16.66.7.15 NMAC – N, 1/15/2021; A, 1/14/2022]

**16.66.7.16 ELECTRICAL:**

**A.** The licensee shall inspect:

- (1) Service drop (overhead) or the readily accessible components of the service lateral (underground);
- (2) service entrance conductors and cables;
- (3) service equipment and main disconnects;
- (4) service and system grounding;
- (5) interior Components of service distribution panelboards and secondary panelboards by removing the panelboards dead front cover.

**(a)** When, as determined by the licensee, primary electrical distribution panelboards or secondary panelboards and their related dead front covers and fasteners are readily accessible, the inspector will remove the dead front covers of such panelboards in order to examine readily accessible components installed on their interiors.

**(b)** Use of tools to remove dead front covers is specifically excluded when dead front covers or their fasteners are painted or otherwise sealed into place or when they cannot be removed with a standard, non-power-assisted slot head or Phillips head screwdriver or hex head nut driver.

**(c)** Exception for home inspector safety: The home inspector is not required to remove the covers of the service and distribution panels when hazardous conditions are present. The home inspector should use caution whenever removing the covers of service and distribution panels. Before touching the fasteners and cover, the home inspector should use available voltage test tools to verify if the panel assembly, panel dead front, and fasteners have live voltage conditions. Example tools include voltage sniffers, neon bulb testers, three light testers or voltmeters.

**(6)** Conductors (wiring methods);

**(7)** overcurrent protection devices;

**(8)** presence of labeling of overcurrent protection devices;

**(9)** ground fault circuit interrupter ( "GFCI ") protection devices;

**(10)** arc fault circuit interrupter ( "AFCI ") protection devices;

**(11)** a representative number of installed lighting fixtures, switches, and receptacles; and

**(12)** the polarity and grounding of all readily accessible receptacles within six feet of interior plumbing fixtures, in the attached garage or carport, and on the exterior of inspected structures.

**B.** In the home inspection report, the licensee shall describe at least the following:

**(1)** Service location type: overhead service drop or underground service lateral;

**(2)** amperage and voltage rating of the service;

**(3)** service and system grounding and bonding (i.e. concrete encased, ground rod, equipotential cold-water metal pipe);

- (4) location of main service entry and distribution panelboards and the associated disconnects;
- (5) predominant branch circuit wiring methods;
- (6) presence or absence of smoke detectors and alarms;
- (7) presence or absence of carbon monoxide detectors and alarms;
- (8) presence or absence of ground fault circuit interrupter ( "GFCI ") protection devices;
- (9) presence or absence of arc fault circuit interrupter ( "AFCI ") protection devices;
- (10) any unused circuit-breaker panel opening that was not filled;
- (11) the presence of solid conductor aluminum branch-circuit wiring;
- (12) any tested receptacle in which power was not present, polarity was incorrect, the cover was not in place, the GFCI devices were not properly installed or did not operate properly, there was evidence of arcing or excessive heat, or where the receptacle was not grounded or was not secured to the wall;
- (13) wiring methods which are not consistent with generally established practices such as terminations, multiple tapping of hot and neutral conductors, insulation, improper color-coding of conductor insulation, over-stripping, securing and protection of conductors, and bonding of components;
- (14) condition of visible conductors and insulation (damaged, scorched, burned, or melted insulation; nicked conductors; cut off strands of multiple strand conductors, anti-oxidant compound on aluminum conductors, etc.);
- (15) corrosion on components; and
- (16) the presence a utility interactive system (i.e. solar, wind turbine, and electric vehicle charging systems).

**C.** The licensee is not required to inspect:

- (1) Remote control devices;
- (2) Low voltage wiring systems and components;
- (3) Ancillary wiring systems and components not a part of the primary electrical power distribution system;

- (4) Private or emergency electrical supply systems;
- (5) Surge protection devices or lightning arrestors.

