

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 21 UNPROFESSIONAL CONDUCT

16.16.21.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10/14/1995; A, 6/26/2000; 16.16.21.1 NMAC - Rn, 16 NMAC 16.21.1, 3/15/2001; A, 7/6/2012]

16.16.21.2 SCOPE: Part 21 of Chapter 16 applies to anyone in violation of the Optometry Act, Section 61-2-1 to 61-2-18 NMSA 1978 (1995 Repl. Pamp.) or the Optometry regulations 16.16 NMAC.
[10/14-95; 16.16.21.2 NMAC - Rn, 16 NMAC 16.21.2, 3/15/2001]

16.16.21.3 STATUTORY AUTHORITY: The authority for Part 21 of Chapter 16 is Section 61-2-1 to 61-2-18 NMSA 1978 (1995 Repl. Pamp.) and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp).
[11/17/1973...10/14/1995; 16.16.21.3 NMAC - Rn, 16 NMAC 16.21.3, 3/15/2001; A, 3/15/2004]

16.16.21.4 DURATION: Permanent.
[10-14/1995; 16.16.21.4 NMAC - Rn 16 NMAC 16.21.4, 3/15/2001]

16.16.21.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11/17/1973...10/14/1995; 16.16.21.5 NMAC - Rn, 16 NMAC 16.21.5, 3/15/2001; A, 7/6/2012]

16.16.21.6 OBJECTIVE: The objective of Part 21 of Chapter 16 is to set forth the acts or conduct that constitute violations of the Optometry Act and the Optometry regulations and the Uniform Licensing Act, and which subject the person in violation to disciplinary action by the board.
[11/17/1973; 9/20/1980; 6/24/1994; 10/14/1995; 16.16.21.6 NMAC - Rn, 16 NMAC 16.21.6, 3/15/2001; A, 3/15/2004]

16.16.21.7 DEFINITIONS:

A. “Disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

B. “Splitting or dividing of fees” means offering, delivering, receiving, or accepting any unearned rebate, refund, commission, preference, patronage, dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, customers to any person, irrespective of any membership, proprietary interest, or co-ownership in or with any person to whom the patients, clients, or customers are referred.

C. “Professional superiority” means claiming, implying, guaranteeing, or representing that one has superior professional qualities, skills, abilities, credentials, training and professional service outcomes beyond those of similarly licensed optometrists.

[N, 6/26/2000; 16.16.21.7 NMAC - Rn, 16 NMAC 16.21.7, 3/15/2001; A, 7/6/2012, A, 2/26/2022]

16.16.21.8 DISCIPLINARY PROCESS INITIATED: In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines that the applicant or the licensee has violated any provision of the Optometry Act or the regulations of the board (16.16 NMAC).
[9/20/1980; 6/24/1994; 10/14/1995; 16.16.21.8 NMAC - Rn, 16 NMAC 16.21.8, 3/15/2001]

16.16.21.9 ACTS OF UNPROFESSIONAL CONDUCT: The following exemplify the types of conduct or acts of omission that shall subject the licensee or applicant to disciplinary action by the board.

A. Any conduct whether an act or the omission of an act, which deceives or defrauds or tends to deceive or defraud the public.

B. Obtaining or attempting to obtain any fee by fraud, misrepresentation, deceit or any other deceptive or dishonest course of conduct.

C. Charging or attempting to charge any unusual, unreasonable, or exorbitant fee.

D. [RESERVED]

E. Splitting or dividing of fees with any person, as defined by this rule.

F. Advertising professional superiority, or advertising ophthalmic materials or services in violation

of the rules of this board.

G. Breach of the confidentiality of information or knowledge about a patient obtained by the optometrist while acting in his or her professional capacity.

H. Seeing patients while under the influence of alcohol or controlled substances not prescribed for him or her by an individual authorized by law to prescribe controlled substances. For purposes of this regulation, the term "controlled substances" shall be defined as the term is defined by the New Mexico Controlled Substance Act.

