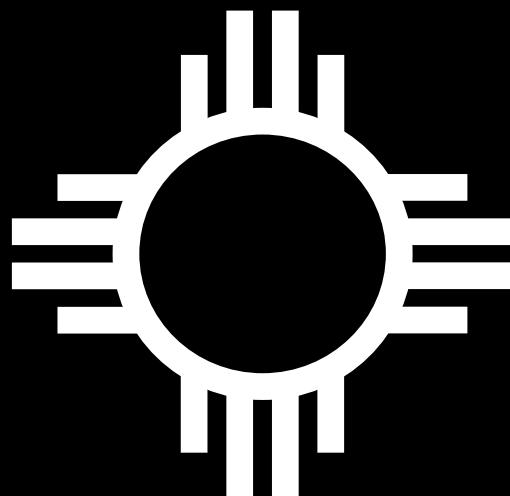


**NEW
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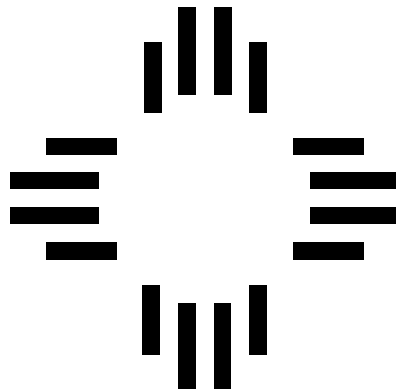


Volume XVI
Issue Number 2
January 31, 2005

New Mexico Register

Volume XVI, Issue Number 2

January 31, 2005



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
2005

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New Mexico Register

Volume XVI, Number 2

January 31, 2005

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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 rules@rain.state.nm.us.

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The New Mexico Department of Agriculture (NMDA) will hold two public hearings under the Pest Control Act, Chapter 76, Article 6, Section 1 through 9, NMSA 1978. NMDA is proposing a permanent interior quarantine to prevent the spread of apple maggot, a serious pest of apples and a threat to the New Mexico apple industry.

Hearings will be held in Santa Fe and Las Cruces.

The hearing in Santa Fe will be held at the Santa Fe Fairgrounds Exhibit Hall at 3229 Rodeo Road, beginning at 10:30 a.m. on February 22, 2005. The Santa Fe Fairgrounds is located at the intersection of Rodeo Road and Paseo de Los Pueblos.

The hearing in Las Cruces will be held in the conference room at the New Mexico Department of Agriculture located at 3190 South Espina (Corner of Gregg and Espina), beginning at 1:30 p.m. on February 22, 2005.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on February 22, 2005. Written statements, inquiries, or requests for copies of the rule should be directed to Brad Lewis, Box 30005, MSC 3BA, Las Cruces, New Mexico 88003 or at (505) 646-3207.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF CONTINUED PUBLIC HEARING TO CONSIDER PROPOSED REVISION OF LIQUID WASTE DISPOSAL REGULATIONS, 20.7.3 NMAC

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning on April 5, at 9:00 am and continuing thereafter as necessary, at the New Mexico State Capitol Building, Room 317, at the corner of Don Gaspar and Paseo de Peralta, Santa Fe, New Mexico. The hearing is a continuation of the hearing

that commenced on December 7, 8 & 9th. The purpose of the hearing is to continue the hearing to consider proposed revisions to Liquid Waste Disposal Regulations, 20.7.3 NMAC. The New Mexico Environment Department and the Professional On-Site Wastewater Re-use Association are proponents of revisions to the regulations.

The revisions are for the purpose of changing the Liquid Waste Disposal regulations to: (i) address the growing concern of ground water contamination generated by septic systems; (ii) provide greater clarity by describing "areas of concern" that invoke stricter standards; (iii) provide for a time period for undeveloped lots to come within current standards over a period of time; (iv) provide language to permit unpermitted systems; and (v) provide maintenance standards for conventional and non-conventional systems. The sections that would be revised include the following:

20.7.3.2 (B) *Scope: Non-substantive technical changes.*

20.7.3.7 *Definitions: Definitions are extensively revised and new definitions are added.*

20.7.3.8 *General Provisions:*

20.7.3.201 *Procedures; Liquid Waste System Permits:*

20.7.3.201 *Procedures- General Requirements:*

20.7.3.202 *Procedures- Modification of Existing Systems:*

20.7.3.203 *Procedures; Appeals:*

20.7.2.204 *Procedures; Inspection and Sampling:*

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20.7.3.305 *Standards; Holding Tank Requirements:*

20.7.3.306 *Standards; Alternative Systems:*

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20.7.3.305 *Standards; Waste Interceptors:*

20.7.3.307 *Standards; Septage:*

20.7.3.308 *Standards; Operation Requirements:*

20.7.3.309 *Standards; Maintenance of on Site Liquid Waste Systems:*

20.7.3.310 *Standards; Graywater Discharge:*

20.7.3.307 *Standards; Abandoned Sewers and On-Site Liquid Waste Systems:*

20.7.3.401 *Design; General Permitting ; General Requirements:*

20.7.3.402 *Permitting; Conventional*

Treatment and Disposal System:

20.7.3.403 *Permitting; Advanced Treatment or Alternative Disposal:*

20.7.3.404 *Permitting; Experimental Systems:*

20.7.3.405 *Permitting; Variances:*

20.7.3.406 *Permitting; Appeals:*

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20.7.3.502 *Design; Conventional Treatment Units; Construction Standards:*

20.7.3.601 *Design; Advanced Treatment Units; General:*

20.7.3.602 *Design; Secondary Treatment Standards:*

20.7.3.603 *Design; Tertiary Treatment Standards:*

20.7.3.604 *Design; Disinfection Treatment Standards:*

20.7.3.605 *Design; Minimum Required Treatment Levels for Site Conditions:*

20.7.3.403 *Design; Area Disposal Field and Seepage Pits:*

20.7.3.404 *Design; Percolation Tests:*

20.7.3.405 *Design; Conventional Disposal Field; Design and Construction:*

20.7.3.406 *Design; Seepage Pit; Design and Construction:*

20.7.3.703 *Design; Area of Disposal Field and Seepage Pits:*

2.7.3.407 *Design; Special Liquid Waste Disposal:*

2.7.3.408 *Design; Inspection and Testing:*

2.7.3.409 *Design; Aerobic Treatment Systems:*

2.7.3.410 *Design; Abandoned Sewers and On Site Liquid Waste Systems:*

20.7.3.801 *Design; Alternative Disposal:*

20.7.3.802 *Privies:*

20.7.3.803 *Cluster Systems:*

20.7.3.804 *Composting and Incinerating Toilets:*

20.7.3.805 *Irrigation/Reuse Systems:*

20.7.3.806 *Evapotranspiration Systems:*

20.7.3.807 *Mound Systems:*

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20.7.3.810 *Graywater Discharges:*

20.7.3.811 *Graywater Systems:*

20.7.3.812 *Pump Stations and Equipment:*

20.7.3.813 *Building Sewer:*

20.7.3.901 *Monitoring:*

20.7.3.902 *Operation and Maintenance:*

20.7.3.903 *Maintenance Service Providers (MSP) for Conventional and Advanced On-site Liquid Waste Systems:*

20.7.3.904 *Requirements For Certification:*

20.7.3.905 *Technical Advisory Committee:*

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20.7.3.501 *Construction:*

20.7.3.502 *Temporary Provisions:*

20.7.3.503 *Severability:*

- 20.7.3.504 References in other Regulations:
- 20.7.3.505 Savings Clause:
- 20.7.3.506 Collateral Requirements:
- 20.7.3.507 Limitations of Defense:

Please note that formatting and minor technical changes in the proposed regulations may occur. In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board and the four New Mexico Environment Department district offices as follows:

- (1) Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505
- (2) District I, 4131 Montgomery Blvd, N.E., Albuquerque, NM 87109
- (3) District II, 4 Calle Medico, Santa Fe, NM 87505
- (4) District III, 1170 North Solano Drive, Suite M, Las Cruces, NM 88001
- (5) District IV, 1914 W. Second, Roswell, NM 88201

Copies of the proposed revisions may be obtained by contacting Sally Worthington at (505) 827-2002 or by email at Sally_Worthington@nmenv.state.nm.us. Please refer to Docket No. EIB 04-07. Written comments regarding the proposed revisions may be addressed to Ms. Worthington at the above address, and should reference docket number EIB 04-07.

The continued hearing will be conducted in accordance with the procedures set forth in the original public notice, published in the New Mexico Register on September 15, 2004 (Vol.XV, Issue 17), 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by March 15, 2005. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may make a decision on the proposed regulatory change at the conclusion

of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

**NEW MEXICO
COMMISSION ON HIGHER EDUCATION**

**NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Commission on Higher Education (“Commission”) Educational Programs Committee will convene on Tuesday, January 18, 2005. At that time information on the proposed rulemaking will be given. The meeting will be held in Santa Fe, New Mexico at the Santa Fe Community College, Jemez Room 1. Information regarding the location of the meetings, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Commission staff at 505-476-6500. The Commission may consider the following items of rulemaking at the meeting:

Rule Number	Rule Name	Proposed Action
5.55.2 NMAC	POST SECONDARY EDUCATION PUBLIC POSTSECONDARY EDUCATION GENERAL PROVISIONS CONCURRENT ENROLLMENT	None, Information only

A public hearing to take action on the proposed rulemaking will be held on Friday, April 22, 2005, in Hobbs, New Mexico, at a time and place to be determined at least ten days before. Please contact the Commission at 505-476-6500 for additional information.

Copies of the proposed rule changes may be obtained from the Commission. Written comments concerning the rules should be submitted to Kathy Cantrell, Deputy Director for Finance and Administration, 1068 Cerrillos Road, Santa Fe, NM 87505, by facsimile at (505) 476-6511, or via electronic mail at kcantrell@che.state.nm. Comments will be accepted until 5 p.m. on January 14, 2005; however, submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the Commission at (505) 476-6500 at least one week prior to the meeting, or as soon as possible.

Comments, questions, or requests for copies of the Agenda should be directed to the Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, NM 87505, Tel. 505-476-6500.

NEW MEXICO MASSAGE THERAPY BOARD

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

Notice is hereby given that the New Mexico Massage Therapy will convene a public rule hearing at 10:00 a.m. on Thursday, March 24, 2005 in the Rio Grande Conference Room at the Toney Anaya Building located in the West Capitol Complex at 2550 Cerrillos Road, Santa Fe, New Mexico. A regular business meeting will follow the hearing, and action will be taken on the proposed rules at that time. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

The purpose of the rule hearing is to consider for adoption proposed amendments to the following Board Rules and Regulations in 16.7 NMAC: Part 1, “General Provisions”; Part 3, “Fees”; Part 5, “Requirements for Schools”; Part 6, “Requirements for Instructors”; and Part 11, “Continuing Education”. The Board will also be considering repealing the current Part 4, “Requirements for Licensure” and Part 12, “License/Registration Renewal; Registration” and replacing these two rules with a new Part 4, “Requirements for Licensure” and Part 12, “License/Registration Renewal; Registration”.

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 (address above) or call (505) 476-4870 or 476-4624; or access them in the “News” link on the Board’s Website at www.rld.state.nm.us/b&c/massage after February 1, 2005. All written comments, mailed to the Board office or e-mailed to Massage@state.nm.us or Carmen.payne@state.nm.us, must be received no later than Monday, March 14, 2005, in order for the Board members to receive the comments in their meeting packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need eight (8) 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) 476-4870 or 476-4624 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at 10:00 A.M. on Wednesday, March 23, 2005, in the Educator Quality Division Meeting Room at 444 Galisteo Street, Suite A, Santa Fe, New Mexico regarding the following proposed rulemaking actions:

Rule Number	Rule Name	Proposed Action
6.60.3 NMAC	Alternative Licensure	Amend rule
6.60.5 NMAC	Competency Testing for Licensure	Amend rule
6.60.6 NMAC	Continuing Licensure for Licensed Educators in New Mexico	Amend rule
6.60.7 NMAC	Educator Licensure Application Fee	Amend rule
6.61.3 NMAC	Licensure in Middle Level Education, Grades 5-9	Amend rule
6.61.6 NMAC	Licensure in Special Education K-12	Amend rule
6.64.16 NMAC	Competencies for Entry-Level Technology Studies/Education Teachers	Adopt new rule
6.64.17 NMAC	Competencies for Entry-Level Agriculture Education Teachers	Adopt new rule
6.69.4 NMAC	Performance Evaluation Requirements for Teachers	Amend rule

The proposed amendments to 6.60.3 NMAC (Alternative Licensure) will define “highly qualified” special education teacher; define the term “full school year” for purposes of alternative licensure; change the required number of credit hours required in a content area for alternative licensure candidates to align with the state’s definition of an undergraduate academic major under NCLB; open a new path for alternative licensure candidates permitting local school district to offer a two-year teacher preparation program in collaboration with a college or university; change the length of the internship license from a one-year renewable license, to a three-year non-renewable license; delete the information about the nature of an alternative licensure mentorship program because it is covered in the mentorship rule. The proposed amendments to 6.60.5 NMAC (Competency Testing for Licensure) will clarify language about when new tests were first required; provide for new content area tests required for licensure in health, physical education, library/media, TESOL, and family and consumer sciences beginning in September, 2006; and delete language about licensees who have let their licenses lapse beginning again at level one. The proposed amendments to 6.60.6 NMAC (Continuing Licensure for Licensed Educators in New Mexico) will define a “full school year” for purposes of licensure advancement and authorize a system whereby local school districts can authorize electronically the renewal of licenses at the same licensure level without candidates submitting applications and fees to the Department. The proposed amendment to 6.60.7 NMAC (Educator Licensure Application Fee) will amend the licensure fee rule to provide for the collection of a \$25.00 fee for endorsement applications. The proposed amendments to 6.61.3 NMAC (Licensure in Middle Level Education, Grades 5-9) will allow elementary and secondary teachers with at least five years of teaching experience at the middle school level to obtain the middle school license though the procedures outlined in NCLB, including the two HOUSSE paths, and provide clean-up language to bring the rule in line with other licenses. The proposed amendment to 6.61.6 NMAC (Licensure in Special Education K-12) will amend the special education K-12 licensure rule to provide a definition of a new “highly qualified” special education teacher entering the profession that aligns with the reauthorization of IDEA. Proposed new rule 6.64.16 NMAC (Competencies for Entry-Level Technology Studies/Education Teachers) will establish the requirements and teacher preparation competencies for entry-level technology studies/education teachers. Proposed new rule 6.64.17 NMAC will establish the requirements and teacher preparation competencies for entry-level agriculture education teachers. The proposed amendments to 6.69.4 NMAC (Performance Evaluation Requirements for Teachers) will amend the teacher performance evaluation rule to provide a definition of an experience “highly qualified” special education teacher that aligns with the reauthorization of IDEA.

Interested individuals may testify at the public hearing or submit written comments to James Ball, Assistant Secretary for Educator Quality, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (jball@ped.state.nm.us) or telefaxed to (505) 827-4148. Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Linda Olivas, Professional Licensure Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6581.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Olivas as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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

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

NOTICE OF PUBLIC HEARING

A public meeting for the purpose of receiving comments on rule adoption of the 2005 New Mexico Electrical Code and the 2005 National Electrical Code (NFPA-70) will be held at the following time and place:

* **Santa Fe, NM** - March 7, 2005, 9:00 a.m. - 12:00 Noon, CID Conference Room, 2550 Cerrillos Road

* **Albuquerque, NM** - March 9, 2005, 9:00 a.m. - 12:00 Noon, CID Conference Room, 5200 Oakland NE

* **Las Cruces, NM** - March 7, 2005, 9:00 a.m. - 12:00 Noon, CID Conference Room, Loretto Towne Center, 505 South Main, Suite 150

* **Roswell, NM** - March 9, 2005, 9:00 a.m. - 12:00 Noon, City Council Chambers, 425 N. Richardson

* **Farmington, NM** - March 9, 2005, 9:00 a.m. - 12:00 Noon, Farmington Civic Center 200 W. Arrington; Meeting Room C

The public is invited to attend and comment on the adoption of the above-referenced proposed rule. If you cannot attend the meeting, you may send your written comments to Construction Industries Division, ATTENTION: Electrical Bureau, P.O. Box

25101, Santa Fe, New Mexico 87504. FAX (505) 476-4685. No comments will be received after 12:00 noon, March 9, 2005.

Copies of the rule will be available at the Construction Industries Division Offices.

If you require special accommodations, please notify the Division of such needs no later than February 21, 2005, by calling (505) 476-4679.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

16.2.2 NMAC, Scope of Practice (filed 09-15-2000) repealed 02-15-05 and replaced by 16.2.2 NMAC, Scope of Practice, effective 02-15-05.

16.2.8 NMAC, License Renewal (filed 06-15-2001) repealed 02-15-05 and replaced by 16.2.8 NMAC, License Renewal, effective 02-15-05.

16.2.15 NMAC, Inactive License (filed 02-14-2003) repealed 02-15-05 and replaced by 16.2.15 NMAC, Inactive License, effective 02-15-05.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 2 ACUPUNCTURE
AND ORIENTAL MEDICINE PRACTITIONERS
PART 2 SCOPE OF PRACTICE**

16.2.2.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.2.1 NMAC - Rp, 16.2.2.1 NMAC, 02-15-05]

16.2.2.2 SCOPE: All licensed doctors of oriental medicine, all licensed doctors of oriental medicine certified for the extended (Rx1) or expanded (Rx2) prescriptive authority, temporary licensees engaging in only those activities authorized on the temporary license, externs engaging in only those activities authorized by the externship and students enrolled in an educational program in acupuncture and oriental medicine approved by the board working under the direct supervision of a teacher at the approved educational program as part of the educational program in which they are enrolled.
[16.2.2.2 NMAC - Rp, 16.2.2.2 NMAC, 02-15-05]

16.2.2.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-3, 4, 6, 8 and 8.1 NMSA 1978.
[16.2.2.3 NMAC - Rp, 16.2.2.3 NMAC, 02-15-05]

16.2.2.4 DURATION: Permanent.
[16.2.2.4 NMAC - Rp, 16.2.2.4 NMAC, 02-15-05]

16.2.2.5 EFFECTIVE DATE: 02-15-05, unless a later date is cited at the end of a section.
[16.2.2.5 NMAC - Rp, 16.2.2.5 NMAC, 02-15-05]

16.2.2.6 OBJECTIVE: This part clarifies the scope of practice of doctors of oriental medicine, temporary licensees, externs and students and defines the requirements for extended (Rx1) and expanded (Rx2) prescriptive authority.
[16.2.2.6 NMAC - Rp, 16.2.2.6 NMAC, 02-15-05]

16.2.2.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).
[16.2.2.7 NMAC - Rp, 16.2.2.7 NMAC, 02-15-05]

16.2.2.8 SCOPE OF PRACTICE: Pursuant to Section 61-14A-3 NMSA 1978, the practice of oriental medicine in New Mexico is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health. Oriental medicine includes all traditional and modern diagnostic, prescriptive and therapeutic methods utilized by practitioners of acupuncture and oriental medicine worldwide. The scope of practice of doctors of oriental medicine shall include but is not limited to:

A. evaluation, management and treatment services;
B. diagnostic examination, testing and procedures;
C. the ordering of diagnostic imaging procedures and laboratory or other diagnostic tests;

D. the surgical procedures of acupuncture and other related procedures, as well as injection therapy; injection therapy may only be performed by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 16.2.2.11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);

E. the stimulation of points, areas of the body or substances in

the body using qi, needles, heat, cold, color, light, infrared and ultraviolet, lasers, sound, vibration, pressure, magnetism, electricity, electromagnetic energy, bleeding, suction, or other devices or means;

F. physical medicine modalities, procedures and devices; spray and stretch techniques using prescription vapocoolants may only be performed by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 NMAC (Section 10 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);

G. therapeutic exercises, qi exercises, breathing techniques, meditation, and the use of biofeedback devices and other devices that utilize heat, cold, color, light, infrared and ultraviolet, lasers, sound, vibration, pressure, magnetism, electricity, electromagnetic energy and other means therapeutically;

H. dietary and nutritional counseling and the prescription or administration of food, beverages and dietary supplements therapeutically;

I. counseling and education regarding physical, emotional and spiritual balance in lifestyle;

J. the prescription or administration of any herbal medicine, homeopathic medicine, vitamins, minerals, enzymes, glandular products, natural substances, protomorphogens, live cell products, gerovital, amino acids and dietary and nutritional supplements; the injection of any of the above substances may only be performed by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 16.2.2.11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);

K. the prescription or administration of cosmetics, biological products including therapeutic serum and over the counter drugs other than those enumerated in Section 61-14A-3.G.(2) of the act by a doctor of oriental medicine who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 16.2.2.11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);

L. the prescription or administration of sterile water, sterile saline, sarapin or its generic and vapocoolants by a doctor of oriental medicine

who is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority pursuant to 16.2.2.10 and 11 NMAC (Sections 10 and 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);

M. the prescription or administration of caffeine, procaine, oxygen, epinephrine, bioidentical hormones and those substances listed in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules) by a doctor of oriental medicine who is certified for the expanded prescriptive authority (Rx2) pursuant to 16.2.2.11 NMAC (Section 11 of Part 2 of the rules) or a temporary licensee for the purposes specified in Section 61-14A-12 of the act and 16.2.5 NMAC (Part 5 of the rules);

N. the prescription or administration of devices, restricted devices and prescription devices as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978) by a doctor of oriental medicine who meets the requirements of 16.2.2.9 NMAC (Section 9 of Part 2 of the rules). [16.2.2.8 NMAC - Rp, 16.2.2.8 NMAC, 02-15-05]

16.2.2.9 DEVICES, RESTRICTED DEVICES AND PRESCRIPTION DEVICES: The board determines that devices, restricted devices and prescription devices as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978) are necessary in the practice of oriental medicine. Doctors of oriental medicine who have the training recommended by the manufacturer of the device shall be authorized to prescribe or administer the device. [16.2.2.9 NMAC - Rp, 16.2.2.9 NMAC, 02-15-05]

16.2.2.10 EXTENDED PRESCRIPTIVE AUTHORITY CERTIFICATION (RX1): The board shall certify a doctor of oriental medicine in good standing for extended prescriptive authority (Rx1) as provided herein.

A. The doctor of oriental medicine shall file a completed and signed application form provided by the board and shall pay the administrative fee for extended prescriptive authority (Rx1) application specified in 16.2.10 NMAC (Part 10 of the rules).

B. The doctor of oriental medicine shall submit proof of completion of the following education, satisfactory to the board, in the pharmacology and general use of the drugs authorized for use under the extended prescriptive authority (Rx1) provisions of Section 61-14A-3.G(4) and (5) and Section 61-14A-8.1 of the act. Such

education shall have been earned in classes pre-approved by the board and shall be taught by qualified teachers as approved by the board. All pharmacology shall be taught by a licensed pharmacist, PharmD or a Ph.D. in pharmacology. The education in the therapeutic use of the drugs shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the drugs. The board shall have final authority for approval of classes and teachers. All classes may be video recorded and transcribed for approval by the board for future presentation of the class. Testing shall be administered as approved by the board to insure that the material presented in the classes has been learned. The entire educational program shall be completed within two (2) years. The above education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine. The education shall include a minimum of sixty (60) hours in the following areas with one (1) hour of education equal to that defined by the accreditation commission for acupuncture and oriental medicine (ACAOM):

(1) twenty-eight (28) hours in the theory and practice of injection therapy such as trigger point injection therapy, neural injection therapy, prolo therapy, mesotherapy, endotherapy, nerve blocks and therapeutic injections using the authorized drugs in the prescriptive authority formulary defined in 16.2.2.13 (Section 13 of Part 2 of the rules) as well as vapocoolant spray and stretch techniques; intravenous injection and infusion therapy are not authorized under the extended prescriptive authority (Rx1) certification; the course shall include classes in: anatomy, physiology, pathology, biochemistry, pharmacology, diagnostic methodology, clinical strategies, contraindications and safeguards;

(2) fourteen (14) hours in orthopedic and neurological evaluation;

(3) seven (7) hours in biomedical differential diagnosis relative to the prescription or administration of the authorized drugs;

(4) five (5) hours in the pharmacology, application and clinical use of cosmetics and over-the-counter drugs;

(5) three (3) hours in the compounding of the authorized drugs intended for injection utilizing approved aseptic technique;

(6) one (1) hour in the proper record keeping, storage and dispensing of dangerous drugs;

(7) one (1) hour of pharmaceutical law as provided by the New Mexico board of pharmacy;

(8) one (1) hour in oriental medicine scope of practice relative to the author-

ized substances and techniques.

C. The education and training completed by a doctor of oriental medicine who is certified for extended prescriptive authority (Rx1) may be credited towards the education required for expanded prescriptive authority (Rx2) certification.

D. The board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the receipt of the complete application whether the application is accepted or rejected. If the application is rejected, the notice of rejection shall state the reason the application was rejected.

E. The extended prescriptive authority (Rx1) certification shall automatically terminate when the license lapses, is suspended, revoked or terminated for any reason.

F. A doctor of oriental medicine certified for extended prescriptive authority (Rx1) shall be designated as such by the addition of "Rx1" after his or her license number. The board shall maintain a list of each doctor of oriental medicine who is certified for extended prescriptive authority (Rx1) and shall notify the New Mexico board of pharmacy of all licensees certified for extended prescriptive authority (Rx1).

G. A doctor of oriental medicine certified for the extended prescriptive authority (Rx1) shall complete all continuing education required by 16.2.9 NMAC (Part 9 of the rules). [16.2.2.10 NMAC - N, 02-15-05]

16.2.2.11 EXPANDED PRESCRIPTIVE AUTHORITY CERTIFICATION (RX2): The board shall certify a doctor of oriental medicine in good standing for expanded prescriptive authority (Rx2) as provided herein.

A. The doctor of oriental medicine shall file a completed and signed application form provided by the board and shall pay the administrative fee for expanded prescriptive authority (Rx2) application specified in 16.2.10 NMAC (Part 10 of the rules).

B. The education and training required for extended prescriptive authority (Rx1) certification defined in 16.2.2.10 NMAC (Section 10 of Part 2 of the rules) shall be a prerequisite for the education and training required for expanded prescriptive authority (Rx2) certification.

C. The doctor of oriental medicine shall submit proof of completion of the following education, satisfactory to the board, in the pharmacology and general use of the drugs authorized for use under the expanded prescriptive authority (Rx2) provisions of Section 61-14A-3.G(4) and (5) and Section 61-14A-8.1 of the act. Such education shall have been earned in classes pre-approved by the board and shall be

taught by qualified teachers as approved by the board. All pharmacology shall be taught by a licensed pharmacist, PharmD or a Ph.D. in pharmacology. The education in the therapeutic use of the drugs shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the drugs. The board shall have final authority for approval of classes and teachers. All classes may be video recorded and transcribed for approval by the board for future presentation of the class. Testing shall be administered as approved by the board to insure that the material presented in the classes has been learned. The entire educational program shall be completed within two (2) years. The above education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a doctor of oriental medicine. The education shall include a minimum of ninety-five (95) hours in the following areas with one (1) hour of education equal to that defined by the accreditation commission for acupuncture and oriental medicine (ACAOM).