D. The licensee is not required to:

- (1) Operate electrical systems that are shut down;
- (2) test or operate overcurrent protection devices except ground fault and arc fault circuit interrupters;
- (3) test or operate any overcurrent device or safety device in the electrical service panel or elsewhere that may adversely affect the personal property or activity of the resident;
- (4) determine the accuracy of the labeling of all overcurrent protection devices;
- (5) calculate or measure amperage, voltage, and impedance;
- (6) determine (present or future) service capacity amperage, voltage, or the capacity, when not readily accessible, of the electrical system or main service equipment;
- (7) determine the age and type of smoke alarms and carbon monoxide alarms;
- (8) test or determine the interconnectivity or effectiveness of smoke alarms and carbon monoxide alarms;
- (9) verify that smoke or carbon monoxide alarms are interconnected or suitable for the hearing-impaired;
- (10) insert any tool, probe, or testing device inside panels or dismantle any electrical device or control other than to remove the primary electrical distribution panelboards or secondary panelboards and their related dead front covers and fasteners when no hazard conditions exist and when readily accessible;
- (11) remove the covers of junction, fixture, receptacle, or switch boxes unless specifically required by this standard; and
- (12) the home inspector is not required to remove electrical device covers when removal would damage or mar any painted surface or covering materials.

[16.66.7.16 NMAC – N, 1/15/2021; A, 1/14/2022]

**16.66.7.17 HEATING:**

**A.** The licensee shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

**B.** The licensee shall inspect:

(1) Permanently installed heating equipment and distribution systems, using normal operating controls; and

(2) Vent systems, flues, and chimneys.

**C.** In the home inspection report, the licensee shall describe at least the following:

(1) Energy sources; and

(2) Heating systems.

**D.** The licensee is not required to inspect:

(1) Interior of vent systems, flues, and chimneys that are not readily accessible;

(2) Heat exchangers;

(3) Humidifiers and dehumidifiers;

(4) Electric air cleaning and sanitizing devices;

(5) Portable heating equipment;

(6) Heating systems using ground-source, water-source, solar, and renewable energy technologies;

(7) Heat-recovery and similar whole-house mechanical ventilation systems;

(8) Fuel tanks or underground or concealed fuel supply systems.

**E.** The licensee is not required to:

(1) Light or ignite pilot flames and burners;

(2) Operate automatic safety controls.

**F.** The licensee is not required to determine:

(1) Uniformity, temperature, flow, balance, distribution, size, capacity, British thermal unit ("BTU"), or supply adequacy of the heating system;

(2) Adequacy of combustion air components.

[16.66.7.17 NMAC – N, 1/15/2021]

#### **16.66.7.18 COOLING AND AIR CONDITIONING:**

**A.** The licensee shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

**B.** The licensee shall inspect central and permanently installed cooling equipment and distribution systems, using normal operating controls.

**C.** In the home inspection report, the licensee shall describe at least the following:

(1) Energy sources; and

(2) Cooling systems.

**D.** The licensee is not required to:

(1) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;

(2) Operate automatic safety controls;

(3) Inspect electric air cleaning and sanitizing devices;

(4) Inspect cooling units that are not permanently installed or that are installed in windows;

(5) Inspect cooling systems using ground-source, water-source, solar, and renewable energy technologies;

(6) Determine the uniformity, temperature, flow, balance, distribution, size, capacity, BTU, or supply adequacy of the cooling system.

[16.66.7.18 NMAC – N, 1/15/2021]

#### **16.66.7.19 INTERIORS:**

**A.** The licensee shall inspect:

(1) Walls, ceilings, and floors;

(2) Steps, stairways, balconies, and the associated railings, guards, and handrails;

(3) Countertops and a representative number of permanently installed cabinets; and

(4) A representative number of doors and windows.

**B.** In the home inspection report, the licensee shall describe at least the following:

(1) Absence of performing emergency escape and rescue openings in all sleeping rooms;

(2) Observed indications of active water penetration on building components; and

(3) Observed indications of active or abnormal condensation on building components.

**C.** The licensee is not required to inspect:

(1) Safety glazing;

(2) Coatings on and the hermetic seals between panes of window glass;

(3) Security bar release and opening mechanisms;

(4) Paint, wallpaper and other finish treatments on the interior walls, ceilings, and floors;

(5) Floor coverings or carpeting;

(6) Draperies, blinds, or other window treatments; and

(7) Recreational equipment or facilities.

**D.** The licensee is not required to move personal items, furniture, equipment, or plant life that obstructs access or visibility.

[16.66.7.19 NMAC – N, 1/15/2021]

#### **16.66.7.20 GARAGES:**

**A.** The licensee shall inspect:

(1) Walls and ceilings adjoining living space;

- (2) Doors entering living space from the garage;
- (3) Presence of burners, burner ignition devices, or heating elements permanently installed in the garage;
- (4) Presence of vehicle barrier when heating or water heating units are in the path of the vehicle;
- (5) Scuttle access to attics, including pull-down stairs inside the garage;
- (6) Garage vehicle door;
- (7) Vehicle door automatic operator and safety features present.

