

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 16 OPTOMETRIC PRACTITIONERS**  
**PART 24 DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER**

**16.16.24.1 ISSUING AGENCY:** New Mexico Board of Optometry.  
[2-15-99; 16.16.24.1 NMAC - Rn, 16 NMAC 16.24.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

**16.16.24.2 SCOPE:** The provisions in PART 24 of Chapter 16 apply to any person governed by the Optometry Act who may be subject to investigation and disciplinary action for excessive use or abuse of intoxicants or drugs.  
[2-15-99; 16.16.24.2 NMAC - Rn, 16 NMAC 16.24.2, 03-15-2001]

**16.16.24.3 STATUTORY AUTHORITY:** PART 24 of Chapter 16 is promulgated pursuant to the Optometry Act, Section 61-2-1 through Section 61-2-18 NMSA 1978 (1997 Repl. Pam.); the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pam.); and the Impaired Health Care Provider Act, Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pam.).  
[2-15-99; 16.16.24.3 NMAC - Rn, 16 NMAC 16.24.3, 03-15-2001]

**16.16.24.4 DURATION:** Permanent.  
[2-15-99; 16.16.24.4 NMAC - Rn, 16 NMAC 16.24.4, 03-15-2001]

**16.16.24.5 EFFECTIVE DATE:** February 15, 1999, unless a later date is cited at the end of a section.  
[2-15-99; 16.16.24.5 NMAC - Rn, 16 NMAC 16.24.5, 03-15-2001; A, 03-15-2004]

**16.16.24.6 OBJECTIVE:** The objective of PART 24 of Chapter 16 is to set forth policies and guidelines for disciplinary action when evidence or allegations of a mental disorder or illness, abuse of intoxicants or drugs by a licensed optometrist have been presented to the board.  
[2-15-99; 16.16.24.6 NMAC - Rn, 16 NMAC 16.24.6, 03-15-2001; A, 03-15-2004]

**16.16.24.7 DEFINITIONS:** For the purposes of this rule:  
**A. "Impaired Health Care Provider Act"** refers to Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pam.).  
**B. "Controlled Substances Act"** refers to Section 30-31-1 through Section 30-31-42 NMSA 1978.  
**C. "Impaired practitioner"** means any health care provider unable to practice with reasonable skill or safety to patients by reason of one or more of the following: mental disorder or illness; physical illness, including but not limited to deterioration through the aging process or loss of motor skill; or habitual or excessive use of alcohol or abuse of drugs, as defined in the Controlled Substances Act.  
[2-15-99; 16.16.24.7 NMAC - Rn, 16 NMAC 16.24.7, 03-15-2001; A, 03-15-2004]

**16.16.24.8 EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS:** In cases where the Board has reasonable cause to believe that a licensed optometrist has a mental disorder or illness or is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the licensee's ability to practice optometry with reasonable skill and safety to patients, the Board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.  
[2-15-99; 16.16.24.8 NMAC - Rn, 16 NMAC 16.24.8, 03-15-2001; A, 03-15-2004]

**16.16.24.9 EXAMINING COMMITTEE DESIGNATED:** The board shall designate three licensed optometrists as members of an "examining committee" to examine the optometrist believed to be impaired either as a result of a mental disorder or illness or by the excessive or habitual use or abuse of intoxicants or drugs.  
[2-15-99; 16.16.24.9 NMAC - Rn, 16 NMAC 16.24.9, 03-15-2001; A, 03-15-2004]

**16.16.24.10 EXAMINATION CONDUCTED BY EXAMINING COMMITTEE:** In accordance with the provisions in the Impaired Health Care Provider Act, the examining committee shall order and conduct an examination and may require a physical or psychiatric examination or drug test of the licensee to determine his or

her fitness to practice optometry with reasonable skill or safety to patients, either on a restricted or unrestricted basis.

[2-15-99; 16.16.24.10 NMAC - Rn, 16 NMAC 16.24.10, 03-15-2001; A, 03-15-2004]

**16.16.24.11 PHYSICAL EXAM OR DRUG TEST ORDERED:** A licensed professional designated by the board shall perform the physical or psychiatric examination and/or drug test ordered by the examination committee. The cost of said examination or test shall be borne by the optometrist who is the subject of the examination.

[2-15-99; 16.16.24.11 NMAC - Rn, 16 NMAC 16.24.11, 03-15-2001; A, 03-15-2004]

**16.16.24.12 EXAMINING COMMITTEE REPORT:**

**A.** The examining committee shall report its findings on the examination and make recommendation to the Board.

**B.** Recommendations made to the board by the examining committee shall be advisory only and shall not be binding on the Board.

[2-15-99; 16.16.24.12 NMAC - Rn, 16 NMAC 16.24.12, 03-15-2001]

**16.16.24.13 RESULTS ADMISSIBLE:** The results of the examining committee's findings and the physical or psychiatric exam and/or drug test shall be admissible in any subsequent review or hearing by the board, notwithstanding any claim of privilege under a contrary rule or law or statute.

