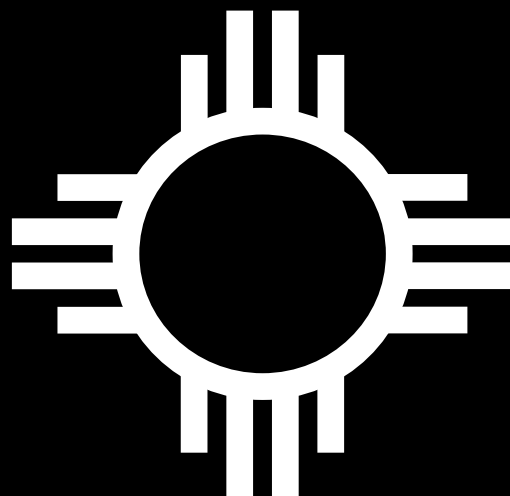


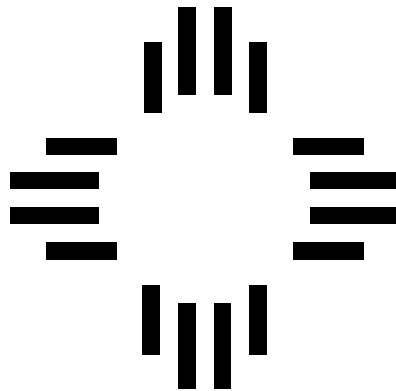
**NEW
MEXICO
REGISTER**



Volume XIV
Issue Number 11
June 13, 2003

New Mexico Register

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June 13, 2003



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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2003

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New Mexico Register

Volume XIV, Number 11

June 13, 2003

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Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD- NOTICE OF HEARING AND REGULAR MEETING

On July 16, 2003, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will reopen the public hearing regarding the proposal to repeal and replace the Fugitive Dust Control Regulation (20.11.20 NMAC). The hearing will be held in the Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. This hearing will only address the possible inclusion of a high wind event "safe harbor" provision in the regulation. Testimony, exhibits and comments will be limited to the proposed "safe harbor" provision. No other portions of the proposed regulation will be involved in the hearing. The proposed "safe harbor" provision will establish how the Air Quality Division for the City of Albuquerque will enforce the regulation in relationship to high wind events. Mandatory controls may be proposed that must be implemented during high wind events. If the mandatory controls are implemented, the person(s) performing active operations may be exempted from enforcement actions, even if some fugitive dust is leaving the property where active operations have been or are occurring. The proposal to exempt a person from enforcement as a result of implementing mandatory controls during a high wind event will not change the person's potential liability for any damages caused by fugitive dust leaving the property.

Following this hearing, the Board will hold its regular monthly meeting and will consider the proposed changes to 20.11.20 NMAC heard on March 12, 2003 and on July 16, 2003 and the proposal to incorporate these changes into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons wishing to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent to: Attn: December Hearing Record, Mr. Dan Warren, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The notice of intent should identify the name, address, and affiliation of the person.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on July 9, 2003. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to dwarren@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or contact Mr. Neal Butt electronically at nbutt@cabq.gov or by phone (505) 768-2660.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

PUBLIC HEARING BEFORE THE NEW
MEXICO ENVIRONMENTAL
IMPROVEMENT BOARD
To Consider Proposed Revision of 20.3.1,
20.3.3, 20.3.4, 20.3.12, 20.3.13, and 20.3.15

NMAC

The New Mexico Environmental Improvement Board will hold a public hearing on August 5, 2003, in conjunction with their regularly scheduled August meeting. The meeting will begin at 9:30 A.M. in Room 317 of the State Capitol Building in Santa Fe, New Mexico. At this hearing, the Board will consider amendments to 20.3.1 NMAC, "Radioactive Materials and Radiation Machines-General Provisions"; 20.3.3 NMAC, "Licensing of Radioactive Material"; 20.3.4 NMAC, "Standards for Protection Against Radiation"; 20.3.12 NMAC, "Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies"; 20.3.13 NMAC, "Licensing Requirements for Land Disposal of Radioactive Waste"; and 20.3.15 NMAC, "Licenses and Radiation Safety Requirements for Irradiators."

The proponent of these regulatory changes is the New Mexico Environment Department.

The purpose for revising Parts 1, 3, 4, 12, 13 and 15 of the New Mexico Radiation Protection Regulations is that those Parts require revision to maintain compatibility with the corresponding Parts of the U.S. Nuclear Regulatory Commission's (NRC) revisions in recent years. The New Mexico Radiation Control Bureau licenses users of radioactive material in accordance with New Mexico's Agreement with the NRC to license and regulate radioactive materials. The regulations are of statewide application.

The proposed revision may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2150, Santa Fe, NM. Copies of the proposed rule may be obtained by contacting Bill Floyd at (505) 476-3236 or by visiting the Department's web site at www.nmenv.state.nm.us. Follow the link to the Radiation Control Bureau's page. Questions or comments about the Department's proposed amendments may be addressed to Bill Floyd, Radiation Protection Program Manager, Radiation Control Bureau, 1190 St. Francis Drive, P.O. Box 26110, Room S2100, Santa Fe, NM 87502-6110, telephone number (505) 476-3236.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures)- Environmental Improvement Board, the Environmental Improvement

Act, Section 74-1-9 NMSA 1978, the Radiation Protection Regulations, Section 74-3-5 NMSA 1978 and other applicable procedures.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

Identify the person for whom the witness (es) will testify;

Identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

Summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration;

Include the text of any recommended modifications to the proposed regulatory change; and

List and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 P.M. on July 24, 2003 and should reference the name of the regulation and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid-Chavez
New Mexico Boards and Commissions
1190 St. Francis Drive, Room N-2150
Santa Fe, New Mexico 87502

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid. (e.g.-a sign language interpreter) to participate in any aspect of this process, please contact Cliff Hawley by July 18, 2003. Mr. Hawley's telephone number (505) 827-2844. He is Chief of the Program Support Bureau, New Mexico Environment Department, at 1190 St. Francis Drive, Santa Fe, NM, 87502. (TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333. Outside of Albuquerque 1-800-659-1779.)

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a

meeting after the hearing to consider action on the proposal.

