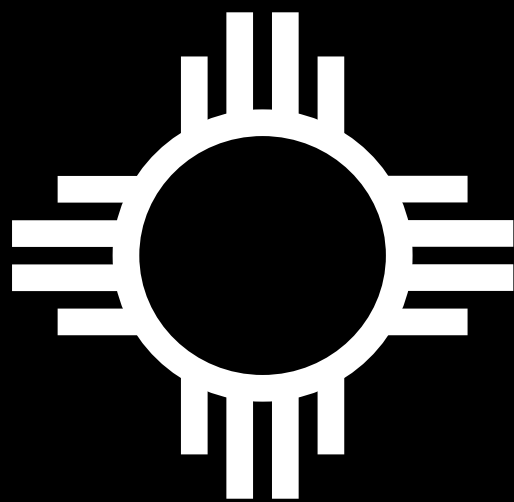


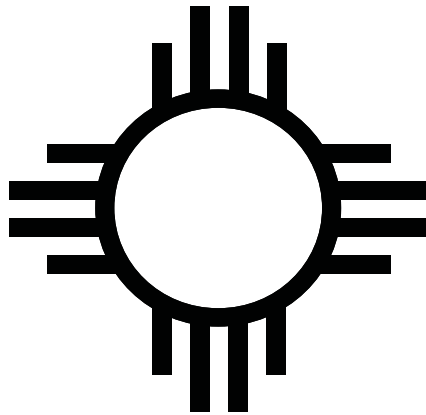
**NEW
MEXICO
REGISTER**



Volume XXII
Issue Number 24
December 30, 2011

New Mexico Register

**Volume XXII, Issue Number 24
December 30, 2011**



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

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Administrative Law Division
Santa Fe, New Mexico
2011

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New Mexico Register

Volume XXII, Number 24

December 30, 2011

Table of Contents

Notices of Rulemaking and Proposed Rules

Health, Department of	
Notice of Public Hearing	857
Human Services Department	
Medical Assistance Division	
Notice of Public Hearing (8.314.6 NMAC)	857
Notice of Public Hearing (8.314.5 NMAC, 8.290.400 NMAC and 8.290.600 NMAC)	857
Oil Conservation Commission	
Notice of Public Hearing	858
Public Education Department	
Notice of Proposed Rulemaking and Invitation for Comments on Proposed Model Forms	859
Public Lands, Commissioner of	
Notice of Rule Making	860
Public Regulation Commission	
Order Consolidating Cases and Establishing Workshops and Notice of Proposed Rulemaking	860
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules	862

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Children, Youth and Families Department		
8.15.2 NMAC	A	Requirements for Child Care Assistance Programs for Clients and Child Care Providers
		863
Dental Health Care, Board of		
16.5.41 NMAC	N	Expanded Function Dental Auxiliary, Fees
		865
16.5.42 NMAC	N	Expanded Function Dental Auxiliary, Requirements for Certification
		865
16.5.43 NMAC	N	Expanded Function Dental Auxiliary, Certification Expiration and Renewal
		866
16.5.44 NMAC	N	Expanded Function Dental Auxiliary, Continuing Education Requirements
		867
16.5.45 NMAC	N	Expanded Function Dental Auxiliary, Certificate Revocation for Non-Renewal
		868
16.5.46 NMAC	N	Expanded Function Dental Auxiliary, Practice and Supervision
		868
16.5.47 NMAC	N	Expanded Function Dental Auxiliary, Disciplinary Proceedings
		869
16.5.49 NMAC	N	Community Dental Health Coordinator, Fees
		870
16.5.50 NMAC	N	Community Dental Health Coordinator, Requirements for Certification
		870
16.5.51 NMAC	N	Community Dental Health Coordinator, Certification Expiration and Renewal
		871
16.5.52 NMAC	N	Community Dental Health Coordinator, Continuing Education Requirements
		872
16.5.53 NMAC	N	Community Dental Health Coordinator, Certificate Revocation for Non-Renewal
		872
16.5.54 NMAC	N	Community Dental Health Coordinator, Practice and Supervision
		873
16.5.55 NMAC	N	Community Dental Health Coordinator, Disciplinary Proceedings
		874

16.5.1 NMAC	A	Dentistry (Dentists, Dental Hygienists, Etc.):	
		General Provisions	874
16.5.3 NMAC	A	Mandatory Reporting Requirements	877
16.5.4 NMAC	A	Emergency Licensure and Certification Provisions	877
16.5.6 NMAC	A	Dentists, Licensure by Examination.	878
16.5.7 NMAC	A	Dentists, Temporary or Public Service Licensure	879
16.5.8 NMAC	A	Dentists, Licensure by Credentials	882
16.5.9 NMAC	A	Non-Dentist Owners.	883
16.5.10 NMAC	A	Dentists, Continuing Education Requirements.	885
16.5.12 NMAC	A	Dentists, Retirement, Inactive and Reinstatement	885
16.5.13 NMAC	A	Dentists, License Revocation for Non-Renewal	887
16.5.15 NMAC	A	Dentists, Anesthesia Administration.	887
16.5.16 NMAC	A	Dentists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions	888
16.5.17 NMAC	A	Dentists and Dental Hygienists, Collaborative Practice.	890
16.5.19 NMAC	A	Dental Hygienists, Licensure by Examination	893
16.5.20 NMAC	A	Dental Hygienists, Licensure by Credentials	894
16.5.21 NMAC	A	Dental Hygienists, Temporary or Public Service Licensure.	894
16.5.23 NMAC	A	Dental Hygienists, Continuing Education Requirements.	896
16.5.25 NMAC	A	Dental Hygienists, Retirement, Inactive and Reinstatement	897
16.5.26 NMAC	A	Dental Hygienists, License Revocation for Non-Renewal.	898
16.5.28 NMAC	A	Dental Hygienists, Local Anesthesia Certification.	898
16.5.29 NMAC	A	Dental Hygienists, Practice	899
16.5.30 NMAC	A	Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions	900
16.5.33 NMAC	A	Dental Assistants, Requirements for Certification	901
16.5.36 NMAC	A	Dental Assistants, Continuing Education Requirements	904
Game and Fish, Department of			
18.15.3 NMAC	A	Off-Highway Motor Vehicle Safety Standards.	904
Human Services Department			
Medical Assistance Division			
8.200.510 NMAC	A	Resource Standards	906
8.200.520 NMAC	A	Income Standards	907
Medical Board			
16.10.10 NMAC	A	Report of Settlements, Judgments, Adverse Actions and Credentialing Discrepancies	910
Sheep and Goat Council			
21.35.2 NMAC	Rn & A	Sheep and Goat Assessment.	911
Workers' Compensation Administration			
11.4.4 NMAC	A	Claims Resolution	912
11.4.7 NMAC	A	Payments for Health Care Services	917
11.4.12 NMAC	A	Uninsured Employers' Fund.	918
Workforce Solutions, Department of			
Repeal Notice	R	Repeal of Obsolete Job Training Partnership Act Rules	921

Other Material Related to Administrative Law

Workers' Compensation Administration			
Director's Response to Public Comment			923

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.4.3 NMAC "Control of Disease and Conditions of Public Health Significance". The Hearing will be held at 9:00 AM on February 2, 2012 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to add or remove certain diseases or conditions as notifiable diseases or conditions, revise definitions, including adding the definition of an acute care hospital, add healthcare facility name and telephone number to the required reporting elements, add reporting requirements for acute care hospitals in compliance with the Hospital-Acquired Infection Act, update or correct statutory or administrative code references, and make certain clarifications and modifications to the existing regulation.

A copy of the proposed regulation can be obtained from:

Monica Roybal
Office of Epidemiology
New Mexico Department of Health
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
505-476-3035

Please submit any written comments regarding the proposed regulation to the attention of Monica Roybal at the above address prior to the hearing.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Monica Roybal by telephone at 505-476-3035. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on February 9, 2012 at 9:00 a.m.

in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is: Mi via Home and Community-Based Services Waiver.

The Human Services Department (HSD), Medical Assistance Division (MAD), is proposing amendments to 8.314.6 NMAC, *Mi Via Home and Community-Based Services Waiver*, for the following reasons:

1. To remove references to the Aging and Long Term Services Department (ALTSD) as an operational entity of the Mi Via waivers. Due to legislative action, the operations of the Mi Via waivers for brain injured and disabled and elderly populations were transferred to the Human Services Department (HSD) on July 1, 2011. The regulations are being revised to reflect HSD, Medical Assistance Division's (MAD) new role as an operational agency for the Mi Via program.

2. To remove the requirement that budget revisions may not occur during the first 90 (ninety) days of the budget year.

3. To clarify that one of the required quarterly contacts between the consultant and participant must occur in the participant's home.

4. To clarify that customized in-home living supports may be provided in the participant's family home.

5. To clarify that customized in-home living supports may be provided to adult participants who are 18 yrs of age or older.

6. To remove the requirement that for environmental modification services, the contractor must be bonded.

7. To modify the regulations so that the approval and purchase of consumer electronics (such as computers, printers, and fax machines) is limited to once every three years.

8. To clarify that the purpose of respite services is to give the primary, unpaid caregiver relief and time away from his/her duties.

9. To clarify non-covered cell phone related services.

10. To simplify 8.314.6.16 NMAC, *Non-covered Services*, by combining Subsections I, R and S.

11. To make changes to the definition of developmental disability (DD) for eligibility purposes to coincide with changes that have been made to the traditional DD waiver program.

Interested persons may submit written comments no later than 5:00 p.m., February 9, 2012, to Sidonie Squier, Secretary, Human

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

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

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at <http://www.hsd.state.nm.us/mad/register/2011> or by sending a self-addressed stamped envelope to Medical Assistance Division, Benefits Services Bureau, P.O. Box 2348, Santa Fe, NM, 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on February 9, 2012 at 1:00 pm. in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is: Developmental Disabilities Home and Community Based Services Waiver - Eligibility.

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing amendments to 8.314.5 NMAC, *Developmental Disabilities Home and Community-Based Services Waiver*, and to 8.290.400 NMAC, *Medicaid Eligibility for Home and Community-Based Services Waiver* (Categories 090, 091, 092, 093, 094, 095 and 096), *Recipient Policies*, and 8.290.600 NMAC, *Benefit Description*, to change the definition of eligible recipients, specifying the definition of developmental disability and attributable disorders/conditions, bringing conformity

to the definition contained in the renewal of the New Mexico Developmental Disabilities Home and Community Services Waiver as approved by the Center for Medicare and Medicaid Services (CMS), made effective 07/01/2011.

If implemented as proposed, the following changes to the regulations will have the following effect: clarifying language and removing old definitions of mental retardation and specific related conditions. The definition of developmental disability is made specific for the related condition of autistic disorder (as described in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders/DSM-IV TR), excluding asperger syndrome. In keeping with the report and recommendations of the Small Business-Friendly Task Force published 4/1/2011, the proposed rules provide clarification of the definition for eligibility for the developmental disability waiver program and is not more stringent than federal requirements.

Interested persons may submit written comments no later than 5:00 p.m., February 9, 2012, to Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at <http://www.hsd.state.nm.us/mad/register/2011> or by sending a self-addressed stamped envelope to Medical Assistance Division, Benefits Services Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO ENERGY, MINERAL AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission (Commission), hereby gives notice that the Commission will conduct a public hearing beginning at 9 a.m. on January 23, 2012 through January 27, 2012, in Porter Hall at 1220 South Saint Francis Drive, Santa Fe, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-659-1779 as soon as possible. Public documents can be provided in various forms. Please contact Ms. Davidson if a summary or other type of form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final Agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division's website at www.emnrd.state.nm.us/ocd/.

STATE OF NEW MEXICO TO: All named parties and persons having any right, title, interest or claim in the following cases and notice to the public.