(1) Fourteen (14) hours in the theory and practice of injection therapy such as trigger point injection therapy, neural injection therapy, prolo therapy, mesotherapy, endotherapy, nerve blocks, therapeutic injections and intravenous therapy using the authorized drugs in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules). The course shall include classes in: anatomy, physiology, pathology, biochemistry, pharmacology, diagnostic methodology, clinical strategies, contraindications and safeguards.

(2) Fourteen (14) hours in oxidative and ultraviolet medicine and the use of oxygen therapeutically.

(3) Fourteen (14) hours in metal detoxification and chelation therapy using vitamins, natural substances, amino acids and those substances used for chelation therapy listed in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules).

(4) Thirty (30) hours in the theory and practice of bioidentical hormone therapy. The course shall include classes in: anatomy, physiology, endocrinology, pathology, biochemistry, pharmacology, diagnostic imaging, diagnostic procedures, clinical strategies, contraindications, safeguards, and specialist referral.

(5) Twelve (12) hours in blood, urine and saliva hormone diagnostic testing and evaluation.

(6) Seven (7) hours in biomedical differential diagnosis relative to the prescription or administration of the authorized drugs.

(7) Two (2) hours in the com-

pounding of the authorized drugs intended for injection utilizing approved aseptic technique.

(8) One (1) hour in the proper record keeping, storage and dispensing of the dangerous drugs and controlled substances.

(9) One (1) hour in oriental medicine scope of practice.

D. The board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the receipt of the complete application whether the application is accepted or rejected. If the application is rejected, the notice of rejection shall state the reason the application was rejected.

E. The expanded (Rx2) prescriptive authority certification shall automatically terminate when the license lapses, is suspended, revoked or terminated for any reason.

F. A doctor of oriental medicine certified for expanded prescriptive authority (Rx2) shall be designated as such by the addition of "Rx2" after his or her license number. The board shall issue a wallet size license card to each doctor of oriental medicine that shall contain the licensee's name, and license number followed by "Rx2" if applicable. The board shall maintain a list of each doctor of oriental medicine who is certified for expanded prescriptive authority (Rx2) and shall notify the New Mexico board of pharmacy of all licensees certified for expanded prescriptive authority (Rx2).

G. A doctor of oriental medicine certified for the expanded prescriptive authority (Rx2) shall register with the federal DEA (drug enforcement agency) to authorize the use of testosterone, a controlled substance, and any other drug that is classified as a controlled substance and that is within the prescriptive authority of a doctor of oriental medicine as defined in the act and this rule and as listed in the prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules).

H. A doctor of oriental medicine certified for the expanded prescriptive authority (Rx2) shall complete all continuing education required by 16.2.9 NMAC (Part 9 of the rules).

[16.2.2.11 NMAC - Rp 16.2.2.10 NMAC, 02-15-05]

16.2.2.12 PRESCRIPTION

PADS: A doctor of oriental medicine, when prescribing, shall use prescription pads imprinted with his/her name, address, telephone number and license number. If a doctor of oriental medicine is certified for the extended (Rx1) or expanded (Rx2) prescriptive authority, the "Rx1" or "Rx2" designation shall be included after the license

number. If a doctor of oriental medicine is using a prescription pad printed with the names of more than one doctor of oriental medicine, each doctor of oriental medicine shall have a separate signature line indicating the name and license number followed by "Rx1" or "Rx2" designation if applicable. Each specific prescription shall indicate the name of the doctor of oriental medicine for that prescription.

[16.2.2.12 NMAC - Rp 16.2.2.11 NMAC, 02-15-05]

16.2.2.13 PRESCRIPTIVE AUTHORITY FORMULARY:

A doctor of oriental medicine is authorized to prescribe, dispense or administer only the drugs not listed by the designation Rx after a specific substance in Subsections A to L of this prescriptive authority formulary (16.2.2.13 NMAC) and is not authorized to prescribe the drug if it is classified as a dangerous drug or controlled substance or administer the drug by injection. A doctor of oriental medicine certified for extended prescriptive authority (Rx1) is authorized to prescribe, dispense or administer only the drugs listed in Subsections A to S of this prescriptive authority formulary (16.2.2.13 NMAC) and is only authorized to administer them in compliance with the techniques defined in 16.2.2.10 NMAC (Section 10 of Part 2 of the rules), except that injection of gerovital (buffered procaine) is not authorized and intravenous injection or infusion therapy is not authorized. A doctor of oriental medicine certified for expanded prescriptive authority (Rx2) is authorized to prescribe, dispense or administer all drugs listed in this prescriptive authority formulary (16.2.2.13 NMAC). Drugs, dangerous drugs and controlled substances are defined in the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act. All drugs listed in this prescriptive authority formulary that at any time have been classified as dangerous drugs or controlled substances, including those intended for injection are within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority. A drug listed in this prescriptive authority formulary that at any time is classified as a schedule 1 controlled substance, as defined in the New Mexico Controlled Substances Act, is within the prescriptive authority of a doctor of oriental medicine certified for the appropriate extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority if at any time that drug is authorized for research or use by prescription or administration by a practitioner. This prescriptive authority formulary is an evolving document. All substances from threatened

or endangered species as determined by the convention on the international trade in endangered species of wild fauna and flora (CITES at www.cities.org) and the US fish and wildlife service (<http://www.endangered.fws.gov/>) shall be automatically eliminated from this prescriptive authority formulary. Definitions from the New Mexico Drug, Device and Cosmetic Act and the New Mexico Controlled Substances Act apply to the appropriate terms in this prescriptive authority formulary. Doctors of oriental medicine must comply with all federal and state laws pertaining to the obtaining, possession, prescription, compounding, administration or dispensing of any drug, dangerous drug or controlled substance. Any substances for injection or infusion shall only be approved for use if procured from a manufacturer or compounding pharmacy compliant with all federal and state laws. This prescriptive authority formulary does not supersede such laws. A doctor of oriental medicine certified for the extended prescriptive authority (Rx1) or expanded (Rx2) prescriptive authority, when diagnosing and treating a patient, shall possess and apply the knowledge and use the skill and care ordinarily used by other similarly certified doctors of oriental medicine.

A. All herbal medicines from around the world.

B. All homeopathic medicines.

C. All vitamins including their surrogates, isomers and analogues. Doctors of oriental medicine certified for the extended prescriptive authority (Rx1) are authorized to inject these substances except that intravenous injection therapy is not authorized under the extended prescriptive authority (Rx1) certification. Doctors of oriental medicine certified for the expanded prescriptive authority (Rx2) are authorized to administer these substances through any means including intravenous therapy.

D. All minerals from the periodic table including the salts of calcium and magnesium such as ammoniates, anhydrides, ascorbates, aspartates, chlorides, citrates, gluconates, fumarates, iodates, sulfates, etc., except the injection of gold.

E. All enzymes except urokinase.

F. All glandular products.

G. Natural substances. The

authorized natural substances are:

- (1) adenosine triphosphate (ATP)
- (2) alcohols
- (3) acetylcysteine (mucomist) Rx
- (4) bee venom (apis)
- (5) benzyl alcohol
- (6) carbohydrates
- (7) colchicine Rx
- (8) cytokines

- (9) dextrose
- (10) EDTA
- (a) ethylenediamine tetraacetic acid
- (b) disodium ethylenediamine tetraacetic acid
- (c) trisodium ethylenediamine tetraacetic acid
- (11) fatty acids
- (12) flavonoids
- (13) fructose
- (14) gamaglobulin
- (15) glucose
- (16) glucosamine
- (17) glutathione
- (18) glycerine
- (19) haemaglobulin
- (20) heparin Rx
- (21) hyaluronic acid
- (22) hydrochloric acid
- (23) hydrogen peroxide
- (24) lipids
- (25) ozone
- (26) phenol (carbolic acid) Rx
- (27) proteins
- (28) pumice
- (29) sodium hyaluronate
- (30) sodium morrhuate (extract of cod liver oil)
- (31) sulfur compounds. Examples are:
 - (a) DMPS (dimercaptopropane-1-sulphonate)
 - (b) DMSO (dimethyl sulfoxide)
 - (c) DMSA (dimercaptosuccinic acid) Rx
 - (d) MSM (methylsulfonyl methane)
- (32) tetrahydropalmatine (extract of corydalis)
- (33) all natural substances from the traditional natural medicines of the world
- (34) all substances in the natural medicines comprehensive database.
- H. All protomorphogens.
- I. All live cell products.
- J. Gerovital.
- K. All amino acids.
- L. All dietary and nutritional supplements.
- M. All cosmetics as defined in the New Mexico Drug Device and Cosmetic Act.
- N. All biological products including therapeutic serum. Biological products and therapeutic serum are defined in the New Mexico Drug, Device and Cosmetic Act.
- O. All over the counter drugs available without a prescription. Drugs are defined in the New Mexico Drug Device and Cosmetic Act.
- P. Sterile water.
- Q. Sterile saline.
- R. Sarapin (or its generic).
- S. Vapocoolants.

- (1) Ethyl chloride
- (2) Fluori-methane
- T. Caffeine.
- U. Procaine.
- V. Oxygen.
- W. Epinephrine.
- X. Bioidentical hormones.

The authorized hormones are:

- (1) adrenocortical hormones (adrenocorticosteroids; cortical hormones)
 - (a) androgens (17-ketosteroids, dehydroisoandrosterone, androstenedione, testosterone)
 - (b) estrogens
 - (c) glucocorticoids (hydrocortisone or cortisol, cortisone, corticosterone)
 - (d) mineralocorticoids (aldosterone, dehydroepiandrosterone DHEA)
 - (e) progesterone
- (2) adrenomedullary hormones
 - (a) epinephrine
 - (b) norepinephrine
- (3) anterior pituitary hormones
- (4) sex hormones
 - (a) androstenedione
 - (b) androsterone
 - (c) estradiol (E2)
 - (d) estriol (E3)
 - (e) estrone (E1)
 - (f) progesterone
 - (g) testosterone
- (5) thyroid hormones
 - (a) 3, 5-diiodothyronine (T2)
 - (b) calcitonin
 - (c) monoiodothyronine (T1)
 - (d) thyroxine; levothyroxine (T4)
 - (e) triiodothyronine; liothyronine (T3).

[16.2.2.13 NMAC - N, 02-15-05]

16.2.2.14 REVIEW OF THE PRESCRIPTIVE AUTHORITY FORMULARY:

Each year the board may review the prescriptive authority formulary for necessary amendments. When new substances are added to the formulary, appropriate education in the use of the new substances shall be approved and required by the board for doctors of oriental medicine applying for new certification or continuing education for renewal in the extended (Rx1) or expanded (Rx2) prescriptive authority.

[16.2.2.14 NMAC - N, 02-15-05]

History of 16.2.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

- AB 81-1, Regulations Governing Acupuncture Practitioners, filed 10-05-81;
 AB 82-1, Regulations Governing Acupuncture Practitioners, filed 06-16-82;
 AB 84-1, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes, filed 03-13-84;
 BCD 87-1 Regulations Governing

Acupuncture Practitioners, Tutors, and Institutes, filed 10-30-87;
 ACU 88-1, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes, filed 03-13-89;
 ACU 91-11, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes - Scope of Practice, filed 02-18-91;
 ACU 91-11, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes - Scope of Practice, filed 05-11-92;
 Rule 11, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes - Scope of Practice, filed 08-28-92;
 Rule 11, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes - Scope of Practice, filed 12-19-94.

History of Repealed Material: 16.2.2 NMAC, Scope of Practice (filed 09-15-2000) repealed 02-15-05.

Other History:

Rule 11, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes - Scope of Practice (filed 12-19-94) was renumbered, reformatted and amended to 16 NMAC 2.2, Acupuncture and Oriental Medicine - Scope of Practice, effective 07-01-96.
 16 NMAC 2.2, Acupuncture and Oriental Medicine - Scope of Practice (filed 06-14-96) was renumbered, reformatted, amended and replaced by 16.2.2 NMAC, Scope of Practice, effective 10-15-2000.
 16.2.2 NMAC, Scope of Practice (filed 09-15-2000) was replaced by 16.2.2 NMAC, Scope of Practice, effective 02-15-05.

**NEW MEXICO BOARD OF
 ACUPUNCTURE AND
 ORIENTAL MEDICINE**

**TITLE 16 OCCUPATIONAL
 AND PROFESSIONAL LICENSING
 CHAPTER 2 ACUPUNCTURE
 AND ORIENTAL MEDICINE PRACTITIONERS
 PART 8 LICENSE RENEWAL**

16.2.8.1 ISSUING AGENCY:
 New Mexico Board of Acupuncture and Oriental Medicine.
 [16.2.8.1 NMAC - Rp, 16.2.8.1 NMAC, 02-15-05]

16.2.8.2 SCOPE: All licensed doctors of oriental medicine.
 [16.2.8.2 NMAC - Rp, 16.2.8.2 NMAC, 02-15-05]

**16.2.8.3 S T A T U T O R Y
 AUTHORITY:** This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 15, NMSA 1978.
 [16.2.8.3 NMAC - Rp, 16.2.8.3 NMAC, 02-15-05]

16.2.8.4 D U R A T I O N :
 Permanent.
 [16.2.8.4 NMAC - Rp, 16.2.8.4 NMAC, 02-15-05]

16.2.8.5 EFFECTIVE DATE:
 February 15, 2005, unless a later date is cited at the end of a section.
 [16.2.8.5 NMAC - Rp, 16.2.8.5 NMAC, 02-15-05]

16.2.8.6 OBJECTIVE: This part defines the requirements for renewal of licenses.
 [16.2.8.6 NMAC - Rp, 16.2.8.6 NMAC, 02-15-05]

16.2.8.7 D E F I N I T I O N S :
 Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).
 [16.2.8.7 NMAC - Rp, 16.2.8.7 NMAC, 02-15-05]

16.2.8.8 LICENSE 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 licensed doctor of oriental medicine shall be granted renewal of his or her license for one year upon receipt and approval by the board or its designee completion of the following requirements.

B. Any applicant for license 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 license with the board.

C. Any applicant for license renewal who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC (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 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 license 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, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.
 [16.2.8.8 NMAC - Rp, 16.2.8.8 NMAC, 02-15-05]

16.2.8.9 LICENSING PERIOD: The licensing period shall run from August 1st to the following July 31st. A newly licensed doctor of oriental medicine shall be issued a license that shall be required to be renewed on July 31st.
 [16.2.8.9 NMAC - Rp, 16.2.8.9 NMAC, 02-15-05]

16.2.8.10 ANNUAL LICENSE RENEWAL APPLICATION: Upon approval of an application for license renewal that fulfills the requirements listed below, the board shall renew the license. The application requirements for license renewal shall be receipt of the following documentation by the board:

A. the license 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;

B. an license 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;

C. an affidavit as provided on the "annual license renewal form" as to whether the applicant since receiving or last renewing (whichever is more recent) his or her license with the board:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, 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 acupuncture and oriental medicine, 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 as provided on the "annual license renewal form";

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

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

D. an affidavit as provided on the "annual license renewal form" regarding the applicant's license history 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 acupuncture or oriental medicine 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

E. an affidavit as provided on the "annual license 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 (Subsection 10.C 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

F. an affidavit as provided on the "annual license 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 acupuncture and oriental medicine; and

(2) the license 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

G. 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;

H. 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 applicant 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

I. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules); doctors of oriental medicine certified for the expanded or extended prescriptive authority shall submit satisfactory proof, as determined by the board, of completion of any expanded or extended prescriptive authority continuing education requirements established by the board in 16.2.9.9 NMAC (Section 9 of Part 9 of the rules).

[16.2.8.10 NMAC - Rp, 16.2.8.10 NMAC, 02-15-05]

16.2.8.11 LATE LICENSE RENEWAL:

A. For a licensee whose late application to renew his or her license is received at the board office during the sixty (60) day grace period provided by Section 61-14A-15 NMSA 1978, the license shall be renewed if the applicant for late license renewal completes the requirements of 16.2.8.10 NMAC (Section 10 of Part 8 of the rules) and pays the fee for late license renewal specified in 16.2.10 NMAC (Part 10 of the rules).

B. With regard to continuing education, if the required correct score on the open book jurisprudence examination (Subsection 8.C of Part 9 of the rules) is not attained, the applicant will be required to resubmit the open book jurisprudence exam and the license shall not be renewed until the required score is achieved. If the jurisprudence examination with the required correct score is received at

the board office during the sixty (60) day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

C. If proof of NCCAOM recertification or equivalent continuing education as defined in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules) is received at the board office during the sixty (60) day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

D. For doctors of oriental medicine certified for the expanded or extended prescriptive authority, if proof of expanded or extended prescriptive authority continuing education as defined in 16.2.9.9 NMAC (Section 9 of Part 9 of the rules) is received at the board office during the sixty (60) day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal.

[16.2.8.11 NMAC - Rp, 16.2.8.11 NMAC, 02-15-05]

16.2.8.12 EXPIRED LICENSE:

A. If a licensee has not renewed his or her license, including all continuing education requirements specified in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules) within the sixty (60) day grace period provided by Section 61-14A-15 NMSA 1978, the license is expired and that licensee shall not practice oriental medicine until their expired license is renewed. For an expired license, if a properly completed application for license renewal is received at the board office within one year of the last regular renewal date, the license shall be renewed if all the requirements of late license renewal during the sixty day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC (Section 11 of Part 8 of the rules), and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC (Part 10 of the rules). Any former licensee who fails to renew his or her expired license within one year of that licensee's last regular renewal date shall be required to apply as a new applicant.

B. If a doctor of oriental medicine certified for expanded or extended prescriptive authority does not complete all expanded or extended prescriptive authority continuing education requirements specified in 16.2.9.9 NMAC (Section 9 of Part 9 of the rules) within the sixty (60) day grace period, the expanded or extended prescriptive authority certification is expired and that licensee shall not be certified for expanded or extended prescriptive authority until the continuing education is completed.

Provided that all other renewal requirements have been received by the board, such a licensee shall continue to be licensed as a doctor of oriental medicine and is authorized for that scope of practice but shall not be authorized for the expanded or extended prescriptive authority scope of practice. For an expired expanded or extended prescriptive authority certification, if a properly completed application for license renewal, including proof of completion of the required expanded or extended prescriptive authority continuing education, is received at the board office within one year of the last regular renewal date, the expanded or extended prescriptive authority shall be renewed if all the requirements of late license renewal during the sixty day grace period provided by Section 61-14A-15 NMSA 1978 are completed, in addition to the requirements of 16.2.8.11 NMAC (Section 11 of Part 8 of the rules), and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC (Part 10 of the rules). Any licensee who fails to renew his or her expired expanded or extended prescriptive authority certification within one year of that licensee's last regular renewal date shall be required to apply as a new applicant for expanded or extended prescriptive authority certification. [16.2.8.12 NMAC - Rp, 16.2.8.12 NMAC, 02-15-05]

History of 16.2.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

AB 81-1, Regulations Governing Acupuncture Practitioners, filed 10-5-81;
 AB 82-1, Regulations Governing Acupuncture Practitioners, filed 6-16-82;
 AB 84-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3-13-84;
 BCD 87-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 10-30-87;
 ACU 88-1 Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3-13-89;
 ACU Rule 91-8 Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Licensing, filed 2-18-91;
 Rule 8, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Licensing, filed 8-28-92.

History of Repealed Material: 16 NMAC 2.8.11 deleted effective 7-15-01. 16.21.8 NMAC, License Renewal (filed 06-15-01) repealed 02-15-05.

Other History:

Rule 8, Regulations Governing Acupuncture Practitioners, Tutors and

Institutes - Licensing (filed 8-28-92) was renumbered, reformatted and replaced by 16 NMAC 2.8, License Renewal, effective 07-01-96.

16 NMAC 2.8, License Renewal (filed 06-14-96) was renumbered, reformatted, amended and replaced by 16.2.8 NMAC, License Renewal, effective 07-15-01.

16.2.8 NMAC, License Renewal (filed 06-15-01) was replaced by 16.2.8 NMAC, License Renewal, effective 02-15-05.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS

PART 15 I N A C T I V E LICENSE

16.2.15.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.15.1 NMAC - Rp, 16.2.15.1 NMAC, 02-15-05]

16.2.15.2 SCOPE: All licensed and inactive licensed doctors of oriental medicine.

[16.2.15.2 NMAC - Rp, 16.2.15.2 NMAC, 02-15-05]

**16.2.15.3 S T A T U T A R Y
AUTHORITY:** This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 15, NMSA 1978.

[16.2.15.3 NMAC - Rp, 16.2.15.3 NMAC, 02-15-05]

16.2.15.4 D U R A T I O N : Permanent.

[16.2.15.4 NMAC - Rp, 16.2.15.4 NMAC, 02-15-05]

16.2.15.5 EFFECTIVE DATE: February 15, 2005, unless a later date is cited at the end of a section.

[16.2.15.5 NMAC - Rp, 16.2.15.5 NMAC, 02-15-05]

16.2.15.6 OBJECTIVE: This part defines the requirements for renewal of licenses and the procedures to place an active license on inactive status or to reinstate the license to active status.

[16.2.15.6 NMAC - Rp, 16.2.15.6 NMAC, 02-15-05]

16.2.15.7 D E F I N I T I O N S : Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[16.2.15.7 NMAC - Rp, 16.2.15.7 NMAC,

02-15-05]

**16.2.15.8 I N A C T I V E
LICENSE GENERAL PROVISIONS:** A licensee in good standing is eligible to have his or her license placed on inactive status. A licensee who failed to renew his or her license by July 31st shall renew the license in accordance with the provisions of 16.2.8.10 NMAC, 16.2.8.11 NMAC and 16.2.8.12 NMAC (Sections 10, 11 and 12 of Part 8 of the rules) before the licensee can apply for an inactive license.

A. The board will not accept an inactive license application from a licensee who is under investigation for violations of the act or who has an active complaint pending before the board with the exception of an impaired licensee who is participating in a rehabilitation plan approved by the board. Impaired means the inability to practice acupuncture and oriental medicine with reasonable skill and safety to patients as a result of mental illness or habitual or excessive use or abuse of alcohol or drugs as defined in the Controlled Substances Act, Sections 30-31-1, et seq., NMSA 1978.

B. An inactive licensee shall not practice acupuncture and oriental medicine, as defined in the act, in New Mexico. An inactive licensee shall not represent himself or herself as a doctor of oriental medicine in public statements that include, but are not limited to, paid or unpaid advertising, brochures, printed or copied materials, electronic or digital media, directory listings, personal resumes or curricula vitae, business cards, interviews or comments for use in media, statements in legal proceedings, lectures and public presentations. An inactive licensee shall not teach acupuncture and oriental medicine at an educational program.

C. Providing or offering to provide oriental medical services, engaging in the practice of acupuncture and oriental medicine or teaching acupuncture and oriental medicine at an educational program by an inactive licensee shall be grounds for disciplinary action by the board for unprofessional conduct and potentially for other appropriate reasons pursuant to Section 61-14A-17 of the act and 16.2.12 NMAC (Part 12 of the rules).

D. An inactive licensee shall comply with the disciplinary requirements of Section 61-14A-17 of the act and 16.2.12 NMAC (Part 12 of the rules).

[16.2.15.8 NMAC - Rp, 16.2.15.8 NMAC, 02-15-05]

**16.2.15.9 I N A C T I V E
LICENSE APPLICATION:** A licensee in good standing may apply to have his or her license placed on inactive status. Upon approval of an application for an inactive

license that fulfills the requirements listed below, the board shall place the license on inactive status. The application requirements for an inactive license shall be receipt of the following by the board:

A. the administrative fee for inactive license application specified in 16.2.10 NMAC (Part 10 of the rules) paid by check or money order in U.S. funds; and

B. an inactive license 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;

C. an affidavit provided on the inactive license application form as to whether the applicant since last renewing his or her license with the board:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, 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 acupuncture and oriental medicine, 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 guilty 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

D. an official license history since last renewing his or her license with the board, 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 acupuncture, oriental medicine 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

E. an affidavit as provided on the inactive license application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.9 NMAC (Part 15 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

F. an affidavit as provided on the inactive license application 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 acupuncture and oriental medicine; and

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

(3) an inactive licensee shall comply with any continuing education requirements established by the board; and

(4) an inactive license shall expire after fifteen (15) years; and

(5) an inactive licensee shall not practice acupuncture and oriental medicine, as defined in the act, in New Mexico; an inactive licensee shall not represent himself or herself as a doctor of oriental medicine in public statements that include, but are not limited to, paid or unpaid advertising, brochures, printed or copied materials, electronic or digital media, directory listings, personal resumes or curricula vitae, business cards, interviews or comments for use in media, statements in legal proceedings, lectures and public presentations; an inactive licensee shall not teach acupuncture and oriental medicine at an educational program; and

(6) providing or offering to provide oriental medical services, engaging in the practice of acupuncture and oriental medicine or teaching acupuncture and oriental medicine at an educational program by an inactive licensee shall be grounds for disciplinary action by the board for unprofessional conduct and potentially for other appropriate reasons pursuant to Section 61-14A-17 of the act and 16.2.12 NMAC (Part 12 of the rules); and

(7) an inactive licensee shall comply with the appropriate requirements of

Section 61-14A-17 of the act and 16.2.12 NMAC (Part 12 of the rules); and

(8) the board will not accept an inactive license application from a licensee who is under investigation for violations of the act or who has an active complaint pending before the board with the exception of an impaired licensee who is participating in a rehabilitation plan approved by the board; and

G. 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 applicant 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.

[16.2.15.9 NMAC - Rp, 16.2.15.9 NMAC, 02-15-05]

16.2.15.10 INACTIVE LICENSE RENEWAL:

An inactive license shall be renewed by July 31st of every year. Upon approval of an application for inactive license renewal that fulfills the requirements listed below, the board shall renew the inactive license. The application requirements for inactive license renewal shall be receipt of the following by the board:

A. the administrative fee for inactive license renewal 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 inactive license 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;

C. an affidavit as provided on the inactive license renewal form stating that the applicant understands that:

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

(2) an inactive license shall expire after fifteen (15) years; and

(3) an inactive license must be renewed annually.

[16.2.15.10 NMAC - Rp, 16.2.15.10 NMAC, 02-15-05]

16.2.15.11 INACTIVE LICENSE EXPIRATION:

An inactive license that is not renewed by September 30 shall expire and the person shall reapply for

licensure as a new applicant.

