

**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.  
[10-14-95; A, 6-26-00; 16.16.21.1 NMAC - Rn, 16 NMAC 16.21.1, 03-15-2001; A, 07-06-2012]

**16.16.21.2 SCOPE:** Part 21 of Chapter 16 applies to anyone in violation of the Optometry Act NMSA 1978 Section 61-2-1 to 61-2-18 (1995 Repl. Pamp.) or the Optometry regulations 16.16 NMAC.  
[10-14-95; 16.16.21.2 NMAC - Rn, 16 NMAC 16.21.2, 03-15-2001]

**16.16.21.3 STATUTORY AUTHORITY:** The authority for Part 21 of Chapter 16 is NMSA 1978, Section 61-2-1 to 61-2-18 (1995 Repl. Pamp.) and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp).  
[11-17-73...10-14-95; 16.16.21.3 NMAC - Rn, 16 NMAC 16.21.3, 03-15-2001; A, 03-15-2004]

**16.16.21.4 DURATION:** Permanent.  
[10-14-95; 16.16.21.4 NMAC - Rn 16 NMAC 16.21.4, 03-15-2001]

**16.16.21.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section.  
[11-17-73...10-14-95; 16.16.21.5 NMAC - Rn, 16 NMAC 16.21.5, 03-15-2001; A, 07-06-2012]

**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.  
[11-17-73; 9-20-80; 6-24-94; 10-14-95; 16.16.21.6 NMAC - Rn, 16 NMAC 16.21.6, 03-15-2001; A, 03-15-2004]

**16.16.21.7 DEFINITIONS:**

**A. “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.

**B. “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, 6-26-00; 16.16.21.7 NMAC - Rn, 16 NMAC 16.21.7, 03-15-2001; A, 07-06-2012]

**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).  
[9-20-80; 6-24-94; 10-14-95; 16.16.21.8 NMAC - Rn, 16 NMAC 16.21.8, 03-15-2001]

**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 NMSA Sections 61-2-1 through 61-2-18 (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).

[11-17-73; 9-20-80; 8-21-92; 6-24-94; 10-14-95; 16.16.21.9 NMAC - Rn, 16 NMAC 16.21.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

**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 Part 7 of 16.16 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 Part 8 of 16.16 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, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

**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. Pamp), 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 (\$1,000) 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, 03-15-2004]

**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 10-18-73.

OPT Rule No. 4, Unprofessional Conduct, filed 8-21-80.

NMBO Rule 4, Board Rule No. 4 - Unprofessional Conduct, filed 7-22-92.

NMBO Rule 4, Board Rule No. 4 - Unprofessional Conduct, filed 5-25-94.

**History of Repealed Material:** [Reserved]

**Other History:**

16 NMAC 16.21, Unprofessional Conduct, filed 9-21-95, replaced that relevant portion of NMBO Rule 4 - Board Rule No. 4, Unprofessional Conduct.

16 NMAC 16.21, Unprofessional Conduct, filed 9-21-95, was renumbered and reformatted to 16.16.21 NMAC, Unprofessional Conduct, effective 03-15-2001.