**B.** In the home inspection report, the licensee shall describe at least the following:

- (1) Damage, unsealed penetrations, and openings to walls and ceilings adjoining living spaces;
- (2) Presence of heating or cooling supply or return ductwork inside the garage space;
- (3) Burners, burner ignition devices, and other heating elements, switches, and thermostats that may generate a glow, spark, or flame capable of igniting flammable vapors that are installed less than 18 inches above the floor above the garage floor, unless the unit is listed for garage floor installation; and
- (4) Vehicle door operation.

**C.** The licensee is not required to:

- (1) Verify or certify automatic operator remote control operation;
- (2) Verify or certify the proper operation of any pressure-activated auto-reverse or related safety feature of a garage door;
- (3) Inspect or operate equipment housed in the garage, except as otherwise noted;
- (4) Move personal items, furniture, or equipment which obstructs access or visibility; and
- (5) Burners, burner ignition devices, or heating elements, switches, and thermostats that are not a minimum of eighteen (18) inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation.

[16.66.7.20 NMAC – N, 1/15/2021]

**16.66.7.21 INSULATION AND VENTILATION:**

**A.** The licensee shall inspect:

- (1) Insulation and vapor retarders in unfinished spaces;
- (2) Ventilation of unfinished spaces, including attics, enclosed rafter spaces, crawlspaces, and foundation areas; and
- (3) Kitchen, bathroom, laundry, and similar exhaust systems.

**B.** In the home inspection report, the licensee shall describe at least the following:

- (1) Insulation and vapor retarder in unfinished spaces;
- (2) Ventilation of unfinished spaces; and
- (3) Absence of insulation in unfinished spaces at conditioned surfaces.

**C.** The licensee is not required to:

- (1) Disturb insulation;
- (2) Determine the adequacy of ventilation;
- (3) Report on concealed insulation, vapor retarders, or venting equipment which is integral with household appliances.

[16.66.7.21 NMAC – N, 1/15/2021]

**16.66.7.22 FIREPLACES AND FUEL BURNING APPLIANCES:**

**A.** The licensee shall inspect:

- (1) Fuel-burning fireplaces, stoves, and fireplace inserts;
- (2) Fuel-burning accessories installed in fireplaces; and
- (3) Chimneys and vent systems.

**B.** In the home inspection report, the licensee shall describe at least the following:

- (1) Fuel-burning fireplaces, stoves, and fireplace inserts;

(2) Fuel-burning accessories installed in fireplaces;

(3) Presence or lack of a smoke detector in same room of fuel-burning fireplaces, stoves, or fireplace inserts; and

(4) Presence or lack of a carbon monoxide detector in same room of fuel-burning fireplaces, stoves, and fireplace inserts.

C. The licensee is not required to inspect:

(1) Interiors of vent systems, flues, and chimneys that are not readily accessible;

(2) Fire screens and doors;

(3) Seals and gaskets;

(4) Mantles and fireplace surrounds;

(5) Combustion air components;

(6) Heat distribution assists (gravity feeds and fan assisted);

(7) Automatic fuel feed devices;

(8) Fuel-burning fireplaces and appliances located outside the inspected structures.

D. The licensee is not required to:

(1) Ignite pilot flames;

(2) Ignite or extinguish fires;

(3) Determine the adequacy of drafts or draft characteristics;

(4) Move fireplace inserts, stoves, or firebox contents.

[16.66.7.22 NMAC – N, 1/15/2021]

#### **16.66.7.23 BUILT-IN APPLIANCES:**

A. The licensee shall inspect:

(1) Kitchen, using normal operating controls:

- (a) Dishwashers through a cycle of the licensee's choosing;
  - (b) Ovens, ranges, and surface cooking appliances;
  - (c) Trash compactors;
  - (d) Food waste grinders;
  - (e) Permanently installed kitchen ventilation equipment; and
  - (f) Permanently installed microwave oven.
- (2) Laundry:
- (a) Dryer hookup energy sources; and
  - (b) Dryer ventilation or exhaust system.

**B.** In the home inspection report, the licensee shall describe at least the permanently installed appliances that the licensee did not operate and the reason why the appliance was not operated.