NEW MEXICO OIL CONSERVATION COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO OIL CONSERVATION COMMISSION SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on July 17, 2003 in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico concerning the repeal of 19.15.1.18, 19.15.3.105, 19.15.5.313 NMAC, Commission Order numbers R-3221, Case No 3551; Order No. R-3221-A, Case No. 3644; Order No. R-3221-B, Case No. 3806; Order No. R-3221-B-1, Case No. 3806; and Order No. R-7940-C which is existing material in 19.15.2 NMAC, and the adoption of replacement rules to be codified in a new Part 2 of Title 19, Chapter 15 of the New Mexico Administrative Code. The proposed regulation and amendments are designed to regulate the construction, operation and closing of pits in the interest of protection of ground and surface water and public health, safety and the environment. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Florene Davidson at 505-476-3458 or through the New Mexico Relay Network, 1-800-659-1779 immediately. Copies of the text of proposed regulation and amendments are available from Ms. Davidson at 505-476-3458 or from the Division's Internet web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm>

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 29th day of May, 2003.

STATE OF NEW MEXICO OIL CONSERVATION DIVISION

Lori Wrotenbery, Director

S E A L

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that a rulemaking and public hearing will be held in the Commission Conference Room, 300 San Mateo N.E., Albuquerque, New Mexico, commencing in executive session at 8:00 o'clock a.m. on Wednesday, June 25, 2003. The public session will begin at 10:00 o'clock a.m. on Wednesday, June 25, 2003. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 16.47.1.8 NMAC (regarding temporary licenses), No. 16.47.1.9 NMAC (regarding owner's licenses), No. 15.2.7.12 NMAC (regarding wagering pools) and other matters of general business.

Copies of these proposed rules may be obtained from India Hatch, Agency Director, New Mexico Racing Commission, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87108, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

India Hatch
Agency Director

Dated: May 22, 2003

End of Notices and Proposed Rules Section

Adopted Rules and Regulations

NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE

Explanatory paragraph: The purpose of these changes are to effect the amending of Sections 10.14.200.1, 10.14.200.2, 10.14.200.3, 10.14.200.6, Subsection J of 10.14.200.7, Name and Subsection E of Section 10.14.200.8, Subsections A, D, E and K of Section 10.14.200.9, Paragraph 2 of Subsection A, Subsection B, Name of Subsection D and Paragraphs 2 and 3 of Subsection E of Section 10.14.200.11, Subsections A and B of Section 10.14.220.16, renumbering and amendment of Subsections A, B, C, D, F, G and H of Section 10.14.200.10, and Subsections A through K of Section 10.14.200.12 all to be effective on 7/1/2003.

10.14.200.1 ISSUING AGENCY: DNA Identification System Oversight Committee & Administrative Center, %Albuquerque Police Department, [400 ~~Roma,~~] 5350 Second Street, N.W. Albuquerque, NM [87102] 87107, (505) 823-4634.

10.14.200.2 SCOPE: Department of Public Safety, Department of Corrections, Attorney General, state Medical Investigator, local New Mexico law enforcement agencies, City of Albuquerque, Covered Offenders.

10.14.200.3 STATUTORY AUTHORITY: Section 29-16-4.B.6 NMSA 1978, ~~and~~ 29-16-5.B NMSA 1978 and 29-16-5.E NMSA 1978.

10.14.200.6 OBJECTIVE: To establish a DNA Identification system for covered offenders, unidentified persons and unidentified human remains. ~~and to~~ To facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification, detection or exclusion of persons in connection with criminal investigations or in the identification of unidentified persons or unidentified human remains pursuant to the DNA Identification Act.

10.14.200.7 DEFINITIONS:

J. "DNA Identification Act" means Sections 29-16-1 to 29-16-13 NMSA 1978, and any subsequent amendments or additions to these sections, the law that authorizes the DNA Identification System and the DNA Oversight Committee.

10.14.200.8 COLLECTION AND

TRANSFER OF OFFENDER SAMPLES AND FEES:

E. The routine method of sample collection shall be by buccal cell swabbing and transfer to a FTA collection card using the standardized sample collection kit as supplied by the Administrative Center. In non-routine circumstances, including a refusal by a covered offender, the collection shall be referred to the Administrative Center, require a written consent or court order, and shall be collected and coordinated by trained persons designated by the Administrative Center pursuant to Sections ~~[29-16-3(K)]~~ 29-16-3.K and 29-16-9 NMSA 1978.

10.14.200.9 HANDLING AND SECURITY OF SAMPLES:

A. DNA records and samples are confidential and shall not be disclosed except as authorized by the DNA Oversight Committee and as governed by ~~[Sections 29-16-1 to 29-16-13 NMSA 1978]~~ the DNA Identification Act.

D. Any person who willfully discloses, seeks to obtain or use information from the DNA Identification System for purposes not authorized in these Rules ~~[and Regulations]~~ and in violation of Section 29-16-12 NMSA 1978 shall be subject to the penalties thereof.

E. All samples received by the Administrative Center for DNA analysis shall be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

K. The FTA card shall be returned to the FTA Card Envelope affixed to the inside of the kit and placed into secured storage until processed for analysis. The sample checklist/flow sheet is then securely filed in the Administrative Center ~~[until the sample is processed for analysis.]~~ via hardcopy or electronic means.

10.14.200.10 SAMPLE PROCESSING AND ANALYSIS:

A. All samples received by the Administrative Center for DNA analysis should be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

B. The mechanism of sample collection authorization for samples collected pursuant to 29-16-6.B NMSA 1978 shall be documented and a copy or that authorization maintained by the Administrative Center.

~~[B.]~~ **C.** These samples shall be handled, examined, and processed individually to avoid possible cross-contamination

from another biological sample or from the examiner.

~~[C. Upon removal of the sample collection kit from secured storage, the sample checklist/flow sheet shall be retrieved from the secured files and used to track the samples.]~~

D. Samples tested shall follow DNA testing procedures approved by the ~~[Albuquerque Police Department Crime Laboratory biology unit]~~ Administrative Center. Remaining samples shall be returned to secured storage ~~[and the sample checklist/flowsheet shall be completed and refilled].~~

F. Excess extracted or amplified offender DNA shall be destroyed within thirty (30) days after completion of analysis.

G. Excess DNA collected or extracted pursuant to Section 29.16.2.C NMSA 1978 shall be retained by the Administrative Center, the analyzing laboratory or the submitting agency at the discretion of the submitting agency. Excess amplified DNA generated pursuant to Section 29.16.2.C NMSA 1978 shall be destroyed within thirty (30) days after completion of analysis.