Case No.14784: APPLICATION OF THE NEW MEXICO OIL AND GAS ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING CHANGES, STATEWIDE. The New Mexico Oil and Gas Association requests an order amending Commission Rules concerning pits, closed-loop systems, below grade tanks, sumps and other alternative methods related to the foregoing proposed amendments, codified as Part 17 of the Rules of the Oil Conservation Division [19.15.17 NMAC]. The proposed amendments are to (i) revise the permitting and registration requirements for permanent pits, temporary

pits and below grade tanks; (ii) eliminate the permitting, design, construction and operational requirements for closed-loop systems while requiring that drying pads be designed and constructed to prevent contamination of water; for sumps used to collect liquids from cuttings; and for berms constructed to prevent run-on; (iii) revise the siting, design, construction, operation, closure and site reclamation provisions for temporary pits, permanent pits, drying pads, below grade tanks and tanks associated with closed-loop systems, (iv) authorize standardized plans for pit construction, closure and other matters; (v) adopt a definition for "low chloride" drilling fluids and the establishment of siting, closure and remediation requirements for temporary pits based on the chloride concentration in the waste and the distance between the waste and ground water or a flowing water course; (vi) authorize and adopt requirements for the permitting, siting, design, construction, operation and closure for "multi-well fluid management pits"; (vii) revise the rules governing the testing and removal of below grade tanks; (viii) revise the rules governing onsite disposal in pits and trenches; (ix) revise the rules governing releases, waste testing and excavation and the concentration of wastes disposed in temporary pits or burial trenches; (x) revise the requirements for remediation and site reclamation including contouring and re-vegetation; (xi) revise the rules governing variances and exceptions to these rules to provide for their approval by the appropriate division district office pursuant to procedures set out in the proposed amendments; (xii) revise and adopt rules and procedures set out in the proposed amendments; (xiii) revise and adopt rules and procedures governing the Oil Conservation Division's notice, processing and approval of applications filed pursuant to these rules, (xiv) revise the rules governing transfer of a permit; and (xv) otherwise change the Commission's requirements concerning permitting, design, construction, operation and closure of pits and below grade tanks, operation of sumps and other alternative methods that may be proposed for use in lieu of pits or below grade tanks used in oil and gas operations.

Copies of the text of the proposed amendments are available from the Oil Conservation Division's Administrator, Florene Davidson at (505) 476-3458 or from the Division's website at <http://www.emnrd.state.nm.us/ocd/Rules.htm>. Modifications to the proposed amendments (six copies) conforming to the requirements of 19.15.3.11 NMAC must be received by the Division no later than 5:00 p.m. on January 6, 2012. Persons intending to provide written comments on the proposed rule change must submit their written comments no later than 5:00 p.m. on January 13, 2012 to the Division's Administrator. Persons intending

to offer technical testimony or cross-examine witnesses at the hearing must file a Pre-hearing statement (six copies) conforming to the requirements of 19.15.3.11 NMAC, including six copies of all exhibits the person will offer in evidence at the hearing, no later than 5:00 p.m. on January 13, 2012. Modifications, written comments and Pre-hearing statements may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or may be faxed to Ms. Davidson at (505) 476-3462.

Case No.14785: APPLICATION OF THE INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO FOR AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW GRADE TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING AND AMENDING, STATEWIDE AND AMENDMENT OF TITLE 19, CHAPTER 15, PART 39.8(B) OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING PITS AND SIERRA AND OTERO COUNTIES. The Independent Petroleum Association of New Mexico requests an order amending Commission Rules concerning pits, closed-loop systems, below grade tanks, sumps and other alternative methods related to the foregoing proposed amendments, codified as Part 17 of the Rules of the Oil Conservation Division [19.15.17 NMAC] and concerning pits in Sierra and Otero Counties, codified as Part 39.8(B) of the Rules of the Oil Conservation Division [19.15.39.8(B)]. The proposed amendments are to (i) revise the permitting and registration requirements for permanent pits, temporary pits and below grade tanks; (ii) eliminate the permitting, design, construction and operational requirements for closed-loop systems while requiring that drying pads be designed and constructed to prevent contamination of water; for sumps used to collect liquids from cuttings; and for berms constructed to prevent run-on; (iii) revise the siting, design, construction, operation, closure and site reclamation provisions for temporary pits, permanent pits, drying pads, below grade tanks and tanks associated with closed-loop systems, (iv) authorize standardized plans for pit construction, closure and other matters; (v) adopt a definition for "low chloride" drilling fluids and the establishment of siting, closure and remediation requirements for temporary pits based on the chloride concentration in the waste and the distance between the waste and ground water or a flowing water course; (vi) authorize and adopt requirements for

the permitting, siting, design, construction, operation and closure for "multi-well fluid management pits"; (vii) revise the rules governing the testing and removal of below grade tanks; (viii) revise the rules governing onsite disposal in pits and trenches; (ix) revise the rules governing releases, waste testing and excavation and the concentration of wastes disposed in temporary pits or burial trenches; (x) revise the requirements for remediation and site reclamation including contouring and re-vegetation; (xi) revise the rules governing variances and exceptions to these rules to provide for their approval by the appropriate division district office pursuant to procedures set out in the proposed amendments; (xii) revise and adopt rules and procedures set out in the proposed amendments; (xiii) revise and adopt rules and procedures governing the Oil Conservation Division's notice, processing and approval of applications filed pursuant to these rules, (xiv) revise the rules governing the transfer of a permit; (xv) otherwise change the Commission's requirements concerning permitting, design, construction, operation and closure of pits and below grade tanks, operation of sumps and other alternative methods that may be proposed for use in lieu of pits or below grade tanks used in oil and gas operations; and (xvi) to conform to the proposed amendments of Part 17 to allow pits in Sierra and Otero Counties.

Copies of the text of the proposed amendments are available from the Oil Conservation Division's Administrator, Florene Davidson at (505) 476-3458 or from the Division's website at <http://www.emnrd.state.nm.us/ocd/Rules.htm>. Modifications to the proposed amendments (six copies) conforming to the requirements of 19.15.3.11 NMAC must be received by the Division no later than 5:00 p.m. on January 6, 2012. Persons intending to provide written comments on the proposed rule change must submit their written comments no later than 5:00 p.m. on January 13, 2012 to the Division's Administrator. Persons intending to offer technical testimony or cross-examine witnesses at the hearing must file a Pre-hearing statement (six copies) conforming to the requirements of 19.15.3.11 NMAC, including six copies of all exhibits the person will offer in evidence at the hearing, no later than 5:00 p.m. on January 13, 2012. Modifications, written comments and Pre-hearing statements may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or may be faxed to Ms. Davidson at (505) 476-3462.

Given under the seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 16th day of December, 2011.

STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION

Jami Bailey
Oil Conservation Commission Chair

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING AND INVITATION FOR COMMENTS ON PROPOSED MODEL FORMS

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, January 30, 2012, from 10:00 A.M. to 11:00 A.M. The purposes of the public hearing will be to obtain input on the proposed amendments to 6.31.2 NMAC (Children with Disabilities/Gifted Children) and to seek public comment on proposed model forms. Members of the public are advised that the proposed model forms will not be adopted as rules. The finalized model forms will be made available to the public on the Department's website and through Department publications.

Interested individuals may testify either at the public hearing or submit written comments to Amy Baca, Executive Secretary Administrative Assistant, Special Education Bureau, Public Education Department, 120 South Federal Place, Room 206, Santa Fe, New Mexico 87501, via email at (spedfeedback@state.nm.us), or fax (505) 954-0001. Copies of the proposed amendments and the rationale for the changes may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Ms. Baca. Copies of the proposed model forms may be accessed in the same manner. Written comments must be received no later than 5:00 P.M. on the date of the hearing. However, the 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 are asked to contact Ms. Baca as soon as possible at (505) 827-1458. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSIONER OF PUBLIC LANDS**NOTICE OF RULE MAKING**

NOTICE IS HEREBY GIVEN that Ray Powell, M.S., D.V.M., New Mexico Commissioner of Public Lands (Commissioner), and the New Mexico State Land Office (NMSLO) propose to amend 19.2.18 NMAC "RELATING TO STATE LAND TRUSTS ADVISORY BOARD, which incorporates minor changes, amendments, additions to and deletions from the previous rule.

The proposed new rule provides new and/or amended guidelines and requirements that pertain to the state land trusts advisory board pursuant to the Act of June 20, 1910, 36 Stat. 557, Chapter 310; N.M. Const. Art. XIII; and NMSA 1978, Chapter 19.

The Commissioner will take written comments on the proposed rule from any interested person. Interested persons shall file their written comments no later than January 30, 2012 by 5:00 p.m. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include specific language proposed to effectuate the changes being suggested. Specific proposed language changes to the proposed new rule should, whenever possible, be in the same format that the proposed rule is in. A copy of the proposed rule in electronic format may be obtained from the Commissioner to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted either in hard copy or by e-mail. The Commissioner strongly encourages all persons submitting comments in hard copy to file an additional copy in electronic format. The electronic medium shall clearly designate the name of the person submitting the proposed changes.

One public hearing to receive oral and written comments on proposed amendments to Rule 18 will be held in Santa Fe, New Mexico, in the Executive Conference Room of State Land Office, 310 Old Santa Fe Trail, from 9:00 a.m. to 10:00 a.m. on Monday, January 30, 2012.

Please submit any written comments regarding the proposed rule to the attention of Ley Schimoler and Chris Melendrez at the address set forth below and/or by e-mail to Ley Schimoler at lschimoler@slo.state.nm.us and to Chris Melendrez at CMelendrez@slo.state.nm.us. Comments received by e-mail will be printed by the NMSLO and entered in the rule-making record.

The Commissioner will review and take into consideration all timely submitted written comments. If the Commissioner deems it advisable, he may have further meetings with any persons or entities submitting written comments.

A copy of the proposed rule may be obtained from:

Ley Schimoler
Office of the General Counsel
New Mexico State Land Office
PO Box 1148
Santa Fe, NM 87504-1148
Tel: 505/827-5713
Fax: 505/827-4262

Copies of the proposed rule may also be viewed at, or downloaded from the NMSLO website (www.nmstatelands.org). Upon request the documents may be made available in alternative formats.

NEW MEXICO PUBLIC REGULATION COMMISSION**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION****Case No. 09-00413-UT**

IN THE MATTER OF A NOTICE OF PROPOSED RULEMAKING REGARDING COMMISSION REVIEW AND APPROVAL OF CERTAIN LONG-TERM PURCHASE POWER AGREEMENTS.

Case No. 09-00414-UT

IN THE MATTER OF A NOTICE OF PROPOSED RULEMAKING REGARDING COMMISSION REVIEW AND APPROVAL OF CERTAIN LONG-TERM PURCHASE POWER AGREEMENTS.

ORDER CONSOLIDATING CASES AND ESTABLISHING WORKSHOPS**AND NOTICE OF PROPOSED RULEMAKING**

THIS MATTER comes before the Public Regulation Commission ("Commission") upon the Petition Requesting Docketing A Rulemaking Case Regarding Commission Approval of Long-Term Purchased Power Agreements ("SPS's Petition"), filed November 20, 2009, by Southwestern Service Company ("SPS"), the Petition to Issue a Notice of Proposed Rulemaking Regarding Approval of Certain Long-Term Purchased Power Agreements ("PNM's Petition"), filed November 20, 2009, by Public Service Company of New Mexico ("PNM"), and by the Joinder and Motion to Consolidate ("Staff's Motion"), filed November 30, 2011, by the Staff of the Commission's Utility Division ("Staff"). Upon consideration of SPS's and PNM's Petitions and Staff's Motion, and being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES AS FOLLOWS:

1. In its Petition, PNM requests the Commission to issue a Notice of Proposed Rulemaking ("NOPR") pursuant to 17.1.120 NMAC that uses the language of Attachment A to PNM's Petition as the proposed rule. Under PNM's proposed rule, all electric utilities would be required to obtain the Commission's approval of certain long-term purchased power agreements ("PPAs") entered into by the utility as purchased prior to the utility becoming irrevocably obligated under the PPA. In support of its Petition, PNM asserts that its Petition was filed pursuant to Paragraph 6(i) of the Stipulation that was approved by the Commission in Case No. 08-00305-UT. Under that Paragraph, PNM and the other signatories to the Stipulation agreed to jointly petition the Commission to initiate a rulemaking proceeding on PPA approvals that would incorporate certain terms and conditions set forth in Paragraphs 6(e) through (h) of the Stipulation. According to PNM, although certain essential terms of the proposed rule have been agreed to by the signatories to the Stipulation, those parties have been unable to reach agreement on the content of the entire rule. In order to avoid further delay in this proceeding, PNM states that it is filing the Petition on its own behalf. PNM further requests that after the Commission issues the NOPR, the Commission convene one or more workshops at which interested parties would attempt to reach agreement on the content of a final rule for Commission consideration.