[16.2.15.11 NMAC - Rp, 16.2.15.11 NMAC, 02-15-05]

16.2.15.12 I N A C T I V E LICENSE REINSTATEMENT GENERAL PROVISIONS:

An inactive licensee whose license has been inactive for varying periods up to fifteen (15) years may apply to have his or her inactive license reinstated. The following provisions apply.

A. Any applicant for inactive license reinstatement who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC (Part 15 of the rules) may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, 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.

B. Any applicant for inactive license reinstatement 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, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

C. The board will not approve an inactive license reinstatement application from an inactive licensee who is under investigation for violations of the act or who has an active complaint pending before the board.

D. The board will not approve an inactive license reinstatement application from an impaired inactive licensee, or an impaired inactive licensee who is currently participating in a rehabilitation plan approved by the board until the rehabilitation plan is successfully completed. Impaired means the inability to practice acupuncture and oriental medicine with reasonable skill and safety to patients as a result of mental illness or habitual or excessive use or abuse of alcohol or drugs as defined in the Controlled Substances Act, Section 30-31-1, et seq., NMSA 1978.

E. Once an inactive license has been reinstated, the licensee may not apply for inactive license status again for five (5) years.

[16.2.15.12 NMAC - Rp, 16.2.15.12 NMAC, 02-15-05]

16.2.15.13 I N A C T I V E LICENSE REINSTATEMENT APPLICATION - 5 YEARS OR LESS:

An inactive licensee whose license has been inactive for five (5) years or less may apply to have his or her license reinstated. Upon approval of

an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. the administrative fee for inactive license reinstatement application specified in 16.2.10 NMAC (Part 10 of the rules) paid by check or money order in U.S. funds; and

B. an inactive license reinstatement 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;

C. an affidavit as provided on the inactive license reinstatement application form as to whether the applicant since last renewing his or her license with the board:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, 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 acupuncture and oriental medicine, 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

D. an official license history since last renewing his or her license with the board, 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 acupuncture, oriental medicine 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

E. an affidavit as provided on the inactive license renewal application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC (Section 13 of Part 15 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

F. an affidavit as provided on the inactive license renewal application 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 acupuncture and oriental medicine; and

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

(3) the applicant shall not practice acupuncture and oriental medicine in New Mexico until the applicant receives a new active license issued by the board except as provided in Paragraph (2) of Subsection B of 16.2.15.14 NMAC or Paragraph (2) of Subsection D of 16.2.15.15 NMAC (Part 15 of the rules); and

G. 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 applicant 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

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

established by the board for all years the license was on inactive status.

[16.2.15.13 NMAC - Rp, 16.2.15.13 NMAC, 02-15-05]

16.2.15.14 I N A C T I V E LICENSE REINSTATEMENT APPLICATION - 5 TO 10 YEARS: An inactive licensee whose license has been inactive for more than five (5) years and less than ten (10) years may apply to have his or her inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. fulfillment of the requirements of 16.2.15.13 NMAC (Section 13 of Part 15 of the rules); and

B. either of the following:

(1) proof of clinical experience, as defined in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules), for at least two out of every three years in another jurisdiction where the inactive licensee was licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine, while the license was on inactive status; or

(2) proof of completion of 300 hours of clinical experience as an extern supervised by an externship supervisor as part of an externship as provided in 16.2.14 NMAC (Part 14 of the rules).

[16.2.15.14 NMAC - Rp, 16.2.15.14 NMAC, 02-15-05]

16.2.15.15 I N A C T I V E LICENSE REINSTATEMENT APPLICATION - MORE THAN 10 YEARS: An inactive licensee whose license has been inactive for more than ten (10) years may apply to have his or her inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. fulfillment of the requirements of 16.2.15.13 NMAC (Section 13 of Part 15 of the rules); and

B. passing the clinical skills examination; and

C. passing the board approved jurisprudence examination; and

D. either of the following:

(1) proof of clinical experience, as defined in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules), for at least two out of every three years in another jurisdiction where the inactive licensee was licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine, while the license was on inactive status; or

(2) proof of completion of 600 hours of clinical experience as an extern supervised by an externship supervisor as part of an externship as provided in 16.2.14 NMAC (Part 14 of the rules).

[16.2.15.15 NMAC - Rp, 16.2.15.15 NMAC, 02-15-05]

16.2.15.16 I N A C T I V E LICENSE EXPIRATION: An inactive license that has been inactive for more than fifteen (15) years shall expire and the person who was previously licensed shall be required to apply as a new applicant.

[16.2.15.16 NMAC - Rp, 16.2.15.16 NMAC, 02-15-05]

**History of 16.2.15 NMAC:
Pre-NMAC History:** None

History of Repealed Material: 16.2.15 NMAC, Inactive License (filed 02-14-2003) repealed 02-15-05.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS

PART 16 A U R I C U L A R DETOXIFICATION

16.2.16.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.16.1 NMAC - N, 02-15-05]

16.2.16.2 SCOPE: Doctors of oriental medicine, certified auricular detoxification specialist applicants, certified auricular detoxification specialists, auricular detoxification specialist supervisor applicants, auricular detoxification specialist supervisors, auricular detoxification specialist training program applicants, auricular detoxification specialist training programs, treatment programs and treatment program applicants.

[16.2.16.2 NMAC - N, 02-15-05]

16.2.16.3 S T A T U T O R Y AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-4.1.

[16.2.16.3 NMAC - N, 02-15-05]

16.2.16.4 D U R A T I O N : Permanent.

[16.2.16.4 NMAC - N, 02-15-05]

16.2.16.5 EFFECTIVE DATE: February 15, 2005, unless a later date is

cited at the end of a section.

[16.2.16.5 NMAC - N, 02-15-05]

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]

16.2.16.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[16.2.16.7 NMAC - N, 02-15-05]

16.2.16.8 CERTIFIED AURICULAR DETOXIFICATION SPECIALISTS GENERAL REQUIREMENTS:

A. A certified auricular detoxification specialist applicant who has been subject to any action or proceeding described in Subsection H of 16.2.16.10 NMAC (Section 10 of Part 16 of the rules) or who has violated the act or the rules, may be subject to disciplinary action, including denial, suspension or revocation of certification, 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.

B. A certified auricular detoxification specialist 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.

[16.2.16.8 NMAC - N, 02-15-05]

16.2.16.9 CERTIFIED AURICULAR DETOXIFICATION SPECIAL-

ISTS 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 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%).

[16.2.16.9 NMAC - N, 02-15-05]

16.2.16.10 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST 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);
- E. a copy of the appli-

cant's certificate of successful completion of a board approved auricular detoxification specialist training program; and

F. the name of the auricular detoxification supervisor 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 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

I. an affidavit as provided on the certified auricular detoxification spe-

cialist 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 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, Extern certification or externship 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 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. 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]

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 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 auricular detoxification specialist supervisor 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]

16.2.16.12 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST 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 certified auricular detoxification specialist shall be granted renewal of his or her certification for one year upon receipt and approval by the board or its designee, completion of the requirements specified in Section 13 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 certification with the board.

C. Any applicant for renewal who has been subject to any action or proceeding comprehended by Subsection D of 16.2.16.13 NMAC (Section 13 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 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, suspen-

sion or revocation of certification, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq. [16.2.16.12 NMAC - N, 02-15-05]

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 registered with the board who will supervise the applicant if known; 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 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 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]

16.2.16.14 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST LATE RENEWAL:

A certified auricular detoxification specialist whose application to renew his or her certification 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 certification renewed if the applicant for late certification renewal completes the requirements of 16.2.16.13 NMAC (Section 13 of Part 16 of the rules) and pays the auricular detoxification specialist certification late renewal fee specified in 16.2.10 NMAC (Part 10 of the rules).

[16.2.16.14 NMAC - N, 02-15-05]

16.2.16.15 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST EXPIRED CERTIFICATION:

The certification of a certified auricular detoxification specialist who has not renewed his or her certification, including any required continuing education requirements, within the sixty (60) day period following the required date of renewal is expired and that certified auricular detoxification specialist shall not practice auricular detoxification. Such an applicant seeking valid certification shall apply with the board as a new applicant.

[16.2.16.15 NMAC - N, 02-15-05]

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

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]

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

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

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

(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; and

(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

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

(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]

**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. 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. the names of all certified auricular detoxification specialists certified with the board who are under the supervision of the applicant; and

D. 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 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

(5) 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. 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) 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; 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]

16.2.16.19 CHANGE OF SUPERVISOR:

If the auricular detoxification specialist supervisor relationship terminates for any reason, each party must notify the board in writing within five (5) working days of this fact.

[16.2.16.19 NMAC - N, 02-15-05]

16.2.16.20 COMPENSATION:

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

[16.2.16.20 NMAC - N, 02-15-05]

**16.2.16.21 A U R I C U L A R
DETOXIFICATION SPECIALIST
SUPERVISOR CONFLICT OF INTEREST:**

An 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. "Member of the certified auricular detoxification specialist's family" means a spouse,

child, stepchild, grandchild, parent, grandparent, sibling, uncle, aunt, niece, or nephew, or other relative by blood, marriage, or legal process with whom the supervisor has or has had a close familial relationship. The supervisor shall not have a conflict of interest with the certified auricular detoxification specialist, such as a past or present familial, social, fiduciary, business, financial, or physician-patient relationship, that impairs or compromises or appears to impair or compromise the supervisor's neutrality, independence, or objectivity. If a conflict of interest arises during the supervision, the supervisor shall immediately report the conflict of interest to the board and shall cease supervision of the certified auricular detoxification specialist. Exceptions may be made by the board on an individual basis due to limited availability of certified auricular detoxification specialists or supervisors.

[16.2.16.21 NMAC - N, 02-15-05]

**16.2.16.22 A U R I C U L A R
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.

[16.2.16.22 NMAC - N, 02-15-05]

**16.2.16.23 A U R I C U L A R
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.

[16.2.16.23 NMAC - N, 02-15-05]

16.2.16.24 A U R I C U L A R 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).

[16.2.16.24 NMAC - N, 02-15-05]

16.2.16.25 A U R I C U L A R 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.

[16.2.16.25 NMAC - N, 02-15-05]

16.2.16.26 A U R I C U L A R DETOXIFICATION SPECIALIST TRAINING PROGRAM APPROVAL:

Upon approval of an auricular detoxification specialist training program approval 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:

(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 of the 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; 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; and

F. approval of a training program shall entail recognition that its trainers have the status of certified auricular detoxification specialists for the purpose of and for the duration of the training program. [16.2.16.26 NMAC - N, 02-15-05]

16.2.16.27 A U R I C U L A R 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 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]

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 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]

16.2.16.29 GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE, CERTIFICATION, REGISTRATION OR APPROVAL: The board may refuse to issue, or may suspend, or revoke any license, certification, registration or 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).

[16.2.16.29 NMAC - N, 02-15-05]

History of 16.2.16 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [Reserved]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 17 LICENSURE BY ENDORSEMENT

16.2.17.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.17.1 NMAC - N, 02-15-05]

16.2.17.2 SCOPE: All applicants for licensure by endorsement as doctors of oriental medicine.

[16.2.17.2 NMAC - N, 02-15-05]

16.2.17.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-4, 6, 8, 9 and 10, NMSA 1978.

[16.2.17.3 NMAC - N, 02-15-05]

16.2.17.4 DURATION: Permanent.

[16.2.17.4 NMAC - N, 02-15-05]

16.2.17.5 EFFECTIVE DATE: February 15, 2005, unless a later date is cited at the end of a section.

[16.2.17.5 NMAC - N, 02-15-05]

16.2.17.6 OBJECTIVE: Part 17 lists the requirements that an applicant for licensure by endorsement must fulfill in order to apply for licensure as a doctor of oriental medicine.

[16.2.17.6 NMAC - N, 02-15-05]

16.2.17.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[16.2.17.7 NMAC - N, 02-15-05]

16.2.17.8 GENERAL REQUIREMENTS:

A. An applicant for licensure by endorsement must have clinical experience, as defined in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules), for at least eighty (80) percent of the years since 1986.

B. An applicant for licensure by endorsement must be licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine in another state or jurisdiction of the United

States.

C. Any applicant for licensure by endorsement who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC (Section 10 of Part 17 of the rules) may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of 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.

D. Any applicant for licensure by endorsement 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 Section 61-14A-17 NMSA 1978, and to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq. [16.2.17.8 NMAC - N, 02-15-05]

16.2.17.9 EDUCATIONAL PROGRAM REQUIREMENTS:

A. An applicant for licensure by endorsement shall provide proof that he or she completed an educational program in acupuncture that fulfilled the requirements of the national certification commission for acupuncture and oriental medicine in place in 1986.

B. If the educational program is no longer in existence, or if the applicant's records are not available for good cause, the applicant for licensure by endorsement shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept or reject as adequate and sufficient such evidence presented in lieu of the records otherwise required. [16.2.17.9 NMAC - N, 02-15-05]

16.2.17.10 INITIAL LICENSURE BY ENDORSEMENT APPLICATION:

Upon approval of a licensure by endorsement application that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure. The application requirements for licensure by endorsement shall be receipt of the following by the board:

A. the fee for application for licensure by endorsement specified in 16.2.10 NMAC (Part 10 of the rules); and

B. a licensure by endorsement 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, if available; 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. an affidavit as provided on the initial licensure by endorsement application form as to whether the applicant:

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture or oriental medicine, 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 applicant's 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 applicant's practice of acupuncture and oriental medicine, 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 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 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

F. an affidavit as provided on the initial licensure by endorsement application form stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC (Section 10 of Part 17 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 initial licensure by endorsement application 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 acupuncture and oriental medicine; and

(2) the license 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. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC (Section 9 of Part 17 of the rules). This copy shall include on it an affidavit certifying that it is a true copy of the original; and

I. a copy of the applicant's transcript from the educational program in acupuncture or oriental medicine evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC (Section 9 Part 17 of the rules). This copy shall include on it an affidavit certifying that it is a true copy of the original; and

J. a copy of the applicant's license, certificate, registration or legal authority to practice acupuncture or oriental medicine in another state or jurisdiction of the United States; and

K. proof of clinical experience as required in Subsection A of 16.2.17.8 NMAC (Section 8 of Part 17 of the rules); and

L. proof of successful completion of the examinations required below in 16.2.17.11 NMAC (Section 11 of Part 17 of the rules); and

M. 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 applicant 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.

[16.2.17.10 NMAC - N, 02-15-05]

16.2.17.11 EXAMINATION REQUIREMENTS: The following requirements shall be received at the board's office within twelve (12) months of the receipt of the initial licensure by endorsement application:

A. proof of successful completion of one of the following examination options:

(1) the national certification commission for acupuncture and oriental medicine (NCCAOM) comprehensive written exam (acupuncture portion); or

(2) the NCCAOM foundations of oriental medicine module and the acupuncture module if completed after June 2004; or

(3) the NCCAOM comprehensive written exam (Chinese herbology portion); or

(4) the NCCAOM foundations of oriental medicine module and the Chinese herbology module if completed after June 2004; and

B. proof of successful completion of the NCCAOM approved clean needle technique course; and

C. proof of successful completion of the New Mexico clinical skills examination specified in 16.2.4.10 NMAC (Section 10 of Part 4 of the rules); and

D. proof of successful completion of the board approved and board administered jurisprudence examination specified in Section 10 of 16.2.4 NMAC (Part 4 of the rules).

[16.2.17.11 NMAC - N, 02-15-05]

16.2.17.12 DOCUMENTS IN A FOREIGN LANGUAGE: All documents submitted in a foreign language must be accompanied by an accurate translation in English. 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 applicant 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 applicant's application shall be at the expense of the applicant.

[16.2.17.12 NMAC - N, 02-15-05]

16.2.17.13 SUFFICIENCY OF DOCUMENT: The board shall determine the sufficiency of the documentation that supports the application for licensure by endorsement. The board may, at its discretion, request further proof of qualifications or require a personal interview with any applicant to establish his or her qualifications. If requested by the board, all further proof of qualifications shall be received at the board office at least thirty five (35) days before the clinical skills examination date. Any required personal interview will be scheduled as determined by the board.

[16.2.17.13 NMAC - N, 02-15-05]

16.2.17.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE: All documentation required for licensure by endorsement shall be received at the board office no later than twelve (12) months after the initial application for licensure by endorsement is received at the board office.

[16.2.17.14 NMAC - N, 02-15-05]

16.2.17.15 NOTIFICATION OF LICENSURE: The applicant for licensure by endorsement shall be notified of approval or denial of his or her completed application requirements including examination requirements by mail postmarked no more than twenty-one (21) days from the board's receipt of all required documentation. The board shall issue a license to all applicants who have met the requirements of 16.2.17 NMAC (Part 17 of the rules).

[16.2.17.15 NMAC - N, 02-15-05]

16.2.17.16 EXPIRATION AND ABANDONMENT OF APPLICATION: If all licensure by endorsement application requirements have not been met within twelve (12) months of the initial licensure by endorsement application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the licensure by endorsement application is abandoned and the applicant for licensure by endorsement wants to reapply, the applicant for licensure by endorsement shall be required to submit the completed current licensure by endorsement application form, pay the current application fee and satisfy the requirements for licensure by endorsement in effect at the time of the new licensure by endorsement application. The board shall notify the applicant for licensure by endorsement of pending abandonment of the licensure by endorsement application by mail postmarked at least sixty (60) days before the date of abandonment which is the expiration of the twelve (12) month deadline for completing all requirements for licensure by endorsement. The board shall notify the

applicant for licensure by endorsement of abandonment of the application by mail postmarked no more than twenty-one (21) days after the date of abandonment.

[16.2.17.16 NMAC - N, 02-15-05]

History of 16.2.17 NMAC:
Pre-NMAC History: None.

History of Repealed Material: [Reserved]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.1.2 and 16.2.1.7 NMAC, effective 2-15-05.

16.2.1.2 SCOPE: All licensed doctors of oriental medicine, applicants, temporary licensees, applicants for temporary licensure, externs, auricular detoxification specialists, educational programs and applicants for approval of educational programs.

16.2.1.7 DEFINITIONS: ~~For the purpose of these Rules the following definitions apply in addition to those in the Act.~~

A. The definitions in Subsection B of 16.2.1.7 NMAC (Part 1 of the rules) are in addition to those in the act.

B. The following definitions apply to the rules and the act.

~~[A-](1)~~ "Act" is the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978.

~~[B-](2)~~ "Animal acupuncture" is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act (61-14-1. to 61-14-20.) and the rules of the New Mexico board of veterinary medicine. (16.25.9.15 NMAC)

~~[C-](3)~~ "Applicant" is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.

~~[D-](4)~~ "Applicant for temporary licensure" is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.

~~[E-]~~ "Board" is the State of New Mexico Board of Acupuncture and Oriental Medicine.]

(5) "Auricular detoxification specialist supervisor" is a doctor of oriental medicine registered with the board under the provisions of Section 18 of 16.2.16 NMAC (Part 16 of the rules).

(6) "Auricular detoxification spe-

cialist training program” is a training program approved by the board under the provisions of Section 26 of 16.2.16 NMAC (Part 16 of the rules) to train certified auricular detoxification specialists and auricular detoxification supervisors.

(7) “Auricular detoxification specialist training program trainer” is a member of the staff of an auricular detoxification specialist training program who, though not necessarily licensed or certified by the state, shall be deemed to be a certified auricular detoxification specialist only for the purposes of and only for the duration of the auricular detoxification specialist training program.

(8) “Bioidentical hormones” are hormones that are chemically identical to, or are analogues of hormones found in living entities or that have substantially identical physiological functions as hormones found in living entities.

(9) “Biomedical diagnosis” is a diagnosis of a person’s medical status based on the commonly agreed upon guidelines of conventional biomedicine as classified in the most current edition or revision of the international classification of diseases, 9th revision, clinical modification (ICD-9-CM).

(10) “Biomedicine” is the application of the principles of the natural sciences to clinical medicine.

(11) “Certified auricular detoxification specialist” is a person certified by the board under the provisions of Section 10 of 16.2.16 NMAC (Part 16 of the rules) to perform auricular detoxification techniques, including acupuncture, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. The title may be abbreviated as CADS.

(12) “Chief officer” is the board’s chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

[F-](13) “Clinical skills examination” is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.

[G-](14) “Clinical experience” is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than five hundred (500) patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least twenty-five (25) different patients within that year. One patient hour is

defined as one clock hour spent in the practice of oriental medicine with patients.

(15) “Complainant” is the complaining party.

(16) “Complaint committee” is a board committee composed of the complaint committee chairperson and the complaint manager.

(17) “Complaint committee chairperson” is a member of the board appointed by the board’s chairperson.

(18) “Complaint manager” is the board’s administrator or any member of the board appointed by the board’s chairperson.

[H-](19) “Department” is the state of New Mexico regulation and licensing department.

[I-](20) “Doctor of oriental medicine” is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

[J-](21) “Educational program” is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four (4) academic years and meets the requirements of Section 61-14A-14 of the act and 16.2.7 NMAC (Part 7 of the rules).

[K-](22) “Expanded prescriptive authority” is authorized by Section 61-14A-3.G.(4) and (5), and 61-14A08.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in Section 11 of 16.2.2 NMAC (Part 2 of the rules). Expanded prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. Expanded prescriptive authority may be abbreviated as Rx2.

[L-](23) “Extended prescriptive authority” is authorized by Section 61-14A-3.H.(4) and (5), and 61-14A-8.1 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in Section 10 of 16.2.2 NMAC (Part 2 of the rules). Extended prescriptive authority is in addition to the prescriptive authority granted all licensed doctors of oriental medicine as defined in Section 61-14A-3.G.(2) of the act. Extended prescriptive authority may be abbreviated as [Ex] Rx1.

[M-](24) “Extern” is a current applicant undergoing supervised clinical training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern [~~certificate~~] certification issued by the board pursuant to 16.2.14

NMAC (Part 14 of the rules).

[N-](25) “Externship” is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC (Part 14 of the rules).

[O-](26) “Externship supervisor” is a doctor of oriental medicine who has at least five years clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board’s application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC (Part 14 of the rules).

[P-](27) “Good cause” is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

[Q-](28) “Inactive licensee” means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC (Part 15 of the rules).

[R-](29) “Licensee” is a doctor of oriental medicine licensed pursuant to the act.

[S-](30) “Licensing candidate” is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

(31) “Licensure by endorsement” is a licensing procedure for the experienced practitioner who completed his or her initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC (Part 17 of the rules). Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

(32) “Limited temporary license” is a license issued under the provisions of Section 12 of 16.2.5 NMAC (Part 5 of the rules) for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by a licensed, registered, certified or legally recognized healthcare practitioner from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another

person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

(33) "Live cell products" are living cells from glandular tissues and other tissues.

(34) "Natural substances" are physical matter including atoms, molecules, elements and compounds that exist in nature or are formed by natural forces, processes or entities including their constituents, preparations, concentrates, refinements, isolates, extracts, derivatives, byproducts, ligands and metabolites, and the synthetic chemical surrogates, isomers and analogues of these. A natural substance may be the crude substance, a prepared form that renders the crude substance clinically useful, a constituent derived from the crude substance, or a synthesized chemical surrogate, isomer or analogue of the constituent. Natural substances may be classified as drugs, dangerous drugs or controlled substances as these are defined in the New Mexico Drug Device and Cosmetic Act or the Controlled Substances Act.

(35) "NCA" is a notice of contemplated action.

(36) "Office" is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

(37) "Oxidative medicine" is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body's oxidation and reduction function and health.

(38) "Protomorphogens" are extracts of glandular tissues.

(39) "Respondent" is the subject of the complaint.

(40) "Rules" are the rules, promulgated pursuant to the act, governing the implementation and administration of the act ~~[Doctors of Oriental Medicine, Applicants, Temporary Licensees, Applicants for Temporary Licensure, Externs, and applicants for approval of Educational Programs]~~ as set forth in 16.2 NMAC (Title 16 - Occupational and Professional Licensing, Chapter 2 - Acupuncture and Oriental Medicine).

(41) "Supervised clinical observation" is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(42) "Supervised clinical practice" is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate

supervision.

(43) "Supervision" is the coordination, direction and continued evaluation at first hand of the student in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in 16.2.7 NMAC (Part 7 of the rules). No more than four (4) students shall be under supervision for supervised clinical practice and no more than four (4) students shall be under supervision for supervised clinical observation by a qualified instructor at any time.

(44) "Temporary licensee" is a doctor of oriental medicine who holds a temporary license pursuant to the act, Section 61-14-12 and 16.2.5 NMAC (Part 5 of the rules).

(45) "Treatment program" is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of Section 28 of 16.2.16 NMAC (Part 16 of the rules).

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Sections 16.2.3.7, 16.2.3.9, 16.2.3.10, 16.2.3.11, 16.2.3.12 and 16.2.3.16 NMAC, effective 02-15-05.

16.2.3.7 DEFINITIONS:
~~Reserved~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.3.9 EDUCATIONAL PROGRAM REQUIREMENTS: Every applicant shall provide satisfactory proof that he or she has completed a board approved educational program as defined in 61-14A-14 of the act and 16.2.7 NMAC (Part 7 of the rules). ~~If the educational program is no longer in existence, or if the applicant's records are not available for good cause, the applicant shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The board, in its sole and sound discretion, may accept or reject as adequate and sufficient such evidence presented in lieu of the records otherwise required.~~

16.2.3.10 INITIAL LICENSURE APPLICATION: Upon approval of an application for licensure that fulfills the requirements listed below, the board shall issue a license that will be valid until July

31 ~~[of the same year]~~ following the initial licensure. The application requirements for a license shall be receipt of the following by the board:

A. the fee for application for licensure specified in 16.2.10 NMAC (Part 10 of the rules); and

B. an application for licensure 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 available;

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

D. an affidavit as provided on the "initial licensure application" 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, 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 acupuncture and oriental medicine, 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 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 ~~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

F. an affidavit as provided on the "initial licensure application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by ~~[16.2.3.10D]~~ Subsection D of 16.2.3.10 NMAC (Subsection 10D of Part 3 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 "initial licensure application" 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 acupuncture and oriental medicine; and

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

~~(2)~~(3) the applicant must notify the board within ten (10) days if the applicant's address changes; and

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the required program. This copy shall include on it an affidavit certifying that it is a true copy of the original; and

I. an official copy of the applicant's transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; this copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant's application for licensure; 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 ~~[complete]~~ faithful translation of the foreign language original; each translat-

ed document shall also bear the affidavit of the applicant certifying that the translation is a true and ~~[complete]~~ 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.

16.2.3.11 EXAMINATION REQUIREMENTS: The ~~[following]~~ examination requirements specified in 16.2.4 NMAC (Part 4 - Examination Requirements of the rules) shall be received at the board office within twelve (12) months of the receipt of the initial application at the board office[-].