I. Sexual misconduct with a patient, including but not limited to the making of unsolicited sexual advances to a patient.

J. Violation of any order or judgment of the board.

K. Impersonating another who is licensed to practice optometry, or permitting or allowing any person to use such license.

L. Employing or inducing an unlicensed person to perform any procedure that is considered the practice of optometry as defined in Sections 61-2-1 through 61-2-18 NMSA 1978 (1995 Repl. Pamp.).

M. Practicing beyond the scope of his/her optometry license as defined by state law and regulations.

N. Advertising in any manner that violates board regulations and state statutes on advertising.

O. Making false statements in any application for licensure or renewal of licensure.

P. Failing to report to the board the surrender of an optometric license or any formal disciplinary action, in another state or jurisdiction, in which there has been an adverse finding for acts or conduct which would constitute grounds for actions as defined in these rules.

Q. Failing to report to the board any criminal conviction of a felony.

R. Refusing to provide the patient with their eyeglass prescription if the prescription is under a year old.

S. Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

T. Failing to disclose and release patient information when requested by a patient or a health care provider upon a patient's authorization, or upon request from a health care provider when relating to the treatment of a patient, in accordance with the 1996 Health Insurance Portability and Accountability Act (HIPAA). [11/17/1973; 9/20/1980; 8/21/1992; 6/24/1994; 10/14/1995; 16.16.21.9 NMAC - Rn, 16 NMAC 16.21.9, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

16.16.21.10 UNPROFESSIONAL CONDUCT RELATED TO PHARMACEUTICALS: The following unprofessional conduct related to pharmaceutical and controlled dangerous pharmaceutical agents shall be grounds for disciplinary action by the board. Violations of Subsections of this Section may also constitute fourth degree felony violations and may be subject to conviction, imprisonment, and fines pursuant to the provisions of Section 31-18-15 NMSA 1978 (see Subsections B and C of 16.16.11.12 NMAC).

A. Practicing optometry, including the use of pharmaceutical agents without a valid, current license.

B. Administering, dispensing and prescribing diagnostic, topical, or oral pharmaceutical agents without the proper certification by the board as set forth in 16.16.7 NMAC.

C. Administering, dispensing, and prescribing controlled dangerous drugs without proper certification by the board and the required controlled substances registration with the State of New Mexico and proper DEA registration with the drug enforcement administration as set forth in 16.16.8 NMAC.

D. Administering, dispensing and prescribing dangerous drugs for purposes other than generally accepted treatment for the relief of ocular abnormalities.

E. Indiscriminately or excessively administering, dispensing, or prescribing controlled dangerous substances.

F. Administering, dispensing and prescribing controlled dangerous substances to immediate family members for purposes other than as applied in the treatment and management of ocular disease.

G. [RESERVED]

H. Administering, dispensing, and prescribing controlled dangerous substances in excess of the amount considered good optometric practice.

I. Administering, dispensing, and prescribing controlled dangerous substances without medical need in accordance with published standards.

J. Disbursing or prescribing any controlled dangerous substance for the optometrist's personal use for any other use than as applied in the treatment and management of ocular disease.

K. Delegating prescriptive signing authority for either prescriptive medications or controlled

dangerous substances to another person.

[10-14-95; 16.16.21.10 NMAC - Rn, 16 NMAC 16.21.10, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

16.16.21.11 DISCIPLINARY PROCEEDINGS FOR UNLICENSED ACTIVITY: In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamph), a person who is not licensed to engage in the practice of optometry by the board is subject to disciplinary actions and proceedings by the board if it is determined that he or she has been practicing optometry in New Mexico without a valid New Mexico license.

A. The board may impose a civil penalty in an amount not to exceed one thousand dollars against a person who engages in the practice of optometry without a valid New Mexico license.