2. In SPS's Petition, SPS requests the Commission to initiate a rulemaking case regarding long-term purchased power agreement ("PPAs" of electric utilities. According to SPS, its Petition is being filed pursuant to Section

11 of the Uncontested Stipulation that was approved by the Commission in Case No. 08-00354-UT, in which SPS agreed to jointly file a petition with the Commission that would request the initiation of a rulemaking case and workshop regarding the Commission's regulatory treatment and approval process for long-term PPAs.

3. SPS further states that it has read PNM's proposed PPA rule embodied in Attachment A to PNM's Petition, and states that it does not concur in that proposed rule, and that it would respond to that proposed rule at the appropriate time. SPS recommends that the Commission allow SPS, Staff, PNM and El Paso Electric Company ("EPE") and other interested persons the opportunity to discuss PNM's proposal in a workshop in an effort to reach a consensus proposal of the long-term PPA rule. Finally, SPS requests the Commission to consolidate its Petition with PNM's Petition.

4. Staff, based upon preliminary discussions with SPS and PNM, clarifies SPS's position as preferring that a proceeding that does not start with a published rule, but with workshops to develop language that can later be published as a proposed rule. However, Staff goes on to support PNM's position that its proposed rule be issued and published as a proposed rule and that workshops to arrive at final language. Staff acknowledges that it does not necessarily agree with all of PNM's proposed rule but submits that it represents a good starting point for discussions. Staff further submits that initial publication followed by workshops represent the most expeditious path to develop a final rule.

5. Staff states that it contacted SPS and PNM to request their position on Staff's request to consolidate the above-captioned cases, and that SPS supports that request. PNM did not, according to Staff, respond to Staff by the time required to file its Motion.

6. The Commission agrees that because SPS's and PNM's Petition involve the same matter - the commencement of a rulemaking proceeding to develop rules governing Commission review and approval of long-term PPA's - the Commission agrees that the above-captioned cases should be consolidated into a single proceeding. To simplify the filing of documents in the future, PNM's Petition in Case No. 09-00413-UT, and Case No. 09-00414-UT should be closed.

7. The Commission also agrees with Staff and PNM that the most expeditious way to move toward a final rule would be to issue PNM's proposed rule as a NOPR. The Commission should appoint a Mediator to preside over workshops held for the purpose of attempting to develop a

consensus on a final rule. Because workshops are usually informal in nature, any consensus final rule that is proposed by the workshop participants should be accompanied by formal written comments explaining the reasons for any proposed changes to the NOPR so that the Commission will have an adequate record on which to base its final determinations. The Commission is setting a deadline for the filing of initial comments on the NOPR of March 31, 2012, in order to give the workshop participants a reasonable amount of time to reach a full or partial consensus on a final rule. The Commission should further set a deadline of April 15, 2012 for the filing of response comments, and set a public hearing on April 24, 2012.

8. All comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft rule shall be provided in legislative format.

9. All pleadings, including comments, shall bear the caption and Case No. 09-00413-UT. Additional copies of the proposed rule can be obtained from, and comments on the proposed rule, shall be sent to:

Nick Guillen
New Mexico Public
Regulation Commission
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone: (505) 827-6968

10. 1.2.3.7.B NMAC ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications". In order to assure compliance with 1.2.3.7.B NMAC, the Commission should set a record date for this rulemaking as the earlier of May 24, 2012, or the date a Final Order is issued in this proceeding. The setting of a record closing date will permit Commissioners and Commission counsel to conduct follow-up discussions with parties who have submitted initial or responsive comments to the Commission's proposed rule or responses to any bench request orders. However, this action should not be interpreted as extending the time during which parties may file comments or responsive comments, or as allowing the filing of other documents in this case.

**IT IS THEREFORE
ORDERED:**
A. Case No. 09-00414-

UT should be consolidated with and into Case No. 09-00413-UT by transferring PNM's Petition to Case No. 09-00413-UT. Immediately after such transfer, Case No. 09-00414-UT shall be closed.

B. Initial comments on the NOPR shall be filed by no later than March 30, 2012, and response comments shall be filed by no later than April 13, 2012.

C. A public hearing will begin at 1:00 p.m. on April 24, 2012 at the offices of the NMPRC, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, in the Fourth Floor Hearing Room, to receive oral comment and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

D. William J. Herrmann is designated as the Mediator to preside over the workshops that shall be held in this docket for the purpose of attempting to develop a consensus on a final rule, or portions of a final rule that can be recommended to the Commission. All persons interested in participating in the workshops shall provide written notice of such interest to the Mediator by no later than January 6, 2012, which notice shall include the name, address, email address (if one exists) and telephone number of the contact person for the individual or entity that wishes to participate in the workshop. The Mediator shall provide all persons and entities that submit written notices of interest with a notice of the time and place of the workshops to be held in this case, the first of which should be held in January, 2012.

E. This Order is effective immediately.

F. Copies of this Order and Notice of Proposed Rulemaking shall be served on all persons on the attached Certificate of Service via email if their email addresses are known, and if not known, via regular mail. Pursuant to NMSA 1978, Section 8-8-15.B, this Order and Notice of Proposed Rulemaking shall be published, without Attachment A, in at least two newspapers of general circulation in the state and in the New Mexico Register by no later than December 30, 2011.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 6th day of December, 2011.

**NEW MEXICO PUBLIC REGULATION
COMMISSION
PATRICK H. LYONS, CHAIRMAN
THERESA BECENTI-AGUILAR, VICE
CHAIR
JASON A. MARKS, COMMISSIONER
DOUGLAS J. HOWE, COMMISSIONER
BEN L. HALL, COMMISSIONER**

**NEW MEXICO TAXATION
AND REVENUE
DEPARTMENT**

**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT**

**NOTICE OF HEARING AND
PROPOSED RULES**

The New Mexico Taxation and Revenue Department proposes to amend the following rules:

Gross Receipts and Compensating Tax Act

3.2.1.30 NMAC Section 7-9-3(N) NMSA 1978
(*Use and Using*)

These proposals were placed on file in the Office of the Secretary on December 16, 2011. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about February 29, 2012.

A public hearing will be held on these proposals on Monday, January 30, 2012, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before January 30, 2012.

3.2.1.30 **USE AND USING.** The definition of "use" and "using" pursuant to Subsection N of Section 7-9-3 NMSA 1978 includes three components: use, consumption and storage.

A. Use: The first component, "use", means to employ or utilize property or a service for a particular purpose. Use does not include mere ownership or possession of property. Use does not include the mere treatment, processing or servicing of tangible property to make the property fit for utilization when the ultimate use of the property is outside New Mexico. Use does not include the transfer to the customer of tangible personal property in the course of the treatment, processing or servicing or the return of the property to the owner at the conclusion of the treatment, processing or servicing.

(1) Example 1: The uses of a

chair are many and varied. It's designed or intended use is being sat on by human beings. A chair, however, may also be "used" to wedge a door shut, as a step-ladder to reach something, as a receptacle to hold objects, as a display item, as a support to prop up a table or shelf and many other purposes not planned by its designer or maker. In contrast, a chair is not "used" by being assembled, polished, painted, upholstered or recaned.

(2) Example 2: B enters into a contract with C, a firm in New Mexico. Under the contract, B sends a gaseous compound to C for separation. C returns the separated materials to B or delivers them to D for further processing. B has not used the compound or the separated materials in New Mexico.

[A.] B. **Storage:**

(1) The term "using" includes storage in New Mexico except where the storage is for subsequent sale of the property in the ordinary course of the seller's business or for use solely outside New Mexico.

(2) Example 1: D, a resident of Utah, buys pipe in Texas to be used solely in Utah. The pipe is shipped into New Mexico, unloaded, and stored for three days. It is then reloaded and shipped to Utah. There is no use of the pipe in New Mexico within the meaning of Subsection N of Section 7-9-3 NMSA 1978. The transaction which occurred was merely storage for use solely outside New Mexico.

(3) Example 2: X Construction Company purchases a bulldozer in Illinois intending to use it in its construction business. The bulldozer is then delivered to X in New Mexico. X does not have any immediate use for the bulldozer so it is stored in the back lot of the construction company with other equipment. Two months later X changes plans and sells the bulldozer to Y Construction Company who needs it for a job. The bulldozer remained in storage from the day X received it until the day it was sold. Since the storage of the tractor was not for subsequent sale in the ordinary course of X's business, the storage of the tractor is a "use" within the meaning of Subsection N of Section 7-9-3 NMSA 1978. Therefore, X Construction Company will be subject to the compensating tax on the value of the tractor because it has used the property in New Mexico.

[B. ~~Use - general example:~~

~~The following example illustrates the application of Subsection N of Section 7-9-3 NMSA 1978. Example: D purchases a juke box in Texas for use in a coin-operated music business in New Mexico. D maintains that the machine is not being used in New Mexico within the meaning of the law. D says that the machine is being held for sale in the ordinary course of business since the machine is paid for by people playing records on it. D is not holding the machine~~

~~for resale but is merely granting a license to use the machine.]~~

~~[9/29/67, 12/5/69, 3/9/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.1.30 NMAC - Rn & A, 3 NMAC 2.1.30, 4/30/01; A, 12/30/03; A, XXX]~~

**End of Notices and Proposed
Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is a repromulgation to make permanent the amendment to 8.15.2 NMAC, Section 17, effective 12/30/11.

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child’s enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the 14 calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1).

F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time).

G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type.

H. Monthly reimbursement rates: [The table below reflects a decrease in monthly provider reimbursement rates in response to a significant budget shortfall in FY 2011. The department will reevaluate its financial situation prior to June 30, 2011, which is the end of the state fiscal year 2011, and determine whether it will be possible to increase reimbursement rates for the following fiscal year.]

Licensed child care centers								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
	Infant	[\$457.32] \$476.37	[\$402.00] \$418.75	[\$342.99] \$357.28	[\$301.50] \$314.06	[\$228.66] \$238.19	[\$201.00] \$209.38	[\$114.33] \$119.09
Toddler	[\$408.69] \$425.72	[\$374.04] \$389.63	[\$306.52] \$319.29	[\$280.53] \$292.22	[\$204.35] \$212.86	[\$187.02] \$194.81	[\$102.17] \$106.43	[\$93.51] \$97.41
Pre-school	[\$379.21] \$395.01	[\$348.50] \$363.02	[\$284.41] \$296.26	[\$261.37] \$272.27	[\$189.60] \$197.51	[\$174.25] \$181.51	[\$94.80] \$98.75	[\$87.12] \$90.76
School age	[\$331.81] \$345.64	[\$319.64] \$332.96	[\$248.86] \$259.23	[\$239.73] \$249.72	[\$165.91] \$172.82	[\$159.82] \$166.48	[\$82.95] \$86.41	[\$79.91] \$83.24
Licensed group homes (capacity: 7-12)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
	Infant	[\$363.85] \$379.01	[\$341.72] \$355.96	[\$272.89] \$284.26	[\$256.29] \$266.97	[\$181.92] \$189.51	[\$170.86] \$177.98	[\$90.96] \$94.75
Toddler	[\$330.17] \$343.93	[\$322.78] \$336.23	[\$247.63] \$257.95	[\$242.09] \$252.17	[\$165.09] \$171.97	[\$161.39] \$168.12	[\$82.54] \$85.98	[\$80.70] \$84.06
Pre-school	[\$324.56] \$338.08	[\$317.57] \$330.81	[\$243.42] \$253.56	[\$238.18] \$248.10	[\$162.28] \$169.04	[\$158.79] \$165.40	[\$81.14] \$84.52	[\$79.39] \$82.70