~~[G.]~~ **H.** No written reports shall be released on any specific DNA sample except as authorized by the DNA Identification Act and these Rules ~~[and Regulations].~~

10.14.200.11 ACCESS TO DNA SAMPLE INFORMATION, RECORDS AND SAMPLES:

A. Access to or disclosure of DNA records and samples collected shall be authorized only in the following circumstances:

(2) For identification, comparison, and investigative purposes, to local, state, and federal law enforcement agencies and the state medical investigator in response to official inquiries as authorized by Sections 29-16-2, 29-16-8.B NMSA 1978 and these Rules ~~[and Regulations]~~; or

B. Access to the DNA Identification System by authorized law enforcement agencies and the state medical investigator shall be through their servicing forensic DNA laboratory or by direct request to the Head of the Administrative Center.

D. DNA ~~[D]~~ database searches:

E. Database hits:

(2) A written report indicating the match shall be forwarded to the requesting agency through their servicing laboratory or directly by the Head of the Administrative Center. Release of personal identifying

information shall be made only after compliance with Subsection C of 10.14.200.11 NMAC.

(3) Should a profile not be confirmed or if a hit does not occur, a written report to that effect shall be forwarded to the requesting agency through their servicing laboratory or directly by the Head of the Administrative Center.

10.14.200.12 EXPUNGEMENT OF INFORMATION:

A. A person may request expungement of his offender DNA sample and DNA records from the DNA Identification System on the ground that the conviction that led to the inclusion of his sample and DNA records in the DNA Identification System has been reversed.

B. The Head of the Administrative Center shall expunge a person's offender DNA sample and DNA records from the DNA Identification System when the person provides the Administrative Center with the following materials:

C. Before expungement of an offender DNA sample, an independent review of the court order shall be conducted by the Attorney General's Office. The Attorney General shall confirm or reject the expungement request in writing within thirty (30) days from the receipt of the written request by the Attorney General's Office. If no action is taken by the Attorney General after thirty (30) days from receipt, expungement shall automatically occur.

D. A person may request expungement of his DNA sample and DNA records from the missing persons DNA Identification System at any time.

E. The Head of the Administrative Center shall expunge a person's sample and DNA records from the missing persons DNA Identification System when the person provides the Administrative Center with the following materials:

(1) A written request for expungement of his sample and DNA records.

(2) A certified copy of a court order overturning any original search warrant or court order that led to the inclusion of his sample and DNA records in the missing persons DNA Identification System, if applicable.

F. Before expungement of a DNA sample collected for the missing persons DNA Identification System, a review of the mechanism of sample collection authorization shall be conducted by the Administrative Center. The Administrative Center shall confirm or reject the expungement request in writing within thirty (30) days from the receipt of the written request by the Administrative Center.

G. Rejection of requests for expungement shall not be made without cause.

H. Should a request for expungement be rejected, the written notification shall include information as to the reason for rejection and that the rejection may be appealed to the Oversight Committee.

~~D.~~ I. When a person's sample and DNA records are expunged from the DNA Identification System, the Head of the Administrative Center shall ensure that the person's sample and DNA records are expunged from CODIS within sixty (60) days after confirmation of the expungement request.

~~E.~~ J. Written confirmation of expungement shall be sent to the requesting party and a record of the confirmation shall be kept by the Head of the Administrative Center.

~~F.~~ K. For purposes of this section, expungement means the complete destruction of all samples, records, personal identification and information concerning that person.

10.14.200.16 MISCELLANEOUS PROVISIONS:

A. Savings Clause. These Rules ~~and Regulations~~ shall be read and interpreted consistent with the provisions of the DNA Identification Act. If a topic is not addressed in these Rules and Regulations, reference shall be made to the DNA Identification Act.

B. Annual Review. The Rules ~~and Regulations~~ shall be reviewed on, at least, an annual basis by the DNA Oversight Committee.

NEW MEXICO BOARD OF MEDICAL EXAMINERS

This is an amendment to 16.10.2 NMAC, Sections 1, 9, 10 and 13

16.10.2.1 ISSUING AGENCY. New Mexico ~~Board of Medical Examiners~~ medical board, hereafter called the board.

[16.10.2.1 NMAC - Rp 16 NMAC 10.2.1, 4/18/02; A, 7/1/03]

16.10.2.9 MEDICAL LICENSE BY EXAMINATION.

A. **Prerequisites for licensure.** Each applicant for a license to practice as a medical doctor in New Mexico must possess the following qualifications:

(1) graduated and received a diploma from a board approved school;

(2) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Section 61-6-11, C NMSA 1978;

(4) When the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) A qualified applicant who has not been actively and continuously in practice for more than 2 years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (Special Purpose Examination), the PLAS (Post-Licensure Assessment System of the Federation of State Medical Boards), or specialty re-certification.

B. **Required documentation for all applicants.** Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed application signed and notarized with a passport-quality photo taken within the previous 6 months. Applications are valid for 1 year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be sent directly to the board office from the other state board(s), must include a raised seal, and must attest to the status, issue date, license number, and other information requested and contained on the form. This information will be provided by HSC for applicants using that service, or directly to the New Mexico ~~Board of Medical Examiners~~ medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine. The recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance. Forms must be sent directly to the board from the recommending physician. This information will be provided by HSC for applicants using that service, or directly to the New Mexico ~~Board of Medical Examiners~~ medical board for applicants using FCVS or applying directly to the board;

(4) verification of all hospital affiliations in the last five years, if applicable, not to include postgraduate training.

This information will be provided by HSC for applicants using that service, or directly to the New Mexico ~~Board of Medical Examiners~~ medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all ABMS specialty board certifications, if applicable. This information will be provided by HSC for applicants using that service, or directly to the New Mexico ~~Board of Medical Examiners~~ medical board for applicants using FCVS or applying directly to the board; and

(6) The board may request that applicants be investigated by the biographical section of the American medical association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other sources as may be deemed appropriate by the board.