B. In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of optometry the administrative costs, including investigative costs and the costs of conducting a hearing.

C. Reports of unlicensed practice of optometry may be reported for investigation to the board by phone, fax, mail, or e-mail.

[16.16.21.11 NMAC - N, 3/15/2004]

16.21.12 DISQUALIFYING CRIMINAL CONVICTIONS:

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

- (1) murder;
- (2) manslaughter;
- (3) aggravated assault;
- (4) assault with intent to commit a violent felony;
- (5) aggravated battery inflicting great bodily harm or with deadly weapon;
- (6) second or subsequent conviction of stalking;
- (7) aggravated stalking;
- (8) false imprisonment;
- (9) amendment of child resulting in death or great bodily harm;
- (10) abuse of a child;
- (11) negligent abuse of a child resulting in death;
- (12) intentional abuse of a child 12 to 18 years old resulting in death;
- (13) intentional abuse of a child less than 12 years old resulting in death;
- (14) contributing to the delinquency of a minor;
- (15) sexual exploitation of children;
- (16) sexual exploitation of children by prostitution;
- (17) accepting the earnings of a prostitute;
- (18) promoting prostitution;
- (19) criminal sexual penetration;
- (20) criminal sexual contact;
- (21) criminal sexual contact of a minor;
- (22) aggravated indecent exposure;
- (23) bigamy;
- (24) incest;
- (25) breaking and entering;
- (26) larceny;
- (27) robbery;
- (28) burglary;
- (29) aggravated burglary;
- (30) fraud;
- (31) embezzlement;
- (32) extortion;
- (33) forgery;
- (34) receiving stolen property;
- (35) falsely obtaining services or accommodations;
- (36) improper sale, disposal, removal or concealing of encumbered property;
- (37) theft of identity;

- (38) theft of a credit card by taking or retaining possession of card taken;
- (39) fraudulent transfer or receipt of a credit card;
- (40) dealing in credit cards of another;
- (41) forgery of a credit card;
- (42) fraudulent signing of credit cards or sales slips or agreements;
- (43) certain fraudulent acts by merchants or their employees;
- (44) possession of four or more incomplete credit cards or machinery, plates or other contrivance;
- (45) unlawful taking of a vehicle or motor vehicle;
- (46) embezzlement of a vehicle or motor vehicle;
- (47) fraudulently obtaining a vehicle or motor vehicle;
- (48) receiving or transferring a stolen vehicle or motor vehicle;
- (49) arson or negligent arson;
- (50) aggravated arson;
- (51) cruelty to animals or extreme cruelty to animals;
- (52) second conviction for use of telephone to terrify, intimidate, threaten, harass, annoy or offend;
- (53) aggravated fleeing a law enforcement officer;
- (54) tampering with evidence;
- (55) aggravated assault upon a peace officer;
- (56) assault with intent to commit a violent felony upon a peace officer;
- (57) battery upon a peace officer;
- (58) aggravated battery upon a peace officer;
- (59) assisting in assault upon peace officer;
- (60) disarming a peace officer;
- (61) paying or receiving public money for services not rendered;
- (62) making or permitting false public voucher;
- (63) unlawful interest in a public contract;
- (64) bribery of public officer or public employee;
- (65) demanding or receiving bribe by public officer or public employee;
- (66) bribery or intimidation of a witness;
- (67) retaliation against a witness;
- (68) acceptance of a bribe by a witness;
- (69) perjury;
- (70) tampering with public records;
- (71) attempt to commit a felony;
- (72) conspiracy;
- (73) criminal solicitation;
- (74) intentionally trafficking controlled substances;
- (75) intentionally distributing a controlled substance to a person under the age of eighteen years;
- (76) intentionally distributing or possessing with intent to distribute a controlled substance;
- (77) possession of a controlled substance;
- (78) violations of the administrative provisions of the Controlled Substances Act;
- (79) engaging in other acts prohibited by the Controlled Substances Act;
- (80) delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior;
- (81) manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;
- (82) intentionally selling an imitation controlled substance to a person under the age of eighteen years;
- (83) intentionally possessing an imitation controlled substance with the intent to distribute;
- (84) certain violations of the Drug Precursor Act;
- (85) child solicitation by electronic communication device;
- (86) criminal sexual communication with a child;
- (87) second or subsequent unauthorized distribution of sensitive images;