School age	[\$320.19] \$333.53	[\$310.59] \$323.53	[\$240.14] \$250.15	[\$232.94] \$242.65	[\$160.09] \$166.77	[\$155.29] \$161.77	[\$80.05] \$83.38	[\$77.65] \$80.88
Licensed family homes (capacity: 6 or less)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	[\$350.59] \$365.20	[\$328.90] \$342.60	[\$262.94] \$273.90	[\$246.67] \$256.95	[\$175.30] \$182.60	[\$164.45] \$171.30	[\$87.65] \$91.30	[\$82.22] \$85.65
Toddler	[\$312.08] \$325.08	[\$307.24] \$320.04	[\$234.06] \$243.81	[\$230.43] \$240.03	[\$156.04] \$162.54	[\$153.62] \$160.02	[\$78.02] \$81.27	[\$76.81] \$80.01
Pre-school	[\$311.20] \$324.17	[\$304.40] \$317.09	[\$233.40] \$243.13	[\$228.30] \$237.81	[\$155.60] \$162.09	[\$152.20] \$158.54	[\$77.80] \$81.04	[\$76.10] \$79.27
School age	[\$306.51] \$319.28	[\$297.25] \$309.64	[\$229.88] \$239.46	[\$222.94] \$232.23	[\$153.25] \$159.64	[\$148.63] \$154.82	[\$76.63] \$79.82	[\$74.31] \$77.41
Registered homes and in-home child care								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	[\$267.59] \$278.74	[\$247.68] \$258.00	[\$200.69] \$209.06	[\$185.76] \$193.50	[\$133.80] \$139.37	[\$123.84] \$129.00	[\$66.90] \$69.69	[\$61.92] \$64.50
Toddler	[\$253.44] \$264.00	[\$208.98] \$217.69	[\$190.08] \$198.00	[\$156.74] \$163.27	[\$126.72] \$132.00	[\$104.49] \$108.85	[\$63.36] \$66.00	[\$52.25] \$54.42
Pre-school	[\$232.32] \$242.00	[\$211.20] \$220.00	[\$174.24] \$181.50	[\$158.40] \$165.00	[\$116.16] \$121.00	[\$105.60] \$110.00	[\$58.08] \$60.50	[\$52.80] \$55.00
School age	[\$232.32] \$242.00	[\$190.08] \$198.00	[\$174.24] \$181.50	[\$142.56] \$148.50	[\$116.16] \$121.00	[\$95.04] \$99.00	[\$58.08] \$60.50	[\$47.52] \$49.50

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, Star level status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider. Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties. All other providers receive the rural rate.

J. Providers holding national accreditation status receive an additional ~~[\$126.72]~~ \$132.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher Star levels as follows: 2-Star at ~~[\$43.20]~~ \$45.00 per month per child for full time care above the base reimbursement rate; 3-Star at ~~[\$67.20]~~ \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at ~~[\$100.32]~~ \$104.50 per month per child for full time care above the base reimbursement rate, and 5-Star at ~~[\$126.72]~~ \$132.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

M. If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six to 12 month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 08/15/07; A, 06/30/10; A/E, 11/01/10; Re-pr, 12/30/10; A/E, 12/01/11; Re-pr, 12/30/11]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 41 EXPANDED FUNCTION DENTAL AUXILIARY, FEES

16.5.41.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care.
[16.5.41.1 NMAC - N, 01/09/12]

16.5.41.2 SCOPE: The provisions of Part 41 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified expanded function dental auxiliary or other public records.
[16.5.41.2 NMAC - N, 01/09/12]

16.5.41.3 STATUTORY AUTHORITY: Part 41 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-20 NMSA 1978.
[16.5.41.3 NMAC - N, 01/09/12]

16.5.41.4 DURATION: Permanent.
[16.5.41.4 NMAC - N, 01/09/12]

16.5.41.5 EFFECTIVE DATE: January 9, 2012, unless a later date is cited at the end of a section.
[16.5.41.5 NMAC - N, 01/09/12]

16.5.41.6 OBJECTIVE: To establish fees to generate revenue to support the cost of program administration.
[16.5.41.6 NMAC - N, 01/09/12]

16.5.41.7 DEFINITIONS:
[RESERVED]

16.5.41.8 FEES:

- A. all fees are non-refundable;
- B. application fee: \$100;
- C. board examination fee not to exceed \$100 per exam;
- D. triennial renewal fee: \$100;
- E. late penalty fee: \$25.00;
- F. duplicate certificate fee: \$10.00;
- G. list of current certificate holders: \$300; an annual list of current

certificate holders is available to the professional association upon request at no cost;

- H. labels of current certificate holders: \$300;
- I. reinstatement fee: \$15.00;
- J. copies cost \$0.25 per page.

[16.5.41.8 NMAC - N, 01/09/12]

HISTORY OF 16.5.41 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 42 EXPANDED FUNCTION DENTAL AUXILIARY, REQUIREMENTS FOR CERTIFICATION

16.5.42.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care.
[16.5.42.1 NMAC - N, 01/09/12]

16.5.42.2 SCOPE: The provisions of Part 42 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified expanded function dental auxiliary or other public records.
[16.5.42.2 NMAC - N, 01/09/12]

16.5.42.3 STATUTORY AUTHORITY: Part 42 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-5, 61-5A-6 and 61-5A-6.1 NMSA 1978.
[16.5.42.3 NMAC - N, 01/09/12]

16.5.42.4 DURATION: Permanent.
[16.5.42.4 NMAC - N, 01/09/12]

16.5.42.5 EFFECTIVE DATE: January 9, 2012, unless a later date is cited at the end of a section.
[16.5.42.5 NMAC - N, 01/09/12]

16.5.42.6 OBJECTIVE: To establish the requirements for certification for expanded function dental auxiliary to perform expanded functions. These rules address applicants being certified via the following tracks.

- A. Completed an expanded function dental auxiliary program accredited by the joint commission on dental accreditation.

- B. Independent preparation for dental assistants that have five years experience and prepare independently for the requirements.

- C. Candidates who possess a current certificate in good standing in expanded function dental auxiliary from another state or jurisdiction (credentials).
[16.5.42.6 NMAC - N, 01/09/12]

16.5.42.7 DEFINITIONS:

- A. "Apprenticeship" means a period of time in which an EFDA candidate is closely supervised by a supervising dentist and demonstrates competency on patients in EFDA duties as defined under 16.5.46.9 NMAC. The supervising dentist assumes all responsibility and liability for the training and actions of an EFDA candidate and must attest to their competency.

- B. "Close personal supervision" means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of a EFDA candidate to the board.

- C. "Continuous employment" means 1,000 hours per year for any five consecutive years.

- D. "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;

- (2) orders, controls and accepts full professional responsibility for the act performed; and

- (3) evaluates and approves the procedure performed before the patient departs the care setting.

- E. "Expanded function dental auxiliary" EFDA means a dental assistant, dental hygienist or other dental auxiliary that has received education specific to the duties delineated by the board for an EFDA, and has met the educational and certifying exam standards set by the board for an EFDA, and works under the direct supervision of a NM licensed dentist to perform the functions allowed under this section.

- F. "Placing and shaping restorations" means the act of placing dental filling material(s) directly into a cavity preparation previously prepared by a dentist, and shaping, finishing and polishing the restoration so that it has proper occlusal form, contacts, anatomy and margins prior to final approval by the dentist.

- G. "Supervising dentist" means a New Mexico licensed dentist who has no current action or inquires pending by the board and who provides supervision, instruction and recommendation for an EFDA candidate to the board.

[16.5.42.7 NMAC - N, 01/09/12]

16.5.42.8 REQUIREMENTS: EFDA who performs the duties defined under 16.5.46.9 NMAC are required to be certified by the board.
[16.5.42.8 NMAC - N, 01/09/12]

16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL AUXILIARY:

A. satisfactory completion of an accepted expanded function dental auxiliary course at an institution accredited by the board or joint commission on dental accreditation where in the offering program is also accredited by the commission; or

B. for dental auxiliaries that have five years experience and "independent preparation" for the requirements:

(1) applicant must have a minimum of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(2) achieved certification in all expanded functions as defined in 16.5.33 NMAC;

(3) taken a course of study in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function and passed a post-test approved by the board verifying readiness for taking the certification examination;

(4) recommended for an EFDA certification by the supervising dentist;

C. pass the WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board for certification of EFDA;

D. completed the jurisprudence examination with a score of at least 75 percent;

E. exemptions; an expanded function dental auxiliary who is certified to perform EFDA duties in another state or jurisdiction with requirements not less stringent than those in New Mexico may be certified based on credentials;

F. after passing a board accepted examination or being certified by credentials, EFDA candidates must complete an apprenticeship under the close personal supervision of a supervising dentist; an affidavit to be signed by the supervising dentist attesting to the apprenticeship will be sent by the board to the candidate upon receipt of the completed application; the affidavit shall serve as the permit to start the apprenticeship;

(1) the affidavit shall state that the supervising dentist assures that the EFDA candidate is competent in the procedures allowed by an EFDA and that the supervising dentist assumes full responsibility and liability for the training and actions of the EFDA;

(2) once the affidavit is issued by

the board office the EFDA candidate will have 180 days to complete the apprenticeship and submit the signed affidavit to the board; and

(3) once the signed affidavit has been received and verified by the board a certificate for EDFA may be issued.

[16.5.42.9 NMAC - N, 01/09/12]

16.5.42.10 REQUIRE D DOCUMENTATION: Each applicant for an expanded function dental auxiliary certification shall submit to the board or its agent the required fees and following documentation. Applications are valid for one year from the date of receipt by the board; after one year, the applicant shall submit to the board a new application.

A. Each application for licensure who completed an EFDA program must submit the following documentation:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) official transcripts or certification verifying successful completion of an EFDA program accredited by the commission on dental accreditation;

(3) copy of WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board for certification as EDFA; the results of the exam are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to WREB, CRDTS, NERB/ADEX, or SRTA for examination;

(b) results of the clinical examination shall be sent directly to the board office; and

(4) affidavit letter from supervising dentists.

B. An applicant who has not graduated from an accredited expanded function dental auxiliary program can apply for licensure if they meet all requirements in Subsection B, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) shall provide proof of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(3) shall have achieved certification in all expanded function as defined in 16.5.33 NMAC;

(4) shall provide proof of successful completion of courses in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function;

(5) shall provide a letter from supervising dentist recommending applicant for EFDA certification; must be on dentist letterhead;

(6) copy of WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board; and

(7) affidavit letter from the supervising dentist of competency.

C. Certification by credentials. Applicants can apply for certification by credentials if they meet all requirements as defined in Subsections A, C, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) verification of a current active certification in good standing from another state; and

(3) copy of WREB, CRDTS, NERB/ADEX, SRTA or other clinical examination accepted by the board; the results of the examination are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to WREB, CRDTS, NERB/ADEX or SRTA for examination, and

(b) the results of the clinical examination must be sent directly to the board office; and

(4) affidavit letter from the supervising dentist of competency.

[16.5.42.10 NMAC - N, 01/09/12]

16.5.42.11 CERTIFICATION PROCEDURE: Upon receipt of a completed application, including all required documentation, signed affidavit and fees, the secretary-treasurer or delegate of the board will review the application and determine eligibility for certification.

A. Initial certificates are issued for a period not to exceed three years.

B. The certificate must be displayed so that it is visible to the public.

[16.5.42.11 NMAC - N, 01/09/12]

HISTORY OF 16.5.42 NMAC: [RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 43 EXPANDED FUNCTION DENTAL AUXILIARY, CERTIFICATION EXPIRATION AND RENEWAL**

16.5.43.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.43.1 NMAC - N, 01/09/12]

16.5.43.2 SCOPE: The

provisions of Part 43 of Chapter 5 apply to all expanded function dental auxiliary with a certificate to practice expanded functions in New Mexico.

[16.5.43.2 NMAC - N, 01/09/12]

16.5.43.3 STATUTORY

AUTHORITY: Part 43 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[16.5.43.3 NMAC - N, 01/09/12]

16.5.43.4 DURATION:

Permanent.

[16.5.43.4 NMAC - N, 01/09/12]

16.5.43.5 EFFECTIVE DATE:

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.43.5 NMAC - N, 01/09/12]

16.5.43.6 OBJECTIVE:

To establish the requirements and procedures for renewal and expiration of certificates for expanded function dental auxiliary.

[16.5.43.6 NMAC - N, 01/09/12]

16.5.43.7 DEFINITIONS:

[RESERVED]

16.5.43.8 CERTIFICATE

EXPIRATION: Initial certificates will expire on July 1 following the second year of certification. No certificate will be issued for longer than 36 months or less than 25 months.

[16.5.43.8 NMAC - N, 01/09/12]

16.5.43.9 RENEWAL PERIOD

AND EXPIRATION: After the initial certification period, certifications for expanded function expire every three years on June 30. Certificates that are not renewed by July 1 are considered expired.