**C.** The licensee is not required to inspect:

(1) Installed and free-standing kitchen and laundry appliances that are not listed in subsection (A) of this rule;

(2) Appliances in use or appliances on which personal items are located;

(3) Appliance thermostats, including their calibration, adequacy of heating elements, self-cleaning oven cycles, indicator lights, door seals, timers, clocks, timed features, and other specialized features of the appliance;

(4) Microwave oven heating function or microwave leakage;

(5) Refrigerators, ice makers, or freezers;

(6) Laundry washers with respect to operation or performance;

(7) Laundry dryers with respect to operation or performance;

(8) Central vacuum systems;

(9) Clocks, timers, self-cleaning oven functions, or thermostats for calibration or automatic characteristics of operation;

(10) Any system, component, or appliance that does not respond to normal user controls;

(11) Any system, component, or appliance that requires use of special codes, keys, combinations, or devices;

(12) Elevators or stairlifts.

D. The licensee is not required to:

(1) Remove personal items in or on the appliance;

(2) Operate or confirm the operation of every control and feature of an inspected appliance.

[16.66.7.23 NMAC – N, 1/15/2021]

#### **16.66.7.24 LIMITATIONS AND EXCLUSIONS:**

A. General limitations:

(1) The requirements, obligations, and standards in this Part apply to residential buildings with four or fewer dwelling units and their attached and detached garages and carports.

(2) As part of a particular home inspection, licensees are not required to perform actions or make determinations or recommendations beyond those identified in this Part.

(3) Home inspections performed by licensees are not expected to be technically exhaustive.

(4) Home inspections performed by licensees are not required to identify or report on concealed, latent, or intermittent conditions.

B. In general, the licensee is not required to inspect:

(1) Underground items including, but not limited to, lawn irrigation systems or underground storage tanks and other underground indications of their presence, whether abandoned or active;

(2) Items that are not permanently installed;

(3) Permanently installed decorative items;

(4) Items in areas that the licensee does not enter, as provided in this Part;

- (5) Detached structures other than garages and carports;
- (6) Common elements and common areas in multi-unit housing, such as condominium properties and cooperative housing;
- (7) All occurrence of multiple similar components, provided that the licensee may be required to inspect one such component;
- (8) Outdoor cooking appliances.

C. In general, the licensee is not required to:

- (1) Ignite or extinguish fires, pilot lights, burners, and other open flames that require manual ignition;
- (2) Dismantle systems and components, except as required by this Part;
- (3) Operate any system or component which is shut down or otherwise inoperable;
- (4) Operate any system or component which does not respond to normal operating controls;
- (5) Operate shut-off valves and manual stop valves;
- (6) Reset, reprogram, or otherwise adjust devices, systems, and components affected by the home inspection required by this Part;
- (7) Probe surfaces that would be damaged or where no deterioration is visible or presumed to exist;
- (8) Use specialized tools;
- (9) Disturb insulation, move personal items, furniture, equipment, plant life, soil, snow, ice, or debris which obstructs access or visibility;
- (10) Enter areas that will, as determined by the licensee, likely be dangerous to the licensee or to other persons or likely to damage the property or its systems and components;
- (11) Enter any area or perform any procedure which may damage the property or its components or be dangerous to the licensee or other persons;
- (12) Enter under-floor crawlspaces and attics that are not readily accessible;

**(13)** Identify and report cosmetic imperfections that do not affect a component's normally intended function or operation;

**(14)** Describe or report on systems or components that are not included in this Part and that were not inspected;

**(15)** Offer warranties or guarantees of any kind;

**(16)** Offer or perform any engineering services;

**(17)** Offer or perform any trade or professional service other than home inspection.

**D.** In general, the licensee is not required to determine:

**(1)** Compliance with local codes, ordinances or regulations, the legality of property and its present use, conditions of title, boundaries and easements, and location in earthquake, flood, mining, or any other hazard zones;

**(2)** Whether any permits were required or obtained for any work performed on the subject property;

**(3)** Whether grandfathering applies to any condition in a system or component;

**(4)** Condition of systems and components not readily accessible;

**(5)** Strength, adequacy, effectiveness, and efficiency of systems and components;

**(6)** Causes of adverse conditions observed and reported;

**(7)** Methods, materials, and costs of corrections;

**(8)** Future conditions, including but not limited to failure of systems and components;

**(9)** The age of installation of any system, structure, or component of a building;

**(10)** The remaining life expectancy of systems and components;

**(11)** Whether items, materials, conditions, and components are subject to recall, controversy, litigation, product liability, and other adverse claims and conditions;

