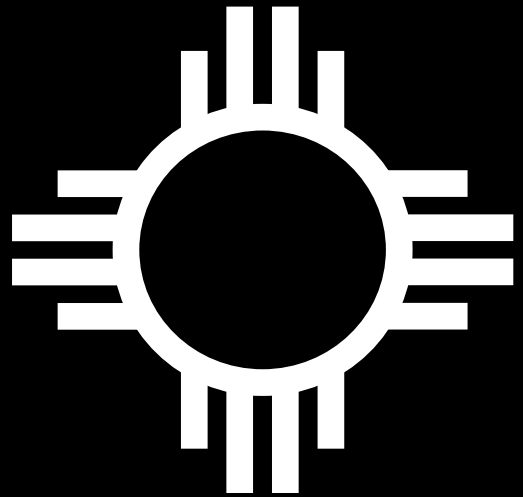


**NEW  
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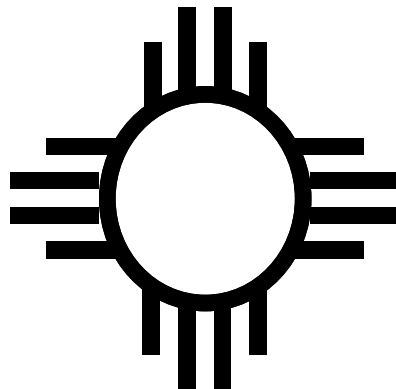


**Volume XIX  
Issue Number 23  
December 15, 2008**



# **New Mexico Register**

**Volume XIX, Issue Number 23  
December 15, 2008**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2008

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<b>Pharmacy, Board of</b>			
16.19.6 NMAC	A	Pharmacies . . . . .	1278
16.19.27 NMAC	A	Dishonorable Conduct . . . . .	1280
<b>Public Records, Commission of</b>			
1.18.355 NMAC	R	ERRDS, Public Defender . . . . .	1281
1.18.539 NMAC	R	ERRDS, State Land Office . . . . .	1281
		<i>Letter</i>	
		<i>Synopsis Approval Letter</i> . . . . .	1281
1.18.355 NMAC	N	ERRDS, Public Defender Department ( <i>synopsis</i> ) . . . . .	1281
1.18.539 NMAC	N	ERRDS, State Land Office ( <i>synopsis</i> ) . . . . .	1281
1.18.465 NMAC	A	ERRDS, Gaming Control Board . . . . .	1282
1.18.790 NMAC	A	ERRDS, Department of Public Safety . . . . .	1282
<b>Real Estate Commission</b>			
16.61.19 NMAC	A	Associate Broker and Qualifying Broker Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships . . . . .	1283
<b>Regulation and Licensing Department</b>			
Financial Institutions Division			
12 NMAC 19.2			
Subpart 8 R Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements . . . . .			
12.19.8 NMAC	N	Mortgage Loan Company and Loan Broker Requirements . . . . .	1283
12.19.1 NMAC	Rn & A	Mortgage Companies: General Provisions . . . . .	1285
<b>Social Work Examiners, Board of</b>			
16.63.1 NMAC	A	Social Workers: General Provisions . . . . .	1286
16.63.3 NMAC	A	Application for Licensure . . . . .	1286
16.63.6 NMAC	A	Licensure by Credentials; Reciprocity . . . . .	1287
16.63.9 NMAC	A	Baccalaureate Social Worker . . . . .	1287
16.63.10 NMAC	A	Master Social Worker . . . . .	1287
16.63.11 NMAC	A	Independent Social Worker . . . . .	1288
16.63.16 NMAC	A	Code of Conduct . . . . .	1288
<b>Workers' Compensation Administration</b>			
11.4.7 NMAC	A	Payments for Health Care Services . . . . .	1290
<b>Workforce Solutions, Department of</b>			
Labor Relations Division			
11.6.1 NMAC	N	Day Laborers: General Provisions . . . . .	1291
11.6.2 NMAC	N	Day Labor Service Agencies and Third Party Employers Duties . . . . .	1292
11.6.3 NMAC	N	Day Labor Complaints and Penalties . . . . .	1293

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register*  
Published by  
The Commission of Public Records  
Administrative Law Division  
1205 Camino Carlos Rey  
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [staterules@state.nm.us](mailto:staterules@state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### Notice of Hearing

New Mexico Department of Agriculture (NMDA) will hold a public hearing to address changes to rules under its authority. First, it is proposed that the addresses and phone numbers be removed from the "Issuing Agency" section of each rule and placed in an annotation. In addition, it is proposed that 37 of NMDA's rules be reformatted and renumbered to comply with current New Mexico Administrative Code (NMAC) requirements.

The rules to be changed in the "Issuing Agency" section include:

19 NMAC 15.103; 19 NMAC 15.104; 19 NMAC 15.105; 19 NMAC 15.106; 19 NMAC 15.107; 19 NMAC 15.109; 21 NMAC 1.1; 21 NMAC 1.2; 21 NMAC 16.2; 21 NMAC 16.3; 21 NMAC 16.4; 21 NMAC 16.6; 21 NMAC 16.9; 21 NMAC 16.10; 21 NMAC 17.2; 21 NMAC 17.28; 21 NMAC 17.29; 21 NMAC 17.31; 21 NMAC 17.33; 21 NMAC 17.51; 21 NMAC 17.53; 21 NMAC 17.57; 21 NMAC 18.2; 21 NMAC 18.3; 21 NMAC 18.4; 21 NMAC 25.5; 21 NMAC 27.2; 21 NMAC 34.2; 21 NMAC 34.3; 21 NMAC 34.4; 21 NMAC 34.5; 21 NMAC 34.6; 21 NMAC 34.7; 21 NMAC 34.8; 19 NMAC 15.108; 21 NMAC 16.5; 21 NMAC 16.11; 21 NMAC 16.12; 21 NMAC 17.32; 21 NMAC 17.50; 21 NMAC 17.56; 21 NMAC 34.13; and 21 NMAC 34.14.

In addition, it is proposed that 37 of NMDA's rules be reformatted and renumbered to comply with current NMAC requirements. These rules include:

19 NMAC 15.103; 19 NMAC 15.104; 19 NMAC 15.105; 19 NMAC 15.106; 19 NMAC 15.107; 19 NMAC 15.109; 21 NMAC 1.1; 21 NMAC 1.2; 21 NMAC 16.2; 21 NMAC 16.3; 21 NMAC 16.4; 21 NMAC 16.6; 21 NMAC 16.9; 21 NMAC 16.10; 21 NMAC 17.2; 21 NMAC 17.28; 21 NMAC 17.29; 21 NMAC 17.31; 21 NMAC 17.33; 21 NMAC 17.51; 21 NMAC 17.53; 21 NMAC 17.57; 21 NMAC 18.2; 21 NMAC 18.3; 21 NMAC 18.4; 21 NMAC

25.5; 21 NMAC 27.2; 21 NMAC 34.2; 21 NMAC 34.3; 21 NMAC 34.4; 21 NMAC 34.5; 21 NMAC 34.6; 21 NMAC 34.7; 21 NMAC 34.8.

The statutory authority for these rules includes:

57-19-28 NMSA 1978; 76-1-2 NMSA 1978; 57-17-8 NMSA 1978; 57-18-3 NMSA 1978; 76-5-5 NMSA 1978; 76-6-3 NMSA 1978; 76-4-9 NMSA 1978; 76-11-13 NMSA 1978; 76-10-18 NMSA 1978; 76-15-17 NMSA 1978; 76-9-3 NMSA 1978; 25-7A-15 NMSA 1978; 25-7-7 NMSA 1978; 25-6-11 NMSA 1978; 77-8A-6 NMSA 1978; 76-6B-8 NMSA 1978; 76-6A-5 NMSA 1978; 76-4-9 NMSA 1978; and 76-21-14 NMSA 1978.

The hearing will be held at the NMDA conference room located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 8:30 a.m. on January 14, 2009. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on January 14, 2009. Written statements, inquiries, or requests for copies of the rules should be directed to: New Mexico Department of Agriculture, ATTN: Elizabeth Holmes, P.O. Box 30005, MSC 3189, Las Cruces, New Mexico 88003-8005.

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

On January 14, 2009, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to amend 20.11.63 NMAC, *New Source Performance Standards For Stationary Sources*, by incorporating by reference new and modified New Source

Performance Standards published in 40 CFR 60, *New Source Performance Standards* (NSPS) through August 1, 2008.

Proposal to amend 20.11.64 NMAC, *Emission Standards For Hazardous Air Pollutants For Stationary Sources*, by incorporating by reference new and modified standards published in 40 CFR 61, *National Emission Standards For Hazardous Air Pollutants* (NESHAP), and 40 CFR 63, *National Emission Standards For Hazardous Air Pollutants By Source Category* (NESHAP by Source Category) through August 1, 2008.

The Environmental Health Department's Air Quality Division routinely updates these regulations to incorporate federal requirements so that the Division can remain up to date on new and modified standards developed at the federal level. In addition, it is proposed that the EPA delegate to the Department the authority to locally administer and enforce the standards referenced above, throughout Albuquerque and Bernalillo County. Local delegation authorizes the Department to require local air pollution sources to comply with these standards.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the proposed revisions to 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*, and proposed revisions to 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*.

The Air Quality Control Board is the federally-delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air 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 and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish 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, and 20.11.82 NMAC,

*Rulemaking Procedures — Air Quality Control Board.*

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on December 30, 2008, to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Room 3023, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. 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; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on January 7, 2009. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [jamend@cabq.gov](mailto:jamend@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 by contacting Ms. Janice Amend electronically at [jamend@cabq.gov](mailto:jamend@cabq.gov) or by phone (505) 768-2601.

**NOTICE FOR PERSON WITH DISABILITIES:** If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

**ALBUQUERQUE-  
BERNALILLO COUNTY  
AIR QUALITY CONTROL  
BOARD**

**ALBUQUERQUE-BERNALILLO  
COUNTY AIR QUALITY CONTROL  
BOARD  
NOTICE OF HEARING  
POSTPONEMENT**

The hearing scheduled for December 10, 2008 regarding the proposal to repeal current 20.11.41 NMAC, *Authority to Construct*; adopt a proposed replacement 20.11.41 NMAC, *Stationary Source Permits*; and incorporate the replacement 20.11.41 NMAC into the State Implementation Plan for air quality has been postponed to a future date. Public Notice will be published when the new hearing date has been established.

The Board acknowledges that this notice is published after the December 10, 2008 Air Board meeting. However, because comments and potential changes were submitted subsequent to the prior publication of notice, the hearing has been postponed in order to give those comments due consideration.

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

For more information, contact Janice Amend at [jamend@cabq.gov](mailto:jamend@cabq.gov) or at (505) 768-2601.

**NEW MEXICO BOARD OF  
CHIROPRACTIC  
EXAMINERS**

**RULE HEARING AND REGULAR  
BOARD MEETING**

The New Mexico Board of Chiropractic Examiners will hold a Rule Hearing on January 24, 2009. Following the Rule Hearing the New Mexico Board of Chiropractic Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractic Examiners Rule Hearing will begin at 9:00 a.m. and the

Regular Meeting will convene following the rule hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. The meetings will be held at the Toney Anaya Building, Rio Grande Room, 2nd Floor, and 2550 Cerrillos Road, Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments, replacements, repeals and or additions to the following Board Rules in NMAC 16.4 Chiropractic Practitioners – 16.4.8 Disciplinary Proceedings  
16.4.10 Continuing Education  
16.4.17 Supervision of interns  
16.4.15 (New Part) Chiropractic Advanced Practice Certification Registry

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capital Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4605 after December 14, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than December 10, 2008. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4613 at least two weeks prior to the meeting or as soon as possible.

**NEW MEXICO  
GAMING CONTROL  
BOARD**

**NEW MEXICO  
GAMING CONTROL BOARD**

**NOTICE OF HEARING ON  
AMENDMENTS TO RULES**

The New Mexico Gaming Control Board (“Board”) will hold a public hearing at 9:00 a.m. on January 21, 2009, at the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113 to consider amendments for the following rules: **15.1.8**



**NMAC**, *Accounting Requirements under the Gaming Control Act*, **15.1.10 NMAC**, *Conduct of Gaming under the Gaming Control Act*.

Copies of the proposed amendments are available on request to the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113, or by calling (505) 841-9733. The proposed changes are also available on our website at [www.nmgcb.org](http://www.nmgcb.org). The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Denise Leyba, Gaming Control Board, at least one week prior to the hearing at (505) 841-9733.

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**NEW MEXICO HUMAN  
SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

**NOTICE**

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 AM, on January 15, 2009, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be 8.300.6 NMAC, Responsibility and Delegation of Authority to Division and 8.300.21NMAC, Medical Assistance Division Policy Manual.

The Human Services Department, Medical Assistance Division, is proposing to make minor revisions to clarify regulatory language in existing Medical Assistance Division rules and provider participation agreements.

The existing policies for Responsibility and Delegation of Authority (MAD 020) will be repealed and replaced with 8.300.6 NMAC and Medical Assistance Division Policy Manual (MAD 085) will be repealed and replaced with 8.300.21 NMAC.

Interested persons may submit written comments no later than 5:00 p.m., January 15, 2009, to Pamela S. Hyde, J.D., Secretary,

Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/register.html](http://www.state.nm.us/hsd/register.html) . or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

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**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION**

**THE NEW MEXICO DEPARTMENT  
OF TRANSPORTATION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on revisions to Rule Number 18.20.11, Ignition Interlock Devices. The purpose of the proposed rule revision is to update the provisions applying to the use of ignition interlock devices in New Mexico and to establish procedures for the establishment of the Interlock Device Fund.

The hearing is scheduled on January 21, 2009, from 9:00 a.m. to 12:00 p.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. Please contact Sandra Lucero, Traffic Safety Bureau, New Mexico Department of Transportation, 604 West San Mateo Road, Santa Fe, New Mexico 87504, Telephone (505) 827-0427 to request a copy of the rule.

The hearing will be held before Michael Sandoval, NMDOT, Director, Traffic Safety Bureau. Interested persons may also present their views by written statements submitted on or before January

6, 2009, New Mexico Department of Transportation, 604 West San Mateo Road, Santa Fe, New Mexico 87504, Telephone (505) 827-0427.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Sandra Lucero at (505) 827-0427 at least ten days before the hearing.

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.16 NMAC Sections 6, 9, 10, 11, 13, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27 and 28, effective 12-26-08.

**16.2.16.6 OBJECTIVE:** Part 16 establishes the requirements regarding the training and certification of a certified auricular detoxification specialist, the scope of practice of a certified auricular detoxification specialist, the requirements for registration of an auricular detoxification specialist supervisor, the responsibilities of an auricular detoxification specialist supervisor, the approval of an auricular detoxification specialist training program, and the approval of a treatment program. Part 16 establishes the provisions for the renewal or expiration of a certified auricular detoxification specialist certification, ~~[auricular detoxification specialist supervisor registration,]~~ auricular detoxification specialist training program and a substance abuse treatment program. Part 16 establishes the grounds for denial, suspension or revocation of a certified auricular detoxification specialist certification, an auricular detoxification specialist supervisor registration, an auricular detoxification specialist training program approval and a treatment program approval.

[16.2.16.6 NMAC - N, 02-15-05; A, 12-26-08]

**16.2.16.9 CERTIFIED AURICULAR DETOXIFICATION SPECIALISTS TRAINING AND EXAMINATION REQUIREMENTS:** A certified auricular detoxification specialist applicant shall provide satisfactory proof that he or she has successfully completed a board approved auricular detoxification specialist training program as defined in 16.2.16.26 NMAC (Section 26 of Part 16 of the rules) that specifies successful completion of:

- A. clean needle technique training; and
- B. ~~[the]~~ a board approved clean needle technique examination; and
- C. the board approved jurisprudence examination covering the act and the rules with a score of not less than ~~[one hundred percent (100%)]~~ ninety percent (90%).

[16.2.16.9 NMAC - N, 02-15-05; A, 12-26-08]

**16.2.16.10 CERTIFIED AURICULAR DETOXIFICATION SPECIAL-**

**IST CERTIFICATION APPLICATION:** Upon approval of a certified auricular detoxification specialist application that fulfills the requirements listed below, the board shall issue a certified auricular detoxification specialist certification that will be valid until July 31 following the initial certification. In the interim between regular board meetings, whenever a qualified applicant for certified auricular detoxification specialist certification has filed his or her application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary certified auricular detoxification specialist certification that will suffice until the next regular meeting of the board. In no event shall the applicant begin the practice of auricular detoxification until the certified auricular detoxification specialist certification or interim temporary certified auricular detoxification specialist certification is issued by the board. The application requirements for certified auricular detoxification specialist certification shall be receipt of the following by the board:

A. the auricular detoxification specialist certification application fee specified in 16.2.10 NMAC (Part 10 of the rules); and

B. an application for certified auricular detoxification specialist certification that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number if the applicant has one; and

C. two (2) passport-type photographs of the applicant taken not more than six months prior to the submission of the application; and

D. a copy of the applicant's high school diploma or high school general equivalency diploma (GED) or diploma of higher education; and

E. a copy of the applicant's certificate of successful completion of a board approved auricular detoxification specialist training program; and

F. the name of the auricular detoxification supervisor(s) registered with the board who will supervise the applicant if known; and

G. an affidavit as provided on the certified auricular detoxification specialist application form as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, the practice of auricular detoxification, the provision of medical or counseling services for disease prevention, harm

reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the ~~[pendency]~~ pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

(2) has been a party to litigation in any jurisdiction related to the applicants practice of acupuncture and oriental medicine, the practice of auricular detoxification, the provision of medical or counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; and

H. ~~[an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and]~~ an affidavit as provided on the certified detoxification specialist application form attesting the disciplinary record of the applicant with regard to each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, under any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

I. an affidavit as provided on the certified auricular detoxification specialist application form certifying that all documents submitted with the form are true and faithful copies of the original; and

J. an affidavit as provided

on the certified auricular detoxification specialist application form certifying a record free of convictions for drug or alcohol related offenses for at least two consecutive years before the submission of the certified auricular detoxification specialist application; and

K. an affidavit as provided on the certified auricular detoxification specialist application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection G of 16.2.16.10 NMAC (Section 10 of Part 16 of the rules) may be subject to disciplinary action at any time, including denial, suspension or revocation of certification, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of certification, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; and

(3) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification; and

(4) the certified auricular detoxification specialist certification must be renewed annually by July 31; and

(5) if the relationship with ~~the~~ an auricular detoxification specialist supervisor terminates for any reason, to continue working, the certified auricular detoxification specialist must arrange to be supervised by another auricular detoxification specialist supervisor and notify the board within five (5) working days; and

(6) the applicant must notify the board within ten (10) days if the applicant's address changes; and

(7) the board may refuse to issue, or may suspend, or revoke any license, certified auricular detoxification specialist certification or auricular detoxification specialist supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC (Part 12 of the rules); and

L. an affidavit as provided on the certified auricular detoxification specialist application form stating that the applicant understands that a certified auricular detoxification specialist is authorized

to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency and only within a board approved treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency [~~and~~]:

(1) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure [~~and~~] or other board approved auricular procedures; and

(2) the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure or other board approved auricular procedure and that the board approved devices that do not penetrate the skin are: seeds, grains, stones, metal balls, magnets and any small sterilized, spherical object that is non-reactive with the skin; and

M. a board approved clean needle technique examination and the board approved jurisprudence examination covering the act and the rules with passing scores of not less than ninety percent (90%):

~~[M]~~ N. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the translator certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.16.10 NMAC - N, 02-15-05; A, 9-25-06; A, 12-26-08]

**16.2.16.11 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST SCOPE OF PRACTICE AND TITLE:**

A. A certified auricular detoxification specialist is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency, only within a board approved treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency, and only under the supervision of ~~[a]~~ one or more auricular detoxification specialist supervisor(s) registered with the board:

(1) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure, or other board approved auricular procedure; and

(2) the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure, or other board approved auricular procedure; and

B. the board approved devices that do not penetrate the skin of the ear are:

(1) seeds or grains;

(2) stones;

(3) metal balls;

(4) magnets; and

(5) any small sterilized, spherical object that is non reactive with the skin; and

C. a certified auricular detoxification specialist is authorized to use the title certified auricular detoxification specialist or CADS.

[16.2.16.11 NMAC - N, 02-15-05; A, 12-26-08]

**16.2.16.13 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST RENEWAL:**

Upon approval of a certified auricular detoxification specialist renewal application that fulfills the requirements listed below, the board shall renew the certification, which shall be valid until July 31 of the next year. The application requirements for certification renewal shall be receipt of the following by the board:

A. the auricular detoxification specialist certification renewal fee specified in 16.2.10 NMAC (Part 10 of the rules) paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process; and

B. a certified auricular detoxification specialist renewal application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number; and

C. the name of the auricular detoxification specialist supervisor(s) registered with the board who will supervise the applicant if known and notice of which of these is to be the primary supervisor; and

D. an affidavit as provided on the certified auricular detoxification specialist renewal form as to whether the applicant since last receiving or renewing his or her certification with the board:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of auricular detoxification, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including res-

ignation from practice, withdrawal or surrender of applicants license, certificate or registration during the ~~[pendancy]~~ pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

(2) has been a party to litigation in any jurisdiction related to the ~~[applicant's]~~ applicant's practice of auricular detoxification, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or

(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or

(4) is in arrears on a court-ordered child support payment; or

(5) has violated any provision of the act or the rules; and

E. an affidavit as provided on the certified auricular detoxification specialist renewal form certifying a record free of convictions for drug or alcohol related offenses for a minimum of one (1) year prior to application for renewal; and

F. an affidavit as provided on the certified auricular detoxification specialist renewal form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC (Section 10 of Part 8 of the rules) may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq; and

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.; and

G. an affidavit as provided on the certified auricular detoxification specialist renewal form stating that the applicant understands that:

(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the

practice of auricular detoxification and supervision; and

(2) the certification must be renewed annually by July 31; and

(3) the applicant must notify the board within ten (10) days if the applicant's address changes; and

H. if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits; and

I. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the translator certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

J. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board.

[16.2.16.13 NMAC - N, 02-15-05; A, 12-26-08]

#### **16.2.16.16 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST INACTIVE STATUS:**

A certified auricular detoxification specialist in good standing may place his or her certification on inactive status for up to three (3) years by notifying the board of his or her intention to do so. Renewal fees will not be due during the period of inactivity. The certified auricular detoxification specialist shall not engage in the practice of auricular detoxification while the certification is inactive. If certification has not been reactivated within three years of its being placed on inactive status, the certification shall be considered expired. Should the certified auricular detoxification specialist wish to reactivate an inactive certification, he or she may do so by ~~[providing the board with evidence of having obtained eight (8) hours of board approved, directly supervised clinical experience]~~ notifying the board, and with board approval, performing eight complete auricular detoxification treatments directly supervised by a registered auricular detoxification supervisor within a board-approved training or treatment program within three

(3) months prior to reactivation; satisfying any additional requirements for certification imposed by the board at the time of recertification; paying a single auricular detoxification specialist certification renewal fee specified in 16.2.10 NMAC (Part 10 of the rules); and complying with all other requirements of 16.2.16.13 NMAC (Section 13 of Part 16 of the rules).

[16.2.16.16 NMAC - N, 02-15-05; A, 12-26-08]

#### **16.2.16.17 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR REQUIREMENTS AND RESPONSIBILITIES:**

A. The auricular detoxification specialist supervisor shall:

(1) be a licensed doctor of oriental medicine; and

~~[(2) demonstrate experience in auricular detoxification by providing:]~~

~~[(a) a resume and three (3) references; or]~~

~~[(b) NADA certification; and]~~

~~[(c)]~~ (2) be registered with the board as an auricular detoxification specialist supervisor; and

~~[(d)]~~ (3) supervise no more than thirty (30) certified auricular detoxification specialists; and

~~[(e)]~~ (4) be accessible for consultation directly or by telephone to a certified auricular detoxification specialist under his or her supervision; and

~~[(f)]~~ (5) directly visit each certified auricular detoxification specialist under his or her supervision at the treatment program site at intervals of not more than six (6) weeks with the first visit occurring not more than two (2) weeks after supervision has begun; and

~~[(g)]~~ (6) be responsible for having each certified auricular detoxification specialist under his or her supervision require each patient to complete a written, signed consent form outlining the responsibilities of the certified auricular detoxification specialist, the nature of the treatment, expected outcomes, and the scope and limits of practice; and

~~[(h)]~~ (7) ensure that the certified auricular detoxification specialist is following a board approved treatment protocol; and

~~[(i)]~~ (8) notify the board in writing, within five (5) days working days, when a certified auricular detoxification specialist enters into a supervisory relationship with the auricular detoxification specialist supervisor or the supervisory relationship is terminated; and

B. an auricular detoxification specialist supervisor shall be responsible for the delivery of competent, professional services and ensuring that patient

consents are obtained; and

C. the auricular detoxification specialist supervisor shall terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules; in such case the auricular detoxification specialist supervisor shall notify the board and the certified auricular detoxification specialist's employer, in writing, within five (5) working days that the supervisory relationship is terminated and give in writing the reasons for the termination.

[16.2.16.17 NMAC - N, 02-15-05; A, 9-25-06; A, 12-26-08]

### 16.2.16.18 A U R I C U L A R DETOXIFICATION SPECIALIST SUPERVISOR REGISTRATION

**APPLICATION:** Upon approval of an auricular detoxification specialist supervisor registration application that fulfills the requirements listed below, the board shall issue an auricular detoxification specialist supervisor registration that will be valid until July 31 following the initial registration. In the interim between regular board meetings, whenever a qualified applicant for auricular detoxification specialist supervisor registration has filed his or her application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary auricular detoxification specialist supervisor registration that will suffice until the next regular meeting of the board. In no event shall the auricular detoxification specialist supervisor begin supervising a certified auricular detoxification specialist until the auricular detoxification specialist supervisor registration or interim temporary auricular detoxification specialist supervisor registration is issued by the board. The application requirements for an auricular detoxification specialist supervisor registration shall be receipt of the following by the board:

A. the auricular detoxification specialist supervisor registration application fee specified in 16.2.10 NMAC (Part 10 of the rules); and

B. proof of successful completion of an official national acupuncture detoxification association (NADA) course, or another board-approved training program, or a CV demonstrating experience, or education in the field of harm reduction and alcoholism, substance abuse and chemical dependency at least equivalent to that provided in a NADA training, and three (3) letters of reference attesting to the applicant's competence and experience in the field of auricular treatment for harm reduction, auricular treatment of alcoholism, substance abuse or chemical

dependency; and

~~[B]~~ C. an application for auricular detoxification specialist supervisor registration that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number; and

~~[C]~~ D. the names of all certified auricular detoxification specialists certified with the board who are under the supervision of the applicant; and

~~[D]~~ E. an affidavit as provided on the auricular detoxification specialist supervisor registration application form stating that the applicant understands that:

(1) a certified auricular detoxification specialist is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency and only within a board approved substance abuse treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency:

(a) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association (NADA) procedure ~~[and]~~ or other board approved procedure; and

(b) the application to the ear of simple board approved devices that do not penetrate the skin using the five auricular point national acupuncture detoxification association (NADA) procedure and that the board approved devices that do not penetrate the skin are: seeds, grains, stones, metal balls, magnets and any small sterilized, spherical object that in non-reactive with the skin; and

(2) the auricular detoxification specialist supervisor shall not be a member of the certified auricular detoxification specialist's family or a member of the certified auricular detoxification specialist's household or have a conflict of interest with the certified auricular detoxification specialist as defined in 16.2.16.21 NMAC (Section 21 of Part 16 of the rules). Exceptions may be made by the board on an individual basis due to limited availability of certified auricular detoxification specialists or supervisors; and

(3) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification and supervision; and

~~[(4) the auricular detoxification specialist supervisor registration must be renewed annually by July 31; and]~~

~~[(S)]~~ (4) the board may refuse to issue, or may suspend, or revoke any license or auricular detoxification specialist supervisor registration in accordance with the

Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC (Part 12 of the rules); and

~~[E]~~ E. an affidavit as provided on the auricular detoxification specialist supervisor registration application form stating that the applicant understands that the auricular detoxification specialist supervisor shall:

(1) be registered with the board as an auricular detoxification specialist supervisor; and

(2) supervise no more than thirty (30) certified auricular detoxification specialists; and

(3) be accessible for consultation directly or by telephone to a certified auricular detoxification specialist under his or her supervision; and

(4) directly visit each certified auricular detoxification specialist under his or her supervision at the treatment program site at intervals of not more than six (6) weeks; and

(5) verify that each certified auricular detoxification specialist under his or her supervision has had each patient sign a consent form outlining the responsibilities of the certified auricular detoxification specialist, the nature of the treatment, expected outcomes, and the scope and limits of practice; and

(6) ensure that the certified auricular detoxification specialist is using a board approved treatment protocol; and

(7) notify the board in writing, within five (5) days working days, when a certified auricular detoxification specialist enters into a supervisory relationship with the auricular detoxification specialist supervisor or the supervisory relationship is terminated; and

(8) be responsible for the delivery of competent professional services and ~~[obtaining patient consents]~~ ensuring that patient consents have been obtained; and

(9) terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules or if a conflict of interest arises during the supervision; the auricular detoxification specialist supervisor shall notify the board and the CADS's employer, in writing, within five (5) working days that the supervisory relationship is terminated and give in writing the reasons for the termination; and

(10) notify the board within ten (10) days if the auricular detoxification supervisor's address changes or phone number changes.

[16.2.16.18 NMAC - N, 02-15-05; A, 12-26-08]

**16.2.16.20 COMPENSATION:**

Any compensation contract is solely between the auricular detoxification specialist supervisor and the certified auricular detoxification [specialist and their] specialist's employing program or agency and is not the province of the board.

[16.2.16.20 NMAC - N, 02-15-05; A, 12-26-08]

**16.2.16.22 [AURICULAR DETOXIFICATION—SPECIALIST SUPERVISOR RENEWAL GENERAL REQUIREMENTS:]**

[A. Except as provided otherwise in the act, or in these rules, or pursuant to other state law, including but not limited to the board's right to deny an application for renewal pursuant to Section 61-14A-17 NMSA 1978, and the Parental Responsibility Act, NMSA 1978, Section 40-5A-1, et seq., each auricular detoxification specialist supervisor shall be granted, upon receipt and approval of a complete renewal application by the board or its designee, renewal of his or her registration for one year in compliance with the requirements specified in Section 23 of 16.2.16 NMAC (Part 16 of the rules).]

[B. Any applicant for renewal who is licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act, shall provide an affidavit regarding the disciplinary record of the applicant since last renewing his or her registration with the board.]

[C. Any applicant for renewal who has been subject to any action or proceeding comprehended by Subsection D of 16.2.16.23 NMAC (Section 23 of Part 16 of the rules), may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure or registration, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.]

[D. Any applicant for renewal who provides the board with false information or makes a false statement to the board may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure or registration, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.] [RESERVED]

[16.2.16.22 NMAC - N, 02-15-05; Repealed, 12-26-08]

**16.2.16.23 [AURICULAR DETOXIFICATION—SPECIALIST SUPERVISOR RENEWAL:]** Upon approval of an auricular detoxification specialist supervisor renewal application that fulfills the requirements listed below, the board shall renew the registration, which shall be valid until July 31 of the next year. The application requirements for registration renewal shall be receipt of the following by the board:]

[A. the auricular detoxification specialist supervisor registration renewal fee specified in 16.2.10 NMAC (Part 10 of the rules) paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process; and]

[B. an auricular detoxification specialist supervisor registration renewal application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number; and]

[C. the names of all certified auricular detoxification specialists certified with the board under the supervision of the applicant; and]

[D. an affidavit as provided on the auricular detoxification specialist supervisor renewal form as to whether the applicant since last receiving or renewing his or her registration with the board:]

[(1) has been subject to any disciplinary action in any jurisdiction related to the practice of auricular detoxification, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or]

[(2) has been a party to litigation in any jurisdiction related to the applicants practice of auricular detoxification, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice; or]

[(3) has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; or]

[(4) is in arrears on a court-ordered child support payment; or]

[(5) has violated any provision of the act or the rules; and]

[E. an affidavit as provided

on the auricular detoxification specialist supervisor renewal form certifying a record free of convictions for drug or alcohol related offenses for a minimum of one (1) year prior to application for renewal; and]

[F. an affidavit as provided on the auricular detoxification specialist supervisor renewal form regarding the applicant's disciplinary record in each jurisdiction, since last renewing his or her license with the board stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice auricular detoxification or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and]

[G. an affidavit as provided on the auricular detoxification specialist supervisor renewal form stating that the applicant understands that:]

[(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC (Section 10 of Part 8 of the rules) may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure or registration, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq; and]

[(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure or registration, pursuant to the provisions of the act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq; and]

[H. an affidavit as provided on the auricular detoxification specialist supervisor renewal form stating that the applicant understands that:]

[(1) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of auricular detoxification and supervision; and]

[(2) the registration must be renewed annually by July 31; and]

[(3) the applicant must notify the board within ten (10) days if the applicant's address or phone number changes; and]

[I. if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to

pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits; and]

[J. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the translator certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and]

[K. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board.] [RESERVED]  
[16.2.16.23 NMAC - N, 02-15-05; Repealed, 12-26-08]

**16.2.16.24 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR LATE RENEWAL:** An auricular detoxification specialist whose application to renew his or her registration is received late at the board's office during the sixty (60) day period following the required date of renewal shall have his or her registration renewed if the applicant for late registration renewal completes the requirements of 16.2.16.23 NMAC (Section 23 of Part 16 of the rules) and pays the auricular detoxification specialist supervisor registration late renewal fee specified in 16.2.10 NMAC (Part 10 of the rules). [RESERVED]

[16.2.16.24 NMAC - N, 02-15-05; Repealed, 12-26-08]

**16.2.16.25 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR EXPIRED CERTIFICATION:** The registration of an auricular detoxification specialist supervisor who has not renewed his or her registration, including any required continuing education requirements within the sixty (60) day period following the required date of renewal is expired and that auricular detoxification specialist supervisor shall not supervise any certified auricular detoxification specialists. Such an applicant seeking valid certification shall apply with the board as a new applicant. [RESERVED]

[16.2.16.25 NMAC - N, 02-15-05; Repealed, 12-26-08]

**16.2.16.26 AURICULAR DETOXIFICATION SPECIALIST TRAINING PROGRAM APPROVAL:**

Upon approval of an auricular detoxification specialist training program approval application that fulfills the requirements listed below, the board shall issue an auricular detoxification specialist training program approval that will be valid until July 31 following the initial registration. In the interim between regular board meetings, whenever a qualified applicant for auricular detoxification specialist training program approval has filed an application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary auricular detoxification specialist training program approval that will suffice until the next regular meeting of the board. The application requirements for an auricular detoxification specialist training program approval shall be receipt of the following by the board:

A. the auricular detoxification specialist training program approval application fee specified in 16.2.10 NMAC (Part 10 of the rules); and

B. an application for auricular detoxification specialist training program approval that is complete and in English on a form provided by the board that shall include the applicant's name, address, phone number, fax number and email address, if available; and

C. [proof of successful completion of] a curriculum that shall include at least:

(1) [a curriculum that shall include:] 30 hours of classroom didactic education covering the following subjects related to auricular detoxification: history and overview of the auricular detoxification profession; point descriptions, and locations and use of the NADA five auricular point national acupuncture detoxification association (NADA) procedure [and/] or other board approved procedures; acupuncture needle description, insertion and removal techniques, the use of devices that do not penetrate the skin of the ear; trial treatment (explanation of what happens during a treatment and practice on class members); public health and laws and regulations; exposure control; clean needle technique training; occupational health and safety administration (OSHA) requirements; integration of auricular detoxification within the treatment program; concepts of acupuncture and oriental medicine as related to addiction and recovery (the concept of "empty fire", etc.); client management issues and strategies (special populations); ethical and legal issues (confidentiality, HIPAA, the pertinent laws and rules of the state of New Mexico, etc.); and the nature of addiction and recovery; and

(2) [40 hours of supervised clinical experience using auricular detoxification;] 40 client hours (40 successfully com-

pleted treatments) under direct supervision by a board approved CADS supervisor at a site and with a supervisor pre-approved in writing by the training program, documented by a HIPAA-compliant form in which the privacy of clients is respected; and

[~~(3) the clean needle technique examination; and]~~

[~~(4) the board approved jurisprudence examination covering the act and the rules with a passing score of not less than one hundred percent (100%); and]~~

D. an affidavit as provided on the auricular detoxification specialist training program approval application form stating that the applicant understands that:

(1) the auricular detoxification specialist training program must provide each person who successfully completes the approved program with a certification of completion; and

(2) the auricular detoxification specialist training program registration must be renewed annually by July 31; and

(3) the auricular detoxification specialist training program must notify the board within ten (10) days if the program's address or phone number changes; and

(4) the board may refuse to issue, or may suspend, or revoke any auricular detoxification specialist training program approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC (Part 12 of the rules); and

E. the name or names of the trainer(s) who shall be teaching in the program and copies of their qualifications as trainers from NADA or [of their license, certification, registration or legal recognition to practice acupuncture and/or oriental medicine in New Mexico or other jurisdiction;] other oriental medicine and auricular acupuncture drug detoxification, harm reduction, substance abuse or relapse-prevention-related education and experience approved by the board to train auricular detoxification specialist trainers; and

F. approval of a training program shall entail recognition that its trainers have the status of certified auricular detoxification specialists and CADS supervisors within and for the purpose of and for the duration of [the training program.] a training course.

[16.2.16.26 NMAC - N, 02-15-05; A, 12-26-08]

**16.2.16.27 AURICULAR DETOXIFICATION SPECIALIST TRAINING PROGRAM RENEWAL:** Upon approval of an auricular detoxification specialist training program renewal application that fulfills the requirements listed below, the board shall renew the approval, which shall be valid until July 31



of the next year. The application requirements for approval renewal shall be receipt of the following by the board:

A. the auricular detoxification specialist training program approval renewal fee specified in 16.2.10 NMAC (Part 10 of the rules) paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process; and

B. an application for auricular detoxification specialist training program renewal that is complete and in English on a form provided by the board that shall include the applicant's name, address, phone number, fax number and email address, if available; and

C. an affidavit as provided on the auricular detoxification specialist training program renewal of approval application form stating that the program continues to provide at a minimum the curriculum required by the board in 16.2.16.26 NMAC (Section 26 of Part 16 of the rules); and

D. an affidavit as provided on the auricular detoxification specialist training program renewal of approval application form stating that the applicant understands that:

(1) the auricular detoxification specialist training program must provide each person who successfully completes the approved program with a ~~certification~~ certificate of completion; and

(2) the auricular detoxification specialist training program registration must be renewed annually by July 31; and

(3) the auricular detoxification specialist training program must notify the board within ten (10) days if the program's address or phone number changes; and

(4) the board may refuse to issue, or may suspend, or revoke any auricular detoxification specialist training program approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC (Part 12 of the rules); and

E. if the applicant renews using the board's online application process, the applicant shall check all appropriate affidavit check boxes in the online application and the applicant's agreement to pay by credit card shall be equivalent to the applicant's witnessed signature and notary's stamp and signature normally required by the above affidavits.

[16.2.16.27 NMAC - N, 02-15-05; A, 12-26-08]

**16.2.16.28 TREATMENT PROGRAM APPROVAL:** All treatment programs for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical

dependency that are officially recognized by a federal, state or local government agency shall automatically be approved by the board. ~~[For all other treatment programs the requirements of 16.2.16.27 NMAC (Section 27 of Part 16 of the rules) shall apply.]~~ Upon approval of a treatment program application for approval that fulfills the requirements listed below, the board shall issue a treatment program approval. In the interim between regular board meetings, whenever a qualified applicant for a treatment program approval has filed an application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary treatment program approval that will suffice until the next regular meeting of the board. The application requirements for a treatment program approval shall be receipt of the following by the board:

A. the treatment program approval application fee specified in 16.2.10 NMAC (Part 10 of the rules);

B. an application for treatment program approval that is complete and in English on a form provided by the board that shall include the applicant's name, address, phone number, fax number and email address, if available, and:

(1) confirmation that the treatment program is for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency; and

(2) whether the facility is at a fixed address or is mobile; and

(3) the name of the director of the program; and

(4) the number and qualifications of the treatment staff; and

C. an affidavit as provided on the treatment program approval application form stating that the facility ~~is equipped with~~ has access to a toilet and a sink; and

D. an affidavit as provided on the treatment program approval application form stating that the applicant understands that:

(1) the treatment program must notify the board within ten (10) days if the program's address or phone number changes; and

(2) the board may refuse to issue, or may suspend, or revoke any treatment program approval in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC (Part 12 of the rules).

[16.2.16.28 NMAC - N, 02-15-05; A, 12-26-08]

## NEW MEXICO ENVIRONMENT DEPARTMENT

### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 2 AIR QUALITY (STATEWIDE) PART 89 QUALIFIED GEN- ERATING FACILITY CERTIFICA- TION

**20.2.89.1 ISSUING AGENCY.**  
New Mexico Environment Department.  
[20.2.89.1 NMAC - N, 12/20/08]

**20.2.89.2 SCOPE.** All entities that hold title to a qualified generating facility pursuant to NMSA 1978, Section 7-9G-2.  
[20.2.89.2 NMAC - N, 12/20/08]

**20.2.89.3 STATUTORY AUTHORITY.** NMSA 1978, Section 7-9G-2, and NMSA 1978, Section 62-6-28.  
[20.2.89.3 NMAC - N, 12/20/08]

**20.2.89.4 DURATION.**  
Permanent.  
[20.2.89.4 NMAC - N, 12/20/08]

**20.2.89.5 EFFECTIVE DATE.**  
December 20, 2008, except where a later date is cited at the end of a section.  
[20.2.89.5 NMAC - N, 12/20/08]

**20.2.89.6 OBJECTIVE.** The objective of this part is to establish requirements for issuance of a certificate of eligibility for advanced energy tax credits pursuant to NMSA 1978, Section 7-9G-2.  
[20.2.89.6 NMAC - N, 12/20/08]

**20.2.89.7 DEFINITIONS.** In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this part.

**A. "Department"** means the environment department.

**B. "New solar thermal electric generating facility"** means a solar thermal electric generating facility that begins construction no later than December 31, 2015.

**C. "Qualified generating facility"** means:

(1) a new solar thermal electric generating facility that may include an associated renewable energy storage facility; or

(2) a recycled energy project.

**D. "Recycled energy"** means energy produced by a generation unit with a name-plate capacity of not more than 15 megawatts that converts the otherwise lost energy from the exhaust stacks or pipes

to electricity without combustion of additional fossil fuel.

**E. “Recycled energy project”** means an energy generating project using recycled energy that begins construction no later than December 31, 2015.

**F. “Small business”** means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees. In addition, “small business” does not include any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and any major source for hazardous air pollutants under 20.2.70 NMAC.

**G. “Solar thermal electric generating facility”** means an electric generating facility that utilizes solar energy conversion technologies that convert solar energy to electricity by heating a working fluid to power a turbine that drives a generator. Examples of these systems include, but are not limited to, central receiver systems, parabolic dish, and solar trough.

**H. “Title holder” or “entity(ies) that hold title”** means a person who holds or will hold a financial interest in the qualified generating facility.  
[20.2.89.7 NMAC - N, 12/20/08]

**20.2.89.8 SEVERABILITY.** If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.  
[20.2.89.8 NMAC - N, 12/20/08]

**20.2.89.9 CONSTRUCTION.** This part shall be liberally construed to carry out its purpose.  
[20.2.89.9 NMAC - N, 12/20/08]

**20.2.89.10 SAVINGS CLAUSE.** Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.  
[20.2.89.10 NMAC - N, 12/20/08]

**20.2.89.11 COMPLIANCE WITH OTHER REGULATIONS.** Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.  
[20.2.89.11 NMAC - N, 12/20/08]

**20.2.89.12 to 20.2.89.199 [RESERVED]**

**20.2.89.200 APPLICABILITY.**

Any entity that holds title to a qualified generating facility located in New Mexico may apply for a certificate of eligibility under this part. Only one certificate shall be granted to a qualified generating facility. If changes to the facility are planned or made that could result in the facility no longer meeting certification requirements as a qualified generating facility, the title holder shall apply to the department for a reevaluation of the certification under this part. A complete application including fees pursuant to section 20.2.89.400 NMAC shall be submitted with that application for reevaluation.

[20.2.89.200 NMAC - N, 12/20/08]

**20.2.89.201 APPLICATION REQUIREMENTS.**

**A.** Entities that hold title to a qualified generating facility may submit an application for a certificate of eligibility for an advanced energy tax credit.

**B.** All applications shall include all of the following items and information.

(1) Be filled out on the form(s) furnished by the department.

(2) State the applicant’s name and address.

(3) Include a topographical map, at least as detailed as the 7.5 minute topographic quadrangle map published by the United States geological survey, showing the exact location and geographical coordinates of the proposed construction or installation of the facility or project.

(4) Include a full description of the process, including a process flow sheet, or, if the department so requires, layout and assembly drawings.

(5) All information relied upon by the applicant to support its position that the facility meets the criteria for a qualified generating facility.

(6) Contain other information requested by the department to determine whether the facility meets the criteria for a qualified generating facility.

(7) Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any.

(8) Contain payment of any fees which are specified in 20.2.89.300 NMAC, payable at the time the application is submitted.

[20.2.89.201 NMAC - N, 12/20/08]

**20.2.89.202 CERTIFICATION PROCEDURES.**

**A.** The department shall either grant or deny the certification within

180 days after the department receives the application.

**B.** The department shall grant or deny the certification based on information contained in the department’s administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, and any other evidence considered by the department. The applicant has the burden of demonstrating that a certificate should be issued.