[16.5.43.9 NMAC - N, 01/09/12]

16.5.43.10 RENEWAL

PROCESS: A completed renewal application, accompanied by the required fee as set forth in 16.5.41.8 NMAC, along with the required proof of completion of 36 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1 of the renewal year.

[16.5.43.10 NMAC - N, 01/09/12]

16.5.43.11 CERTIFICATE

HOLDER RESPONSIBILITY: The board assumes no responsibility for renewal applications not received for any reason. It is the certificate holders responsibility to make timely request for the renewal form if one has not been received 30 days prior to certificate expiration.

[16.5.43.11 NMAC - N, 01/09/12]

16.5.43.12 RENEWAL AFTER

JUNE 30: Renewal applications post-marked after July 1 and prior to August 1 of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.44.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.41.8 NMAC.

[16.5.43.12 NMAC - N, 01/09/12]

16.5.43.13 RENEWAL AFTER

AUGUST 1 AND BEFORE SEPTEMBER 1: Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.44.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.41.8 NMAC.

[16.5.43.13 NMAC - N, 01/09/12]

16.5.43.14 RENEWAL

APPLICATION UNDELIVERABLE: If the notice of renewal is returned to the office and the certificate holder has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[16.5.43.14 NMAC - N, 01/09/12]

HISTORY OF 16.5.43 NMAC:

[RESERVED]

**NEW MEXICO BOARD OF
DENTAL HEALTH CARE**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL HYGIENISTS,
ETC.)**

**PART 44 EXPANDED
FUNCTION DENTAL AUXILIARY,
CONTINUING EDUCATION
REQUIREMENTS**

16.5.44.1 ISSUING AGENCY:

New Mexico Board of Dental Health Care.

[16.5.44.1 NMAC - N, 01/09/12]

16.5.44.2 SCOPE:

The provisions of Part 44 of Chapter 5 apply to all expanded function dental auxiliary with current expanded function dental auxiliary certification who are applying to renew their certificate.

[16.5.44.2 NMAC - N, 01/09/12]

16.5.44.3 STATUTORY

AUTHORITY: Part 44 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).

[16.5.44.3 NMAC - N, 01/09/12]

16.5.44.4 DURATION:

Permanent.

[16.5.44.4 NMAC - N, 01/09/12]

16.5.44.5 EFFECTIVE DATE:

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.44.5 NMAC - N, 01/09/12]

16.5.44.6 OBJECTIVE:

To establish the requirements for the renewal of expanded function dental auxiliary certificates.

[16.5.44.6 NMAC - N, 01/09/12]

16.5.44.7 DEFINITIONS:

[RESERVED]

16.5.44.8 HOURS REQUIRED:

36 hours of continuing education, a maximum of 12 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are prorated at 12 hours per year for individuals certified for less than three years.

[16.5.44.8 NMAC - N, 01/09/12]

16.5.44.9 COURSES

REQUIRED: Continuing education coursework must contribute directly to the practice of expanded function dental auxiliary. The following courses are required for certification renewal:

A. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period;

B. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course; and

C. 12 hours in restorative dentistry.

[16.5.44.9 NMAC - N, 01/09/12]

16.5.44.10 VERIFICATION

OF CONTINUING EDUCATION: The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms

of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[16.5.44.10 NMAC - N, 01/09/12]

16.5.44.11 EMERGENCY DEFERRAL: A certificate holder who is unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

[16.5.44.11 NMAC - N, 01/09/12]

HISTORY OF 16.5.44 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 45 EXPANDED FUNCTION DENTAL AUXILIARY, CERTIFICATE REVOCATION FOR NON-RENEWAL

16.5.45.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.45.1 NMAC - N, 01/09/12]

16.5.45.2 SCOPE: The provisions of Part 45 of Chapter 5 apply to all expanded function dental auxiliary with expanded function certification who do not submit an application for certificate renewal within 60 days of the expiration date.
[16.5.45.2 NMAC - N, 01/09/12]

16.5.45.3 STATUTORY AUTHORITY: Part 45 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pamp.).
[16.5.45.3 NMAC - N, 01/09/12]

16.5.45.4 DURATION: Permanent.
[16.5.45.4 NMAC - N, 01/09/12]

16.5.45.5 EFFECTIVE DATE: January 9, 2012, unless a later date is cited at the end of a section.
[16.5.45.5 NMAC - N, 01/09/12]

16.5.45.6 OBJECTIVE: To establish the procedures and policies for revocation of expired expanded function dental auxiliary certificates and the reinstatement of certificates revoked for non-

renewal.

[16.5.45.6 NMAC - N, 01/09/12]

16.5.45.7 DEFINITIONS:
[RESERVED]

16.5.45.8 REVOCATION OF CERTIFICATE FOR NON-RENEWAL: Unless an application for certificate renewal is received by the board office, or post-marked, before September 1, the certificate shall be revoked for non-renewal.
[16.5.45.8 NMAC - N, 01/09/12]

16.5.45.9 REINSTATEMENT OF REVOKED CERTIFICATE: Within one year of the revocation notice, the certificate may be reinstated by payment of renewal, late and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must re-apply as a new applicant and meet all requirements for initial certification.

A. Applicants for reinstatement must provide verification of certification in all states where the applicant holds or has held a certificate to practice expanded function dental auxiliary, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, expiration date, certificate number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked certification application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[16.5.45.9 NMAC - N, 01/09/12]

HISTORY OF 16.5.45 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 46 EXPANDED FUNCTION DENTAL AUXILIARY, PRACTICE AND SUPERVISION

16.5.46.1 ISSUING AGENCY: New Mexico Board of Dental Health Care
[16.5.46.1 NMAC - N, 01/09/12]

16.5.46.2 SCOPE: The provisions of Part 46 of Chapter 5 apply to all expanded function dental auxiliary with current certification.
[16.5.46.2 NMAC - N, 01/09/12]

16.5.46.3 STATUTORY AUTHORITY: Part 46 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, 61-5A-5, 61-5A-6 and 61-5A-6.1 NMSA 1978, (1996 Repl. Pamp.).
[16.5.46.3 NMAC - N, 01/09/12]

16.5.46.4 DURATION: Permanent.
[16.5.46.4 NMAC - N, 01/09/12]

16.5.46.5 EFFECTIVE DATE: January 9, 2012, unless a later date is cited at the end of a section.
[16.5.46.5 NMAC - N, 01/09/12]

16.5.46.6 OBJECTIVE: To establish those procedures which shall be provided by an expanded function dental auxiliary, the procedures which require expanded function dental auxiliary certification, and the procedures which shall not be performed by an expanded function dental auxiliary, regardless of certification or supervision.
[16.5.46.6 NMAC - N, 01/09/12]

16.5.46.7 DEFINITIONS: "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

A. is physically present throughout the performance of the act;

B. orders, controls and accepts full professional responsibility for the act performed; and

C. evaluates and approves the procedure performed before the patient departs the care setting.

[16.5.46.7 NMAC - N, 01/09/12]

16.5.46.8 PRACTICE AND REQUIRED SUPERVISION: EFDA duties set forth in 16.5.46.9 NMAC are allowed under the direct supervision of a NM licensed dentist, provided the dentist has:

A. prepared the cavity or tooth for the restorative procedure;

B. instructed the EFDA on the particular elements of this individual case;

C. fully examined and evaluated the procedure carried out by the EFDA, and corrected or replaced any deficiency found in the EFDA work, before allowing the patient to leave the treatment facility;

D. the dentist is ultimately

responsible for the quality of care and the quality of the final restorative procedure carried out by the EFDA as defined in 16.5.16 NMAC and Subsection N of Section 61-5A-3 of the Dental Health Care Act; and

E. not more than two EFDA, performing expanded functions, per licensed dentist present in office.
[16.5.46.8 NMAC - N, 01/09/12]

16.5.46.9 ALLOWABLE DUTIES UNDER DIRECT SUPERVISION: The following EFDA procedures are allowable under direct supervision as set forth in 16.5.46.8 NMAC.

A. Placing and shaping of direct restorative materials into cavity preparations completed by a dentist; EFDA may use instrumentation as necessary and proper for this purpose.

B. Taking of impressions for permanent fixed or removable prosthetics involving single teeth. These include single crowns or single tooth replacement prosthetics. EFDA shall NOT take final impressions for multiple units of single crowns, bridges, cast framework partial dentures or full dentures.

C. Cement permanent or provisional restorations with temporary or provisional cement, provided the permanent cementation will be completed or monitored by the dentist within six months.

D. Place pit and fissure sealants under supervision as certification or licensure allows.

E. Place temporary or sedative restorations in open carious lesions after hand excavation of gross decay and debris. If pain is perceived by the patient dentist shall evaluate lesion before completion by EFDA.

F. The EFDA may place temporary or sedative restorative material into unprepared tooth fractures as a palliative measure. The EFDA shall NOT use any automated method to clean out the lesion or prepare the tooth, including but not limited to high speed, slow speed, air abrasion, ultrasonic, laser etc.

G. Remove residual orthodontic bracket or band cement or resin from teeth after the brackets or bands have been removed by the dentist performing the orthodontic treatment, or to prepare the tooth or teeth for re-cementation of a debonded bracket or band. This removal of cement/resin may include the use of instrumentation, as necessary and proper for this purpose.

H. Perform preliminary fitting and shaping of stainless steel crowns which shall undergo final evaluation and cementation by a dentist.

I. In emergency situation recement temporary or permanent crowns or bridges using provisional cement under the general supervision of a dentist and when

instructed to do so by the dentist provided the permanent cementation will be completed or monitored by the dentist within six months.
[16.5.46.9 NMAC - N, 01/09/12]

16.5.46.10 NON-ALLOWABLE PROCEDURES: EFDA shall not perform any other procedure, duty or function as an EFDA under any level of supervision that is not expressly listed in 16.5.46.9 NMAC.
[16.5.46.10 NMAC - N, 01/09/12]

HISTORY OF 16.5.46 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 47 EXPANDED FUNCTION DENTAL AUXILIARY, DISCIPLINARY PROCEEDINGS

16.5.47.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.47.1 NMAC - N, 01/09/12]

16.5.47.2 SCOPE: The provisions of Part 47 of Chapter 5 apply to all active certificate holders and applicants for certification. These provisions may also be of interest to anyone who may wish to file a complaint against an expanded function dental auxiliary certified by the board.
[16.5.47.2 NMAC - N, 01/09/12]

16.5.47.3 STATUTORY AUTHORITY: Part 47 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-6 and 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).
[16.5.47.3 NMAC - N, 01/09/12]

16.5.47.4 DURATION: Permanent.
[16.5.47.4 NMAC - N, 01/09/12]

16.5.47.5 EFFECTIVE DATE: January 9, 2012, unless a later date is cited at the end of a section.
[16.5.47.5 NMAC - N, 01/09/12]

16.5.47.6 OBJECTIVE: To establish the procedures for filing complaints against certificate holders, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a certificate holder which are considered incompetent or unprofessional practice.
[16.5.47.6 NMAC - N, 01/09/12]

16.5.47.7 DEFINITIONS:
[RESERVED]

16.5.47.8 COMPLAINTS: Disciplinary proceedings shall be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Dental Health Care Act.
[16.5.47.8 NMAC - N, 01/09/12]

16.5.47.9 ACTIONS:
A. The board may issue fines, deny, revoke or suspend, or otherwise limit a certificate if the board determines the certificate holder is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, or these rules.

B. The board may reprimand, censure, stipulate and may require certificate holders to fulfill additional continuing education hours within limited time constraints for violations of the act or the rules.

C. The board shall take into consideration the role of expanded function dental auxiliary as employees when taking disciplinary action against a certificate holder. In the event the complaint is ruled to be based primarily on the expanded function dental auxiliary's role as employee, the board may consider appropriate action against the employer/dentist.
[16.5.47.9 NMAC - N, 01/09/12]

16.5.47.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of expanded function dental auxiliary;

B. sexual misconduct;
C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any renewal or reinstatement application;

E. cheating on an examination for expanded function dental auxiliary certification;

F. performing any procedure which requires certification unless so certified;

G. i n j u d i c i o u s

administration of any drug or medicine; and
H. conviction of either
a misdemeanor or a felony punishable by
incarceration.