(7) Applicants who have graduated from a medical school not located in the United States must provide proof that they are in compliance with the immigration laws of the United States.

C. Additional documentation for applicants using the FCVS. Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in 16.10.2.9.B are required in addition to the FCVS report.

D. Additional documentation for applicants using HSC.

(1) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency.

(4) proof of identity must be presented at the personal interview. Acceptable documents include birth certificate, passport, naturalization documents, and visas.

E. Additional documentation for applicants applying directly to New Mexico and not using FCVS or HSC.

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the

board from the medical school;

(3) notarized copy of diploma;

(4) status report of ECFMG certification sent directly to the board from ECFMG, if applicable.

(5) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(6) postgraduate training form sent to the board directly from the training program;

(7) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency; and

(8) proof of identity must be presented at the personal interview. Acceptable documents include birth certificate, passport, naturalization documents, and visas.

(9) certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

F. Licensure process.

Upon receipt of a completed application, including all required documentation and fees, the applicant ~~[will]~~ may be scheduled for a personal interview before the board, ~~[or]~~ a board member designated by the board, or an agent of the board and must present original documents as requested by the board.

~~† Applicants whose applications are complete and who successfully complete the interview may be issued an interim license valid for a period of up to twelve months.~~

~~(2) In addition to the required personal interview, each applicant approved for licensure must personally attend the board Orientation meeting within twelve months of the date of the interview prior to the issuance of a permanent license.~~

~~(3) Following attendance at the Orientation meeting, the applicant will receive a permanent license to practice medicine.]~~

The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

G. Initial license expiration. Medical licenses expire on July 1 of every third year. Initial licenses are valid for a period of ~~[not more than thirty seven months or less than thirty months]~~ not more than three years or less than two years.

[16.10.2.9 NMAC - N, 5/1/02; A, 1/20/03; A, 7/1/03]

16.10.2.10

MEDICAL LICENSE

BY ENDORSEMENT

A. Prerequisites for licensure. Each applicant for a license to practice as a medical doctor in New Mexico by endorsement must be of good moral character, hold a full and unrestricted license to practice medicine in another state, and possess the following qualifications:

(1) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC within three attempts per step/level and within a seven year time period from the date the first step is passed;

(2) be free of disciplinary history, license restrictions, or pending investigations in all jurisdictions where a medical license is or has been held;

(3) graduated from an approved medical school or hold current educational commission for foreign medical graduates (ECFMG) certification; and

(4) completion of three years of progressive postgraduate training in an accredited program; or

(5) current certification from a medical specialty board recognized by the American board of medical specialties (ABMS). Lifetime certificate holders who have not passed a written specialty recertification examination must demonstrate successful completion of the Special Purpose Examination (SPEX) or applicable recertification examination.

B. Required documentation for all applicants. Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed application signed and notarized with a passport-quality photo taken within the previous 6 months. Applications are valid for 1 year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession. Verification must be sent directly to the board office from the other state board(s), must include a raised seal, and must attest to the status, issue date, license number, and other information requested and contained on the form.

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine. The recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance. Forms must be sent directly to the board from the recommending physician. This information

will be provided by HSC for applicants using that service, or directly to the New Mexico ~~[Board of Medical Examiners]~~ medical board:

(4) verification of all hospital affiliations in the last five years, if applicable, not to include postgraduate training. This information will be provided by HSC for applicants using that service, or directly to the New Mexico ~~[Board of Medical Examiners]~~ medical board;

(5) a copy of all ABMS specialty board certifications, if applicable. This information will be provided by HSC for applicants using that service, or directly to the New Mexico ~~[Board of Medical Examiners]~~ medical board; and

(6) The board may request that applicants be investigated by the biographical section of the American medical association, the drug enforcement administration, the federation of state medical boards, the national practitioner data bank, and other sources as may be deemed appropriate by the board.

(7) Applicants who are not U.S. citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant ~~[will]~~ may be scheduled for a personal interview before the board, ~~[or]~~ a board member designated by the board, or an agent of the board and must present original documents as requested by the board.

~~† (1) Applicants whose applications are complete and who successfully complete the interview may be issued an Interim license valid for a period of up to twelve months.~~

~~(2) In addition to the required personal interview, each applicant approved for licensure must personally attend the board Orientation meeting within twelve months of the date of the interview prior to the issuance of a permanent license.~~

~~(3) Following attendance at the Orientation meeting, the applicant will receive a permanent license to practice medicine.]~~

The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

D. Initial license expiration. Medical licenses expire on July 1 of every third year. Initial licenses are valid for a period of ~~[not more than thirty seven months or less than thirty months]~~ not more than three years or less than two years.

[16.10.2.10 NMAC - N, 1/20/03; A, 7/1/03]

16.10.2.13 PUBLIC SERVICE

LICENSE. A resident physician may apply for a public service license, which enables him to practice medicine outside the training program. The resident physician must be continuing in the board approved training program.

A. Prerequisites for licensure. Each applicant for a public service license shall have graduated from an approved medical school, passed all required examinations as defined in 16.10.3 NMAC, and completed one year of postgraduate training. In addition, the applicant shall have completed an application for licensure including all required documentation required in 16.10.2.9.B through 16.10.2.9.E as applicable. Other requirements include:

(1) written approval from his training program director.

(2) a postgraduate training license issued by the New Mexico ~~[Board of Medical Examiners]~~ medical board.

(3) A resident physician with one-year postdoctoral training may only apply for a public service license when he is under the direct supervision of a New Mexico physician or when employed in a medically underserved area.

(4) If a physician is not being supervised directly, there must be procedures in place for a licensed New Mexico physician to review, on at least a quarterly basis, prescriptions written and dispensed for controlled substances and operative procedures performed.

B. Required documentation. Each applicant for a public service license shall submit the required fee as specified in 16.10.9.8 NMAC and the following documentation:

(1) completed application, signed and notarized with a passport quality photo taken within the previous 6 months. Applications are valid for 1 year from the date of receipt;

(2) letter of approval from the training program director.