[20.2.89.202 NMAC - N, 12/20/08]

**20.2.89.203 CANCELLATION OF CERTIFICATION.**

The department shall cancel a previously issued certification if the plans for the facility are changed, or the facility is changed, so that the facility no longer meets the requirements of this part as a qualified generating facility.

**20.2.89.204 to 20.2.89.399 [RESERVED]**

**20.2.89.400 FEES.**

**A.** Fees for the review of application for certification shall be paid according to this fee schedule.

(1) For solar thermal electric generating facilities, the fee is \$1,000.

(2) For recycled energy projects, the fee is \$5,000.

**B.** For sources that satisfy the definition of “small business” as defined in Subsection F of 20.2.89.7 NMAC, the permit fee determined by Subsection A of this section shall be divided by two.

**C.** Fees collected pursuant to this part shall be included with the application for certification. The department shall refuse to accept any application without inclusion of the fee.

**D.** All fees paid pursuant to this part shall be remitted in the form of a corporate or certified check or money order made payable to the environment department at the address specified on the application form. Upon receipt of the check, it shall be deposited in the “state air quality permit fund” established by NMSA 1978, 74-2-15 (1992).

**E.** All fees shall be paid in U.S. dollars.

**F.** Beginning on January 1, 2010, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[20.2.89.400 NMAC - N, 12/20/08]

**HISTORY of 20.2.89 NMAC:**  
[RESERVED]

**NEW MEXICO**  
**DEPARTMENT OF HEALTH**  
DIVISION OF EPIDEMIOLOGY  
AND RESPONSE

7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 12/16/2005), is replaced by 7.27.2 NMAC "Licensing of Emergency Medical Services Personnel", effective 12/15/2008.

**NEW MEXICO**  
**DEPARTMENT OF HEALTH**  
DIVISION OF EPIDEMIOLOGY  
AND RESPONSE

**TITLE 7 HEALTH**  
**CHAPTER 27 EMERGENCY MEDICAL SERVICES**  
**PART 2 LICENSING OF EMERGENCY MEDICAL SERVICES PERSONNEL**

**7.27.2.1 ISSUING AGENCY:** New Mexico Department of Health, Division of Epidemiology and Response, Emergency Medical Systems Bureau. [7.27.2.1 NMAC - Rp, 7.27.2.1 NMAC, 12/15/2008]

**7.27.2.2 SCOPE:** These rules apply to New Mexico emergency medical services, including the service directors and medical directors of those services; approved New Mexico EMS training programs and graduates of approved New Mexico EMS training programs; New Mexico licensed EMS personnel including those previously licensed; persons trained, certified or licensed in another state or territory seeking to acquire licensure in New Mexico; EMS licensing commission; national registry of emergency medical technicians; and any other entity associated with the licensing of emergency medical services personnel in New Mexico. [7.27.2.2 NMAC - Rp, 7.27.2.2 NMAC, 12/15/2008]

**7.27.2.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the following statutory authorities: 1) the New Mexico Department of Health Act, Subsection E of Section 9-7-6 NMSA 1978, which authorizes the secretary of the department of health to "make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions," and; 2) the Emergency Medical Services Act, Subsection A of Section 24-10B-5 NMSA 1978, which authorizes the department to adopt and enforce licensure requirements by regulation, and Paragraph (3) of Subsection B of Section 24-10B-5 NMSA 1978 which

authorizes the department to establish a schedule of reasonable fees for application, examination, licensure and regular renewal thereof.

**A. Administration:** Administration and enforcement of these rules is the responsibility of the emergency medical systems bureau of the division of epidemiology and response, department of health.

**B. Guidelines:** In the absence of specific direction in the law or these rules as to the standard of practice, the current national standard for emergency cardiac care (ECC), the national highway traffic safety administration of the United States department of transportation standard curriculum, and the EMT code of ethics, as adopted in 1978 by the national association of emergency medical technicians, shall serve as guidelines.

**C. Other law and regulations:** These rules are subject to the provisions of the department of health's 7 NMAC 1.3, "Health Records."

**D. Use of certain terms prohibited:** The use of "licensed emergency medical dispatchers", "licensed emergency medical dispatch instructors", "licensed emergency medical services first responder", "licensed emergency medical technician (EMT)-basic", "licensed EMT-intermediate", or "licensed EMT-paramedic", or display of the "star of life" except as allowed in the United States department of transportation (US-DOT) trademark specifications, or similar terms or emblems connoting expertise in basic or advanced life support by any person not licensed hereunder is hereby prohibited. See Emergency Medical Services Act, Paragraph (1) of Subsection C of 24-10B-5 NMSA 1978.

[7.27.2.3 NMAC - Rp, 7.27.2.3 NMAC, 12/15/2008]

**7.27.2.4 DURATION:** Permanent. [7.27.2.4 NMAC - Rp, 7.27.2.4 NMAC, 12/15/2008]

**7.27.2.5 EFFECTIVE DATE:** 12/15/2008, unless a later date is cited at the end of a section. [7.27.2.5 NMAC - Rp, 7.27.2.5 NMAC, 12/15/2008]

**7.27.2.6 OBJECTIVE:** These rules will inform the emergency medical services community of licensure requirements for emergency medical services personnel. It is the purpose of these rules to provide for the licensure of emergency medical dispatchers, emergency medical dispatch-instructors, emergency medical services first responders and emergency

medical technicians, and to assist in the provision of a comprehensive system of emergency medical services in the state of New Mexico.

[7.27.2.6 NMAC - Rp, 7.27.2.6 NMAC, 12/15/2008]

**7.27.2.7 DEFINITIONS:**

**A. "Academy"** means a separately funded emergency medical services training program administered through the department of emergency medicine of the university of New Mexico school of medicine.

**B. "Act"** means the Emergency Medical Services Act, Section 24-10B-1, et seq., NMSA 1978.

**C. "Advance directive"** means a written instruction, such as a living will, durable power of attorney for health care, or emergency medical services do not resuscitate form recognizable under state law and relating to the provision of health care when an individual is incapacitated.

**D. "Advisory committee"** means the statewide emergency medical services advisory committee appointed by the secretary of health.

**E. "Ambulance service"** means any provider of ambulance service subject to the jurisdiction of the department of health pursuant to and subject to the jurisdiction of the New Mexico public regulation commission, pursuant to the Ambulance Standards Act, Section 65-6-1, et seq., NMSA 1978, Article XI of the New Mexico Constitution, the Municipal Transit Law Section 3-52-1, et seq., NMSA 1978, and other laws.

**F. "Applicant"** means a person who has indicated an intention to gain licensure as an EMS first responder, emergency medical dispatcher, emergency medical dispatcher instructor or an EMT in the state of New Mexico, as evidenced by submission of the proper fees, documentation, and bureau approved application form.

**G. "Approved emergency medical services training program"** means an emergency medical services training program that is sponsored by a post-secondary educational institution, accredited by a national educational accrediting organization for emergency medical services or active in the accreditation process and is approved by the joint organization on education committee and participates in the joint organization on education committee.

**H. "Basic emergency medical technician" or "EMT-B"** means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

**I. "Bureau"** means the emergency medical systems bureau of the

epidemiology and response division of the New Mexico department of health.

**J. "Bureau approved"** means any course, form, or official document that has received the approval of the bureau for use in a training or licensure context.

**K. "Cardio-pulmonary resuscitation (CPR)"** means training required for licensure that meets the intent of the current national emergency cardiac care (ECC) guidelines for professional rescuers, as approved by the bureau.

**L. "Certified emergency medical service"** means an organization that meets minimum standards to provide emergency services and is approved by the bureau, including emergency medical dispatch agencies, pre-hospital or inter-facility care services and special event services organized to provide emergency medical services.

**M. "Contact hour"** means a unit of measurement of between fifty (50) and sixty (60) minutes of bureau-approved organized learning experience which is designed to meet educational objectives for continuing education.

**N. "Commission"** means the New Mexico emergency medical services licensing commission appointed by the secretary of health.

**O. "Continuing education" or "CE"** means EMS training that is approved by the bureau and is required every two years for renewal of licensure.

**P. "Curriculum"** means a program of study utilizing approved minimum curricula content based on the national standard curriculum for EMS as published by the national highway and traffic safety administration (NHTSA) and approved by the joint organization on education for formal training courses required for EMS first responder, EMT-basic, EMT-intermediate and EMT-paramedic.

**Q. "Department"** means the New Mexico department of health.

**R. "Distributive education"** means training and education accomplished outside the classroom though computer-based-training, self study modules, web-casts via the internet and other methods of out-of-classroom didactic education that includes an evaluation component. Distributive education is synonymous with distance education.

**S. "Emergency medical dispatcher" or "EMD"** means a person who is trained and licensed pursuant to Subsection G of Section 24-10B-4 NMSA 1978 to receive calls for emergency medical assistance, provide pre-arrival medical instructions, dispatch emergency medical assistance and coordinate its response.

**T. "Emergency medical dispatch agency" or "EMDA"** means any

organization, or a combination of organizations working cooperatively, that routinely accepts calls for emergency medical assistance and employs emergency medical dispatch priority reference system (EMDPRS) techniques.

**U. "Emergency medical dispatch priority reference system" or "EMDPRS"** means a medically approved reference system used by an emergency medical dispatch agency (EMDA) to dispatch aid to medical emergencies, which includes systematized caller interrogation; systematized pre-arrival instructions to the caller based upon protocols matching the dispatcher's evaluation of injury or illness severity; and prioritized vehicle response.

**V. "Emergency medical services" or "EMS"** means the services rendered by licensed providers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

**W. "Emergency medical services first responder" or "EMSFR"** means a person who is licensed by the department, and who functions within the emergency medical services system to provide initial emergency aid according to the current scopes of practice.

**X. "Emergency medical services instructor/coordinator" or "EMT-I/C"** means an individual approved by an EMS training institution and registered by the bureau to conduct and instruct EMS education programs.

**Y. "Emergency medical technician" or "EMT"** means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

**Z. "EMT skill evaluator"** means a health care provider trained and approved by the bureau to participate in EMT licensing examinations to observe and evaluate the performance of an applicant's skills for licensure as an EMT.

**AA. "Examination attempt"** means an attempt to successfully complete the New Mexico EMT licensing examination. An attempt constitutes taking a written or practical examination. Retests of either a written or practical examination are considered an examination attempt.

**BB. "Fully licensed"** means an individual licensed to practice medical patient care at a specified level

**CC. "Graduate license"** means a license issued to in-state and out-of-state graduates of a bureau approved EMS training program used for performing EMS duties under supervision and direct observation prior to full licensure. The graduate license shall be valid for a period of up to six (6) months from the date of course completion or until failure of any

part of the licensing examination.

**DD. "Initial licensure"** means the first time a person is licensed in New Mexico as an EMD, EMD instructor, EMS first responder, EMT, or subsequent licensure of a previously licensed New Mexico EMT, who has either established residence in another state or has retaken a full curriculum or accomplished re-entry procedures to regain an expired license.

**EE. "Intermediate emergency medical technician" or "EMT-I"** means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

**FF. "License"** means a full, temporary or graduate license issued by the department to all EMD's, first responders, and EMT's pursuant to the Emergency Medical Services Act, Section 24-10B-5 NMSA 1978.

**GG. "Medical control"** means supervision provided by or under the direction of physicians to providers by written protocols or direct communication.

**HH. "Medical direction"** means guidance or supervision provided by a physician to a provider or emergency medical services system and which includes authority over and responsibility for emergency medical dispatch, direct patient care and transport of patients, arrangements for medical control and all other aspects of patient care delivered by a provider.

**II. "Medical direction committee"** means a committee of physicians and EMT's, appointed by the secretary of health to advise the bureau on all matters relating to medical control and medical direction.

**JJ. "Medical director"** means a physician who is responsible for all aspects of patient care provided by an EMS system or EMS provider service, in accordance with 7.27.3 NMAC.

**KK. "Moral turpitude"** means conduct contrary to justice, honesty, modesty or good morals including such acts as domestic abuse, drunk driving or other similar convictions.

**LL. "National registry"** means the national registry of emergency medical technicians based in Columbus, Ohio.

**MM. "Offline medical control"** means performing EMS actions or medication administration under standing orders or protocols.

**NN. "Online medical control"** means direct voice contact with a medical control physician.

**OO. "Out-of-state transition course"** means a standardized training course required and approved by the bureau for an out-of-state EMT applicant seeking licensure in New Mexico.

**PP. "Paramedic" or**

**“EMT-P”** means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

**QQ. “Physician”** means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico.

**RR. “Protocol”** means a predetermined, written medical care plan approved by the medical director and includes standing orders.

**SS. “Provider”** means a person who has been licensed by the department to provide patient care pursuant to the Emergency Medical Services Act.

**TT. “Re-entry”** means a process for a person, whose license has been expired for less than three years, to accomplish a given set of requirements to re-enter a previously held level of licensure.

**UU. “Regional office”** means an emergency medical services planning and development agency formally recognized and supported by the bureau.

**VV. “Re-instatement”** means a process for those persons who have completed the renewal requirements before the December 31st deadline, but fail to renew licensure by March 31st, to renew licensure between April 1st and May 31st of the expiration year.

**WW. “Renewal”** means relicensure every two years, including completion of all requirements for specified levels by December 31st that occurs prior to expiration of licensure. Renewal applications shall be received by the bureau by the last day of February prior to expiration of licensure and may be postmarked and submitted by March 31 prior to expiration of licensure for a higher fee.

**XX. “Retest”** means a written or practical examination given after failure of the applicant’s initial examination.

**YY. “Secretary”** means the New Mexico secretary of health.

**ZZ. “Special skills”** means a set of procedures or therapies that are beyond the usual scope of practice of a given level of licensure and that have been approved by the medical direction committee for use by a specified provider.

**AAA. “Standing orders”** means strictly defined written orders for actions, techniques or drug administration, signed by the medical director, to be utilized when communication has not been made with an on-line medical control physician.

**BBB. “State emergency medical services medical director”** means a physician designated by the department to provide overall medical direction to the statewide emergency medical services system, whose duties include serving as a liai-

son to the medical community and chairing the medical direction committee.

**CCC. “Temporary license”** means a license issued by the department to applicants that are fully licensed in another state or certified with the national registry of EMTs, as determined by the bureau. The temporary license shall be valid for a period of up to six months from the date issued, or until failure of any part of the licensing examination.

[7.27.2.7 NMAC - Rp, 7.27.2.7 NMAC, 12/15/2008]

#### **7.27.2.8 GENERAL LICENSURE:**

**A. Authorizations to practice:** No person shall function as, or represent themselves as an emergency medical services provider or offer, whether or not for compensation, any services included in these rules, unless currently licensed as an emergency medical dispatcher (EMD), emergency medical dispatcher instructor (EMD-I), EMS first responder or EMT under these rules. This provision is enforceable by civil action as provided by law.

**B. Licensing agency:** As provided by law, the agency responsible for the licensure of an EMD, EMD-I, EMS first responder and EMT’s in New Mexico is the emergency medical systems bureau of the epidemiology and response division of the department of health.

**C. Eligibility:** Initial licensure as an EMD, EMD-I, EMS first responder or EMT is open to all persons who have met the requirements prescribed in these rules, whether or not they are affiliated with an ambulance service, fire department, rescue service, or other emergency medical service in New Mexico, and irrespective of their monetary remuneration for such service.

**D. Establishment of the New Mexico registry of emergency medical services personnel:** The New Mexico registry of emergency medical services personnel is established and maintained at the bureau. The registry is open to all persons who have met the requirements for licensure as an EMS provider as prescribed by these rules.

**E. Authorized classifications:** There are six (6) classifications of fully licensed EMS provider that are recognized in the New Mexico registry of emergency medical services personnel. Generally, licensure as an emergency medical dispatcher-instructor shall also include licensure as an emergency medical dispatcher. Licensure as an EMT-paramedic shall also include licensure as an EMT-intermediate; and licensure as an EMT-intermediate shall also include licensure as

an EMT-basic. The highest level of provider licensure will be shown on the person’s certificate and licensure card. This section does not apply to a graduate license.

(1) emergency medical dispatcher (EMD);

(2) emergency medical dispatcher instructor (EMD-I);

(3) emergency medical services first responder (EMSFR);

(4) emergency medical technician - basic (EMT-B);

(5) emergency medical technician - intermediate (EMT-I);

(6) emergency medical technician - paramedic (EMT-P).

**F. General training standards:** New Mexico EMS training programs shall meet the training standards for approval by the bureau. The bureau shall provide an aggregate report on pass/fail rates of graduates that complete a state EMS licensing examination. The bureau shall distribute this report in May and November of each year to each bureau approved New Mexico EMS training program. The bureau shall periodically evaluate the training standards in each bureau approved EMS training program, which may include an on-site inspection and review for compliance with the standards outlined in this section. The bureau approved New Mexico EMS training program shall:

(1) submit an annual report to the bureau that provides an overview of EMS education and training; this report shall be submitted to the bureau no later than February 1 of any given year;

(2) submit an addendum report to the bureau that supplements the annual report; this report shall be submitted to the bureau no later than September 1 of any given year; the annual and addendum reports shall contain the following elements:

(a) number of courses that were instructed by the training program by level of education, i.e. EMS first responder, EMT-basic, EMT-intermediate, EMT-paramedic, EMS instructor-coordinator;

(b) pass/fail rate of each course of instruction where students are enrolled to receive course completion certificates, including the name of the course and the name of the instructor-coordinator;

(c) aggregate pass/fail rate of each level of EMS instruction where students are enrolled to receive course completion certificates;

(d) list of current instructor-coordinators employed with the bureau approved training program;

(e) list of new instructor-coordinators employed with the training program over the time period of the report;

(f) any changes in the status of

any instructor-coordinator;

(g) any changes to the EMS curriculum at any level of instruction;

(h) summary of any quality improvement activities accomplished during the time period of the report;

(i) list of clinical skills required for course completion by level, if applicable;

(j) list of satellite campuses; and

(k) contact information of key staff with the training program;

(3) be accredited by a national education accrediting organization for emergency medical services;

(4) utilize approved minimum curricula content based on the national standard curriculum for EMS as published by the national highway and traffic safety administration (NHTSA) and approved by the joint organization for education committee (JOE);

(5) have, at a minimum, an administrative director, an EMS medical director, and a course instructor-coordinator;

(6) ensure that an instructor-coordinator is in attendance at all didactic and practical training sessions, with substitution permissible on an excused absence basis only;

(7) inform the bureau if an instructor/coordinator is terminated due to inappropriate conduct or negligence; the bureau shall be notified by the training program of the termination within ten (10) working days;

(8) develop and utilize an instructional quality assurance program to review course and instructor effectiveness; a copy of the quality assurance program shall be provided to the bureau; the following measures may initiate a quality assurance review by the bureau;

(a) failure of an approved New Mexico training program to maintain an aggregate state licensure examination pass rate of seventy percent (70%) or better of students attempting to pass their initial state written or practical EMS examination for each level of licensure, as determined over a period of time of six (6) months or greater;

(b) failure of an approved New Mexico training program instructor-coordinator to maintain an aggregate state licensure examination pass rate of seventy percent (70%) or better of students attempting to pass their initial state written or practical EMS examination for each level of licensure, as determined over a period of time of six (6) months or greater;

(c) failure of an approved New Mexico training program to maintain an aggregate course pass rate of seventy percent (70%) or better of students completing a core EMS course of instruction;

(d) failure of an approved New

Mexico training program instructor-coordinator to maintain an aggregate course pass rate of seventy percent (70%) or better of students completing a core EMS course of instruction;

(e) complaints, reports or course trends indicating the possible need for a quality assurance review by the bureau;

(9) submit to the bureau for approval, refresher course curricula that follow the New Mexico refresher course blueprints as outlined in 7.27.2.10 NMAC of these rules, whether the course is conducted by the training program or through a service training agreement, which has been approved by the training program;

(10) use distributive education for initial formal training courses as deemed necessary by the approved EMS training program, based on the distributive education guidelines provided by the joint organization on education committee;

(11) review and approve any formal EMS courses and course content that will allow graduates to apply for EMS licensure in the state of New Mexico or with the national registry of EMTs, prior to delivery by an instructor-coordinator;

(12) submit a bureau approved course registration form, along with completed license application forms for all students enrolled in an initial course of instruction; course registration and license application forms shall be submitted to the bureau for processing within thirty (30) days from the start of the course;

(13) ensure that all affiliated instructor-coordinators are registered with the bureau on the appropriate form;

(14) notify the bureau within ten (10) working days if an instructor-coordinator resigns or is terminated due to inappropriate conduct or negligence;

(15) ensure that a formal preceptor program is developed and utilized for all field and clinical training; the preceptor program shall include the following standards:

(a) EMS providers functioning as preceptors within an EMS service have written approval from the EMS service director, the EMS service medical director, the training program service director and the training program medical director; preceptors shall be licensed as a provider at or above the student's level of training; preceptors shall ensure that only approved skills, commensurate with the student's scope of training, are performed by the student under direct observation by the approved preceptor;

(b) students practicing in a field training environment shall function under a formal field preceptorship agreement between the EMS service and the training program;

(c) students performing field or clinical skills as part of a bureau approved

EMT-intermediate or EMT-paramedic training program must be fully licensed or certified at the EMT-basic level;

(d) only students from approved New Mexico or CoAEMSP (committee on accreditation of educational programs for the EMS professions) accredited training programs may participate in a field training environment within the state of New Mexico.

#### **G. Training program instructor-coordinator standards:**

Approved New Mexico EMS training programs shall maintain instructor-coordinator standards to ensure quality of instruction. Instructor-coordinators shall:

(1) be affiliated with an approved EMS training program;

(2) be registered with the bureau by the training program;

(3) successfully complete an instructor-coordinator training course that meets or exceeds the national standard curriculum for EMS instructor-coordinators as published by NHTSA and approved by the bureau;

(4) be currently licensed as a New Mexico EMS provider or higher, medical professional level; and

(5) shall meet the qualifications for instructor-coordinators as established by the joint organization on education committee.

**H. Scope of practice:** The scope of practice for each level of licensure is found in 7.27.2.14 NMAC, appendix A to these rules, and shall be updated at least annually and issued by the bureau in accordance with the EMS Act, Section 24-10B-7.C(4) NMSA 1978. Licensed EMD's, EMSFR's and EMT's shall only perform those skills, techniques, medications, and procedures found within the New Mexico scope of practice and as authorized by the service medical director (also see EMS medical direction rule 7.27.3 NMAC).

**I. Training required:** As outlined in the New Mexico scopes of practice, prior to utilizing any new skill, technique, medication, or procedure designated as "service medical director approved", it shall be documented by the service director, medical director, or bureau approved EMS training program that the EMS provider has been appropriately trained to perform the skills, techniques, medications, or procedures. Additionally, each EMS provider must have a signed authorization from the services medical director on file at the EMS services headquarters or administrative offices.

**J. Medical direction approval/control required:** Medical control is required for certain skills and medications at all levels of EMS as outlined in the New Mexico scopes of practice. Those EMS personnel who function without med-

ical direction shall only perform those skills, techniques and procedures that do not require medical director approval. Any person who is issued a temporary or graduate license shall only perform the skills, techniques, medications, and procedures for the approved level, as established by the medical direction committee and found in Appendix A, 7.27.2.14 NMAC of these rules.

**K. Special skills:** Special skills, which are all considered advanced life support, are skills outside the usual scope of practice for a level of licensure. EMS services or systems that wish to apply for special skills authorization, shall submit a written application as set forth in Appendix C, 7.27.2.16 NMAC of these rules. Services or systems may apply for any skill at any level. Personnel who successfully complete a special skills program shall be authorized to utilize advanced skills and drugs only with medical director approval and under the medical control of the EMS system that received the program approval.

**L. Licensing application procedures:** Persons seeking New Mexico licensure in any of the six (6) classifications shall apply using the appropriate forms as provided by the bureau and present the required documentation, which shall remain in the person's licensure file. Applications and forms can be obtained from the bureau.

**M. Licensure periods:** Licensure periods are twenty-seven (27) months in length except for the initial period, which varies according to the date of the initial license. The second or subsequent period of licensure will be for a full twenty-seven (27) month period, regardless of the date of application for renewal, or the date for processing of the renewal license. This period will begin on January 1 of the renewal year. Requirements for renewal of licensure shall be completed by the December 31st that occurs prior to expiration of licensure.

**N. Expiration dates:** The expiration date for a license is established as March 31 of a given year. The year of initial expiration will depend on what month during the year a person was originally licensed.

(1) The initial licensure period shall begin on January 1 for persons who are licensed during the first six (6) months of a given year. The expiration date for this license will be twenty-seven (27) months later or March 31. For example: a person is licensed by the bureau on February 10, 2006. The person's expiration date will be March 31, 2008. All subsequent renewal periods will be for a full twenty-seven (27) month period running from January 1 for twenty-seven (27) months, and ending on

March 31.

(2) For persons who are initially licensed during the last six (6) months of a given year, the expiration date shall be counted from January 1 of the following year. For example: A person is licensed on August 10, 2006. The person's expiration date will be March 31, 2009. All subsequent renewal periods will be for a full twenty-seven (27) month period, running from January 1 and ending on March 31.

**O. New Mexico state licensing examinations:** All EMS candidates must successfully complete the state of New Mexico licensing examination.

(1) The initial state licensing examination shall be completed within nine (9) months based from the date of course completion. Successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based from the date of course completion. Should a candidate fail to become licensed within twenty-four (24) months, completion of a new EMSFR or EMT initial training course will be required. The bureau may approve an initial licensing testing extension on a case by case basis.

(2) Normally, state licensing examinations are conducted by the bureau. When needed, regional offices and other representatives may be designated to conduct licensing examinations. In any case, all examination sites will be conducted using the "bureau examination standard operating procedures".

(3) Applications for the state licensing examinations, at any classification, shall be made on the appropriate forms as provided by the bureau. Applications must be received by the bureau prior to the application deadline set forth in the annual schedule of licensure examinations, issued by the bureau.

(4) Persons applying for examination and licensing at any level, upon submission of the appropriate documentation as indicated in these rules, shall be allowed a maximum of three (3) examination attempts at the level for which the applicant has applied. Upon failure of the third (3rd) examination attempt, the person must successfully complete a New Mexico approved EMS refresher course for the appropriate level. Following this, the person will be allowed a fourth and final examination attempt. A person that fails four (4) times shall complete the entire training program again before any other testing is allowed at that level. If a person has an unexcused absence from a scheduled examination, as determined by the bureau, it shall count as one (1) examination attempt.

(5) Any applicant who has failed the state licensing examination at an

advanced life support level as described in these rules may be allowed to take the state licensing examination at a lower level. Applicants under this section shall be allowed to attempt the state licensing examination at a lower level of licensure no more than two (2) times. Further examinations shall not be allowed until successful completion of an approved EMS training course is documented.

(6) Applicants for examination shall pay the examination and licensing fees upon submission of application to the bureau. Also, additional examination fees will be assessed for each subsequent examination attempt. These additional fees shall be submitted to the bureau with the retest application. See 7.27.2.12 NMAC for a complete description of licensing and examination fees.

(7) There will be no refund of fees, except in unusual circumstances as determined by the bureau.

(8) An examination candidate who fails to attend a scheduled test site or does not provide a written or verbal notice of cancellation at least forty-eight (48) hours from the scheduled test date, shall forfeit one (1) examination retest attempt. Future requests for a retest attempt must be accompanied by a retest application and appropriate retest fee.

**P. Graduate license for all EMT levels:** The role of the EMS graduate license is to grant in-state and out-of-state graduates of a bureau approved EMS training program authorization to practice skills commensurate with their scope of training in the field setting under the direct observation and supervision of an EMS provider licensed at or above the graduate's training program level. The graduate license shall only be used under approved medical direction. The EMS service director and the EMS service medical director shall identify and maintain a list of approved preceptors. The graduate licensee shall be fully supervised by the preceptor when performing patient care. The preceptor will be responsible for all patient care including patient care activities in the patient compartment when transporting to a medical facility. This will necessitate a vehicle driver in addition to the licensed EMT preceptor and the graduate licensee. During a mass casualty incident, the graduate licensee shall only provide assessment and treatment at the level for which the graduate licensee is fully licensed; if the graduate licensee is not fully licensed at a lower level, they shall only provide non-medical assistance. The EMS graduate license shall remain in effect for a period of six (6) months after the course completion date or until failure of any portion of the state or national licensing examination. All applicants for graduate

licensure shall:

- (1) submit a completed bureau approved license application form;
- (2) provide evidence of current bureau approved CPR certification;
- (3) provide evidence of current bureau approved ACLS certification (paramedic only);
- (4) provide a course completion certificate from a bureau approved EMS training program; and
- (5) pay all examination and licensure fees as required by these rules.

**Q. Americans With Disabilities Act:** When requested by an applicant who otherwise meets the minimum qualifications, the department shall reasonably accommodate the qualified person with disabilities in the examination process, in accordance with the Americans With Disabilities Act and other applicable state and federal laws. Persons requiring accommodations must make an advance request of at least ten (10) calendar days prior to the scheduling request postmark deadline, as found in the bureau examination site schedule, for an examination site. The request for accommodation shall be forwarded to the bureau for consideration of such an accommodation, to include supporting documentation from the applicant's health care provider and a medical or professional diagnosis.

**R. Recognition of out-of-state licensure for emergency incidents:** During emergency situations, the secretary may waive initial licensure requirements for out-of-state EMS personnel based on the following:

- (1) an individual or agency must be responding to a specific emergency incident;
- (2) an individual or agency shall contact the EMS bureau prior to beginning EMS operations in New Mexico;
- (3) the individual or agency shall provide evidence (copies) of individual certification or licensure from another state or the national registry;
- (4) if wildland fire, an individual or agency shall provide a national wildland fire "request for recognition" form;
- (5) an individual or agency shall provide evidence of written medical protocols and scope of practice; the bureau may restrict the provided scope of practice;
- (6) the individual or agency shall contact the local EMS system for coordination of services; and
- (7) the maximum approved time for out-of-state licensure for a specific emergency incident is thirty (30) days and may be renewed on a case by case basis.

[7.27.2.8 NMAC - Rp, 7.27.2.8 NMAC, 12/15/2008]

**SURE:**

**A. General:** This section specifies requirements for initial licensure. This section applies to all applicants who are graduates of bureau approved EMS training programs. Any person applying for New Mexico licensure from out-of-state, other programs, or with national registry certification shall be considered for licensure under this section. Specific time periods apply for EMS licensing examinations, according to Subsection O of 7.27.2.8 NMAC.

**B. Recognition:** Each out-of-state applicant shall be assessed on a case-by-case basis for recognition of initial licensure requirements. The bureau may legally recognize other states, programs, or the national registry of emergency medical technicians requirements, where accreditation, EMS scope of practice, training standards, certification or licensure standards meet or exceed those of New Mexico.

**C. Licensed emergency medical dispatcher (EMD):** Licensure as an emergency medical dispatcher in New Mexico is mandatory for all persons who provide pre-arrival medical instructions to the emergency and non-emergency caller.

(1) An applicant for licensure as an EMD shall:

- (a) be eighteen (18) years of age, and be of good character;
- (b) provide evidence of a current bureau approved CPR certification; or, if physically unable to be CPR certified, provide written documentation of current knowledge and practical applications of CPR, as defined in these rules;
- (c) successfully complete an EMD training course, which has been approved by the bureau, that meets or exceeds the U.S. department of transportation (USDOT) standards for EMD, within the previous twelve (12) months;
- (d) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and
- (e) submit the required application and licensure fees as required by these rules.

(2) Persons who do not have a certificate of completion from a New Mexico approved EMD training program but are currently certified or licensed in another state as an EMD, or have successfully completed an equivalent out-of-state EMD training course as determined by the bureau, within the previous twelve (12) months, may apply for licensure by submitting an application along with documentation of current out-of-state certification or licensure, or an out-of-state EMD course completion certificate.

(3) Upon recognition by the bureau, the person may be fully licensed as an EMD.

**D. Licensed EMD-instructor:** An applicant for licensure as an EMD-instructor shall:

- (1) be a licensed EMT-basic, or higher level of licensure; or, if physically unable to be licensed as an EMT-basic, provide verification of successful course completion from an EMT-B training program;
- (2) have graduated from high school or possess a GED;
- (3) be eighteen (18) years of age, and be of good character;
- (4) provide evidence of a current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR, as defined by these regulations;
- (5) be currently licensed as an EMD;
- (6) have successfully completed an EMD-instructor training course from an EMD program which is approved by the bureau;
- (7) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and
- (8) submit the required application and licensure fees as required by these rules.

**E. Licensed emergency medical services first responder:** An applicant for licensure as an EMS first responder shall:

- (1) be of good character; and
- (2) be at least eighteen (18) years of age; or
- (3) be at least sixteen (16) years of age and meet the following requirements:
  - (a) be affiliated with a service, and shall submit a letter of support from the service director;
  - (b) shall notify the bureau, in writing, of any change of service affiliation; and
  - (c) shall submit a notarized parental or guardian consent;
  - (4) all applicants shall meet the following requirements:
    - (a) submit a completed, bureau approved license application form;
    - (b) provide evidence of current bureau approved CPR certification;
    - (c) present a certificate of completion from an EMSFR course completed at a bureau approved EMS training program;
    - (d) successfully complete the New Mexico EMSFR licensing examination; the initial state licensing examination shall be completed within nine (9) months from the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months from the date of course completion;



(e) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(f) pay all examination and licensure fees as required by these rules;

(5) all persons who do not have a certificate of completion from a New Mexico approved EMSFR training program, but are currently certified or licensed in another state at the first responder level, or have successfully completed an approved equivalent out-of-state EMS first responder course as determined by the bureau, within the previous twelve (12) months, may apply to the bureau in writing for New Mexico licensure in accordance with Subsection B of this section.

**F. Emergency medical technician basic (EMT-B):** An applicant for licensure as an EMT-B shall meet the following requirements:

(1) shall be of good character; and  
(2) be at least eighteen (18) years old; or

(3) be at least seventeen (17) years of age and meet the following requirements:

(a) be affiliated with a service and shall submit a letter of support from the service director;

(b) shall notify the bureau, in writing, of any change of service affiliation; and

(c) shall submit a notarized parental or guardian consent;

(4) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing, which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC of these rules;

(5) all applicants applying to be licensed, shall meet the following requirements:

(a) submit a completed, bureau approved license application form;

(b) provide evidence of current bureau approved CPR certification;

(c) present a certificate of completion from an EMT-B course completed at a bureau approved EMS training program, and accomplished within the previous nine (9) months;

(d) successfully complete the New Mexico EMT-B licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course completion;

(e) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(f) pay all examination and licensure fees as required by these rules;

(g) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC of these rules;

(6) persons who do not have a certificate of completion from a bureau approved EMT-B training program, but are currently licensed or certified in another state or certified with the national registry at the EMT-B level, may apply for New Mexico licensure as provided below:

(a) submit an application along with documentation of current out-of-state certification or licensure, or national registry certification;

(b) provide evidence of current bureau approved CPR certification;

(c) pay all examination and licensure fees as required by these rules;

(d) successfully complete a bureau approved out-of-state transition course, as determined by the bureau;

(e) successfully complete the New Mexico EMT-B licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of application; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course application;

(f) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(g) upon approval by the bureau, the person may be fully licensed as an EMT-B for the remainder of the previous certification/licensing authority's certification/licensure period, as determined by the bureau;

(h) the person may be granted a temporary license to practice as an EMT-B for a period of up to six (6) months or until failure of an EMT-B licensure examination, whichever occurs first; while under a temporary license, those applicants seeking full New Mexico licensure shall complete an out-of-state transition course approved by the bureau and complete the New Mexico EMT-B licensure examination; the temporary license also facilitates licensure of an out-of-state seasonal EMT-B and shall only be issued once in a twelve (12) month period, as determined by the bureau; in this case, the seasonal license is valid for six (6) months from the date of issue and may be issued again, but only once in every subsequent twelve (12) month period;

(i) temporary licensure commences on the issue date of the temporary license from the bureau;

(ii) a temporary license may be issued only upon application and payment of required fees;

(7) persons holding a temporary license shall be fully licensed when they have:

(a) successfully completed the New Mexico EMT-B licensure written and practical examination; and

(b) remit payment of all required fees.

**G. Emergency medical technician-intermediate (EMT-I):** An applicant for licensure as an EMT-I shall meet the following requirements:

(1) be eighteen (18) years old, and be of good character;

(2) submit a completed, bureau approved license application form;

(3) provide evidence of current bureau approved CPR certification;

(4) be fully licensed as an EMT-basic;

(5) present a certificate of completion from an EMT-I course completed at a bureau approved EMS training program, and accomplished within the previous nine (9) months;

(6) successfully complete the New Mexico EMT-I licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course completion;

(7) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(8) pay all examination and licensure fees as required by these rules;

(9) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC;

(10) persons who do not have a certificate of completion from a bureau approved EMT-I training program, but are currently certified or licensed in another state or certified with the national registry at the EMT-I level, may apply for licensure as provided below:

(a) submit an application along with documentation of current out-of-state certification/license or national registry certification;

(b) provide evidence of current bureau approved CPR certification;

(c) pay all examination and licensure fees as required by these rules;

(d) successfully complete a bureau approved out-of-state transition

course, as determined by the bureau;

(e) successfully complete the New Mexico EMT-I licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of application; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of application;

(f) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(g) upon approval by the bureau, the person may be fully licensed as an EMT-I for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau;

(h) the person may be granted a temporary license to practice as an EMT-I for a period of up to six (6) months or until failure of an EMT-I licensure examination, whichever occurs first; while under a temporary license, those applicants seeking full New Mexico licensure may be required to complete an out-of-state transition course approved by the bureau and complete the New Mexico EMT-I licensure examination; the temporary license also facilitates licensure of an out-of-state seasonal EMT-I and shall only be issued once in a twelve (12) month period, as determined by the bureau; in this case, the seasonal license is valid for six (6) months from the date of issue and may be issued again, but only once in every subsequent twelve (12) month period;

(i) temporary licensure commences on the issue date of the temporary license from the bureau;

(ii) a temporary license may be issued only upon application and payment of required fees;

(11) persons holding a temporary license shall be fully licensed when they have:

(a) successfully completed the New Mexico EMT-I licensure written and practical examination; and

(b) remit payment of all required fees;

(12) upon failure of the initial state EMT-I examination or the expiration of the graduate or temporary licensure period, the applicant:

(a) if from out-of-state, may apply to the bureau in writing for a temporary license at the EMT-B level for up to sixty (60) days, provided the applicant is qualified to be licensed as an EMT-B in New Mexico;

(b) during this time the applicant may apply for full EMT-B licensure and will be evaluated based upon their credentials according to these rules; the application must be in writing; and

(c) at the end of the 60 days, the applicant will no longer be licensed at any

level unless evidence of meeting the requirements at some level has been submitted and approved.

**H. Emergency medical technician paramedic (EMT-P):** All applicants applying to be licensed at the EMT-P level shall meet the following requirements:

(1) be eighteen (18) years old, and be of good character;

(2) present, at a minimum, a high school diploma or GED;

(3) be fully licensed as an EMT-B or EMT-I;

(4) submit a completed bureau approved license application form;

(5) provide evidence of current bureau approved CPR certification;

(6) present proof of current bureau approved training which meets or exceeds the current national standard for advanced cardiac life support (ACLS) on emergency cardiac care (ECC);

(7) pay all examination and licensure fees as required by these rules;

(8) graduates of an accredited training program: applicants who have graduated after January 1, 2006 from a bureau approved, CoAEMSP (committee on accreditation of educational programs for the EMS professions) nationally accredited in-state or out-of-state EMS training program shall:

(a) present a certificate of completion from a nationally accredited EMT-P course completed at a bureau approved, CoAEMSP accredited EMS training program or equivalent, nationally accredited out-of-state EMT-P training program as determined by the bureau; successful completion of the EMT-P training program must be accomplished within the previous twenty-four (24) months;

(b) successfully complete the New Mexico EMT-P licensing examination;

(c) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(d) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC;

(9) graduates of a non-accredited training program: applicants who have graduated from a non-accredited, out-of-state EMS training program after January 1, 2006 shall:

(a) submit a copy of the initial paramedic course completion certificate, if available, or identify the EMS training program where the individual graduated along with the date of graduation; the training program will be evaluated for recognition in accordance with Subsection B of 7.27.2.9 NMAC of these rules; successful completion of the EMT-P training program must be

accomplished within the previous twenty-four (24) months;

(b) successfully complete the New Mexico EMT-P licensing examination and other examinations as determined by the bureau;

(c) meet all other general licensing requirements found in 7.27.2.8 NMAC of these rules;

(d) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(e) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months from the date of application or until failure of an EMT-P equivalency examination, whichever occurs first;

(10) out of state applicants licensed or certified prior to January 1, 2006: applicants who are currently certified or licensed in another state or who are certified with the national registry of EMTs prior to January 1, 2006 may apply for licensure as follows:

(a) submit documentation of current out-of-state certification or licensure, or national registry certification;

(b) successfully complete the New Mexico EMT-P licensing examination, as determined by the bureau; and

(c) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(d) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(e) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months or until failure of the New Mexico EMT-P licensing examination, if applicable;

(11) out of state applicants licensed or certified after January 1, 2006: applicants who are currently certified or licensed in another state or who were certified with the national registry of EMTs after January 1, 2006 may apply for licensure as follows:

(a) applicants shall submit documentation of current out-of-state certification or licensure, or national registry certification;

(b) submit a copy of the initial paramedic course completion certificate, if available, or identify the EMS training program where the individual graduated along with the date of graduation; the training program will be evaluated for recognition in accordance with Subsection B of 7.27.2.9 NMAC of these rules;

(c) successfully complete the New Mexico EMT-P licensing examination and other applicable examinations, as determined by the bureau;

(d) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules;

(e) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(f) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months or until failure of the New Mexico EMT-P licensing examination, if applicable;

(12) upon failure of the New Mexico EMT-P examination or equivalency exam, or upon expiration of the temporary or graduate license period, the following condition will apply:

(a) if previously New Mexico state licensed, the licensee shall maintain the original level of licensure (EMT-B or EMT-I), and the applicant may practice at that level until expiration of licensure; or

(b) if from out-of-state, the applicant may apply to the bureau in writing for temporary licensure at a lower level (EMT-B or EMT-I) for up to sixty (60) days, provided that the applicant is qualified to be licensed as an EMT-B or EMT-I in New Mexico;

(i) during this time the applicant may apply for full EMT-B or EMT-I licensure in accordance with these rules;

(ii) at the end of the sixty (60) days, the applicant will no longer be licensed at any level.

[7.27.2.9 NMAC - Rp, 7.27.2.9 NMAC, 12/15/2008]

#### 7.27.2.10 LICENSURE

**RENEWAL:** New licensing renewal fees, as outlined in 7.27.2.12 NMAC, shall be effective July 1, 2006. Individuals renewing their New Mexico EMS provider's license shall submit a bureau approved refresher course completion certificate from an in-state or out-of-state training institution that is equivalent to the refresher course blueprints found in this section; or, use the alternative to a refresher course as outlined for each level of EMSFR and EMT in this section. Carded courses, such as ACLS or PALS, received as part of a bureau approved refresher course shall not be used to fulfill any CE hour requirements.

**A. Receipt of licensure renewal from the EMS bureau:** Licensing renewal is the responsibility of each individual licensee. If an individual licensee fails to notify the bureau of a change of

address within one (1) year from the date of relocation, as determined by the bureau, a bad address fee may be assessed by the bureau. For individuals who have submitted their complete licensure renewal packet to the bureau in a timely manner, the bureau will review the renewal requests in the order they are received.

(1) If there is a delay in notification from the bureau about the status of the licensure renewal beyond the expiration of the license, the individual shall remain licensed until:

(a) notified by the bureau by certified, return receipt requested mail that the license application has been denied or the license expired without renewal; or

(b) they receive their license from the bureau.

(2) If an individual's renewal packet is incomplete, the individual shall be notified by the bureau by certified, return receipt requested mail.

(3) If an individual licensee is notified by certified mail that a renewal problem exists with their license, and the license has expired, the individual shall not remain licensed.

#### B. Renewal deadlines:

Specific renewal requirements must be completed no later than the December 31 that occurs prior to licensure expiration. CPR and ACLS certifications are exempt from the December 31 deadline and must be current at the time of renewal. Renewal applications must be received by the bureau by the last day of February prior to expiration of licensure but may be postmarked and submitted by March 31 prior to expiration of licensure for a higher fee.

(1) The applicant may submit the complete renewal application to the bureau as soon as requirements are complete, but the complete renewal application shall be postmarked no later than the final month of licensure. A normal renewal fee is assessed for renewal applications postmarked prior to the final month of licensure.

(2) Renewal applications received during the final month of licensure will be accepted, but will be assessed a higher renewal fee due to the requirement for speedier processing.

(3) Applications for renewal of licensure shall be postmarked no later than the last day of licensure (March 31).

#### C. Mandatory updates:

The bureau may require mandatory updates to training in any given year of licensure. Mandatory updates may include required content hours during refresher courses, required continuing education, or mandatory classes.

**D. Downgrading to a lower level of licensure:** EMS personnel may petition the bureau to downgrade to a

lower level of licensure if:

(1) they are in good standing at the current level of licensure;

(2) the eligibility requirements have been met for the lower EMS level (i.e., current refresher course, CE, CPR, etc.); and

(3) if the provider requests that the downgraded license be upgraded to the original or EMT-intermediate level of licensure, the provider must meet the re-entry or re-licensure requirements to upgrade to the original level of licensure in accordance with Subsection L of 7.27.2.10 NMAC of these rules.

**E. Waivers:** The licensing commission may, for good cause shown, waive portions of these rules pertaining to licensure renewal pursuant to 7.27.2.13 NMAC of these rules. Persons requesting waivers for licensure renewal shall submit requests in writing to the EMS licensing commission, in care of the bureau.