~~[~~ **A. Proof from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) of successful completion of the following:**

~~(1) The National Certification Commission for Acupuncture and Oriental Medicine Comprehensive Written Exam (Acupuncture Portion);~~

~~(2) The National Certification Commission for Acupuncture and Oriental Medicine Comprehensive Written Exam (Chinese Herbology Portion);~~

~~(3) The National Certification Commission for Acupuncture and Oriental Medicine Comprehensive Written Exam (Clean Needle Technique Portion), if this exam was not included in Paragraph (1) of Subsection A of 16.2.3.11 NMAC (Part 3 of the Rules); and~~

~~(4) The National Certification Commission for Acupuncture and Oriental Medicine Practical Examination of Point Location Skills (PEPLS) or the Computer-Simulated Point Location Examination (CSPLE); and~~

~~B. Proof of successful completion of the New Mexico Clinical Skills Examination.~~

~~C. Proof of successful completion of the Board approved and Board administered jurisprudence examination.~~

~~D. If the Educational Program is no longer in existence, or if the Applicant's records are not available for Good Cause, the Applicant shall submit an affidavit so stating and shall identify the Educational Program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the Board shall deem necessary. The Board, in its sole and sound discretion, may accept or reject as adequate and sufficient such evidence presented in lieu of the records otherwise required.]~~

16.2.3.12 DOCUMENTS IN A FOREIGN LANGUAGE: All documents submitted in a foreign language must be

accompanied by an accurate translation in English. 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 ~~[complete]~~ faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and ~~[complete]~~ faithful translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an applicant's application shall be at the expense of the applicant.

16.2.3.16 EXPIRATION AND ABANDONMENT OF APPLICATION:

If all application requirements have not been met within twelve (12) months of the initial application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the application is abandoned and the applicant wants to reapply for licensure, the applicant shall be required to submit the completed current application form, pay the current application fee and satisfy the requirements for licensure then in effect at the time of the new application. The board shall notify the applicant of ~~[potential]~~ pending abandonment of the application for licensure by mail postmarked at least sixty (60) days before the date of abandonment which is the expiration of the twelve (12) month deadline for completing all requirements for licensure. The board shall notify the applicant of abandonment of the application by mail postmarked no more than twenty-one (21) days after the date of abandonment.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to sections 16.2.4.7, 16.2.4.8, 16.2.4.10 and 16.2.4.19 NMAC, effective 02-15-05.

16.2.4.7 DEFINITIONS: ~~[Reserved]~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.4.8 APPROVED EXAMINATIONS: The board approved examinations shall consist of a written examination portion and a practical examination portion.

A. The written examinations approved by the board shall be:

(1) the national certification commission for acupuncture and oriental medicine foundations of oriental medicine module; and

~~[(4)](2)~~ the national certification commission for acupuncture and oriental medicine [~~Comprehensive Written Exam (Acupuncture Portion)~~] acupuncture module; and

~~[(2)](3)~~ the national certification commission for acupuncture and oriental medicine [~~Comprehensive Written Exam (Chinese Herbology Portion)~~] Chinese herbology module; and

~~(4)~~ the national certification commission for acupuncture and oriental medicine biomedicine module; and

~~[(3)](5)~~ the national certification commission for acupuncture and oriental medicine [~~Comprehensive Written Exam (Clean Needle Technique Portion)~~] approved clean needle technique course; and

~~[(4)](6)~~ the board approved and board administered jurisprudence examination covering the act and the rules.

B. The practical examinations approved by the board shall be:

(1) the national certification commission for acupuncture and oriental medicine [~~Practical Examination of Point Location Skills (PEPLS) or the Computer-Simulated Point Location Examination (CSPLE)~~] point location module; and

(2) the clinical skills examination; the clinical skills examination includes examination in acupuncture, herbal medicine and biomedicine competencies.

C. The board may adopt such other examinations as may be necessary for psychometric evaluation of its approved examinations.

16.2.4.10 EXAMINATION REQUIREMENTS FOR LICENSURE:

~~The Board shall issue a license to every Applicant whose application has been filed with and approved by the Board, who has paid the fees for application and examinations specified in 16.2.10 NMAC (Part 10 of the Rules), has paid the fees for any nationally recognized examinations, and who.]~~ The following shall be the examination requirements for licensure. All fees for nationally recognized examinations shall be paid by the applicant and are not included in fees charged by the board.

A. [~~Has achieved~~] Achievement of a passing score as determined by the national certification commission for acupuncture and oriental medicine (NCCAOM) on each of the following:

(1) the NCCAOM foundations of oriental medicine module; and

~~[(4)](2)~~ the [~~National Certification Commission for Acupuncture and Oriental Medicine Comprehensive Written Exam (Acupuncture Portion)~~] NCCAOM acupuncture module; and

~~[(2)](3)~~ the [~~National Certification Commission for Acupuncture~~

~~and Oriental Medicine Comprehensive Written Exam (Chinese Herbology Portion)]~~ NCCAOM Chinese herbology module; and

(4) the NCCAOM biomedicine module; and

~~[(3) The National Certification Commission for Acupuncture and Oriental Medicine Comprehensive Written Exam (Clean Needle Technique Portion); and]~~

~~[(4)](5)~~ the [~~National Certification Commission for Acupuncture and Oriental Medicine Practical Examination of Point Location Skills (PEPLS) or the Computer Simulated Point Location Examination (CSPLE)~~]; and] NCCAOM point location module.

B. [~~Has achieved~~] Achievement of a passing score of at least seventy-five percent (75%) on the clinical skills examination. To determine a passing score when the applicant is examined by more than one (1) examiner, if the applicant is examined by two (2) examiners, the applicant must receive a score of at least seventy-five percent (75%) after both scores are averaged and if the applicant is examined by three (3) examiners, the applicant must receive a score of at least seventy-five percent (75%) from a majority of the examiners[- and].

C. [~~Has successfully completed~~] Successful completion of the national certification commission for acupuncture and oriental medicine approved clean needle technique course[- and].

D. [~~Has achieved~~] Achievement of a passing score of not less than one hundred percent (100%) on the board approved and board administered jurisprudence examination covering the act and the rules.

E. Applicants who completed the national certification commission for acupuncture and oriental medicine (NCCAOM) examinations in acupuncture and Chinese herbology prior to June 2004 are not required to pass the NCCAOM foundations of oriental medicine module.

16.2.4.19 REVIEW OF [~~PRACTICAL~~] CLINICAL SKILLS EXAMINATION SCORE:

Applicants may request review of their clinical skills examination results by the board or its examination committee for significant procedural or computational error if such review request is received in writing at the board office within thirty (30) calendar days of notification to the applicant of the clinical skills examination results.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Sections 16.2.5.7, 16.2.5.10 and 16.2.5.12 NMAC, effective 02-15-05.

16.2.5.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

[A "Limited Temporary License" is a license for the exclusive purpose of teaching a single complete course in Acupuncture and Oriental Medicine and assisting in the implementation of new techniques in Acupuncture and Oriental Medicine including the study of such techniques by a licensed, registered, certified or legally recognized healthcare practitioner from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person if they are not a licensee or temporary licensee. A person who has been issue a limited temporary license shall be considered a temporary licensee with regard to the administrative and disciplinary requirements of the Act and the Rules. A Limited Temporary License shall be valid for twelve (12) consecutive months from date of issuance and is not renewable. Limited Temporary Licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved Educational Program.]

16.2.5.10 TEMPORARY LICENSE APPLICATION:

Upon approval of an application for a temporary license that fulfills the requirements listed below, the board shall issue a temporary license that will be valid for the dates specified on the license but shall not exceed six (6) months. The temporary license shall include the name of the temporary licensee, the effective dates of the license, the name of the sponsoring New Mexico doctor of oriental medicine or New Mexico educational program, and a statement that the license shall be for the exclusive purpose of one or more of the following: teaching acupuncture and oriental medicine; consulting, in association with the sponsoring doctor of oriental medicine, regarding the sponsoring doctor's patients; performing specialized diagnostic or treatment techniques in association with the sponsoring doctor of oriental medicine regarding the sponsoring doctor's patients; assisting in the conducting of research in acupuncture and oriental medicine; or assisting in the implementation of new techniques and technology related to acupuncture and oriental medi-

cine. The application requirements for a limited temporary license shall be receipt of the following by the board.

A. The fee for application for temporary license specified in 16.2.10 NMAC (Part 10 of the rules).

B. A application for temporary license that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program.

C. One (1) passport-type photograph of the applicant taken not more than six months prior to the submission of the application.

D. An affidavit as provided on the "temporary license application" from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program attesting to the qualifications of the applicant and the activities the applicant will perform~~[-and]~~.

E. An affidavit as provided on the "temporary license application" 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, 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 acupuncture and oriental medicine, 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~~[-and]~~.

F. 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 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 "temporary license application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection E of 16.2.5.10 NMAC (Subsection 10.E of Part 5 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]~~.

H. An affidavit as provided on the "temporary license application" 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 acupuncture and oriental medicine; and

(2) the applicant must notify the board within ten (10) days if the applicant's address changes or the circumstances of the applicant's relationship to the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program change; and

(3) the applicant may only engage in those activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program for the limited time specified on the temporary license~~[-and]~~.

I. A copy of the applicant's license, certification or registration or other document proving that the applicant is legally recognized in another state or country to practice acupuncture and oriental medicine or another health care profession and who possesses knowledge and skill that are included in the scope of practice of doctors of oriental medicine. The copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants in the United States who practice in a state in which there is no legal recognition, a copy of the certification document in acupuncture, Chinese herbal med-

icine or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the national certification commission for acupuncture and oriental medicine (NCCAOM) shall be sufficient. The copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original. For applicants outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal requirement for practice, the above provisions in this paragraph shall not apply~~[-and]~~.

J. A copy of the applicant's diploma for graduation from the educational program that is required to be licensed, certified, registered or legally recognized to practice in the state or country where the applicant practices. This copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original ~~[-and]~~.

K. An official copy of the applicant's transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the certificate or diploma, and that shall verify the applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject. This copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant's application for licensure~~[-and]~~.

L. An affidavit stating that the applicant has been officially informed by the board in writing that either of the following two requirements has been fulfilled:

(1) the educational program in acupuncture and oriental medicine from which the applicant graduated has been approved by the board as an educational program; or

(2) the board, by a vote of the majority of the members of the board acting at a duly convened meeting of the board, has determined not to require the applicant for temporary licensure to have graduated from an approved educational program as provided for in Subsection B of 16.2.5.9 NMAC (Subsection 9.B of Part 5 of the rules)~~[-and]~~.

M. 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 ~~complete~~ faithful translation of the foreign language original. Each trans-

lated document shall also bear the affidavit of the applicant certifying that the translation is a true and ~~[complete]~~ 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.

16.2.5.12 LIMITED TEMPORARY LICENSE APPLICATION:

Upon approval of an application for a limited temporary license that fulfills the requirements listed below, the board shall issue a limited temporary license that will be valid for the dates specified on the license but shall not exceed twelve (12) consecutive months from the date of issuance and is not renewable, ~~and~~. A limited temporary license shall be for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program. The limited temporary license shall include the name of the limited temporary license holder, the effective dates of the license, the name of the sponsoring New Mexico doctor of oriental medicine or New Mexico educational program, and a statement that the license shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. The requirements for a limited temporary license shall be:

A. the fee for application for a limited temporary license specified in 16.2.10 NMAC (Part 10 of the rules);

B. an application for limited temporary license that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth, social security number, if available, and the name of the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program;

C. an affidavit as provided

on the "temporary license application" from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program attesting to the qualifications of the applicant and the activities the applicant will perform; and

D. an affidavit 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, 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 acupuncture and oriental medicine, 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; and

E. an affidavit as provided on the "temporary license application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.5.12 NMAC (Subsection 12.D of Part 5 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

F. an affidavit as provided on the "temporary license application" 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 acupuncture and oriental medicine; and

(2) the applicant must notify the board within ten (10) days if the applicant's address changes or the circumstances of the applicant's relationship to the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program change; and

(3) the applicant may only engage in those activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program for the limited time specified on the temporary license; and

G. a copy of the applicant's license, certification or registration or other document proving that the applicant is legally recognized in another state or country to practice acupuncture and oriental medicine or another health care profession and who possesses knowledge and skill that are included in the scope of practice of doctors of oriental medicine; the copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; for applicants in the United States who practice in a state in which there is no legal recognition, a copy of the certification document in acupuncture, Chinese herbal medicine or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the national certification commission for acupuncture and oriental medicine (NCCAOM) shall be sufficient; the copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; for applicants outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal requirement for practice, the above provisions in this paragraph shall not apply; and

H. a copy of the applicant's diploma for graduation from the educational program that is required to be licensed, certified, registered or legally recognized to practice in the state or country where the applicant practices; this copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; 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 ~~[complete]~~ faithful translation of

the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and ~~complete~~ 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.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to section 16.2.6.7 NMAC, effective 02-15-05.

16.2.6.7 DEFINITIONS:
~~Reserved~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to sections 16.2.7.7 and 16.2.7.8 NMAC, effective 02-15-05.

16.2.7.7 DEFINITIONS:
~~Reserved~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.7.8 EDUCATIONAL PROGRAM REQUIREMENTS: All educational programs shall be approved by the board. Using the requirements of 16.2.7.8 NMAC and 16.2.7.9 NMAC (Sections 8 and 9 of Part 7 of the rules), the board will evaluate whether or not an educational program shall be approved. If a visit is necessary to evaluate the educational program, the cost of the visit, including any administrative costs, shall be paid in advance by the educational program.

A. The foundation educational program requirement shall be the four academic year masters of oriental medicine program that meets the national certification commission for acupuncture and oriental medicine (NCCAOM) accreditation/equivalent education policy as defined here. Graduation/education must be obtained from a formal education program that has met the standards of the accreditation commission for acupuncture and oriental medicine (ACAOM) or an equivalent educational body. A program may be established as having satisfied this requirement by demonstration of one of the following:

- (1) accreditation or candidacy for accreditation by ACAOM; or
- (2) approval by a foreign government's ministry of education, ministry of health, or equivalent foreign government agency; each candidate must submit their documents for approval by a foreign cre-

dential equivalency service approved by the NCCAOM for that purpose; programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAOM in effect at the time of application; or

(3) approval by a foreign private accreditation agency that has an accreditation process and standards substantially equivalent to that of ACAOM, and that is recognized for that purpose by the appropriate government entity in that foreign country; each candidate must submit their documents for approval by a foreign credential equivalency service approved by the NCCAOM for that purpose; programs attempting to meet the eligibility requirement under this method must also meet the curricular requirements of ACAOM in effect at the time of application.

B. The educational program shall provide a program that shall be at least four academic years and shall include in-class education that comprises a minimum of 2,400 clock hours of classes including a minimum of 1,100 hours of didactic education in acupuncture and oriental medicine and a minimum of 900 hours of supervised clinical practice, instruction and observation in acupuncture and oriental medicine. The curriculum shall provide the knowledge and skills required to maintain appropriate standards of acupuncture and oriental medical care.

C. The educational program shall include a didactic curriculum that educates and graduates physicians who are competent to practice acupuncture and oriental medicine and who are able to diagnose, prescribe, and treat accurately and that specifically includes, in addition to the requirements of the act, oriental principles of life therapy, including the prescription of herbal medicine, diet and nutrition, manual therapy/physical medicine and counseling, not to exceed 900 hours of the required 2,400 hours specified in Subsection B of 16.2.7.8 NMAC (Subsection 8.B. of Part 7 of the rules) and that includes a minimum of 450 hours of education in herbal medicine.

D. The educational program shall include a clinical curriculum that includes clinical instruction and direct patient contact. This clinical part of the educational program shall include at least 900 hours of supervised clinical practice, instruction and observation in the following areas:

- (1) the observation of and assistance in the application of principles and techniques of oriental medicine including diagnosis, acupuncture, moxibustion, manual therapy/physical medicine, diet and nutrition, counseling and the prescription of herbal medicine; and
- (2) a minimum of 400 hours of actual treatment in which the student is

required to perform complete treatment as the primary student practitioner.

~~E.~~ The educational program shall include a curriculum that educates and graduates physicians who are competent to demonstrate a clinically relevant, complementary and integrative knowledge of biomedicine and biomedical diagnosis sufficient to treat and refer patients when appropriate.

~~[E]~~E. The educational program may honor credit from other educational programs.

~~[F]~~G. The names and educational qualifications of all teaching supervisors, resident teachers, and visiting teachers of acupuncture and oriental medicine shall be submitted to the board and shall meet the following:

(1) all teachers of acupuncture and oriental medicine in New Mexico shall have a license or temporary license to practice acupuncture and oriental medicine in New Mexico issued by the board; any educational program in violation of this provision shall be subject to suspension or revocation of the educational program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC (Part 12 of the rules);

(2) all teachers of acupuncture and oriental medicine at educational programs outside New Mexico shall be licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine in the state or country in which he or she practices and teaches; any educational program in violation of this provision shall be subject to suspension or revocation of the educational program approval or subject to disciplinary proceedings, including fines as defined in 16.2.12 NMAC (Part 12 of the rules);

(3) exceptions may be made at the board's discretion and for good cause.

~~[G]~~H. Educational programs may employ or contract with tutors to teach components of the educational program. Educational programs may honor credit from tutors. A tutor is defined in the act as "a doctor of oriental medicine with at least ten years of clinical experience who is a teacher of acupuncture and oriental medicine."

I. The educational program may be subject to inspection by the board.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to sections 16.2.9.7, 16.2.9.8 and 16.2.9.9 NMAC, effective 02-15-05.

16.2.9.7 DEFINITIONS: ~~[Reserved]~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.9.8 CONTINUING EDUCATION: ~~[Currently there are no continuing education requirements for Doctors of Oriental Medicine who are not certified for the Extended Prescriptive Authority or Expanded Prescriptive Authority.]~~

A. A doctor of oriental medicine shall complete continuing education in oriental medicine equivalent to that required by the national certification commission for acupuncture and oriental medicine (NCCAOM). A doctor of oriental medicine shall submit to the board at the time of license renewal either of the following:

(1) proof of continuing NCCAOM recertification in oriental medicine, acupuncture or Chinese herbology; or
(2) proof of completion of 15 hours of annually of NCCAOM equivalent continuing education courses approved by the board; the board shall annually audit a random ten (10) percent of continuing education documentation to determine the validity of the documentation.

B. A doctor of oriental medicine 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.

C. A doctor of oriental medicine shall maintain an understanding of the current act and rules and shall complete, with a score of 100 percent correct answers, an open book jurisprudence examination covering the act and the rules that contains at least ten (10) questions and shall submit this to the board at the time of license renewal.

16.2.9.9 CONTINUING EDUCATION FOR ~~[EX-OR-RX]~~ EXTENDED OR EXPANDED PRESCRIPTIVE AUTHORITY CERTIFIED LICENSEES:

A doctor of oriental medicine certified for the extended prescriptive authority or the expanded prescriptive authority shall complete seven (7) hours of continuing education each year prior to renewal of his or her license in addition to any continuing education required for license renewal specified in 16.2.9.8 NMAC (Section 8 of Part 9 of the rules). The continuing education shall be about new substances or updated information about current substances in the ~~[Expanded]~~ prescriptive authority formulary defined in 16.2.2.13 NMAC (Section 13 of Part 2 of the rules) and in improving current techniques or new or advanced techniques that

are part of the extended or expanded prescriptive authority certification. Continuing education ~~[classes and] courses, including teachers,~~ shall be approved by the board. Continuing education that is appropriate for regularly licensed doctors of oriental medicine shall not be considered as fulfilling the above requirements. The board may determine specific mandatory courses that must be completed. Specific mandatory courses shall be noticed at least six (6) months prior to the date of the course. Exceptions to being required to complete a specific mandatory course may be made for good cause.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Sections 16.2.10.2, 16.2.10.7, 16.2.10.8 and 16.2.10.9 NMAC, effective 02-15-05.

16.2.10.2 SCOPE: All licensees, applicants, temporary licensees, applicants for temporary licensure, limited temporary license holders, limited temporary license applicants, extern applicants, externship supervisor applicants, certified auricular detoxification specialists, certified auricular detoxification specialist applicants, auricular detoxification specialist training programs, auricular detoxification specialist training program applicants, educational programs and applicants for approval of educational programs.

16.2.10.7 DEFINITIONS: ~~[Reserved]~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.10.8 DEPOSIT AND USE OF FEES: All fees and other funds collected under the act shall be deposited with the state treasurer for credit to the board of acupuncture and oriental medicine fund. The board shall appropriate money from the fund to pay for the costs of administration of the act. Any surplus funds remaining at the end of each fiscal year shall not revert to the general fund. ~~[All fees shall be paid by check, certified check or money order in US funds unless otherwise specified by Rule. No fees paid to the Board shall be refunded.]~~

16.2.10.9 FEES CHARGED: ~~[The Board shall charge the following fees:]~~

A. All fees shall be paid by check, certified check or money order in US funds unless otherwise specified by rule.

B. No fees paid to the board shall be refunded.

C. The board shall charge the following fees:

~~[A-]~~(1) application for licensure: \$500.00;

(2) application for reciprocal licensure: \$750.00;

(3) application for licensure by endorsement: \$800.00;

~~[B-]~~(4) application for temporary licensure: \$300.00;

~~[C-]~~(5) application for limited temporary licensure: \$75.00;

~~[D-]~~(6) clinical skills examination, not including the cost of any nationally recognized examinations: \$450.00;

~~[E-]~~(7) annual license renewal: \$200.00;

~~[F-]~~(8) late license renewal: \$100.00;

~~[G-]~~(9) expired license renewal: \$200.00;

~~[H-]~~(10) temporary license renewal: \$100.00;

~~[I-]~~(11) application for a new annual approval or renewal of approval of an educational program, including the same program offered at multiple campuses: \$400.00;

~~[J-]~~(12) late renewal of approval of an educational program: \$200.00;

~~[K-]~~(13) application for single instance approval of an educational program: \$200.00;

~~[L-]~~(14) application for extended prescriptive authority certification: \$100.00;

~~[M-]~~(15) application for expanded prescriptive authority certification: \$100.00;

~~[N-]~~(16) application for externship supervisor registration: \$200.00;

~~[O-]~~(17) application for extern certification: \$200.00;

(18) continuing education provider course approval application: \$50.00;

(19) auricular detoxification specialist certification application: \$50.00;

(20) auricular detoxification specialist certification renewal: \$30.00;

(21) auricular detoxification specialist certification late renewal: \$20.00;

(22) auricular detoxification specialist supervisor registration application: \$50.00;

(23) auricular detoxification specialist supervisor registration renewal: \$30.00;

(24) auricular detoxification specialist supervisor registration late renewal: \$20.00;

(25) auricular detoxification specialist training program approval application: \$100.00;

(26) auricular detoxification specialist training program approval renewal: \$50.00;

(27) treatment program approval

application: \$100.00;

(28) administrative fee for application for approval of extended or expanded prescriptive authority course: \$100.00;

~~[P-]~~(29) administrative fee for inactive license application: \$100.00;

~~[Q-]~~(30) administrative fee for inactive license renewal: \$35.00;

~~[R-]~~(31) administrative fee for inactive license reinstatement application: \$100.00;

~~[S-]~~(32) administrative fee for each duplicate license: \$25.00;

(33) administrative fee for a single transcript or diploma from the former international institute of Chinese medicine, per copy: \$50.00;

~~[T-]~~(34) administrative fees to cover the cost of photocopying, electronic data, lists and labels produced at the board office.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Sections 16.2.11.2, 16.2.11.7, 16.2.11.10 and 16.2.11.12 NMAC, effective 02-15-05.

16.2.11.2 SCOPE: All licensees, applicants, temporary licensees, applicants for temporary licensure, limited temporary license holders, externs, certified auricular detoxification specialists, auricular detoxification specialist training programs, educational programs and applicants for approval of educational programs.

16.2.11.7 DEFINITIONS: ~~[Reserved]~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.11.10 USE OF BUSINESS NAME OR TRADE NAME: The board shall be notified of the use of a trade or business name or "DBA" by a doctor of oriental medicine ~~[shall be registered with the Board]~~. The board shall be notified, in writing, of any change of business or trade name within ten (10) days of the change.

16.2.11.12 CHANGES, RELOCATION, CLOSING: Within ten (10) days of any changes, a doctor of oriental medicine or temporary licensee shall inform the board, in writing, of any changes to his or her practice, including relocation, abandonment and closing for over 90 days. Notice to the board shall include at a minimum the name of the licensee, office location, mailing address, telephone number, business name and the names of all licensees practicing at that location.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Sections 16.2.12.2, 16.2.12.7, 16.2.12.20, 16.2.12.32, 16.2.12.35 and 16.2.12.36 NMAC, effective 02-15-05

16.2.12.2 SCOPE: All licensees, applicants, temporary licensees, applicants for temporary licensure, limited temporary license holders, limited temporary license applicants, externs, certified auricular detoxification specialists, certified auricular detoxification specialist applicants, auricular detoxification specialist training programs, auricular detoxification specialist training program applicants, educational programs and applicants for approval of educational programs.

16.2.12.7 DEFINITIONS: ~~[Reserved]~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.12.20 FAILURE TO PROVIDE RECORDS TO PATIENT: Pursuant to the Act, Section 61-14A-17.A (5) NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who fails to make available to a patient or client, upon request, copies of ~~[documents]~~ patient records in their possession, or under their control that have been prepared for and paid for by the patient or client. The patient records must be provided to the patient or client within 30 days of the request.

16.2.12.32 INCOMPETENCE AND UNPROFESSIONAL CONDUCT: The ~~[forgoing]~~ specifications of incompetence and unprofessional conduct defined in the act and 16.2.12 NMAC (Part 12 of the rules) shall not be exclusive of the types of acts and omissions which may be found by the board to constitute incompetence or unprofessional conduct.

16.2.12.35 EXTENDED OR EXPANDED PRESCRIPTIVE AUTHORITY INCOMPETENCE: Pursuant to the Act, Section 61-14A-17.A (3) NMSA 1978, a doctor of oriental medicine certified for the extended prescriptive authority or expanded prescriptive authority shall be guilty of incompetence if he or she, when diagnosing and treating a patient, does not possess and apply the knowledge and use the skill and care ordinarily used by similarly certified doctors of oriental medicine.

16.2.12.36 INCOMPETENCE: Pursuant to the Act, Section 61-14A-17.A (3) NMSA 1978, A doctor of oriental medicine who injudiciously prescribes, administers, or dispenses a drug as defined in the New Mexico Drug, Device and Cosmetic Act shall be guilty of incompetence.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Section 16.2.13.7 NMAC, effective 02-15-05.