C. Licensure process. Upon receipt of a completed application, including all required documentation and fees, the applicant ~~[will]~~ may be scheduled for a personal interview before the board, ~~[or]~~ a board member designated by the board, or an agent of the board and must present original documents as requested by the board.

~~† (1) Applicants whose applications are complete and who successfully complete the interview may be issued an Interim license valid for a period of up to twelve months.~~

~~(2) In addition to the required personal interview, each applicant approved for licensure must personally attend the board Orientation meeting within twelve months~~

~~of the date of the interview prior to the issuance of a public service license.~~

~~(3) Following attendance at the Orientation meeting, the applicant will receive a permanent license to practice medicine.]~~

The initial license will be issued following completion of any required interview, and/or approval by a member or agent of the board.

D. License expiration. Public service licenses expire on July 1. Initial licenses are valid for a period of not more than 13 months or less than 8 months, or until completion of the training program. Public service licenses may be renewed annually as long as the applicant remains eligible.

[16.10.2.13 NMAC - Rp 16 NMAC 10.3.9, 4/18/02; 16.10.2.13 NMAC - Rn & A, 16.10.2.12 NMAC, 1/20/03; A, 7/1/03]

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Paragraph 8 of Subsection B of 15.2.5.8 NMSA changing the procedure for declaring permitted medications and creating a new Paragraph 9 for the second portion of what was formerly Paragraph 8. This amendment is effective 06/13/2003.

15.2.5.8 ENTRIES AND NOMINATIONS:

B. PROCEDURE:

(1) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

(2) An entry shall be in the name of the horse's licensed owner and made by the owner, trainer or a licensed designee of the owner or trainer. Any horse which is in a race or on the also-eligible list may not be sold or transferred until that obligation is completed, except with permission of the stewards.

(3) Numbered races printed in the condition book shall have preference over extra races. Should any race fail to draw seven (7) separate wagering interests, it may be called off.

(4) An entry must be in writing, by telephone, electronically or facsimile machine to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(5) The person making an entry shall clearly designate the horse so entered.

(6) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of

the stewards.

(7) No horse may be entered in more than one race (with the exception of stakes races) to be run on the same day at the same track on which pari-mutuel wagering is conducted. If a horse is entered in more than one stakes race to be run on the same day, at the time of draw, the trainer must declare which race the horse will run in.

(8) Any permitted medication ~~of~~ must be declared on the original entry at each race meet. No further declaration will be required at that meet unless there is a change.

(9) Any approved change of equipment must be declared at time of entry. Any changes after that time must be approved by the stewards.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

This is an amendment to 14.5.6 NMAC, Section 14

**14.5.6.14 GENERAL
MECHANICAL AND PLUMBING
LICENSE INFORMATION:**

A. Journeyman Certificate of Competence Required:

A journeyman Certificate of Competence in the proper trade classification for the work being performed is required of all individuals performing mechanical and/or plumbing work. Journeyman Certifications shall be issued such that the certificates parallel the mechanical and plumbing license classification numbers and scopes.

B. Implementation of new license classifications; renewal of existing license classifications:

(1) The mechanical and plumbing license and journeyman Certificate of Competence classifications specified immediately below become effective on November 1, 1998. Thus, all licenses and Certificates of Competence tested for on or after, November 1, 1998 will be issued pursuant to the classifications set forth below.

(2) All licenses and journeyman Certificate of Competence tested for and/or issued prior to November 1, 1998 under the prior license and journeyman classifications will be issued under the renewed under the prior classifications until the license or Certificate of Competence ceases to exist. However, if a licensee or journeyman fails to renew his license or Certificate of Competence in a timely manner as required in the Construction Industries Licensing Act or the Construction Industries Division

Rules and Regulations, or otherwise allows his license or Certificate of Competence to lapse, be voided and/or canceled, the licensee and/or journeyman will be required to obtain the proper license under the new classification system becoming effective on November 1, 1998. Obtaining the proper license and/or journeyman Certificate of Competence under the new license classification system in these circumstances will require that the licensee and/or journeyman take the appropriate examination and make application to the Division.

C. Mechanical and Plumbing contracting defined:

The definition of contracting is set forth in Section 60-13-3 of the Construction Industries Licensing Act. Nothing in this rule shall be construed to conflict with the Act's definition. However, for the purpose of clarity in this rule, contracting is understood to include: installations, alterations, repairs, servicing and maintenance involving plumbing and/or mechanical work.

D. [RESERVED]

**E. GENERAL
MECHANICAL AND PLUMBING
LICENSE CLASSIFICATIONS:**

(1) MM-1. Plumbing. (Requires four years experience.)

A contractor under this classification is authorized to install, alter, repair or service plumbing, fixtures and water conditioners as defined under Section 60-13-32 B, C and E of the Act. He may perform piping which carries fuel, oil, gasoline in the service station installation. Also, he may perform all piping associated with solar water heating and cooling systems. The following are some sample types of work included under this classification (this list is for illustrative purpose, and is not exhaustive): 1. plumbing, fixtures and water conditioners, as defined under Section 60-13-32 (B)(C) and (E) of the Construction Industries Licensing Act; hot water heating systems not exceeding 30 p.s.i.; fixture and softener installations, and accessories; piping associated with solar water heating and cooling systems; contractor may not perform natural gas fitting except as described in the subsection below; 2. cesspools, septic tanks, manholes and sewer lines, starting at a point of five (5) feet beyond the outside wall of a building, including excavating, trenching, backfilling and grading necessary to make the authorized installation. 3. lawn sprinklers which are connected to a potable water supply, including necessary excavation and backfilling, the plug-in type electrical control panels and apparatus, and control wiring up to 24 volts; 4. piping, fixtures or equipment which is an integral part of swimming pool filters or heating systems (water side only); drain piping to an approved sand trap; make up water pip-

ing of potable water line; does not include installation of natural gas fired appliances or natural gas piping; 5. piping, fittings and equipment for the treatment of water, including necessary concrete supports for water and conditioning systems, plug-in electrical control panels and apparatus up to 24 volts necessary for the operation of the water conditioning system; 6. indirect waste piping to the point of disposal; and 7. pneumatic systems and electrical control wiring up to 24 volts, provided all electrical work over 24 volts shall be installed by a properly licensed electrical contractor, and pneumatic tube systems.