**(12)** Operating costs of systems and components;

(13) Acoustical properties of systems and components;

(14) Presence of plants, animals, and other life forms and substances that may be hazardous or harmful to humans including, but not limited to, wood destroying organisms, molds, and mold-like substances;

(15) Presence of environmental hazards including, but not limited to, allergens, toxins, carcinogens, electromagnetic radiation, noise, radioactive substances, and contaminants in building materials, soil, water, and air;

(16) Effectiveness of permanently installed systems and methods used to control or remove suspected hazardous plants, animals, and environmental hazards;

(17) Soil conditions relating to geotechnical or hydrologic specialties;

(18) Advisability of purchasing of the property being inspected;

(19) Insurability of the property;

(20) Marketability or market value of the property;

(21) Suitability of the property for specialized uses.

[16.66.7.24 NMAC – N, 1/15/2021]

#### **16.66.7.25 INSPECTION REPORTS:**

Following any home inspection, the licensee shall provide the client with a written inspection report.

**A.** Inspection reports must state, at a minimum, the following:

(1) The systems and components of the home that, as determined by the licensee, are not performing their normally intended function or operation or are not consistent with generally established practices regarding the historically or conventionally applied and acknowledged methods of installation, assembly, operation or use;

(2) Recommendations as to the need to correct, observe, or check for further correction the adverse conditions reported pursuant to subsection (A) of this rule or any other items requiring further evaluation;

(3) Such reasoning and explanation as necessary to identify and clarify the nature of the adverse conditions reported pursuant to subsection (A) of this rule;

(4) The systems and components of the home designated for inspection under the Board's rules which were present at the time of the home inspection but not inspected, along with the reasons for the lack of inspection;

(5) The following statement, in its entirety and in all capital letters: "THE HOME INSPECTOR DID NOT DETERMINE AND THIS REPORT DOES NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

B. Although all pre-inspection agreements must state the date upon which the licensee shall deliver the home inspection report to the client, if the pre-inspection agreement does not set forth such a date, the home inspector shall provide the report to the client no later than five days after the home inspection was performed.

[16.66.7.25 NMAC – N, 1/15/2021]

## **PART 8: DISCIPLINARY PROCEEDINGS**

### **16.66.8.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.8.1 NMAC – N, 1/15/2021]

### **16.66.8.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.8.2 NMAC – N, 1/15/2021]

### **16.66.8.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.8.3 NMAC – N, 1/15/2021]

### **16.66.8.4 DURATION:**

Permanent.

[16.66.8.4 NMAC – N, 1/15/2021]

**16.66.8.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.8.5 NMAC – N, 1/15/2021]

**16.66.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 66 is to establish the procedures for denying applications for licensure, processing complaints against licensees and applicants, reinstatement of suspended or revoked licenses, and taking disciplinary action against licensees.

[16.66.8.6 NMAC – N, 1/15/2021]

**16.66.8.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.8.7 NMAC – N, 1/15/2021]

**16.66.8.8 GROUNDS FOR DISCIPLINARY ACTION:**

The following are grounds for taking disciplinary action against licensees and unlicensed practitioners, and for denying licenses to applicants:

- A.** Substantial misrepresentation;
- B.** Violations of the Home Inspector Licensing Act or any rule of the board, including but not limited to the code of ethics and standards of practice as outlined in Parts 5 and 6 of these rules;
- C.** Offered or delivered compensation, inducement, or reward to the owner of an inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector's company;
- D.** A license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts proscribed in Section 61-24D-11 of the Home Inspector Licensing Act;
- E.** Failure to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation;
- F.** Performance or offer to perform for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at

any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract; or

**G.** Failure to maintain errors and omissions insurance and professional liability insurance as required by the Home Inspector Licensing Act and the rules of the board.

**H.** Failure to comply with a notice of audit or submit evidence of continuing education hours earned during the current renewal cycle may result in disciplinary action by the board.

[16.66.8.8 NMAC – N, 1/15/2021; A, 4/23/2024]

#### **16.66.8.9 COMPLAINTS AND RESPONSES:**

**A.** A complaint against a licensee or applicant may be filed with the board by any person, office, or organization. The complaint must also contain specific factual allegations of violations of either the Home Inspector Licensing Act, board's rules, or code of ethics.