**F. Licensed emergency medical dispatcher (EMD):** Renewal for a licensed EMD is required within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and must be current at the time of renewal. If the EMD is concurrently licensed as an EMT-B, EMT-I or EMT-P, the renewal dates for EMD licensure may be adjusted by the bureau to match the renewal dates for the EMT-B, EMT-I, or EMT-P license. The following requirements are necessary for a person to renew their EMD license:

(1) submit copies of course completion certificates or verification showing a minimum of twenty-four (24) contact hours of continuing education activity; of which at least twelve (12) hours shall be medical subjects/skills of bureau approved continuing education activity and twelve (12) hours of dispatch related subjects/skills, unless the EMD is also licensed at the EMT-B, EMT-I or EMT-P level; the EMD may then use those contact hours of continuing education activity obtained during the renewal period for the EMT-B, EMT-I or EMT-P licensure toward the medical renewal requirements;

(2) provide evidence of current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR; and

(3) submit required application and payment of all license renewal fees as required by 7.27.2.12 NMAC of these rules.

**G. Licensed emergency medical dispatcher-instructor:** Renewal of a licensed EMD-instructor is required

within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and must be current at the time of renewal. The following requirements are necessary for a person to renew their EMD-I license:

(1) submit verification from a bureau approved EMD training program showing that the EMD- instructor is current and in good standing with the approved EMD training program;

(2) submit documentation showing completion of all EMD continuing education renewal requirements;

(3) submit a copy of current licensure at the EMT-B or higher level;

(4) provide evidence of current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR; and

(5) submit the required application and payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

**H. Emergency medical services first responder:** Renewal of the EMSFR license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for a person to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of eight (8) contact hours of bureau approved continuing education activity, of which two (2) contact hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMSFR refresher course that includes a minimum of sixteen (16) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, one (1) hour  
(b) airway and ventilation, two (2) hours

(c) patient assessment, two (2) hours

(d) medical emergencies, four (4) hours

(e) trauma emergencies, four (4) hours

(f) special considerations, two (2) hours

(g) operations, one (1) hour  
(4) as an alternative to a formal

refresher course, submit a total of sixteen (16) contact hours of additional bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the basic life support level;

(5) provide evidence of current bureau approved CPR certification;

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMSFR skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; and

(7) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

**I. Emergency medical technician basic (EMT-B):** Renewal of the EMT-B license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-B to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of twenty-four (24) contact hours of bureau approved continuing education activity, of which four (4) contact hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMT-basic refresher course that includes a minimum of twenty-four (24) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, one (1) hour  
(b) airway and ventilation, two (2) hours

(c) patient assessment, three (3) hours

(d) medical emergencies, six (6) hours

(e) trauma emergencies, six (6) hours

(f) special considerations, four (4) hours

(g) operations, two (2) hours

(4) as an alternative to a formal refresher course, submit a total of twenty-four (24) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the basic life support level;

(5) provide evidence of current bureau approved CPR certification;

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-basic skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction;

(7) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules; and

(8) applicants who have completed a bureau approved EMT-I or EMT-P course or completed appropriate sections of the EMT-I or EMT-P course, as determined by the bureau, may fulfill the refresher and continuing education requirement.

**J. Emergency medical technician intermediate (EMT-I):** Renewal of the EMT-I license is required within each licensure period. Documentation must show that all renewal requirements have been met on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-I to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of thirty (30) contact hours of bureau approved continuing education activity, of which five (5) contact hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMT-intermediate refresher course that includes a minimum of twenty-four (24) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, one (1) hours  
(b) airway and ventilation, two (2) hours

(c) patient assessment, three (3) hours

(d) medical emergencies, six (6) hours

(e) trauma emergencies, six (6) hours

(f) special considerations, four (4) hours

(g) operations, two (2) hours

(4) as an alternative to a formal refresher course, submit a total of twenty-four (24) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the advanced life support level;

(5) provide evidence of current bureau approved CPR certification;

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-intermediate skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; persons who are not currently providing care through an EMS provider service and do not have a service medical director, may for good cause, petition the bureau for an exception of this requirement;

(7) submit payment of all licensure renewal fees as required by 7.27.2.12

NMAC of these rules; and

(8) applicants who have completed a bureau approved EMT-P course or completed appropriate sections of the EMT-P course, as determined by the bureau, may fulfill the refresher and continuing education requirement.

**K. Emergency medical technician paramedic (EMT-P):** Renewal of the EMT-P license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to the expiration of licensure. CPR and ACLS certifications are exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-P to renew their license:

(1) submit a completed renewal application;

(2) submit documentation showing a minimum of twenty-four (24) contact hours of bureau approved continuing education activity at any level, of which six (6) contact hours shall consist of pediatric content;

(3) submit a copy of a course completion certificate from a bureau approved EMT-paramedic refresher course that includes a minimum of forty-eight (48) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory, three (3) hours

(b) airway and ventilation, four (4) hours

(c) patient assessment, four (4) hours

(d) medical emergencies, eighteen (18) hours

(e) trauma emergencies, ten (10) hours

(f) special considerations, six (6) hours

(g) operations, three (3) hours

(4) as an alternative to a formal refresher course, submit a total of forty-eight (48) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the advanced life support level;

(5) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-paramedic skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; persons who are not currently providing care through an EMS provider service and do not have a service medical director, may for good cause, petition the bureau for an exception of this requirement;

(6) submit proof of current bureau approved training which meets or exceeds the current national standards for advanced training which is equivalent to or exceeds

the advanced cardiac life support (ACLS) certification on emergency cardiac care;

(7) provide evidence of current bureau approved CPR certification; and

(8) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

**L. Late renewal for all categories:** The bureau provides three (3) methods for expired licensees to regain their licensure; reinstatement, re-entry, and relicensure.

(1) **Reinstatement:** Those persons who have completed the renewal requirements on or before the December 31 cutoff, but failed to renew licensure by March 31, may renew between April 1 and May 31 of the expiration year. A complete renewal application for reinstatement must be received at the bureau by May 31. Paperwork postmarked after March 31 will be assessed with an additional late fee. See Fees, 7.27.2.12 NMAC of these rules.

(2) **Re-entry:** A person whose license is expired, who does not meet the circumstances of Paragraph (1) of Subsection L of 7.27.2.10 NMAC above, but whose date of expiration of the previously held certification or license is less than three (3) years, may re-enter EMS at the previously held or lower level if the person left EMS in good standing and successfully completes the following:

(a) complete a bureau approved refresher training course at the appropriate level (except EMD or EMD-I);

(b) provide evidence of current bureau approved BLS CPR training;

(c) successfully complete the New Mexico licensing examination and other examinations, as determined by the bureau, at the appropriate provider licensure level (maximum of two (2) examination attempts allowed), if applicable;

(d) if EMD or EMD-I applicant, provide verification of a minimum of twenty-four (24) contact hours of bureau approved continuing education activity, of which twelve (12) hours shall be medical subjects/skills and twelve (12) hours shall be dispatch related subjects/skills of bureau approved continuing education activity;

(e) if an EMT-P applicant, provide evidence of current advanced cardiac life support training; and

(f) submit required application and payment of licensure fees as identified for the appropriate level in 7.2.27.12 NMAC of these rules.

(3) **Re-licensure:** A person whose license has been expired for more than three (3) years from the date of expiration shall be considered an initial licensure applicant. To become licensed, a person must complete the requirements of 7.27.2.9 NMAC of these rules.

**M. Expiration of licensure:** All New Mexico EMS personnel, whose licensure expires on March 31 of any given year, shall be removed from the New Mexico active registry of emergency medical services personnel on the first business day of April of that given year. The bureau will send a notice to the address of record notifying the former licensee of removal from the New Mexico registry of EMS personnel.

**N. Continuing education:** Continuing education (CE) credit may be granted for any training that has been approved in advance by the bureau. All individuals or EMS services wishing to grant continuing education credit to licensed EMD's, EMD-I's, EMSFRs and EMT's in New Mexico shall submit the appropriate documentation to the bureau at least thirty (30) days in advance. CE's submitted to the bureau after training has been completed is discouraged and will be reviewed for approval or disapproval on a case-by-case basis. Application for continuing education approval shall be made utilizing the bureau's "notification of intent to conduct a continuing education program" application form available from the bureau. More detailed information about New Mexico's EMS continuing education program may be found in the "EMS continuing education user's guide", available from the bureau.

(1) **Purpose:** Continuing education is designed to meet three main objectives:

(a) to provide exposure to new and current trends in the area of patient care;

(b) to review areas of patient assessment and management that are not used on a frequent basis; and

(c) to meet licensure renewal requirements.

(2) **Continuing education categories:** The EMS bureau has adopted the CE category designations published by the national highway and traffic safety administration (NHTSA) and utilized by many states and national EMS organizations. A more detailed explanation of these categories can be found in the "EMS continuing education user's guide" available from the bureau. These categories apply only to formal and alternative refresher courses. The CE categories are:

(a) preparatory topics: general topics include roles and responsibilities, well-being of the EMT, injury prevention, medical/legal issues, ethics, anatomy/physiology, principles of pathophysiology, principles of pharmacology, IV therapy and medication administration, therapeutic communications;

(b) airway and ventilation;

(c) patient assessment: general topics include history taking, techniques of the physical examination, patient assessment, clinical decision making, EMS communications, documentation;

(d) medical emergencies: general topics include pulmonary, cardiology, neurology, endocrinology, allergies and anaphylaxis, gastroenterology, urology/renal, toxicology, hematology, environmental conditions, infectious and communicable diseases, behavioral and psychiatric disorders, gynecology, obstetrics;

(e) trauma emergencies: general topics include kinematics, blunt trauma, penetrating trauma, hemorrhage and shock, soft tissue trauma, burns, head and facial trauma, spinal trauma, thoracic trauma, abdominal trauma, musculoskeletal trauma;

(f) special considerations: general topics include neonatology, pediatrics, geriatrics, abuse and neglect, patients with special challenges, acute interventions for the home health care patient; and

(g) operations: general topics include ambulance operations, medical incident command, rescue awareness and operations, hazardous materials incidents, crime scene awareness.

**(3) Forms of continuing education:** The following forms of continuing education are currently recognized by the bureau. The bureau reserves the right to approve additional forms of continuing education as necessary. More detailed information may be found in the "EMS continuing education user's guide" available from the bureau.

(a) Classroom instruction: Standard instructor-student relationship in the classroom or field setting.

(b) Pre-approved courses: This list of national and statewide recognized courses are pre-approved for CE credit. Individuals completing any of these courses need only to submit their course completion certificate or card when renewing their licenses. Courses that are approved by CECBEMS are pre-approved for credit in New Mexico.

(c) EMS related college courses: Credit may be awarded to individuals who are attending college courses relevant to EMS. Individuals who are interested in receiving credit should submit a copy of their unofficial student transcript and course syllabus.

(d) EMS video presentations: EMS video presentations may be used for continuing education. In order to do so, the "notification of intent to conduct a continuing education program" application form must be submitted, along with a list of the videos intended for presentation with their corresponding copyright dates. No more than one-half of the CE requirement for any given level may be accomplished by EMS

video presentations.

(e) State skill evaluator participation: A maximum of twenty (20) hours of credit may be used for skill evaluation at state licensing examination sites; these credits cannot be applied toward refresher course blueprint requirements.

(f) Teaching bureau approved courses: Licensed individuals who teach bureau approved courses may receive the same number of CE hours as students who are taking the program; refer to the "EMS continuing education user's guide" for a more complete description.

(g) Field or clinical preceptorship: A maximum of twenty (20) hours of additional CE may be allowed for EMS preceptor activities; documentation of preceptor activities must be on letterhead from an approved New Mexico EMS training institution or EMS service director; these credits cannot be applied toward refresher course blueprint requirements.

(h) Distributive learning programs: A list of recognized internet, web-based and EMS professional journal CE programs can be found in the "EMS continuing education user's guide"; a maximum of twelve (12) hours of credit may be acquired for the additional CE component.

(4) **Record keeping:** Once approval of a CE program is obtained and the course is presented, records of attendance must be maintained. The bureau may audit the CE records of an approved CE program. Attendance records with original signatures of course participants and a copy of any course presentation material must be kept for a minimum of thirty-six (36) months by the service, for bureau audit purposes.

(a) In order for participating EMS personnel to receive credit, each individual shall be given a certificate, letter of attendance/completion, or copy of course attendance roster and advised to retain it until their licensure renewal. Many EMD Agencies (EMDA) and EMS services have computerized records of their personnel concerning CE. The EMS bureau will recognize CE summary documentation, on letterhead, from EMDA or EMS service directors, training coordinators, medical directors, or CE coordinators with appropriate original signatures.

(b) Course completion letters, certificates and course rosters shall contain the following information:

(i) location and date of the CE program;

(ii) title of the class or course;

(iii) number of actual contact hours (half hour increments are acceptable);

(iv) CE category;

(v) name of participant;

(vi) CE coordinator's name with designation "CE coordinator" placed after the name;

(vii) signature of CE coordinator;

(viii) the statement: "reviewed and approved by the New Mexico EMS bureau for continuing education"; and

(ix) EMS bureau approval number.

**(5) CE audits for EMS services and personnel:** The bureau may periodically perform audits of CE programs. These audits are usually provided as a way for services to evaluate their current program, identify areas in which the program excels, as well as areas that may be problematic. The following types of CE audits may be conducted by the bureau:

(a) **CE course audit:** this audit evaluates the actual class or course being conducted; the purpose of this audit is to provide written feedback to the instructor on presentation, content and participant evaluations conducted at the end of the class; this audit is usually unannounced;

(b) **CE recordkeeping audit:** this audit evaluates the CE program sponsor recordkeeping process; the bureau may audit refresher course certificates for compliance with the refresher course blueprint; records of prior classes or courses conducted are inspected for completeness and feedback is provided to the CE program sponsor that identify areas for improvement; CE program sponsors will be given at least five (5) days advance notification of these audits; records that will be inspected include:

(i) original copies of attendance rosters with the signatures of course participants;

(ii) course presentation materials/outlines or learning objectives;

(iii) handouts that were given to participants;

(iv) any evaluation tools, including written exams or practical skill forms; and

(v) CE approval letter or approval numbers;

(c) **CE complaint audit:** this audit is a preliminary investigation conducted by the EMS bureau based on a complaint concerning falsification of the CE process. [7.27.2.10 NMAC - Rp, 7.27.2.10 NMAC, 12/15/2008]

**7.27.2.11 IDENTIFICATION OF EMS PERSONNEL:** Licensed EMD's, EMD- I's, EMSFR's, and EMT's will be issued: one license certificate, one license wallet card, and one uniform patch (if available).

A. The bureau shall charge a reasonable fee for replacement of lost

cards or certificates. The bureau shall also charge a reasonable fee for additional uniform patches, pursuant to 7.27.2.12 NMAC of these rules.

**B.** Licensed EMD's, EMD-I's, EMSFR's, and EMT's shall carry their current New Mexico state license wallet card, or bureau approved equivalent form of identification, while participating in a patient care situation. All EMS personnel must present upon demand, proof of licensure.

**C.** Licensed EMD's, EMD-I's, EMSFR's, and EMT's shall promptly notify the bureau of any changes of name, address or EMS employment/affiliation status.  
[7.27.2.11 NMAC - Rp, 7.27.2.11 NMAC, 12/15/2008]

**7.27.2.12 FEES:**

**A. Examination, licensure, renewal and assorted fees:** The bureau shall charge reasonable fees for the examination, licensure, and renewal of licensed EMS providers in New Mexico, according to the following schedule. For persons taking national registry examinations, additional fees will be required.

(1) In-state: includes individuals who are residents of the state of New Mexico or who have completed an EMS course of instruction at a New Mexico EMS training program.

(2) Out-of-state: includes individuals who are residents of another state or who have completed an EMS course of instruction at an out-of-state EMS training program.

**B. Initial license fees (testing and re-license):**

DESCRIPTION	IN-STATE APPLICATION FEE	OUT-OF-STATE APPLICATION FEE	OUT-OF-STATE TRANSITION COURSE FEE
<b>initial license fees (testing and re -license)</b>			
licensed EMD	\$25.00	\$50.00	
licensed EMD -instructor	\$35.00	\$70.00	
licensed EMS first responder	\$25.00	\$50.00	\$25.00
licensed EMT -basic	\$65.00	\$130.00	\$50.00
licensed EMT -intermediate	\$75.00	\$150.00	\$75.00
licensed EMT -paramedic	\$85.00	\$170.00	

**C. National registry (additional state examination fee):**

DESCRIPTION	IN-STATE APPLICATION FEE	OUT-OF-STATE APPLICATION FEE
<b>National registry (additional state examination fee)</b>		
first responder examination fee	\$10.00	\$50.00
EMT-basic examination fee	\$25.00	\$75.00
EMT-intermediate examination fee	\$75.00	\$150.00
EMT-paramedic examination fee	\$100.00	\$200.00

**D. Examination re-test fees, which may be assessed for same day re-test:**

DESCRIPTION	IN-STATE APPLICATION FEE	OUT-OF-STATE APPLICATION FEE
<b>Examination re -test fees, which may be assessed for same day re - test</b>		
first responder examination fee	\$25.00	\$25.00
EMT-basic examination fee	\$30.00	\$30.00
EMT-intermediate written/practical	\$35.00	\$35.00
EMT-paramedic written/practical	\$40.00	\$40.00

**E. Licensure renewal fees:**

DESCRIPTION	FEE TYPE	FEE
<b>Licensure renewal fees</b>		
licensed EMD	normal fee	\$20.00
	March renewal fee	\$60.00
licensed EMD -instructor	normal fee	\$25.00
	March renewal fee	\$75.00
licensed EMS first responder	normal fee	\$20.00
	March renewal fee	\$60.00
licensed EMT -basic	normal fee	\$30.00
	March renewal fee	\$90.00
licensed EMT -intermediate	normal fee	\$40.00
	March renewal fee	\$120.00
licensed EMT -paramedic	normal fee	\$50.00
	March renewal fee	\$150.00

**F. Reinstatement fees:**

DESCRIPTION	FEE
<b>Reinstatement fees</b>	
licensed EMD	\$120.00
licensed EMD -instructor	\$150.00
licensed EMS first responder	\$120.00
licensed EMT -basic	\$180.00
licensed EMT -intermediate	\$240.00
licensed EMT -paramedic	\$300.00

**G. Re-entry fees-same as March renewal fees:**

DESCRIPTION	FEE
<b>Re-entry fees-same as March renewal fees</b>	
licensed EMD	\$60.00
licensed EMD -instructor	\$75.00
licensed EMS first responder	\$60.00
licensed EMT -basic	\$90.00
licensed EMT -intermediate	\$120.00
licensed EMT -paramedic	\$150.00

**H. Miscellaneous fees:**

DESCRIPTION	FEE
<b>Miscellaneous fees</b>	
additional patches -each	\$3.00
replacement licensure card -each occurrence	\$10.00
bad check fee -each occurrence	\$20.00
national healthcare practitioner query fee -each occurrence as determined by the bureau	\$15.00
bad address fee -each occurrence, as determined by the bureau	\$20.00

**I. Use of fees:** Fees collected by the bureau under these rules shall be used expressly for licensing operations. This includes but is not limited to payment of approved EMS skill evaluators, for their participation at state licensing examinations; examination and licensing supplies and equipment, including processing equipment; facility rental costs associated with the examination and licensing process; processing and handling of licenses; operation of examination sites; expenses encountered in the enforcement of these rules.

**J. Payment of fees:** State fees shall be made payable to the bureau by check, money order or other bureau approved method of payment. Licensure and examination fees are due and payable at the time of licensure application. Licensure applications will not be processed until payment of the required fees.

**K. Waiver of fees:** Applicants for licensure under these rules who, for good cause, are unable to pay the licensure fees may petition the bureau for a waiver. Applications for fee waiver under these rules shall be submitted to the bureau in the form of a written letter, and shall document the exact nature of the applicant's inability to pay. Waiver requests shall be submitted to the EMS program manager or designee for approval.

[7.27.2.12 NMAC - Rp, 7.27.2.12 NMAC, 12/15/2008]

**7.27.2.13 ENFORCEMENT:****A. EMS licensing commission:**

**(1) Statutory basis:** The emergency medical services licensing commission is established pursuant to Section 24-10B-5.1 NMSA 1978 of the act.

**(2) Duties:** The duties of the commission are to:



(a) provide a forum for the receipt of public comment regarding emergency medical services licensing matters;

(b) oversee the bureau's licensing and enforcement functions;

(c) receive complaints, direct investigations and authorize the initiation of actions by the bureau regarding contemplated refusal to grant initial licensure and for disciplinary actions against licensees; and

(d) grant waivers, for good cause shown, of regulations pertaining to licensure renewal.

**(3) Organization:** Members of the commission are appointed by the secretary as provided by law.

(a) Commission members shall serve until their successors have been appointed by the secretary.

(b) In the event of a vacancy on the commission by resignation or removal, the bureau shall immediately notify the secretary so as to expedite the appointment of a new commission member. The secretary shall appoint such vacancies.

(c) The commission may recommend to the secretary removal of any commission member for the following reasons:

(i) failing to attend or otherwise participate in two (2) consecutive meetings without a valid reason; or

(ii) any other good cause.

(d) The commission shall elect a chair and vice-chair annually. The term of office begins with the meeting at which the officer is elected.

(e) The bureau shall serve as staff for the commission.

**(4) Commission meetings:** The commission shall meet as needed, but not less than semi-annually.

(a) Commission meetings for receipt of public comment regarding emergency medical services licensing functions and oversight of the bureau's licensure function shall be subject to the Open Meetings Act, Section 10-15-1, et seq., NMSA 1978.

(b) Meetings pertaining to the issuance, suspension, renewal or revocation of a license, or other personnel matters, are closed meetings as provided by the Open Meetings Act.

(c) A meeting notice resolution, consistent with the provisions of the Open Meetings Act, shall be adopted by the commission and shall be reviewed in November of each year at a regularly scheduled meeting of the commission.

(d) Minutes of meetings shall be taken and maintained in accordance with the Open Meetings Act.

**(5) Receipt of public comment:** There shall be an opportunity for receipt of public comment regarding licensure mat-

ters, in writing or orally, at each open commission meeting.

(a) Written public comment intended for consideration by the commission shall be mailed to the bureau. The comments must include the person's name, address, and telephone number, if available. Unidentified comments may or may not be considered by the commission.

(b) The commission, upon receipt of public comments, may make an appropriate recommendation to the bureau to take action based on those comments.

**(6) Oversight:** During each regularly scheduled meeting, the bureau will provide a report of its licensure functions to the commission. Commission members may, at any time, request information about licensure functions from the bureau.

**B. Complaint/incident procedures:** Any person may communicate a written complaint or knowledge of an incident to the bureau or the commission.

(1) When the bureau has knowledge of a complaint that may affect a person's license, it shall notify the chair of the commission as soon as practicable.

(2) Similarly, when the commission has knowledge of a complaint or incident affecting licensure, it shall notify the bureau.

(3) Other complaints, which would not affect licensure, will be directed to, and examined by the bureau.

(4) The bureau shall communicate to the chair or designee its opinion as to whether or not an investigation of the complaint should be initiated.

(5) Upon knowledge of a complaint, the chair, or designee, after consultation with other members of the commission, as feasible, shall authorize that an investigation be conducted.

(6) The chair or designee shall direct the course of the investigation through periodic communication with the bureau as necessary.

(7) If an investigation indicates that the complaint may affect a person's license, the licensee shall be notified that the bureau is conducting an investigation, unless extenuating circumstances reasonably preclude notification.

(a) At the conclusion of the bureau's investigation, the bureau shall report its findings to the commission in a closed meeting at which a majority of commission members participate, either in person or by means of a conference telephone or other similar communications equipment.

(b) The commission, after consideration of the bureau's report, may authorize the initiation of an action by the bureau regarding contemplated refusal to grant initial licensure, or for disciplinary action

against a licensee, by a majority vote of commission members participating in the closed meeting. The commission may immediately authorize a cease and desist order or immediate suspension of license, subject to expedited hearing rights as outlined in Paragraph (5) of Subsection G of 7.27.2.13 NMAC, if it determines that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible.

(c) The chair of the commission may immediately authorize the initiation of an action by the bureau regarding contemplated refusal to grant initial licensure, or for disciplinary action against a licensee, without consulting the other members of the commission. This immediate action may be used if the chair makes a good faith judgment that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible. Actions may include cease and desist orders or immediate suspension, subject to expedited hearing rights pursuant to Paragraph (5) of Subsection G of 7.27.2.13 NMAC of these rules. If the chair authorizes the initiation of an action by the bureau, the bureau shall notify each commission member in writing of such action within ten (10) working days of the initiation of the action.

(d) Upon receipt of authorization from the commission to initiate an action, the bureau may deny, suspend or revoke licensure or take other disciplinary action, in accordance with the provisions of the Act, Section 24-10B-5.B.(2), NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1, et seq., NMSA 1978.

**C. Conduct of investigations:** Investigations shall normally be conducted by the bureau.

**(1) Preliminary investigations:** When the bureau receives information that might form the basis for disciplinary action against a person, it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine for the commission whether justification exists for the commission to authorize the bureau to initiate an action or to conduct a formal investigation. The results of the preliminary investigation will be presented to the commission.

**(2) Formal investigations:** Formal investigations are authorized by the commission for the purpose of obtaining additional information to allow the commission to determine if it will authorize the bureau to initiate an action. The results of the formal investigation will be presented to the commission. Notice will be given to the person who is the subject of the formal investigation unless extenuating circumstances exist which would reasonably preclude notification.

**D. Subpoena authority:**

In accordance with Subsection C of Section 24-10B-5.1 NMSA 1978 of the EMS Act and Subsection A of Section 61-1-4 of the Uniform Licensing Act, the EMS licensing commission or the bureau, pursuant to the commissions authorization may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take sworn statements of witnesses, including parties.

**E. Waivers:**

The commission, upon good cause or for extenuating circumstances shown by a licensee, may grant a waiver of a specific regulation or regulations pertaining to licensure renewal for that licensee.

(1) A licensee shall demonstrate good cause to the commission by submitting written justification that identifies any extenuating circumstances, to the bureau. The licensee shall include any reasonable supporting documentation to relevant to the request.

(2) The bureau shall distribute the submitted written justification and supporting documentation to the members of the commission prior to their next meeting.

(3) The commission, as soon as practicable, shall determine if good cause exists to grant a waiver by a majority vote of commission members meeting in a closed meeting. To accomplish this, the commission shall evaluate the documentation and, if necessary, review other pertinent documentation requested from the licensee.

(4) The commission may also meet with the licensee at a closed meeting of the commission prior to rendering its decision as to whether good cause exists to grant a waiver.

(5) If the commission grants the waiver to the licensee, it shall direct the bureau to take appropriate action to implement the terms and conditions of the waiver.

(6) A licensee applying for a waiver shall be notified by the bureau of the commission's decision in writing within twenty (20) calendar days of receipt of the commission's decision.

(7) The chair or his designee, with a recommendation from the bureau, may authorize a temporary waiver for licensure renewal, where they feel it may be justified, i.e., loss of employment, pecuniary interests, etc., subject to subsequent commission review and approval.

**F. Impaired practitioner program:**

An EMT who voluntarily self-identifies to the bureau or the impaired practitioner committee that he is experiencing a physical or mental impairment shall be considered for the impaired practitioner

program ("diversion program"). Consideration may not result in participation in the diversion program. Also, any impaired-EMT who the bureau, with the advice of the commission, determines may benefit from the impaired practitioner program may be referred to the impaired practitioner committee.

(1) The bureau, with the advice of the commission, may appoint an impaired-EMT rehabilitation committee to organize and administer a program that will:

(a) serve as a diversion program to which the bureau may refer licensees in lieu of, or in addition to, other disciplinary action taken by the bureau under these regulations; and

(b) be a source of referral for EMT's who, on a voluntary basis, desire to avail themselves of treatment for behavioral health based or chemical-dependence impairments.

**(2) The impaired practitioner committee shall be composed as a minimum of:**

(a) one bureau staff member;

(b) one regional director;

(c) one commission member;

(d) one mental health specialist;

and

(e) one physician.

**(3) The impaired practitioner committee shall:**

(a) arrange evaluations for EMT's who request participation in the diversion program;

(b) review and designate treatment facilities and services to which EMT's in the diversion program may be referred;

(c) receive and review information concerning the status and progress of participants in the diversion program;

(d) publicize the diversion program in coordination with EMS professional organizations and the bureau; and

(e) prepare and provide reports as needed to the bureau and the commission.

**(4) Each EMT entering the diversion program shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion program and of the possible consequences of failure to participate in the diversion program:** Failure to comply with any treatment requirement of the diversion program may result in termination of the diversion program participation. The bureau shall report termination of diversion program participation to the commission. Participation in the diversion program shall not be a defense against, but may be considered in mitigating any disciplinary action authorized by the commission and taken by the bureau. The commission is not precluded from authorizing the bureau to commence a disciplinary action against an EMT

who is participating in the diversion program or has been terminated from the diversion program.

**G. Denial, suspension, and revocation:** A license may be denied, suspended, or revoked in accordance with the following:

(1) upon authorization by the commission, the bureau may suspend, revoke, or refuse to issue any license, or take other disciplinary action, in accordance with the provisions of the EMS Act, Subsection B, Section 24-10B-5, NMSA 1978 and the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978, for any of the reasons outlined below;

(2) if final disciplinary action is taken against a licensed EMS provider by the bureau, upon authorization from the commission, the bureau may publish the action in a periodical or other medium that has statewide distribution;

(3) grounds for denial, suspension, or revocation are:

(a) misconduct in obtaining licensure;

(b) fraud, deceit, misrepresentation in obtaining licensure, including, but not limited to, cheating on an examination or attempting to subvert the initial or renewal licensing process;

(c) unprofessional conduct, to include but not limited to, the following:

(i) dissemination of a patient's health information to individuals not entitled to such information and where such information is protected by law from disclosure;

(ii) falsifying or altering patient records or personnel records;

(iii) misappropriation of money, drugs or property;

(iv) obtaining or attempting to obtain any fee for patient services for one's self or for another through fraud, misrepresentation, or deceit;

(v) aiding, abetting, assisting or hiring an individual to violate the EMS Act or these duly promulgated rules;

(vi) failure to follow established procedure and documentation regarding controlled substances;

(vii) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of pre-hospital emergency care;

(viii) failure to report an EMS provider who is suspected of violating the New Mexico Emergency Medical Services Act or these rules;

(ix) intentionally engaging in sexual contact with or toward a patient;

(d) conviction of a felony or misdemeanor, or conviction of a misdemeanor involving abuse, neglect, exploitation, or

moral turpitude, as shown by a certified copy of the record of the court conviction;

(e) negligence in the delivery of emergency medical services to include, but not limited to:

(i) practicing outside the standard of care, scope of licensure or without appropriate medical direction;

(ii) malpractice;

(iii) incompetence, in performing pre-hospital emergency medical functions, whether direct patient care or the administration/management of that care, an EMS provider is under legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other EMS providers of the same licensure status and required by the generally accepted standards of the profession; the failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings; it shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient or to the public;

(iv) patient abandonment: patient abandonment occurs when the EMS provider has accepted the patient assignment thus establishing a provider-patient relationship and then severs the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of care;

(f) unauthorized disclosure of medical or other confidential information;

(g) physical or mental incapacity which could result or has resulted in performance of emergency medical service duties in a manner which endangers the health and safety of the patient or others;

(h) any demonstrated pattern of alcohol or other substance abuse; or any single instance of alcohol or substance abuse in the performance of emergency medical services duties;

(i) failure to successfully complete the impaired practitioner program; or failure to meet the terms and conditions of an impaired practitioner agreement;

(j) failure to meet licensure requirements;

(k) dispensing, administering, distributing or diversion of controlled substances, other than those authorized in the scope of practice, as defined in the New Mexico Controlled Substance Act, Section 30-31-1, et seq., NMSA 1978;

(l) failure to report revocation, suspension, denial, or other adverse actions taken in any other state or jurisdiction affecting the ability to practice emergency medical services;

(m) misrepresentation of the level

of licensure or certification;

(n) performing duties as a licensed EMT without being licensed by the bureau to perform the authorized scope of practice for a level of licensure, including practicing after expiration of a license;

(o) any false, fraudulent, or deceptive statement in any document connected with the practice of emergency medical services, including, but not limited to, documents associated with:

(i) initial licensure;

(ii) renewal licensure;

(iii) licensure certificates, wallet cards; or

(iv) continuing education;

(p) failure to cooperate with an investigation, including but not limited to, failure to furnish the commission or bureau with information requested, or to appear for an interview as requested;

(q) inappropriate conduct or negligence by a licensed EMT who is also a registered instructor coordinator;

(r) failure to comply with a judgment and order for child support issued by a district or tribal court as defined in the Parental Responsibility Act (Laws of 1995, Chapter 25);

**(4) procedures for enforcement of the Parental Responsibility Act:**

(a) the New Mexico human services department (HSD) shall issue to the bureau a certified list of obligor's (meaning persons who have been ordered to pay child support pursuant to a judgment and order for support issued by a district or tribal court) not in compliance with their judgment and order of support;

(b) upon determination by the bureau that the name and social security number of an applicant for licensure, a licensed person, or licensee, appears on the certified list, the bureau shall require that applicants for licensure:

(i) provide a statement of compliance from HSD to the bureau no later than forty eight (48) hours prior to scheduled attendance at a state EMS examination site; or

(ii) provide a statement of compliance from HSD to the bureau no later than the close of business, sixty (60) days from the date of the letter of notification; or

(iii) if the applicant fails to provide a statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to deny the application;

(iv) that persons currently licensed shall provide the bureau with a statement of compliance from HSD by the earlier of the application for licensure renewal or a specified date not to exceed

sixty (60) days;

(v) if the licensed person fails to provide the statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to take appropriate action;

**(c) upon authorization by the commission to issue a notice of contemplated action, the bureau shall serve upon an applicant for licensure or licensee a notice of contemplated action in accordance with the Uniform Licensing Act stating that:**

(i) the bureau has grounds to take such action, and that the bureau shall take such action unless the applicant or licensed person;

(ii) mails a letter (certified mail, return receipt requested) within 20 days after service of the notice requesting a hearing; or

(iii) provides the bureau, within thirty (30) days of receipt of the notice of contemplated action, a statement of compliance from HSD; and

(iv) if the applicant or licensed person disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensed person should contact the HSD child support enforcement division;

**(d) in any hearing under this section, relevant evidence is limited to the following:**

(i) a statement of non-compliance is conclusive evidence that requires the bureau to take appropriate action, unless:

(ii) the applicant or licensee provides the bureau with a subsequent statement of compliance, which shall preclude the bureau from taking any further action under this section;

(iii) when an action is taken against an applicant or licensee solely because the applicant or licensed person is not in compliance with a judgment and order for support, the order shall state that the application, license shall be reinstated upon presentation to the bureau of a subsequent statement of compliance;

(e) the bureau may also include in the order any other conditions necessary to comply with its requirements for reapplication and re-issuance of licensure, including, but not limited to requiring a surcharge fee of fifty dollars (\$50), in addition to any other applicable fees;

**(5) right to a hearing:** in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1, et seq., NMSA 1978, every applicant or person licensed, shall be afforded notice and opportunity for a hearing, before the department shall have authority to take action, the effect of which would be to deny permis-

sion to take an examination for licensure for which application has been duly made, or to deny, suspend, or revoke a certification or license, or take other disciplinary action; exception:

(a) right to expedited hearing for an immediate suspension of a persons license: the person whose license is immediately suspended may request a hearing before a hearing officer appointed by the secretary to contest the action, by mailing a certified return receipt letter addressed to the bureau within twenty (20) days after service of the notice;

(b) expedited hearing for a person whose license has been immediately suspended: upon receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico, within twenty (20) working days of receipt of the timely request for a hearing;

(6) **records management:** a licensing record is maintained for every licensed EMT in New Mexico; any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act; if the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigatory material;

(a) **confidentiality:** the commission and the bureau will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner; if the commission authorizes the bureau to initiate an action, all records not exempt from disclosure under the Inspection of Public Records Act, Sections 14-2-1, et seq., NMSA 1978, will be placed in the licensee's licensing record, if one exists;

(b) **records confidentiality:** any files or records in the possession of the bureau, a regional office or a provider containing identifying information about individuals requesting or receiving treatment or other health services and any unsubstantiated complaints received by the bureau regarding any provider shall be confidential and not subject to public inspection; such files, records and complaints may be subject to subpoena for use in any pending cause, in any administrative proceeding, or in any of the courts of this state, unless otherwise provided by state or federal law.

#### H. Enforcement of training standards.

(1) **Process for non-compliance:** The bureau will make every attempt to resolve non-compliance of training standards at the lowest level possible. The following process shall be utilized:

(a) the bureau will notify the approved New Mexico training program, in writing, of any suspected or reported non-compliance of training standards received

by complaint, report or course trends;

(b) the approved New Mexico training program will provide a plan to correct items of non-compliance and will submit the plan to the bureau in writing within thirty (30) days;

(c) the bureau will re-evaluate the plan and progress reports for compliance of the training standards in three (3) month increments until the problem is resolved; and

(d) if the bureau determines that non-compliance has not been adequately resolved, the bureau may initiate an enforcement action against the training program or the licensed EMT who is an instructor-coordinator.

(2) **Complaint/incident procedures:** Any person may communicate a complaint or knowledge of an incident to the bureau. Complaints shall be submitted in signed written form to the bureau. The bureau may begin an investigation if there is sufficient cause.

(a) When a complaint is received by the bureau, written acknowledgment shall be made within ten (10) working days and the bureau staff shall decide whether or not a preliminary or formal investigation of the complaint shall be initiated.

(b) Approved New Mexico EMS training programs being formally investigated shall receive written notification within ten (10) working days after a decision is made to begin a formal investigation.

(c) At the conclusion of the bureau's formal investigation, the bureau may report its findings to the investigated training program in written form. If the bureau investigation warrants an enforcement action, the training program will be given a notice of contemplated action.

(d) If no investigation is warranted, the training program or person filing a complaint will be notified, as determined by the bureau.

(3) **Investigations:** The bureau shall normally conduct preliminary and formal investigations.

(a) **Preliminary investigations:** When the bureau receives information that forms the basis for an enforcement action, it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine for the bureau whether justification exists to initiate an action or to conduct a formal investigation.

(b) **Formal investigations:** Formal investigations are for the purpose of obtaining additional information to allow the bureau to determine if it will initiate an action. Notice will be given of the formal investigation, unless extenuating circumstances exist which would reasonably preclude notification.

(c) **Confidentiality:** The bureau

will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner.

(d) **Records:** An official record is maintained for every approved New Mexico EMS training program. If the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigation material. If the bureau initiates an action, all records not exempt from disclosure under the Inspection of Public Records Act, sections 14-2-1, et seq., NMSA 1978, will be placed in the training program's official record. Any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act.

(4) **Grounds for enforcement actions:** Enforcement actions may result in an action taken against an approved New Mexico EMS training program or an instructor-coordinator affiliated with the training program. These enforcement actions may result in the following actions:

(a) probation or suspension of the training program for a specified period of time;

(b) non-recognition of a training program course;

(c) withdrawal of approval status of a training program by the bureau;

(d) under 7.27.2.13 NMAC, a licensing action may be initiated against an instructor-coordinator when the bureau determines that there may be inappropriate conduct or negligence; grounds for enforcement actions include, but are not limited to the following:

(i) failure to comply with law or rules; failure to comply with the training standards or non-compliance with a training standard found in these rules;

(ii) falsifying documents to include use of any false, fraudulent, or deceptive statement in any document;

(iii) failure to cooperate with an investigation to include failure to furnish the bureau with requested information, as provided by law;

(iv) failure of students or instructors to function within the approved New Mexico scopes of practice, New Mexico treatment guidelines and the training medicine formulary, as approved by the medical direction committee;

(v) failure to report required documentation including patient care data and annual training reports.

(5) **Right to appeal:** Any approved New Mexico EMS training program may appeal a decision by the bureau to take an enforcement action.

(6) **Notice of contemplated action:** When the bureau contemplates taking any action specified in this section, it

shall serve upon the approved New Mexico EMS training program a written notice containing a statement of the grounds or subject upon which the proposed action is based and the rule(s) violated.

**(7) Right to hearing:** The approved New Mexico EMS training program may request a hearing before a hearing officer appointed by the secretary to contest the proposed enforcement action, by mailing a certified return receipt letter addressed to the bureau within twenty (20) days after service of the notice.

**(8) Hearing:** Upon receipt of a timely request for a hearing, the department of health shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico, within forty-five (45) working days of receipt of the timely request for a hearing.

**(9) Notice of hearing:** The department shall notify the approved New Mexico EMS training program of the date, time, and place of the hearing, the identity of the hearing officer, and the subject matter of the hearing, not less than thirty (30) days prior to the date of the hearing.

**(10) Hearing officer duties:** The hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and rule on any motions or other matters that arise prior to the hearing.

**(11) Discovery:** Upon written request to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items, which the other party will or may introduce in evidence at the hearing.

**(12) Conduct of hearing:** Hearings are open to the public unless either party makes a request for closed meeting.

**(13) Hearing officer written report and recommendation(s):** The hearing officer shall make a written report and recommendation(s) to the secretary containing a statement of the issues raised at the hearing proposed findings of fact, and conclusions of law, and a recommended determination. The hearing officer or designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. The hearing officer written report shall be submitted to the secretary no later than thirty (30) working days after the close of the hearing.

**(14) Secretary's determination:** The secretary shall render a final determination within ten (10) working days of the submission of the hearing officer's written report. A copy of the final decision shall be

mailed to the appealing party by certified mail, return receipt requested. A copy shall be provided to legal counsel for the bureau. [7.27.2.13 NMAC - Rp, 7.27.2.13 NMAC, 12/15/2008]

**7.27.2.14 APPENDIX A: SCOPES OF PRACTICE FOR FULLY LICENSED EMERGENCY MEDICAL SERVICES PERSONNEL:**

**A.** Medical director means a physician functioning as the service EMS medical director as defined and described in 7.27.3 NMAC, medical direction for emergency medical service. Medical control means supervision provided by or under the direction of a physician.

**B.** Prior to accomplishing a new skill, technique, medication, or procedure, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform those new skills, techniques, medications, or procedures.

**C.** Service medical director approved: All service medical director approved skills, technique, medication, or procedure are considered advanced life support. Prior to utilizing any skill, technique, medication or procedure designated as service medical director approved, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform the skills, techniques, medications or procedures. Additionally, each EMS provider must have a signed authorization from the service's medical director on file at the EMS service's headquarters or administrative offices.

**D.** Any device designed and utilized to facilitate successful completion of a skill or other treatment modality, including but not limited to CPR devices, intraosseous placement devices, positive pressure ventilation devices, must be approved by the service medical director.

**E.** Only personnel with full, unrestricted licensure may utilize items designated as service medical director approved.

**F.** Utilization of pharmacological agents for the primary purpose of sedation, induction, or muscle relaxation to facilitate placement of an advanced airway requires medical direction committee special skills approval.

**G. Licensed emergency medical dispatcher (EMD).**

(1) Medical direction is required for all items in the EMD scope of practice.

(2) The following allowable skills may be performed by EMDs who are licensed by the EMS bureau and function-

ing with a New Mexico emergency medical dispatch agency utilizing protocols and any EMD priority reference system approved by the EMS bureau and service medical director.

(a) Process calls for medical assistance in a standardized manner, eliciting required information for evaluating, advising, and treating sick or injured individuals, and dispatching an appropriate EMS response.

(b) Provide pre-arrival instructions to the patient through the caller when possible and appropriate to do so while functioning in compliance with an emergency medical dispatch priority reference system (EMDPRS).

**H. EMS first responders (EMSFR):**

**(1) The following allowed skills, procedures, and drugs may be performed without medical direction:**

(a) basic airway management;

(b) use of basic adjunctive airway equipment;

(c) suctioning;

(d) cardiopulmonary resuscitation, according to current ECC guidelines;

(e) obstructed airway management;

(f) bleeding control via direct pressure;

(g) spine immobilization;

(h) splinting (medical direction required for femoral traction splinting);

(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) emergency childbirth;

(l) glucometry;

(m) oxygen;

(n) other non-invasive procedures as taught in first responder courses adhering to DOT curricula.

**(2) The following require service medical director approval:**

**(a) allowable skills:**

(i) mechanical positive pressure ventilation;

(ii) femoral traction splinting;

(iii) application and use of semi-automatic defibrillators;

(iv) insertion of laryngeal and supraglottic airway devices;

(v) acupressure;

**(b) allowable drugs:**

(i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(iii) IM auto-injection of atropine and pralidoxime for treatment of chemical and nerve agent exposure;

(iv) albuterol (including

isomers) via inhaled administration;

(v) ipratropium via inhaled administration, in combination with or after albuterol administration;

(vi) epinephrine via auto-injection device;

**(c) patient's own medication that may be administered:** bronchodilators using pre-measured or metered dose inhalation device.

**(3) Wilderness protocols:** the following skills shall only be used by providers who have a current wilderness certification from a bureau approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(a) minor wound cleaning and management;

(b) cessation of CPR;

(c) field clearance of the cervical-spine;

(d) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

**I. EMT-BASIC (EMT-B):**

**(1) The following allowed skills, procedures, and drugs may be performed without medical direction:**

(a) basic airway management;

(b) use of basic adjunctive airway equipment;

(c) suctioning;

(d) cardiopulmonary resuscitation, according to current ECC guidelines;

(e) obstructed airway management;

(f) bleeding control;

(g) spine immobilization;

(h) splinting;

(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);

(l) glucometry;

(m) oxygen;

(n) other non-invasive procedures as taught in EMT-B courses adhering to DOT curricula;

(o) wound management.

