

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 19 PHARMACISTS
PART 27 DISHONORABLE CONDUCT

16.19.27.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM 87102, (505) 841-9102.
[16.19.27.1 NMAC - N, 12-01-2003]

16.19.27.2 SCOPE: Pharmacist interns, pharmacy technicians and businesses licensed pursuant to the New Mexico Pharmacy Act.
[16.19.27.2 NMAC - N, 12-01-2003]

16.19.27.3 STATUTORY AUTHORITY: Section 61-11-20 NMSA 1978, Uniform Licensing Act authorizes the board of pharmacy to deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant: (1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board; (17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act.
[16.19.27.3 NMAC - N, 12-01-2003]

16.19.27.4 DURATION: Permanent.
[16.19.27.4 NMAC - N, 12-01-2003]

16.19.27.5 EFFECTIVE DATE: December 1, 2003, unless a later date is cited at the end of a section.
[16.19.27.5 NMAC - N, 12-01-2003]

16.19.27.6 OBJECTIVE: The objective of Part 27 of Chapter 19 is to protect the health and safety of New Mexico citizens by regulating the conduct of pharmacist interns, pharmacy technicians and facilities licensed pursuant to the New Mexico Pharmacy Act.
[16.19.27.6 NMAC - N, 12-01-2003]

16.19.27.7 DEFINITIONS: Dishonorable conduct by a pharmacist intern licensed pursuant to Section 61-11-6 NMSA 1978, or pharmacy technician registered pursuant to Section 61-11-6 NMSA 1978.

A. Dishonorable conduct by a pharmacist intern or pharmacy technician shall mean, among other things, but not to be limited to:

- (1) violation of any provision of the Pharmacy Act as determined by the board;
- (2) violation of the board of pharmacy regulations as determined by the board;
- (3) violation of the Drug and Cosmetic Act as determined by the board;
- (4) violation of the Controlled Substances Act as determined by the board;
- (5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;
- (6) acquiring prescription stock from unlicensed sources;
- (7) failure to hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;
- (8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;
- (9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;
- (10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:
 - (a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or
 - (b) a request for therapeutic interchange of a medication prescribed for the patient;
- (11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

(12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(14) suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

B. Dishonorable conduct by a facility (business) shall mean but not to be limited to:

(1) violation of any provision of the Pharmacy Act as determined by the board;

(2) violation of the board of pharmacy regulations as determined by the board;

(3) violation of the Drug and Cosmetic Act as determined by the board;

(4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a) the inpatient, or institutional setting (i.e. long term care or correctional facility)

by an in-house or contracted pharmacy; or

(b) a request for therapeutic interchange of a medication prescribed for the patient;

(11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

(12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(14) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;

(15) failure to correct written deficiencies, documented by drug inspectors during routine inspections;

(16) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC);

(17) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public;

(18) having a policy or procedure which hinders the apprehension and/or prosecution of individuals who the pharmacist or pharmacist intern after reasonable inquiry suspect of prescription forgery, alteration, fraud, misrepresentation or a prescription transaction which is not otherwise in accordance with the law;

(19) failure to adhere to the written policy and procedures established by the pharmacist-in-charge.

C. "Pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems. (Subsection V of Section 61-11-2 NMSA 1978)

D. "Dispensing error" means a prescription that was dispensed from the pharmacy differently from what was prescribed.

E. “Harm” means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.

F. “Patient counseling” means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or a device. (Subsection T of Section 61-11-2 NMSA 1978).

G. “Physical environment” means the facility layout design, fixtures, and surroundings that affect lighting levels, sound levels, temperature, interruptions, and distractions.

[16.19.27.7 NMAC - N, 12-01-2003; A, 04-01-2004; A, 09-30-05; A, 12-15-08; A, 11-13-18]

HISTORY OF 16.19.27 NMAC: [RESERVED]