(2) MM-2. Natural Gas Fitting. (Requires four years experience.)

A contractor under this classification is authorized to install, alter, repair or service natural gas fittings as defined in Section 60-13-32.D. of the Act. He may install hot water heating systems not exceeding 30 p.s.i. working pressure or 400,000 B.T.U./hour input. NOTE: This classification does not allow the installation of LP Gas systems.

The following are some sample types of work included under this classification (this list is for illustrative purpose, and is not exhaustive): 1. natural gas fitting and consumer natural gas piping downstream of the gas meter or property line; 2. warm air heating appliances; 3. freestanding gas appliances and built-in ranges and ovens, including all venting and existing valved outlets. 4. steam and hot water boilers, including chimney connections, flues, refractories, burners, fittings, valves, thermal insulation, controls, accessories and incidental piping, and natural gas piping from the main boiler cutoff to the burner; and 5. pneumatic control systems and electrical wiring up to 24 volts, provided all electrical work over 24 volts shall be installed by a properly licensed electrical contractor, and pneumatic tube systems. 6. contractor may bid and contract for a complete boiler installation, provided all electrical work over 24 volts shall be installed by a properly licensed electrical contractor.

(3) MM-3. Heating, Ventilation & Air Conditioning (HVAC). (Requires four years experience.)

A contractor under this classification is authorized to install, alter, repair or service HVAC air handling and refrigeration cycle, consisting of and including fans, coils, evaporative cooling units, self-contained packaged air conditioning and/or heating units, air handling units, condensing units, duct work and accessories, including solar air heating and cooled mechanical air handling and ventilation applications. He is not authorized to perform piping, other than refrigerant piping, except as allowed below. The following are some sample types of

work included under this classification (this list is for illustrative purpose, and is not exhaustive): 1. evaporative coolers, including circulating pumps, controls, control wiring up to 24 volts and duct work for the evaporative cooler installations, and connecting water to existing valved outlets; Structural work and electrical work not specifically described herein must be performed by properly licensed contractors, however this work may be included in the bid or contract of the evaporative cooler contractor if incidental to the evaporative cooler installation; and 2. pneumatic control systems or electrical wiring up to 24 volts, provided all electrical work and control systems over 24 volts shall be installed by a properly licensed electrical contractor, and pneumatic tube systems.

(4) MM-4. Heating, Cooling and Process Piping. (Requires four years experience.)

A contractor under this classification is authorized to install, alter, repair or service hydronic heating, cooling and process piping consisting of and including steam hot water systems of any temperature pressure range, chilled water systems, condensing water systems and process piping systems, including pressure vessels, heat exchangers, boilers, refrigeration water chillers, cooling towers, fuel oil tanks and fuel oil piping. He may install natural gas piping from the main boiler cut-off to the burner. He may install high pressure and process piping solar energy systems and components of any temperature or any pressure conveying gas or fluids other than potable water.-

In addition to the above, the contractor under this classification is authorized to install pneumatic or electric controls and control wiring up to 24 volts, provided electrical wiring over 24 volts shall be installed by a properly licensed electrical contractor, and pneumatic tube systems.

(5) MM-98. Mechanical. (Requires four years experience.)

A contractor under this classification is authorized to perform all work described under MM-1, 2, 3 and 4, and all specialty mechanical licenses. He may bid and contract as the prime contractor of an entire project provided the mechanical contractor's part of the project, based on dollar amounts, is the major portion of the contract and further provided that all subcontracted work is awarded to and performed by properly licensed and classified contractors.

F. MECHANICAL AND PLUMBING SPECIALTY LICENSES:

(1) MS-3. Cesspools, Septic Tanks & Sewer. (Requires two years experience.)

A contractor under this classification is authorized to install, alter, repair or service cesspools, septic tanks, manholes and sewer

lines, starting at a point five (5) feet beyond the outside wall of a building. He may excavate, trench, backfill and grade as necessary for the authorized installation. He shall not represent himself as a plumbing contractor. A contractor under this classification may install or repair plug-in type electrical control panels and apparatus and may install control wiring up to 24 volts.

(2) MS-6. Lawn Sprinklers. (Requires two years experience.)

A contractor under this classification is authorized to install, alter, repair or service sprinkler systems which are connected to a potable water supply. He may excavate and backfill as necessary for proper installation of the system. A contractor under this classification may install or repair plug-in type electrical control panels and apparatus and may install control wiring up to 24 volts.

(3) MS-12. Fire Protection Sprinkler Systems. (Requires four years experience.)

A contractor under this classification is authorized to install, alter, repair or service fire protection systems using water, including any pressure or storage tanks required, including control wiring of 24 volts or less. He may excavate and backfill and install piping from structure to off-premise water supply adjacent to property involving a fire protection system. He may bid or contract structural alterations, painting, electrical wiring, etc., incidental to the system installation, provided such work is performed by a properly licensed contractor.

(4) MS-14. Dry Chemical Fire Protection. (Requires four years experience.)

A contractor under this classification is authorized to install, alter, repair or service fire protection systems using gas or chemical, including CO, halon, etc. Included are pressurized storage tanks, valves, appurtenances, temperature sensing devices and other incidental control wiring of 24 volts or less. This contractor is not authorized to install solenoid or shut-off valve devices in any natural or LP gas supply piping. He may bid or contract for only the complete dry chemical fire suppression system including the mounting of tanks and securing of piping arrangements. Any architectural or structural work shall be done by properly licensed contractors.

[14.5.6.14 NMAC - Rp, 14 NMAC 5.6.14, 12-1-00; A, 6-20-03]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

Explanatory paragraph: Subsection E is being added to Section 12.11.1.11 in order

to implement the statutory change effected by Senate Bill 596. See S.B. 596, 46th Leg., 1st Sess., 2003 N.M. Laws 247 (providing that the annual licensing fees for sales representatives and investment adviser representatives would be "an amount not to exceed fifty dollars"). The fee is being set at \$40, which represents an increase of \$5 over the amount previously set by statute. Section 12.11.1.5 is being amended to reflect that some sections may have a different effective date (i.e., section 12.11.1.11).