**B.** Upon receipt of any complaint alleging that a licensee has violated the Home Inspector Licensing Act, board's rules, or code of ethics, board staff shall forward the complaint to the respective licensee and request a response. The licensee ("respondent") must provide a response to the board within ten business days of receipt. A respondent's failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

**C.** The board administrator may authorize the issuance of an investigative subpoena to obtain documents or other evidence relevant to a disciplinary complaint.

**D.** Subject to applicable exceptions to confidentiality established by law, all complaints, responses, and other disciplinary and investigatory records are public records available for inspection and copying, pursuant to state law, irrespective of the final disposition of the underlying disciplinary complaint.

[16.66.8.9 NMAC – N, 1/15/2021; A, 04/23/2024]

#### **16.66.8.10 REVIEW OF COMPLAINT:**

All complaints may be reviewed by the board's complaint committee.

**A.** Should the board, in its discretion, choose to utilize a complaint committee, the complaint committee shall be responsible for reviewing disciplinary complaints against

licensees and applicants and making informal, non-binding recommendations to the board as to their disposition. The complaint committee shall not have any policymaking authority of any kind.

**B.** The board's complaint committee shall consist of no more than two board members and no more than two other volunteer members who are not members of the board, for a total of no more than four members at any given time.

**C.** After completing its review of a complaint, the complaint committee shall either recommend that the board take disciplinary action or that it close the case. As part of any recommendation of disciplinary action, the complaint committee may also make recommendations as to the proper amount of discipline (i.e., letter of reprimand, fine, suspension, revocation, etc.), including discipline that might be obtained through a negotiated settlement agreement with the licensee, applicant, or unlicensed practitioner.

[16.66.8.10 NMAC – N, 1/15/2021; A, 4/23/2024]

#### **16.66.8.11 HEARINGS AND DISCIPLINARY PROCEEDINGS:**

**A.** All disciplinary proceedings conducted by the board shall fully conform to the provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2019).

**B.** In the event that the board seeks to proceed with formal disciplinary action and issue a notice of contemplated action pursuant to the Uniform Licensing Act, the board shall send a request to the litigation division of the New Mexico Office of the Attorney General, which shall, if it elects to do so, serve as the administrative prosecutor on behalf of the board.

**C.** If a respondent requests an evidentiary hearing in response to a notice of contemplated action, the board chair shall designate a hearing officer to preside over the hearing. Alternatively, at the discretion of the board chair or upon vote of the board, the entire board may preside over the hearing.

**D.** Any continuance of an evidentiary hearing requested or stipulated by a respondent shall only be considered by the hearing officer, or board chair if the hearing is conducted by the full board, if the respondent has knowingly, voluntarily, and intelligently signed a waiver of the applicable time limits set forth by the Uniform Licensing Act.

[16.66.8.11 NMAC – N, 1/15/2021]

#### **16.66.8.12 SETTLEMENT AGREEMENTS:**

As a means of resolving disciplinary complaints against licensees, applicants, and unlicensed practitioners without the time and expense of formal hearings, settlement

agreements are encouraged at any stage in the disciplinary process prior to the adjournment of the evidentiary hearing.

**A.** Prior to the board voting on a disciplinary complaint or the matter being referred to the Office of the Attorney General for administrative prosecution, the board staff may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

**B.** Prior to the issuance of a notice of contemplated action or the adjournment of an evidentiary hearing, the board's administrative prosecutor may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

**C.** Following the conclusion of an evidentiary hearing, no settlement agreement shall be considered by the board.

[16.66.8.12 NMAC – N, 1/15/2021]

#### **16.66.8.13 REINSTATEMENT OF SUSPENDED OR REVOKED LICENSES:**

**A.** Reinstatement of Suspended Licenses: Licensees whose licenses have been suspended by the board may apply to reinstate those licenses in accordance with the terms of the suspension. Any licensee seeking reinstatement of a suspended license shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;
- (4) Any evidence necessary to demonstrate that the licensee has satisfactorily completed any terms of the licensee's suspension.