16.2.13.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

~~[~~ **A.** "Chief Officer" is the Board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

~~B.~~ "Complainant" is the complaining party.

~~C.~~ "Complaint Committee" is a Board committee composed of the Complaint Committee Chairperson and the Complaint Manager.

~~D.~~ "Complaint Committee Chairperson" is a member of the Board appointed by the Board's chairperson.

~~E.~~ "Complaint Manager" is the Board's administrator or any member of the Board appointed by the Board's chairperson.

~~F.~~ "NCA" is a notice of contemplated action.

~~G.~~ "Respondent" is the subject of the complaint.]

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Sections 16.2.14.7, 16.2.14.9, 16.2.14.10, 16.2.14.11, 16.2.14.12, 16.2.14.13, 16.2.14.16 and 16.2.14.19 NMAC, effective 02-15-05.

16.2.14.7 DEFINITIONS: ~~[Reserved]~~ Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).

16.2.14.9 EDUCATIONAL AND EXAMINATION REQUIREMENTS FOR EXTERNS:

A. An extern applicant shall provide satisfactory proof that he or she has completed a board approved educational program.

B. An extern applicant shall provide satisfactory proof from the national certification commission for acupuncture and oriental medicine that he

or she has successfully passed the following:

(1) the national certification commission for acupuncture and oriental medicine [~~Comprehensive Written Exam (Acupuncture Portion)~~] foundations of oriental medicine module; and

(2) the national certification commission for acupuncture and oriental medicine [~~Comprehensive Written Exam (Clean Needle Technique Portion)~~, if this exam was not included in 16.2.14.9.B.(1) NMAC (Paragraph 9.B.(1) of Part 14 of the Rules)] approved clean needle technique course; and

(3) the national certification commission for acupuncture and oriental medicine [~~Practical Examination of Point Location Skills (PELPE) or the Computer-Simulated Point Location Exam (CSPLE)~~] point location module.

C. An extern applicant must have graduated from a board approved educational program within twelve (12) months of filing the application for extern certification.

16.2.14.10 EXTERN CERTIFICATION APPLICATION:

Upon approval of an application for extern certification that fulfills the requirements listed below, the board shall issue an extern certification. In the interim between regular board meetings, whenever a qualified applicant for extern 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 extern certification that will suffice until the next regular meeting of the board. In no event shall the applicant begin the practice of acupuncture and oriental medicine until the extern certification or interim temporary extern certification is issued by the board. The application requirements for extern certification shall be receipt of the following by the board:

A. the fee for application for extern certification specified in 16.2.10 NMAC (Part 10 of the rules);

B. a application for extern 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 available;

C. an affidavit as provided on the "extern certification application" 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, 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 acupuncture and oriental medicine, 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

D. an affidavit as provided on the "extern certification application" stating that the applicant is an applicant for licensure; and

E. an affidavit as provided on the "extern certification application" stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC (Part 3 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

(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 acupuncture and oriental medicine; and

(4) the scope of practice of an extern shall be limited to the practice of acupuncture and oriental medicine as defined in the act and 16.2.2 NMAC (Part 2 of the rules), except that the extern shall not prescribe or administer any herbal, nutritional, homeopathic or any other medicines

or substances; when diagnosing and treating a patient, the extern shall practice only within the limits of his or her education and training; the extern shall possess and apply the knowledge, and use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to their limited clinical experience; and

(5) the extern certification shall expire automatically twelve (12) months after the date of issuance unless the certificate expires sooner for any of the following reasons:

(a) upon licensure;

(b) if the extern fails the board's clinical skills examination more than once; or

(c) if the extern is no longer under the supervision of the externship supervisor; and

(6) if the externship relationship terminates before the expiration of the extern certification, the extern may reapply to be supervised by another externship supervisor by filing the appropriate forms required by the board; the extern certification time limit of twelve (12) months shall remain the same and shall not be extended; and

(7) in no event shall an extern practice under extern certification(s) for more than a total of twelve (12) months or after failing the board's clinical skills examination more than once; the extern certification is not renewable; exceptions for good cause shall not apply to the extern certification; and

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

(9) the board may refuse to issue, or may suspend, or revoke any license, extern certification or externship 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).

F. 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 ~~complete~~ faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and ~~complete~~ 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.

16.2.14.11 REQUIREMENTS AND RESPONSIBILITIES OF EXTERNSHIP SUPERVISORS:

A. The externship supervisor shall:

(1) provide a clinical environment where the extern is able to further his or her knowledge and apply acupuncture and oriental medicine theory and techniques; and

(2) directly supervise the extern on the premises of the treating facility at all times and be available for consultation, intervention, and decisions about patient care; and

(3) supervise no more than two externs at any given time and have no more than a total of two externs in his or her overall externship program at a time; and

(4) inform patients with a written signed consent form outlining the responsibility of the extern and the scope and limits of practice; and

(5) prescribe all herbal, nutritional, homeopathic and any natural substances. Any recommendations of these substances by the extern must be signed by the externship supervisor; and

(6) approve the diagnosis and treatment plan and oversee the techniques of oriental medicine and delivery of patient care; and

(7) notify the board in writing, within five (5) days working days, when the extern enters into an extern supervisory contract with the externship supervisor or terminates the externship participation.

B. The externship supervisor shall be responsible for the delivery of competent professional services, obtaining patient consents, and maintaining patient records.

C. The externship supervisor shall document approval and oversight of diagnosis, treatment, and patient care in the patient's permanent file.

D. The externship supervisor shall terminate the externship relationship if the externship supervisor has the reasonable belief that the extern has violated the act or the rules. The externship supervisor shall notify the board, in writing, within five (5) working days that the externship relationship is terminated and give the reasons for the termination.

16.2.14.12 ISSUANCE OF EXTERNSHIP SUPERVISOR REGISTRATION:

Upon approval of an application for externship supervisor registration that fulfills the requirements listed below, the board shall issue an ~~[Extern certification]~~ externship supervisor registration. In the interim between regular board meetings, whenever a qualified applicant for externship 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 externship supervisor registration that will suffice until the next regular meeting of the board. In no event shall the externship supervisor begin supervising an extern until the externship supervisor registration or interim temporary externship supervisor registration is issued by the board. The application requirements for an externship supervisor registration shall be receipt of the following by the board:

A. the fee for application for externship supervisor registration specified in 16.2.10 NMAC (Part 10 of the rules);

B. an application for externship 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, if available;

C. proof of five (5) years of clinical experience; and

D. proof of maintaining a clinical facility; and

E. proof of appropriate professional and facility insurance; and

F. an affidavit as provided on the "extern supervisor registration application" stating that the applicant understands that:

(1) the scope of practice of an extern shall be limited to the practice of acupuncture and oriental medicine as defined in the act and 16.2.2 NMAC (Part 2 of the rules), except that the extern shall not prescribe or administer any herbal, nutritional, homeopathic or any other medicines or substances; when diagnosing and treating a patient, the extern shall practice only within the limits of his or her education and training; the extern shall possess and apply the knowledge, and use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to their limited clinical experience; and

(2) the extern certification shall expire automatically twelve (12) months after the date of issuance unless the certificate expires sooner for any of the following reasons:

(a) upon licensure;

(b) if the extern fails the board's clinical skills examination more than once; or

(c) if the extern is no longer under the supervision of the externship supervisor; and

(3) in no event shall an extern practice under extern certification(s) for more than a total of twelve (12) months or after failing the board's clinical skills examination more than once; the extern certification is not renewable; exceptions for good

cause shall not apply to the extern certification; and

(4) the extern supervisor shall not be a member of the extern's family or a member of the extern's household or have a conflict of interest with the extern as defined in 16.2.14.19 NMAC (Section 19 of Part 14 of the rules); and

G. an affidavit as provided on the "extern supervisor registration application" stating that the applicant understands that the externship supervisor shall:

(1) provide a clinical environment where the extern is able to further his or her knowledge and apply acupuncture and oriental medicine theory and techniques; and

(2) directly supervise the extern on the premises of the treating facility at all times and be available for consultation, intervention, and decisions about patient care; and

(3) supervise no more than two externs at any given time and have no more than two externs in his or her externship program at a time; and

(4) inform patients with a written signed consent form outlining the responsibility of the extern and the scope and limits of practice; and

(5) prescribe all herbal, nutritional, homeopathic and any natural substances; any recommendations of these substances by the extern must be signed by the externship supervisor; and

(6) approve the diagnosis and treatment plan and oversee the techniques of oriental medicine and delivery of patient care; and

(7) notify the board in writing, within five (5) days working days, when the extern enters into an extern supervisory contract with the externship supervisor or terminates the externship participation; and

(8) be responsible for the delivery of competent professional services, obtaining patient consents, and maintaining patient records; and

(9) document approval and oversight of diagnosis, treatment, and patient care in the patient's permanent file; and

(10) terminate the externship relationship if the externship supervisor has the reasonable belief that the extern has violated the act or the rules or if a conflict of interest arises during the supervision; the externship supervisor shall notify the board, in writing, within five (5) working days that the externship relationship is terminated and give the reasons for the termination; and

(11) the ~~[applicant]~~ extern supervisor must notify the board within ten (10) days if the ~~[applicant's]~~ extern supervisor's address changes; and

(12) the board may refuse to issue, or may suspend, or revoke any license, externship supervisor registration

or externship 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).

16.2.14.13 CHANGE OF EXTERNSHIP SUPERVISOR: If the externship relationship terminates before the expiration of the extern certification, the extern may reapply to be supervised by another externship supervisor by filing the appropriate forms required by the board. The extern certification time limit of twelve (12) months shall remain the same and shall not be extended.

16.2.14.16 EXTERN LIMITATIONS: In no event shall an extern practice under extern certification(s) for more than a total of twelve (12) months or after failing the board's clinical skills examination more than once. The extern certification is not renewable. Exceptions for good cause shall not apply to the extern certification.

16.2.14.19 EXTERN SUPERVISOR CONFLICT OF INTEREST: The externship supervisor shall not be a member of the extern's family or a member of the extern's household. "Member of the extern's family" means a spouse, child, stepchild, grandchild, parent, grandparent, sibling, uncle, aunt, niece, or nephew, or other relative by blood, marriage, or legal process with whom the supervisor has or has had a close familial relationship. The supervisor shall not have a conflict of interest with the extern, such as a past or present familial, social, fiduciary, business, financial, or physician-patient relationship, that impairs or compromises or appears to impair or compromise the supervisor's neutrality, independence, or objectivity. If a conflict of interest arises during the supervision, the supervisor shall immediately report the conflict of interest to the board and shall cease supervision of the extern.

NEW MEXICO OFFICE OF THE STATE ENGINEER

The Office of the State Engineer is repealing the following rules and orders, effective January 31, 2005. They will be replaced by 19.26.2 NMAC, Administration, effective January 31, 2005.

1) Manual of Revised Rules, Regulations and Requirements for Filing Claims to Water Rights under Laws of 1907 as amended; in force after June 14, 1913. Filed 6/27/91 (SRC).

2) Manual of Revised Rules, Regulations and Requirements for Filing Applications for Permit to Appropriate Water under Laws of 1907 as amended; in force after April 14, 1915. Filed 6/27/91 (SRC).

3) Manual of Revised Rules, Regulations and Requirements Under Laws Affecting the Public Waters; Revised Manual in Effect May 1, 1918. Filed 6/27/91 (SRC).

4) Manual of Revised Rules, Regulations, Requirements and Instructions Under Law Affecting the Public Waters; Revised Manual in effect May 1, 1918. Filed 6/27/91 (SRC).

5) Manual of Rules and Regulations for Proceeding Before the State Engineer Under the Laws Affecting the Surface Waters of the State of New Mexico; Revised April, 1941. Filed 6/27/91 (SRC).

6) Order No. 32. Amendment to Rules and Regulations Governing the Appropriation and Use of Surface Waters of the State of New Mexico, Revised January 1951. Filed 7/12/52 (SCLL) and 6/27/91 (SRC).

7) Manual of Rules and Regulations Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Revised August 1953. Filed 6/27/91 (SRC).

8) Order No. 61. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 5/31/56 (SCLL) and 6/27/91 (SRC).

9) Order No. 62. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 7/20/56 (SCLL) and 6/27/91 (SRC).

10) Order No. 68. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 3/10/57 (SCLL) and 6/27/91 (SRC).

11) Order No. 76. Order amending the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed 7/2/59 (SCLL) and 6/27/91 (SRC).

12) Order No. 89. Order amending

article VI-A (high water line traverse) of the Rules and Regulations Revised August 1953 Governing the Appropriation and Use of Surface Waters of the State of New Mexico; Filed February 12, 1962 (SCLL) and 6/27/91 (SRC).

13) Order No. 140. In the Matter of the Revision of Article VII of the Manual of Rules and Regulations of the State Engineer Governing the Appropriation and Use of Surface Waters of the State of New Mexico. Filed 7/7/87 (SRC).

NEW MEXICO OFFICE OF THE STATE ENGINEER

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 26 SURFACE WATER PART 2 ADMINISTRATION

19.26.2.1 ISSUING AGENCY:
Office of the State Engineer.
[19.26.2.1 NMAC - N, 1/31/2005]

19.26.2.2 SCOPE: The administration of all natural waters flowing in streams and watercourses, and supplemental groundwater, within the limits of the state of New Mexico.
[19.26.2.2 NMAC - N, 1/31/2005]

19.26.2.3 S T A T U T O R Y AUTHORITY: Chapter 72, Articles 1, 2, 5, 6, 7 and 9, NMSA. Section 72-1-1 NMSA provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts. Section 72-9-1 NMSA gives the state engineer authority to regulate reservoirs, canals, pipelines or other works and the rights of the owners thereof. Nothing in these rules shall be construed so as to limit the state engineer's authority to take lawful alternative or additional actions relating to the management of surface water resources.

[19.26.2.3 NMAC - N, 1/31/2005]

19.26.2.4 DURATION: Permanent.

[19.26.2.4 NMAC - N, 1/31/2005]

19.26.2.5 EFFECTIVE DATE: January 31, 2005, unless a later date is cited at the end of a section.

[19.26.2.5 NMAC - N, 1/31/2005]

19.26.2.6 OBJECTIVE: To establish standards and procedures implementing the duties of the state engineer as set forth by statute and further defined by judicial decisions to supervise and administer the appropriation, allocation, and use of surface water and supplemental groundwater of the state.

[19.26.2.6 NMAC - N, 1/31/2005]

19.26.2.7 DEFINITIONS: Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meaning.

A. Abandonment: The loss of a water right based on the nonuse of water and the intent by the water right owner to permanently relinquish or forsake the right.

B. Acequia: An irrigation ditch managed and maintained by the local community it serves. Acequias and community ditch associations are considered legal subdivisions of the state pursuant to Section 73-2-28 NMSA.

C. Acre-foot: A volume of water sufficient to cover one (1) acre of land one (1) foot deep. One acre-foot is equal to 43,560 cubic feet or 325,851 gallons.

D. Beneficial use: The direct use or storage and use of water by man for a beneficial purpose including, but not limited to, agricultural, municipal, commercial, industrial, domestic, livestock, fish and wildlife, and recreational uses. Beneficial use shall be the basis, the measure, and the limit of a water right.

E. Certificate of construction: A document issued by the state engineer which recognizes that construction of the works has been in accordance with the permit.

F. Community ditch: An irrigation ditch managed and maintained by the local community it serves. Acequias and community ditch associations are considered legal subdivisions of the state pursuant to Section 73-2-28 NMSA.

G. Consumptive irrigation requirement (CIR): The quantity of irrigation water, expressed as a depth or volume, exclusive of effective rainfall, that is consumptively used by plants or is evaporated from the soil surface during one cal-

endar year. The consumptive irrigation requirement (CIR) may be numerically determined by subtracting effective rainfall from the consumptive use.

H. Consumptive use: The quantity of water consumed during the application of water to beneficial use. The quantity of water beneficially consumed depends on the requirements of a particular enterprise and how it applies and consumes the water. The authorized diversion of water that is not beneficially consumed in the course of water use is not part of the allowable consumptive use allocation of the water right. The consumptive use of water by a crop (evapotranspiration) does not include depletions such as evaporation from canals, ditches or irrigated fields during surface application, transpiration by vegetation along ditches, evaporation or leakage from irrigation water pipes, evaporation of sprinkler spray and drift losses, and evaporation of runoff and seepage from irrigated fields.

I. Dam: A man-made barrier constructed across a watercourse or off-channel for the purpose of storage, control, or diversion of water.

J. Effective rainfall: The average rainfall during the growing period of a crop that becomes available to help meet the consumptive use of water by the crop.

K. Duty of water (farm delivery requirement): The average quantity of water that is delivered on an annual basis to the farm headgate or is diverted from a source of water that originates on the farm itself - such as a well or spring - to satisfy the consumptive irrigation requirement of crops grown on a farm. In practice, the farm delivery requirement is estimated by dividing the crop irrigation requirement by the irrigation efficiency.

L. Forty-year planning entity: A municipality, county, state university, member-owned community water system, special water users' association, or public utility supplying water to a municipality or county which is allowed a water use planning period of not to exceed forty years pursuant to Section 72-1-9 NMSA.

M. Headgate: A mechanism in a dam or ditch that controls the flow of water through the outlet.

N. Hearing: An administrative proceeding on an order entered by the state engineer, or the filing of an application, protest, aggrievment or other pleading, in which parties may present evidence according to the rules and procedures contained in 19.25.2 NMAC.

O. Historical supply: The average quantity of water historically available from a specific source at the point of diversion to meet the farm delivery requirement. Historical supply is expressed as a percentage of the total farm delivery

requirement.

P. Impoundment: Any man made or modified structure or diversion works intended for the retention or detention of water, including but not limited to livestock water tanks, sumps, spring boxes, subsurface excavations, metal tanks, ponds and dams.

Q. Infiltration gallery: Constructed works laid in, adjacent to, or below a streambed or spring source that intercepts surface water.

R. Irrigation efficiency: The portion of the duty of water, expressed as a percentage, consumed to meet the crop irrigation requirement.

S. License: A document issued by the state engineer after final proof of application of water to beneficial use has been filed and inspection has been completed that confirms the extent of diversion and beneficial use of water made in conformance with permit conditions.

T. Livestock: All domestic or domesticated animals that are used or raised on a farm or ranch, including exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae. Livestock does not include canine or feline animals.

U. Livestock water impoundment: Any impoundment used exclusively for watering livestock.

V. Perennial stream: A stream or reach of a stream that flows continuously throughout the year. Under extreme conditions such as severe drought some streams considered perennial may not contain water.

W. Permit: A document issued by the state engineer that authorizes the diversion of water from a specific point of diversion, for a particular beneficial use, and at a particular place of use, in accordance with the conditions of approval. A permit allows the permittee to develop a water right through the application of water to beneficial use, in conformance with the permit's conditions of approval. A permit in itself does not constitute a water right.

X. Point of diversion: The location of constructed works where water is diverted from a stream, watercourse, or well.

Y. Project diversion requirement or off-farm diversion requirement: When the source of water does not originate on the farm, the project diversion requirement or off-farm diversion requirement is the average quantity of water that is diverted from an off-farm source to satisfy the farm delivery requirement for one calendar year.

Z. Proof of application of water to beneficial use: A document filed with the state engineer by a permittee

demonstrating the actual beneficial use to which water has been applied under a permit.

AA. Rate of diversion: The instantaneous measurement of water being taken from a stream, watercourse, or well.

BB. Spring: A site where surface water flows freely from the ground under natural conditions. The flow at land surface may be perennial or intermittent in nature.

CC. Stream system: The surface waters of a river or stream and all groundwater hydrologically connected to those surface waters.

DD. Surface water: Water found in any watercourse including impoundments, ponds, lakes, reservoirs, springs, streams and rivers or flows obtained from an infiltration gallery.

EE. Water right: The legal right to appropriate water for a specific beneficial use. The elements of a water right generally include owner, point of diversion, place of use, purpose of use, priority date, amount of water, periods of use, and any other element necessary to describe the right. A permitted or declared right is considered to be a valid water right only to the extent water has been legally placed to beneficial use.

FF. Watercourse: Any river, creek, arroyo, canyon, draw or wash, or any other channel having definite banks and bed with visible evidence of the flow of water.

[19.26.2.7 NMAC - N, 1/31/2005]

19.26.2.8 DECLARATION OF A WATER RIGHT DEVELOPED PRIOR TO MARCH 19, 1907: All water rights established by beneficial use in New Mexico prior to March 19, 1907, were recognized and confirmed by the state constitution at the time of its adoption. Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source may file a declaration on a form prescribed by the state engineer setting forth the history and continuity of the beneficial use to which said water has been applied. A declaration may be accompanied by a map prepared pursuant to 19.26.2.26 NMAC and may be accompanied by deeds, survey plats, affidavits and other evidence tending to substantiate the claim. If such supporting documents are filed with the state engineer, they will be filed together with the declaration. The declaration may be filed by the declarant on his personal information and belief. No declarations will be accepted for filing within any stream system where an adjudication court has entered an order or decree that operates to bar such claims.

A. Form - content: A declaration shall be filed on a form pre-

scribed by the state engineer. The declaration shall include the following information: the name and address of the declarant, the owner of the land on which the water is used, legal descriptions for the point of diversion and the place of use, the purpose of use, quantity of water used, periods of use, the date water was first applied to beneficial use and the continuity thereof, and any other information deemed necessary by the state engineer. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. The declarant shall sign the declaration before a notary.

B. Amended declaration: An amended declaration may be filed to supplement the evidence substantiating the claim or to correct any clerical errors in the initial declaration. An amended declaration that changes the purpose of use or amount of water, or that is filed after an application affecting the declared water right has been filed, will only be accepted for filing if substantial and specific documentation supporting the change(s) is filed with the amended declaration. The state engineer will not accept an amended declaration after an application affecting the declared rights has been acted upon by the state engineer in accordance with Subsections F and H of 19.26.2.12 NMAC or 19.25.2 NMAC. An amended declaration may be accompanied by deeds, survey plats, affidavits and other evidence to further substantiate the claim.

C. Filing fee: A fee of \$10 must accompany a declaration, with or without attachments. An amended declaration requires a fee of \$25 with or without attachments. After a declaration has been accepted for filing, submission of any other document associated with the declaration, which becomes a part of the permanent water right record, requires a fee of \$5.00.

D. Action of the state engineer: Upon receipt of a declaration or amended declaration a preliminary investigation may be performed by the state engineer. If this preliminary investigation reveals deficiencies in the declaration or amended declaration, the declaration may be returned to the declarant. If the declaration is accepted for filing by the state engineer, the acceptance does not constitute validation of the right claimed. The declaration may be recorded by the declarant in the office of the county clerk of the county wherein the diversion works are located.

[19.26.2.8 NMAC - N, 1/31/2005]

19.26.2.9 NOTICE OF INTENTION TO FILE APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER: A notice of intention to file an application for permit to appropriate surface water may be filed for the purpose of establishing priority of application. The

application shall be prepared and filed within one year of the date of filing of the notice. A notice of intention to file an application for permit to appropriate surface water, automatically expires at the end of one year if an application as described in the notice of intention is not filed.

A. Form - content: A notice of intention to file application for permit to appropriate surface water shall be filed on a form prescribed by the state engineer. A notice of intention shall include the following information: the name and address of the applicant, the use to which the water will be applied, the amount of water required for the proposed use, legal descriptions for the point of diversion and the place of use, the method of conveyance, and the annual water use schedule. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If a notice lacks any of this information, it may be returned for completion.

B. Filing fee: A fee of \$25 must accompany the notice of intention to file an application.

C. Rejection of notice of intention: When the state engineer is of the opinion that there is no unappropriated surface water available, the notice of intention shall be rejected or refused.

[19.26.2.9 NMAC - N, 1/31/2005]

19.26.2.10 APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER: Any appropriation of surface water initiated on or after March 19, 1907 requires a valid permit issued by the state engineer. Any person, firm, corporation, public or private, or any other entity intending to appropriate surface water shall file an application on a form prescribed by the state engineer. Except where a notice of intention is filed, the date of filing of an application for permit to appropriate establishes the priority of application. Application maps (see 19.26.2.25 NMAC), preliminary surveys, design data and additional information shall be included with an application to provide all essential facts relating to the request.

A. Form - content: An application to appropriate surface water shall be filed on a form prescribed by the state engineer. The application shall include the following information: the name and address of the applicant, the proposed use, the annual diversion of water requested for the proposed use, legal descriptions of the point of diversion and the place of use, the method of conveyance, the annual diversion schedule, and other information the state engineer may deem necessary. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system.

B. Filing fee: An application to appropriate surface water shall be accompanied with filing fees as follows:

(1) \$25 for a rate of diversion amount not to exceed five (5) cubic feet of water per second;

(2) \$25 plus \$5 for each additional cubic foot per second over five (5) cubic feet per second, unless the appropriation is for power generation purposes and the amount of water diverted is returned to the river bed in substantially undiminished quantity, in which case, the filing fee shall be \$25 plus \$1 for each additional cubic foot per second required;

(3) \$10 for each one thousand (1000) acre-feet, or fraction thereof, of storage capacity if the request is primarily for storage of excess and flood water;

(4) For a canal or other water conduit, \$25 where the capacity does not exceed fifty (50) cubic feet of water per second, and \$10 for each additional fifty (50) cubic feet per second or fraction thereof.

(5) Additional required fees for examining plans and specifications for dams and for inspection of dam sites are described in 19.25.12 NMAC.

[19.26.2.10 NMAC - N, 1/31/2005]

19.26.2.11 CHANGES TO DECLARED, PERMITTED, LICENSED OR ADJUDICATED RIGHTS:

Any change in point of diversion, place of use, or purpose of use of declared, permitted, licensed, or adjudicated surface water rights may be made only upon issuance of a permit by the state engineer. The owner of record of a water right must be the applicant or co-applicant on an application. An access agreement shall accompany an application if the applicant is not the owner of the land on which a new point of diversion is proposed.

A. Application for permit to change point of diversion: A permit from the state engineer is required to change any point of diversion. A point of diversion may be changed within a stream system without losing the priority of the right if such change can be made without detriment to existing surface water rights or impairment to existing ground water rights, and is not contrary to the conservation of water within the state nor detrimental to the public welfare of the state.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply for the move-from point of diversion, the source of water supply for the move-to point of diversion, the priority date

of the water right, the diversion amount, the consumptive use amount, the purpose of use, the reason for change, the legal description of the place of use, the location of the present point of diversion, the location of proposed point of diversion, and other information the state engineer deems necessary. The locations of the move-from and move-to points of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. An application for a change in point of diversion of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

(2) **Filing fee:** A fee of \$100 must accompany each application.