- (88) failing to disclose facts or change of circumstances to obtain public assistance;
 - (89) unlawful use of food stamp identification card or medical identification card;
 - (90) misappropriating public assistance;
 - (91) making or permitting a false claim for reimbursement of public assistance services;
 - (92) failure to reimburse the human services department upon receipt of third party payment;
 - (93) making, conspiring, or attempting to make an extortionate extension of credit;
 - (94) knowingly advancing money or property to any person with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced for the purpose of making extortionate extensions of credit;
 - (95) knowingly participating, conspiring, or attempting to participate in the use of any extortionate means to collect any extensions of credit or to cause harm to the person, reputation or property of any person for the nonpayment thereof;
 - (96) falsification of documents in connection with the Medicaid Fraud Act;
 - (97) failure to retain records in connection with the Medicaid Fraud Act;
 - (98) obstruction of investigation in connection with the Medicaid Fraud Act;
 - (99) medicaid fraud;
 - (100) computer access with intent to defraud or embezzle;
 - (101) computer abuse;
 - (102) unauthorized computer use;
 - (103) human trafficking;
 - (104) willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
 - (105) willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;
 - (106) homicide by vehicle;
 - (107) fourth or subsequent driving under the influence of intoxicating liquor or drugs;
 - (108) practicing medicine without a license;
 - (109) making a false statement under oath, or submitting a false affidavit, in connection with the Medical Practice Act;
 - (110) making an unauthorized withdrawal from the account of another person with a financial institution, or stealing the card of another, or making an unauthorized use of the card of another;
 - (111) violations of the New Mexico Drug, Device and Cosmetic Act;
 - (112) selling or dispensing a contact lens to a resident of this state unless the person has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription;
 - (113) certain violations of the Optometry Act;
 - (114) misuse of public funds;
 - (115) tax fraud;
 - (116) failure to comply with proclamation of the governor;
 - (117) violations of certain provisions of the Drug & Cosmetic Act;
 - (118) making false statement in claim for payment under Indigent Hospital and County Health Care Act;
 - (119) unauthorized obtain or use of DNA samples or DNA records;
 - (120) sex offender who fails to comply with SORNA re moving to another state;
 - (121) making a false entry in a book, report or statement of an insurer with intent to injure, defraud, or deceive (insurance);
 - (122) unlawfully removing or attempting to remove records, assets, or material from a domestic insurer (insurance);
 - (123) making a false statement in connection with insurance with the effect of causing a loss to the insurer.
- B.** The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
- C.** The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.
- D.** Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Optometry Act, regardless of

whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in

Subsection A of this rule.

[16.16.21.12 NMAC - N, 2/26/2022]

HISTORY of 16.16.21 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 4 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10/18/1973.

OPT Rule No. 4, Unprofessional Conduct, filed 8/21/1980.

NMBO Rule 4, Board Rule No. 4 - Unprofessional Conduct, filed 7/22/1992.

NMBO Rule 4, Board Rule No. 4 - Unprofessional Conduct, filed 5/25/1994.

History of Repealed Material: [RESERVED]

Other History:

16 NMAC 16.21, Unprofessional Conduct, filed 9/21/1995, replaced that relevant portion of NMBO Rule 4 - Board Rule No. 4, Unprofessional Conduct.

16 NMAC 16.21, Unprofessional Conduct, filed 9/21/1995, was renumbered and reformatted to 16.16.21 NMAC, Unprofessional Conduct, effective 3/15/2001.