[16.5.47.10 NMAC - N, 01/09/12]

**16.5.47.11 INVESTIGATIVE
SUBPOENAS:** The complaint committee of
the board is authorized to issue investigative
subpoenas and to employ experts with regard
to pending investigations.

[16.5.47.11 NMAC - N, 01/09/12]

**HISTORY OF 16.5.47 NMAC:
[RESERVED]**

NEW MEXICO BOARD OF DENTAL HEALTH CARE

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL HYGIENISTS,
ETC.)**

**PART 49 COMMUNITY
DENTAL HEALTH COORDINATOR,
FEES**

16.5.49.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care.
[16.5.49.1 NMAC - N, 01/09/12]

16.5.49.2 SCOPE: The
provisions of Part 49 of Chapter 5 apply
to all applicants for certification; to active,
expired and suspended certificate holders;
and to anyone who requests a list of certified
community dental health coordinators or
other public records.

[16.5.49.2 NMAC - N, 01/09/12]

**16.5.49.3 STATUTORY
AUTHORITY:** Part 49 of Chapter 5 is
promulgated pursuant to the Dental Health
Care Act, Section 61-5A-20 NMSA 1978.
[16.5.49.3 NMAC - N, 01/09/12]

16.5.49.4 DURATION:
Permanent.
[16.5.49.4 NMAC - N, 01/09/12]

16.5.49.5 EFFECTIVE DATE:
January 9, 2012, unless a later date is cited
at the end of a section.
[16.5.49.5 NMAC - N, 01/09/12]

16.5.49.6 OBJECTIVE: To
establish fees to generate revenue to support
the cost of program administration.
[16.5.49.6 NMAC - N, 01/09/12]

16.5.49.7 DEFINITIONS:
[RESERVED]

16.5.49.8 FEES:
A. all fees are non-

refundable;
B. application fee: \$100;
C. board examination fee
not to exceed \$100 per exam;
D. triennial renewal fee:
\$100;

E. late penalty fee: \$25.00;
F. duplicate certificate fee:
\$10.00;

G. list of current certificate
holders: \$300; an annual list of current
certificate holders is available to the
professional association upon request at no
cost;

H. labels of current
certificate holders: \$300;

I. reinstatement fee:
\$15.00;

J. copies cost \$0.25 per
page.

[16.5.49.8 NMAC - N, 01/09/12]

**HISTORY OF 16.5.49 NMAC:
[RESERVED]**

NEW MEXICO BOARD OF DENTAL HEALTH CARE

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL HYGIENISTS,
ETC.)**

**PART 50 COMMUNITY
DENTAL HEALTH COORDINATOR,
REQUIREMENTS FOR
CERTIFICATION**

16.5.50.1 ISSUING AGENCY:
New Mexico Board of Dental Health Care.
[16.5.50.1 NMAC - N, 01/09/12]

16.5.50.2 SCOPE: The
provisions of Part 50 of Chapter 5 apply to all
applicants for certification; to active, expired
and suspended certificate holders; and to
anyone who requests a list of community
dental health coordinators or other public
records.

[16.5.50.2 NMAC - N, 01/09/12]

**16.5.50.3 STATUTORY
AUTHORITY:** Part 50 of Chapter 5 is
promulgated pursuant to the Dental Health
Care Act, Sections 61-5A-5 and 61-5A-6
NMSA 1978.

[16.5.50.3 NMAC - N, 01/09/12]

16.5.50.4 DURATION:
Permanent.

[16.5.50.4 NMAC - N, 01/09/12]

16.5.50.5 EFFECTIVE DATE:
January 9, 2012, unless a later date is cited
at the end of a section.

[16.5.50.5 NMAC - N, 01/09/12]

16.5.50.6 OBJECTIVE: To
establish the requirements for certification
as a community dental health coordinator
for applicants from various educational
backgrounds and professional tracks.
[16.5.50.6 NMAC - N, 01/09/12]

16.5.50.7 DEFINITIONS:
A. "Community based field
experience" means a hands on internship/
apprenticeship where the CDHC gets to use
their skills under supervision of a licensed
New Mexico dentist or hygienist.

B. "Community dental
health coordinator" CDHC means a dental
assistant, dental hygienist or other trained
personnel certified by the board as a
community dental health coordinator to
provide educational, preventive and limited
palliative care and assessment services
working collaboratively under the general
supervision of a licensed New Mexico
dentist.

C. "Community health
promotion" means courses that teach social
work skills such as, building social networks,
health advocacy for individuals and
communities, mapping out social and health
support networks, cultural competency,
communication skills, interpersonal skills,
interviewing skills, behavioral assessment
and management, developing community
programs, teaching and training skills, legal
and ethical issues.

D. "Continuous
employment" means 1,000 hours per year
for five consecutive years.

E. "Dental skills" means
courses in basic dental knowledge, emergency
vs. routine care needs, recognition of dental
conditions, gross anatomy of head and neck
and oral structures, gathering and recording
information, clinical record keeping, caries,
periodontal disease, oral and external cancer
evaluation, palliative care, and financing
dental care.

F. "General supervision"
means the authorization by a dentist of the
procedures to be used by a dental hygienist,
dental assistant, expanded function dental
auxiliary, dental student, or community
dental health coordinator and the execution
of the procedures in accordance with a
dentist's diagnosis and treatment plan at a
time the dentist is not physically present and
in the facility as designated by the rules of
the board.

G. "Limited palliative
procedures" means procedures ordered by
the dentist to help relieve pain or to improve
an emergency situation that a patient is
experiencing. These procedures must be
within the scope of the community dental
health coordinator.

H. "Teledentistry" means a
dentist's use of health information technology
in real time to provide limited diagnostic and

treatment planning services in cooperation with another dentist, a dental hygienist, a community dental health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

[16.5.50.7 NMAC - N, 01/09/12]

16.5.50.8 REQUIREMENTS:

Community dental health coordinator who performs the duties defined under 16.5.54 NMAC are required to be certified by the board.

[16.5.50.8 NMAC - N, 01/09/12]

16.5.50.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR COMMUNITY DENTAL HEALTH COORDINATOR:

Each applicant for a certification for community dental health coordinator must possess the following qualifications, through one of the following pathways:

A. Applicants for CDHC shall meet the following requirements for certification:

(1) shall have high school diploma (or equivalent) or college level degree;

(2) shall have board certification in radiography, rubber cup coronal polishing and topical fluoride and pit and fissure expanded functions;

(3) completed the jurisprudence exam with a score of at least 75 percent; and

(4) successful completion of CDHC program approved by the board.

B. Pathways/educational tracks: applicants may have earned other college level degree(s) and certifications in their respective field(s) of study, such as, but not limited to, registered dental hygienists, certified dental assistant, dental assistant, expanded function dental auxiliary and other non-dental professionals. Credits earned in these educational fields may be applied for credit towards the CDHC education program as determined by the sponsoring institution.

C. Approved programs: board approved CDHC programs shall include the following guidelines for course study in order to prepare the applicant to a level consistent with the definitions as listed in 16.5.50.7 NMAC and duties as outlined in 16.5.54.9 NMAC:

(1) education in community health promotion;

(2) education in dental skills; and

(3) education in community-based field experience.

D. Credit shall be given by the approved program of coursework, certifications, or degrees already earned. Proof of these credits is the responsibility of the institution of the approved program.

[16.5.50.9 NMAC - N, 01/09/12]

16.5.50.10 R E Q U I R E D

DOCUMENTATION: Each applicant for community dental health coordinator certification must submit to the board or its agent the required fees and following documentation. Applications are valid for one year from the date of receipt:

A. proof of official transcripts with required courses for certification; official transcripts verifying successfully passing all required coursework as defined in 61-5A-6 of the act;

B. passed the jurisprudence exam with a score of at least 75 percent;

C. submit to the board the names of the dentists(s) working in a supervisory capacity to the CDHC coordinator.

[16.5.50.10 NMAC - N, 01/09/12]

16.5.50.11 CERTIFICATION

PROCEDURE: Upon receipt of a completed application, including all required documentation and fees the secretary-treasurer or delegate of the board will review the application and determine eligibility for certification.

A. Initial certificates are issued for a period not to exceed three years.

B. The certificate must be displayed so that it is visible to the public.

[16.5.50.11 NMAC - N, 01/09/12]

HISTORY OF 16.5.50 NMAC: [RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 51 COMMUNITY DENTAL HEALTH COORDINATOR, CERTIFICATION EXPIRATION AND RENEWAL

16.5.51.1 ISSUING AGENCY:

New Mexico Board of Dental Health Care.

[16.5.51.1 NMAC - N, 01/09/12]

16.5.51.2 SCOPE:

The provisions of Part 51 of Chapter 5 apply to all community dental health coordinators with a certificate to practice as a community dental health coordinator in New Mexico.

[16.5.51.2 NMAC - N, 01/09/12]

16.5.51.3 STATUTORY

AUTHORITY: Part 51 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pam.).

[16.5.51.3 NMAC - N, 01/09/12]

16.5.51.4 D U R A T I O N :

Permanent.

[16.5.51.4 NMAC - N, 01/09/12]

16.5.51.5 EFFECTIVE DATE:

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.51.5 NMAC - N, 01/09/12]

16.5.51.6 OBJECTIVE:

To establish the requirements and procedures for renewal and expiration of certificates for community dental health coordinator.

[16.5.51.6 NMAC - N, 01/09/12]

16.5.51.7 DEFINITIONS:

[RESERVED]

16.5.51.8 CERTIFICATE

EXPIRATION: Initial certificates will expire on July 1 following the second year of certification. No certificate will be issued for longer than 36 months or less than 25 months.

[16.5.51.8 NMAC - N, 01/09/12]

16.5.51.9 RENEWAL PERIOD

AND EXPIRATION: After the initial certification period, certifications for community dental health coordinator expire every three years on June 30. Certificates that are not renewed by July 1 are considered expired.

[16.5.51.9 NMAC - N, 01/09/12]

16.5.51.10 RENEWAL

PROCESS: A completed renewal application, accompanied by the required fee as set forth in 16.5.49.8 NMAC, along with the required proof of completion of 36 hours of continuing education as set forth in 16.5.1.15 NMAC. The completed renewal application must be post-marked on or before July 1 of the renewal year.

[16.5.51.10 NMAC - N, 01/09/12]

16.5.51.11 CERTIFICATE

HOLDER RESPONSIBILITY: The board assumes no responsibility for renewal applications not received for any reason. It is the certificate holders responsibility to make timely request for the renewal form if one has not been received 30 days prior to certificate expiration.

[16.5.51.11 NMAC - N, 01/09/12]

16.5.51.12 RENEWAL AFTER

JUNE 30: Renewal applications post-marked after July 1 and prior to August 1 of the renewal year must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.52.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.49.8 NMAC.

[16.5.51.12 NMAC - N, 01/09/12]

16.5.51.13 RENEWAL AFTER

AUGUST 1 AND BEFORE SEPTEMBER

1: Renewal applications post-marked on or after August 1, but before September 1, of the renewal year, must be accompanied by the completed renewal application with the required proof of completion of 36 hours of continuing education as set forth in 16.5.52.8 NMAC, along with the triennial renewal fee and late fee as set forth in 16.5.49.8 NMAC. [16.5.51.13 NMAC - N, 01/09/12]

16.5.51.14 RENEWAL APPLICATION UNDELIVERABLE:

If the notice of renewal is returned to the office and the certificate holder has not sent a change of address, the revocation order will be considered undeliverable and will not be mailed.

[16.5.51.14 NMAC - N, 01/09/12]

HISTORY OF 16.5.51 NMAC: [RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE
TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 52 COMMUNITY DENTAL HEALTH COORDINATOR, CONTINUING EDUCATION REQUIREMENTS
16.5.52.1 ISSUING AGENCY:

New Mexico Board of Dental Health Care. [16.5.52.1 NMAC - N, 01/09/12]

16.5.52.2 SCOPE:

The provisions of Part 52 of Chapter 5 apply to all community dental health coordinators with current expanded function certification who are applying to renew their certificate.

[16.5.52.2 NMAC - N, 01/09/12]

16.5.52.3 STATUTORY

AUTHORITY: Part 52 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pam.).

[16.5.52.3 NMAC - N, 01/09/12]

16.5.52.4 DURATION:

Permanent.