**(2) The following require service medical director approval:**

**(a) allowable skills:**

(i) mechanical positive pressure ventilation;

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway,

LMA);

(iii) pneumatic anti-shock garment;

(iv) application and use of semi-automatic defibrillators;

(v) acupressure;

(vi) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

**(b) allowable drugs:**

(i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(iii) activated charcoal PO;

(iv) acetaminophen PO in pediatric patients with fever;

(v) IM auto-injection of atropine and pralidoxime for treatment of chemical and nerve agent exposure;

(vi) albuterol (including isomers), via inhaled administration;

(vii) ipratropium, via inhaled administration, in combination with or after albuterol administration;

(viii) epinephrine via auto-injection device;

(ix) administration of naloxone by SQ, IM, or IN route;

(x) administration of epinephrine, 1:1000, no single dose greater than 0.3 ml, subcutaneous or intramuscular injection with a pre-measured syringe or 0.3 ml TB syringe for anaphylaxis or status asthmaticus refractory to other treatments under on-line medical control; when on-line medical control is unavailable, administration is allowed under off-line medical control if the licensed provider is working under medical direction using approved written medical protocols;

**(c) patient's own medication that may be administered:**

(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) sublingual nitroglycerine for unrelieved chest pain, with on line medical control only.

**(3) Wilderness protocols:** the following skills shall only be used by providers who have a current wilderness certification from a bureau-approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(a) minor wound cleaning and management;

(b) cessation of CPR;

(c) field clearance of the cervical-spine;

(d) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

**(4) Immunizations and biologicals:** administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances: in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of pharmaceuticals or tests.

**J. EMT-INTERMEDIATE (EMT-I):**

**(1) The following allowed skills, procedures, and drugs may be performed without medical direction:**

(a) basic airway management;

(b) use of basic adjunctive airway equipment;

(c) suctioning;

(d) cardiopulmonary resuscitation, according to ECC guidelines;

(e) obstructed airway management;

(f) bleeding control;

(g) spine immobilization;

(h) splinting;

(i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);

(l) glucometry;

(m) oxygen;

(n) wound management.

**(2) The following require service medical director approval:**

**(a) allowable skills:**

(i) mechanical positive pressure ventilation;

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, combi-tube, king airway, LMA);

(iii) pneumatic anti-shock garment;

(iv) application and use of semi-automatic defibrillators;

(v) acupressure;

(vi) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for outpatient use;

(vii) peripheral venous puncture/access;

(viii) blood drawing;

(ix) pediatric intraosseous tibial access;

(x) adult intraosseous access;

**(b) administration of approved**

**medications via the following routes:**

(i) intravenous;  
 (ii) intranasal;  
 (iii) nebulized inhalation;  
 (iv) sublingual;  
 (v) intradermal;  
 (vi) intraosseous;  
 (vii) endotracheal (for administration of epinephrine only, under the direct supervision of an EMT-paramedic, or if the EMS service has an approved special skill for endotracheal intubation);  
 (viii) oral (PO);  
 (ix) intramuscular;

**(c) allowable drugs:**

(i) oral glucose preparations;  
 (ii) aspirin PO for adults with suspected cardiac chest pain;  
 (iii) activated charcoal PO;  
 (iv) acetaminophen PO in pediatric patients with fever.  
 (v) IM auto-injection of atropine and palidoxime for treatment of chemical and nerve agent exposure;  
 (vi) albuterol (including isomers) via inhaled administration;  
 (vii) ipratropium, via inhaled administration, in combination with or after albuterol administration;  
 (viii) naloxone;  
 (ix) I.V. fluid therapy (except blood or blood products);  
 (x) 50% dextrose – intravenous;  
 (xi) epinephrine via auto-injection device;  
 (xii) epinephrine (1:1000), SQ or IM for anaphylaxis and known asthmatics in severe respiratory distress (no single dose greater than 0.3 cc);  
 (xiii) epinephrine (1:10,000) in pulseless cardiac arrest for both adult and pediatric patients; epinephrine may be administered via the endotracheal tube in accordance with ACLS and PALS guidelines;  
 (xiv) nitroglycerin (sublingual) for chest pain associated with suspected acute coronary syndromes; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;  
 (xv) morphine, fentanyl, or dilaudid for use in pain control with approval of on-line medical control;  
 (xvi) diphenhydramine for allergic reactions or dystonic reactions;  
 (xvii) glucagon, to treat hypoglycemia in diabetic patients when intravenous access is not obtainable;  
 (xviii) promethazine and anti-emetic agents, for use as an anti-

emetic;

(xix) methylprednisolone for reactive airway disease/acute asthma exacerbation;

(xx) hydroxycobalamin.

**(d) patient's own medication that may be administered:**

(i) bronchodilators using pre-measured or metered dose inhalation device;

(ii) sublingual nitroglycerine for unrelieved chest pain; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable;

**(e) wilderness protocols:** the following skills shall only be used by providers who have a current wilderness certification from a bureau approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(i) minor wound cleaning and management;

(ii) cessation of CPR;

(iii) field clearance of the cervical-spine;

(iv) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder;

**(f) drugs allowed for monitoring during transport:** monitoring IV solutions that contain potassium during transport (not to exceed 20 mEq/1000cc or more than 10 mEq/hour);

**(g) immunizations and biologicals:** administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(i) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a public health physician, nurse, or other authorized public health provider;

(ii) administer vaccines to EMS and public safety personnel;

(iii) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(iv) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of pharmaceuticals or tests not listed above.

**K. EMT-PARAMEDIC (EMT-P):**

**(1) The following allowed skills, procedures, and drugs may be performed without medical direction:**

(a) basic airway management;  
 (b) use of basic adjunctive airway equipment;

(c) suctioning;  
 (d) cardiopulmonary resuscitation, according to current ECC guidelines;

(e) obstructed airway management;

(f) bleeding control;  
 (g) spine immobilization;

(h) splinting;  
 (i) scene assessment, triage, scene safety;

(j) use of statewide EMS communications system;

(k) childbirth (imminent delivery);

(l) glucometry;

(m) oxygen;  
 (n) wound management.

**(2) The following require service medical director approval:**

**(a) allowable skills:**

(i) mechanical positive pressure ventilation;

(ii) use of multi-lumen, supraglottic, and laryngeal airway devices (examples: PTLA, Combi-tube, King Airway, LMA);

(iii) pneumatic anti-shock garment;

(iv) transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, PEG tubes, or vascular access devices intended for out-patient use;

(v) application and use of semi-automatic defibrillators;

(vi) acupressure;

(vii) peripheral venous puncture/access;

(viii) blood drawing;

(ix) I.V. fluid therapy;

(x) direct laryngoscopy;

(xi) endotracheal intubation;

(xii) thoracic decompression (needle thoracostomy);

(xiii) surgical cricothyroidotomy;

(xiv) insertion of nasogastric tubes;

(xv) cardioversion and manual defibrillation;

(xvi) external cardiac pacing;

(xvii) cardiac monitoring;

(xviii) use of infusion pumps;

(xix) initiation of blood

and blood products with on-line medical control;

(xx) intraosseous access;

**(b) administration of approved medications via the following routes:**

(i) intravenous;

(ii) intranasal;

(iii) nebulized inhalation;

(iv) sublingual;

(v) intradermal;

(vi) intraosseous;

(vii) endotracheal;

(viii) oral (PO);

(ix) intramuscular;

(x) topical;

(xi) endotracheal;

(xii) rectal;

(xiii) IV drip;

**(c) allowable drugs:**

(i) acetaminophen;

(ii) activated charcoal;

(iii) adenosine;

(iv) albuterol (including isomers);

(v) amiodarone;

(vi) aspirin;

(vii) atropine sulfate;

(viii) benzodiazepines;

(ix) bretylium tosylate;

(x) calcium preparations;

(xi) corticosteroids;

(xii) dextrose;

(xiii) diphenhydramine;

(xiv) dopamine hydrochloride;

(xv) epinephrine;

(xvi) furosemide;

(xvii) glucagon;

(xviii) hydroxycobalamin;

(xix) ipratropium;

(xx) lidocaine;

(xxi) magnesium sulfate;

(xxii) naloxone;

(xxiii) narcotic analgesics;

(xxiv) nitroglycerine;

(xxv) oral glucose preparations;

(xxvi) oxytocin;

(xxvii) phenylephrine nasal spray;

(xxviii) pralidoxime, IM auto-injection for treatment of chemical and nerve agent exposure;

(xxix) promethazine and anti-emetic agents, for use as an anti-emetic;

(xxx) sodium bicarbonate;

(xxxi) thiamine;

(xxxii) topical anesthetic ophthalmic solutions;

(xxxiii) vasopressin.

**(3) Wilderness protocols:** The following skills shall only be used by providers who have a current wilderness certification from a bureau approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which time to a hospital is expected to exceed two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required), and are authorized by their medical director to provide the treatment:

(a) minor wound cleaning and management;

(b) cessation of CPR;

(c) field clearance of the cervical spine;

(d) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

**(4) Drugs allowed for monitoring in transport** (requires an infusion pump when given by continuous infusion unless otherwise specified):

(a) potassium (no infusion pump needed if concentration not greater than 20mEq/1000cc);

(b) anticoagulation type blood modifying agents (such as fibrolytic drugs, heparin, glycoprotein IIb-IIIa inhibitors/antagonists);

(c) procainamide;

(d) mannitol;

(e) blood and blood products (no pump required);

(f) aminophylline;

(g) antibiotics and other anti-infective agents;

(h) dobutamine;

(i) sodium nitroprusside;

(j) insulin;

(k) terbutaline;

(l) norepinephrine;

(m) octreotide;

(n) nutritional supplements;

(o) beta blockers;

(p) diltiazem;

(q) nesiritide;

(r) propofol in patients that are intubated prior to transport;

(s) proton pump inhibitors and H2 antagonists.

**(5) Immunizations and biologicals:** administration of immunizations, vaccines, biologicals, and TB skin testing is authorized under the following circumstances:

(a) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a public health physician, nurse, or other authorized public health provider;

(b) administer vaccines to EMS

and public safety personnel;

(c) TB skin tests may be applied and interpreted if the licensed provider has successfully completed required department of health training;

(d) in the event of a disaster or emergency, the state EMS medical director or chief medical officer of the department of health may temporarily authorize the administration of other pharmaceuticals or tests not listed above.

**(6) Skills approved for monitoring in transport:**

(a) internal cardiac pacing;

(b) chest tubes.

**(7) Medications for administration during patient transfer:**

(a) retavase (second dose only);

(b) protamine sulfate;

(c) non-depolarizing neuromuscular blocking agents in patients that are intubated prior to transport;

(d) acetylcysteine.

**(8) Patient's own medication that may be administered:**

(a) epoprostenol sodium;

(b) bronchodilators using pre-measured or metered dose inhalation device;

(c) sublingual nitroglycerine for unrelieved chest pain; must have intravenous access established prior to administration or approval of online medical control if IV access is unavailable.

[7.27.2.14 NMAC - Rp, 7.27.2.14 NMAC, 12/15/2008]

#### 7.27.2.15 APPENDIX B: APPROVED TRAINING PROGRAMS:

"Approved emergency medical services training program" means a New Mexico emergency medical services training program that is sponsored by a post-secondary educational institution, is accredited by the national accrediting organization for emergency medical services or active in the accreditation process, and is approved by the joint organization on education (JOE) and participates in the joint organization on education. Currently, there are three approved EMS training programs:

**A. Emergency medical services academy.** University of New Mexico, [2700 Yale SE., Albuquerque, New Mexico 87106, Tel: 505-272-5757]. The EMS academy is designated as the lead training agency for providers in New Mexico as stated in Section 24-10B-12 NMSA 1978. The EMS academy teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**B. Dona Ana branch community college.** New Mexico state university, [Box 30001, Las Cruces, NM 88003-0001, Tel: 505-527-7530]. Dona Ana branch community college teaches formal



EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**C. Eastern New Mexico university.** EMS program, [Box 6000, Roswell, NM 88202-6000, Tel: 505-624-7000]. The eastern New Mexico university teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**D. Santa Fe community college.** EMS program, [6401 Richards Ave., Santa Fe, NM 87508-4887, Tel: 505-428-1000]. Santa Fe community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

**E. Central New Mexico community college.** EMS program, [5600 Eagle Rock Ave. NE, Albuquerque, NM 87113, Tel: 505-224-5200]. Central New Mexico community college teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses. [7.27.2.15 NMAC - Rp, 7.27.2.15 NMAC, 12/15/2008]

#### 7.27.2.16 APPENDIX C: SPECIAL SKILLS APPLICATION AND REPORTING PROCEDURES:

**A. Purpose:** Special skills are those skills, procedures, and medications that are requested by an EMS service to enhance emergency treatment capabilities beyond the normal scope of practice, as defined in the EMS Act. Use the enclosed procedures for application, reporting and renewal for special skills. Applications are reviewed and approved or disapproved by the medical direction committee, and once approved, become a legally recognized addition to the service capabilities.

**B. General:** All levels of EMS personnel, including licensed EMS first responders and all levels of licensed EMTs are eligible for special skills consideration for any procedure, skill or medication.

**C. Application procedure:** The EMS service medical director, or his designee, shall coordinate with the EMS service director, and shall apply for special skills to the EMS medical direction committee.

**D. Application document:** The application document for a special skill must be tailored to the level of the request. While the degree of detail in each section may vary to match the nature of the skill requested, all applications should include the following elements, in order:

(1) application cover page: titled to state the requested special skill, date of

application, name of service, service director name and medical director name;

(2) contact information page: must include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of support from the service director and medical director; additional letters of support from the local medical community or evidence of notification of the local medical community may be required; the need for letters of notification and support from the local medical community and who provides the letters must be adjusted to match the nature of the special skill requested;

(4) service description: provide a concise description of the EMS service; this includes such items as basic call demographics relevant to the applicant, level of licensure of providers and names and locations of the primary receiving medical facilities;

(5) description of the special skill: provide a description of the procedure, medication or requested skill. Include information on risks, benefits, indications and contraindications;

(6) justification and statement of need: provide a statement explaining why the special skill is needed; this should include a description of the current medical intervention or alternative practice to the special skill and a risk or benefit analysis that supports the special skill requested; the estimated number of potential interventions per year, other relevant statistical data and a statement indicating the level of current scientific information/studies to support the requested special skill; the level of scientific justification can be adjusted to match the level of the special skill requested;

(7) protocol: provide a copy of the treatment protocol; include other operational protocols relevant to the special skill, if applicable;

(8) training: provide a training syllabus; this must include learning objectives and the training hours for initial and continuing education; this section should also include a description of the instructors, how training will be completed, and a description of the method used to initially evaluate the skill;

(9) QA/QI program: provide a description of the QA/QI process for the special skill, including frequency of evaluation, names and qualifications of the personnel involved in the process; include a copy of the evaluation tool or forms that will be used, if applicable; and

(10) the application and all supporting documentation shall be submitted to the EMS bureau, attn: state EMS training coordinator.

**E.** Applicants may involve the EMS regional offices when preparing a special skill request and include a letter evidencing regional review. Applicants shall forward a copy of their application to their EMS regional office when completed.

**F.** Upon receipt, the state EMS medical director and state EMS training coordinator will review the application. The service will be notified if the application is found to be incomplete or to contain significant errors.

**G.** Applications must be received at the bureau at least forty-five (45) days prior to the next regularly scheduled medical direction committee meeting to be placed on the agenda of that meeting for consideration by the medical direction committee.

**H.** The medical direction committee shall take action on all special skills applications on the agenda at their regularly scheduled meeting. The medical direction committee may take the following actions on the application: approved with limitations or restrictions, denied or tabled with a request for a formal presentation or additional information by the requesting service medical director or their designee.

**I.** The medical direction committee may give an approval subject to specific conditions, limitations or restrictions. This may include a written and practical examination.

**J.** Within ten (10) working days following the decision of the medical direction committee, the state EMS training coordinator shall provide a written response to the applicant regarding the action of the medical direction committee.

**K.** Special skills may not be utilized until receipt of these special skill approval letter from the bureau. Any specific conditions or limitations will be evidenced in the approval letter from the bureau.

**L. Monitoring:** It is expected that EMS services with approved special skills will continuously comply with the requirements of their application and approval letter. This includes, but is not limited to, such items as training curricula, approved instructors, quality assurance, protocols and data collection. Any changes to the approved application shall be sent to the state EMS training coordinator for concurrence/coordination with the medical direction committee.

**M.** The medical direction committee may immediately suspend or revoke special skill privileges for an individual or service that loses medical direction, or fails to comply with the stated requirements, or for any other reason to protect the health and welfare of the people of New Mexico.

**N.** If a new medical director assumes control of a service with an active special skill program, the bureau shall receive a letter of support from the new medical director within thirty (30) days or the special skill approval may be withdrawn.

**O.** The service shall maintain a current list of all providers trained and approved to utilize the special skill. This list must be provided to the bureau upon request.

**P. Reporting:** The service shall provide to the state EMS training coordinator periodic written special skill reports. During the first year, the report shall be due semi-annually, occurring on June 1 and December 1. Subsequent reports shall be due annually on June 1.

**Q. Report document:** The written special skill report shall include the following minimum elements:

(1) report cover page: titled to state the special skill reported, date, name of service, service director and medical director;

(2) contact information page: shall include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of continued support from the service director and service medical director;

(4) statistics and outcome data: provide data on the utilization and patient outcomes involving the special skill; do not include patient identifiers; all adverse outcomes related to the special skill must be reported;

(5) continuing education: provide evidence of the continuing education program and refresher program;

(6) personnel list: provide a list of all personnel authorized to perform the special skill;

(7) QA/QI program: provide evidence of the ongoing QA/QI program;

(8) renewal: during a regularly scheduled meeting, the medical direction committee shall review all ongoing individual special skills programs on their three (3) year anniversary and make a determination on renewal;

(9) if the medical direction committee determines not to provide automatic renewal on an ongoing special skill program, the state EMS training coordinator shall provide a written notification to the service director and the service medical director within ten (10) working days; and

(10) the special skills program will be placed on the agenda of the next, or subsequent, regularly scheduled meeting of the medical direction committee and final determination regarding renewal will be made.

**R.** Special skills programs will remain active until a final determination regarding renewal has been made.

**S. Special skills application:**

- (1) general section;
- (2) EMS service name;
- (3) address;
- (4) service chief/director;
- (5) contact phone number;
- (6) physician medical director;
- (7) physician/medical director

contact phone number;

- (8) special skill proposed;
- (9) level of licensure necessary for special skill;

- (10) estimated number of personnel to be trained;

- (11) estimated date of initial training;

- (12) training/quality assurance;

- (13) describe or identify the curriculum, including learning objectives, training hours, etc.;

- (14) please identify the lead instructor and provide a brief summary of their qualifications or attach a resume;

- (15) resumes required for new instructors;

- (16) if training/experience is required, provide a letter of commitment from the supporting institution;

- (17) describe or attach a proposed continuing education plan;

- (18) attach a description of quality assurance plan, including periodic case reviews, ongoing problem;

- (19) identification and steps for remedial action if necessary;

- (20) signatures; person completing the application, service chief/service director and medical director;

- (21) submit ten (10) copies of the application in its entirety to: EMS bureau, state EMS training coordinator, [2500 Cerrillos Rd., Santa Fe, NM 87505];

- (22) submit one copy to the regional office.

[7.27.2.16 NMAC - Rp, 7.27.2.16 NMAC, 12/15/2008]

#### 7.27.2.17 APPENDIX D: LICENSING APPLICATION:

**A. Section I- initial application for licensure:**

(1) **General:** To apply for licensure as an emergency medical dispatcher (EMD), EMD-instructor, EMS first responder, EMT-basic, EMT-intermediate, or EMT-paramedic, the licensure application form shall be used. The instructions for this form are included in the application packet, which is available at the EMS bureau.

(2) The EMS levels currently authorized for licensure in New Mexico are emergency medical dispatcher (EMD), EMD-instructor, EMS first responder,

EMT-basic, EMT-intermediate and EMT-paramedic. State examinations are not required for licensure of EMD or EMD-instructor.

**B. Registration for training and licensure application:**

(1) **Purpose:** The form has been developed by the EMS bureau as part of the statewide EMS information management system. It serves three primary purposes towards applying for licensure. These are:

(a) to register in-state candidates for training with a New Mexico approved EMS training program and the EMS bureau, thus establishing an EMS candidate record at the beginning of EMS instruction; or,

(b) for use by former EMS personnel whose licensure has expired within the past three (3) years to re-enter the EMS field at the same level; or

(c) for use by out-of-state candidates to apply for testing or licensure.

(2) This form is used to establish a person's record in the EMS registry as a candidate for licensure. Normally, for in-state EMT courses, the form is completed during the course, with the assistance of the course instructor. It is used by the approved EMS training program and the EMS bureau to register persons for training and establish them as a licensure candidate, respectively.

(3) To request a complete licensure application package, including the licensure application form, call the EMS bureau at [505-476-7701 or write the EMS bureau at: EMS bureau, attn: operations section, 2500 Cerrillos Road, Santa Fe, New Mexico 87505].

(4) A package will be sent to applicant in the mail containing all forms required.

(5) Original forms will only be accepted at the EMS bureau, as an optical scanner scans these forms.

**C. Test request application form:**

(1) **Purpose:** This form is used to apply for a state examination site. It is used by EMS course graduates who have already completed the registration for training and licensure application form and who are listed as a candidate in the New Mexico registry of EMS personnel. EMS course graduates will have already completed the registration for training or licensing application during their course. If, for some reason, the application was not filled out, call the bureau and an application will be mailed out.

(2) In all cases of licensure, the registration for training or licensure application is required to be scanned into the bureau's computer system prior to the test request application form.

(3) Only original forms will be accepted at the EMS bureau. To request a complete test request application package,

please contact the EMS bureau.

[7.27.2.17 NMAC - Rp, 7.27.2.17 NMAC, 12/15/2008]

### 7.27.2.18 APPENDIX E: EMS PERSONNEL JOB DESCRIPTIONS:

**A. Introduction:** The bureau is providing the following general position description for the New Mexico EMS provider positions for first responder, EMT-basic, EMT-intermediate, and EMT-paramedic. It is the ultimate responsibility of an employer to define specific job descriptions within each EMS service.

#### **B. Qualifications:**

(1) successfully complete a recognized training course from an approved EMS training institution;

(2) possess a valid course completion certificate, and accomplish all state licensure examination application requirements;

(3) additionally, applicants shall meet all established requirements for initial licensing as identified by the current EMS licensure regulations;

(4) a copy of these regulations is available through the EMS bureau;

(5) generally, the knowledge and skills required demonstrate the need for a high school education or equivalent;

(6) ability to communicate verbally; via telephone and radio equipment;

(7) ability to lift, carry, and balance up to 125 pounds (250 pounds with assistance);

(8) ability to interpret written, oral, and diagnostic form instructions;

(9) ability to use good judgment and to remain calm in high-stress situations;

(10) ability to work effectively in an environment with loud noises and flashing lights;

(11) ability to function efficiently throughout an entire work shift;

(12) ability to calculate weight and volume ratios and read small English print, both under life threatening time constraints;

(13) ability to read and understand English language manuals and road maps;

(14) accurately discern street signs and address numbers;

(15) ability to interview patient, family members, and bystanders;

(16) ability to document, in writing, all relevant information in a prescribed format;

(17) ability to converse orally and in written form in English with coworkers and hospital staff as to status of patient;

(18) good manual dexterity, with ability to perform all tasks related to the highest quality of patient care;

(19) ability to assume a variety of

postural positions to carry out emergency and non-emergency patient care, including light extrication; from crawling, kneeling, squatting, twisting, turning, bending, to climbing stairs and ladders, and the ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and

(20) ability to work in low light, confined spaces and other dangerous environments.

#### **C. Competency areas:**

**(1) Licensed EMS first responder:** Must demonstrate competency handling emergencies utilizing all basic life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of first responder, to include the ability to demonstrate competency for all skills and procedures currently approved for the first responder, as identified by the current scope of practice document.

**(2) Emergency medical technician-basic:** Must demonstrate competency handling emergencies utilizing all basic life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of EMT-basic, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-basic, as identified by the current scope of practice document.

**(3) Emergency medical technician-intermediate:** Must demonstrate competency handling emergencies utilizing all basic life support and intermediate life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of EMT-intermediate, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-intermediate, as identified by the current scope of practice document.

**(4) Emergency medical technician-paramedic:** Must demonstrate competency handling emergencies utilizing all basic life support and advanced life support equipment and skills in accordance with all behavioral objectives of an approved New Mexico curriculum of EMT-paramedic, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-paramedic, as identified by the current scope of practice document.

#### **D. Description of tasks for all EMS levels:**

(1) Receives call from dispatcher, responds verbally to emergency calls, reads maps, may drive emergency vehicle to emergency site, uses most expeditious route, and observes traffic ordinances and regulations.

(2) Determines nature and extent of illness or injury, takes pulse, blood pressure, visually observes changes in skin color, auscultate breath sounds, makes determination regarding patient status, establishes priority for emergency care, may administer intravenous drugs or fluid replacement as authorized by level of licensure and scope of practice.

(3) May use equipment and other devices and procedures as authorized by level of licensure and scope of practice.

(4) Assists in lifting, carrying, and transporting patient to an ambulance and to a medical facility.

(5) Reassures patients and bystanders and searches for medical identification emblem to aid in care.

(6) Extricates patient from entrapment, assesses extent of injury, uses prescribed techniques and appliances, radio dispatcher for additional assistance or services, provides light rescue service if required and trained, provides additional emergency care following service established protocols.

(7) Complies with regulations in handling deceased, notifies authorities, arranges for protection of property and evidence at scene.

(8) Determines appropriate facility to which patient will be transported, report nature and extent of injuries or illness to the facility, asks for direction from hospital physician or emergency department staff.

(9) Observes patient in route and administers care as directed by physician or service-established protocols.

(10) Identifies diagnostic signs that require communication with facility.

(11) Assists in removing patient/s from ambulance and into emergency facility.

(12) Reports verbally, and in writing, observations about and care of patient at the scene, en-route to facility, and to the receiving facility.

(13) Provides assistance to emergency department staff as required.

(14) Replaces supplies, sends used supplies for sterilization, checks all equipment for future readiness, maintains ambulance in operable condition, ensures ambulance cleanliness and orderliness of equipment and supplies, decontaminates vehicle interior, determines vehicle readiness by checking oil, gas, water in battery and radiator, and tire pressure, maintains familiarity with all specialized equipment.

[7.27.2.18 NMAC - Rp, 7.27.2.18 NMAC, 12/15/2008]

#### **History of 7.27.2 NMAC:**

##### **Pre-NMAC History:**

Material in this part was derived from that

previously filed with the commission of public records - state records center and archives as:

DOH Regulation 95-04 (CHSD), Regulations Governing the Certification and Licensing of Emergency Services Personnel, filed 10-25-95.

**History of Repealed Material:** 7 NMAC 27.2, Certification and Licensing of Emergency Medical Services Personnel (filed 11-26-96) repealed 09/13/01.

7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 08/30/01) repealed 01/01/06.

7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 12/16/05) repealed 12/15/2008.

**Other History:**

DOH Regulation 95-04 (CHSD), Regulations Governing The Certification and Licensing of Emergency Medical Services Personnel (filed 10-25-95), was renumbered and reformatted to and replaced by 7 NMAC 27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel, effective 01/01/97.

7 NMAC 27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 11-26-96) was replaced by 7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel, effective 09/13/01.

7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 08/30/01) was replaced by 7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel, effective 01/01/06.

7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 12/16/05) was replaced by 7.27.2 NMAC, Licensing of Emergency Medical Services Personnel, effective 12/15/2008.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
PUBLIC HEALTH DIVISION**

**TITLE 7 HEALTH  
CHAPTER 34 MEDICAL USE OF  
MARIJUANA  
PART 3 REGISTRY IDENTIFICATION CARDS**

**7.34.3.1 ISSUING AGENCY:** New Mexico Department of Health, Public Health Division.  
[7.34.3.1 NMAC - N, 12/15/2008]

**7.34.3.2 SCOPE:** This rule governs the issuance of registry identification cards to qualified patients and primary caregivers as defined by the Lynn and Erin

Compassionate Use Act, 26-2B-3(F) and (G) NMSA 1978. This rule addresses the department's actions in the prevention of non-medical marijuana use in an effort to prevent abuse or misuse of the act and its purpose. All requirements contained herein are necessary prerequisites to the state's ability to distinguish between authorized use under this act and unauthorized use under the state's criminal laws.

[7.34.3.2 NMAC - N, 12/15/2008]

**7.34.3.3 STATUTORY**

**AUTHORITY:** The requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the general authority granted under Section 9-7-6 (E) NMSA 1978, as amended, and the authority granted under Sections 24-1-2(D), 24-1-3(I) and 24-1-5, NMSA 1978, of the Public Health Act as amended, Section 53-8-1 et seq. NMSA 1978, and the Lynn and Erin Compassionate Use Act. Although federal law currently prohibits any use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont and Washington permit the medical use and cultivation of marijuana. New Mexico joins this effort to provide for the health and welfare of its citizens. New Mexico adopts these regulations to accomplish the purpose of the Lynn and Erin Compassionate Use Act as stated in Section 26-2B-2 NMSA 1978, "to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments," while at the same time ensuring proper enforcement of any criminal laws for behavior that has been deemed illicit by the state.

[7.34.3.3 NMAC - N, 12/15/2008]

**7.34.3.4 DURATION:** Permanent.

[7.34.3.4 NMAC - N, 12/15/2008]

**7.34.3.5 EFFECTIVE DATE:** 12/15/2008, unless a later date is cited at the end of a section.

[7.34.3.5 NMAC - N, 12/15/2008]

**7.34.3.6 OBJECTIVE:** The objective of this rule is to ensure the safe use and possession of marijuana for individuals living with debilitating medical conditions, and the safe possession and administration of marijuana for medical use to those individuals by primary caregivers, as mandated under the Lynn & Erin Compassionate Use Act Sections 26-2B-1 et seq., (NMSA 2007).

[7.34.3.6 NMAC - N, 12/15/2008]

**7.34.3.7 DEFINITIONS:**

**A. "Act"** means the Lynn and Erin Compassionate Use Act.

**B. "Adequate supply"** means an amount of marijuana, derived solely from an intrastate source and in a form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver, that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of marijuana for a period of three (3) months. An adequate supply shall not exceed six (6) ounces of useable marijuana, and with a producer license only, four (4) mature plants and twelve (12) seedlings, or a three (3) month supply of topical treatment. An amount greater than six (6) ounces of useable marijuana may be allowed upon proof of special need as evidenced by a practitioner letter explaining why a larger dose is indicated. Any such allowance shall be reviewed for approval by a medical director designated by the department after consultation with the advisory board created under the act.

**C. "Administrative review committee"** means an intra-department committee appointed by the secretary, selected for the purposes of reviewing qualified patients or primary caregivers application denial, licensed producer denial, or the imposition of a summary suspension. The administrative review committee shall consist of the medical director, the medical cannabis program manager, a social worker, registered nurse and attorney.

**D. "Administrative withdrawal"** means the procedures for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.

**E. "Adverse action"** includes the denial of any application, immediate revocation of the qualified patient or primary caregiver's registry identification card, licensed producer revocation, referral to state or local law enforcement and loss of all lawful privileges under the act.

**F. "Applicant"** means any person applying to participate in the medical use of marijuana program as a qualified patient, primary caregiver or licensed producer.

**G. "Cannabis"** see "marijuana."

**H. "Debilitating medical condition"** means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue

of the spinal cord, with objective neurological indication of intractable spasticity;

- (5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admitted into hospice care in accordance with rules promulgated by the department; or

(8) any other medical condition, medical treatment or disease as approved by the department.

**I. "Deficiency"** means a violation of or failure to comply with a provision of these requirements.

**J. "Department"** means the New Mexico department of health.

**K. "Division"** means the public health division of the New Mexico department of health.

**L. "Facility"** means any building or grounds licensed for the production, possession and distribution of marijuana in any form.

**M. "Intrastate"** means existing or occurring within the state boundaries of New Mexico.

**N. "License"** means the document issued by the department pursuant to this rule granting the legal right to produce and distribute medical marijuana for a specified period of time not to exceed one (1) year.

**O. "Licensed producer"** means any person or entity licensed pursuant to Medical Use of Marijuana, Licensing Requirements for Producers, Production Facilities and Distribution, 7.34.4.1 to 7.34.4.19 NMAC (12/15/2008).

**P. "Licensing Authority"** means the medical use of marijuana program of the department.

**Q. "Licensure"** means the process by which the department grants permission to an applicant to produce or possess marijuana.

**R. "Marijuana"** means all parts of the plant *cannabis sativa*, family *cannabinaceae*, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.

**S. "Mature plant"** means a harvestable female marijuana plant that is flowering and is greater than twelve inches in height and twelve inches in diameter.

**T. "Medical cannabis program"** means the administrative body of the New Mexico public health division charged with the management of the medical marijuana program, including the issuance of registry identification cards, licensing of producers and distribution systems, administration of public hearings and administration of informal administrative reviews.

**U. "Medical director"** means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible

for enrollment in the program.

**V. "Minor"** means an individual less than eighteen (18) years of age.

**W. "Paraphernalia"** means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling or otherwise introducing into the human body marijuana.

**X. "Personnel record"** means an individual personnel employment file of any employee of a licensed producer containing, but not limited to, the employee's education, work history, training, licensure, certification, performance evaluation, salary, job title and description.

**Y. "Policy"** means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.

**Z. "Practitioner"** means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Section 30-31-1 et seq. NMSA 1978.

**AA. "Primary caregiver"** means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by a qualified patient or the patient's practitioner as being necessary to take responsibility for managing the well-being of the patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act (26-2B-1 NMSA 1978).

**BB. "Private entity"** means a private, non-profit organization that meets the requirements under this rule for licensure as a producer and distributor of marijuana.

**CC. "Qualified patient"** means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the medical use of marijuana registry identification cards rule.

**DD. "Record review"** means an informal non-adversarial administrative review of written documentation submitted by an applicant who has been denied status as a qualified patient or a primary caregiver, one who has been denied a license to produce and distribute marijuana, or the process for expedited review of a summary suspension.

**EE. "Registry identification card"** means a document issued by the department which identifies a qualified patient authorized to engage in the use of marijuana for a debilitating medical condition or a document issued by the department which identifies a primary caregiver author-

ized to engage in the intrastate possession and administration of marijuana for the sole use of the qualified patient.

**FF. "Representative"** means an individual designated as the qualified patient's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, Section 24-7A-1 et seq. NMSA 1978.

**GG. "Secretary"** means the secretary of the New Mexico department of health.

**HH. "Secure grounds"** means a facility that provides a safe environment to avoid loss or theft.

**II. "Security alarm system"** means any device or series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect an unauthorized intrusion.

**JJ. "Security policy"** means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, personal safety and crime prevention techniques.

**KK. "Seedling"** means a marijuana plant that has no flowers and is less than twelve (12) inches in height and less than twelve (12) inches in diameter. A seedling must meet all three (3) criteria set forth above.

**LL. "Topical treatment"** means a transcutaneous therapeutic marijuana extract formulation comprising of water, short carbon chains alcohol, dimethylsulfoxide, polyethylene glycol, polypropylene glycol, glycerin, mineral oil and mixtures thereof.

**MM. "Usable marijuana"** means the dried leaves and flowers of the female marijuana plant, any mixture or preparation thereof, including ointments, but does not include the seeds, stalks, or and roots of the plant.

[7.34.3.7 NMAC - N, 12/15/2008]

#### 7.34.3.8 Q U A L I F I E D PATIENT AND PRIMARY CAREGIVER REGISTRY IDENTIFICATION CARD APPLICATION REQUIREMENTS:

**A.** The department shall issue a registry identification card to an applicant for the purpose of participating in the medical cannabis program upon the written certification of the applicant's practitioner and supporting application documents. The following information shall be provided in the participant enrollment form submitted to the department in order for a registry identification card to be obtained

and processed.

(1) An attached original medical provider certification for patient eligibility form shall contain:

(a) the name, address and telephone number of the practitioner;

(b) the practitioner's clinical licensure;

(c) the patient applicant's name and date of birth;

(d) the medical justification for the practitioner's certification of the patient's debilitating medical condition;

(e) the practitioner's signature and date;

(f) the name, address and date of birth of the applicant;

(g) the name, address and telephone number of the applicant's practitioner;

(h) the name, address and date of birth of the applicant's primary caregiver(s), if any;

(i) a reasonable xerographic copy of the applicant's New Mexico driver's license photograph or comparable state of New Mexico or federal issued photo identification card verifying New Mexico residence;

(j) documented parental consent, if applicable, to the applicant;

(k) the applicant's debilitating medical condition;

(l) the length of time the applicant has been under the care of the practitioner providing the medical provider certification for patient eligibility;

(m) the applicant's signature and date; and

(n) a signed consent for release of medical information related to the patient's debilitating medical condition, on a form provided by the medical cannabis program.

**B. Qualified minor:** The department shall issue a registry identification card to an applicant under the age of eighteen (18) for the purpose of participating in the medical cannabis program upon the medical provider certification for patient eligibility from the applicant's practitioner and supporting application documents required under this rule. The qualified minor parental consent form shall require the following information to be provided:

(1) written documentation that the applicant's practitioner has explained the potential risks and benefits of the use of marijuana to both the applicant and parent or representative of the applicant; and

(2) the applicant's parent or representative consents to:

(a) allow the applicant's use of marijuana;

(b) serve as the applicant's primary caregiver; and

(c) control the acquisition of the marijuana, dosage and the frequency of the

use of marijuana by the applicant.

**C. Primary caregiver:**

The department shall issue a registry identification card to a primary caregiver applicant for the purpose of managing the well-being of up to four (4) qualified patients pursuant to the requirements of this rule upon the completion and approval of the primary caregiver application form available from the medical cannabis program. In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical cannabis program:

(1) birth certificate verifying that the applicant is at least eighteen (18) years of age;

(2) written approval by the qualified patient(s) and the qualified patient(s)' practitioner(s) authorizing responsibility for managing the well-being of a qualified patient(s) with respect to the use of marijuana;

(3) the name(s), address(es), telephone number(s) and date of birth of the qualified patient(s);

(4) the name, address and telephone number of the qualified patient's practitioner

(5) the name, address, telephone number of the applicant; and

(6) the applicant's signature and date.

**D. Primary caregiver application requirements and prohibitions:**

(1) Criminal history screening requirements.

(a) All primary caregiver applicants are required to consent to a nationwide and statewide criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the primary caregiver applicant.

(b) Individuals convicted of a felony violation of Section 30-31-20, 30-31-21, or 30-31-22 NMSA 1978 are prohibited from serving as a primary caregiver. If an applicant has been convicted of a felony violation of Section 30-31-1 et seq. NMSA 1978, other than Sections 30-31-20 through 30-31-22, and the final completion of the entirety of the associated sentence of such felony conviction has been less than three (3) years from the date of the applicant's application as a primary caregiver, then the applicant is prohibited from being a primary caregiver. The applicant and qualified patient shall be notified by registered mail of his or her disqualification from being a primary caregiver. If the applicant has been convicted of more than one (1) felony violation of Section 30-31-1 et seq. NMSA 1978, the applicant and qualified patient shall be notified by registered or certified

mail that the applicant is permanently prohibited from being a primary caregiver and cannot be issued a medical use marijuana registry identification card.

(2) Prohibitions: A qualified patient shall only reimburse their primary caregiver for the cost of travel, supplies or utilities associated with the possession of medical use marijuana by the primary caregiver for the qualified patient. No other cost associated with the possession of medical use marijuana by the primary caregiver for the qualified patient, including the cost of labor, shall be reimbursed or paid. All marijuana possessed by a primary caregiver for a qualified patient is the property of the qualified patient.

[7.34.3.8 NMAC - N, 12/15/2008]

**7.34.3.9 REGISTRY IDENTIFICATION CARDS:**

**A. Department inquiry:**

(1) The department may verify information on each application and accompanying documentation by the following methods:

(a) contacting each applicant by telephone, mail, or if proof of identity is uncertain, the department shall require a face-to-face meeting and the production of additional identification materials;

(b) when applicable, contacting a minor's parent or legal representative;

(c) contacting the New Mexico medical board to verify that the practitioner is licensed to practice in New Mexico and is in good standing; and

(d) contacting the practitioner to obtain further documentation that the applicant's medical diagnosis and medical condition qualify the applicant for enrollment in the medical use cannabis program.

(2) Upon verification of the information contained in an application submitted pursuant to this subsection, the department shall approve or deny an application within thirty (30) calendar days of receipt.

**B. Department registry identification card:**

The department shall issue a registry identification card within five (5) business days of approving an application. A registry identification card shall contain an eight (8) digit number maintained by the division which identifies the qualified patient or primary caregiver. Unless renewed at an earlier date, suspended or revoked, a registry identification card shall be valid for a period of one (1) year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date.

**C. Supplemental information requirement:**

A qualified patient or primary caregiver who possesses a registry identification card shall notify the department of any change in the person's name,

address, qualified patient's practitioner status, qualified patient's primary caregiver status, or change in status of the qualified patient's debilitating medical condition, within thirty (30) calendar days of the change. An extension shall be granted by the medical cannabis program coordinator upon the showing of good cause. Failure to provide notification of any change shall result in the immediate revocation of the registry identification card and all lawful privileges provided under the act.

**D. Registry identification card application denial:** The medical director or designee shall deny an application if the applicant fails to provide the information required, if the department determines that the information provided is false or if the patient does not have a debilitating medical condition eligible for enrollment in the program as determined by the medical director. A person whose application has been denied shall not reapply for six (6) months from the date of the denial, unless otherwise authorized by the department, and is prohibited from all lawful privileges provided by this rule and act. A person whose application as a qualified patient or primary caregiver has been denied may request a record review.

**E. Registry identification card renewal application:** Each registry identification card issued by the department is valid for one (1) year from the date of issuance. A qualified patient or primary caregiver shall apply for a registry identification card renewal no less than thirty (30) calendar days prior to the expiration date of the existing registry identification card in order to prevent interruption of possession of a valid (unexpired) registry identification card.

**F. Non-transferable registration of registry identification card:** A registry identification card shall not be transferred by assignment or otherwise to other persons or locations. Any attempt shall result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and act.

**G. Automatic expiration of registry identification card by administrative withdrawal:** Upon request the qualified patient or primary caregiver shall discontinue the medical cannabis program by an administrative withdrawal. A qualified patient or primary caregiver that intends to seek an administrative withdrawal shall notify the licensing authority no later than thirty (30) calendar days prior to withdrawal.

**H. Lost or stolen registry identification card:** The qualified patient or primary caregiver shall report a lost or stolen registry identification card to the medical cannabis program within twenty-

four (24) hours after discovery. An extension shall be granted by the medical cannabis program coordinator upon the showing of good cause. Upon notification, the medical cannabis program shall issue a new registry identification card. Unless documentation in the initial application has changed, the qualified patient or primary caregiver shall not be required to submit a new application.

[7.34.3.9 NMAC - N, 12/15/2008]

#### **7.34.3.10 DENIAL OF AN INITIAL REGISTRY IDENTIFICATION CARD:**

**A. Record review:** All qualified patient applicants or primary caregivers whose initial application for a registry identification card has been denied may request a record review from the department.

**B. Procedure for requesting informal administrative review:**

(1) An applicant given notice of an application denial may submit a written request for a record review. To be effective, the written request shall:

(a) be made within thirty (30) calendar days, as determined by the postmark, from the date of the denial notice issued by the department;

(b) be properly addressed to the medical cannabis program;

(c) state the applicant's name, address, and telephone numbers;

(d) state the applicant's proposed status as a qualified patient or primary caregiver;

(e) if the applicant is a potential primary caregiver, state the anticipated date of which service shall commence;

(f) provide a brief narrative rebutting the circumstances of the application denial, and

(g) if applicable, provide supplemental documentation from the applicant's practitioner supporting the debilitating medical condition as eligible for the program.

(2) If the applicant wishes to submit additional documentation for consideration, such additional documentation must be included with the request for a record review.

**C. Record review proceeding:** The review proceeding is intended to be an informal non-adversarial administrative review of written documentation. It shall be conducted by an administrative review committee designated for that purpose by the division. In cases where the administrative review committee finds the need for additional or clarifying information, the review committee shall request that the applicant supply such additional infor-

mation within the time set forth in the committees' request.

#### **D. Final determination:**

(1) Content: The administrative review committee shall render, sign and enter a written decision setting forth the reasons for the decision and the evidence upon which the decision is based.

(2) Effect: The decision of the administrative review committee is the final decision of the informal administrative review proceeding.

(3) Notice: A copy of the decision shall be mailed by registered or certified mail to the applicant.

#### **E. Judicial review:**

Judicial review of the administrative review committee's final decision is permitted to the extent provided by law. The party requesting the appeal shall bear the cost of such appeal.

[7.34.3.10 NMAC - N, 12/15/2008]

#### **7.34.3.11 MONITORING AND CORRECTIVE ACTIONS:**

##### **A. Monitoring:**

(1) The department or its designee may perform on-site assessments of a qualified patient or primary caregiver to determine compliance with these rules. The department may enter the premises of a qualified patient or primary caregiver during business hours for purposes of monitoring and compliance. Twenty-four (24) hours notice will be provided to the qualified patient or primary caregiver prior to an on-site assessment except when the department has a reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the department's ability to enforce these regulations.

(2) All qualified patients or primary caregivers shall provide the department or the department's designee immediate access to any material and information necessary for determining compliance with these requirements.

(3) Failure by the qualified patient or primary caregiver to provide the department access to the premises or information may result in the revocation of the qualified patient or primary caregiver license and referral to state law enforcement.

(4) Any failure to adhere to these rules documented by the department during monitoring may result in sanction(s), including suspension, revocation, non-renewal or denial of licensure and referral to state or local law enforcement.

(5) The department shall refer credible criminal complaints against a qualified patient or primary caregiver to the appropriate New Mexico state or local authorities.