B. Application for permit to change place and/or purpose of use: A permit from the state engineer is required to change the place and/or purpose of use of all or any part of a water right. If the applicant is not the landowner, written consent by the owner of the land upon which water rights are appurtenant must accompany the application. Water rights may be transferred within a stream system without losing the priority of the right if such change can be made without detriment to existing surface water rights or impairment to existing ground water rights, and is not contrary to the conservation of water within the state nor detrimental to the public welfare of the state. For applications proposing to change the purpose of use, only the consumptive use established and available at the move-from location may be considered for transfer to the new purpose of use. In the context of permits and declarations, only that amount of water that has been legally placed to actual beneficial use may be considered for a change in place and or purpose of use.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. The application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply, the priority date of the water right, the location of the point(s) of diversion, the present diversion amount, the present consumptive use amount, the present purpose of use, the reason for change, the legal description of the present place of use, the proposed diversion amount, the proposed consumptive use amount, the proposed purpose of use, the legal description of the proposed place of use and other information the state engineer deems necessary. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. An application for a change in place and/or purpose of use of a water right into or out of an acequia or com-

munity ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

(2) **Filing fee:** A fee of \$100 must accompany each application.

(3) **Appurtenance:** No irrigation right shall be assigned or transferred apart from the land, and title to land may not be transferred apart from appurtenant water rights, except in the manner specifically provided in Sections 72-1-2, 72-5-22, and 72-5-23 NMSA.

C. Application for permit to drill and use a well to supplement a surface water right: Within declared underground water basins an application for a permit from the state engineer is required to drill a well and use the groundwater to supplement any part of a surface water right. Surface water rights may be supplemented with groundwater provided that groundwater is available for appropriation and such change can be made without impairment to existing water rights, is not contrary to conservation of water within the state, and is not detrimental to the public welfare of the state. In the context of declared, permitted, licensed, or adjudicated surface water rights, only that amount of water that has been historically and legally placed to beneficial use from the surface source may be supplemented with groundwater. In no event shall the combined diversion from the surface source and supplemental well exceed the historical supply. Upon approval of a supplemental well, the state engineer shall require metering and reporting of diversions from both sources.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of surface water supply, the priority date of the surface water right, the location of the surface water point of diversion, the diversion amount, the consumptive use amount, the purpose of use, the legal description of the place of use, the reason for the supplemental well, the location of the proposed well, and other information the state engineer deems necessary. The proposed supplemental well shall be described using latitude and longitude or the New Mexico state plane coordinate system. If an application lacks any of this information, it may be returned to the applicant for completion.

(2) **Filing fee:** A fee of \$100 must accompany an application.

(3) **Emergency supplemental wells:** Emergency authorization to drill and use a well to supplement a primary surface water rights is not authorized in statute and will not be considered.

D. Emergency change in

point of diversion, storage or use of an existing water right: Written authorization from the state engineer is required for an emergency change in point of diversion, storage, or use of water. Emergency authorization may be requested upon the filing of an application and an affidavit showing that an emergency exists in which the delay caused by awaiting publication or hearing would result in crop loss or other serious economic loss. The state engineer may grant the authorization if he determines, after preliminary review, that no foreseeable detriment will occur to existing water rights of other ownership. Within thirty (30) days of an authorization granted by the state engineer, if notice of the application has not already been published, the applicant shall publish the notice in accordance with 19.26.2.12 NMAC. The emergency authorization shall continue in effect as conditioned in the emergency authorization or until the state engineer enters a final decision on the application, whichever occurs first. The emergency authorization will be revoked upon violation of any condition of the emergency authorization. Issuance of the authorization does not obligate favorable consideration by the state engineer on the pending application. A request for an emergency change in the point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

E. Return flow credit:

Surface water return flow is that percentage of the total diversion of surface water that has been applied to beneficial use pursuant to a water right or permit and returned to the same surface water stream from which it was appropriated. In no instance may a return flow credit allow an increase in the authorized consumptive use amount, impair existing water rights, be contrary to the conservation of water within the state, or be detrimental to the public welfare of the state. A permit from the state engineer is required to receive return flow credit. An application for return flow shall be accompanied by a return flow plan. Upon review of a return flow application and plan, the state engineer may request additional information, correction, clarification, modification, or other revision as deemed necessary. The permittee has the final burden of demonstrating return flow. The state engineer may approve an application for return flow if the permitted, licensed, or adjudicated consumptive use amount is not increased, the return flow does not violate any applicable standards, regulations, or permits promulgated pursuant to the New Mexico Water Quality Act, or the federal Clean Water Act, and the requirements of

19.26.2.12 NMAC have been satisfied.

(1) Form - content: An application shall be filed on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply, the priority date of the water right, the location of point of diversion, the authorized diversion amount, the authorized consumptive use amount, the purpose of use, the legal description of the place of use, the proposed diversion amount, the location of the return flow back to the source, the measurement technique employed to quantify the total diversion, the measurement technique employed to quantify the return flow, proof of any applicable New Mexico environment department or other discharge permits, and other information the state engineer deems necessary. The location of the point of diversion and the location of return flow back to the source shall be described using latitude and longitude or the New Mexico state plane coordinate system.

(2) Filing fee: A fee of \$100 must accompany an application.

(3) Return flow plan: The permittee shall demonstrate any return flow claimed by submitting a return flow plan acceptable to the state engineer. The actual timing and amount of return flows shall be demonstrated by acceptable field measurement. The plan shall describe the hydrologic conditions and must substantiate the return flow sought by a method acceptable to the state engineer.

(4) Monitoring, reporting and continuing jurisdiction: All approved permits for return flow credit shall require monitoring and annual reporting. The state engineer shall retain jurisdiction over all return flow credit permits and may revise return flow credits as deemed appropriate. The amount of return flow credit may be administered on a year-to-year basis. Return flow credits shall not accrue and may not be carried over to the following year. In the event of changes in established patterns of water use, appropriately revised return flow plans may be required in order to receive continued consideration for return flow credit.

F. Additional application requirements for water rights associated with acequias or community ditches: In addition to the requirements of Subsections A, B, C, and D of 19.26.2.11 NMAC, an application for a change, including an emergency change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 and Sections 73-3-1 through 73-3-11 NMSA, shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA. The

documentary evidence shall include a copy of the applicant's written request to the commissioners of the acequia or community ditch for approval of the proposed change, together with the evidence that the request was delivered to the commissioners by certified mail; and one of the following:

(1) documentary evidence provided by the commissioners of the acequia or community ditch showing that the applicant has complied with all applicable requirements duly adopted by the acequia or community ditch pursuant to Sections 73-2-21 or 73-3-4.1 NMSA; or

(2) an affidavit provided by the commissioners of the acequia or community ditch stating that the acequia or community ditch has not adopted any requirements pursuant to Sections 73-2-21 or 73-3-4.1 NMSA; or

(3) an affidavit provided by the applicant stating that the acequia failed to make a decision in response to the applicant's written request for approval of the proposed change within one hundred and twenty (120) days after the applicant mailed the request to the commissioners by certified mail.

G. Additional changes requiring permit: Any other change requiring a permit from the state engineer not specifically covered by this section shall conform generally to this section and the rules and regulations of the office of the state engineer.

[19.26.2.11 NMAC - N, 1/31/2005]

19.26.2.12 APPLICATION PROCESSING: This section describes the process in which applications filed pursuant to 19.26.2.10 or 19.26.2.11 NMAC will be processed.

A. Return of application: The state engineer may return an application to the applicant, with a statement of corrections required, if the application is found to be faulty or incomplete. If the application is returned to the state engineer with the necessary information within sixty (60) days from the date the application is returned by the state engineer, the original filing date of the application shall be retained.

B. Rejection of application: When, after preliminary review of the information provided by the applicant, the state engineer is of the opinion that there is no unappropriated surface water available, or that the approval of the application would be contrary to the conservation of water within the state or detrimental to the public welfare of the state, or that the applicant has not complied with the applicable requirements of Section 72-5-24.1 NMSA, then the application shall be rejected. The state engineer shall decline to order the publication of notice of any such application.

C. Publication: After receipt of an acceptable application, the state engineer will issue a notice for publication to the applicant. The notice issued by the state engineer shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation - as prescribed by the state engineer - for every county affected. The notice will also be placed on the state engineer web-site (www.ose.state.nm.us). Only notices issued by the state engineer pursuant to Section 72-5-4 or Section 72-12-3 NMSA shall be valid. Prior to publication, the applicant shall ensure that the notice provides all essential facts pertaining to the application, including the location of the point(s) of diversion, the amount and timing of the diversion of water, the place of use, and the purpose for which the water is to be used. The applicant shall ensure the accuracy of publication of the notice in the newspaper. The responsibility for publication and all expenses associated with publication or republication shall be borne by the applicant. An affidavit of the publication shall be filed with the state engineer within sixty (60) days of the notice being issued to the applicant by the state engineer. Failure to file an affidavit of publication within the stated time shall result in the filing date of the application being postponed to the date the last affidavit is filed.

D. Amended notice and republication: If publication of the notice is defective, the state engineer may order republication. If an amendment is made to an application after publication of the original notice that changes the location of the point of diversion, requests a larger diversion amount or a larger consumptive use of water or changes the place or purpose of use of the water, the state engineer shall issue an amended notice and require the publication of the amended notice. Any republication cost or cost to publish an amended notice shall be paid by the applicant. An amended notice shall be published in accordance with the requirements of Subsection C of 19.26.2.12 NMAC.

E. Protest to application: Any person, firm, corporation or other entity objecting that the granting of the application will impair the objector's water rights shall have standing to file objections or protests. Any person, firm, corporation or other entity objecting that granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests. Pursuant to Section 72-5-5.1 NMSA, standing shall be afforded for those asserting legitimate concerns involving public welfare and conservation

of water in a manner which avoids unduly burdening the administrative and judicial process. All objections and protests shall set forth the grounds for asserting standing. All objections or protests failing to meet the above criteria for standing will not be recognized as valid protests. The state of New Mexico or any of its branches, agencies, and political subdivisions shall have standing to file objections or protests. The state engineer will mail one copy of the objections or protests to the applicant.

(1) Filing deadline: All objections and protests must be filed with the state engineer not later than ten (10) calendar days after the date of the last publication of the notice. If the final day for filing a protest falls on a weekend or a state of New Mexico recognized holiday, protests received on the next business day shall be deemed timely. All objections or protests filed after the ten-day period will not be recognized as valid protests.

(2) Filing an objection or protest by facsimile: Objections or protests may be filed via facsimile no later than 5:00 p.m. (mountain time) of the tenth calendar day after the date of last publication of notice, provided the original objections or protests are mailed and postmarked within twenty-four (24) hours after transmission of the facsimile. If the original objections or protests are not mailed and postmarked within twenty-four (24) hours of transmission, the protest will be deemed untimely, and will not be recognized by the state engineer as a valid protest.

(3) Hearing before the state engineer: The state engineer encourages the parties to resolve the objection or protest. If the applicant and protestant cannot reach agreement by which the protest can be withdrawn, the matter shall proceed to hearing as described in 19.25.2 and 19.25.4 NMAC, unless the state engineer determines that the application should be denied, in which case the state engineer may deny the application prior to holding a hearing.

F. Action of the state engineer - protested application:

(1) Denial of application: The state engineer may deny a protested application, prior to or after holding a hearing, if the state engineer determined one or more of the following:

- (a)** No water right exists.
- (b)** Granting the application would be detrimental to or impair existing water rights.
- (c)** Granting the application would be contrary to the conservation of water within the state.
- (d)** Granting the application would be detrimental to the public welfare of the state.
- (e)** For a new appropriation,

available information indicates that there is no unappropriated surface water.

(2) Permits - conditions of approval: The state engineer may approve a protested application after holding a hearing and may impose reasonable conditions of approval.

G. Withdrawal of application: An applicant may request in writing that an application be withdrawn. A withdrawn application is not subject to reinstatement, although the applicant may refile the application or a similar application at a later date. A copy of the withdrawn application remains part of the public record. A protested application may not be withdrawn and refiled for the purpose of removing a standing protest. When a protested application is withdrawn and the same or similar application is filed within one calendar year of the withdrawal date, the state engineer will attempt to notify the previous protestant(s) of the refiled application. The withdrawal of an application that is currently in the hearing process before the state engineer may only be withdrawn pursuant to 19.25.2 NMAC.

H. Action of the state engineer - unprotested application: After receipt of an affidavit of publication for an application to which no timely protest was received or remains, the state engineer will act on the application.

(1) Denial of application: The state engineer shall deny an application if the state engineer makes any of the five determinations listed in Paragraph 1 of Subsection F of 19.26.2.12 NMAC.

(2) Permits - conditions of approval: The state engineer may approve an application and may impose reasonable conditions of approval including measurement at the point of diversion. The state engineer retains jurisdiction of all permits.

I. Request to set aside decision for reconsideration or hearing: Upon receipt of notice from the state engineer of the decision on an application, if the permittee is aggrieved by any of the conditions of approval, the permittee may within thirty (30) calendar days of such receipt request in writing that the decision be set aside for the purpose of reconsideration or hearing. The state engineer may issue an order setting aside all or part of his decision for the purpose of reconsideration or hearing. That part of the permit which is set aside shall revert to application status and may not be exercised.

(1) State engineer order to set aside decision for the purpose of reconsideration: At the request of the permittee, the state engineer may issue an order setting aside all or part of his decision for the purpose of reconsideration. If additional information is to be submitted for reconsideration, the order shall specify the time

allowed for submission. Failure to submit information within the specified time shall result in reinstatement of the original decision. Upon receipt of notice from the state engineer of the decision on a reconsideration of an application, if the permittee is aggrieved by the decision, the permittee may within thirty (30) calendar days of such receipt request in writing that the decision be set aside for the purpose of hearing in accordance with 19.25.2 and 19.25.4 NMAC.

(2) State engineer order to set aside decision for the purpose of hearing:

At the request of the permittee, the state engineer shall issue an order setting aside all or part of his decision for the purpose of hearing. After the state engineer issues an order setting aside all or part of his decision for the purpose of hearing in accordance with 19.25.2 and 19.25.4 NMAC.

[19.26.2.12 NMAC - N, 1/31/2005]

19.26.2.13 PERMITS: Upon state engineer approval an application becomes a permit. A permit allows the permittee to place water to beneficial use in accordance with the permit conditions of approval.

A. Construction of works and proof of completion: No works for the storage, diversion, or carriage of water may be constructed or substantially modified except in accordance with the permit conditions of approval. Any such construction or modification must be supervised by a professional engineer, registered in the state of New Mexico, unless the state engineer in his discretion expressly waives this requirement. On or before the date set in the permit for the completion of works, the permittee shall notify the state engineer that work has been completed by filing with the state engineer proof of completion of works.

(1) Form - content: The permittee shall submit proof of completion of works on a form prescribed by the state engineer. The form shall include the following information: the name and address of the permittee, the pertinent state engineer file number(s), the source of water supply, the name of the stream system, the location of point of diversion, a description of the constructed works - including diversion dams, storage dams, main canals, headgates, pipelines, flumes, reservoirs, and laterals, the date the construction of works was completed, a description of rights-of-way, and other information the state engineer deems necessary. The point(s) of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If the proof of completion form filed by the permittee lacks any of this information, it may be returned for completion.

(2) Filing fee: A fee of \$25 must accompany a proof of completion of works.

(3) Unsafe or defective construction: Upon submission of a proof of completion of works, the state engineer will order the inspection of the works after notice to the permittee. At any time before or after issuance of a certificate of construction, the state engineer may order the inspection of the works after notice to the permittee. If the state engineer determines after inspection that the works for the storage, diversion, or carriage of water are unsafe or do not comply with the permit conditions of approval, the state engineer may require the permittee to make necessary changes within a reasonable time.

(4) Certificate of construction: Upon completion of the works to the satisfaction of the state engineer, the state engineer will issue a certificate of construction, which shall describe the constructed works, the location of the point(s) of diversion, the capacities of the works for the storage, diversion, or carriage of water, and certify the adequacy of the works for the permitted uses.

B. Proof of application of water to beneficial use: Upon applying water to beneficial use as provided by the permit, on or before the due date set by the permit, the permittee shall file with the state engineer proof of application of water to beneficial use. The beneficial use of water must be in accordance with the permit conditions of approval. Once a proof of application of water to beneficial use has been filed, the water right shall be limited to the amount of water that has been put to beneficial use, and no further development of the water right may occur.

(1) Form - content: The permittee shall submit proof of application of water to beneficial use on a form prescribed by the state engineer. The form shall include the following information: the name and address of permittee, the pertinent state engineer file number(s), the source of water supply, the name of the stream system, the location of the point(s) of diversion, the location of the place of use, the purpose of use to which the water is being beneficially applied, the annual diversion of water, the method of conveyance, the annual diversion schedule, and other information the state engineer may deem necessary. The point(s) of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If the form filed by the permittee lacks any of this information, it may be returned for completion.

(2) Filing fee: A fee of \$25 must accompany a proof of application of water to beneficial use.

(3) Survey plat: A survey shall be conducted in accordance with the requirements of 19.26.2.26 NMAC of the

diversion works and place of use of the water by a surveyor or professional engineer registered in the state of New Mexico. The permittee shall submit a plat of the survey with the proof of beneficial use.

C. Application for extension of time: When a permittee is unable to construct the necessary works or apply water to beneficial use within the time authorized, the permittee may file with the state engineer an application for extension of time. The application shall state all reasons for the request for additional time, describe the works which have been completed, the extent of application of water to beneficial use under the permit at the time of the request, and a plan setting forth the dates when the project will be completed or when the total amount of water to be appropriated under the permit will be applied to beneficial use. The application may be accompanied by affidavits, photographs of works completed, or other information supporting the request. The state engineer may grant an extension of time upon a proper showing of due diligence or reasonable cause for delay, or upon the state engineer finding that it is in the public interest to allow additional time. Financial inability of the permittee to proceed with a project is not a sufficient reason for granting an extension of time. Failure of the permittee to provide a proper showing of due diligence or reasonable cause for delay as described in Section 72-5-28 NMSA, shall result in denial of the extension of time. Denied requests for extension of time may be appealed as provided in Subsection I of 19.26.2.12 NMAC. The water right established shall be limited by that amount of water lawfully applied to beneficial use pursuant to the terms of the permit. Failure to file proof of beneficial use within the time allotted by the state engineer shall result in cancellation of the permit.

(1) Term: An extension of time may be granted for a period not to exceed three (3) years. Except as provided in Subsections F and G of 19.26.2.19 NMAC, no extensions of time shall be granted which in combination extend the time allowed by the permit beyond ten (10) years from the initial date of approval of the application, unless the state engineer in his discretion expressly waives this limitation pursuant to Section 72-5-14 NMSA. For applications for extension of time for filing proof of completion of works, the state engineer may upon the request of the applicant allow additional time for the completion of works equal to the time during which work was prevented by acts of God, operation of law, or other causes beyond the control of the applicant. For applications for new appropriations pursuant to Subsection G of 19.26.2.19 NMAC, and for application for water rights transferred pursuant to

Subsection F of 19.26.2.19 NMAC, no extensions of time shall be granted which in combination extend the time allowed by the permit beyond forty (40) years from the date the application was filed at the office of the state engineer.

(2) Form - content: The permittee shall submit an application for extension of time on a form prescribed by the state engineer. The form shall include the following information: the name and address of the permittee, the pertinent state engineer file number(s), the reason(s) for requesting additional time under which to complete constructed works or apply water to beneficial use, a plan setting forth the dates when the project will be completed or when the total amount of water to be appropriated under the permit will be applied to beneficial use, a description of the works which have been completed and the extent of application of water to beneficial use under the permit at the time of the request, and other information the state engineer may deem necessary. If an application lacks any of this information, it may be returned for completion. The application may be accompanied by affidavits, photographs of works completed, or other information supporting the request.

(3) Filing fee: A fee of \$50 must accompany an application for extension of time.

D. License to appropriate: After notice to the permittee, the state engineer or his designee may perform a field inspection of the permittee's application of water to beneficial use. Upon application of water to beneficial use in accordance with the permit conditions of approval the state engineer will issue a license to appropriate water, which shall define the extent and conditions of use under which the water right has been established. A license to appropriate shall recognize a water right only to the extent water has been applied to beneficial use under the conditions of the permit, and shall not recognize any diversion of water that exceeds the permit conditions of approval. A license may be revoked for failure to comply with the terms of the license.

E. Cancellation of permit: The state engineer may cancel a permit upon failure of a permittee to comply with the permit conditions of approval or any applicable provisions of 19.26.2 NMAC or Chapter 72 NMSA. The state engineer may also cancel a permit upon request from the permittee. Upon final cancellation of a permit, the water subject to the permit reverts to the public.

[19.26.2.13 NMAC - N, 1/31/2005]

19.26.2.14 LIVESTOCK WATER IMPOUNDMENTS: A permit is required to impound surface water for

watering livestock. If the proposed impoundment is created by a dam that exceeds ten feet in height measured from the lowest point on the downstream toe to the dam crest, or exceeds ten acre-feet in storage capacity, the applicant shall comply with the applicable dam construction requirements in 19.25.12 NMAC. Watering of livestock does not include the impoundment of surface or groundwater in any amount for fishing, fish propagation, recreation, or aesthetic purposes.

A. Form - content: An application for permit for livestock water impoundment shall be filed on a form prescribed by the state engineer. The application shall include the following information: the name and mailing address of the applicant, owner of land on which the livestock water impoundment will be constructed, proof of permission from land owner (if other than applicant) to construct a livestock water impoundment, name of the livestock water impoundment, location of the livestock water impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, name of the watercourse, maximum depth of the livestock water impoundment, height of dam and height of spillway from the lowest natural ground surface on the downstream side to the dam crest, surface area and storage capacity of the impoundment at lowest spillway elevation, map illustrating location of proposed livestock water impoundment and source of water, type of stock, amount of stock, other sources of water locally available for stock watering, and any other information deemed necessary by the state engineer. If an application lacks any of this information, it may be returned to the applicant for completion.

B. Filing fee: A fee of \$10 must accompany the application for a livestock water impoundment.

C. Return or rejection of an application: After reviewing each application, the state engineer will notify the applicant if any deficiencies are found with the application. The applicant will be given an opportunity to correct any deficiencies noted in the application. All deficiencies noted by the state engineer shall be corrected prior to acceptance and action on the proposed application for livestock water impoundment.

D. Action of the state engineer: The state engineer shall approve an application if, after review, the state engineer is of the opinion that the proposed use qualifies as a livestock water impoundment by meeting the following requirements: the impoundment is not fed by or located on a perennial stream, the impoundment is used for stock watering, and the capacity of impoundment is 10 acre-feet or less. The state engineer may take into

account the maximum amount of water required per livestock unit and shall take into account regional and climatic conditions that affect consumption. The state engineer may impose reasonable conditions of approval. An application may be denied if the state engineer is of the opinion that the proposed impoundment does not qualify as a livestock water impoundment. A permit to appropriate water must be obtained pursuant to Section 19.26.2.10 or 19.26.2.11 NMAC if the proposed impoundment is located on or fed by a perennial stream or if the capacity of the impoundment exceeds 10 acre-feet.

E. Proof of construction: No works may be constructed or modified except in accordance with the permit conditions of approval. Upon completion of a livestock water impoundment, a statement of completion of construction shall be filed with the state engineer on a form prescribed by the state engineer. Said statement of completion shall be filed within one year of approval or the permit shall automatically expire. An expired permit shall not be subject to reinstatement.

F. Declaration of existing livestock water impoundments: Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source, may file a declaration on a form prescribed by the state engineer pursuant to 19.26.2.8 NMAC. Any person, firm or corporation claiming to be the owner of a livestock water impoundment where the impoundment was created after March 19, 1907 but before May 19, 2004, may file a declaration of existing livestock water impoundment, provided the storage capacity is less than ten acre-feet. The declaration shall set forth the history and continuity of the beneficial use to which said water has been applied. A declaration may be accompanied by a map prepared pursuant to 19.26.2.26 NMAC and may be accompanied by deeds, survey plats, affidavits and other evidence tending to substantiate the claim. If such supporting documents are filed with the state engineer, they will be filed together with the declaration. The declaration may be filed by the declarant on his personal information and belief. No declarations will be accepted for filing within any stream system where an adjudication court has entered an order or decree that operates to bar such claims.

(1) Form - content: A declaration of livestock water impoundment shall be filed on a form prescribed by the state engineer. The declaration shall include the following information: the name and mailing address of the declarant, owner of land on which the livestock water impoundment is located, proof of permission from land owner (if other than declarant) to construct a

livestock water impoundment, name of the livestock water impoundment, location of the livestock water impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, name of the watercourse, maximum depth of the livestock water impoundment, height of dam and height of spillway from the lowest natural ground surface on the downstream side to the dam crest, surface area and storage capacity of the impoundment at lowest spillway elevation, map illustrating location of the livestock water impoundment and source of water, type of stock, amount of stock, other sources of water, quantity of water used, the date of construction, the date water was first applied to beneficial use and the continuity thereof, and any other information deemed necessary by the state engineer. The declarant shall sign the declaration before a notary. If a declaration lacks any of this information, it may be returned to the declarant for completion.

(2) Filing fee: A fee of \$10 must accompany the declaration for a livestock water impoundment.
[19.26.2.14 NMAC - N, 1/31/2005]

19.26.2.15 PONDS AND OTHER

IMPOUNDMENTS: A permit is required to capture or store surface water in an impoundment. An application to capture and store surface water shall be filed pursuant to 19.26.2.10 NMAC or 19.26.2.11 NMAC unless the impoundment of water is authorized as a livestock watering impoundment under 19.26.2.14 NMAC. A permit to appropriate water is required for an impoundment created by constructed works, sand and gravel operations, or mining operations, including excavations that fill with water. Dams exceeding 10 feet in height or that can store in excess of 10 acre-feet shall meet the requirements of 19.25.12 NMAC.

A. Form - content: An application for an impoundment shall be filed pursuant to the requirements of 19.26.2.10 NMAC or 19.26.2.11 NMAC. In addition to the information required for an application filed under 19.26.2.10 NMAC or 19.26.2.11 NMAC, an application for a pond or other impoundment shall also include: the name of the proposed impoundment, the location of the impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, the maximum depth of the impoundment, the perimeter of the impoundment, the maximum surface area, the estimation of annual evaporative losses, the slope(s) of the interior basin, the outlet conduit size and slope, a table showing the stage, surface area and storage capacity of the impoundment, and the time to empty the impoundment.

B. Flood control: No permit to appropriate water is required for an impoundment when the primary purpose of the impoundment is flood control, provided the outlet drains the impoundment (from the spillway crest) in 96 hours. The water shall not be detained in the impoundment in excess of 96 hours unless the state engineer has issued a waiver to the owner of the impoundment.