[16.5.52.4 NMAC - N, 01/09/12]

16.5.52.5 EFFECTIVE DATE:

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.52.5 NMAC - N, 01/09/12]

16.5.52.6 OBJECTIVE:

To establish the requirements for the renewal of community dental health coordinator

certificates.

[16.5.52.6 NMAC - N, 01/09/12]

16.5.52.7 DEFINITIONS:

[RESERVED]

16.5.52.8 HOURS REQUIRED:

36 hours of continuing education, a maximum of 12 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are prorated at 12 hours per year for individuals licensed for less than three years.

[16.5.52.8 NMAC - N, 01/09/12]

16.5.52.9 COURSES REQUIRED:

Continuing education coursework must contribute directly to the practice of community dental health coordinator. The following courses are required for license renewal:

A. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period;

B. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course; and

C. 12 hours in preventive or emergency dentistry.

[16.5.52.9 NMAC - N, 01/09/12]

16.5.52.10 VERIFICATION OF CONTINUING EDUCATION:

The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned.

[16.5.52.10 NMAC - N, 01/09/12]

16.5.52.11 EMERGENCY

DEFERRAL: A certificate holder who is unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the

board.

[16.5.52.11 NMAC - N, 01/09/12]

HISTORY OF 16.5.52 NMAC: [RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE
TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 53 COMMUNITY DENTAL HEALTH COORDINATOR, CERTIFICATE REVOCATION FOR NON-RENEWAL
16.5.53.1 ISSUING AGENCY:

New Mexico Board of Dental Health Care. [16.5.53.1 NMAC - N, 01/09/12]

16.5.53.2 SCOPE:

The provisions of Part 53 of Chapter 5 apply to all community dental health coordinators with certification who do not submit an application for certificate renewal within 60 days of the expiration date.

[16.5.53.2 NMAC - N, 01/09/12]

16.5.53.3 STATUTORY

AUTHORITY: Part 53 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-16 NMSA 1978 (1996 Repl. Pam.).

[16.5.53.3 NMAC - N, 01/09/12]

16.5.53.4 DURATION:

Permanent.

[16.5.53.4 NMAC - N, 01/09/12]

16.5.53.5 EFFECTIVE DATE:

January 9, 2012, unless a later date is cited at the end of a section.

[16.5.53.5 NMAC - N, 01/09/12]

16.5.53.6 OBJECTIVE:

To establish the procedures and policies for revocation of expired community dental health coordinator certificates and the reinstatement of certificates revoked for non-renewal.

[16.5.53.6 NMAC - N, 01/09/12]

16.5.53.7 DEFINITIONS:

[RESERVED]

16.5.53.8 REVOCATION OF CERTIFICATE FOR NON-RENEWAL:

Unless an application for certificate renewal is received by the board office, or post-marked, before September 1, the certificate shall be revoked for non-renewal.

[16.5.53.8 NMAC - N, 01/09/12]

16.5.53.9 REINSTATEMENT OF REVOKED CERTIFICATE: Within one year of the revocation notice, the certificate may be reinstated by payment of renewal, late and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must re-apply as a new applicant and meet all requirements for initial certification.

A. Applicants for reinstatement must provide verification of certification in all states where the applicant holds or has held a certificate to practice as a community dental health coordinator, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, expiration date, certification number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked certification application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.
[16.5.53.9 NMAC - N, 01/09/12]

HISTORY OF 16.5.53 NMAC: [RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 54 COMMUNITY DENTAL HEALTH COORDINATOR, PRACTICE AND SUPERVISION**

16.5.54.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.54.1 NMAC - N, 01/09/12]

16.5.54.2 SCOPE: The provisions of Part 54 of Chapter 5 apply to all community dental health coordinators with current certification.
[16.5.54.2 NMAC - N, 01/09/12]

16.5.54.3 STATUTORY AUTHORITY: Part 54 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, 61-5A-5 and 61-5A-6 NMSA 1978, (1996 Repl. Pam.).
[16.5.54.3 NMAC - N, 01/09/12]

16.5.54.4 DURATION :

Permanent.
[16.5.54.4 NMAC - N, 01/09/12]

16.5.54.5 EFFECTIVE DATE: January 9, 2012, unless a later date is cited at the end of a section.
[16.5.54.5 NMAC - N, 01/09/12]

16.5.54.6 OBJECTIVE: To establish those procedures which may be provided by a community dental health coordinator, the procedures which require community dental health coordinator certification, and the procedures which may not be performed by an community dental health coordinator, regardless of certification or supervision.
[16.5.54.6 NMAC - N, 01/09/12]

16.5.54.7 DEFINITIONS:
A. "Cavitation" means a break in the continuous, solid surface of the enamel of a tooth, created either by genetic formation or demineralization.

B. "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed; and

(3) evaluates and approves the procedure performed before the patient departs the care setting.

C. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, community dental health coordinator or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

D. "Limited palliative procedure(s)" means procedures ordered by the dentist to help relieve pain or to improve an emergency situation that a patient is experiencing. These procedures must be within the scope of practice of the CDHC.

E. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

F. "Teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator

or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

G. "Tooth fracture" means the fracture or loss of tooth structure due to trauma or chewing. The defect has little or no caries present.

H. "Unexcavated carious lesion" means an open carious lesion in a tooth that is cleaned of loose debris by rinsing or use of cotton pellets. Caries attached to the tooth will not be removed.
[16.5.54.7 NMAC - N, 01/09/12]

16.5.54.8 PRACTICE AND REQUIRED SUPERVISION: Community dental health coordinator duties set forth in 16.5.54.9 NMAC are allowed under the general supervision of a New Mexico licensed dentist. The community dental health coordinator may provide educational preventive and limited palliative care and assessment services while working collaboratively under the general supervision of a dentist.
[16.5.54.8 NMAC - N, 01/09/12]

16.5.54.9 ALLOWABLE DUTIES UNDER GENERAL SUPERVISION: The following community dental health coordinator procedures are allowable under general supervision as set forth in 16.5.54.8 NMAC:

A. take a complete health and dental history;

B. expose and develop necessary radiographs as ordered by the supervising dentist or as established in protocol by a supervising dentist;

C. observe and transmit patient data through teledentistry means to a dentist;

D. place temporary and sedative restorative materials in unexcavated carious lesions and unprepared tooth fractures;

E. transmit prescription or medication orders on the direct order of a dentist;

F. CDHC may provide the following limited palliative procedures:

(1) application of hot/cold compresses to the face or mouth;

(2) instruct patient in the uses of various rinses containing salt, sodium bicarbonate, chlorhexidine, etc. as ordered by the dentist;

(3) instruct patients as to the proper use and dosage of over the counter or prescribed medications recommended by the supervising dentists;

(4) place avulsed teeth in the proper preservation solution for transport to a dentist;

(5) apply pressure compresses to intraoral wounds;

(6) performance of any other

palliative procedures as directly instructed by the supervising dentist, and within the scope of practice of the CDHC;

(7) instruct the patient on brushing, flossing, gingival massage or cleaning for gingival inflammation or infection;

G. patient and community education on an individual basis or with groups within the community to improve dental health and dental health awareness;

H. act as an advocate for patients and the community in accessing dental care; and

I. rubber cup coronal polishing, topical application of fluorides; application of pit and fissures when previously authorized by the supervising dentist or dental hygienist and cavitation of the enamel is not present.

[16.5.54.9 NMAC - N, 01/09/12]

16.5.54.10 NON-ALLOWABLE PROCEDURES: CDHC may not perform any other procedure, duty or function under any level of supervision that is not expressly listed in 16.5.54.9 NMAC.

[16.5.54.10 NMAC - N, 01/09/12]

HISTORY OF 16.5.54 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 55 COMMUNITY DENTAL HEALTH COORDINATOR, DISCIPLINARY PROCEEDINGS

16.5.55.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.55.1 NMAC - N, 01/09/12]

16.5.55.2 SCOPE: The provisions of Part 55 of Chapter 5 apply to all active certificate holders and applicants for certification. These provisions may also be of interest to anyone who may wish to file a complaint against a community dental health coordinator certified by the board.
[16.5.55.2 NMAC - N, 01/09/12]

16.5.55.3 STATUTORY AUTHORITY: Part 55 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-5, 61-5A-6 and 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).
[16.5.55.3 NMAC - N, 01/09/12]

16.5.55.4 DURATION: Permanent.
[16.5.55.4 NMAC - N, 01/09/12]

16.5.55.5 EFFECTIVE DATE: January 9, 2012, unless a later date is cited at the end of a section.
[16.5.55.5 NMAC - N, 01/09/12]

16.5.55.6 OBJECTIVE: To establish the procedures for filing complaints against certificate holders, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a certificate holder which are considered incompetent or unprofessional practice.
[16.5.55.6 NMAC - N, 01/09/12]

16.5.55.7 DEFINITIONS:
[RESERVED]

16.5.55.8 COMPLAINTS: Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Dental Health Care Act.
[16.5.55.8 NMAC - N, 01/09/12]

16.5.55.9 ACTIONS:
A. The board may issue fines, deny, revoke or suspend, or otherwise limit a certificate if the board determines the certificate holder is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, or these rules.

B. The board may reprimand, censure, stipulate and may require certificate holders to fulfill additional continuing education hours within limited time constraints for violations of the act or the rules.

C. The board shall take into consideration the role of community dental health coordinator as employees when taking disciplinary action against a certificate holder. In the event the complaint is ruled to be based primarily on the community dental health coordinator's role as employee, the board may consider appropriate action against the employer/dentist.
[16.5.55.9 NMAC - N, 01/09/12]

16.5.55.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of community dental

health coordinator;

B. sexual misconduct;

C. failure to use appropriate

infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any renewal or reinstatement application;

E. cheating on an examination for community dental health coordinator certification;

F. performing any procedure which requires certification unless so certified;

G. injudicious administration of any drug or medicine; and

H. conviction of either a misdemeanor or a felony punishable by incarceration.

[16.5.55.10 NMAC - N, 01/09/12]

16.5.55.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations.

[16.5.55.11 NMAC - N, 01/09/12]

HISTORY OF 16.5.55 NMAC:
[RESERVED]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.1 NMAC Sections 7, 15, 17 and 18, add Section 20, effective 01-09-12.

16.5.1.7 DEFINITIONS:

[A. ~~“Act” means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978:~~

~~B. “Authorization” means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care:~~

~~C. “Diagnosis” means the identification or determination of the nature or cause of disease or condition:~~

~~D. “Impaired Act” means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978:~~

~~E. “Jurisprudence exam” means the examination given over the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico:~~

~~F. “Licensee” means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico:~~

~~G. “Provider” means a provider of dental health care services, including but not limited to dentists, dental~~

hygienists, and dental assistants:

H. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous eleven months or will examine that patient within 30 days of giving authorization.

I. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

J. "CRDTS" means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

K. "NERB/ADEX" means the north east regional board of dental examiners, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

L. "SRFA" means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

M. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

N. "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

O. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978.]

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the

healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

C. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

D. "Consulting dentists" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

E. "CRDTS" means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

F. "Dental hygiene-focused assessment" means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

G. "Dental record" means electronic, photographic, radiographic or manually written records.

H. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

I. "Direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed;

(3) evaluates and approves the procedure performed before the patient departs the care setting; and

(4) is capable of responding immediately if any emergency should arise.

J. "Extenuating circumstances" are defined as a serious, physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

K. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and

in facilities as designated by the rules of the board.

L. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

M. "Indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in 61-5A-3 NMSA 1978.

N. "Jurisprudence exam" means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

O. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

P. "NERB/ADEX" means the north east regional board of dental examiners, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

Q. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978.