**B. Corrective action:**

(1) If violations of these requirements are cited as a result of monitoring, the qualified patient or primary caregiver shall be provided with an official written report of the findings within seven (7) business days following the monitoring visit.

(2) Unless otherwise specified by the department, the qualified patient or primary caregiver shall correct the violation within five (5) calendar days of receipt of the official written report citing the violation(s).

(3) The violation shall not be deemed corrected until the department verifies in writing within seven (7) calendar days of receiving notice of the corrective action that the corrective action is satisfactory.

(4) If the violation has not been corrected, the department may issue a notice of contemplated action to revoke the qualified patient or primary caregiver license.

**C. Suspension of license without prior hearing:** In accordance with the Public Health Act, Section 24-1-5 (H) NMSA 1978, if immediate action is required to protect the health and safety of the general public, the qualified patient or primary caregivers, the department may suspend the qualified patient or primary caregiver license without notice.

(1) A qualified patient or primary caregiver whose license has been summarily suspended is entitled to a record review not later than thirty (30) calendar days after the license was summarily suspended.

(2) The record review requested subsequent to a summary suspension shall be conducted by the administrative review committee.

(3) The administrative review committee shall conduct the record review on the summary suspension by reviewing all documents submitted by both licensee and the department.

(4) The sole issue at a record review on a summary suspension is whether the licensee's license shall remain suspended pending a final adjudicatory hearing and ruling.

(5) a licensee given notice of summary suspension by the division may submit a written request for a record review. To be effective, the written request shall:

(a) be made within thirty (30) calendar days, as determined by the postmark, from the date of the notice issued by the department;

(b) be properly addressed to the medical cannabis program;

(c) state the applicant's name, address, and telephone numbers;

(d) provide a brief narrative rebutting the circumstances of the suspension, and

(e) additional documentation must be included with the request for a record review.

[7.34.3.11 NMAC - N, 12/15/2008]

**7.34.3.12 SUMMARY SUSPENSION, REVOCATION AND APPEAL PROCESS:**

**A.** Participation in a medical cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from:

(1) criminal prosecution or civil penalties for activities not authorized in this rule and act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or

(3) criminal prosecution or civil penalty for possession, distribution or transfers of marijuana or use of marijuana;

(a) in a school bus or public vehicle;

(b) on school grounds or property;

(c) in the workplace of the qualified patient's or primary caregiver's employment;

(d) at a public park, recreation center, youth center or other public place;

(e) to a person not approved by the department pursuant to this rule;

(f) outside New Mexico or attempts to obtain or transport marijuana from outside New Mexico; or

(g) that exceeds the allotted amount of useable medical use marijuana.

**B. Revocation of registry identification card:** Violation of any provision of this rule may result in either the summary suspension of the qualified patient's or primary caregiver's registry identification card, or a notice of contemplated action to suspend or revoke the qualified patient's or primary caregiver's registry identification card, and all lawful privileges under the act.

**C. Grounds for revocation or suspension of license, denial of renewal application for license. A license may be revoked or suspended, and a renewal application may be denied for:**

(1) failure to comply with any provisions of these requirements;

(2) failure to allow a monitoring visit by authorized representatives of the department;

(3) the discovery of repeated violations of these requirements during monitoring visits.

**D. Request for hearing:** A qualified patient or primary caregiver whose license has been summarily suspended, or who has received a notice of contemplated action to suspend or revoke, may request a hearing, in addition to a request

for a record review, for the purpose of review of such action. The appellant shall file the request for hearing within thirty (30) calendar days of the date the action is taken or the notice of contemplated action is received. The request shall include the following:

(1) a statement of the facts relevant to the review of the action;

(2) a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;

(3) a statement of the arguments that the appellant considers relevant to the review of the action; and

(4) any other evidence considered relevant.

**E. Hearing process:**

(1) All formal adjudicatory hearings held pursuant to this regulation shall be conducted by a hearing examiner duly appointed by the secretary.

(2) Except for telephonic hearings, hearings shall be conducted in Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

(3) All hearings held pursuant to this section shall be open to the public.

(4) The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter. The decision as to the type of recording shall be at the discretion of the department.

(5) Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

**F. The department shall schedule and hold the hearing as soon as practicable, however; in any event no later than sixty (60) calendar days from the date the department receives the appellant's request for hearing. The hearing examiner shall extend the sixty (60) day time period upon motion for good cause shown or the parties shall extend the sixty (60) day time period by mutual agreement. The department shall issue notice of hearing, which shall include:**

(1) a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short and plain statement of the matters of fact and law asserted;

(4) notice to any other parties to give prompt notice of issues controverted in fact or law; and

(5) all necessary telephone numbers if a telephonic hearing shall be conducted.

**G. All parties shall be given the opportunity to respond and present evidence and argument on all rel-**



**evant issues.****H. Record of proceeding:**

The record of the proceeding shall include the following:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any action recommended by the hearing examiner.

**I. A party may request a transcription of the proceedings:** The party requesting the transcript shall endure the cost of transcription.

**J. Procedures and evidence:**

(1) Any party shall be represented by a person licensed to practice law in New Mexico or an individual appellant may represent him or herself.

(2) The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted and such evidence shall be sufficient in itself to support a finding if the evidence is reliable, regardless of the existence of any statutory or common law rule that shall make admission of such evidence improper in a civil action. Irrelevant, immaterial or unduly repetitious evidence shall be excluded at a party's request or on the hearing examiner's own initiative.

(3) Documentary evidence shall be received in evidence in the form of true copies of the original.

(4) Documentary and other physical evidence shall be authenticated or identified by any reasonable means that shows that the matter in question is what the proponent claims it to be.

(5) The experience, technical competence and specialized knowledge of the hearing examiner, the department or the department's staff shall be used in the evaluation of evidence.

(6) Evidence on which the hearing examiner shall base his or her decision is limited to the following:

(a) all evidence, including any records, investigation reports and documents in the department's possession of which the department desires to avail itself as evidence in making a decision that is offered and made a part of the record of the proceeding; and

(b) testimony and exhibits introduced by the parties.

**K.** The record shall include all briefs, proposed findings and exceptions and shall show the ruling on

each finding, exception or conclusion presented.

**L.** A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five (5) business days from the scheduled hearing date to insure the hearing examiner and other parties receive the documents prior to the hearing.

**M. Conduct of proceeding:** Unless the hearing examiner reasonably determines a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:

(1) the appellant shall present an opening statement on the merits and the appellee shall make a statement of the defense or reserve the statement until presentation of that party's case;

(2) after the opening statements, if made, the appellant shall present its case in chief in support of the appellant's petition;

(3) upon the conclusion of the appellant's case, the appellee shall present its case in defense;

(4) upon conclusion of the appellee's case, the appellant shall present rebuttal evidence;

(5) after presentation of the evidence by the parties, the appellant shall present a closing argument; the appellee then shall present its closing argument and the appellant shall present a rebuttal argument; and

(6) thereafter, the matter shall be submitted for recommendation by the hearing examiner.

**N. Burden of proof:** The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the department or an agent of the department shall be reversed or modified.

**O. Continuances:** The hearing examiner shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least ten (10) calendar days before the hearing date.

**P. Telephonic hearings:**

(1) Any party requesting a telephonic hearing shall do so within ten (10) business days of the date of the notice. Immediately after the parties agree to conduct the hearing by telephone; notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

(2) Any party that has agreed to a telephonic hearing, but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later

than ten (10) calendar days before the scheduled date of the hearing. The decision to grant or deny the request for an in-person hearing shall be at the discretion of the hearing examiner for good cause shown. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. Should the hearing examiner grant the request, the hearing shall be rescheduled to a time convenient for all parties. Should the hearing examiner deny the request, the telephonic hearing shall proceed as scheduled.

(3) The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine available so that all shall hear the proceedings and documents shall be transmitted between witnesses and the hearing examiner.

(4) The appellee shall initiate the telephone call. The appellant is responsible for ensuring the telephone number to the appellant's location for the telephonic hearing is accurate and the appellant is available at said telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the petitioner to a default judgment.

(5) The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

**Q. Recommended action and final decision:**

(1) At the request of the hearing examiner or upon motion by either party granted by the hearing examiner and before the hearing examiner recommends action by the secretary, the parties shall submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner holds the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty-five (45) calendar days from the date of continuance.

(2) No more than thirty (30) calendar days after completion of the hearing, the hearing examiner shall prepare a written

decision containing his or her recommendation of action to be taken by the secretary. The recommendation shall propose to sustain, modify or reverse the initial decision of the department or the department's agent.

(3) The secretary shall accept, reject or modify the hearing examiner's recommendation no later than ten (10) calendar days after receipt of the hearing examiner's recommendation. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons thereof, on all material issues of fact, law or discretion involved, together with the specific action taken to sustain, modify or reverse the initial decision of the department or the department's agent. Service shall be made by registered or certified mail.

(4) The final decision or order shall be public information and shall become a part of the record.

[7.34.3.12 NMAC - N, 12/15/2008]

**7.34.3.13 EXEMPTION FROM STATE CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF MARIJUANA:** Possession of, or application for, a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for any governmental agency to search the person or property of the person possessing or applying for the card.

**A.** A qualified patient shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the use of marijuana by the state of New Mexico, or political subdivision thereof, if the quantity of marijuana does not exceed an adequate supply.

**B.** A primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of marijuana by the state of New Mexico, or political subdivision thereof, for the medical use by the qualified patient if the quantity of marijuana does not exceed an adequate supply.

**C.** A qualified patient or a primary caregiver shall be granted the full legal protections provided under 7.34.3.12 NMAC by the state of New Mexico if the qualified patient or primary caregiver is in possession of a registry identification card. If the qualified patient or primary caregiver is not in possession of a registry identification card, the qualified patient or primary caregiver shall be given an opportunity to produce the registry identification card before any arrest or criminal charges or other penalties are initiated.

**D.** A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege by the state of New Mexico, or political subdivision thereof, for recom-

mending the use of marijuana or providing written certification for the use of marijuana pursuant to this rule and act.

**E.** Any property interest that is possessed, owned or used in connection with the use of marijuana, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of New Mexico state or local law enforcement officials. Any such property interest shall not be forfeited under any New Mexico state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Marijuana, paraphernalia or other property seized from a qualified patient or primary caregiver in connection with the claimed use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or primary caregiver is entitled to the protections of the provisions of this rule and act, as shall be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

**F.** A person shall not be subject to arrest or prosecution by the state of New Mexico, or political subdivision thereof, for a marijuana related offense for being in the presence of the use of marijuana as permitted under the provisions of this rule and act.

[7.34.3.13 NMAC - N, 12/15/2008]

**7.34.3.14 QUALIFIED PATIENT AND PRIMARY CAREGIVER CONFIDENTIALITY:** The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names on the list shall be confidential and not subject to disclosure, except:

**A.** to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of this rule and act;

**B.** to authorized employees of New Mexico state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of a registry identification card; or

**C.** as provided in the federal Health Insurance Portability and Accountability Act of 1996.

[7.34.3.14 NMAC - N, 12/15/2008]

**7.34.3.15 DISPOSAL OF UNUSED MARIJUANA:** Unused marijuana in the possession of the qualified patient or caregiver that is no longer needed for the patient's needs may be disposed of by transporting the unused portion to a state or local law enforcement office.

[7.34.3.15 NMAC - N, 12/15/2008]

**7.34.3.16 ASSESSMENT REPORT:** The department shall evaluate the implementation of the Lynn and Erin Compassionate Use Act and regulations issued pursuant to that act and provide a report to the Secretary of the department within one year of the effective date of these regulations. In performing its evaluation, the department shall focus on whether the needs of qualified patients are being met by the department's administration of the act and whether there is a demonstrable need for a state run production and distribution facility. The department's assessment report shall be issued every two years, shall be a public document, and must contain de-identified data upon which the assessment is based.

[7.34.3.16 NMAC - N, 12/15/2008]

**7.34.3.17 SEVERABILITY:** If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of these rules shall not interfere with the remaining protections provided by these rules and the act.

[7.34.3.17 NMAC - N, 12/15/2008]

**HISTORY OF 7.34.3 NMAC:**  
[RESERVED]

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**NEW MEXICO  
DEPARTMENT OF HEALTH  
PUBLIC HEALTH DIVISION**

**TITLE 7 HEALTH  
CHAPTER 34 MEDICAL USE OF MARIJUANA  
PART 4 LICENSING  
REQUIREMENTS FOR PRODUCERS,  
PRODUCTION FACILITIES AND DISTRIBUTION**

**7.34.4.1 ISSUING AGENCY:** New Mexico Department of Health, Public Health Division.

[7.34.4.1 NMAC - N, 12/15/2008]

**7.34.4.2 SCOPE:** This rule applies to all licensed producers of medical use marijuana, defined in Section 26-2B-3 (D) NMSA 1978 as "any person or association of persons within New Mexico that the department determines to be qualified to produce, possess, distribute and dispense cannabis pursuant to the Lynn and Erin Compassionate Use Act and that is licensed by the department." This rule addresses the department's actions in the prevention of non-medical marijuana use, in an effort to prevent abuse or misuse of the act and its purpose. All requirements contained herein are necessary prerequisites to the state's ability to distinguish between authorized

use under this act and unauthorized use under the state's criminal laws.

[7.34.4.2 NMAC - N, 12/15/2008]

#### 7.34.4.3 STATUTORY

**AUTHORITY:** The requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the general authority granted under Section 9-7-6 (E) NMSA 1978, as amended, and the authority granted under Sections 24-1-2(D), 24-1-3(I) and 24-1-5, NMSA 1978, of the Public Health Act, as amended, Section 53-8-1 et seq. NMSA 1978, and the Lynn and Erin Compassionate Use Act. Although federal law currently prohibits any use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont and Washington permit the medical use and cultivation of marijuana. New Mexico joins this effort to provide for the health and welfare of its citizens. New Mexico adopts these regulations to accomplish the purpose of the Lynn and Erin Compassionate Use Act as stated in Section 26-2B-2, NMSA 1978, "to allow for the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments," while at the same time ensuring proper enforcement of any criminal laws for behavior that has been deemed illicit by the state.

[7.34.4.3 NMAC - N, 12/15/2008]

#### 7.34.4.4 DURATION: Permanent.

[7.34.4.4 NMAC - N, 12/15/2008]

**7.34.4.5 EFFECTIVE DATE:** 12/15/2008, unless a later date is cited at the end of a section..

[7.34.4.5 NMAC - N, 12/15/2008]

**7.34.4.6 OBJECTIVE:** Ensuring the safe production, distribution and dispensing of marijuana for the sole purpose of medical use for alleviating symptoms caused by debilitating medical conditions in a regulated system.

[7.34.4.6 NMAC - N, 12/15/2008]

#### 7.34.4.7 DEFINITIONS:

**A. "Act"** means the Lynn and Erin Compassionate Use Act.

**B. "Adequate supply"** means an amount of marijuana, derived solely from an intrastate source and in a form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's primary caregiver, that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of marijuana for a period of three (3) months. An adequate

supply shall not exceed six (6) ounces of useable marijuana, and with a producer license only, four (4) mature plants and twelve (12) seedlings, or a three (3) month supply of topical treatment. An amount greater than six (6) ounces of useable marijuana may be allowed upon proof of special need as evidenced by a practitioner letter explaining why a larger dose is indicated. Any such allowance shall be reviewed for approval by a medical director designated by the department after consultation with the advisory board created under the act.

**C. "Administrative review committee"** means an intra-department committee appointed by the secretary, selected for the purposes of reviewing qualified patients or primary caregivers application denial, licensed producer denial, or the imposition of a summary suspension. The administrative review committee shall consist of the medical director, medical cannabis program manager, a social worker, registered nurse and attorney.

**D. "Administrative withdrawal"** means the procedures for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.

**E. "Adverse action"** includes the denial of any application, immediate revocation of the qualified patient or primary caregiver's registry identification card, licensed producer revocation, referral to state or local law enforcement and loss of all lawful privileges under the act.

**F. "Applicant"** means any person applying to participate in the medical use of marijuana program as a qualified patient, primary caregiver or licensed producer.

**G. "Cannabis"** see "marijuana."

**H. "Debilitating medical condition"** means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admittance into hospice care in accordance with rules promulgated by the department; or
- (8) any other medical condition, medical treatment or disease as approved by the department.

**I. "Deficiency"** means a violation of or failure to comply with a provision of these requirements.

**J. "Department"** mean

the New Mexico department of health.

**K. "Division"** means the public health division of the New Mexico department of health.

**L. "Facility"** means any building or grounds licensed for the production, possession and distribution of marijuana in any form.

**M. "Intrastate"** means existing or occurring within the state boundaries of New Mexico.

**N. "License"** means the document issued by the department pursuant to this rule granting the legal right to produce and distribute medical marijuana for a specified period of time not to exceed one (1) year.

**O. "Licensed producer"** means any person or entity licensed by this rule.

**P. "Licensing Authority"** means the medical cannabis program of the department.

**Q. "Licensure"** means the process by which the department grants permission to an applicant to produce or possess marijuana.

**R. "Marijuana"** means all parts of the plant cannabis sativa, family cannabaceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.

**S. "Mature plant"** means a harvestable female marijuana plant that is flowering and is greater than twelve inches in height and twelve inches in diameter.

**T. "Medical cannabis program"** means the administrative body of the New Mexico public health division charged with the management of the medical marijuana program, including the issuance of registry identification cards, licensing of producers and distribution systems, administration of public hearings and administration of informal administrative reviews.

**U. "Medical director"** means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program.

**V. "Minor"** means an individual less than eighteen (18) years of age.

**W. "Paraphernalia"** means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling or otherwise introducing marijuana into the human body.

**X. "Personnel record"** means an individual personnel employment

file of any employee of a licensed producer containing, but not limited to, the employee's education, work history, training, licensure, certification, performance evaluation, salary, job title and job description.

**Y. "Policy"** means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.

**Z. "Practitioner"** means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Section 30-31-1 et seq. NMSA 1978.

**AA. "Primary caregiver"** means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by the qualified patient or patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act [26-2B-1 NMSA 1978].

**BB. "Private entity"** means a private, non-profit organization that meets the requirements under this rule for licensure as a producer and distributor of marijuana.

**CC. "Qualified patient"** means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the medical use of marijuana registry identification cards rule.

**DD. "Record review"** means an informal non-adversarial administrative review of written documentation submitted by an applicant who has been denied status as a qualified patient or a primary caregiver, one who has been denied a license to produce and distribute marijuana, or the process for expedited review of a summary suspension.

**EE. "Registry identification card"** means a document issued by the department which identifies a qualified patient authorized to engage in the use of marijuana for a debilitating medical condition or a document issued by the department which identifies a primary caregiver authorized to engage in the intrastate possession and administration of marijuana for the sole use of the qualified patient.

**FF. "Representative"** means an individual designated as the qualified patient's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, Section 24-7A-1 et seq. NMSA 1978.

**GG. "Secretary"** means the secretary of the New Mexico department of health.

**HH. "Secure grounds"** means a facility that provides a safe environment to avoid loss or theft.

**II. "Security alarm system"** means any device or series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect an unauthorized intrusion.

**JJ. "Security policy"** means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, personal safety and crime prevention techniques.

**KK. "Seedling"** means a marijuana plant that has no flowers and is less than twelve (12) inches in height and less than twelve (12) inches in diameter. A seedling must meet all three (3) criteria set forth above.

**LL. "Topical treatment"** means a transcutaneous therapeutic marijuana extract formulation comprising of water, short carbon chains alcohol, dimethylsulfoxide, polyethylene glycol, polypropylene glycol, glycerin, mineral oil and mixtures thereof.

**MM. "Usable marijuana"** means the dried leaves and flowers of the female marijuana plant, any mixture or preparation thereof, including ointments, but does not include the seeds, stalks and roots of the plant.

[7.34.4.7 NMAC - N, 12/15/2008]

#### 7.34.4.8 LICENSED PRODUCER APPLICATION REQUIREMENTS:

**A. The department may license two classes of producers:**

(1) a qualified patient who shall produce no more than an adequate supply of marijuana for the qualified patient's personal use only; and

(2) a non-profit private entity that operates a facility and, at any one time, is limited to a total of ninety-five (95) mature plants and seedlings and an inventory of usable marijuana that reflects current patient needs, and that shall sell marijuana with a consistent unit price, without volume discounts.

**B. Application for licensure as either a qualified patient or private entity.**

(1) The issuance of an application form is in no way a guarantee that the completed application shall be accepted or that a license will be granted. Information provided by the applicant and used by the licensing authority for the licensing process shall be accurate and truthful. Any applicant that fails to participate in good faith by falsifying information presented in the licensing

process shall have its license denied by the licensing authority.

(2) The number of licenses issued by the department to private entities is at the discretion of the secretary.

**C. The secretary shall consider the overall health needs of qualified patients and the safety of the public in deciding on the number and location of licenses to produce marijuana issued to private entities, including, but not limited to, the following factors:**

(1) the sufficiency of the overall supply available to qualified patients statewide;

(2) the applicant's plan to ensure purity, consistency of dose, and the various forms of applications to be provided; i.e., topical, oral, tinctures, etc.;

(3) the applicant's skill and knowledge of organic growing methods to ensure a safe product;

(4) the quality of the security plan proposed including location, security devices employed and staffing;

(5) the quality assurance plans in place including provision for periodic testing; and

(6) the experience and expertise of the non-profit board members.

**D. Location of licensed producer:** Distribution of marijuana by a non-profit entity to qualified patients or primary caregiver shall not take place at locations that are within three hundred (300) feet of any school, church or daycare center.

**E. Qualified patients must provide the following in order to be considered for a license to produce marijuana:**

(1) appropriate non-refundable fees, except the fees may be waived upon a showing of need;

(2) a description of the facility that shall be used in the production of marijuana;

(3) a written plan that ensures that the marijuana production shall not be visible from the street or other public areas;

(4) a description of any device or series of devices that shall be used to provide security and proof of the secure grounds;

(5) written acknowledgement of the limitations of the right to use and possess marijuana for medical purposes in New Mexico; and

(6) the department may verify information on each application and accompanying documentation by:

(a) contacting the applicant by telephone or by mail;

(b) conducting an on-site visit;

(c) requiring a face-to-face meeting and the production of additional identification materials if proof of identity is uncertain; and

(d) requiring additional relevant information that the department deems necessary.

**F. A private non-profit entity must provide the following in order to be considered for a license to produce marijuana:**

(1) acknowledgement that, at any time, production shall not exceed ninety-five (95) mature plants and seedlings and an inventory of usable marijuana that reflects current patient needs;

(2) proof that the private entity is a non-profit corporation pursuant to, Section 53-8-1 et seq. NMSA 1978;

(3) appropriate non-refundable fees;

(4) verification that the board of the non-profit includes, at a minimum, one (1) physician, a nurse or other health care provider, and three (3) patients currently qualified under the Lynn and Erin Compassionate Use Act;

(5) a description of the facility that shall be used in the production of marijuana;

(6) proof that the facility is not within three hundred (300) feet of any school, church or daycare center;

(7) a description of the means the private non-profit shall employ to make qualified patients or the primary caregiver aware of the quality of the product;

(8) a description of the means the private non-profit shall employ to safely dispense the marijuana to qualified patients or the qualified patient's primary caregivers;

(9) a description of ingestion options of useable marijuana provided by the private non-profit entity;

(10) a description of safe smoking techniques that shall be provided to qualified patients;

(11) a description of potential side effects and how this shall be communicated to qualified patients and the qualified patient's primary caregivers;

(12) a description of the private entity's means for educating the qualified patient and the primary caregiver on the limitation of the right to possess and use marijuana;

(13) a description of the packaging of the useable marijuana that the private non-profit entity shall be utilizing, including a label that shall contain the name of the strain, batch, quantity and a statement that the product is for medical use and not for resale;

(14) a description of the private non-profit entity's confidential sale records, ensuring that quantities purchased do not suggest re-distribution; both clients and the department shall have access to this information at any time;

(15) a description of the private non-profit entity's policy on the right of the entity to refuse service;

(16) a description of the device or series of devices that shall be used to provide security;

(17) a written description of the private non-profit entity's security policies, safety and security procedures, personal safety and crime prevention techniques;

(18) copies of the entity's articles of incorporation and by-laws;

(19) a list of all persons or business entities having direct or indirect authority over the management or policies of the facility;

(20) a list of all persons or business entities having five percent or more ownership in the facility, whether direct or indirect and whether the interest is in profits, land or building, including owners of any business entity which owns all or part of the land or building;

(21) the identities of all creditors holding a security interest in the premises, if any;

(22) criminal history screening requirements:

(a) all persons associated with a non-profit private entity production facility must consent to a nationwide and statewide criminal history screening background check; this includes board members, persons having direct or indirect authority over management or policies, and employees; all applicable fees associated with the nationwide and statewide criminal history screening background check shall be paid by the individual or production facility;

(b) individuals convicted of a felony violation of Section 30-31-20, 30-31-21, or 30-31-22 NMSA 1978 are prohibited from participating or being associated with a production facility licensed under this rule; if an individual has been convicted of a felony violation of Section 30-31-1 et seq. NMSA 1978, other than Sections 30-31-20 through 30-31-22, and the final completion of the entirety of the associated sentence of such felony conviction has been less than five (5) years from the date of the individual's anticipated association with the production facility, then the individual is prohibited from serving in his or her role on the board or for the entity; the individual shall be notified by registered mail of his or her disqualification; if the individual has been convicted of more than one (1) felony violation of Section 30-31-1 et seq. NMSA 1978, the individual shall be notified by registered or certified mail that he or she is permanently prohibited from participating or being associated with a production facility licensed under this rule; any violation of this subsection will result in the immediate revocation of any privilege granted under

this rule and the act;

(23) the department may verify information on each application and accompanying documentation by:

(a) contacting the applicant by telephone or by mail;

(b) conducting an on-site visit;

(c) requiring a face-to-face meeting and the production of additional identification materials if proof of identity is uncertain; and

(d) requiring additional relevant information that the department deems necessary;

(24) cooperation with the department upon notice by the department of the intent to review the licensed producer application; failure of the private entity to cooperate with the department's request may result in the application being declared incomplete or denied; and

(25) such other information as the private entity wishes to provide or that the licensing authority shall request.

**G. Private entity policies and procedures:** Distribution criteria documentation. The private non-profit entity shall develop, implement and maintain on the premises, policies and procedures relating to the marijuana program. The policies and procedures shall at a minimum include the following criteria:

(1) develop distribution criteria for qualified patients or primary caregivers appropriate for marijuana services;

(2) qualified patient's or the primary caregiver's distribution criteria shall include a clear identifiable photocopy of all qualified patient's or the primary caregiver's registry identification card served by the private entity; and

(3) alcohol and drug free workplace policy; the private non-profit entity shall develop, implement and maintain on the premises, policies and procedures relating to an alcohol and drug free workplace program;

(4) employee policies and procedures; the private non-profit entity shall develop, implement and maintain on the premises, employee policies and procedures to address the following requirements:

(a) a job description or employment contract developed for all employees, which includes duties, authority, responsibilities, qualifications and supervision; and

(b) training in, and adherence to, state confidentiality laws;

(5) the licensed producer shall maintain a personnel record for each employee that includes an application for employment and a record of any disciplinary action taken; and

(6) the private non-profit entity shall develop, implement and maintain on the premises on-site training curriculum, or

enter into contractual relationships with outside resources capable of meeting employee training needs, which includes, but is not limited to, the following topics:

(a) professional conduct, ethics and patient confidentiality; and

(b) informational developments in the field of medical use of marijuana;

(7) employee safety and security training; the private non-profit entity shall provide each employee, at the time of his or her initial appointment, training in the following:

(a) the proper use of security measures and controls that have been adopted; and

(b) specific procedural instructions on how to respond to an emergency, including robbery or a violent accident.

(8) all private non-profit entities shall prepare training documentation for each employee and have employees sign a statement indicating the date, time and place the employee received said training and topics discussed, to include name and title of presenters; the private non-profit entity shall maintain documentation of an employee's training for a period of at least six (6) months after termination of an employee's employment; employee training documentation shall be made available within twenty-four (24) hours of a department representative's request; the twenty-four (24) hour period shall exclude holidays and weekends.

**H. Annual license:** An annual license is issued for a one (1) year period to a licensed producer that has met all requirements of this rule.

**I. Amended license:** A licensed producer shall submit an application form provided by the department for an amended license, with a non-refundable required fee to the department prior to:

(1) change of location of a qualified patient who also holds a license as a producer;

(2) change of location of the private non-profit entity, change of ownership, private entity name, capacity or any physical modification or addition to the facility;

(3) an application for change of the licensed producer shall be submitted within thirty (30) business days prior to the change; and

(4) a licensed producer shall not increase production, possession or institute changes in plans to distribute or dispense marijuana until the department has approved the increase and issued a license for the increased production or possession or approved changes to the manner of distribution or dispensing of marijuana.

**J. Application for renewal of an annual license:** Each licensed producer shall apply for renewal of its annual license thirty (30) calendar days

prior to expiration by submitting a renewal application to the licensing authority.

(1) Qualified patients must submit:

(a) an application for renewal of license that includes an updated recommendation from their primary care physician stating that the applicant continues to meet criteria as a qualified patient and that medical use of marijuana shall be of benefit; and

(b) appropriate non-refundable fees, except the fees may be waived upon a showing of need.

(2) Private entities must submit:

(a) an application for renewal of license; and

(b) appropriate non-refundable fees.

**K. Non-transferable registration of license:**

(1) A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensed producer applies for and receives an amended license, the license shall be void and returned to the licensing authority when any one of the following situations occurs:

(a) ownership of the facility changes;

(b) location change;

(c) change in licensed producer;

(d) the discontinuance of operation; or

(e) the removal of all medical marijuana from the facility by lawful state authority.

(2) Transactions, which do not constitute a change of ownership, include the following:

(a) when applicable, changes in the membership of a corporate board of directors or board of trustees; and

(b) two (2) or more corporations merge and the originally licensed corporation survives.

(3) Management agreements are generally not considered a change in ownership if the licensed producer continues to retain ultimate authority for the operation of the facility. However, if the ultimate authority is surrendered and transferred from the licensed producer to a new manager, then a change of ownership has occurred.

**L. Automatic expiration of license:**

(1) A license shall expire at midnight on the day indicated on the license as the expiration date, unless renewed at an earlier date, suspended or revoked.

(2) A private entity that intends to voluntarily close shall notify the licensing authority no later than thirty (30) calendar days prior to closure. All private non-profit entities shall notify all qualified patients or the primary caregivers prior to expiration of the license. Any unused medical marijuana must be turned over to local law enforce-

ment.

**M. Display of license:** The licensed producer shall maintain the license in a safe location and be able to produce the license immediately upon request by the department or law enforcement.

[7.34.4.8 NMAC - N, 12/15/2008]

#### 7.34.4.9 SECURITY REQUIREMENTS FOR LICENSED PRODUCERS:

Private entities licensed to produce marijuana shall comply with the following requirements to ensure that production facilities are located on secure grounds. **Security alarm system:** The private non-profit entity shall provide and maintain in each facility a fully operational security alarm system. The private non-profit entity shall:

**A.** conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the alarm system and, in the event of an extended mechanical malfunction that exceeds an eight (8) hour period, provide alternative security that shall include closure of the premises; and

**B.** maintain documentation for a period of at least twenty-four (24) months of all inspections, servicing, alterations and upgrades performed on the security alarm system; all documentation shall be made available within twenty-four (24) hours of a department representative's request; failure to provide equipment maintenance documentation within the twenty-four (24) hour period shall subject the licensed producer to the sanctions and penalties provided for in this rule; the twenty-four (24) hour period shall not include holidays and weekends.

[7.34.4.9 NMAC - N, 12/15/2008]

#### 7.34.4.10 DENIAL OF AN INITIAL PRODUCER LICENSE:

**A. Record review:** All applicants whose initial application for a licensed producer has been denied may request a record review from the department.

**B. Procedure for requesting informal administrative review:**

(1) An applicant given notice of an application denial may submit a written request for a record review. To be effective, the written request shall:

(a) be made within thirty (30) calendar days, as determined by the postmark, from the date of the denial notice issued by the department;

(b) be properly addressed to the medical cannabis program;

(c) state the applicant's name, address, and telephone numbers;

(d) state the applicant's proposed status as a licensed producer;

(e) provide a brief narrative rebutting the circumstances of the application denial.

(2) If the applicant wishes to submit and have considered additional documentations, such additional documentation must be included with the request for a record review.

**C. Record review proceeding:** The review proceeding is intended to be an informal non-adversarial administrative review of written documentation. It shall be conducted by an administrative review committee designated for that purpose by the division. In cases where the administrative review committee finds the need for additional or clarifying information, the review committee may request that the applicant supply such additional information within the time set forth in the committees' request.

**D. Final determination:**

(1) Content: The administrative review committee shall render, sign and enter a written decision setting forth the reasons for the decision and the evidence upon which the decision is based.

(2) Effect: The decision of the administrative review committee is the final decision of the informal administrative review proceeding.

(3) Notice: A copy of the decision shall be mailed by registered or certified mail to the applicant.

**E. Judicial review:**

Judicial review of the administrative review committee's final decision is permitted to the extent provided by law. The party requesting the appeal shall bear the cost of such appeal.

[7.34.3.10 NMAC - N, 12/15/2008]

**7.34.4.11 PARENTAL RESPONSIBILITY ACT:**

The failure to comply with a judgment or order for child support, or subpoena or warrants relating to paternity or child support proceedings, is grounds for the denial, suspension or revocation of a private entity's license to produce marijuana in accordance with Section 40-5A-6 of the Parental Responsibility Act. [7.34.4.11 NMAC - N, 12/15/2008]

**7.34.4.12 PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE PRODUCTION OF MEDICAL USE MARIJUANA AND CRIMINAL PENALTIES:**

**A.** Participation in a medical use of marijuana licensing program by a licensed producer, or the employees of a licensed producer, does not relieve the producer or employee from criminal prosecution or civil penalties for activities not authorized in this rule and the act.

**B.** Distribution of medical

marijuana to qualified patients or their primary caregivers shall take place at locations that are designated by the department and that are not within three hundred feet of any school, church or daycare center.

**C. Fraudulent misrepresentation:** Any person who makes a fraudulent representation to a law enforcement officer about the person's participation in a medical cannabis program to avoid arrest or prosecution for a marijuana-related offense is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 et seq. NMSA 1978.

**D. Unlawful distribution:**

If a licensed producer or employee of a licensed producer sells, distributes, dispenses or transfers marijuana to a person not approved by the department pursuant to this rule and the act, or obtains or transports marijuana outside New Mexico in violation of federal law, the licensed producer or employee of the licensed producer shall be subject to arrest, prosecution and civil or criminal penalties pursuant to state law.

**E. Revocation of registry identification card, licensed primary caregiver card, license to produce or distribute:** Violation of any provision of this rule may result in the immediate revocation of any privilege granted under this rule and the act.

[7.34.4.12 NMAC - N, 12/15/2008]

**7.34.4.13 MONITORING AND CORRECTIVE ACTIONS:**

**A. Monitoring:**

(1) The department or its designee may perform on-site assessments of a licensed producer to determine compliance with these rules. The department may enter a facility at any time to assess or monitor.

(2) Twenty-four (24) hours notice will be provided to licensed producers who are qualified patients prior to an on-site assessment except when the department has a reasonable suspicion to believe that providing notice will result in the destruction of evidence or that providing such notice will impede the department's ability to enforce these regulations.

(3) The department may review any and all employee, qualified patient or primary caregiver's records or conduct interviews with employees, qualified patients, primary caregivers or private licensed producers for the purpose of determining compliance with these requirements.

(4) All licensed producers shall provide the department or the department's designee immediate access to any material and information necessary for determining compliance with these requirements.

(5) Failure by the licensed pro-

ducer to provide the department access to the premises or information may result in the revocation of the licensed producer's license and referral to state law enforcement.

(6) Any failure to adhere to these rules documented by the department during monitoring may result in sanction(s), including suspension, revocation, non-renewal or denial of licensure and referral to state or local law enforcement.

(7) The department shall refer non-frivolous complaints involving alleged criminal activity made against a licensed producer to the appropriate New Mexico state or local authorities.

**B. Corrective action:**

(1) If violations of these requirements are cited as a result of monitoring, the licensed producer shall be provided with an official written report of the findings within seven (7) business days following the monitoring visit.

(2) Unless otherwise specified by the department, the licensed producer shall correct the violation within five (5) calendar days of receipt of the official written report citing the violation(s).

(3) The violation shall not be deemed corrected until the department verifies in writing within seven (7) calendar days of receiving notice of the corrective action that the corrective action is satisfactory.

(4) If the violation has not been corrected, the department may issue a notice of contemplated action to revoke the producer's license.

**C. Suspension of license without prior hearing:** In accordance with the Public Health Act, Section 24-1-5 (H) NMSA 1978, if immediate action is required to protect the health and safety of the general public, the qualified patient or primary caregivers, the department may suspend the qualified patient, primary caregiver or licensed producer's license without notice.

(1) A licensee whose license has been summarily suspended is entitled to a record review not later than thirty (30) calendar days after the license was summarily suspended.

(2) The record review requested subsequent to a summary suspension shall be conducted by the administrative review committee.

(3) The administrative review committee shall conduct the record review on the summary suspension by reviewing all documents submitted by both licensee and the department.

(4) The sole issue at a record review on a summary suspension is whether the licensee's license shall remain suspended pending a final adjudicatory hearing and

ruling.

(5) A licensee given notice of summary suspension by the division may submit a written request for a record review. To be effective, the written request shall:

(a) be made within thirty (30) calendar days, as determined by the postmark, from the date of the notice issued by the department;

(b) be properly addressed to the medical cannabis program;

(c) state the applicant's name, address, and telephone numbers;

(d) provide a brief narrative rebutting the circumstances of the suspension, and

(e) such additional documentation must be included with the request for a record review.

[7.34.4.13 NMAC - N, 12/15/2008]

#### **7.34.4.14 SUMMARY SUSPENSION, REVOCATION AND APPEAL PROCESS:**

**A. Revocation of producer license:** Violation of any provision of this rule may result in either the summary suspension of the producer's license or a notice of contemplated action to suspend or revoke the producer's license, and all lawful privileges under the act.

**B. Grounds for revocation or suspension of license, denial of renewal application for license. A license may be revoked or suspended, and a renewal application may be denied for:**

(1) failure to comply with any provisions of these requirements;

(2) failure to allow a monitoring visit by authorized representatives of the department;

(3) the discovery of repeated violations of these requirements during monitoring visits.

**C. Request for hearing:** A producer whose license has been summarily suspended or who has received a notice of contemplated action to suspend or revoke may request a hearing, in addition to a request for a record review, for the purpose of review of such action. The appellant shall file the request for hearing within thirty (30) calendar days of the date the action is taken or the notice of contemplated action is received. The request shall include the following:

(1) a statement of the facts relevant to the review of the action;

(2) a statement of the provision of the act and the rules promulgated under the act that are relevant to the review of the action;

(3) a statement of the arguments that the appellant considers relevant to the review of the action; and

(4) any other evidence considered relevant.

#### **D. Hearing process:**

(1) All formal adjudicatory hearings held pursuant to this regulation shall be conducted by a hearing examiner duly appointed by the secretary.

(2) Except for telephonic hearings, hearings shall be conducted in Albuquerque or, upon written request by an aggrieved person, in the place or area affected.

(3) All hearings held pursuant to this section shall be open to the public.

(4) The hearing shall be recorded on audiotape or other means of sound reproduction, or by a certified court reporter. The decision as to the type of recording shall be at the discretion of the department.

(5) Any hearing provided for in this rule may be held telephonically, in the interest of a speedy resolution.

**E. The department shall schedule and hold the hearing as soon as practicable, however; in any event no later than sixty (60) calendar days from the date the department receives the appellant's request for hearing. The hearing examiner shall extend the sixty (60) day time period upon motion for good cause shown or the parties shall extend the sixty (60) day time period by mutual agreement. The department shall issue notice of hearing, which shall include:**

(1) a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short and plain statement of the matters of fact and law asserted;

(4) notice to any other parties to give prompt notice of issues controverted in fact or law; and

(5) all necessary telephone numbers if a telephonic hearing shall be conducted.

**F. All parties shall be given the opportunity to respond and present evidence and argument on all relevant issues.**

**G. Record of proceeding:** The record of the proceeding shall include the following:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and conclusions; and

(6) any action recommended by the hearing examiner.

**H. A party may request a transcription of the proceedings:** The

party requesting the transcript shall endure the cost of transcription.

**I. Procedures and evidence:**

(1) A party may be represented by a person licensed to practice law in New Mexico, a non-lawyer representative, or an individual appellant may represent him or herself.

(2) The rules of evidence as applied in the courts do not apply in these proceedings. Any relevant evidence shall be admitted and such evidence shall be sufficient in itself to support a finding if the evidence is reliable, regardless of the existence of any statutory or common law rule that shall make admission of such evidence improper in a civil action. Irrelevant, immaterial or unduly repetitious evidence may be excluded by the hearing examiner at a party's request or on the hearing examiner's own initiative.

(3) Documentary evidence shall be received in evidence in the form of true copies of the original.

(4) Documentary and other physical evidence shall be authenticated or identified by any reasonable means that shows that the matter in question is what the proponent claims it to be.

(5) The experience, technical competence and specialized knowledge of the hearing examiner, the department or the department's staff shall be used in the evaluation of evidence.

(6) Evidence on which the hearing examiner shall base his or her decision is limited to the following:

(a) all evidence, including any records, investigation reports and documents in the department's possession of which the department desires to avail itself as evidence in making a decision that is offered and made a part of the record of the proceeding; and

(b) testimony and exhibits introduced by the parties.

**J.** The record shall include all briefs, proposed findings and exceptions and shall show the ruling on each finding, exception or conclusion presented.

**K.** A party to a hearing shall submit to the hearing examiner and to all other parties to the hearing all documents to be introduced at the hearing no later than five (5) business days from the scheduled hearing date to insure the hearing examiner and other parties receive the documents prior to the hearing.

**L. Conduct of proceeding:** Unless the hearing examiner reasonably determines a different procedure is appropriate, the hearing shall be conducted in accordance with the procedures set forth in this rule. The following procedures shall apply:



(1) the appellant shall present an opening statement on the merits and the appellee shall make a statement of the defense or reserve the statement until presentation of that party's case;

(2) after the opening statements, if made, the appellant shall present its case in chief in support of the appellant's petition;

(3) upon the conclusion of the appellant's case, the appellee shall present its case in defense;

(4) upon conclusion of the appellee's case, the appellant shall present rebuttal evidence;

(5) after presentation of the evidence by the parties, the appellant shall present a closing argument; the appellee then shall present his or her closing argument and the appellant shall present a rebuttal argument; and

(6) thereafter, the matter shall be submitted for recommendation by the hearing examiner.

**M. Burden of proof:** The appellant bears the burden of showing by a preponderance of the evidence that the decision made by the department or an agent of the department shall be reversed or modified.

**N. Continuances:** The hearing examiner shall not grant a continuance except for good cause shown. A motion to continue a hearing shall be made at least ten (10) calendar days before the hearing date.

**O. Telephonic hearings:**

(1) Any party requesting a telephonic hearing shall do so within ten (10) business days of the date of the notice. Immediately after the parties agree to conduct the hearing by telephone; notice of the telephonic hearing shall be made to all parties and shall include all necessary telephone numbers.

(2) Any party that has agreed to a telephonic hearing, but subsequently requests an in-person hearing shall do so in writing to the hearing examiner no later than ten (10) calendar days before the scheduled date of the hearing. The decision to grant or deny the request for an in-person hearing shall be at the discretion of the hearing examiner for good cause shown. The hearing examiner's decision to grant or deny the hearing shall be issued in writing and shall include the specific reasons for granting or denying the request. Should the hearing examiner grant the request, the hearing shall be rescheduled to a time convenient for all parties. Should the hearing examiner deny the request, the telephonic hearing shall proceed as scheduled.

(3) The location or locations of the parties during the hearing shall have a speaker telephone and facsimile machine

available so that all shall hear the proceedings and documents shall be transmitted between witnesses and the hearing examiner.

(4) The appellee shall initiate the telephone call. The appellant is responsible for ensuring the telephone number to the appellant's location for the telephonic hearing is accurate and the appellant is available at said telephone number at the time the hearing is to commence. Failure to provide the correct telephone number or failure to be available at the commencement of the hearing shall be treated as a failure to appear and shall subject the petitioner to a default judgment.

(5) The in-person presence of some parties or witnesses at the hearing does not prevent the participation of other parties or witnesses by telephone with prior approval of the hearing examiner.

**P. Recommended action and final decision:**

(1) At the request of the hearing examiner or upon motion by either party granted by the hearing examiner and before the hearing examiner recommends action by the secretary, the parties shall submit briefs including findings of fact and conclusions of law for consideration by the hearing examiner. The hearing examiner holds the discretion to request briefs or grant a motion to submit briefs on any point of law deemed appropriate by the hearing examiner. Briefs submitted shall include supporting reasons for any findings or legal conclusions and citations to the record and to relevant law. Should the hearing examiner request briefs or grant a party's motion to submit briefs, the hearing shall be continued until the hearing examiner has given the briefs sufficient consideration and brings the hearing to a close. The hearing, however, shall be completed no later than forty-five (45) calendar days from the date of continuance.

(2) No more than thirty (30) calendar days after completion of the hearing, the hearing examiner shall prepare a written decision containing his or her recommendation of action to taken by the secretary. The recommendation shall propose to sustain, modify or reverse the initial decision of the department or the department's agent.

(3) The secretary shall accept, reject or modify the hearing examiner's recommendation no later than ten (10) calendar days after receipt of the hearing examiner's recommendation. The final decision or order shall be issued in writing and shall include a statement of findings and conclusions and the reasons thereof, on all material issues of fact, law or discretion involved, together with the specific action taken to sustain, modify or reverse the initial decision of the department or the department's

agent. Service shall be made by registered or certified mail.