[19.26.2.15 NMAC - N, 1/31/2005]

19.26.2.16 [RESERVED]

19.26.2.17 CHANGE OF OWNERSHIP:

In the event of any changes of ownership affecting the title to a declaration, permit, license, or adjudicated water right, the new owner shall file a change of ownership form with the state engineer. The new owner shall file a separate change of ownership for each declaration, permit, license, or adjudicated water right of record filed with the state engineer. Upon acceptance by the state engineer for filing, the new owner shall record a copy of the change of ownership form filed with the state engineer with the clerk of the county in which the declaration, permit, license, or adjudicated water right is located.

A. Form - content: The new owner shall file a change of ownership in duplicate on a form prescribed by the state engineer. A change of ownership shall include the following information: the name of the owner of record, the name and address of the new owner, the state engineer file number, the diversion amount, the consumptive use amount, the purpose of use, the legal description of the place of use, the priority date(s), and any other information the state engineer deems necessary. The new owner shall sign each form before a notary. If a change of ownership form lacks any of this information, it may be returned for completion.

B. Filing fee: A fee of \$5 must accompany a change of ownership form.

C. Proof of ownership: The new owner shall attach to the change of ownership form a copy of a warranty deed or other instrument of conveyance that has been duly recorded with the clerk of the county in which the declaration, permit, license, or adjudicated water right is located. The warranty deed or other instrument of conveyance shall show the ownership of the declaration, permit, license, or adjudicated water right in the name of the new owner. The state engineer will not accept for filing a change of ownership form that is not accompanied by a recorded instrument of conveyance.

(1) Acceptable instruments of conveyance for the purposes of this section include, but are not limited to, warranty

deeds, special warranty deeds, quitclaim deeds, personal representative's deeds, special master's deeds, and tax deeds, where such instruments unconditionally convey present title to the declaration, permit, license, or adjudicated water right.

(2) Real estate installment sales contracts or memoranda of such contracts, mortgages, instruments conveying security interests, or other documents that do not on their face unconditionally convey present title to the declaration, permit, license, or adjudicated water right are not acceptable instruments of conveyance for the purposes of this section.

D. Effect: A change of ownership form filed with the state engineer notifies the state engineer that a change in ownership has been effected by a legal instrument of conveyance. Acceptance of a change of ownership form by the state engineer for filing does not constitute approval by the state engineer of either the validity of the conveyance or the validity of the right conveyed.

E. Appurtenance: Except as otherwise provided by written contract between the owner of the land and the owner of a ditch, reservoir, or other works for the storage or conveyance of water, all surface waters appropriated for irrigation purposes are appurtenant to the land upon which they are used by operation of Sections 72-1-2 and 72-5-23 NMSA. No irrigation water right appurtenant to the land irrigated shall be assigned or conveyed apart from the land unless it is expressly severed from the land in the manner provided by law.

[19.26.2.17 NMAC - N, 1/31/2005]

19.26.2.18 LEASE OF WATER

RIGHTS: An owner of a water right may lease all or any part of their right for a period not to exceed ten (10) years pursuant to Section 72-6-3 NMSA except that a water right may be leased for a period not to exceed forty years by a forty year planning entity as provided in Section 72-1-9 NMSA. Transfers of agricultural water to municipal/industrial use pursuant to Section 73-10-48 NMSA will be covered by rules and regulations promulgated pursuant to the statute. Prior to the use of water pursuant to a lease, if the proposed point of diversion or place or purpose of use differs from that of the owner's water right in any respect, a permit must be obtained from the state engineer for the term of the lease. The procedure for filing an application shall be the same as described in 19.26.2.11 NMAC. The amount of water that an owner/lessor may use during the term of a lease shall be reduced by the amount of water so leased. Upon termination of such a lease, the point of diversion and place and purpose of use subject to the lease shall revert to the

owner's original point of diversion and place and purpose of use. Renewal of a lease shall require a new application, unless a longer period has been previously applied for, advertised, and approved by the state engineer.

[19.26.2.18 NMAC - N, 1/31/2005]

19.26.2.19 WATER DEVELOPMENT PLANS: A forty-year planning entity shall be allowed a water use planning period, not to exceed forty years, to acquire and hold water rights pursuant to Section 72-1-9 NMSA. A water development plan may be filed at any time. If a plan is not already on file, a water development plan shall be filed with an application to appropriate water or transfer a water right where the water right will be held unused or undeveloped pursuant to the plan.

A. Planning period: The water rights of a forty-year planning entity subject to this section shall be based upon the reasonably projected additional needs for water within forty years set out in a water development plan. The implementation of the plan shall not exceed a forty-year period from the date the forty-year planning entity files with the state engineer an application to change the place or purpose of use of a water right pursuant to the plan or an application for a new appropriation pursuant to the plan.

B. Water development plan - content: A water development plan shall include the following information: the name and address of the owner of record of the water rights subject to the plan, a summary of all water rights subject to the plan, the place and purpose of use of the identified water rights, the historical and current water use, the historical and existing population served by the identified water rights, reasonable population projections, implemented water conservation measures, planned water conservation measures, a summary of the per capita water use including a comparison with the per capita water use of other similar forty-year planning entities, reasonably projected additional needs - taking into account the variability of surface water supply and the sustainability of groundwater supply - for water within forty years, and any other information the state engineer deems necessary. If a development plan lacks any of this information, it may be returned to the forty-year planning entity for completion.

C. Filing fee: A fee of \$100 must accompany a water development plan.

D. Return of plan: The state engineer may return the plan to the forty-year planning entity, with a statement of corrections required, if it is found to be faulty or incomplete.

E. Approval of plan:

Upon review of the plan, if the state engineer finds the plan to be reasonable, the plan and projected needs of the planning entity will be approved by the state engineer. Notification of the approval shall be given to the planning entity.

F. Water rights held pursuant to plan: For permits for water rights acquired by forty-year planning entities pursuant to a forty-year plan, the state engineer may grant extensions of time which in combination extend the time allowed by the permit up to forty (40) years from the date of the application where:

(1) the planning entity acquires and holds the water right pursuant to a water development plan approved by the state engineer; and

(2) upon acquisition of the water right it files with the state engineer an application to change the place or purpose of use of the water right pursuant to the water development plan; and

(3) the quantity of water associated with the water right, together with the quantity of water associated with the other water rights and permits held pursuant to the plan, does not exceed the reasonably projected additional needs for water within forty years set out in the plan.

G. Permits for new appropriations held pursuant to plan:

For permits for new appropriations for forty-year planning entities, the state engineer may grant extensions of time which in combination extend the time allowed by the permit up to forty (40) years from the date of the application where:

(1) the application is filed and the permit will be held pursuant to a water development plan approved by the state engineer; and

(2) the quantity of water authorized in the permit, together with the quantity of water associated with the water rights and other permits held pursuant to the plan, does not exceed the reasonably projected additional needs for water within the forty years set out in the plan.

[19.26.2.19 NMAC - N, 1/31/2005][RTF bookmark end: OLE_LINK1]

19.26.2.20 FORFEITURE AND ABANDONMENT OF A WATER RIGHT:

A water right may be lost for nonuse in two ways. First, the right may be forfeited pursuant to Section 72-5-28 NMSA or Section 72-12-8 NMSA. Alternatively, the right may be abandoned. Abandonment is a judicial doctrine.

A. Forfeiture: All or any part of a water right is subject to forfeiture when a person entitled to the use of water fails to apply water to beneficial use for a period of four or more consecutive years. If the state engineer determines that a water

right is subject to forfeiture, the water right owner will be sent a notice and declaration of nonuse by certified mail. If failure to apply water to its associated beneficial use persists for one year after receipt of notice and declaration of nonuse given by the state engineer the water right will be forfeited and the unused water shall revert to the public. The requirement for an issuance of a notice and declaration of nonuse by the state engineer shall not apply to water that has reverted to the public by operation of law prior to June 1, 1965 (see Sections 72-5-28 and 72-12-8 NMSA). Periods of non-use for the following reasons shall not be applied towards the four or more consecutive year period required for a water right to be subject to forfeiture:

(1) Despite the diligent effort on the part of the water right owner, circumstances beyond the control of the water right owner have prevented the application of water to beneficial use.

(2) The state engineer has granted an extension of time in which to apply water to beneficial use.

(3) The water is part of a state engineer approved water development plan (see 19.26.2.19 NMAC).

(4) The water right owner is on active duty in the armed forces of the United States of America.

(5) The water right is acquired and placed in a state engineer approved water conservation program.

(6) The water right is appurtenant to irrigated farm lands which have been placed under the acreage reserve or conservation reserve program provided by the Food Security Act of 1985, P.L. 99-108.

B. Abandonment:

Common law abandonment of a water right requires both the nonuse of water by a person entitled to such use and the intent to abandon the right. Whether or not a court would determine that a water right has been abandoned depends on the facts and circumstances in each particular case. The intent to abandon the right may be express or may be inferred from the acts of the water right owner. In making such determination, the state engineer is not adjudicating a right, but merely making a threshold administrative determination of the validity and existence of the underlying water right. Nonuse for an unreasonable period of time establishes a presumption of abandonment and prima facie evidence of the intention to abandon the right. To rebut a presumption of abandonment a person must establish not merely their expressions of desire or hope or intent, but some fact or condition excusing the period of nonuse.

[19.26.2.20 NMAC - N, 1/31/2005]

19.26.2.21 - 19.26.2.24 [RESERVED]

19.26.2.25 APPLICATION MAPS: An application for appropriation, change in point of diversion or change in place and/or purpose of use shall require a map delineating the proposal described in the application. The map shall include a description of all lands, point(s) of diversion, place(s) of use, accurate locations of canals and streams, and other relevant features included in the application. In general, maps accepted by the state engineer are: irrigation and conservancy district maps, maps prepared by a licensed professional surveyor or engineer, and state engineer hydrographic survey maps. Plan drawings and maps prepared with the aid of a computer shall be submitted with a copy of the digital data files in a format acceptable to the state engineer.
 [19.26.2.25 NMAC - N, 1/31/2005]

19.26.2.26 FORMAT FOR PLAN DRAWINGS, PROOF OF BENEFICIAL USE AND DECLARATION MAPS: All plan drawings, proof of beneficial use maps, and declaration maps filed with the state engineer shall meet the requirements listed below. Proof of beneficial use maps and declaration maps shall be prepared by either a licensed professional surveyor or licensed professional engineer in the state of New Mexico. Plan drawings and maps prepared with the aid of a computer shall be submitted with a copy of the digital data files in a format acceptable to the state engineer.

A. Map quality: Plan drawings and maps shall be made from actual field or photogrammetric surveys of an accuracy acceptable to the state engineer. Plan drawings and maps shall be prepared with permanent black ink on mylar. All original signatures, dates, and acknowledgments appearing on the sheet(s) shall be in permanent ink. If more than one sheet is required, each shall be numbered in sequence (example: Sheet 1 of 3). Plan drawings and maps shall always be rolled - never folded - for transmittal.

B. Scale and size: Mylar sheets shall be twenty-four (24) inches by thirty-six (36) inches with one (1) inch margins on all sides unless otherwise specified by the state engineer. The scale(s) used on the drawings may vary according to requirements and space available to show all necessary data in detail clearly in feet and decimals. Detailed dimensions of structures, headgates, drops, etc. shall be given in feet and 1/10th of a foot or inches.

C. Map details: The following information is required on declaration and proof of beneficial use maps.

(1) Title sheet: The following title shall be placed on and made a part of the first sheet:

MAP
of the

_____)
(name of system: ditch, ditch & reservoir, irrigation, power, etc.)

_____, Applicant/Declarant/Permit Holder

State Engineer File Number(s): _____

Located in _____ County, State of New Mexico.

Scale of Map: 1 inch = _____ feet.

The undersigned,

_____)
whose address is: _____)
Zip Code _____, County of _____, State of _____

(2) Location of point of diversion: The location of the point of diversion on the stream, whether supplying water to direct diversion to a ditch or to an off-channel reservoir, shall be identified on the drawings as follows:

The headgate, which is the point of diversion from _____ (river, creek, spring, arroyo) from which the works derive their water supply, is located as follows _____ (latitude) and _____ (longitude) or X = _____ and Y = _____, (New Mexico state plane coordinate system), NAD _____.

(3) Acreage irrigated, to be irrigated, or retired: Acreage irrigated or retired from irrigation shall be clearly indicated on the maps. Cross-hatching the subject area on the location map is preferred. A written description of the location of the acreage, acceptable to the state engineer, shall be provided.

D. Orientation and date: The direction of north and the basis of bearings shall be shown on all maps. The date that field surveys are made or the date of the aerial photography used shall be shown on the maps.

E. Vicinity map: A vicinity map of sufficient scale and size to locate the pertinent area shall be shown on the maps and/or plan drawings.

F. Surveyor's certification and seal: A licensed professional surveyor preparing maps shall place on the first sheet the certificate shown below and the certificate shall be signed. The surveyor's license number and the seal impression shall accompany the certificate.

State of New Mexico)
) ss.
County of _____)

I, _____, hereby certify that I am licensed professional surveyor and that the accompanying maps were prepared by me or under my direction, and that the same are true and correct to the best of my knowledge and belief.

Licensed Professional Surveyor

License Number: _____
Date Submitted: _____

G. Engineer's certification and seal: A licensed professional engineer preparing maps, plan drawings, or specifications shall place on the first sheet of the map or plan drawings and the first page of the specifications the certificate shown below and the certificate shall be signed. The engineer's license number and the seal impression shall accompany the certificate.

State of New Mexico)
) ss.
County of _____)

I, _____, hereby certify that I am a licensed professional engineer, qualified in _____ (agricultural, civil, geological etc.) engineering and that the accompanying _____ (maps, drawings or specifications) were prepared by me or under my direction, and that the same are true and correct to the best of my knowledge and belief.

Licensed Professional Engineer

License Number: _____
Date Submitted: _____

H. Owner's certificate: An owner's certificate shall be placed on the first sheet of the plan drawings and shall be signed by the owner and acknowledged by a notary public.

State of New Mexico)
) ss.
County of _____)

I, _____, being first duly sworn, upon my oath, state that I have read and examined the accompanying drawings and statements, (consisting of _____ sheets) and know the contents thereof and representations thereon, and all that is shown hereon is done with my free consent and in accordance with my wishes and state that the same are true to the best of my knowledge and belief.

Owner

Subscribed and sworn to before me this _____ day of _____, 20 ____

Notary Public

My commission expires _____ (SEAL)

If a claimant is a corporation, political subdivision or other governmental entity the following shall be used:

State of New Mexico)
) ss.
County of _____)

I, _____, being first duly sworn, upon my oath, state than I am the _____ (officer) of _____, a corporation duly organized under the laws of the State of _____, and that the accompanying drawings and statements, (consisting of _____ sheets) were made under authority of the Board of Directors of said Corporation, and that, in their behalf, I have read and examined the statements and representations thereon and all that is shown hereon is done with their free consent and in accordance with their wishes and state that the same are true to the best of my knowledge and belief.

Representative, Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires _____ (SEAL)

I. State engineer's certificate: A certificate form for the state engineer approval shall be placed on the first sheet of the maps, plan drawings, and the specifications. This certificate is to be signed by the state engineer after all necessary corrections or additions, if any, have been made.

State of New Mexico)
) ss.
 County of _____)

I hereby certify that the accompanying _____ (map, plans, specifications) have been duly examined by me and accepted for filing on the _____ day of _____, 20 ____.

 State Engineer

J. Reproduction fees: Copies of maps and plan drawings on record with the state engineer may be purchased at a cost of fifteen dollars (\$15) for each sheet.
 [19.26.2.26 NMAC - N, 1/31/2005]

19.26.2.27 LIBERAL CONSTRUCTION: This part shall be liberally construed to carry out its purpose.
 [19.26.2.27 NMAC - N, 1/31/2005]

19.26.2.28 SEVERABILITY: If any portion of this part is found to be invalid, the remaining portion of this part shall remain in force and not be affected.
 [19.26.2.28 NMAC - N, 1/31/2005]

**NEW MEXICO
 DEPARTMENT OF GAME
 AND FISH**

This is an amendment to 19.30.5 NMAC, Sections 8, 9, and 10, effective January 31, 2005.

19.30.5.8 SYSTEM PROCEDURE:

A. Establishing the number of elk licenses: The director, will establish the number of elk licenses within game management units through use of the elk allocation system as described herein.

B. Criteria for establishing the numbers: The criteria for establishing numbers of elk licenses within each unit will be elk distribution, herd objectives, estimated elk populations, estimated elk occupied habitat, relative elk densities, past harvest data, and estimated population trends.

C. Setting of authorization numbers: District wildlife officers and/or game managers will evaluate landowners' requests for private land authorization certificates in accordance with the above procedures. The game managers will use the established formula to set the number of authorization certificates for each ranch.

D. Public land elk licenses will be set for each unit as follows:

(1) Number of elk to be harvested multiplied by the percent public land equals public land elk harvest.

(2) Public land elk harvest divided by public land hunter success equals

public elk licenses.

E. Private land elk authorizations will be set for each unit as follows:

(1) Number of elk to be harvested multiplied by percent private land equals private elk harvest.

(2) Private land elk harvest divided by private land hunter success equals private land elk authorizations.

F. Elk licenses per ranch will be set as follows:

(1) Occupied ranch deeded acres multiplied by relative elk densities or relative ranch factor equals ranch weighted acres.

(2) Ranch weighted acres divided by total ranch weighted acres equals percent occupied weighted acres.

(3) Percent occupied weighted acres multiplied by private land authorizations equals licenses per ranch.

G. Setting ranch-only authorizations for units 47, 54, 55A, 56A, 57 and 58: In big game management units 47, 54, 55A, 56A, 57 and 58, the department will set the appropriate numbers and bag limits for ranch-only authorization certificates needed to achieve the desired and proper harvest within the exterior boundaries of designated ranches.

H. Setting ranch-only authorizations for ranches of 10,000 acres: In all big game management units (except 46, 47, 54, 55, 56A, 57, 58 and all unlimited elk units) the department will have the option of exempting large ranches from the formula in Subsection F. In those cases, the department will set the appropriate numbers and bag limits of each ranch-

only authorization certificates needed to achieve the desired and proper harvest within the exterior boundaries of designated ranches. The estimated harvest for these ranches per unit will be subtracted from the unit's private land elk harvest. The number of authorization certificates allocated to these ranches shall be negotiated and allocated to each ranch as appropriate to achieve that unit's herd objective. The criteria for participation in this subsection are:

(1) deeded land must be a minimum of 10,000 contiguous acres;

(2) participant must engage into a written contract with the department for a period of up to five years; and

(3) in collaboration with department staff, participants shall submit a management plan outlining the landowner's elk management and harvest desires, estimated herd population and structure, a current evaluation of game habitat, proposed actions to be taken to address nuisance elk issues on the ranch and within the unit, and a commitment to harvest elk on their properties to strive to attain that unit's herd objective and as such, landowner shall submit to the department the harvest on the ranch on or before ~~April 1 annually~~ **February 1st annually unless a later date is approved by the director and chairman of the state game commission.**

I. [Reserved]

J. Public and private land permits for sub-unit 5A: Public elk permits issued in sub-unit 5A are valid only on public land within sub-unit 5A. Private land elk authorization certificates

issued in sub-unit 5A are valid only on the private land for which they were issued and on other private land within sub-unit 5A when the authorization certificate holder has written permission from the landowner, or person in control of the land, to access that private property.

K. Private land permits for units 4, 46, and all unlimited elk units: Private land authorization certificates issued in units 4, 46, and all unlimited elk units are valid only on the private property for which they were issued and on other private land within the unit for which they are issued when the permit holder has written permission from the landowner, or person in control of the land, to access that private property. A unit 4 cooperative pilot project shall be created for the purpose of redistributing authorization certificates to a community - based cooperative (cooperative) group as established in a memorandum of understanding between the department and the cooperative. The cooperative will oversee the redistribution of the reissued authorization certificates to landowners who are current active participants of the elk landowner sign-up system.

L. Landowner UNIT-WIDE option: All private-land authorizations issued will be ranch only. However, in applicable units each participating landowner or agent has the option to sign an agreement with the New Mexico department of game and fish designating the ranch as UNIT-WIDE. Under the UNIT-WIDE option, elk licenses obtained with landowner authorization certificates will be valid for use on all unit-wide ranches and public lands throughout the unit during corresponding public hunt periods with their sporting arms and bag-limit restrictions. UNIT-WIDE ranches will grant free and equal access, including vehicular access but excluding camping, for the sole purpose of hunting elk to any legally licensed person and their companions. The UNIT-WIDE option is applicable to all ranches not otherwise excluded in this regulation.

M. Setting authorizations for non-qualifying ranches: In all big game management units (except units with unlimited elk hunting), those ranches that fail to qualify for authorization certificates pursuant to procedures described in Subsection F of 19.30.5.8 NMAC shall be issued one either-sex elk authorization certificate (except ~~[unit 4,]~~ **units 4, 16A, 16B, 16C, 16D, 16E and 34**) valid only on the participant's deeded acreage (except where safety is of concern or hunting is otherwise prohibited). These authorization certificates are non-appealable. In ~~[unit 4,]~~ **units 4, 16A, 16B, 16C, 16D, 16E and 34**, non-qualifying ranches will be issued one ~~[mature bull or antlerless (MB-A)]~~ **APRE or antler point restricted elk** authorization

certificate **valid only on the participant's deeded acreage (except where safety is of concern or hunting is otherwise prohibited)**. Unit 4 non-qualifying authorization certificates will be valid on the private property for which they were issued and on other private land within unit 4 when the permit holder has written permission from the landowner, or person in control of the land, to access that private property. The estimated harvest on these landholdings per unit will be subtracted from the unit's private land elk harvest. The number of landholdings receiving an authorization certificate pursuant to this paragraph shall not be limited. These authorization certificates are non-appealable.

[4-1-95; A, 4-15-97, A, 8-30-97, A, 9-15-99; 19.30.5.8 NMAC - Rn & A, 19 NMAC 30.5.8, 01-15-01; A, 02-28-01; A, 05-15-01; A, 11-14-02; A, 01-31-05]

19.30.5.9 APPEAL REGARDING ALLOCATED AUTHORIZATION CERTIFICATES:

A. Landowners' right to appeal calculation: If a landowner who qualifies under procedures of Subsection F of 19.30.5.8 NMAC disagrees with the allocation of authorizations, ~~[certificates during the first cycle year of the Big Game regulation 19.31.8 NMAC]~~, he may appeal the officer's findings by first filing a written appeal, with supporting documentation, to the appropriate area chief. ~~[Landowners receiving a two year agreement may not appeal allocations during the second cycle year of the Big Game regulation 19.31.8 NMAC. New landowners who have signed up during the second cycle year of the Big Game regulation may appeal for the current year.]~~ Non-qualifying authorization certificates are non-appealable.

(1) Supporting documentation must include, but is not limited to, current and legal documentation of total acreage, a map of the property boundaries, and estimation of elk numbers on the property, season and length of elk use.

(2) Receipt of an appeal at the area office must be postmarked by May 15 of each license year. Receipt of the appeal begins the process **described below in Subsection B of 19.30.5.9 NMAC.**

(3) The department may impose a "point restricted bull elk bag limit" on appeal authorizations issued to qualifying ranches in GMU 4 who appeal the number of APRE authorizations they receive and upon investigation and determination that the appeal is to be granted.

B. Area level investigation: The area chief will investigate the appeal and will notify the landowner in writing, of their findings within fifteen (15) working days after receipt of proper documentation. Copies of the area chief's find-

ings will be forwarded to the chief of wildlife. The landowner may appeal, in writing, within ten (10) working days after notification to the chief of wildlife.

C. Santa Fe office investigation: Within five (5) working days after receipt of documentation from the landowner the chief of wildlife will investigate the appeal and notify the landowner in writing, as to his findings.

D. Appeal to state game commission: Within ten (10) working days after receipt of documentation from the chief of wildlife, the landowner may appeal, in writing to the state game commission.

E. Hearing by the state game commission: If the state game commission agrees to hear the appeal, it will be held at a regularly scheduled meeting. The landowner may present witnesses and supporting documentation during the hearing.

(1) The department may also furnish witnesses and supporting documentation.

(2) The state game commissions' decision will be final.

~~[(3) The department may impose a "point restricted bull elk bag limit" on appeal authorizations issued to qualifying ranches in GMU 4 who appeal the number of MB-A authorizations they receive and upon investigation and determination that the appeal is to be granted.]~~

[4-1-95; A, 4-15-97; 19.30.5.9 NMAC - Rn & A, 19 NMAC 30.5.9, 01-15-01; A, 11-14-02; A, 7-15-04; A, 01-31-05]

19.30.5.10 AGREEMENTS AND NEGOTIATIONS:

A. Deadlines for new landowner sign-ups and changes to existing data will be 1 February.

B. New landowners applying for private land authorization certificates must submit the current landowner sign-up system application for elk authorization certificates, warranty deed, the most recent tax receipt, and a map of the exterior boundaries of the property, specifying township, range and section (if applicable).

C. All contracts and negotiations will be completed and returned postmarked by 15 April.

D. It shall be unlawful to breach the terms and tenants of any contract issued pursuant to this rule.

E. The landowner, manager or lessee shall inform the department of game and fish of any changes in ownership, acreage and/or address changes. Failure to do so is a violation under 19.31.2.8 NMAC. Any breaches of the terms of the agreement shall require review and action by the department of game and fish prior to the signing of next year's agreement and may result in the loss of some or all authorization certificates allocated to the ranch as speci-

fied in 19.31.2.8 NMAC.

F. Beginning with the [2003-04] **2005-06** season, a [two-year] **one-year** agreement will be entered into with **participating** landowners who are allocated authorization certificates or receive non-qualifying authorization certificates [in order to coincide with the two-year cycle of the Big Game regulation (19.31.8 NMAC), except in Unit 4 while provisions of the unit 4 cooperative pilot project are in effect. Landowners who apply as new signups during the 2nd year of the cycle that are allocated authorization certificates or receive a non-qualifying authorization certificate, will be granted a one-year agreement. If necessary, an amendment to the agreement will be made to reflect changes made to the Big Game regulation 19.31.8 NMAC, or changes to existing ranch acreage as reported by the landowner]. See Subsection A of 19.30.5.9 NMAC for appeal procedures. [4-1-95; 19.30.5.10 NMAC - Rn & A, 19 NMAC 30.501, 01-15-01; A, 02-28-01; A, 11-14-02; A, 01-31-05]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.33.6 NMAC, Section 8, effective January 31, 2005.