**B.** Reinstatement of Revoked Licenses: Former licensees whose licenses were revoked by the board may apply to reinstate those licenses no sooner than five years following the date of the order of revocation, unless the former licensee's license was revoked pursuant to the Parental Responsibility Act, in which case the former licensee may apply for reinstatement immediately upon the name of the former licensee's removal from the certified list issued by the New Mexico department of human services. Any former licensee seeking reinstatement of a revoked license shall, pursuant to the terms of the Uniform Licensing Act, carry the burden of demonstrating to the board the

former licensee's qualifications for licensure. The former licensee shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;
- (4) A letter, affidavit, or other evidence necessary to demonstrate that the former licensee will, in the future, comply with all of the provisions of the Home Inspector Licensing Act and the board's rules.

[16.66.8.13 NMAC – N, 1/15/2021]

#### **16.66.8.14 PARENTAL RESPONSIBILITY ACT:**

The authority of the board to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, as deficient in child support payments, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.66.8.14 NMAC – N, 1/15/2021]

### **PART 9: INSURANCE**

#### **16.66.9.1 ISSUING AGENCY:**

New Mexico home inspectors board.

[16.66.9.1 NMAC – N, 1/15/2021]

#### **16.66.9.2 SCOPE:**

All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.9.2 NMAC – N, 1/15/2021]

#### **16.66.9.3 STATUTORY AUTHORITY:**

These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.9.3 NMAC – N, 1/15/2021]

**16.66.9.4 DURATION:**

Permanent.

[16.66.9.4 NMAC – N, 1/15/2021]

**16.66.9.5 EFFECTIVE DATE:**

January 15, 2021, unless a later date is cited at the end of a section.

[16.66.9.5 NMAC – N, 1/15/2021]

**16.66.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 66 is to establish the minimum terms and conditions of insurance coverage required of all home inspector licensees.

[16.66.9.6 NMAC – N, 1/15/2021]

**16.66.9.7 DEFINITIONS:**

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.9.7 NMAC – N, 1/15/2021]

**16.66.9.8 INSURANCE REQUIRED:**

**A.** Pursuant to Section 61-24D-12 of the Home Inspector Licensing Act, all licensees and their employers shall carry at all times errors and omissions insurance and professional liability insurance to cover all activities contemplated pursuant to the provisions of the Home Inspector Licensing Act.

**B.** Every applicant for a license and every licensee who applies for renewal of a license must, as a condition prerequisite to the issuance or renewal of the license, provide the board with satisfactory evidence (proof) that the applicant or licensee has errors and omissions insurance coverage and professional liability insurance coverage that meet the minimum terms and conditions required by this Part.

[16.66.9.8 NMAC – N, 1/15/2021]

**16.66.9.9 ERRORS AND OMISSIONS INSURANCE:**

**A.** A licensee's or applicant's errors and omissions insurance policy shall be, at a minimum, in the amount of \$250,000 in the aggregate.

**B.** Every proof of an errors and omissions insurance policy shall stipulate that cancellation or nonrenewal of the policy shall not be effective until at least ten days' notice of intention to cancel or not renew has been received in writing by the board.

[16.66.9.9 NMAC – N, 1/15/2021]

**16.66.9.10 PROFESSIONAL LIABILITY INSURANCE:**

**A.** A licensee's or applicant's professional liability insurance policy shall be, at a minimum, in the amount of \$250,000.

**B.** The professional liability insurance policy must include coverage for the licensee's activities performed during the course of a home inspection on the premises of the home inspection.

**C.** The professional liability insurance policy must include coverage for both property damage and bodily injury.

**D.** Every proof of a professional liability insurance policy shall stipulate that cancellation or nonrenewal of the policy shall not be effective until at least ten days' notice of intention to cancel or not renew has been received in writing by the board.

[16.66.9.10 NMAC – N, 1/15/2021]

**16.66.9.11 GROUP INSURANCE POLICIES ESTABLISHED BY THE BOARD:**

**A.** The board may, at its discretion, solicit sealed, competitive proposals from insurance carriers to provide a group errors and omissions insurance policy that complies with the terms and conditions established by this Part. The Board may approve one or more policies that comply with the board rules.

**B.** The board may, at its discretion, solicit sealed, competitive proposals from insurance carriers to provide a professional liability insurance policy that complies with the terms and conditions established by this part. The board may approve one or more policies that comply with the board rules.

**C.** In the event that the board approves a group insurance policy, licensees are required to neither purchase the group policy nor contract with the group policy provider.

[16.66.9.11 NMAC – N, 1/15/2021]

**CHAPTER 67 - 69: [RESERVED]**

**CHAPTER 70: DRY CLEANERS [RESERVED]**