(4) The final decision or order shall be public information and shall become a part of the record.  
[7.34.4.14 NMAC - N, 12/15/2008]

**7.34.4.15 EXEMPTION FROM STATE CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF MARIJUANA:**

**A.** No licensed producer or employee of the licensed producer, qualified patient licensed as a producer or licensed primary caregiver shall be subject to arrest, prosecution or penalty, in a manner for the production, possession, distribution or dispensing of marijuana in accordance with this rule and the act.

**B.** Any property interest that is possessed, owned or used in connection with the production of marijuana or acts incidental to such production shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials. Any such property interest shall not be forfeited under any state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Marijuana, paraphernalia or other property seized from a qualified patient or primary caregiver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or primary caregiver is entitled to the protections of the provisions of this rule and act as shall be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.  
[7.34.4.15 NMAC - N, 12/15/2008]

**7.34.4.16 LICENSED PRODUCER CONFIDENTIALITY:**

The department shall maintain a confidential file containing the names, addresses and telephone numbers of the persons who have either applied for or received a registry identification card or license for the purpose of producing marijuana for medical use. Individual names on the list shall be confidential and not subject to disclosure, except:

**A.** to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of this rule and the act;

**B.** to authorized employees of state or local law enforcement agencies, but not only for the purpose of verifying that a person is lawfully in possession of the license to produce; or

**C.** as provided in the federal Health Insurance Portability and Accountability Act of 1996.

[7.34.4.16 NMAC - N, 12/15/2008]

**7.34.4.17 DISPOSAL OF UNUSED MARIJUANA:** Unused marijuana in the possession of the licensed producer may be disposed of by transporting the unused portion to a state or local law enforcement office.

[7.34.4.17 NMAC - N, 12/15/2008]

**7.34.4.18 ASSESSMENT REPORT:** The department shall evaluate the implementation of the Lynn and Erin Compassionate Use Act and regulations issued pursuant to that act and provide a report to the secretary of the department within one year of the effective date of these regulations. In performing its evaluation, the department shall focus on whether the needs of qualified patients are being met by the department's administration of the act and whether there is a demonstrable need for a state run production and distribution facility. The department's assessment report shall be issued every two years, shall be a public document, and must contain de-identified data upon which the assessment is based.

[7.34.4.18 NMAC - N, 12/15/2008]

**7.34.4.19 SEVERABILITY:** If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of these rules legally severed shall not interfere with the remaining protections provided by these rules and the act.

[7.34.4.19 NMAC - N, 12/15/2008]

**HISTORY OF 7.34.4 NMAC:**  
[RESERVED]

## NEW MEXICO MAIN STREET REVOLVING LOAN COMMITTEE

**TITLE 12 TRADE COMMERCE AND BANKING  
CHAPTER 21 COMMUNITY REVITALIZATION AND DEVELOPMENT**

**PART 3 LENDING PROCEDURES OF THE MAIN STREET REVOLVING LOAN FUND**

**12.21.3.1 ISSUING AGENCY:** Main Street Revolving Loan Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.  
[12.21.3.1 NMAC - N, 12/15/08]

**12.21.3.2 SCOPE:** This rule applies to the members of the main street revolving loan committee, the state historic

preservation officer, the historic preservation division, members of the public having business with the committee, the economic development department, the New Mexico main street program, property owners in main street districts, lending institutions and federal agencies or non-profit organizations with funds available for making loans to owners of main street properties.

[12.21.3.2 NMAC - N, 12/15/08]

**12.21.3.3 STATUTORY AUTHORITY:** Section 3-60C-4, NMSA 1978.

[12.21.3.3 NMAC - N, 12/15/08]

**12.21.3.4 DURATION:** Five years.

[12.21.3.4 NMAC - N, 12/15/08]

**12.21.3.5 EFFECTIVE DATE:** December 15, 2008, unless a later date is cited at the end of a section.

[12.21.3.5 NMAC - N, 12/15/08]

**12.21.3.6 OBJECTIVE:** This rule establishes lending procedures for loans and loan subsidies made to New Mexico main street property owners for the repair, rehabilitation, restoration and preservation of eligible main street properties and to promote preservation and economic development in main street communities. The regulations describe the eligibility requirements for property owners and their property for loans or loan subsidies. The regulations describe the procedures that are followed and the documentation required and entered into by the state of New Mexico, the committee, historic preservation division and lending institutions or other entities that participate in the loan, and property owners, including descriptions of the preliminary loan application, the loan participation agreement, and the development agreement and preservation covenants and deed restrictions. The regulations also describe the terms and conditions contained in the required documentation and agreements entered into between the committee, division, lending institution, any other entity, and the borrower. This rule governs projects jointly funded by the state historic preservation division through the main street revolving loan fund and lending institutions. Entities other than lending institutions, e.g., non-profit organizations, may also contribute funding to the projects.

[12.21.3.6 NMAC - N, 12/15/08]

**12.21.3.7 DEFINITIONS:**

A. "Acquisition" means the acquiring of a fee simple interest or of a lesser interest by appropriate mechanism, including but not limited to easement or lease, in a main street property.

B. "Development agree-

ment and covenants and deed restrictions" means the agreement entered into between the committee, division and the property owner/borrower.

C. "Committee" means the main street revolving loan committee.

D. "Division" means the historic preservation division, department of cultural affairs.

E. "Eligible property" means a site, structure, building or object that is subject to the Main Street Act (3-60B-1 NMSA 1978) or otherwise found pursuant to rule of the committee to merit preservation pursuant to the main street revolving loan act.

F. "Fund" means the main street revolving loan fund.

G. "Lending institution" means a commercial bank, savings and loan, credit union or non-profit organization with lending as part of its by-laws.

H. "Loan contributions" means the amount of funds from the main street revolving loan fund deposited into the loan pool.

I. "Loan participation agreement" means the agreement entered into between the division and a lending institution.

J. "Loan pool" means an account established and administered by a lending institution that contains contributions from the main street revolving loan fund, funds from participating lending institution(s), and may include funds from private and federal agencies.

K. "Main street revolving loan fund" or MSRL fund means the revolving loan fund established by Section 3-60C-1 through 3-60C-6, NMSA 1978, of the Main Street Revolving Loan Act, consisting of funds appropriated by the legislature of the state of New Mexico, funds available from federal agencies, non-profit organizations, and private funds made available for purposes of the Main Street Revolving Loan Act and receipts from the repayment of loans or loan subsidies made pursuant to the Main Street Revolving Loan Act.

L. "Non-profit organization" means an organization who has received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

M. "Property owner" means the sole owner, joint owner, owner in partnership or an owner of a leasehold interest with a term a term of five or longer of an eligible property.

N. "State historic preservation officer" or "SHPO" means the state official designated by the Cultural Properties Act, Section 18-6-8 NMSA 1978, to serve as the director of the state historic preservation division and administer the Cultural Properties Act and the Main Street

Revolving Loan Act, Section 3-60C-4 to administer the main street revolving loan act.

O. "Standards" means the MSRL fund standards for rehabilitation adopted by the committee. The standards are for rehabilitation to guide projects on main street buildings under the Main Street Revolving Loan Act.

12.21.3.7 NMAC - N, 12/15/08]

#### **12.21.3.8 MSRL FUND CONTRIBUTIONS TO THE LOAN POOL AND THE LOAN POOL:**

A. MSRL funds are contained in the main street revolving loan fund. Funding of restoration, rehabilitation, repair and preservation of an eligible property is accomplished by the division contributing an amount of MSRL funds into the loan pool.

B. For each approved project, the division and the lending institution shall establish a schedule for disbursement of loan funds to the borrower. The schedule shall be included in the loan participation agreement as provided for in Subsection E of 12.21.3.13 NMAC of these regulations, and indicate the stages of work progress and the anticipated dates of disbursements and amount of MSRL contributions to be directed toward each stage of work progress. The period during which all disbursements of the MSRL contributions for a project shall not exceed a period of twelve months from the date the first disbursement of loan funds was made to the borrower or a period otherwise agreed to by the parties in the loan participation agreement. In either event, such period shall not exceed two years from the date of project loan approval by the division. The disbursement schedule for the MSRL funds from the loan pool shall be based upon the planned restoration, rehabilitation, repair and authorized use of MSRL funds.

C. Prior to the date of a scheduled disbursement of MSRL Funds, the lending institution shall notify the division that a deposit of a specified amount of MSRL funds into the loan pool is necessary. The division shall make an appropriate request to the New Mexico state treasurer's office to effect the deposit of the specified amount of MSRL funds into the loan pool for disbursement to the borrower by the lending institution. An MSRL contribution that is not disbursed to the borrower as provided in Subsection B of 12.21.3.8 NMAC herein shall be returned by the lending institution to the division.

D. The division shall only deposit MSRL funds into the loan pool to pay the costs of completed rehabilitation, restoration, or repair work, or for reimbursement of payment of approved materi-

als delivered to the project site, including eligible costs approved by the division.

E. In addition to MSRL funds, the funds in the loan pool may include other funds from other sources that are available for loans or loan subsidies made pursuant to the Main Street Revolving Loan Act.

F. MSRL funds contributed into and disbursed from the loan pool shall be used in accordance with these regulations.

G. Non-MSRL contributions in the loan pool may be available for costs of land acquisition, purchase, or other costs for which MSRL funds cannot be used.

H. Use of non-MSRL contributions in the loan pool shall be governed by any applicable restrictions, requirements, terms or conditions of the lending institution or other funding entity.

[12.21.3.8 NMAC - N, 12/15/08]

#### **12.21.3.9 ELIGIBILITY OF PROPERTY:**

A. An eligible property is any property in the designated main street district, historic and non-historic.

B. Eligible properties may be restored, rehabilitated, repaired, and preserved with a loan or loan subsidy using MSRL contributions to the loan pool.

[12.21.3.9 NMAC - N, 12/15/08]

#### **12.21.3.10 ELIGIBILITY OF PROPERTY OWNERS:**

A. An eligible property owner is a sole owner, joint owner, owner in partnership, corporate owner or owner of a leasehold interest of a term not less than five years, of any eligible property as described in Subsection A of 12.21.3.9 NMAC of these regulations.

B. A loan or loan subsidy from the loan pool shall be made only to eligible property owners who agree:

(1) to repay the loan and maintain the registered cultural property as restored, rehabilitated or repaired for a period of not less than five years; and

(2) that the property owner's failure to so maintain the property in conformity with Paragraph (1) of Subsection B of 12.21.3.10 NMAC of these regulations shall constitute a default of the loan or loan subsidy promissory note and mortgage agreement and shall be cause for acceleration of the unpaid loan or subsidy balance and exercise of foreclosure remedies against the collateral by the lending institution; and

(3) to execute a development agreement and covenants and deed restrictions with the committee and other loan agreements or documentation that may be required by the lending institution; and

(4) to rehabilitate, restore or repair a main street property, including rehabilitation of a portion of its front façade, in compliance with the standards as determined and agreed upon by the division; and

(5) to maintain complete and proper financial records regarding the eligible property and to make such records available to the division upon request; and

(6) to complete the proposed rehabilitation, repair or restoration work on the main street property within two years from the date the loan or loan subsidy is approved by the committee and closed by the lending institution; and

(7) to provide sufficient collateral security interest in the property to the state of New Mexico in accordance with 12.21.3.16 NMAC of these regulations; and

(8) to meet the committee criteria for priority ranking of loans or subsidies made from the MSRL contributions to the loan pool; and

(9) to meet the income eligibility criteria to satisfy the lending institution; and

(10) to credit the program with a job sign at least 36" in height by 24" in width, including the names of lender, other participating funding organizations, MSRL fund and the division.

[12.21.3.10 NMAC - N, 12/15/08]

#### **12.21.3.11 MSRL CONTRIBUTIONS - ELIGIBLE COSTS:**

Costs which can be paid with MSRL funds to the loan pool are architectural, design, graphic design, construction and engineering documents and planning costs, inspection of work in progress, contracted restoration, rehabilitation, and repair and costs necessary to meet code compliance. The division or the lending institution with prior approval of the committee, may use the MSRL funds to the loan pool to pay costs associated with enforcement of the obligations of the borrower under the promissory note, mortgage or loan agreement.

[12.21.3.11 NMAC - N, 12/15/08]

#### **12.21.3.12 MSRL CONTRIBUTIONS - INELIGIBLE COSTS:**

A. MSRL contributions to the loan pool shall not be used to pay costs of land acquisition, legal costs, fiscal agents' fees, loan origination fees, points, or other charges incurred by the borrower or which may be imposed by the lending institution or other lending entity, including fees described in 12.21.3.17 NMAC of these regulations and costs that are not expressly permitted in 12.21.3.11 NMAC of these regulations.

B. The borrower shall not apply MSRL funds contributions to the loan pool toward the acquisition or purchase of property.

[12.21.3.12 NMAC - N, 12/15/08]

**12.21.3.13 COMMITTEE AND DIVISION PROCEDURES:**

The committee shall consider loan applications at a regularly scheduled public meeting. The committee will review the application for conformance with the applicable standards and will take action on the application. Such action will take the form of an approval, approval with conditions, tabling or denial. Applicants will be notified of the committee's decisions within 14 calendar or 10 business days of the committee's meeting. If approved division staff will prepare the state's agreement documents for review and approval of the committee.

A. All plans, specifications and descriptions for a project shall be included in the application. All work that will affect the property during the project time frame shall be described, whether or not it is eligible for the state loan funding. The application shall be received in the office of the division at least 15 business days prior to the committee meeting in which it shall be reviewed or an alternate time established by the committee. The division shall determine whether the information being presented is complete and adequate for committee review. The division shall provide the committee with a staff recommendation for the project conformance with applicable standards.

B. Projects must be completed within 24 months of approval date. Alterations to approved projects must be submitted to the division. Major project alterations shall be submitted to the committee for action at a regularly scheduled meeting. The committee may assign to the division review and approval authority for minor project alterations.

C. Loan participation agreement: The committee shall enter into a loan participation agreement with one or more lending institutions, a federal entity, or other funding entity, to make MSRL funds available for deposit into the loan pool for purposes of the Main Street Revolving Loan Act.

D. The loan or loan subsidy from the MSRL contributions to the loan pool for a repair, restoration or rehabilitation project, shall be governed by the terms of the loan participation agreement.

E. The loan participation agreement shall contain the following:

- (1) the names and street addresses of all parties participating in the project by making a contribution of funds to the loan pool; and
- (2) recitals of the project, definitions, and
- (3) a statement specifying the parties' respective percentages of financial participation or "share" in the loan pool, such

participation shall be described as a "sale of participation" in the loan or loan subsidy by each party; and

(4) a statement describing the manner in which MSRL funds will be contributed to the loan pool; the lending institution shall notify the division that according to the schedule for disbursements of loan funds to the borrower, a contribution of MSRL funds into the loan pool is necessary; the division shall make an appropriate request to the department of finance and administration and the state treasurer's office to effect a contribution of MSRL funds into the loan pool; and

(5) a statement that upon deposit of the MSRLF contribution to the loan pool, the MSRLF contribution shall accrue interest at the rate of three percent per annum; and

(6) a statement that the lending institution shall disburse loan funds to the borrower in no more than five separate installments and as provided in Subsection B of 12.21.3.8 NMAC herein; and

(7) a statement that the division shall establish an inspection schedule relating to the purposes and goals of the Main Street Revolving Loan Act, authorized uses of the MSRL contributions, and compliance with the development agreement and preservation covenants and deed restrictions and the MSRL standards; and

(8) a statement that provides that the lending institution shall establish an inspection schedule relating to construction progress; and

(9) a statement that provides that MSRLF contributions that are not disbursed to the borrower, as provided in Subsection B of 12.21.3.8 NMAC herein, shall be returned by the lending institution to the division; and

(10) a statement describing the rates of interest charged to the borrower for the loan or loan subsidy attributable to each party who contributed to the loan pool, including the rate charged on the MSRLF contribution as stated in Section C of 3-60C-6 NMSA 1978, and other rates charged on funds contributed by the lending institution; and

(11) a statement indicating the combined interest rate of the loan or loan subsidy; and

(12) a statement describing the administration of the loan pool by the lending institution, including that the lending institution shall:

(a) receive and deposit the MSRLF contributions into the loan pool and, within five working days after receipt of a payment from the borrower, transfer to the division its share of any collections, including interest due to the division; and

(b) service and manage the loan or loan subsidy and collateral according to

customary and prudent lending practices; and

(c) be responsible for all aspects of loan origination, servicing, collections, and security; and

(d) document the loan or loan subsidy in the form a promissory note, loan agreement, mortgage and other security agreements(s) that may be required by the lending institution; and

(e) require that the promissory note, mortgage and other loan documents provide that events of default include the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions; and

(f) ensure that the original priority of the mortgage extends to each subsequent disbursement of loan proceeds to the borrower; and

(g) provide the division with copies of all documents pertaining to the loan or loan subsidy; and

(h) monitor the borrower's maintenance of any insurance required on the collateral, payment of all taxes, fees and other charges assessed or otherwise imposed upon the collateral; and

(i) promptly notify the committee and division of any event of default existing for more than thirty days, and of other significant information relating to the loan; and

(j) upon notification of a default, consult with the division as to the appropriate course of action and take such agreed upon action with the prior written approval of the division; and

(13) a statement that the lending institution shall execute and deliver satisfactions, endorsements, receipts, discharges or releases as may be necessary in the proper serving and collection of the loan or loan subsidy; the lending institution shall not modify or supplement any documents associated with the loan or loan subsidy, agree to any extension of time or waiver or forgiveness of debt, take or permit any action that will release the borrower or any guarantor from any obligation or liability with regard to the loan, or impair the validity or priority of the lending institution's or committee's interest in the collateral unless the lending institution obtains the committee's prior written consent; and

(14) a statement permitting payment of charges related to loan origination, closing, and other service charges incurred by the lending institution in its administration of the loan pool, to be paid from loan funds contributed by the lending institution; and

(15) a statement describing the committee and division's right to have access to loan or loan subsidy records in the possession of the lending institution; and

(16) a statement describing all terms of the loan or loan subsidy issued from the loan pool, including:

(a) a detailed description of all repair, restoration or rehabilitation for the project as approved by the division and any modifications, exhibits or additional documents as approved by the division and the lending institution; and

(b) a statement that the restoration, rehabilitation, or repair must be completed within two years from the date the loan is approved by the division and closed by the lending institution; and

(c) a statement that the term of the loan or loan subsidy shall be five years and interest and principal shall be paid in equal installments no less than annually with the first installment due within one year of the date the loan is closed by the lending institution; this statement shall also provide that the loan shall be amortized over a period not to exceed twenty years, with a balloon payment due at the end of the five year term; in lieu of a balloon payment, the lending institution may purchase the remaining loan amount due to the division; and

(d) a statement that the loan or loan subsidy shall be secured by the collateral; and

(e) a statement that all restoration, rehabilitation, or repair shall be completed in conformity with the MSRL fund standards for rehabilitation as determined by the division; and

(f) a statement that failure by the borrower to comply with the standards shall be an event of default under the promissory note and the mortgage; and

(g) a statement that the division shall notify the borrower of any noncompliance with the standards, that the borrower has a specific period of time to cure the non-compliance, and if the default is not cured the division shall notify the lending institution of the default and the lending institution shall pursue appropriate remedies as stated in the loan participation agreement, promissory note or mortgage; and

(h) a statement that the lending institution shall condition the closing of the loan or loan subsidy upon the borrower's execution of a development agreement and covenants and deed restrictions with the committee, as described in Subsection F of 12.21.3.13 NMAC of these regulations; and that if the loan is repaid prior to the expiration of five years from the date the loan or loan subsidy is closed by the lending institution, the covenants and deed restrictions shall not be extinguished and shall remain in effect until the termination date of the development agreement and covenant and deed restriction; and a requirement that this provision be contained in the mortgage and all other documents evidencing security for

the loan or loan subsidy; and

(i) a statement that the promissory note, mortgage, and any other documents pertaining to security for the loan or loan subsidy shall include provisions stating that the borrower's default in connection with any loan, loan subsidy or other obligation secured by a lien superior to the mortgage or development agreement and covenants and deed restrictions shall constitute an event of default of the mortgage and loan agreement; the division and the lending institution shall have the right (but not the obligation) to cure any default in connection with superior liens and charge the costs of curing to the borrower; and

(j) a statement requiring that a construction sign acknowledging the assistance of the MSRL, division and the lending institution, or other participating party, shall be displayed prominently at the project being restored, rehabilitated or repaired; and

(k) a statement requiring the lending institution to require the borrower to maintain financial records regarding the project throughout the term of the loan or loan subsidy and shall make such records available to the lending institution and the division upon request; and

(17) a statement regarding the lending institution's transfer of payments to the division, including any interest, in conformity with the division's share of participation in the loan pool; and

(18) a statement regarding quarterly reports to the participating parties from the lending institution concerning the project's financial and restoration, rehabilitation or repair status; and

(19) a statement identifying the name and street address of individuals to whom written notice of matters concerning the project shall be addressed and directed; and

(20) a statement describing the applicable law that governs the loan participation agreement; and

(21) a statement providing for severability, non-assignability, amendment of the loan participation agreement, and

(22) a statement regarding execution of the loan participation agreement in counterparts; and duly witnessed signatory lines of the parties.

F. Development agreement and covenants and deed restrictions: The committee shall enter into a development agreement and covenants and deed restrictions with the property owner/borrower to govern the restoration, rehabilitation, or repair of a project. The development agreement and covenants and deed restrictions shall contain the following:

(1) the names and street addresses of the parties, including the property

owner's heirs, successors and assigns and the date the agreement is executed; and

(2) recitals, including a statement that all covenants and deed restrictions shall run with the land for no less than a period of five years, shall bind all future owners and occupants of the property during that time, and be recorded; and

(3) covenants applicable to the property owner and that pertain to the owner's obligations to do or refrain from doing specified activities that affect the condition of the restoration, rehabilitation or repaired property; and

(4) a statement that nothing in the development agreement prohibits the owner from obtaining financial assistance from sources other than the MSRL fund, provided that the lien of the covenants and deed restrictions shall not be made subordinate to any mortgage or other lien interest made in connection with other financial assistance without the committee's approval; and

(5) a statement that the standard of review for compliance with the covenants and deed restrictions or review of construction, alteration, repair, maintenance, or casualty damage, shall be the MSRL standards and any applicable state or local standards; and

(6) a statement that the division determines the applicability of the standards and the application of alternative standards that the division determines to be reasonable; and

(7) a provision regarding casualty damage or destruction to the property; and

(8) covenants applicable to the committee and that pertain to conveyance, assignment or transfer of its interest in the development agreement; and

(9) a provision regarding inspection of the property; and

(10) a provision describing the division's remedies to correct violations of the development agreement and covenants and deed restrictions; and

(11) a provision regarding notice from the owner to the committee in the event the owner proposes to sell the property; and

(12) a requirement that as long as the covenants and deed restrictions run with the land, the owner shall insert the covenants and deed restrictions in any subsequent deed or other legal instrument by which the owner divests itself of either the fee simple title to, or its possessory interest in the property; and

(13) a provision regarding recording of the development agreement and covenants and deed restrictions; and

(14) provisions regarding subordination of subsequent mortgages and the rights of the division with respect to senior liens, which shall require that:

(a) the covenants and deed restrictions shall have priority over all mortgages, other rights affecting the property including tax liens, which are granted after execution and recording of the development agreement; and

(b) the covenants and deed restrictions shall not be extinguished or terminate upon a mortgagee taking title to the property within five years of the date of closing of the loan, as a result of foreclosure or otherwise; and

(c) that the borrower's default in connection with any loan or other obligation secured by a lien superior to the mortgage or lien of the covenants and deed restrictions shall constitute an event of default of the covenants and deed restrictions, and that the division or lending institution shall have the right to cure any such default and charge the costs of curing to the borrower; and

(d) if a mortgage grants to a mortgagee the right to receive proceeds of a condemnation proceeding arising from an exercise of eminent domain as to any part of the property or the right to receive insurance proceeds as a result of any casualty, hazard or accident occurring to or about the property, the mortgagee shall have a superior claim to the insurance and condemnation proceeds and entitled to the same in preference to the division until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the covenants and deed restrictions; and

(e) if a mortgagee has received an assignment of the leases, rents and profits of the property as security or additional security for a loan, the mortgagee shall have a superior claim to the leases, rents and profits of the property and shall be entitled to receive same in preference to the division until said mortgagee's debt is paid off, notwithstanding that the mortgage is subordinate to the covenants and deed restrictions; and

(f) until a mortgagee or purchaser at foreclosure obtains ownership of the property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under the covenants and deed restrictions; and

(15) a statement of the name and street address of the individuals to whom written notice is to be directed; and

(16) a requirement that upon the request of the division, the owner shall provide evidence of compliance with terms of the development agreement and covenants and deed restrictions; and

(17) provisions regarding evidence of compliance, and interpretation and enforcement of the development agreement and covenants and deed restrictions; and

(18) an expiration date of the development agreement and covenants and

deed restrictions, and duly witnessed and notarized signature lines of the owner and the division.

G. Promissory note:

(1) A promissory note signed by the borrower and evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement of Paragraph (2) of Subsection G of 12.21.3.13 NMAC below, the form of the note and its terms shall be determined by the lending institution using customary and prudent lending practices by lending institutions in New Mexico.

(2) The promissory note shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

H. Mortgage:

(1) A mortgage evidencing the security interest for the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection H of 12.21.3.13 NMAC below, the form of the mortgage and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

I. Loan agreement:

(1) A loan agreement evidencing the loan or loan subsidy may be required by the lending institution. With the inclusion of the requirement in Paragraph (2) of Subsection G of 12.21.3.13 NMAC below, the form of the agreement and its terms shall be determined by the lending institution using customary and prudent lending practices for lending institutions in New Mexico.

(2) The mortgage shall include a provision that events of default include without limitation, the borrower's failure to make timely payments of amounts due under the loan or loan subsidy, comply with the standards, or comply with the development agreement and covenants and deed restrictions.

[12.21.3.13 NMAC - N, 12/15/08]

**12.21.3.14 PRIORITY RANKING OF MAIN STREET PROJECTS AND PRELIMINARY LOAN APPLICATION FORM:**

A. The committee in con-

sultation with the division shall annually review and adopt a system for priority ranking of criteria applied to loan applications in a regular public meeting of the MSRLC. The priority ranking will assist the committee and the division in the review of applications and in funding decisions.

B. The division shall provide annual public notice of the availability of loans or loan subsidies from the main street revolving loan fund and the availability of a main street preliminary loan application form from the division.

C. A preliminary loan application form shall consist of the street address of the property, the names and street addresses of the parties, and their tax identification; the status of the property in a main street district per Subsection E of 12.21.3.7 NMAC, ownership, existence of legal protections, application date, description of proposed work, photographs, statement of condition, drawings or plans when required to describe work, and cost estimates of rehabilitation, restoration, or repairs, project start and completion dates, agreement to provide financial information per Paragraph (9) of Subsection B of 12.21.3.10 NMAC, and signature and date lines for the applicants. It will also include a certification page with a statement that the division has reviewed the project according to the priority ranking and the MSRL standards and recommends the project to the committee for approval, approval with conditions, denial, or tabling the application pending further information, division staff and committee signature and date lines.

[12.21.3.14 NMAC - N, 12/15/08]

**12.21.3.15 LENDING INSTITUTION'S PROCEDURES:**

A. After approval by the committee of a preliminary loan application form and identification of a lending institution, the designated officer of the lending institution will advise the property owner of any additional documentation required by the lending institution.

B. Applicants will be notified in writing by the lending institution regarding its determination to approve or disapprove a loan for a project. The designated officer of the lending institution will advise the borrower of the amount, terms and conditions of the loan.

C. Approval of a loan or loan subsidy from the loan pool will be made in accordance with the lending institutions customary and prudent lending practices.

[12.21.3.15 NMAC - N, 12/15/08]

**12.21.3.16 PROPERTY OWNER'S COLLATERAL SECURITY INTEREST:**

A. The sufficiency of the

collateral security interest in a main street property whose repair, rehabilitation or restoration is to be funded with funds from the main street revolving loan fund and lending institution(s) shall be determined by the participating lending institution(s) in accordance with the customary and prudent lending practices.

B. The offer of collateral security in the form of an assignment to the state of New Mexico and the committee, of a first mortgage, second mortgage, or assignment of lease, shall be commensurate with risk and approved by the division in consultation with the lending institution.  
[12.21.3.16 NMAC - N, 12/15/08]

**12.21.3.17 LENDING INSTITUTION'S LOAN PROCESSING FEES AND RELATED CHARGES:** Recording, title, credit report fees and costs charged by the lending institution(s) participating in the loan for a project shall not be paid with MSRL contributions to the loan pool.  
[12.21.3.17 NMAC - N, 12/15/08]

**12.21.3.18 MSRL LOAN AMOUNT AND REPAYMENT BY PROPERTY OWNER:**

A. The amount of MSRL funds contributed to the loan pool shall not exceed \$75,000 for any one project except if granted by a waiver of the committee at a public meeting.

B. The property owner of an approved project will repay the loan or loan subsidy in monthly installments. Payment on the interest and principal shall be in accordance with Subparagraph (c) of Paragraph (16) of Subsection C of 12.21.3.13 NMAC of these regulations.  
[12.21.3.18 NMAC - N, 12/15/08]

**12.21.3.19 MSRL STANDARDS FOR REHABILITATION:** The committee shall review architectural applications for conformance with the following MSRL standards:

A. Rehabilitation standards for all eligible projects applying to the program provide the applicant with guidance on maintaining the architectural, design, historic, and main street character of the property, during and after the contracted restoration, rehabilitation, repair and work necessary to meet code requirements.

B. The following standards have been adopted by the committee as the standards for rehabilitation for eligible properties.

(1) A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

(2) The historic character of a

property will be retained and preserved. The removal of distinctive materials or alterations of features, spaces, and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archaeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(9) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.  
[12.21.3.19 NMAC - N, 12/15/08]

**12.21.3.20 COMPLIANCE WITH MSRL STANDARDS, INSPECTION AND REPORTING REQUIREMENTS:**

A. All rehabilitation, restoration, repair and preservation of projects funded by a loan or loan subsidy from the main street revolving loan fund shall be governed by the MSRL standards as applicable.

B. The committee may require professional design, architectural or

engineering services for any rehabilitation, restoration, repair and preservation projects funded by a loan or loan subsidy from the main street revolving loan fund.

C. All plans and specifications, when required, shall be approved by the committee and the division prior to commencement of rehabilitation, restoration, repair and preservation of a project. The committee or its architectural subcommittee may also review project plans and specifications.

D. The committee may direct the division to review a project in progress at any time upon notice to the property owner and may require correction of any work not conforming to the standards or approved plans and specifications. The division will review all completed projects to ensure conformity with the standards and the approved application, plans and specifications.

E. Written progress reports on projects undergoing rehabilitation, restoration, repair and preservation shall be submitted by the property owner to the division with a request for a draw and after a division inspection of work. Reports shall include a detailed description of progress to date, a status report for the entire project and a financial summary.  
[12.21.3.20 NMAC - N, 12/15/08]

**12.21.3.21 AGREEMENT PROVISION VARIANCES:** The requirements described in any section of these regulations may be subject to variance in accordance with the agreement and negotiations of the parties. Changes or divergence from the provisions described therein are within the discretion of the committee and the division.  
[12.21.3.21 NMAC - N, 12/15/08]

**HISTORY OF 12.21.3 NMAC:**  
[RESERVED]

## NEW MEXICO MEDICAL BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 21 GENETIC COUNSELORS: LICENSURE AND PRACTICE REQUIREMENTS**

**16.10.21.1 ISSUING AGENCY:** New Mexico Medical Board, hereafter called the board.  
[16.10.21.1 NMAC - N, 1/1/09]

**16.10.21.2 SCOPE:** This part applies to genetic counselors.  
[16.10.21.2 NMAC - N, 1/1/09]

**16.10.21.3 STATUTORY AUTHORITY:** This part governs the licensing and practice of genetic counselors in New Mexico and is promulgated pursuant to and in accordance with the Genetic Counseling Act, Sections 61-6A-1 through 61-6A-10 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.21.3 NMAC - N, 1/1/09]

**16.10.21.4 DURATION:** Permanent.

[16.10.21.4 NMAC - N, 1/1/09]

**16.10.21.5 EFFECTIVE DATE:** January 1, 2009, unless a different date is cited at the end of a section.

[16.10.21.5 NMAC - N, 1/1/09]

**16.10.21.6 OBJECTIVE:** This part regulates the licensing and practice of genetic counselors.

[16.10.21.6 NMAC - N, 1/1/09]

**16.10.21.7 DEFINITIONS:**

**A. "ABGC"** means the American board of genetic counseling, a national agency for certification and recertification of genetic counselors, or its successor agency.

**B. "ABMG"** means the American board of medical genetics, a national agency for certification and recertification of genetic counselors and geneticists with medical or other doctoral degrees, or its successor agency.

**C. "Accreditation"** means any of the following definitions.

**(1) Full accreditation** indicates that the program meets the minimum standards established by ABGC to provide a well-rounded and adequate educational and clinical program for students. ABGC full accreditation is typically conferred for a period of six (6) years and reaccreditation is typically conferred for a period of up to eight (8) years, although ABGC reserves the right to provide probationary or shorter-term accreditation.

**(2) Probationary accreditation** indicates that, while the program continues to have accredited status, it does not meet the minimum standards for providing educational and clinical training for students and has generalized problems that appear to interfere with optimal education of the candidates. This program must make public its probationary status.

**(3) Provisional accreditation** applies to a new program that has completed and submitted an application for becoming an accredited program. Such a program must meet the minimum criteria for providing the master's degree in genetic counseling, as established by ABGC. Provisionally

accredited programs must apply for full accreditation within three years of matriculating their first class. If the program does not attain full accreditation (or accreditation with restrictions), provisional accreditation will be revoked. Probationary accreditation is not an option for a provisionally accredited program.

**D. "Active candidate status"** means a graduate who has applied to sit for the ABGC certification examination according to published eligibility requirements in effect for that examination cycle, and who has been approved as a candidate for that examination cycle based on review and approval of his/her credentials by the ABGC credentials committee.

**E. "Active status"** means a license that is current and authorizes the licensee to engage in the practice of genetic counseling.

**F. "Alternate supervising genetic counselor or physician"** means a genetic counselor or physician who holds a current unrestricted New Mexico license, is a cosignatory on the notification of supervision, and agrees to act as the supervising genetic counselor or physician in the absence of the designated genetic counselor or physician.

**G. "Board"** means the New Mexico medical board.

**H. "Certification"** means successful completion of a comprehensive general genetics examination and genetic counseling specialty examination administered by ABGC or ABMG, or after 2009, successful completion of the ABGC certification examination.

**I. "Contact hour"** means sixty (60) minutes of actual instructional time. Breaks, meals, evaluations, wrap-up or registration are not included when calculating hours.

**J. "Effective supervision"** means the oversight, control, and direction of services rendered by a genetic counselor practicing on a temporary license. Supervision shall be provided by a licensed genetic counselor or physician. Elements of effective supervision include:

**(1)** on-going availability of direct communication, either face-to-face or by electronic means;

**(2)** active, ongoing review of the genetic counselor's services, as appropriate, for quality assurance and professional support;

**(3)** delineation of a predetermined plan for emergency situations, including unplanned absence of the primary supervising genetic counselor or physician; and

**(4)** identification and registration of an alternate supervising genetic counselor or physician, as appropriate to the practice setting.

**K. "Expired"** means a

license was not renewed by the biennial renewal date of March 1 or at the end of the grace period of May 1, and the licensee is not eligible to practice within the state of New Mexico.

**L. "Genetic counseling"** means a communication process that may include:

**(1)** estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition or congenital abnormality. Genetic counseling may involve:

**(a)** obtaining and analyzing the complete health history of an individual and family members;

**(b)** reviewing pertinent medical records;

**(c)** evaluating the risks from exposure to possible mutagens or teratogens; and

**(d)** determining appropriate genetic testing or other evaluations to diagnose a condition or determine the carrier status of one or more family members;

**(2)** helping an individual, family or health care provider to:

**(a)** appreciate the medical, psychological and social implications of a disorder, including its features, variability, usual course and management options;

**(b)** learn how genetic factors contribute to a disorder and affect the chance for occurrence of the disorder in other family members;

**(c)** understand available options for coping with, preventing or reducing the chance of occurrence or recurrence of a disorder;

**(d)** select the most appropriate, accurate and cost-effective methods of diagnosis; and

**(e)** understand genetic or prenatal tests, coordinate testing for inherited disorders and interpret complex genetic test results; and

**(3)** facilitating an individual's or family's:

**(a)** exploration of the perception of risk and burden associated with a genetic disorder; and

**(b)** adjustment and adaptation to a disorder or the individual's or family's genetic risk by addressing needs for psychological, social and medical support.

**M. "Genetic counselor"** means a person licensed pursuant to the Genetic Counseling Act to engage in the practice of genetic counseling.

**N. "Grace period"** means the sixty (60) day period following the renewal date when a genetic counselor may renew a license that was not renewed by the renewal date, by paying the required renewal fee, the late fee and meeting the renewal requirements. A licensee may continue to practice during the grace period.



**O. "Grace period status"** means the license has not been renewed by the renewal date and has not expired.

**P. "NSGC"** means the national society of genetic counselors, a professional membership society promoting the genetic counseling profession as an integral part of health care delivery and offering educational programs.

**Q. "Renew"** means to begin again after an interval of time; to make valid again for a further period.

**R. "Renewal date"** means the deadline date upon which the license shall be made valid again for another period of time without a penalty fee.

[16.10.21.7 NMAC - N, 1/1/09]

**16.10.21.8 LICENSURE REQUIREMENTS:** The board may issue a license to an applicant who fulfills the following requirements.

**A.** Completes an application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one (1) year from the date of receipt. While an application is pending, the applicant is responsible for providing the board with any changes to the submitted information or to the applicant's oath. Applications shall require the following documentation:

- (1) demographic information of the applicant;
- (2) educational history;
- (3) employment history;
- (4) professional references;
- (5) examination information;
- (6) certification information;
- (7) other state licensure information;

(8) professional practice questions;

- (9) applicant's oath;
- (10) passport-quality color photograph taken within six months prior to filing the application; approximate size 2 x 2 inches, head and shoulders only, full face, front view, plain white or off-white background, standard photo stock paper; and, scanned or computer-generated photographs should have no visible pixels or dots; and
- (11) applicant's signature.

**B.** Each applicant for licensure as a genetic counselor shall submit the required fees as established in 16.10.9 NMAC.

**C.** Verification of licensure in all states or territories where the applicant holds or has held a license to engage in the practice of genetic counseling, or other health care profession, shall be sent directly to the board by the other state board(s), and shall include a raised seal,

attest to the current status, issue date, license number, and other information requested and contained on the form.

**D.** Proof of certification from the ABGC, ABMG or as approved by the board, shall be sent directly to the board by the certifying entity. The board may accept hard copy by United States postal service, facsimile or electronic mail.

**E.** Verification of all work experience in the last five (5) years since graduation, if applicable, provided directly to the board from the employer, by letter or on forms provided by the board.

**F.** Proof of graduation from a genetic counseling educational program, evidenced by:

(1) a master's degree from a genetic counseling training program prior to 1997; or

(2) a master's degree from a genetic counseling training program that is accredited by the ABGC, or an equivalent program as approved by the board; or

(3) a doctoral degree from a medical genetics training program that is accredited by the ABMG, or an equivalent program as determined by the board.

(4) Proof of graduation means official transcripts from a college or university. The applicant shall make arrangements for official transcripts to be sent directly to the board by the educational institution. If official transcripts are not available due to school closure, destroyed records, etc., the applicant shall provide satisfactory evidence to the board that the required genetic counseling educational program has been met for consideration on a case-by-case basis.

**G. Initial license period.** The applicant who has met all the requirements for licensure shall be issued an initial license for a period of not more than twenty-four months or less than thirteen months, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1.

**H. Initial license expiration.** Genetic counselor licenses shall be renewed biennially on March 1 as established in Section 12 of this part.

**I.** All applicants for initial licensure as a genetic counselor are subject to a state and national criminal history screening at their expense. All applicants shall submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and background screening fee at the time of application.

(1) Applications for licensure shall not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications shall be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee shall be notified to submit copies of legal documents and other related information to the board, which shall make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. Questions of felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession need to be resolved satisfactorily. If the prior conviction does not relate to employment in the profession, the board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole, payment of fees, community service or any other court ordered sanction.

[16.10.21.8 NMAC - N, 1/1/09]

**16.10.21.9 TEMPORARY INTERIM LICENSE:**

**A.** The board may issue a temporary license to an applicant who has met all licensure requirements except the certification requirement and has active candidate status conferred by ABGC.

**B.** The temporary license is valid until the results of the next scheduled ABGC certification examination are available and a license is issued or denied.

**C.** The temporary license automatically expires three months after the month the ABGC certification examination is offered.

**D.** A temporary license may be renewed as long as the applicant maintains active candidate status. Individuals with active candidate status must sit for the examination within the first two consecutive exam cycles for which they are eligible following graduation. Individuals who fail to do this will need to apply again as new applicants.

**E.** The temporary license may be renewed upon a first failure of the certification examination. The temporary license may be renewed a maximum of two consecutive times within a five-year period following the first temporary licensure and upon payment of the temporary license renewal fee as established in 16.10.9 NMAC.

**F.** The temporary licensee may not practice genetic counseling until the temporary license is received and is on file at the principal place of practice.

**G.** The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician. The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) name of the supervising genetic counselor or physician;
  - (2) specific program or protocol of work planned;
  - (3) address of the sponsoring institution or organization where the work will be performed; and
  - (4) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the temporary licensee will perform.
- [16.10.21.9 NMAC - N, 1/1/09]

**16.10.21.10 TEMPORARY TEACHING OR ASSISTING LICENSE:**

A one-year temporary license may be issued to a person providing the following services.

**A.** The genetic counselor is in New Mexico temporarily to assist a New Mexico resident licensed to practice genetic counseling or to teach. The genetic counselor has met the requirements for New Mexico licensure, or is licensed in another U.S. jurisdiction or country where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction or country; if the genetic counselor is from a U.S. jurisdiction or country that does not have licensure for genetic counselors, the genetic counselor would need to meet the requirements for a New Mexico license as established in Section 8 of this part.

**B.** The holder of a temporary license shall work under the effective supervision of a New Mexico licensed genetic counselor or physician.

**C.** The temporary licensee is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

- (1) completed temporary license application;
- (2) temporary teaching or assisting license fee as established in 16.10.9 NMAC;
- (3) written justification for a temporary license;
- (4) verification of licensure, if licensed, in another U.S. jurisdiction, as established in Subsection 8 of this part;
- (5) name of the supervising genetic counselor or physician;
- (6) specific program or protocol of work planned;
- (7) address of the sponsoring

institution or organization where the work will be performed; and

(8) an affidavit from the supervising genetic counselor or physician attesting to the qualifications of the temporary licensee and the purpose of the functions the temporary licensee will perform.

[16.10.21.10 NMAC - N, 1/1/09]

**16.10.21.11 ENDORSEMENT:**

An applicant for licensure as a genetic counselor who is licensed under the laws of another U.S. jurisdiction where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction, shall file an application as established in Section 8 of this part. An endorsement applicant may also apply for a temporary license as established in Section 10 of this part and not be restricted to teaching or assisting.

[16.10.21.11 NMAC - N, 1/1/09]

**16.10.21.12 LICENSE EXPIRATION AND RENEWAL:**

**A.** Genetic counselor licenses shall be renewed biennially on March 1st. An initial license may be issued for a period of up to two years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1st.

**B.** Failure to receive the renewal notice shall not relieve the licensee from the responsibility of renewing the license by the renewal date. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to inform the board of accurate address information and to make a timely request for the renewal application if one has not been received prior to March 1st.

**C.** Renewal applications postmarked or hand-delivered on or prior to March 1 shall require the following documentation:

- (1) completion of a renewal application either electronically on-line or on the form provided by the board; the renewal form shall include the following data:
  - (a) demographic information of the licensee;
  - (b) license number;
  - (c) questions regarding practice information since the last renewal; and
  - (d) signature of the licensee;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC; and
- (3) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

**D.** Renewal applications postmarked or hand-delivered after March 1 and prior to May 1 shall require the follow-

ing documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in Subparagraphs (a)-(d) of Paragraph (1) of Subsection C of 16.10.21.12 NMAC;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the late fee as established in 16.10.9 NMAC; and

(4) proof of forty (40) NSGC or ABGC approved continuing education contact hours during each biennial renewal cycle.

**E.** March 1 through April 30 is considered the grace period following the renewal date during which a licensee may continue to provide services and renew with a late fee.

**F.** When renewal applications are received on or after May 1, the license shall have expired, and the licensee shall not be eligible to provide genetic counseling services in New Mexico.

[16.10.21.12 NMAC - N, 1/1/09]

**16.10.21.13 REINSTATEMENT:**

A licensee with an expired license may apply for reinstatement.

**A.** Requirements for reinstatement of an expired license *within* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC; and
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours within the previous two years.

**B.** Requirements for reinstatement of an expired license *after* one (1) year of the renewal date are as follows:

- (1) completion of a reinstatement application;
- (2) receipt of the renewal fee as established in 16.10.9 NMAC;
- (3) receipt of the reinstatement fee as established in 16.10.9 NMAC;
- (4) proof of forty (40) NSGC or ABGC approved continuing education contact hours as required for license renewal;
- (5) proof of twenty (20) NSGC or ABGC approved continuing education contact hours for each year the license has been expired; and
- (6) any other proof of competency as may be requested by the board or the board's designee. Additionally, the board may require the former licensee to reapply as a new applicant.

[16.10.21.13 NMAC - N, 1/1/09]

**16.10.21.14 DISCIPLINARY AND COMPLAINT PROCESS:**

Disciplinary actions and complaints shall be processed as established in 16.10.5 and 16.10.6 NMAC.