[2-15-99; 16.16.24.13 NMAC - Rn, 16 NMAC 16.24.13, 03-15-2001; A, 03-15-2004]

**16.16.24.14 [RESERVED]**

**16.16.24.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION:** Failure or refusal by the optometrist to comply with an examining committee order to appear before it for examination, or to submit to a physical or psychiatric examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the license by the board until further order by the board.

[2-15-99; 16.16.24.15 NMAC - Rn, 16 NMAC 16.24.15, 03-15-2001; A, 03-15-2004]

**16.16.24.16 ACTION ON EXAMINATION COMMITTEE REPORT:** The board may accept or reject any finding, determination, or recommendation made by the examining committee to the board regarding the licensee's ability to continue to practice with or without restriction on the license, or the board may refer the matter back to the examination committee for further examination and report, or it may decide that formal disciplinary action is immediately warranted.

[2-15-99; 16.16.24.16 NMAC - Rn, 16 NMAC 16.24.16, 03-15-2001]

**16.16.24.17 [RESERVED]**

**16.16.24.18 ENTITLEMENT TO HEARING:** Before the board can take action to restrict, suspend, or revoke the optometrist's license on the evidence reported by the examining committee, the optometrist shall be entitled to a hearing under, and in accordance with, the procedures contained in the Impaired Health Care Provider Act and the Uniform Licensing Act.

[2-15-99; 16.16.24.18 NMAC - Rn, 16 NMAC 16.24.18, 03-15-2001]

**16.16.24.19 [RESERVED]**

**16.16.24.20 REQUEST FOR VOLUNTARY RESTRICTION OF THE PERMIT OR LICENSE:** In lieu of a formal hearing, the optometrist may voluntarily request, in writing, a restriction of the license to practice optometry.

**A.** The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the optometrist's license to practice within specified limitations.

**B.** Upon imposition of voluntary restrictions on the optometrist's license, the board shall have the authority, if it deems appropriate, to waive the commencement of any further disciplinary proceedings conducted in accordance with the Uniform Licensing Act.

[2-15-99; 16.16.24.20 NMAC - Rn, 16 NMAC 16.24.20, 03-15-2001]

**16.16.24.21 PETITION FOR REMOVAL OF VOLUNTARY RESTRICTION:** The optometrist shall have a right, at reasonable intervals after a year, to petition the board, in writing, for the removal of the voluntary restriction and to demonstrate that he or she is capable of resuming the competent practice of optometry with reasonable skill and safety to patients.

**A.** The board shall act on the petition by referring it to the examining committee, who shall conduct the necessary examination of the optometrist, and make written recommendation to the board.

**B.** Upon consideration of the examining committee's recommendation, the board may, in its discretion, remove the voluntary restriction on the optometrist's license.  
[2-15-99; 16.16.24.21 NMAC - Rn, 16 NMAC 16.24.21, 03-15-2001]

**16.16.24.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION:** In the absence of a request by the optometrist for voluntary restriction of his or her license as provided in Section 20 of 16.16.24 NMAC (this rule), the board may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the optometrist's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.

[2-15-99; 16.16.24.22 NMAC - Rn, 16 NMAC 16.24.22, 03-15-2001]

**16.16.24.23 TEMPORARY SUSPENSION:**

**A.** The board may temporarily suspend the optometrist's license without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the optometrist's continuation in practice would constitute an imminent danger to the health and safety of the public.

**B.** The optometrist shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

[2-15-99; 16.16.24.23 NMAC - Rn, 16 NMAC 16.24.23, 03-15-2001]

**16.16.24.24 PETITION FOR REINSTATEMENT, RESTORATION, OR MODIFICATION OF DISCIPLINARY ORDER:** Subsequent to formal proceedings under the Impaired Health Care Provider Act and the Uniform Licensing Act, any optometrist who is prohibited from practicing optometry may, after a year from the date of suspension or revocation of the license, petition the board for reinstatement or restoration of his or her license to practice or for modification of the final disciplinary orders.

**A.** The optometrist shall make the application for reinstatement or restoration of his or her license or for the modification of the disciplinary orders in writing.

**B.** The optometrist shall be afforded an opportunity to demonstrate that he or she can resume the practice of optometry with reasonable skill, competence, and safety to patients and shall be required to provide verifiable proof of compliance with any stipulations in the disciplinary order.

(1) The board may require an examination by the examining committee for such reinstatement, restoration, or modification of the optometrist's license.

(2) The board may require verification that the optometrist has completed a treatment program for alcohol or chemical dependency.

(3) The board may require verifiable proof that the optometrist has remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least one (1) year.

(4) The board may require verifiable proof that optometrist has maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and/or alcohol screening of urine or blood.

(5) The board shall have the discretion to accept or reject the petition for reinstatement or restoration of the optometrist's license, or for modification of the disciplinary orders.

[2-15-99; 16.16.24.24 NMAC - Rn, 16 NMAC 16.24.24, 03-15-2001]

**HISTORY of 16.16.24 NMAC:**

**Pre-NMAC History:** None.

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

**Other History:**

16 NMAC 16.24, Disciplinary Guidelines For Impaired Practitioner, filed 2-2-99, renumbered and reformatted to 16.16.24 NMAC, Disciplinary Guidelines For Impaired Practitioner, effective 03-15-2001.