12.11.1.5 EFFECTIVE DATE:
~~Renumbering only, effective~~ May 1, 1999, unless a later date is cited at the end of a section.

[12 NMAC 11.1.1.3, 12-30-95; 12 NMAC 11.1.1.5, 5-1-99; 12.11.1.5 NMAC - Rn & A, 12 NMAC 11.1.1.5, 07-01-2003]

12.11.1.11 FEES:
E. Sales representative and investment adviser representative licensing fees. Pursuant to Section 58-13B-9A NMSA 1978 sales representatives and investment adviser representatives shall pay an annual licensing fee of \$40.00.

[12 NMAC 11.1.2, 12-30-95; 12 NMAC 11.1.2, 5-1-99; 12.11.1.11 NMAC - Rn & A, 12 NMAC 11.1.2, 07-01-2003]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.6.5.23 NMAC.

3.6.5.23 RESPONSIBILITY OF COUNTY ASSESSORS TO DETERMINE AND MAINTAIN CURRENT AND CORRECT VALUES OF PROPERTY

A. **COST SHARING PROVISIONS IN VALUATION MAINTENANCE CONTRACTS:** The department will not enter a contract pursuant to Subsection C of Section 7-36-16 NMSA 1978 which provides for sharing of the costs of valuation maintenance programs with counties unless the department has a report from the secretary of finance and administration showing the amount of county funds available or which could be made available for a valuation maintenance program. In the event the report indicates that the county has available sufficient funds for a valuation maintenance program, the contract will provide for only a minimal amount as the department's share of the program costs.

B. **SALES RATIO REPORT:** The written report which assessors are required to provide under

Subsection E of Section 7-36-16 NMSA 1978 includes "... the relationship of sales prices of property sold to values for property taxation purposes ...". This portion of the report is referred to as the "sales ratio report." The sales ratio report is prepared in accordance with the instructions of the division. In its instruction or by its order to particular county assessors, the division may permit the sales ratio report to be prepared on the basis of sampling. The division instruction will provide for a "uniform sales data card" to be used by each county assessor in recording sales. These cards, or copies of these cards, will be provided the division by the county assessor upon direction by the division.

C. CURRENT AND CORRECT VALUES OF PROPERTY DEFINED:

[The phrase "current and correct values of property" as used in Section 7-36-16 NMSA 1978 means:

(1) for the 1995 and 1996 property tax years, the 1993 valuation level; and

(2) for each two succeeding property tax years, the valuation level in the preceding odd-numbered year.] Assessors shall re-appraise properties either once per year (one-year reappraisal cycle), or once every two years (two-year reappraisal cycle). Assessor's may only change the current reappraisal cycle in their respective county after written approval is granted by the director. The phrase "current and correct values of property" as used in Section 7-36-16 NMSA 1978 means:

(1) For residential property purchased in the year prior to the current tax year the phrase means its market value during the year of purchase;

(2) For residential property not purchased in the year prior to the current tax year, when utilizing a one year reappraisal cycle, the phrase means its market value of the year prior to the current tax year, and

(3) For residential property not purchased in the year prior to the current tax year, and non-residential locally assessed property, when utilizing a two year reappraisal cycle, the phrase means its market value in the tax year 2001 and, for each of the following odd-numbered tax year, its market value during the preceding odd-numbered tax year.

[3/23/83, 11/5/85, 5/10/93, 12/29/94, 8/31/96; 3.6.5.23 NMAC - Rn & A, 3 NMAC 6.5.23, 4/30/01; A, 6/13/03]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Explanatory paragraph: This is an amendment to 11.4.4 sections 9 and 14. This rule is also renumbered and reformatted from 11

NMAC 4.4 to comply with current NMAC requirements. This rules promulgation amends an existing medical release form and creates an entirely new procedure for resolution of disputes concerning release of medical information. The name of the release is corrected in section 9 and is the only amendment to that section. The parties potentially affected are employers, insurers and workers covered by the Workers' Compensation Act and healthcare providers who provide services to workers under the Workers' Compensation Act. The replacement medical release form contains the same operative language as the form that it replaces but adds notices and advices of rights required under the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164. The medical information dispute rule provides a mechanism for a worker, employer, their insurer or healthcare provider to file a petition for expedited court review of any dispute arising from a medical records release issue under HIPAA. The full text of the rule can be found at www.state.nm.us/wca and the effective date of the rule is June 13, 2003.

11.4.4.9 FORMS, FILING AND HEARING PROCEDURES:

R. WCA mandatory forms:

(1) The forms adopted by this rule have been designed to maximize retrieval of information required by the Act.

(2) The forms adopted by this rule are mandatory and must be fully and legibly completed by the filing party. Items on the mandatory forms may not be deleted, but additional information may be provided at the end of the text or by additional pages with clear reference to the paragraph being supplemented. The format for the forms is provided in an Attachment A to this rule. The forms listed below have been adopted as mandatory forms:

- (a) workers' compensation complaint;
- (b) summons for workers' compensation complaint;
- (c) authorization to release medical information (HIPAA Compliant);
- (d) form letter to health care provider (also referred to as form letter to HCP);
- (e) response;
- (f) notice of acceptance or rejection of recommended resolution;
- (g) notice of disqualification;
- (h) application to workers' compensation judge;
- (i) summons for application to workers' compensation judge;
- (j) subpoena or subpoena duces tecum;

(k) request for setting and notice of hearing;

(l) HCP disagreement form; and

(m) petition for lump sum payment.

[5/26/87, 6/20/89, 10/28/93, 3/3/94, 6/1/96, 9/25/96; 10/1/98; 11.4.4.9 NMAC - Rn & A, 11 NMAC 4.4.9, 6/13/03]

11.4.4.14 MEDICAL RECORD DISPUTE RULES: Any party or any authorized health care provider (HCP) may file a petition for court authorization to release medical records. Such petitions shall be allowed notwithstanding the provisions of any other rule, and shall be disposed of separate and apart from all rule provisions and procedures pertaining to resolution of other disputes arising from a claim for benefits.

A. The assigned workers' compensation judge (judge) shall decide medical record disputes. If no judge has been assigned, a judge shall be appointed by the clerk upon the filing of a petition for court authorization to release medical records for the resolution of that matter only.