[16.10.21.14 NMAC - N, 1/1/09]

**HISTORY of 16.10.21 NMAC:**  
[RESERVED]

## NEW MEXICO MEDICAL BOARD

**This is an amendment to 16.10.5 NMAC, Sections 3, 7, 9, 10, 11, 13, 15 and the addition of 16, effective January 1, 2009.**

**16.10.5.3 STATUTORY AUTHORITY:** This part [~~governs the practice of medicine in New Mexico and~~] is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, section 61-1-1 through 61-1-33 NMSA 1978, and the Impaired Health Care Provider Act, section 61-7-1 through 61-7-12 NMSA 1978. [16.10.5.3 NMAC - Rp 16 NMAC 10.5.3, 4/18/02; A, 1/1/09]

### 16.10.5.7 DEFINITIONS:

**A. "License"** means a document granting legal permission to a physician, a physician assistant, [~~or an~~] anesthesiologist assistant, genetic counselor, or a polysomnographic technologist to practice [~~medicine~~] in the state of New Mexico.

**B. "Licensee"** means a physician, physician assistant, [~~or~~] anesthesiologist assistant, genetic counselor, or a polysomnographic technologist who has been granted permission to practice [~~medicine~~] in the state of New Mexico. [16.10.5.7 NMAC - Rp 16 NMAC 10.5.7, 4/18/02; A, 1/1/09]

### 16.10.5.9 REVOCATION OF LICENSE:

**A. Action prior to revocation.** Prior to revoking any license for any violation of the Medical Practice Act, or the Impaired Health Care Provider Act, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

**B. Terms of revocation.** A licensee whose license is revoked may not practice in any manner under [~~the~~] that license.

**C. Relicensing after revocation under the Medical Practice Act.** All revocations pursuant to the Medical Practice Act are permanent and no such license revoked shall be reinstated. Persons seeking licensure after revocation under the Medical Practice Act shall file a new appli-

cation for licensure with the board, under the rules for new applicants, only if permitted in the revocation order.

**D. Relicensing after revocation under the Impaired Health Care Provider Act.** A physician or physician assistant whose license has been revoked pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to section 61-7-9 NMSA 1978. [16.10.5.9 NMAC - Rp 16 NMAC 10.5.10, 4/18/02; A, 1/1/09]

### 16.10.5.10 SUSPENSION OF LICENSE.

**A. Action prior to suspension.** Except as provided in the Impaired Health Care Provider Act, or in a disciplinary order entered after a hearing, or pursuant to Subsection C of 16.10.5.15 NMAC below, prior to suspending any license, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

**B. Terms of suspension.** The board may suspend a license for either a specified period of time or indefinitely. A licensee whose license is suspended may not practice in any manner under [~~the~~] that license during the period of suspension.

**C. Reinstatement.** Unless otherwise established by the board:

(1) If the board has suspended a license indefinitely, the licensee must petition the board for reinstatement. If reinstatement is initially denied, the licensee may petition for reinstatement on a yearly basis thereafter.

(2) If the board sets a date after which a license may be reinstated, the board will consider a petition for reinstatement only after that date. The licensee may petition for reinstatement on a yearly basis thereafter.

(3) A physician whose license has been suspended pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to 61-7-9 NMSA, 1978, if the physician can meet the statutory requirements. [~~The~~] If the reinstatement is denied, the licensee may petition for reinstatement on a yearly basis thereafter.

[16.10.5.10 NMAC - Rp 16 NMAC 10.5.11, 4/18/02; A, 1/1/09]

### 16.10.5.11 PROBATION:

**A. General.** The board may stay any disciplinary action taken and place a [~~license~~] licensee on probation with a requirement that the licensee comply with terms of probation. The board may also place a licensee on probation without taking other disciplinary action.

**B. Terms of probation.** The terms of the probation shall be set forth

in writing. The licensee on probation may continue to practice under the license so long as the licensee complies with all terms of probation.

**C. Violation of probation.** If probation is granted and the terms of the probation are then violated, the board shall give the applicant written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act prior to taking further disciplinary action, unless the order of probation contains a provision for the summary suspension of the license.

[16.10.5.11 NMAC - Rp 16 NMAC 10.5.13, 4/18/02; A, 1/1/09]

**16.10.5.13 FINES:** The board may impose a fine on a licensee for each violation of the Medical Practice Act after giving the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act. If the [~~physician's~~] licensee's action constitutes more than one violation of the Medical Practice Act, the board may impose a fine for each violation.

[16.10.5.13 NMAC - Rp 16 NMAC 10.5.15, 4/18/02; A, 1/1/09]

### 16.10.5.15 STIPULATION:

**A. Power to enter into stipulations.** The board may come to an agreement and enter into a stipulation with a licensee at any time. In a stipulation, the parties may agree to any disciplinary or other action that the board is authorized to take by law.

**B. Contents.** The stipulation shall be in writing, shall contain the agreed upon restrictions on the licensee and shall be signed by the board and the licensee. The stipulation shall contain statements that the licensee:

(1) knows and understands the applicable statutory and regulatory provisions setting forth the authority and power of the board; and

(2) understands that entering into a stipulation regarding the case results in a waiver of the licensee's rights under the Uniform Licensing Act, the Medical Practice Act, [~~and/or~~] or the Impaired Health Care Provider Act, as applicable, including the right to appeal;

**C. Violation of a stipulation.** The licensee and the board may agree that the board may take immediate action to suspend a license, as set forth in the stipulation, if the board has reasonable cause to believe that the stipulation has been violated, without the licensee being given an opportunity to request a hearing. In this case, the stipulation shall provide that the board shall give notice of the disciplinary action to the licensee at the last known address of the licensee pursuant to the pro-

visions of the Uniform Licensing Act.

**D. Costs.** In all appropriate cases, the payment of costs of preparing the case, including reasonable prosecuting attorney's fees, may be negotiated as part of the stipulation.

[16.10.5.15 NMAC - Rp 16 NMAC 10.5.17, 4/18/02; A, 1/1/09]

**16.10.5.16 SUMMARY SUSPENSION:** This is a formal preliminary disciplinary action that immediately suspends a licensee's right to practice. The summary suspension remains in effect until a further order of the board is entered. The licensee has an opportunity for a full hearing before the board on the summary suspension.

**A.** The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with, or at any time after, the issuance of a notice of contemplated action (NCA) and the initiation of proceedings for a hearing provided for under the Uniform Licensing Act on the NCA, if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(3) has pled guilty to or been found guilty of any offense related to their practice or for any violent criminal offense in this state or a substantially equivalent criminal offense in another U.S. jurisdiction.

**B.** A licensee is not required to comply with a summary action until service of the action has been made personally or by certified mail, return receipt requested, at the licensee's last known address as shown in the board's records, or the licensee has actual knowledge of the order, whichever occurs first. The board's executive director may sign a summary suspension order that the board has authorized.

**C.** A licensee whose license is summarily suspended is entitled to a hearing before the board on the summary suspension order, pursuant to the Uniform Licensing Act, within fifteen (15) days from the date the licensee requests a hearing. This hearing request shall be in writing, addressed to the board, delivered by certified mail, return receipt requested. [16.10.5.16 NMAC - N, 1/1/09]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.6 NMAC, Sections 3, 7, 8, 10, 11, 13, 20, 27 and 28, effective January 1, 2009.

**16.10.6.3 STATUTORY AUTHORITY:** This ~~rule governs the practice of medicine in New Mexico and~~ part is promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, section 61-1-1 through 61-1-33 NMSA 1978, Impaired Physician Act, section 61-7-1 through 61-7-12 NMSA 1978 and the Parental Responsibility Act section 40-5A-1 through 13 NMSA 1978. [16.10.6.3 NMAC - Rp 16 NMAC 10.6.3, 4/18/02; A, 1/1/09]

**16.10.6.7 DEFINITIONS:** "Licensee" as used in this part means a physician, a physician assistant, ~~an~~ anesthesiologist assistant, genetic counselor, or polysomnographic technologist who holds a current license to practice in New Mexico or who is applying for licensure, license renewal or license reinstatement. [16.10.6.7 NMAC - N, 4/18/02; A, 1/1/09]

**16.10.6.8 COMPLAINTS.** A complaint may be filed against a physician, physician assistant ~~an~~, anesthesiologist assistant, genetic counselor, or polysomnographic technologist. All complaints must be in writing. The date of receipt of the complaint shall begin the running of the statute of limitation. [16.10.6.8 NMAC - Rp 16 NMAC 10.6.8, 4/18/02; A, 12/30/05; A, 1/1/09]

**16.10.6.10 COMPLAINT COMMITTEE.** The chair of the board shall appoint at least one member of the board to serve on each complaint committee. A complaint committee shall review each complaint charging a physician, physician assistant ~~an~~, anesthesiologist assistant, genetic counselor, or polysomnographic technologist with unprofessional conduct or other violations under the Medical Practice Act.

**A.** The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

**B.** Upon completion of an investigation, the complaint committee shall submit its recommendations to the board. After submitting their recommendations to the board, the members of the complaint committee shall recuse themselves from all further proceedings in that case.

**C.** The complaint commit-

tee, on behalf of the board, may issue investigative subpoenas. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in 61-1-10 NMSA 1978 or in the service of a notice of contemplated action (NCA) pursuant to Section 61-6-15 (D) 23, NMSA 1978.

[16.10.6.10 NMAC - Rp 16 NMAC 10.6.10, 4/18/02; A, 12/30/05; A, 1/1/09]

**16.10.6.11 NOTICE TO PHYSICIAN(S), PHYSICIAN ASSISTANT(S) ~~OR~~, ANESTHESIOLOGIST ASSISTANT(S), GENETIC COUNSELOR(S), OR POLYSOMNOGRAPHIC TECHNOLOGIST(S).** If the complaint committee determines that it will not impede an investigation and will not interfere with the procurement of testimony or development of the case, the complaint committee may inform the physician(s) ~~an~~, physician assistant(s), anesthesiologist assistant(s), genetic counselor(s), or polysomnographic technologists(s) about whom the complaint is made, of the nature of the complaint and may request a response to the allegations.

[16.10.6.11 NMAC - Rp 16 NMAC 10.6.11, 4/18/02; A, 1/1/09]

**16.10.6.13 NOTICE OF CONTEMPLATED ACTION.** Pursuant to a complaint or on its own motion, the board may serve upon an applicant or licensee a notice of contemplated action for any alleged violation of the Medical Practice Act ~~and/or~~ or the Impaired Health Care Provider Act. All notices of contemplated action shall comply with the Uniform Licensing Act, Section 61-1-4 NMSA 1978, and shall be served on the applicant or licensee personally or by certified mail, return receipt requested, at the applicant's or licensee's last known address as shown in the board's records. The executive director may sign a notice of contemplated action that is the result of a formal board action.

[16.10.6.13 NMAC - Rp 16 NMAC 10.6.13, 4/18/02; A, 1/1/09]

**16.10.6.20 ENTRY OF APPEARANCE.** All attorneys representing physicians ~~an~~, physician assistants, anesthesiologist assistants, genetic counselors, or polysomnographic technologists in matters before the board shall file an entry of appearance.

[16.10.6.20 NMAC - Rp 16 NMAC 10.6.20, 4/18/02; A, 1/1/09]

**16.10.6.27 SIMULTANEOUS ACTIONS UNDER THE MEDICAL PRACTICE ACT AND THE IMPAIRED HEALTH CARE PROVIDERS ACT.** Formal proceedings against a physician, physician assistant, ~~an~~ anesthesiologist assistant, genetic counselor, or polysomnographic technologist may be taken by the

board in accordance with the provisions of the Uniform Licensing Act. No action or investigation or proceedings under the Impaired Health Care Provider Act (Section 61-7-1 through Section 61-7-12 NMSA 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Medical Practice Act. (61-6-1 through 61-6-34 NMSA 1978). [16.10.6.27 NMAC - Rp 16 NMAC 10.6.27, 4/18/02; A, 1/1/09]

**16.10.6.28 EVALUATION OF COMPETENCE.** When the board has reason to believe that an applicant for licensure or a licensee is not competent to practice ~~medicine~~, it may require the applicant or licensee to take a competency examination or to be evaluated for competence by any means that has been endorsed or approved the board. (61-6-15, A & C) [16.10.6.28 NMAC - Rp 16 NMAC 10.6.28, 4/18/02; A, 1/1/09]

## NEW MEXICO MEDICAL BOARD

**This is an amendment to 16.10.9 NMAC, Sections 11, 12, 13 and 14, effective January 1, 2009.**

### 16.10.9.11 GENETIC COUNSELOR FEES:

**A.** Application fee of \$150; includes temporary license while certification is pending.

**B.** Biennial renewal fee of \$150.

**C.** Reinstatement fee of \$100.

**D.** Temporary teaching or assisting license fee of \$150.

**E.** Temporary license renewal fee of \$50; for applicants renewing a temporary license while certification is pending.

**F.** Late fee of \$50 for failure to renew license or provide required documentation by March 1 of the renewal year.

[16.10.9.11 NMAC - Rp 16 NMAC 10.9.8.3 & 8.4, 7/15/01; A, 5/1/02; 16.10.9.11 NMAC - N, 1/10/07; 16.10.9.11 NMAC - N, 1/1/09]

### 16.10.9.12 POLYSOMNOGRAPHY TECHNICIAN FEES: [Reserved]

[16.10.9.12 NMAC - Rn, 16.10.9.11 NMAC, 1/10/07; A, 9/27/07; A, 1/2/08; 16.10.9.12 NMAC - N, 1/1/09]

### ~~[16.10.9.14]~~ 16.10.9.13 PHYSICIANS SUPERVISING PHARMACIST CLINICIANS:

**A.** Registration application

fee of \$100.

**B.** Biennial renewal fee of \$100.

**C.** Change of supervising physician fee of \$25, with no change in scope of practice or protocol.

**D.** Late fee of \$25 for failure to renew registration or provide required documentation by July 1 of the renewal year.

[16.10.9.13 NMAC - Rn, 16.10.9.11 NMAC, 1/1/09]

### ~~[16.10.9.12]~~ 16.10.9.14 MISCELLANEOUS FEES:

**A.** Copying fee of up to \$1.00 per page for public records.

**B.** License verification fee of \$30 per license for a letter of good standing to confirm the verification.

**C.** License verification fee of \$5 per license with a minimum charge of \$15 for verification of a list of licenses when the list contains the license numbers and physicians' names. No letters of good standing shall be issued for verifications from a list of this kind and notations regarding each verification shall be made on the list provided.

**D.** Fee of \$20 per copy for annual directory of physicians.

**E.** Returned check fee of \$25.

**F.** List of licensees on CD - \$100

**G.** Physician mailing labels - \$250, physician assistant mailing labels - \$50.

**H.** Administrative reprocessing fee - no greater than current initial licensing fee.

**I.** Waiver. The board may waive or reduce miscellaneous fees but only for good cause shown and documented. The NMMS, NMAPA, and UNMHSC will each be given one free list or CD annually.

[16.10.9.14 NMAC - Rn, 16.10.9.12 NMAC, 1/1/09]

## NEW MEXICO MEDICAL BOARD

**This is an amendment to 16.10.15 NMAC, Sections 8 and 11, effective January 1, 2009.**

### 16.10.15.8 QUALIFICATIONS FOR LICENSURE AS A PHYSICIAN ASSISTANT

**A.** graduation from a program for physician assistants accredited by the committee on allied health education and accreditation (CAHEA) of the American medical association, the accreditation review committee on education for

the physician assistant (ARC-PA) or its successor agency, ~~and~~ or passed the physician assistant national certifying examination administered by NCCPA prior to 1986 and has proof of continuous practice with an unrestricted license as a physician assistant in another state for four (4) years prior to application;

**B.** current NCCPA certification;

**C.** good moral and professional character; and

**D.** any other proof of competency as may be requested by the board.

[16.10.15.8 NMAC - Rp 16 NMAC 10.15.8, 7/15/01; A, 10/5/03; A, 1/1/09]

### 16.10.15.11 APPROVAL OF SUPERVISING PHYSICIANS.

**A.** Pursuant to Section 61-6-10 NMSA 1978 a physician may supervise as many physician assistants as the physician can effectively supervise and communicate with in the circumstances of their particular practice setting.

**B.** All supervising physicians shall submit written notice of intent to supervise a physician assistant on forms prescribed by the board. These forms must be submitted and approved before the physician assistant begins work. Failure of the supervising physician to comply with the Medical Practice Act and the rules may result in denial of approval for current or future physician assistant supervision.

**C.** Within thirty days after an employer terminates the employment of a physician assistant, the supervising physician ~~and/or~~ or the physician assistant shall submit a written notice to the board providing the date of termination and reason for termination. The physician assistant shall not work as a physician assistant until the board approves another supervising physician.

**D.** A physician assistant who is employed by the United States government and who works on land or in facilities owned or operated by the United States government or a physician assistant who is a member of the reserve components of the United States and on official orders or performing official duties as outlined in the appropriate regulation of that branch may be licensed in New Mexico with proof that their supervising physician holds an active medical license in another state.

[16.10.15.11 NMAC - Rp 16 NMAC 10.15.11, 7/15/01; A, 10/7/05; A, 9/27/07; A, 1/1/09]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.16 NMAC, Sections 7, 8 and 9, effective January 1, 2009.

### 16.10.16.7 DEFINITIONS:

**A. "Prescribe"** means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, license classification, the name and address of the patient, the name of the drug prescribed, direction for use and the date of issue.

**B. "Administer"** means to apply a prepackaged drug directly to the body of a patient by any means.

**C. "Dispense"** means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container.

**D. "Distribute"** means to administer or supply to a patient under the direct care of the distributing physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container.

**E. "Formulary"** means any dangerous drugs; including Schedule II-V controlled substances, physician assistants may use in the care of patients where there is an established ~~physician-patient~~ physician- or physician assistant-patient relationship.

**F. "Established ~~physician-patient~~ physician- or physician assistant-patient relationship"** means a relationship between a physician or physician assistant and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician or physician assistant involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

**G. "Licensed physician"** means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico.

**H. "Physician assistant"** means a health professional who is licensed by the board to practice as a physician assistant and who provides services to patients

under the supervision and direction of a licensed physician.

[16.10.16.7 NMAC - Rp 16 NMAC 10.16.7, 7/15/01; A, 7/22/08; A, 1/1/09]

### 16.10.16.8 ADMINISTERING AND PRESCRIBING DANGEROUS DRUGS

**A.** Physician assistants may administer formulary drugs; including Schedule II-V controlled substances, where there is an established ~~physician-patient~~ physician- or physician assistant-patient relationship, under the direction of the supervising physician. Physician assistants must comply with all other state and federal laws regulating the administration and prescribing of controlled substances.

**B.** Physician assistants may prescribe formulary drugs; including Schedule II-V controlled substances, where there is an established ~~physician-patient~~ physician- or physician assistant-patient relationship, under the direction of the supervising physician, and may telephone prescriptions to pharmacies for any drug they are authorized to prescribe.

**C.** Physician assistants may prescribe on a prescription pad that shall contain the following:

(1) the name, business address and telephone number of the supervising physician;

(2) the name, title and New Mexico license number of the physician assistant;

(3) if the signature line is without MD, PA, or PA-C printed after it, the PA or PA-C must add the designation "PA" or "PA-C" at the end of the signature line when signing a prescription; if the PA or PA-C must of necessity use a prescription pre-printed with "MD" at the end of the line, the designation "MD" must be clearly crossed out and "PA" or "PA-C" must be added;

(4) when the physician assistant leaves the supervision or employ of the supervising physician, or there is a change in the supervising or alternate physicians, the supervising physician shall immediately notify the board.

[16.10.16.8 NMAC - Rp 16 NMAC 10.16.8, 7/15/01; A, 7/22/08; A, 1/1/09]

### 16.10.16.9 DISTRIBUTION OF MEDICATIONS

**A.** It must be clear to the physician and to the physician assistant that the intent of the legislature and of the board is that a physician assistant is not to function as a pharmacist in the general sense of that licensee's duties. Dispensing, as defined by statute and this document, is not a physician assistant's job and is prohibited. Distribution of a limited supply of medication to facilitate the medical needs of a patient may be done by a physician assistant

under the direction of the supervising physician. Physician assistants may distribute dangerous drugs where there is an established ~~physician-patient~~ physician- or physician assistant-patient relationship; including Schedule II-V controlled substances.

**B.** Distribution of a medication shall be restricted to medications repackaged by a licensed pharmacist or a pharmaceutical manufacturer or re-packer. Physician assistants may request, receive and sign for professional sample medications and may distribute sample medications to patients. A log must be kept of distributed medications in accordance with board of pharmacy regulations. Samples requested/received would be appropriate to the scope of the supervising physician's practice and would be consistent with board of pharmacy regulations.

**C.** Any medication distributed to a patient will be properly labeled with the following: patient name, date of issue, drug name and strength, instructions for use, drug expiration date, number distributed, name of prescriber, address and phone number of prescriber, and pharmacist or manufacturer/repackager identification,

**D.** Labeling may be via hand-written or pre-printed fill-in labels. The above information shall also be properly documented in the patient's medical record, including the amount of medication provided.

[16.10.16.9 NMAC - Rp 16 NMAC 10.16.9, 7/15/01; A, 7/22/08; A, 1/1/09]

## NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.17 NMAC, Sections 7, 8, 9 and 10, effective January 1, 2009.

### 16.10.17.7 DEFINITIONS.

**A. "Electronic medical billing"** means all data defined in Subsection D of this section that is kept by computer hard drive or disk, server hard drives or other media which is printer capable upon request.

**B. "Electronic medical records"** means all information contained in Subsection E of this section that is kept by computer hard drive or disk, server hard drives or other media, which is printer capable upon request.

**C. "Group practice"** means an association of providers who practice jointly. Providers need not be of the same specialty; however, they shall practice under a common entity. Group practice does not include any government agency or non-profit organization that

employs providers.

**D. “Medical billing”** means all data kept by a physician to procure payment including, but not limited to, claims processing, forms, submissions, correspondence, and accounting ledgers.

**[A-] E. “Medical record”** means all information maintained by a physician relating to the past, present or future physical or mental health of a patient, and for the provision of health care to a patient. This information includes, ~~but is not limited to, the physician’s notes, reports and summaries, and x-rays and laboratory and other diagnostic test results.~~ but is not limited to: the physician’s notes; reports and summaries; x-rays and laboratory results; other diagnostic test results. A patient’s complete medical record includes information generated and maintained by the physician, as well as information provided to the physician by the patient, by any other physician who has consulted with or treated the patient, and other information acquired by the physician about the patient in connection with the provision of health care to the patient. Medical record does not include medical billing, insurance forms or correspondence related thereto.

**F. “Established physician- or physician assistant-patient relationship”** means a relationship between a physician or physician assistant and a patient that is for the purpose of maintaining the patient’s well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician or physician assistant involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

**[B-] G. “Psychotherapy notes”** means notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest ~~[#]~~ of the individual’s medical record. Psychotherapy notes exclude information that is found in the medical record, including medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date. To meet the definition of psychotherapy notes, the information

must be separated from the rest of the individual’s medical record.

[16.10.17.7 NMAC - N, 7/1/06; A, 1/1/09]

**16.10.17.8 RELEASE OF MEDICAL RECORDS.** Physicians must provide complete copies of medical records to a patient or to another physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the physician should act as the patient’s advocate and work to facilitate the patient’s request for records.

**A.** Medical records may not be withheld because an account is overdue or a bill for treatment, medical records, or other services is owed.

**B.** A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is not more than ~~[\$15]~~ \$30 for the first 15 pages, and ~~[\$0.10]~~ \$0.25 per page thereafter. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Physicians charging for the cost of reproduction of medical records shall give consideration to the ethical and professional duties owed to other physicians and their patients.

**C.** Psychotherapy notes must be maintained separately from the patient’s medical record, and may be withheld from the patient. The patient does not have the right to read, amend or have a copy of psychotherapy notes. Release of psychotherapy notes to other health care providers requires express authorization from the patient.

[16.10.17.8 NMAC - N, 7/1/06; A, 1/1/09]

**16.10.17.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE.** Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current physician to the new treating physician. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating physician.

**A.** Whenever possible, active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice. The method of notification is established in Subsection C

of this section.

**B.** ~~[Whenever possible, patients should be notified within at least 30 days after the death of their physician.] The executor of the physician’s estate or his designee shall notify patients within at least thirty (30) days after the death of the physician and indicate how to obtain patient records from the closed practice. The method of notification is established in Subsection C of this section.~~

~~[C. Notification shall be through a notice in newspaper in the local practice area, and should include responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address. To reach a maximum number of patients, the notification must run a minimum of two times per month for three months. In addition to a notice in the newspaper, notification may also be through an individual letter to the patient’s last known address. Notification shall also be sent to the board.]~~

**C.** Notification may be satisfied using any of the following methods:

(1) by placing a notice in at least one newspaper in the local practice area; notice should advise patients where their medical records will be stored; notice should include any pertinent information the patient may need for obtaining or transferring the records, including the name, mailing address and telephone number of a contact person with access to the stored records; notification should run a minimum of two times per month for three months to reach a maximum number of patients; or

(2) by written or electronic mail;

or  
(3) by individual correspondence to the patient’s last known physical or electronic mail address.

**D.** A physician or physician group should not withhold patient lists or other information from a departing physician that is necessary for notification of patients.

**E.** Patients of a physician who leaves a group practice must be notified the physician is leaving, notified of the physician’s new address and offered the opportunity to have their medical records transferred to the departing physician at his new practice.

**F.** When a practice is sold, all active patients must be notified that the physician is transferring the practice to another physician or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another physician or entity of their choice.

**G.** When a physician closes a practice and the practice retains an

inventory of drugs, contact the board of pharmacy for proper disposition, inventory, or inspection in accordance with the Pharmacy Act, the Drug Device and Cosmetic Act, and the Controlled Substances Act.

**H.** A physician or group practice shall develop a procedure for closing a practice and patient notification in the event a physician becomes incompetent or deceased. This procedure shall be available upon request by the board.

**I.** Notification shall also be sent to the board office within at least thirty (30) days before closing by electronic mail, facsimile, or letter.

[16.10.17.9 NMAC - N, 7/1/06; A, 1/1/09]

#### 16.10.17.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS.

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes a violation of 61-6-15.D(33). Physicians must provide every patient with a written copy of their policy or their employer's policy for medical record retention, maintenance and destruction.

**B.** Written medical record policy shall include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed; and

(4) cost of obtaining copies of records, and of recovering records/transferring records.

**C.** Electronic medical record policy shall include:

(1) responsible entity/agent to obtain records, requests for transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed or purged;

(4) a data backup plan, disaster recovery plan and storage which ensures retrievability into reasonably usable form on a timely basis upon any request; and

(5) transfer of data via electronic file with appropriate safeguards to ensure patient confidentiality.

**D.** Physicians must retain medical records that they own for at least ~~2~~ years beyond what is required by state insurance laws and by medicare and medicaid regulations] ten (10) years after the date of last treatment or the time frame set

by state or federal insurance laws or by medicare and medicaid regulation. Medical records for patients who are minors must be retained [for at least 2 years beyond the date that the patient is 18 years old.] until the date that the patient is twenty-one (21) years old. If a physician converts hard copies of medical records to electronic medical records, the hard copy shall be retained by the physician for a minimum of thirty (30) days after electronic transfer has occurred.

**E.** Physicians shall retain medical billing information for at least two (2) years after the date of last treatment.

**F.] E.** The board adopts the ethical standards for medical record retention and maintenance set forth in the latest published version of the "code of medical ethics current opinions with annotations" of the council on ethical and judicial affairs of the American medical association. Physicians have an obligation to retain patient records which may reasonably be of value to a patient. Beyond the time frame established in ~~[subsection B (above)]~~ Subsection D of this section, medical considerations are the primary basis for deciding how long to retain medical records. In deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time. For example, operative notes, chemotherapy records and immunization records must remain part of the patient's chart.

**F.] G.** Destruction of medical records must be such that confidentiality is maintained. Records must be destroyed by shredding, incinerating (where permitted) or by other method of permanent destruction, including purging of medical records from a computer hard drive, server hard drive or other computer media or disk in accordance with existing practices for data deletion then available.

**F.] H.** A log must be kept of all charts destroyed, including the patient's name and date of record destruction in accordance and under the same time frame established in Subsection D of this section. [16.10.17.10 NMAC - N, 7/1/06; A, 1/1/09]

#### NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment of 16.16.18 NMAC to change the part name from Authorized Minor Surgical Procedures and Injections to In-Office Minor Surgical Procedures effective 12/26/2008.

#### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

#### CHAPTER 16 OPTOMETRIC PRACTITIONERS

#### PART 18 [AUTHORIZED] IN-OFFICE MINOR SURGICAL PROCEDURES [AND INJECTIONS]

#### NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.6 NMAC, Sections 7, 9, and the addition of new Section 26, effective December 15, 2008.

#### 16.19.6.7 DEFINITIONS:

**A.** "Contracted" means having a written agreement (to include" business associate agreements" as required by federal law) between parties to ensure the authenticity and prescribing authority of each prescriber transmitting prescriptions, sufficient security to prevent the fraudulent creation or alteration of prescriptions by unauthorized parties, and assurance that "network vendors" or electronic prescription transmission intermediaries involved in the transmission and formatting of the prescription can provide documentation of chain of trust of who has had access to prescription content. Electronic prescription transmissions by non "contracted" parties will be invalid.

**B.** "Drug utilization review" (DUR) means evaluating or reviewing the patient record in order to determine the appropriateness of the drug therapy for a patient and which includes the prospective drug review in 16.19.4 NMAC and the verification of data entries including the correct interpretation and input of written prescriptions and the drug regimen review (NMSA 61-11-2L) as required by the board.

**B.] C.** "Electronically transmitted prescriptions" means communication of original prescriptions, refill authorizations, or drug orders, including controlled substances to the extent permitted by federal law, from an authorized licensed prescribing practitioner or his or her authorized agent directly or indirectly through one or more "contracted" parties to the pharmacy of the patient's choice by electronic means including, but not limited to, telephone, fax machine, routers, computer, computer modem or any other electronic device or authorized means.

**C.] D.** "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a prescription record.

**D.] E.** "Network vendor" means prescription transmission intermediary "contracted" by business associate agreements with appropriate parties involved, including point of care vendors,



pharmacy computer vendors, pharmacies, to transmit the prescription information only having access to the prescription content to make format modification to facilitate secure and accurate data transmission in a format that can be received and deciphered by the pharmacy.

**[E.] E.** "Point of care vendor" means an entity contracted with a prescriber to generate or transmit electronic prescriptions authorized by a practitioner directly to a pharmacy or to a "contracted" intermediary or "network vendor", who will ultimately transmit the prescription order to a patient's pharmacy of choice. Vendor must provide an unbiased listing of provider pharmacies and not use pop-ups or other paid advertisements to influence the prescriber's choice of therapy or to interfere with patient's freedom of choice of pharmacy. Presentation of drug formulary information, including preferred and non-preferred drugs and co-pay information if available, is allowed.

**[F.] G.** "Prescriber" means a licensed practitioner who generates a prescription order and assumes responsibility for the content of the prescription.

**H.** **"Remote pharmacist DUR site means a remote pharmacist practice site electronically linked to the New Mexico licensed pharmacy it operates through at which a pharmacist conducts drug utilization reviews. No dispensing will occur from a remote pharmacist DUR site."**

[16.19.6.7 NMAC - Rp, 16 NMAC 19.6.7, 03-30-02; A, 06-30-06; A, 12-15-08]

#### **16.19.6.9 PHARMACIST-IN-CHARGE:**

**A.** The term "pharmacist-in-charge" means a pharmacist licensee in the state of New Mexico who has been designated pharmacist-in-charge pursuant to New Mexico Statute Section 61-11-15. Failure to perform any of the following duties will constitute a violation of 61-11-20(A)(1). It shall be the duty and responsibility of the pharmacist-in-charge consistent with the regulations governing professional conduct and in compliance with all applicable laws and regulations:

(1) to establish for the employees of the pharmacy, written policies and procedures for procurement, storage, compounding and dispensing of drugs:

**(a) the procurement, storage, compounding and dispensing of drugs;**

**(b) the operation and security for remote pharmacist drug utilization review sites where applicable;**

**(c) error prevention and reporting procedures according to the requirements of 16.19.25.8 NMAC;**

(2) to supervise all of the profes-

sional employees of the pharmacy;

(3) to supervise all of the non-professional employees of the pharmacy in so far as their duties relate to the sale and storage of drugs;

(4) to establish and supervise the method and manner for the storing and safekeeping of drugs;

(5) to establish and supervise the record keeping system for the purchase, sale, possession, storage, safekeeping and return of drugs;

(6) to notify the board immediately upon his knowledge that his service as pharmacist-in-charge have been or will be terminated;

(7) inform the board in writing, within 10 days, of the employment or termination of any pharmacy technician; the information shall include name and location of pharmacy, name of employee, social security number, and date of hire or termination;

(8) to complete the New Mexico board of pharmacy self assessment inspection form as provided by the board and to submit the signed and dated form with the pharmacy renewal application to the board office.

**B.** Every licensed pharmacy will be under continued daily supervision of a registered pharmacist who shall have direct control of the pharmaceutical affairs of the pharmacy.

**C.** Upon termination of the pharmacist-in-charge each pharmacy owner shall immediately designate a successor pharmacist-in-charge and immediately notify the state board of pharmacy of such designation. The owner shall request the license application form to be completed by the successor pharmacist-in-charge and filed with the board within 10 days. The failure to designate a successor pharmacist-in-charge and notify the board of such designation shall be deemed a violation of Section 61-11-15, Pharmacy Act.

[16.19.6.9 NMAC - Rp, 16 NMAC 19.6.9, 03-30-02; A, 06-30-06; A, 12-15-08]

#### **16.19.6.26 REMOTE PHARMACIST DUR SITES:**

**A. General requirements.**

**(1) A New Mexico licensed pharmacy may employ one or more pharmacists for the purpose of conducting drug utilization reviews in remote practice sites provided that all security requirements are met.**

**(2) All pharmacists employed to work at a remote DUR practice site must be New Mexico licensed pharmacists.**

**(3) All remote pharmacist DUR sites will operate under a New Mexico licensed pharmacy and under the author-**

**ity of its pharmacist-in-charge.**

**(4) No drug inventory shall be kept at any remote pharmacist DUR site and no dispensing shall take place from a remote DUR site.**

**(5) The remote pharmacists will not be considered in the computation of the technician to pharmacist ration.**

**(6) Procedure identifying the pharmacist responsible for each aspect of the prescription preparations.**

**B. Personnel.**

**(1) The pharmacist-in-charge:**

**(a) shall provide a written policy and procedure document outlining the operation and security of each remote pharmacist DUR location; the document shall be available at each practice site;**

**(b) shall keep a continuously updated list of all remote DUR sites to include address, phone number and hours of operation for each site; the record shall be retained as part of the records of the licensed pharmacy;**

**(c) is responsible for ensuring that the New Mexico licensed pharmacy and each remote pharmacist has entered into a written agreement outlining all conditions and policies governing the operation of the remote site;**

**(d) shall ensure that all computer equipment used at the remote site is in good working order and complies with all security requirements.**

**(2) Remote pharmacist:**

**(a) shall be a New Mexico licensed pharmacist;**

**(b) shall be trained in the use of all equipment necessary for secure operation of the remote site.**

**C. Operations.**

**(1) If the remote DUR site is located within a home there must be a designated area in which all of the pharmacist's work will be performed.**

**(2) All computer equipment used at the remote DUR sites must be able to establish a secure connection which the site is operating. Remote equipment must be configured so that patient information is not stored at the remote site electronically or in printed form.**

**(3) Computer equipment may only be used for remote DUR. No other use of equipment will be allowed.**

**(4) Computer equipment must be locked or shut down whenever the pharmacist is absent.**

**(5) All remote DUR sites are subject to unannounced inspection by representatives of the New Mexico board of pharmacy during established hours of operation.**

**D. Security.**

**(1) Remote pharmacist DUR**

sites shall have adequate security to maintain patient confidentiality.

(2) Must utilize equipment that prevents unauthorized storage or transfer of patient information.

(3) If the remote site is in a home, the equipment must be located in a designated area where patient information can not be viewed by anyone other than the remote pharmacist.

[16.19.6.26 NMAC - N, 12-15-08]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.27 section 7, effective December 15, 2008.

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

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

(11) 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;

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

(11) 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;

(12) 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;

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

(14) 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);

(15) 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;

(16) 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;

(17) 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]

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**Notice of Repeal**

1.18.355 NMAC, Executive Records Retention and Disposition Schedule for the Public Defender Department, is being repealed and replaced with the new 1.18.355 NMAC, Executive Records Retention and Disposition Schedule for the Public Defender Department, effective January 01, 2009. 1.18.539 NMAC, Executive Records Retention and Disposition Schedule for the State Land Office, is being repealed and replaced with the new 1.18.539 NMAC, Executive Records Retention and Disposition Schedule for the State Land Office, effective January 01, 2009. The New Mexico Commission of Public Records at their November 25, 2008 meeting repealed the current rules and approved the new rules.

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

November 25, 2008

Leo R. Lucero, Agency Analysis Bureau Chief  
NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- \* 1.18.355 NMAC ERRDS, Public Defender Department, and
- \* 1.18.539 NMAC ERRDS, State Land Office.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/lrl

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**SYNOPSIS**

**1.18.355 NMAC ERRDS, Public  
Defender Department**

**1. Subject matter:** 1.18.355 NMAC, Executive Records Retention and Disposition Schedule for the Public Defender Department. This rule is new and replaces 1.18.355 NMAC ERRDS, Public Defender Department, an outdated version that was filed on 08/29/2001. This records retention and disposition schedule is a timetable for the management of specific records series created by the Public Defender Department. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the Public Defender Department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Public Defender Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Public Defender Department. Persons and entities normally subject to the rules and regulations of the Public Defender Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Public Defender Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Public Defender Department. Any person or entity outside the covered geographical area that conducts business with or through the Public Defender Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in

the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** January 1, 2009.

**Certification**

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.355 NMAC ERRDS, Public Defender Department.

Stephen Vigil Date  
Assistant Attorney General

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

**SYNOPSIS**

**1.18.539 NMAC ERRDS, State Land  
Office**

**1. Subject matter:** 1.18.539 NMAC, Executive Records Retention and Disposition Schedule for the State Land Office. This rule is new and replaces 1.18.539 NMAC ERRDS, State Land Office, an outdated version that was filed on 03/09/2000. This records retention and disposition schedule is a timetable for the management of specific records series created by the State Land Office. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the State Land Office as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the

State Land Office.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the State Land Office. Persons and entities normally subject to the rules and regulations of the State Land Office may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the State Land Office.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the State Land Office. Any person or entity outside the covered geographical area that conducts business with or through the State Land Office may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** January 1, 2009.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.539 NMAC ERRDS, State Land Office.

Stephen Vigil Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.465 NMAC, ERRDS, Gaming Control Board, Section 7 and adding Sections 61 and 62 effective January 01, 2009.

#### 1.18.465.7 DEFINITIONS:

**A. "Administrator"** means the state records administrator (Section 14-3-2 NMSA 1978).

**B. "Agency"** means any

state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (14-3-2 NMSA 1978).

**C. "Audit"** means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.

**D. "Commission"** means the state commission of public records (Section 14-3-2 NMSA 1978).

**E. "Crucial security events data"** means any loss of communication with a machine and unscheduled work which requires access to the main logic areas.

**F. "Non crucial security events data"** means security event that holds no series consequences (ie. jammed bill door, stuck door switch.)

~~[E-]~~ **G. "Pending litigation"** means a proceeding in a court of law whose activity is in progress but not yet completed.

~~[E-]~~ **H. "Record destruction"** means the process of totally obliterating information on records by any method to make the information unreadable or unusable under any circumstances.

~~[G-]~~ **I. "Records management"** means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

~~[H-]~~ **J. "Records retention period"** means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

~~[H-]~~ **K. "Records retention and disposition schedule"** means a document prepared as part of a records retention program that lists the period of time for retaining records.

[1.18.465.7 NMAC - N, 10/11/2004; A, 01/01/2009]

#### 1.18.465.61 A D V A N C E D ENTERTAINMENT GAMING INFORMATION SYSTEM:

**A. Program:** information systems

**B. Maintenance system:** numerical by primary key

**C. Description:** system used by GCB to monitor all electronic game playing and gaming revenue on all machines in licensed gambling establishments. System provides the ability to disable from play all electronic gaming machines and produce electronic reports on game play and machine revenue. Data may include hours of operation, game type and machine security events, game play and revenue, etc.

#### D. Retention:

**(1) Revenue data:** 10 years after end of fiscal year in which created

**(2) Crucial security events data:** 10 years after final disposition of event outcome

**(3) Non crucial security events:** 45 days after event

**(4) All other data:** two months after date of entry

**E. Input:** data is automatically relayed from game playing machines to the advanced entertainment gaming information system.

**F. Output:** because the advanced entertainment gaming information is a data-based system, ad hoc and regularly scheduled reports may be generated upon requests or demand. When produced, these reports are forwarded to the requesting entity.

[1.18.465.61 NMAC - N, 01/01/2009]

#### 1.18.465.62 APPLICATION TO TRANSPORT GAMING MEDIA FILES:

**A. Program:** information systems

**B. Maintenance system:** chronological by date

**C. Description:** records concerning the verification and approval of applications to transport gaming software media between vendors and gaming operators. File may include application to transport gaming media (i.e., licensee number, address, contact person, date shipped, date received, etc.), gaming media spreadsheet (i.e., manufacture, model number, quantity, etc.), etc.

**D. Retention:** one year after date transaction verified

[1.18.465.62 NMAC - N, 01/01/2009]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.790 NMAC, Section 187 effective 01/01/2009.

#### 1.18.790.187 MOTOR CARRIER SAFETY COMPLIANCE REVIEW FILES:

**A. Program:** motor transportation

**B. Maintenance system:** chronological by date, then alphabetical by motor carrier or company name

**C. Description:** records concerning motor carrier safety inspections initiated as a result of complaints received by DPS. Files may include complaint, motor carrier inspection forms (i.e., motor carrier document requirements, require-

ments for commercial and non-commercial licensed drivers, inspection results, comments, federal identification number, SSN, etc), driver log reports, out of service order, correspondence, etc.

**D. Retention:** four years after date compliance is established

**E. Confidentiality:** Portions of this record may be confidential pursuant, but not limited to 5 USC, Section 552a (i.e., social security number), 18 U.S.C. Section 2721 (i.e., Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records) and Section 66-2-7.1 NMSA 1978. Motor vehicle-related records; confidential.

[1.18.790.187 NMAC - N, 01/01/2009]

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC Sections 8 and 9, effective 12-31-2008.

**16.61.19.8 BROKER DUTIES; DISCLOSURE:** Prior to the time an associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, the associate broker or qualifying broker shall disclose in writing to [a] their prospective, buyer, seller, landlord or tenant, the following list of broker duties that are owed to [a] customers and clients by all brokers:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules, and other applicable local, state, and federal laws and regulations;

C. performance of any and all oral or written agreements made with the customer or client;

D. assistance to the broker's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) presentation of all offers or counter-offers in a timely manner;

(2) assistance in complying with the terms and conditions of the contract and with the closing of the transaction; if the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the broker is not expected to provide such service, advice or assistance, and the broker shall disclose such agreement in writing to the other brokers involved in the transaction;

E. acknowledgement by the broker that there may be matters related to the transaction that are outside the associate broker's or qualifying broker's knowledge or expertise and that the associate broker or qualifying broker will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all monies or property received by the broker;

G. prior to the time the associate broker or qualifying broker generates or presents any written document that has the potential to become an express written agreement, written disclosure of:

(1) any written brokerage relationship the broker has with any other parties to the transaction and/or;

(2) any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;

(3) other brokerage relationship options available in New Mexico.

H. disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include data from a sex offender registry or the existence of group homes;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, an associate broker or qualifying broker shall not disclose to their customer or client during the transaction that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the associate broker's or the qualifying broker's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp, 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004; A, 1-1-2006; A, 1-1-2006, A, 1-1-2007; A, 12-31-2008]

**16.61.19.9 BROKERAGE RELATIONSHIPS:** Brokerages working with consumers either as customers or clients may do so through a variety of bro-

kerage relationships. These relationships include but are not limited to an exclusive agency relationship, a dual agency relationship, or a transaction broker relationship. For all regulated real estate transactions, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage without creating an agency relationship, and no agency duties will be imposed.

A. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

B. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

C. Transaction broker: the non-fiduciary relationship created by 61-29-2 A 14 NMSA 1978, wherein a brokerage [that] provides real estate services without entering into an agency relationship.

[16.61.19.9 NMAC - Rp, 16.61.19.9 NMAC, 1-1-2004; A, 12-31-2008]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

12 NMAC 19.2 Subpart 8, Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements (filed 09/17/1997) is hereby repealed and replaced by 12.19.8 NMAC, Mortgage Loan Company and Loan Broker Requirements, effective 12/15/08.

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

### TITLE 12 TRADE, COMMERCE AND BANKING CHAPTER 19 MORTGAGE COMPANIES PART 8 MORTGAGE LOAN COMPANY AND LOAN BROKER REQUIREMENTS

**12.19.8.1 ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department.

[12.19.8.1 NMAC - Rp, 12 NMAC 19.2.8.1, 12/15/08]

**12.19.8.2 SCOPE:** All mortgage loan companies and loan brokers licensed or registered by the state of New Mexico.

[12.19.8.2 NMAC - Rp, 12 NMAC 19.2.8.2, 12/15/08]

**12.19.8.3 S T A T U T O R Y AUTHORITY:** Section 58-21-9 NMSA 1978.

[12.19.8.3 NMAC - Rp, 12 NMAC 19.2.8.3, 12/15/08]

**12.19.8.4 D U R A T I O N :** Permanent.

[12.19.8.4 NMAC - Rp, 12 NMAC 19.2.8.4, 12/15/08]

**12.19.8.5 EFFECTIVE DATE:** December 15, 2008, unless a later date is cited in the history note at the end of a section.