19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

A. MAMMALS

(1) Endangered:

- (a) Arizona shrew, *Sorex arizonae*
 - (b) Mexican long-nosed bat, *Leptonycteris nivalis*
 - (c) (Penasco) least chipmunk, *Tamias minimus atristriatus*
 - (d) (Arizona) montane vole, *Microtus montanus arizonensis*
 - (e) gray wolf, *Canis lupus*
 - (f) (desert) bighorn sheep, *Ovis canadensis mexicana*
- ##### (2) Threatened:
- (a) least shrew, *Cryptotis parva*
 - (b) southern long-nosed bat, *Leptonycteris curasoae*
 - (c) spotted bat, *Euderma maculatum*
 - (d) western yellow bat, *Lasiurus xanthius*
 - (e) white-sided jackrabbit, *Lepus callotis*
 - (f) (Organ mountains) Colorado chipmunk, *quadrivittatus australis*
 - (g) southern pocket gopher, *Thomomys umbrinus*
 - (h) meadow jumping mouse, *Zapus hudsonius*
 - (i) American marten, *Martes*

americana

(3) Listing excepts individuals and populations of the desert bighorn sheep in the Peloncillo mountains in Hidalgo county and all stock in captivity.

B. BIRDS

(1) Endangered:

- (a) brown pelican, *Pelecanus occidentalis*
 - (b) aplomado falcon, *Falco femoralis*
 - (c) white-tailed ptarmigan, *Lagopus leucurus*
 - (d) whooping crane, *Grus americana*
 - (e) piping plover, *Charadrius melodus*
 - (f) least tern, *Sterna antillarum*
 - (g) common ground-dove, *Columbina passerina*
 - (h) buff-collared nightjar, *Caprimulgus ridgwayi*
 - (i) elegant trogon, *Trogon elegans*
 - (j) northern beardless-tyrannulet, *Camptostoma imberbe*
 - (k) (southwestern) willow flycatcher, *Empidonax traillii extimus*
 - (l) thick-billed kingbird, *Tyrannus crassirostris*
- ##### (2) Threatened:
- (a) neotropic cormorant, *Phalacrocorax brasilianus*
 - (b) bald eagle, *Haliaeetus leucocephalus*
 - (c) common black-hawk, *Buteogallus anthracinus*
 - (d) peregrine falcon, *Falco peregrinus*
 - (e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*
 - (f) whiskered screech-owl, [~~Otus~~ *Megascops trichopsis*
 - (g) boreal owl, *Aegolius funereus*
 - (h) broad-billed hummingbird, *Cynanthus latirostris*
 - (i) white-eared hummingbird, *Hylocharis leucotis*
 - (j) violet-crowned hummingbird, *Amazilia violiceps*
 - (k) lucifer hummingbird, *Calothorax lucifer*
 - (l) Costa's hummingbird, *Calypte costae*
 - (m) Gila woodpecker, *Melanerpes uropygialis*
 - (n) Bell's vireo, *Vireo bellii*
 - (o) gray vireo, *vireo vicinior*
 - (p) Abert's towhee, *Pipilo aberti*
 - (q) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammoregus*
 - (r) Baird's sparrow, *Ammodramus bairdii*
 - (s) yellow-eyed junco, *Junco phaeonotus*
 - (t) varied bunting, *Passerina ver-*

sicolor

C. REPTILES

(1) Endangered:

- (a) Gila monster, *Heloderma suspectum*
- (b) gray-checked whiptail [~~Cnemidophorus dixonii~~ *Aspidoscelis dixonii*
- (c) [~~Mexican garter snake, Thamnophis eques~~] **gray-banded kingsnake, *Lampropeltis alterna***
- (d) [~~plainbelly water snake, Nerodia erythrogaster~~] **Mexican garter-snake, *Thamnophis eques***
- (e) [~~(New Mexico) ridgenose rattlesnake, Crotalus willardi obscurus~~] **plain-bellied water snake, *Nerodia erythrogaster***
- (f) [~~gray-banded kingsnake, Lampropeltis alterna~~] **(New Mexico) ridgenose rattlesnake, *Crotalus willardi obscurus***

(2) Threatened:

- (a) western river cooter, *Pseudemys gorzugi*
- (b) sand dune lizard, *Sceloporus arenicolus*
- (c) **Slevin's** bunch grass lizard, *Sceloporus [scularis] slevin*
- (d) [~~giant~~] **canyon** spotted whiptail, [~~Cnemidophorus~~ *Aspidoscelis burti*
- (e) mountain skink, *Eumeces [tetragrammus] callicephalus*
- (f) green [~~rat snake~~] **ratsnake, *Senticolis triaspis***
- (g) [~~narrowhead garter snake~~] **narrow-headed gartersnake, *Thamnophis rufipunctatus***
- (h) western [~~ribbon snake~~] **ribbonsnake, *Thamnophis proximus***
- (i) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

D. AMPHIBIANS

(1) Endangered:

- (a) [~~lowland leopard frog, Rana yavapaiensis~~] **Jemez mountains salamander, *Plethodon neomexicanus***
 - (b) [~~western boreal toad, Bufo boreas~~] **lowland leopard frog, *Rana yavapaiensis***
 - (c) [~~Great Plains narrowmouth toad, Gastrophryne olivacea~~] **mountain toad, *Bufo boreas***
 - (d) **Great Plains narrow-mouthed toad, *Gastrophryne olivacea***
- ##### (2) Threatened:
- (a) [~~Jemez Mountains salamander, Plethodon neomexicanus~~] **Sacramento mountain salamander, *Aneides hardii***
 - (b) [~~Sacramento mountain salamander, Aneides hardii~~] **Sonoran desert toad, *Bufo alvarius***
 - [~~(e) Colorado River toad, Bufo alvarius~~]

E. FISHES

(1) Endangered:

(a) Gila chub, *Gila intermedia*
 (b) Chihuahua chub, *Gila nigrescens*
 (c) roundtail chub, *Gila robusta*
 (d) Rio Grande silvery minnow, *Hypognathus amarus*
 (e) Arkansas river shiner, *Notropis girardi*
 (f) southern redbelly dace, *Phoxinus erythrogaster*
 (g) Colorado pikeminnow, *Ptychocheilus lucius*
 (h) (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*
 (i) blue sucker, *Cycleptus elongatus*
 (j) Pecos gambusia, *Gambusia nobilis*

(2) Threatened:
 (a) Gila trout, *Oncorhynchus gilae*
 (b) Mexican tetra, *Astyanax mexicanus*
 (c) Arkansas river speckled chub, *Macrhybopsis tetranema*
 (d) spikedace, *Meda fulgida*
 (e) (Pecos) bluntnose shiner, *Notropis simus pecosensis*
 (f) suckermouth minnow, *Phenacobius mirabilis*
 (g) loach minnow, *Tiaroga cobitis*
 (h) gray redbhorse, *Scartomyzon congestum*
 (i) Pecos pupfish, *Cyprinodon pecosensis*
 (j) White Sands pupfish, *Cyprinodon tularosa*
 (k) Gila topminnow, *Poeciliopsis occidentalis*
 (l) greenthroat darter, *Etheostoma lepidum*
 (m) bigscale logperch, *Percina macrolepida*

(3) Listing exceptions: Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner-excludes the population in the Pecos river drainage; bigscale logperch-excludes the population in the Canadian river drainage

F. CRUSTACEANS
(1) Endangered:
 (a) Noel's amphipod, *Gammarus desperatus*
 (b) Socorro isopod, *Thermosphaeroma thermophilum*

G. MOLLUSKS
(1) Endangered:
 (a) paper pondshell, *Utterbackia imbecillis*
 (b) Texas hornshell, *Popenaias popeii*
 (c) [~~Socorro springsnail, *Pyrgulopsis neomexicana*~~] **Koster's springsnail, *Juturnia kosteri***
 (d) [~~Roswell springsnail, *Pyrgulopsis roswellensis*~~] **Alamosa springsnail, *Pseudotryonia alamosae***

(e) Chupadera springsnail, *Pyrgulopsis chupadera*
 (f) [~~Pecos assiminea, *Assiminea pecos*~~] **Socorro springsnail, *Pyrgulopsis neomexicana***
 (g) [~~wrinkled marshsnail, *Stagnicola caperata*~~] **Roswell springsnail, *Pyrgulopsi roswellensis***
 (h) [~~shortneck snaggletooth, *Gastrocopta dalliana dalliana*~~] **Pecos assiminea, *Assiminea pecos***
 (i) [~~Florida mountainsnail, *Oreohelix florida*~~] **wrinkled marshsnail, *Stagnicola caperata***
 (j) [~~Alamosa springsnail, *Pseudotryonia alamosae*~~] **shortneck snaggletooth, *Gastrocopta dalliana dalliana***
 (k) [~~Koster's springsnail, *Juturnia kosteri*~~] **Florida mountainsnail, *Oreohelix florida***

(2) Threatened:
 (a) [~~swamp fingernailclam, *Musculium partumeium*~~] **lake fingernailclam, *Musculium lacustre***
 (b) [~~lake fingernailclam, *Musculium lacustre*~~] **swamp fingernailclam, *Musculium partumeium***
 (c) long fingernailclam, *Musculium transversum*
 (d) Lilljeborg's peaclam, *Pisidium lilljeborgi*
 (e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*
 (f) Gila springsnail, *Pyrgulopsis gilae*
 (g) Pecos springsnail, *Pyrgulopsis pecosensis*
 (h) New Mexico hot springsnail, *Pyrgulopsis thermalis*
 (i) star gyro, *Gyraulus crista*
 (j) ovate vertigo, *Vertigo ovata*
 (k) Hacheta Grande woodland snail, *Ashmunella hebaridi*
 (l) Cooke's peak woodlandsnail, *Ashmunella macromphala*
 (m) Mineral creek mountainsnail, *Oreohelix pilsbryi*
 (n) Doña Ana talussnail, *Sonorella todseni*

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.34.3 NMAC, Sections 3, 7 and 11, effective January 31, 2005. This rule was also reformatted and renumbered from 19 NMAC 34.3 to comply with current NMAC requirements.

19.34.3.3

S T A T U T O R Y

AUTHORITY: Sections 17-1-1, 17-1-14, 17-1-26 and 17-4-1, NMSA 1978, provide the New Mexico state game commission with the authority to acquire lands, **to provide for use of game and fish for use and development for public recreation**, and to establish rules and regulations that it may deem necessary to carry out the purposes of Chapter 17, NMSA 1978.

[9/1/89, 1/13/96; 19.34.3.3 NMAC - Rn & A, 19 NMAC 34.3.3, 01/31/05]

19.34.3.7 DEFINITIONS:

A. "Bert Clancy wildlife area community shelters" means the two shelters on department of game and fish controlled land along the Pecos river near Willow creek in San Miguel county, New Mexico.

B. "Commission" shall mean the New Mexico state game commission.

C. "Director" shall mean the director of the New Mexico department of game and fish.

D. "Department" shall mean the New Mexico department of game and fish.

E. "Gaining access into nature (GAIN) shall mean a program of the department to provide broadly based wildlife-associated recreation opportunity throughout New Mexico that offers new incentive to recreate, stimulates local economic development, engages diverse cooperating agencies and landowners, and enhances attention to conservation of public trust wildlife and the habitats they depend on.

[1/13/96, 1/29/99; 19.34.3.7 NMAC - Rn & A, 19 NMAC 34.3.7, 01/31/05]

19.34.3.11 PERMITS FOR GAINING ACCESS INTO NATURE PROGRAM

A. The director may from time to time designate commission owned properties or other enrolled properties on which wildlife-associated recreation activities other than hunting, fishing, and trapping may take place subject to regulations under this part. Such designation shall include the times and places when and where access for such activities is available, terms and condition of access to the properties, the activities authorized, and the form of a waiver and release, if any, to be executed and delivered to the department as a condition to any access or activity authorized under this part.

B. Upon application on a form approved by the director and subject to any designated fair and impartial selection process, the department shall issue GAIN activity permits authorizing the permittees to engage in the activities

as designated by the director. GAIN activity permits may contain restrictions and limitations as determined by the department to protect habitat and wildlife interests associated with the property for which an activity permit is issued.

C. The department may charge a fee for the issuance of GAIN activity permits in an amount that shall not exceed the costs to the department for administration associated with each permit, including any application processing costs. Those permit types and fees are as follows, and may be less if department accounting indicates such reduced costs, but may not be more without commission approval.

(1) accompany department wildlife management actions/surveys - \$81;

(2) backpacking to wildlife viewing - \$14;

(3) wildlife watching as designated and restricted but not selected - no fee;

(4) cross-country skiing and snowshoeing to wildlife viewing - \$14;

(5) department/cooperator-led wildlife viewing event - \$56;

(6) department transported wildlife viewing - \$74;

(7) general viewing opportunities as designated and selected - \$8;

(8) horse-back riding to specialty wildlife viewing - \$23;

(9) mountain biking to wildlife viewing - \$19;

(10) site-based wildlife viewing at commission facility - \$5 (self-register), other is no fee;

(11) specialty department-designated, limited-schedule wildlife viewing - \$16;

(12) yearly access pass for non-specialty wildlife viewing as allowed - \$86.

D. The department shall specify restrictions for each activity designated pursuant to section 19.34.3.11A. Such restrictions shall be posted on each property on which a designated activity is permitted, and a copy of the restrictions applicable to such property shall be delivered to a permittee in conjunction with issuance to him or her of a GAIN activity permit. The department will specify the form in which restrictions are posted and distributed.

E. A GAIN activity permit shall be revoked by the department upon its determination that a permittee has persistently, flagrantly, or knowingly violated any terms, conditions, or limitations to which the permit is subject, any violations of the rules and regulations applicable to the activity or property per-

mitted, or a violation of any provision of Chapter 17, NMSA 1978 or of any of the regulations enacted there under. A revocation under this provision shall be subject to the procedural provisions of Section 17-3-34 NMSA 1978. Such revocation shall preclude issuance of any further GAIN activity permit to the permittee for a period designated by the commission, upon recommendation by the department.

[19.34.3.11 NMAC - N, 01/31/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES

PART 240: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF SALE OF FOOD AT RETAIL FOOD STORE

3.2.240.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630

[3.2.240.1 NMAC - N, 1/31/05]

3.2.240.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.240.2 NMAC - N, 1/31/05]

3.2.240.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.240.3 NMAC - N, 1/31/05]

3.2.240.4 DURATION: Permanent.

[3.2.240.4 NMAC - N, 1/31/05]

3.2.240.5 EFFECTIVE DATE: 1/31/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.240.5 NMAC - N, 1/31/05]

3.2.240.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.240.6 NMAC - N, 1/31/05]

3.2.240.7 DEFINITIONS: "FOOD", "RETAIL FOOD STORE" AND "HOME CONSUMPTION": For purposes of Section 7-9-92 NMSA 1978, the definitions of "food", "food retail store" and "home consumption" are the definitions set forth in the federal Food Stamp Act of

1964, codified at 7 USC 2011 *et seq.*, as amended or renumbered and any regulations, rules and administrative materials promulgated thereunder, as they may be amended or renumbered.

[3.2.240.7 NMAC - N, 1/31/05]

3.2.240.8 WHO IS A RETAIL FOOD STORE:

A. A taxpayer that is authorized to accept food stamps under the federal Food Stamp Act is presumed to be a retail food store for the purpose of Section 7-9-92 NMSA 1978 for tax periods during which the taxpayer is authorized to accept food stamps. A taxpayer that meets the definition of "retail food store" but does not participate in the federal food stamp program may qualify as a retail food store for the purpose of Section 7-9-92 NMSA 1978 if the secretary certifies that the taxpayer is a retail food store. A taxpayer seeking certification as a "retail food store" shall apply for certification in the manner and on forms as the secretary shall prescribe.

B. A taxpayer who is not authorized under the federal Food Stamp Act to accept food stamps, and who has not been certified as a food retail store by the secretary, is presumed not to be a food retail store.

[3.2.240.8 NMAC - N, 1/31/05]

3.2.240.9 EQUIVALENCE OF FOOD SALES FOR FOOD STAMP AND SECTION 7-9-92 NMSA 1978 PURPOSES: Receipts from the sale of food for which a taxpayer could have accepted food stamps are receipts from the sale of food for purposes of Section 7-9-92 NMSA 1978.

[3.2.240.9 NMAC - N, 1/31/05]

3.2.240.10 RECEIPTS EXEMPT OR DEDUCTIBLE UNDER OTHER SECTIONS: Taxpayers may not deduct under Section 7-9-92 NMSA receipts that may be exempted or deducted under other sections of the Gross Receipts and Compensating Tax Act, including:

A. receipts of a government exempted from the gross receipts tax by Section 7-9-13 NMSA 1978;

B. receipts subject to the stadium surcharge but exempted from the gross receipts tax by Section 7-9-13.3 NMSA 1978;

C. receipts of a nonprofit entity from running facilities accommodating retired elderly persons exempted from the gross receipts tax by Section 7-9-16 NMSA 1978;

D. receipts from selling livestock and receipts of growers, producers, trappers and nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, pelts and

hides exempted from the gross receipts tax by Section 7-9-18 NMSA 1978;

E. receipts from the lawful acceptance of food stamps exempted from the gross receipts tax by Section 7-9-18.1 NMSA 1978;

F. receipts of 501(c)(3) and 501(c)(6) organizations exempted by Section 7-9-29 NMSA 1978;

G. receipts of nonprofit organizations from registration fees exempted by Section 7-9-39 NMSA;

H. receipts from selling food to manufacturers that may be deducted under Section 7-9-46 NMSA 1978;

I. receipts from selling food for re-sale that may be deducted under Section 7-9-47 NMSA 1978;

J. receipts from selling food to governments that may be deducted under Section 7-9-54 NMSA 1978;

K. receipts from selling food in interstate commerce that may be deducted under Section 7-9-55 NMSA 1978;

L. receipts from selling food to 501(c)(3) organizations that may be deducted under Section 7-9-60 NMSA 1978;

M. receipts from selling food to credit unions that may be deducted under Section 7-9-61.2 NMSA 1978; and

N. receipts from selling food to an accredited foreign mission or accredited member of a foreign mission that may be deducted under Section 7-9-89 NMSA 1978.

[3.2.240.10 NMAC - N, 1/31/05]

History of 3.2.240 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.11 NMAC, Section 19, effective 1/31/05.

3.1.11.19 PENALTY FOR FAILURE TO CORRECTLY REPORT DEDUCTION AMOUNT:

A. A taxpayer who takes the benefit of the deduction provided by either Section 7-9-92 or 7-9-93 NMSA 1978 and fails to correctly report an amount deductible under those sections is subject to the penalty provided by Section 7-1-71.2 NMSA 1972.

B. A taxpayer fails to correctly report the amount of a deduction provided by Section 7-9-92 or 7-9-93 NMSA 1978 when the taxpayer:

(1) excludes from both reported gross receipts and reported deductions an amount deductible under those sections and

not otherwise exempt;

(2) example 1: a "big box" store has sales of \$200,000. \$10,000 is from sales of food in exchange for food stamps and \$20,000 is from other sales of food; the taxpayer reports gross receipts of \$170,000 and zero deductions and pays the appropriate tax on the \$170,000; although the \$10,000 in food stamp sales is exempt under Section 7-9-18.1 NMSA 1978, the other \$20,000 in food sales is not; those sales are deductible under Section 7-9-92 NMSA 1978 and must be reported as gross receipts and then deducted properly; the penalty under Section 7-1-71.2 NMSA 1978 applies to the under-reported \$20,000;

(3) does not report an amount deductible under those sections separately from other deductions in accordance with instructions of the secretary;

(4) example 2: an osteopath has \$25,000 in receipts; the osteopath sold under contract \$5,000 worth of services to a hospital for re-sale to a patient and has accepted a type 5 nontaxable transaction certificate in connection with those services; the \$5,000 is deductible under Section 7-9-48 NMSA 1978; the remaining \$20,000 in services are also deductible, but under Section 7-9-93 NMSA 1978; the osteopath reports, contrary to the instructions of the secretary, on a single line \$25,000 in gross receipts and \$25,000 in deductions; the penalty under Section 7-1-71.2 NMSA 1978 applies to this \$20,000 under-reporting of the deductions subject to Section 7-9-93 NMSA 1978;

(5) reports an amount as a deduction under those sections when the amount should be reported as an exemption or deduction under another section of the Gross Receipts and Compensating Tax Act;

(a) example 3: a grocer sells qualifying food items to a food stamp recipient in exchange for food stamps; the grocer deducts the value of the food stamps received under Section 7-9-92 NMSA 1978; the sale of food items purchased with food stamps is exempt under Section 7-9-18.1 NMSA 1978; the taxpayer has over-reported deductions under Section 7-9-92 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the amount of the over-reporting;

(b) example 4: a physician receives payment from a medicare administrator for health care services provided to a medicare enrollee; the physician deducts the payment from gross receipts under Section 7-9-93 NMSA 1978; medicare payments to physicians are deductible under Section 7-9-77.1 NMSA 1978; the physician has over-reported the deduction under Section 7-9-93 NMSA 1978 and the penalty under Section 7-1-71.2 NMSA 1978 applies to the over-reporting;

(6) reports as a deduction under

those sections an amount in excess of that permitted by those sections.

C. The penalty provided by Section 7-1-71.2 NMSA 1978 is in addition to other penalties provided by the Tax Administration Act.

D. Because not claiming a deduction is not a failure to correctly report the amount of a deduction, the penalty will not apply if the taxpayer is entitled to, but does not claim, a deduction under Section 7-9-92 or 7-9-93 NMSA 1978.

[3.1.11.19 NMAC - N, 1/31/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC Sections 105, 111 and 115, effective 1/31/05.

18.19.5.105 ~~[COMMERCIAL DRIVER'S LICENSE - ADDITIONAL SERIOUS TRAFFIC VIOLATIONS:~~
The secretary determines that the following violations of the Motor Vehicle Code are serious traffic violations when committed by the holder of a commercial driver's license while the holder was driving a commercial motor vehicle:

A. ~~Improper or erratic lane changes, as defined in Section 66-7-317 NMSA 1978;~~

B. ~~Following the vehicle ahead too closely, as defined in Section 66-7-318 NMSA 1978; and~~

C. ~~A traffic control law violation arising in connection with a fatal traffic accident.] [RESERVED]~~

18.19.5.111 COMMERCIAL DRIVER'S LICENSE - COMMERCIAL DRIVER'S LICENSE TESTING:

A. A New Mexico commercial driver's license shall not be issued to any person who has not successfully completed the knowledge and skills tests specified by 18.19.5.111 NMAC. The knowledge tests for New Mexico are in two forms, form A and form B, for each of seven areas of knowledge: general knowledge, air brakes, combination vehicles, passenger transport, tank vehicles, doubles/triples and hazardous materials (HAZMAT). If a driver fails to pass a knowledge test, either form A or B, the alternate form shall be administered the next time the driver takes the test. Passing grades for each separate test shall be 80% or higher. Any driver who does not achieve a score of 80% or higher on any knowledge or skill test may retake a test on that subject after one week or more has intervened since the date last tested. The director, motor vehicle division, however, may waive the time limit when the driver demonstrates that the one week wait would

cause undue hardship.

~~B.~~ A school bus endorsement shall not be issued to any person who has not successfully completed a knowledge test and a skills test in both a passenger commercial motor vehicle and a school bus.

~~B-] C.~~ The skills tests for New Mexico shall be composed of the three parts set forth in Subsections ~~C through E~~ D through F of 18.19.5.111 NMAC.

~~C-] D.~~ The pre-trip test which shall consist of at least the following parts:

(1) Tractor-trailer addressing the following elements:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Left or right side of vehicle
- (e) Coupling system
- (f) Rear of vehicle

- (2) Straight truck:
 - (a) Engine compartment
 - (b) Engine start
 - (c) Front of vehicle
 - (d) Left or right side of vehicle
 - (e) Rear of vehicle
- (3) School bus, coach bus, transit bus:

- (a) Engine compartment
- (b) Engine start
- (c) Front of vehicle
- (d) Right side of vehicle
- (e) Passenger compartment
- (f) Rear of vehicle

~~D-] E.~~ The basic skills tests which shall consist of one of the following forms:

(1) Form 1 addressing at least the following:

- (a) Alley dock
- (b) Straight line backing
- (c) Sight side parallel park
- (d) Conventional parallel park

(2) Form 2 addressing at least the following:

- (a) Right turn
- (b) Alley dock
- (c) Conventional parallel park
- (d) Backing serpentine

(3) Form 3 addressing at least the following:

- (a) Alley dock
- (b) Straight line backing
- (c) Conventional parallel park
- (d) Backing serpentine

~~E-] E.~~ The road test shall consist of the following maneuvers:

- (1) Four left turns
- (2) Four right turns
- (3) One stop intersection
- (4) One through intersection
- (5) Urban straight section
- (6) Expressway section or rural section if no expressway available

(7) One drive down grade and one simulated drive down grade

- (8) One drive up grade
- (9) Stop on downgrade or stop on upgrade
- (10) One underpass or one bridge (tractor-trailer only)
- (11) One curve (left or right)
- (12) Railroad crossing:
 - (a) For non-bus and non-HAZMAT: One railroad crossing or one extra through intersection
 - (b) For bus or HAZMAT: One railroad crossing or one simulated railroad crossing.

~~F-] G.~~ The skills test required by 18.19.5.111 NMAC shall be deemed to have been met by a driver who has been qualified and employed as a commercial driver for two or more years at the time of application for a class A, B, or C license, and who has not been convicted of a point assessment violation nor had an accident with fault while driving a commercial vehicle within the last three years.

18.19.5.115 COMMERCIAL DRIVER'S LICENSE - RESTRICTIONS TO COMMERCIAL DRIVER'S LICENSES:

A. Commercial driver's licenses may have one or more of the following restrictions place upon the license:

<u>Restriction Code</u>	<u>Restriction</u>
B	Driver must wear corrective lenses while driving.
C	Driver limited to vehicles equipped with suitable mechanical aids such as special brakes, hand controls or other adaptive devices.
D	Driver must use prosthetic aids (other than glasses) while driving.
E	Driver limited to vehicles with automatic transmissions.
K	Driver limited to driving a commercial vehicle in intrastate commerce only.
L	Driver limited to driving commercial vehicles which do not have air brakes.
M	Driver not authorized to drive a Class A bus.
N	Driver not authorized to drive a Class A or Class B bus.
O	Driver not authorized to drive a Class A tractor trailer combination vehicle.
<u>R</u>	<u>Driver limited to operating a school bus.</u>
S	Driver authorized to operate only a commercial motor vehicle owned by a governmental entity, and only as a government employee.
T	Driver authorized only to operate a Class B or Class C bus.

B. Paragraph (2) of Subsection D of Section 66-5-65 NMSA 1978 specifies a restriction.

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for
Architects

PO Box 509
Santa Fe, NM
505-827-6375

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 4, 2005. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

**End of Other Related
Material Section**

2005

SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XVI	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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