B. The judge appointed by the clerk is not assigned pursuant to NMSA 1978, Section 52-5-5(C) (1990). The peremptory right to disqualify a judge allowed by NMSA 1978, Section 52-5-5(D) (1993) does not apply. No party or authorized HCP may disqualify a judge appointed to hear a petition for court authorization to release medical records.

C. The judge will determine whether the protected health information in controversy is material to the resolution of any matter presently at issue or likely to be at issue in the administration of the claim, and shall order the release of protected health information upon a finding of materiality by a preponderance of evidence.

D. If a petition for court authorization to release medical records is filed with the clerk, the judge shall hear the petition within seven (7) calendar days from the filing of the petition. The judge may issue a minute order at the conclusion of the hearing on the petition. If the judge does not issue a minute order, the judge shall issue an order not later than three (3) working days after the conclusion of the hearing. A minute or formal order resolving the petition shall have the force of law with respect to the parties and to the authorized HCP.

E. If, after a judge has ordered the release of records pursuant to this rule, an HCP fails to provide records to a payer, the party which is to receive the records shall give the HCP (1) written notice of the obligation to produce the records and (2) an endorsed copy of the judge's order or minute order. If the records

are not produced within five (5) working days of the actual delivery of the notice, the payer's obligation to timely pay shall be tolled until the actual production of the records.

E. If any judge involved in the adjudication of the claim finds that the withholding of records of health information after an order to produce has obstructed the efficient administration or adjudication of a claim, then:

(1) Notice shall be given to the authorized HCP who has withheld records that have been ordered disclosed and a hearing shall be scheduled to determine if the withholding of records was unreasonable.

(2) If the judge finds after notice to the HCP and an opportunity to be heard that the continued withholding of records by the HCP is unreasonable, the director may find the HCP in violation of this rule and penalize pursuant to NMSA 1978, Section 52-1-61 (1990). [11.4.4.14 NMAC – N, 6/13/03]

WORKER'S AUTHORIZATION FOR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR WORKERS' COMPENSATION PURPOSES (HIPAA COMPLIANT)

I. (Print Worker's Name) _____, hereby authorize the use or disclosure of my health information as described in this authorization.

1. INFORMATION WCA No. _____
Date of Birth _____ Date of Injury _____ SSN _____
Address _____ Phone _____
Worker's representative, if any: _____ Phone _____
Address: _____

2. RELEASE
I authorize the Health Care Provider (HCP) or any member or employee of its office or association who has examined or treated me, as well as any hospital or treatment facility in which I have been a patient, to disclose and release complete and legible copies of any and all information concerning my physical or psychiatric condition, care and treatment, to my employer, _____, and/or its insurance carrier, _____, and/or their attorneys, and/or duly authorized representatives of the New Mexico Workers' Compensation Administration and its current medical cost containment contractor or their duly authorized agents. Copies of all documentation released pursuant to this authorization shall be sent to the agency requesting the information and to me or my representative as listed above.

3. I understand the following information will be released pursuant to a work-related/occupational injury or illness/workers' compensation claim: medical reports; clinical notes; nurses' notes; patient's history of injury; subjective and objective complaints; x-rays; test results; interpretation of x-rays or other tests (including a copy of the report); diagnosis and prognosis; hospital bills; bills for services the HCP has rendered; payments received; and any other relevant and material information in the HCP's possession. This Authorization also includes, if applicable, any hospital operational logs, emergency logs, tissues committee reports, psychiatric reports and records, physical therapy records, and all outpatient records. This release may also be used to request a Form Letter to HCP as approved by the Workers' Compensation Administration. I understand that I have the right to restrict the information that may be provided by signing this authorization to the extent provided by law.

CONDITIONS

4. I understand the purpose of this request is to determine the proper level of workers' compensation benefits and may include information regarding any of the following: to determine my occupational injury or illness status; to determine my eligibility for workers' compensation benefits; to determine my current and future medical status after occupational injury; to determine my current medical status and/or return-to-work capability.

5. Right to revoke: I understand I have the right to revoke this authorization at any time by notifying the company named in Paragraphs 1 and 2. I understand that the revocation is only effective after it is received and logged by that company and that any use or disclosure made prior to the revocation under this authorization will not be affected by the revocation. I further understand that my revocation of this authorization may affect my ability to receive occupational injury or workers' compensation benefits governed by this revocation.

6. I understand that after this information is disclosed, the recipient may continue to use it pursuant to my prior authorization, regardless of my subsequent revocation of this authorization. I further understand that different protections may be available pursuant to state and federal law.

7. I understand that information to be released pursuant to a work-related/occupational injury or illness/workers' compensation claim may also be released to WCA and its current medical cost containment contractor or their duly authorized agents.

8. I hereby expressly waive any regulations and/or rules of ethics that might otherwise prevent any hospital, health care provider or other person who has treated me or examined me in a professional capacity from releasing such records.

9. A photostatic or other copy of this Release, which contains my signature, shall be considered as effective and valid as the original, and shall be honored by those to whom it is sent or provided for a period of six (6) months from the date it was signed.

10. This Release does not authorize any personal or telephonic conferences or correspondence directly between any health care provider and a representative of my employer, its attorney or insurance carrier to discuss my case and is solely for the release of medical documentation as set forth herein. Brief communication for the limited purpose of obtaining medical records is permitted.

11. I understand I am entitled to a copy of this authorization and to any records provided hereunder. I am requesting a copy of this authorization Yes No – If Yes, I have received a copy _____ (initial)
I understand this authorization will expire within six (6) months of the date I signed it, unless I revoke it earlier, pursuant to Paragraph 5.

Signature of Employee _____ **Date** _____

Witness Signature (REQUIRED) _____

This form cannot be accepted without a witness signature.

Witness Name (Print or type) _____ **Date** _____

Personal Representative Section:

If a personal representative executes this form, that representative warrants that he or she has authorization to sign this form on the basis of (print detailed basis for representation): _____

Signature of Personal Representative _____ **Date** _____

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2003

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Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
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Issue Number 7	April 1	April 15
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Issue Number 19	October 1	October 15
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Issue Number 23	December 1	December 15
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