[12.19.8.5 NMAC - Rp, 12 NMAC 19.2.8.5, 12/15/08]

**12.19.8.6 OBJECTIVE:** The objective of this part is to effectuate the purposes of the Mortgage Loan Company and Loan Broker Act.

[12.19.8.6 NMAC - Rp, 12 NMAC 19.2.8.6, 12/15/08]

**12.19.8.7 DEFINITIONS:**

**A. "Applicant"** means a person who has applied for registration pursuant to the provisions of the Mortgage Loan Company and Loan Broker Act, and includes all directors, officers, employees, trustees and owners of such person.

**B. "Independent contractor"** means any person who originates mortgage loans and is not a W-2 employee of a registered broker.

**C. "Person who controls or is controlled"**, with respect to Section 58-21-2(A) NMSA 1978, means a person who is a director or executive officer of a business or organization, who directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls or holds power to vote, or holds proxies representing ten percent (10%) or more of the voting shares or rights of any entity, or the spouse of such person.

**D. "Registrant"** means a person who is registered pursuant to the provisions of the act, and includes all directors, officers, employees, trustees and owners of such person.

[12.19.8.7 NMAC - Rp, 12 NMAC 19.2.8.7, 12/15/08]

**12.19.8.8 APPLICANT AND REGISTRANT REQUIREMENTS:**

**A.** Application for regis-

tration: In addition to the information required by Section 58-21-4 of the act, each applicant for issuance or renewal of a registration certificate shall be subject to the following requirements:

(1) applications for registration or renewal of a registration shall be made using forms provided by the director;

(2) if the application is for renewal of a registration, the applicant shall specify any changes in the location or name of the business within the last 12 months and list the names and addresses of any person having acquired an interest in the business within the last 12 months; this update of information does not relieve the registrant of updating any such information under Section 58-21-11 NMSA 1978;

(3) the current registration certificate issued pursuant to the act shall be prominently displayed at the principal office of the registrant; a branch registration certificate shall be prominently displayed at each branch office of the registrant in New Mexico;

(4) independent contractors, prior to originating mortgage loans, shall file an application with the director and obtain a registration certificate under the Mortgage Loan Company and Loan Broker Act (58-21-1) NMSA 1978.

**B.** Registrants shall keep the following records and make them available upon examination or investigation:

(1) documents related to the settlement of a residential mortgage loan which includes, but are not limited to:

(a) mortgage loan transaction documents: all loan applications, written or electronic, loan transmittal summary, credit report, appraisal, all verifications (mortgage, rent, deposits, employment, income), lender loan approval, clear to close and interest rate lock-in confirmation, title commitment, survey and sales contract ( if loan is a purchase);

(b) rate sheet(s) used in the determination of the information used on the initial good faith estimate and loan application and any subsequent good faith estimate and loan application done prior to interest rate lock-in;

(c) rate sheet(s) used for the determination of the interest rate that was locked-in with the lender for the purpose of settlement and funding the loan;

(d) all disclosures required by the Real Estate Settlement Procedures Act, Truth in Lending Act (Regulation Z), the Equal Credit Opportunity Act and the Patriot Act;

(e) disclosures that include: borrower's signature, certification and authorization, fair credit reporting, affidavit of occupancy, insurance anti-coercion statement, mortgage loan agreement, privacy policy, loan comparison for adjustable rate

mortgages, credit score information;

(f) title documents: note, mortgage or deed of trust (including all riders for the note and mortgage or deed of trust), final signed truth-in-lending disclosure, lender's closing instructions to the title company, closing disbursement sheet and copies of issued checks or direct deposits, initial escrow account statement and right of rescission;

(2) all evidence of payment of commissions, brokers' fees or other forms of compensation for services rendered in connection with a mortgage loan transaction;

(3) all books, records, canceled checks pertaining to, but are not limited to, the mortgage loan transactions and payment of fees; books and records shall include cash receipts and disbursements journals, to be posted daily, and a general ledger, to be posted monthly;

(4) the books of account shall include a funded residential mortgage loan journal showing an entry for each mortgage loan transaction completed;

(5) records covered by 12.19.8 NMAC include electronic records.

**C. Registrants' accounts.**

(1) Trust accounts: All funds belonging to third party settlement service providers (e.g., appraisal services, credit reporting agencies), borrowers or sellers, shall, upon receipt thereof, be deposited into the registrant's trust account that is set up exclusively for the deposit and disbursement of third party settlement service fees and the borrowers or sellers funds. The trust account shall be established with a depository institution the accounts of which are insured by the federal deposit insurance corporation or the national credit union administration. Deposited funds shall remain in the trust account until disbursed to the third party settlement service providers, used at settlement for the borrowers benefit or returned to the rightful borrowers or sellers. If the trust account is interest-bearing, all interest shall be distributed to the appropriate parties, on a pro rata basis, at the time trust funds are disbursed or returned. All funds received by the registrant must be disbursed within 30 days of the settlement of the residential mortgage loan.

(2) If a registrant requires a deposit in connection with an application for a mortgage loan, there must be an agreement in writing between applicant and registrant, setting forth the disposition of the deposit, whether the loan is finally consummated or not.

(3) Deposit accounts: All deposit accounts maintained by a registrant shall be reconciled within ten (10) business days after receipt of statements; "deposit accounts" includes all accounts maintained with depository institutions.

[12.19.8.8 NMAC - Rp, 12 NMAC 19.2.8.8.1, 5 & 6, 12/15/08]

### 12.19.8.9 GOOD BUSINESS REPUTATION:

Pursuant to Section 58-21-8(A) of the act, a registrant or applicant may be deemed to lack a good business reputation if the director finds that the registrant or applicant has done or is doing any of the following, which includes, but is not limited to:

A. repeatedly issues worthless checks;

B. has outstanding unsatisfied judgments;

C. repeatedly fails to meet obligations when due;

D. fails to pay the examination fee provided by Section 58-21-12 NMSA 1978;

E. allows unregistered independent contractors to originate mortgage loans using the registrant's certificate. [12.19.8.9 NMAC - Rp, 12 NMAC 19.2.8.8.7, 12/15/08]

### 12.19.8.10 HEARING PROCEDURES:

Hearings requested, pursuant to Section 58-21-14 of the act, by applicants or registrants shall be conducted under the following procedures.

A. Hearings shall be conducted pursuant to Section 12-8-10 NMSA 1978 and Section 12-8-11 NMSA 1978 of the Administrative Procedures Act (12-8-1) NMSA 1978 and any future amendments to this section.

B. Hearings shall be conducted in Santa Fe county, or upon agreement by the director and an applicant or registrant, a hearing may be conducted in a county other than Santa Fe county or the county in which the apparent violation or violations occurred.

C. All hearings shall be conducted by the director or by a hearing officer designated by the director. A hearing officer shall, within 30 days following the hearing, submit to the director a report setting forth his findings of fact and conclusions of law.

D. All hearings shall be open to the public. In cases in which the reputation of an applicant or registrant may be damaged or, for good cause shown, the director or hearing officer may hold a closed hearing and must state the reasons for this decision in the record.

E. A complete record shall be made of all evidence and testimony received during the course of any hearing.

F. Within sixty (60) days after the hearing, the director shall serve upon the applicant or registrant a copy of the final written order.

[12.19.8.10 NMAC - Rp, 12 NMAC

19.2.8.8.8, 12/15/08]

### HISTORY OF 12.19.8 NMAC:

**Pre-NMAC History:** The material in this part was derived from that previously filed with the state records center and archives under:

FID Regulation No. 86-1, Mortgage Loan Company and Loan Broker Regulations, filed 1/29/86.

### History of Repealed Material:

12 NMAC 19.2.8.8.3.1 through 12 NMAC 19.2.8.8.3.6 (including subparagraphs), repealed 10/15/99.

12 NMAC 19.2.8, Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements (filed 09/17/1997) repealed 12/15/08.

### Other History:

FID Regulation No. 86-1, Mortgage Loan Company and Loan Broker Regulations (filed 1/29/86) was renumbered and reformatted to 12 NMAC 19.2.8, Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements, effective 09/30/1997.

12 NMAC 19.2.8, Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements (filed 09/17/1997) was renumbered, reformatted and replaced by 12.19.8 NMAC, Mortgage Loan Company and Loan Broker Requirements, effective 12/15/08.

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

This is an amendment to 12.19.1 NMAC Sections 1, 5, 6 and 7, effective 12/15/08. This rule was also renumbered and reformatted from 12 NMAC 9.1, Mortgage Companies - General Provisions (filed 09/17/1997) to comply with current NMAC requirements also effective 12/15/08.

### 12.19.1.1 ISSUING AGENCY:

Financial Institutions Division of the Regulation and Licensing Department., ~~725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.~~

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.1 & A, 12/15/08]

### 12.19.1.2 SCOPE:

All mortgage loan companies and loan brokers licensed or registered by the state of New Mexico.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.2, 12/15/08]

### 12.19.1.3 S T A T U T O R Y

**AUTHORITY:** Section 58-21-9 NMSA 1978.

[9/30/97 - Rn, 12 NMAC 19.1.3, 12/15/08]

### 12.19.1.4 D U R A T I O N :

Permanent.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.4, 12/15/08]

### 12.19.1.5 EFFECTIVE DATE:

May 5, 1986, unless a later date is cited at the end of a section ~~[or paragraph. Reformatted in NMAC format effective September 30, 1997.]~~

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.5 & A, 12/15/08]

### 12.19.1.6 OBJECTIVE:

The objective of this ~~[sub part]~~ part is to effectuate the purposes of the Mortgage Loan Company and Loan Broker Act, Section 58-21-1 NMSA 1978 et seq., and to clarify its meaning.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.6 & A, 12/15/08]

### 12.19.1.7 DEFINITIONS:

~~[The phrase "ten percent of such loans" contained in Section 58-21-6H NMSA 1978 means "ten percent of the aggregate principal balance of loans brokered, made or originated which are secured by real estate mortgages".]~~

A. "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person.

B. "Closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, commissions of real estate licensees, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

C. "Division" means the

financial institutions division of the regulation and licensing department.

D. "Director" means the director of the financial institutions division of the regulation and licensing department.

E. " Dwelling " means a residential structure, including a home, individual condominium unit, manufactured home or modular home, that contains one to four units and is permanently attached to real property.

F. " Lender " means a person or government agency making a mortgage loan.

G. " Loan broker " means any person who acts as a finder or agent of a lender or borrower of money for the purpose of procuring a mortgage loan, or both.

H. " Mortgage loan " means a loan secured by a dwelling permanently affixed to real property.

I. " Mortgage loan company " means a person who, directly or indirectly:

(1) holds himself out as being able to serve as an agent for any person in an attempt to obtain a mortgage loan;

(2) holds himself out as being able to serve as an agent for a person who makes mortgage loans; or

(3) holds himself out as being able to make mortgage loans.

J. " Net loan funds " means the mortgage loan amounts specified in the note and mortgage less lender-retained fees, as specified in the lender's instruction to the closing agent.

K. The phrase " any action or proceeding, civil or criminal, judicial or administrative, completed or in progress ", as used in Section 58-21-4(F) NMSA 1978, shall be exclusive of divorce proceedings and misdemeanor traffic citations. [5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.7 & A, 12/15/08]

## NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.1 NMAC, Section 7, effective 12/31/08.

### 16.63.1.7 DEFINITIONS:

A. Appropriate supervision:

(1) Supervision, for the purposes of licensure, shall be provided by an individual qualified by the board of social work examiners. For licensed masters social workers aspiring to achieve licensure at an independent level (LISW), supervision shall be provided by a licensed independent social worker (LISW). For those licensed

independent social workers aspiring to add a specialty to their license, supervision shall be provided by a licensed independent social worker licensed in that specialty. The relationship between the supervisor and supervisee must be designed to promote the development of professional social work skills for the delivery of social work services. These skills include the integration of theory and practice, the development and application of intervention techniques, the development and constant improvement of social work standards and ethics, and the continued acquisition of professional knowledge.

(2) Supervision for master level social workers practicing clinical social work not aspiring to achieve licensure at the independent level (LISW), supervision shall be provided by a licensed independent social worker or other supervision approved by the board.

[~~(2)~~] (3) Supervisors shall evaluate and oversee the manner in which the above skills development is reflected in the supervisee's practice. The supervisor's responsibility insures that the supervisee acquires the necessary skills required for advanced and professional social work practice.

[~~(3)~~] (4) Applicant for licensure at the independent level must document 3,600 hours of licensed masters level social work experience which has been accumulated over no more than a 60 month period. Applicants for licensure must document 90 hours of supervision during this 3,600 hour period. One (1) hour of supervision must be documented for every 40 hours worked. No more than 60% of the 90 hours of supervision may be group supervision. No more than 25% of the 90 hours of supervision may be non face-to-face. The supervised contact may include live video-teleconferencing which would be equal to face-face supervision. Teleconferencing can be included as supervision. Individual or group supervision will be accepted. Group supervision means supervision rendered to not more than four (4) individuals at one time. Applicants and supervisors will engage the process of supervision in accordance with the guidelines established by the board of social work examiners.

B. Licensed clinical social worker: an independent social worker with a clinical specialty is equivalent to a licensed clinical social worker (LCSW).

C. Qualified applicants:

(1) Means those programs having received accreditation by CSWE and those programs having candidacy status, conditional status, or under review status with CSWE.

(2) For those applicants who graduated from a institution of higher education before CSWE began to accredit pro-

grams (prior to 1974), the New Mexico board of social work examiners will require:

(a) a letter from the university's registrars office stating that the applicant's course of study culminated in a degree which was the equivalent of an emphasis or major in social work;

(b) demonstrated social work experience;

(c) documentation of social work licensure in a previous state; and

(d) concurrence among the majority of professional members of the board that the transcripts reflect sufficient coursework in social work.

D. CSWE (council on social work education) accreditation: means those programs having received accreditation by CSWE and those programs having candidacy status or under review status with CSWE.

[1/1/90, 5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.1.7 NMAC - Rn, 16 NMAC 63.1.7, 06/19/02; A, 04/24/06; A, 01/17/08; A, 12/31/08]

## NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.3 NMAC, Section 8 and 10, effective 12/31/08.

**16.63.3.8 APPLICATION FOR LICENSURE:** Applicants, other than those applying for licensure by credentials, must submit or cause to be submitted the following documentation to the board:

A. completed application;

B. two (2) personal character references;

C. one (1) 2" x 2" original photograph of the applicant taken within the preceding six (6) months affixed to the application;

D. license fee as provided in Part 8;

E. official transcripts directly from the university or college or by other means approved by the board verifying a bachelors or masters degree in social work; and

F. verification of supervision must be received directly from the supervisor or by other means approved by the board;

G. if currently or previously licensed in another state you must submit verification of licensure, which must be sent directly to the board by the issuing jurisdiction;

H. official exam scores; proof of passing the licensure exam must be received directly from the association of social work boards or from the jurisdiction



in which the applicant is licensed; and

I. verification the applicant has completed one of the following:

(1) a three credit hour course in New Mexico cultures listed on the applicants transcripts;

(2) a board approved course, workshop or seminar in New Mexico cultures;

(3) proof of [~~previous~~] previously passing the New Mexico cultural examination;

J. proof of passing the jurisprudence examination with a grade of no less than 70%.

[5/15/91, 6/22/92, 1/5/95, 5/1/99; 16.63.3.8 NMAC - Rn, 16 NMAC 63.3.8, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08; A, 12/31/08]

### 16.63.3.10 INITIAL LICENSE/RENEWAL OF LICENSE:

A. Initial license

(1) Initial licenses issued between January 1 and June 30 shall expire on July 1 of the next calendar year.

(2) Initial licenses issued between July 1 and December 31 shall expire on July 1 of the second calendar year following the date of issuance.

B. No license will be issued for longer than 24 months.

C. Renewal of license

(1) Each licensed social worker shall apply for license renewal and pay the renewal fee as set forth in Part 8.

(2) Licenses that expire July 1, 2007 will renew according to the following schedule:

(a) If the last digit of the license number ends in an even number the license will expire on July 1, 2008 and biennially thereafter. The renewal fee will be prorated.

(b) If the last digit of the license number ends in an odd number the license will expire on July 1, 2009 and biennially thereafter.

D. A 30-day grace period, running from July 1 - July 30, of the renewal year allows the social worker to submit a renewal without a [~~renewal fee~~] late penalty fee. However the social worker's license shall be considered expired and the social worker will refrain from practicing.

E. From July 31 to September 29 of the renewal year the social worker may renew the license, however a penalty fee will be assessed (16.63.8.17 NMAC).

F. After September 29 the social worker's license will be considered revoked. If revoked for non-renewal, then the licensee will be required to pay previous penalties, complete a new application and pay another application fee. The applicant will also have to take an exam prescribed by

the board.

[5/15/91, 6/22/92, 1/5/95; 5/1/99, 16.63.3.10 NMAC - Rn, 16 NMAC 63.3.10, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08; A, 12/31/08]

### NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.6 NMAC, Section 8, effective 12/31/08.

**16.63.6.8 QUALIFICATION FOR LICENSURE:** Applicants for licensure by credentials must possess the following:

A. a current valid social work license issued by an appropriate examining board under the laws of any other state or territory of the United States or the District of Columbia or any sovereign nation at the level of licensure being sought for a minimum of five years;

B. a passing test score from the association of social work boards for licensure level sought;

C. a baccalaureate degree in social work from a CSWE accredited program, if applying for the LBSW;

D. a master's degree in social work from a CSWE accredited program, if applying for the LMSW or LISW;

E. verification the applicant has completed one of the following:

(1) a three credit hour course in New Mexico cultures listed on the applicants transcripts;

(2) a board approved course, workshop or seminar in New Mexico cultures;

(3) proof of [~~previous~~] previously passing the New Mexico cultural examination;

F. have presented to the New Mexico board documentation as required by the New Mexico board that any other license granted to the applicant by any other state has not been suspended, revoked, voluntarily surrendered or otherwise restricted for any reason except non-renewal or for the failure to obtain the required continuing education credits;

G. proof of passing the jurisprudence examination with a grade of no less than 70%.

[1/1/90, 5/15/91, 6/22/92, 5/1/99; 16.63.6.8 NMAC - Rn & A, 16 NMAC 63.6.8, 06/19/02; A, 11/30/06; A, 01/17/08; A, 12/31/08]

### NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.9 NMAC, Section 8, effective 12/31/08.

**16.63.9.8 QUALIFICATION OF LICENSURE:** Applicants for licensure as baccalaureate social worker must possess the following minimum qualifications:

A. be at least 18 years of age;

B. possess a bachelor's degree in social work from a program accredited by the council on social work education;

C. successfully pass the association of social work board examination [~~ASWB~~] and the jurisprudence examination;

D. documents completion of the required course in New Mexico cultures.

[1/1/90, 5/15/91, 6/22/92; 16.63.9.8 NMAC - Rn & A, 16 NMAC 63.9.8, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08; A, 12/31/08]

### NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.10 NMAC, Section 8, effective 12/31/08.

**16.63.10.8 QUALIFICATION FOR LICENSURE:** Applicants for licensure as master social worker must:

A. be at least 18 years of age;

B. possess a master's degree in social work from a graduate program of social work accredited by the council on social work education;

C. successfully pass the association of social work board examination [~~ASWB~~] and the jurisprudence examination;

D. documents completion of the required course in New Mexico cultures.

[1/1/90, 9/13/90, 5/15/91, 6/22/92; 16.63.10.8 NMAC - Rn & A, 16 NMAC 63.10.8, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08; A, 12/31/08]

## NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.11 NMAC, Section 8, effective 12/31/08.

### 16.63.11.8 QUALIFICATION FOR LICENSURE:

Applicants for licensure as independent social workers must:

A. be at least eighteen (18) years of age;

B. possess at least a master's degree in social work from a graduate program of social work accredited by the council on social work education;

C. complete not less than two years of post graduate social work experience (employed or volunteer), under appropriate supervision; as defined in 16.63.1.7 NMAC for the purposes of this part, 3600 hours of post graduate social work practice is required under appropriate supervision; applicants and supervisors will engage the process of supervision in accordance with the guidelines established by the board of social work examiners;

D. documents completion of the required course in New Mexico cultures; and

E. successfully pass the association of social work board examination, [(ASWB)] clinical or advanced, as determined by the board and the jurisprudence examination.

[1/1/90, 9/13/90, 5/15/91, 6/22/92, 1/5/95; 5/1/99, 16.63.11.8 NMAC - Rn & A, 16 NMAC 63.11.8, 06/19/02; A, 04/24/06; A, 11/30/06; A, 01/17/08; A, 12/31/08]

## NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

This is an amendment to 16.63.16 NMAC, Section 8, effective 12/31/08.

### 16.63.16.8 SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO CLIENTS:

A. Commitment to clients. Social workers' primary responsibility is to promote the well being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

B. Self-determination. Social workers respect and promote the right of clients to self-determination and

assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

C. Professional disclosure statement. A social worker shall effectively communicate through handout or other means as appropriate for all clients and may display at the social worker's primary place of practice a statement that the client has the right to the following:

(1) to expect that the social worker has met the minimal qualifications of education, training, and experience required by the law;

(2) to examine public records maintained by the board which contain the social worker's qualifications and credentials;

(3) to be given a copy of the standards of practice upon request;

(4) to report a complaint about the social worker's practice to the board;

(5) to be informed of the cost of professional services before receiving the services;

(6) to privacy as allowed by law, and to be informed of the limits of confidentiality;

(7) limited access to client information; a social worker shall make reasonable efforts to limit access to client information in a social worker's agency to appropriate agency staff whose duties require access;

(8) supervision or consultation; a social worker receiving supervision shall inform the client that the social worker may be reviewing the client's case with the social worker's supervisor or consultant; upon request, the social worker shall provide the name of the supervisor and the supervisor's contact information;

(9) to be free from being the object of discrimination while receiving social work services; and

(10) to have access to records as allowed by law.

~~C.~~ D. Informed consent.

(1) Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.

(2) In instances when clients are

not literate or have difficulty understanding the primary language used in the practice setting, social workers should take steps to ensure clients' comprehension. This may include providing clients with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.

(3) In instances when clients lack the capacity to provide informed consent, social workers should protect clients' interests by seeking permission from an appropriate third party, informing clients consistently with the clients' level of understanding. In such instances social workers should seek to ensure that the third party acts in a manner consistent with clients' wishes and interests. Social workers should take reasonable steps to enhance such clients' ability to give informed consent.

(4) In instances when clients are receiving services involuntarily, social workers should provide information about the nature and extent of services and about the extent of clients' right to refuse service.

(5) Social workers who provide services via electronic media (such as computer, telephone, radio, and television) should inform recipients of the limitations and risks associated with such services.

(6) Social workers should obtain clients' informed consent before audiotaping or videotaping clients or permitting observation of services to clients by a third party.

~~D.~~ E. Competence.

(1) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

(2) Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those interventions or techniques.

(3) When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm.

~~E.~~ F. Cultural competence and social diversity.

(1) Social workers should understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.

(2) Social workers should have a knowledge base of their clients' cultures

and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.

(3) Social workers should obtain education about and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

**[F] G.** Conflicts of interest.

(1) Social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers should inform clients when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible. In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.

(2) Social workers should not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.

(3) Social workers should not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers should take steps to protect clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries. (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively.)

(4) When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties which individuals will be considered clients and the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients) should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

**[G] H.** Privacy and confidentiality.

(1) Social workers should respect clients' right to privacy. Social workers

should not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.

(2) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.

(3) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.

(4) Social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.

(5) Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers should review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.

(6) When social workers provide counseling services to families, couples, or groups, social workers should seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. Social workers should inform participants in family, couples, or group counseling that social workers cannot guarantee that all participants will honor such agreements.

(7) Social workers should inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.

(8) Social workers should not disclose confidential information to third-party payers unless clients have authorized such disclosure.

(9) Social workers should not discuss confidential information in any setting unless privacy can be ensured. Social workers should not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.

(10) Social workers should protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection.

(11) Social workers should protect the confidentiality of clients when responding to requests from members of the media.

(12) Social workers should protect the confidentiality of clients' written and electronic records and other sensitive information. Social workers should take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorized to have access.

(13) Social workers should take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information should be avoided whenever possible.

(14) Social workers should transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with state statutes governing records and social work licensure.

(15) Social workers should take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.

(16) Social workers should not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.

(17) Social workers should not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

(18) Social workers should protect the confidentiality of deceased clients consistent with the preceding standards.

**[H] I.** Access to records.

(1) Social workers should provide

clients with reasonable access to records concerning the clients. Social workers who are concerned that clients' access to their records could cause serious misunderstanding or harm to the client should provide assistance in interpreting the records and consultation with the client regarding the records. Social workers should limit clients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both clients' requests and the rationale for withholding some or all of the record should be documented in clients' files.

(2) When providing clients with access to their records, social workers should take steps to protect the confidentiality of other individuals identified or discussed in such records.

**[H-] J.** Sexual relationships.

(1) Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.

(2) Social workers should not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain a personal relationship has the potential to be harmful to the client and may make it difficult for the social worker and client to maintain appropriate professional boundaries. Social workers—not their clients, their clients' relatives, or other individuals with whom the client maintains a personal relationship—assume the full burden for setting clear, appropriate, and culturally sensitive boundaries.

(3) Social workers should not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary circumstances, it is social workers—not their clients—who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally.

(4) Social workers should not provide clinical services to individuals with whom they have had a prior sexual relationship. Providing clinical services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for the social worker and individual to maintain appropriate professional boundaries.

**[H-] K.** Physical contact.

Social workers should not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact (such as cradling or caressing clients). Social workers who engage in appropriate physical contact with clients are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.

**[H-] L.** Sexual harassment.

Social workers should not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

**[H-] M.** Derogatory language.

Social workers should not use derogatory language in their written or verbal communications to or about clients. Social workers should use accurate and respectful language in all communications to and about clients.

**[M-] N.** Payment for services.

(1) When setting fees, social workers should ensure that the fees are fair, reasonable, and commensurate with the services performed. Consideration should be given to clients' ability to pay.

(2) Social workers should avoid accepting goods or services from clients as payment for professional services. Bartering arrangements, particularly involving services, create the potential for conflicts of interest, exploitation, and inappropriate boundaries in social workers' relationships with clients. Social workers should explore and may participate in bartering only in very limited circumstances when it can be demonstrated that such arrangements are an accepted practice among professionals in the local community, considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Social workers who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship.

(3) Social workers should not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social workers' employer or agency.

**[N-] O.** Clients who lack decision-making capacity. When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers should take reasonable steps to safeguard the interests and rights of those clients.

**[O-] P.** Interruption of services.

Social workers should make reasonable efforts to ensure continuity of services in the event that services are interrupted by

factors such as unavailability, relocation, illness, disability, or death.

**[P-] Q.** Termination of services.

(1) Social workers should terminate services to clients and professional relationships with them when such services and relationships are no longer required or no longer serve the clients' needs or interests.

(2) Social workers should take reasonable steps to avoid abandoning clients who are still in need of services. Social workers should withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effects. Social workers should assist in making appropriate arrangements for continuation of services when necessary.

(3) Social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client.

(4) Social workers should not terminate services to pursue a social, financial, or sexual relationship with a client.

(5) Social workers who anticipate the termination or interruption of services to clients should notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences.

(6) Social workers who are leaving an employment setting should inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.

[16.63.16.8 NMAC - Rp, 16.63.16.9 NMAC, 4/24/06; A, 12/31/08]

## NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Explanatory paragraph: This is an amendment to 11.4.7 NMAC, Sections 7 and 9, effective 12-31-08. The amendment to Section 7, Subsection W of 11.4.7 updates a statutory reference to NMSA 1978, Section 52-4-1(P) after the amendment of the statute. The dates contained in Section 9 have been changed to allow the current rule to stay in place for another year.

**11.4.7.7 DEFINITIONS:** For the purposes of these rules, the following definitions apply to the provision of all services:

W. "Health care provider (HCP)" means any person, entity, or facility authorized to furnish health care to an injured or disabled worker pursuant to NMSA 1978, Section 52-4-1, including any provider designated pursuant to NMSA 1978, Section 52-1-49, and may include a provider licensed in another state if approved by the director, as required by the act. The director has determined that certified registered nurse anesthetists (CRNAs) and certified nurse specialists (CNSs) who are licensed in the state of New Mexico are automatically approved as health care providers pursuant to NMSA 1978, Section 52-4-1(~~+~~) (P).

[4-1-91, 12-30-91, 12-31-91, 2-24-92, 10-30-92, 1-15-93, 3-18-94, 1-31-95, 8-1-96, 8-15-97, 10-01-98; 11.4.7.7 NMAC - Rn, 11 NMAC 4.7.7, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 1-1-07; A, 12-31-07; A, 12-31-08]

#### 11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. All hospitals shall be reimbursed at the hospital ratio itemized in the official WCA listing that becomes effective on [~~December 31, 2007~~] December 31, 2008, for all services rendered from [~~December 31, 2007, to December 31, 2008,~~] December 31, 2008 to December 31, 2009, except as provided in Subsection B of this temporary rule. Any new hospital shall be assigned a ratio of 67%.

C. All hospitals shall provide to the WCA:

(1) the most recent full year filing of their HCFA/CMS 2552 G-2 worksheet prepared on behalf of the organization, by [~~February 1, 2008~~] February 1, 2009;

E. Method of payment for FASCs:

(1) All FASCs will provide global billing by CPT code on a CMS-1500 and shall be paid by the assigned centers for medicare and medicaid services (CMS) ambulatory payment classification (APC) base payment rate times 1.3 effective for services from [~~December 31, 2007, to December 31, 2008~~] December 31, 2008, to December 31, 2009. See <http://www.cms.hhs.gov/HospitalOutpatientPPS/AU>, under Addendum B, [~~October 2007~~] October 2008. No adjusted conversion factors or index values are to be applied. Payment will be made in accordance with the APC base payment rate assigned for that service in Addendum B dated [~~October 2007~~] October 2008. Absent an assigned APC base payment rate, services shall be paid BR.

F. Subsections A-E of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. [~~December~~

~~31, 2008~~] December 31, 2009, and shall be of no force or effect with respect to any services provided thereafter.

[01-24-91, 4-1-91, 12-30-91, 12-31-91, 1-18-92, 10-30-92, 1-15-93, 10-28-93, 2-23-94, 3-14-94, 12-2-94, 1-31-95, 8-1-96, 9-1-96, 8-15-97, 4-30-98, 10-01-98, 6-30-99; 11.4.7.9 NMAC - Rn & A, 11.4.7.9 NMAC, 8-07-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07; A, 12-31-07; A, 12-31-08]

## NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS LABOR RELATIONS DIVISION

### TITLE 11 LABOR AND WORKERS COMPENSATION CHAPTER 6 DAY LABORERS PART 1 GENERAL PROVISIONS

11.6.1.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions, Labor Relations Division. [11.6.1.1 NMAC - N, 12-15-08]

11.6.1.2 SCOPE: All day labor employers in New Mexico. [11.6.1.2 NMAC - N, 12-15-08]

11.6.1.3 S T A T U T O R Y AUTHORITY: Section 50-15-1 to 50-15-7 NMSA 1978. [11.6.1.3 NMAC - N, 12-15-08]

11.6.1.4 D U R A T I O N : Permanent. [11.6.1.4 NMAC - N, 12-15-08]

11.6.1.5 EFFECTIVE DATE: December 15, 2008, unless a later date is cited at the end of a section. [11.6.1.5 NMAC - N, 12-15-08]

11.6.1.6 OBJECTIVE: The objective of this rule is to establish regulations necessary for the enforcement of the Day Laborer Act. [11.6.1.6 NMAC - N, 12-15-08]

#### 11.6.1.7 DEFINITIONS:

A. "Check cashing service" means a business that offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments.

B. "Day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional, irregular or for a limited time period.

C. "Day labor service agency" means an entity, including a labor

broker or labor pool, that provides day laborers to third-party employers and that charges the third-party employer for the service of providing day laborers for employment offered by the employer. The provisions of the Workers' Compensation Act [52-1-1 et. seq. NMSA 1978] shall apply to day labor service agencies.

D. "Day laborer" means a person who contracts for day labor employment with a day labor service agency.

E. "Department" means the New Mexico department of workforce solutions.

F. "High percentage of workers" means 10% or more of the day laborers that a day labor service agency employs in a calendar year.

G. "Hours worked" means time a day laborer spent actually working. Time of work begins when the employer begins to control the day laborers time. Time spent by a day laborer in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked, consistent with existing wage and hour law. A day laborer who is required to remain waiting on call on the day labor service agency's premises or on the third-party employer's premises is working while waiting, consistent with existing wage and hour law. Further, any preparation time required by the day labor service agency or third-party employer at a day labor service agency or an employer's premises or at a prescribed work place will be counted as hours worked, consistent with existing wage and hour law.

H. "Limited English proficient" means a day laborer who does not speak English as their primary language and who has a limited ability to read, speak, write or understand English.

I. "Payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked.

J. "Third-party employer" means a person or entity that contracts with a day labor service agency for the employment of day laborers. [11.6.1.7 NMAC - N, 12-15-08]

11.6.1.8 EXEMPT EMPLOYERS: The following agencies that provide employees on a short-term or otherwise temporary basis are exempted from the provisions of the Day Labor Act and these regulations:

A. business entities registered as farm labor contractors;

B. temporary services employment agencies where advanced applications, a screening process and job interviews are required;

C. a labor union hiring hall; and

D. a labor bureau or employment office operated by a business entity for the sole purpose of employing a person for its own use.

[11.6.1.8 NMAC - N, 12-15-08]

**11.6.1.9 TIME FRAMES FOR PAYMENT:**

A. Where day labor employment lasts less than one week, wages shall be paid at the end of each workday or sooner if requested by the day laborer.

B. Where day labor employment lasts more than a week, wages shall be paid at the end of each workweek or sooner if requested by the day laborer.

[11.6.1.9 NMAC - N, 12-15-08]

**HISTORY OF 11.6.1 NMAC:**  
[RESERVED]

**NEW MEXICO  
DEPARTMENT OF  
WORKFORCE SOLUTIONS  
LABOR RELATIONS DIVISION**

**TITLE 11 LABOR AND  
WORKERS COMPENSATION  
CHAPTER 6 DAY LABORERS  
PART 2 DAY LABOR SERVICE  
AGENCIES AND THIRD PARTY  
EMPLOYERS DUTIES**

**11.6.2.1 ISSUING AGENCY:**

New Mexico Department of Workforce Solutions, Labor Relations Division.

[11.6.2.1 NMAC - N, 12-15-08]

**11.6.2.2 SCOPE:** All day labor

and third party employers in New Mexico.

[11.6.2.2 NMAC - N, 12-15-08]

**11.6.2.3 STATUTORY**

**AUTHORITY:** Section 50-15-1 to 50-15-7 NMSA 1978.

[11.6.2.3 NMAC - N, 12-15-08]

**11.6.2.4 DURATION:**

Permanent.

[11.6.2.4 NMAC - N, 12-15-08]

**11.6.2.5 EFFECTIVE DATE:**

December 15, 2008, unless a later date is cited at the end of a section.

[11.6.2.5 NMAC - N, 12-15-08]

**11.6.2.6 OBJECTIVE:**

The objective of this rule is to establish regulations necessary for the enforcement of the Day Laborer Act.

[11.6.2.6 NMAC - N, 12-15-08]

**11.6.2.7 DEFINITIONS:**

[RESERVED]

**11.6.2.8 DUTIES APPLICABLE TO DAY LABOR SERVICE AGENCIES AND THIRD-PARTY EMPLOYERS:** A day labor service agency and third-party employer shall:

A. compensate a day laborer for all hours worked or otherwise due and owed to the day laborer;

B. compensate day laborers for hours worked by providing or making available commonly accepted payment instruments that are payable in cash, on demand, at a financial institution;

C. before or at the time of payment of wages, provide each day laborer with an itemized statement of payment with the laborer's name, the amount of time worked, the rate of pay and detail regarding each deduction made from wages, which shall include no less than the purpose of the deduction and the amount of the deduction;

D. not allow any deductions made other than those required by federal or state law to reduce a day laborer's wages below the federal minimum wage for the hours worked;

E. maintain true and accurate records of the day laborers employed and of the hours worked and wages paid to the day laborers for at least one year after the entry of the record; such records shall be kept as provided for herein and shall be open at all reasonable hours to the inspection of the director of the department or his or her agents.

[11.6.2.8 NMAC - N, 12-15-08]

**11.6.2.9 DUTIES APPLICABLE TO DAY LABOR SERVICE AGENCIES ONLY:**

A. A day labor service agency shall not restrict the right of a day laborer to accept a permanent position with a third-party employer to whom the day laborer has been referred for work or otherwise restrict the right of a third-party employer to offer employment to a day laborer.

B. A day labor service agency shall keep the official notice of the Day Laborer Act, furnished by the department of workforce solutions without charge, posted in a conspicuous place on or about the premises where the DLSA is hiring, registering or otherwise offering employment or payment to any day laborer seeking employment. A day labor service agency shall also provide an 8.5 x 11 size copy of the official notice of the Day Labor Act, provided by the department without charge, to each day laborer with each payment statement.

C. A day labor service agency may collect a reasonable placement fee from a third-party employer.

[11.6.2.9 NMAC - N, 12-15-08]

**11.6.2.10 CHECK CASHING SERVICES; NOTICES; WAIVERS; PENALTIES:**

A. If a day labor service agency provides a check cashing service, is a check cashing service, or allows a check cashing service to operate on its premises, it cannot charge a day laborer an amount in excess of two dollars (\$ 2.00) for cashing a check or payment instrument that is issued by the agency.

B. A day labor service agency or a check cashing service that is operating within the office of a day labor service agency shall post a notice clearly visible in the area where it cashes checks or payment instruments, that clearly states limitations on the fee amount and its fee for cashing a check or payment instrument.

C. A day labor service agency or a check cashing service operating on the premises of a day labor service agency shall not charge any fees for cashing a check or payment instrument unless the day laborer is given the option of being paid with a check or payment instrument that is payable without a fee at a local financial institution and the day laborer voluntarily chooses to cash the check with the day labor service agency or at a check cashing service operating on the premises of a day labor service agency.

(1) If the day laborer elects to cash the check with the day labor service agency or a check cashing service operating on the premises of a day labor service agency, the day labor service agency must have the day laborer voluntarily sign a waiver in plain language. When a day laborer is limited English proficient, the, the day labor service agency is responsible for providing a waiver that is translated into the day laborer's primary language, indicating that the day laborer is aware they have the right to be paid with a payment instrument that can be cashed at a bank or other local financial institution free of charge and they have voluntarily elected to cash their check with the day labor service agency or check cashing service. This waiver must be signed each time the day laborer cashes a check with the day labor service agency or with a check cashing service operating on the premises of a day labor services agency.

(2) Waiver(s) must be kept on file for one (1) year from the date signed and shall be open at all reasonable hours to the inspection of the director of the department or his or her agents.

D. The day labor service agency must provide current and accurate information with the name, address and hours of a local financial institution where checks can be cashed without a fee, on the notice form provided by the department.

This information shall be posted in an area where payment is made or checks are cashed, and shall be clearly visible and easily readable.

E. The notices required by this section shall be posted in English, Spanish, and any other written language where a high percentage of the workers speak that language, and will be provided by the department free of charge. The day labor service agency shall be responsible for posting the signs, completing blank sections with accurate information and ensuring the accuracy of any information they provide on the sign. In areas where a day labor service agency employs Navajo workers and the check cashing service cashes checks of Navajo workers, notices shall be provided by the department and posted in Navajo.

F. Failure of the day labor service agency to post notices or provide current and accurate check cashing information or local financial institution information as provided herein is a violation of these regulations and the Day Labor Act. [11.6.2.10 NMAC - N, 12-15-08]

**HISTORY OF 11.6.2 NMAC:**  
[RESERVED]

**NEW MEXICO  
DEPARTMENT OF  
WORKFORCE SOLUTIONS  
LABOR RELATIONS DIVISION**

**TITLE 11 LABOR AND  
WORKERS COMPENSATION  
CHAPTER 6 DAY LABORERS  
PART 3 DAY LABOR COM-  
PLAINTS AND PENALTIES**

**11.6.3.1 ISSUING AGENCY:**  
New Mexico Department of Workforce Solutions, Labor Relations Division.  
[11.6.3.1 NMAC - N, 12-15-08]

**11.6.3.2 SCOPE:** All day labor employers in New Mexico.  
[11.6.3.2 NMAC - N, 12-15-08]

**11.6.3.3 STATUTORY AUTHORITY:** Section 50-15-1 to 50-15-7 NMSA 1978.  
[11.6.3.3 NMAC - N, 12-15-08]

**11.6.3.4 DURATION:** Permanent.  
[11.6.3.4 NMAC - N, 12-15-08]

**11.6.3.5 EFFECTIVE DATE:** December 15, 2008, unless a later date is cited at the end of a section.  
[11.6.3.5 NMAC - N, 12-15-08]

**11.6.3.6 OBJECTIVE:** The

objective of this rule is to establish regulations necessary for the enforcement of the Day Laborer Act.  
[11.6.3.6 NMAC - N, 12-15-08]

**11.6.3.7 DEFINITIONS:**  
[RESERVED]

**11.6.3.8 DAY LABOR ACT COMPLAINTS AND PROCEDURES:**

A. Complaint forms alleging a violation of the Day Laborer Act are available at the Department of Workforce Solutions, 625 Silver Ave SW Suite 410 Albuquerque, NM 87102, and on the department of workforce solutions website (www.dws.state.nm.us), in English and Spanish.

B. Day Laborer Act complaint forms should be completed in English or Spanish, signed and returned to the Department Of Workforce Solutions, 625 Silver Ave SW Suite 410, Albuquerque, NM 87102.

C. Upon receiving a complaint of a violation of the act containing sufficient information, the department of workforce solutions will notify the affected employer of the day laborer claim filed against him/her or violation(s) of the act and allow ten (10) business days for him/her to file a written response. If the day labor service agency or third party employer does not respond, a finding will be made in favor of the complainant or the department. If the day labor service agency or third party employer disputes the claim, his/her written response will be given to the day laborer or the department, who will be allowed ten (10) business days in which to rebut the claim in writing.

D. A department of workforce solutions administrative law judge ALJ(s) may schedule an administrative hearing when, in their judgment, it would facilitate resolution of the complaint. The conduct of the hearing is governed by the procedures described in NMSA 1978, 50-1-2 and pursuant regulations.

E. The ALJ(s) may issue a subpoena duces tecum to compel the production of records they believe are necessary for the resolution of the complaint.

F. In every case in which a hearing has been completed, or in which the pleadings are sufficiently complete and a hearing is deemed unnecessary, or whenever they otherwise have sufficient evidence upon which to base their determination, the ALJ(s) will issue a written decision as to whether the Day Labor Act has been violated. In light of the transitory nature of day labor, the division will strive to complete determinations as quickly as possible, and no later than sixty (60) days after completion of the hearing or after a determination is made that the evidence is otherwise suffi-

cient, unless good cause exists.

G. The ALJ(s) may, upon receipt of written assignment by the day laborer and pursuant to the discretion of the director, file complaints in any magistrate or metropolitan court in the state in order to resolve wage disputes or correct violations arising under Chapter 50 of the New Mexico state statutes, when in the ALJ(s) judgment it is appropriate for the resolution of the claim.

H. The ALJ(s) may, upon receipt of written assignment by the day laborer and pursuant to the discretion of the director, file a proof of claim on behalf of a day laborer in any U.S. bankruptcy court, when in the ALJ(s) judgment it is appropriate for the resolution of the claim.

I. The director of the department of workforce solutions, or his or her designee, shall, when satisfied as to the justice of any claim, cooperate with any employee in the enforcement of any claim against his employer, and refer violations of the Day Labor Act to the district attorneys office of the district in which the violation occurred for criminal prosecution, pursuant to NMSA 50-1-7.  
[11.6.3.8 NMAC - N, 12-15-08]

**11.6.3.9 VIOLATIONS, MISDEMEANORS AND PENALTIES:**

A. Any day labor service agency, or its employee or agent, or any third-party employer or its employee or agent, who hires a day laborer and fails to pay a day laborer for work performed or time due, is liable for full payment of the wages not paid and civil damages equal to twice the value of the unpaid wages, court costs, and attorney fees and costs.

B. Any day labor service agency, or its employee or agent, or any third-party employer or its employee or agent, who violates the provisions of the Day Laborer Act, is for a first offense guilty of a misdemeanor, and shall be sentenced pursuant to Section 31-19-1 NMSA 1978. Offenders who violate this Act a second or subsequent times shall be guilty of a misdemeanor, shall be sentenced pursuant to Section 31-19-1 NMSA 1978, and shall be fined no less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) for each offense for which the offender is convicted, which fine shall not be suspended, deferred or taken under advisement.

C. In addition to any other fees or fines that may be imposed on an offender convicted pursuant to this section, the court may order the offender to pay restitution pursuant to Section 31-17-1 NMSA 1978.

D. Each occurrence of a violation for which a person is convicted is a separate offense.

E. Multiple violations arising from transactions with the same person or multiple violations arising from transactions with different people shall be considered separate occurrences.

F. It shall not be a defense to any action brought pursuant to this section that the plaintiff or complainant is an undocumented worker or otherwise has questionable immigrant status.

[11.6.3.9 NMAC - N, 12-15-08]

**HISTORY OF 11.6.3 NMAC:**  
[RESERVED]

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**End of Adopted Rules Section**

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**SUBMITTAL DEADLINES AND PUBLICATION DATES**

**2008**

<b>Volume XIX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

**2009**

<b>Volume XX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
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