R. "Palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

S. "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

T. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

U. "SRFA" means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

V. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined

that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

W. "Supervision" means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

X. "Teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

Y. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

Z. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05; A, 07-16-07; A, 07-17-08; A, 07-19-10; A, 01-09-12]

16.5.1.15 GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION:

A. Approved courses and providers. The following providers and courses are approved for continuing education credits. Professional training programs used by dental assistants for certification preparation in expanded functions are considered to be "approved training programs." The credit hours for approved training programs may also be used to meet continuing education requirements such as:

(1) scientific meetings or sessions sponsored or recognized by a local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional organization;

(2) any dental related course sponsored by an institution accredited by the United States department of education;

(3) courses that are primarily in relationship to maximizing income, billing, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period;

(4) courses presented by approved

study clubs as further defined in Subsection B of 16.5.1.15 NMAC;

(5) on-line and self-study as further defined in Subsection C of 16.5.1.15 NMAC;

(6) original presentation by a licensee who has submitted to the board an outline, date, place, and sponsor of the presentation; a maximum of eight hours will be allowed each triennial period in this category;

(7) any course not sponsored by a recognized provider may be approved by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters;

~~[(8) alternative medicine courses will be allowed a maximum of eight hours each triennial renewal period;]~~

(8) medical education courses that are accredited by the American council for continuing medical education (ACCME) shall be limited to eight hours per triennial period;

(9) examining board credits shall be limited to 20 hours per triennial period; and

(10) a non-board or non-committee licensee volunteering for the board or committee may receive up to 10 hours of continuing education for board approved activities; including serving as a hearing officer, investigator, mentor, or monitor.

B. Approved study clubs. The board may approve study clubs which meet the following criteria:

(1) composed of not less than five licensees with elected officers, written bylaws, and regular meetings;

(2) organized for the purpose of scientific study;

(3) the approved club must keep records of continuing education information or material presented the number of hours and the members in attendance; films, cassettes, or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material.

C. Allowable on-line, webinars, or self-study.

(1) A self-study course of instruction designed to directly enhance the licensee's or certificate holder's knowledge, skill, or competence in providing care to the dental consumers.

(2) ~~[Each course must include]~~ A course that includes a post study course examination [which] must be completed and returned for grading by the course provider.

(3) The hours of credit must be listed on the certificate.

(4) A maximum of [thirty] 30 credits per triennial period will be allowed in the category of on-line, webinar, or self-study.

(5) A license or certificate holder ~~[who has not previously taken the board's take-home jurisprudence exam shall]~~ may take the board's open book jurisprudence examination, up to once a year, and be granted [3] three hours of continuing education credit for successfully passing the exam with a score of 75% or above~~[-one time only]~~. There will be a \$25 fee for the exam to cover the cost of handling.

(6) Basic life support (BLS) or cardiac pulmonary resuscitation (CPR) is not allowed thru a self-study course, a hands-on course is required.

D. Credit hours.

(1) One hour of credit will be granted for every hour of contact instruction. This credit shall apply to either academic or clinical instruction. Eight hours shall be the maximum number of continuing education credits granted in a single day.

(2) Courses which are presented in institutions of higher education for the purpose of receiving a degree, advanced degree or certificate will earn the licensee or certificate holder ~~[ten]~~ 10 hours for every semester credit hour assigned a course as specified in the catalogue of the institution presenting the course.

E. Courses not allowed. Courses dealing largely with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to dental care may not be used to fulfill continuing education requirements.

F. Verification of course attendance. The following documents, or combination of documents, may be used to verify attendance/participation in the required continuing education:

(1) course certificate with the course title, content, presenter, sponsor and units/hours;

(2) pamphlet of course with same information as requested on certificate along with canceled check;

(3) course attendance sheet submitted from the sponsor;

(4) course code or statement of attendance from presenter or sponsor of licensee attendance;

(5) for out of state courses and meetings when certificates or sign-in sheets are not available, the licensee may provide a copy of the registration form, with a copy of courses in printed form which were offered, identify the ones attended, along with information regarding travel and lodging accommodations for the meeting; and

(6) licensee is responsible for maintaining records of all CEUs for one year following the renewal cycle.

[11-21-75, 5-21-93, 5-31-95; 3-11-89, 9-30-96, 12-15-97, 1-1-99; 16.5.1.15 NMAC - Rn & A, 16 NMAC 5.1.15, 12-14-00; A, 07-19-

10; A, 01-09-12]

16.5.1.17 BOARD OF DENTAL HEALTH CARE:

A. Officers. The board shall elect a [~~chairman, vice-chairman~~] chair, vice-chair, and secretary-treasurer at the first regularly scheduled meeting in each calendar year.

B. Committee members. Two dentist members and two public members from the board shall be elected to serve as members of the dental hygienists committee at the first regularly scheduled meeting in each calendar year. [3-14-73...5-31-95; 16.5.1.17 NMAC - Rn, 16 NMAC 5.1.17, 12-14-00; A, 03-06-05; A, 01-09-12]

16.5.1.18 D E N T A L HYGIENIST COMMITTEE:

A. Officers. The committee shall elect a [~~chairman, vice-chairman~~] chair, vice-chair, and secretary at the first regularly scheduled meeting in each calendar year.

B. Board members. Two dental hygienists members of the committee shall be elected to serve as members of the board of dental health care by a simple majority vote at the first regularly scheduled meeting in the calendar year. [11-5-87...5-31-95, 9-30-96; 16.5.1.18 NMAC - Rn, 16 NMAC 5.1.18, 12-14-00; A, 01-09-12]

16.5.1.20 U.S. CITIZENSHIP OR LEGAL RESIDENT:

Any person requesting a license to practice dentistry, dental hygiene or certificate to practice as a dental assistant, expanded function dental auxiliary or community dental health coordinator must be a United States citizen or legal resident with a valid social security number.

[16.5.1.20 NMAC - N, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.3 NMAC Section 8, effective 01-09-12.

16.5.3.8 ADVERSE EVENTS AND INCIDENTS WHICH MUST BE REPORTED BY THE LICENSEE:

As a condition of licensure, any licensee who seeks or holds an active license, or temporary or public service license in New Mexico, or a retired licensee who seeks to reactivate their license within three years after retirement, must report the following adverse events and incidents in a written report to the board office within thirty days of that event or incident:

A. conviction of a felony or misdemeanor, other than a traffic violation;

B. any payment in settlement of a claim, or satisfaction of judgment, in a dental malpractice action personally or by a third party;

C. any professional review action in which membership status in a health care facility is revoked or suspended; or

D. discipline by any other state licensing authority;

E. any known morbidity or mortality arising as a direct result of examination, prescription, diagnosis or treatment by a licensee which results in hospitalization or treatment of the patient by emergency personnel.

[5/31/95, 12/15/97; 16.5.3.8 NMAC - Rn, 16 NMAC 5.3.8, 04/17/06; A, 07/19/10; A, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.4 NMAC Sections 2, 6, 8, and 9 effective 01-09-12. This also amends the part name.

PART 4 E M E R G E N C Y LICENSURE AND CERTIFICATION PROVISIONS

16.5.4.2 SCOPE: The provisions of 16.5.4 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who qualifies to obtain a license or certification under the provisions for emergency licensure in New Mexico.

[16.5.4.2 NMAC - N, 04/17/06; A, 01/09/12]

16.5.4.6 OBJECTIVE: To establish rules to govern the emergency licensure or certification for dentists, dental hygienists, dental assistants, expanded function dental auxiliary, and community dental health coordinators affected by a declared disaster.

[16.5.4.6 NMAC - N, 04/17/06; A, 01/09/12]

16.5.4.8 REQUIREMENTS FOR EMERGENCY LICENSURE:

A. Dentists, dental hygienists [and], dental assistants, expanded function dental auxiliary, and community dental health coordinators currently licensed or certified and in good standing, or otherwise meeting the requirements for New Mexico licensure or certification in a state in which a federal disaster has been declared, may be licensed or certified in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed

and notarized and which is accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) licensing qualifications and documentation requirements 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC for Dentists, 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC for Dental Hygienists [and], 16.5.33 NMAC for Dental Assistants 16.5.42 NMAC for Expanded Function Dental Auxiliary and 16.5.50 NMAC for Community Dental Health Coordinators;

(3) other required information and documentation will be the name and address of employer, copy of diploma, copy of current active license or certificate in good standing in another state, or verification of licensure, copy of DEA license if applicable; a license or certificate will not be granted without a practice location; the board will query the national practitioners databank, American association of dental examiners and other state dental boards where the practitioner has ever held a license or certificate; if any or all of this information or documents are not available or destroyed in a disaster, an affidavit certifying this will be required.

B. The board may waive the following requirements for licensure:

(1) application fee;

(2) background check by a professional background information service; and

(3) transcripts from an ADA accredited program.

C. The board may waive the specific forms required under the requirements for licensure or certification if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Nothing in this section shall constitute a waiver of the requirements for licensure or certification for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; [and] dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC and community dental health coordinator as required in 16.5.50 NMAC.

E. Licenses and certifications issued under the emergency provision shall expire four months, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made 30 days prior to the date of expiration and may be renewed no more than once. The applicant must obtain a permanent or temporary license or certification within eight months of the issuance of the initial emergency license or certificate. The board reserves the right to request additional

documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license or certification renewal. The board will renew an emergency license or certificate for a period of four months for the following renewal fees:

(1) dentists	\$100.00
emergency license renewal fee;	
(2) dental hygienists	\$ 50.00
emergency license renewal fee;	
(3) dental assistants	\$ 10.00
emergency [license] certificate renewal fee;	
(4) <u>expanded function dental auxiliary</u>	\$ 10.00
<u>emergency certificate renewal fee;</u>	
(5) <u>community dental health coordinator</u>	\$ 10.00
<u>emergency certificate renewal fee.</u>	

F. Licensees issued a license or certificate under the emergency provision are subject to all provisions of the Dental Health Care Act, Article 5A and the rules and regulations, Title 16 Chapter 5, specifically the disciplinary proceedings NMSA 1978 Section 61-5A-21. [16.5.4.8 NMAC - N, 04/17/06; A, 07/16/07; A, 07/17/08; A, 01/09/12]

16.5.4.9 EMERGENCY LICENSE TERMINATION:

A. The emergency license or certification shall terminate upon the following circumstances:

(1) the issuance of a permanent or temporary license for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; [or] dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC and community dental health coordinators as required in 16.5.50 NMAC; or

(2) proof that the emergency license or certificate holder has engaged in fraud deceit; misrepresentation in procuring or attempting to procure a license or certificate under this section.

B. Termination of an emergency license or certificate shall not preclude application for permanent licensure or certification.

[16.5.4.9 NMAC - N, 04/17/06; A, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.6 NMAC Sections 8, 9 and 10, effective 01-09-12.

16.5.6.8 PREREQUISITE REQUIREMENTS FOR GENERAL PRACTICE LICENSE:

Each applicant for a license to practice dentistry by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A;

B. successfully completed the dental national board examination as defined in 61-5A-12 A;

C. passed a WREB, CRDTS, NERB/ADEX, [or] SRTA; or other clinical examination approved by the board; the results of the [WREB, CRDTS, NERB/ADEX, or SRTA exam] clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB, CRDTS, NERB/ADEX, or SRTA for examination, and

(2) [WREB, CRDTS, NERB/ADEX, or SRTA] results of the clinical examination must be sent directly to the board office; and

D. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office;

E. the board requires a level III background status report from a board designated professional background service for new graduates, and a level II background status report from a board designated professional background service for an applicant who has been in practice with experience; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-14-73, 5-31-95, 9-30-96, 12-15-97; 16.5.6.8 NMAC - Rn & A, 16 NMAC 5.6.8, 06-14-01; A, 3-29-02, A, 07-16-07; A, 07-19-10; A, 01-09-12]

16.5.6.9 PREREQUISITE REQUIREMENTS FOR SPECIALTY LICENSE:

Each applicant for a license to practice a dental specialty by examination must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A; and

B. a postgraduate degree or certificate from an accredited dental school

or approved residency program as defined in 61-5A-12 E in one of the following specialty areas:

(1) dental public health,
(2) endodontics,
(3) oral and maxillofacial surgery,
(4) orthodontics and dento-facial orthopedics,

(5) oral pathology,
(6) pediatric dentistry,
(7) periodontology, [or]
(8) prosthodontics, or
(9) other specialties approved by the American dental association.

C. successfully completed the dental national board examination as defined in 61-5A-12 A;

D. passed a WREB, CRDTS, NERB/ADEX, or SRTA specialty examination; the results of the [WREB, CRDTS, NERB/ADEX, or SRTA] exam are valid in New Mexico for a period not to exceed five years;

~~[(1) the applicant shall apply directly to WREB, CRDTS, NERB/ADEX, or SRTA for examination; and~~

~~(2) WREB, CRDTS, NERB/ADEX, or SRTA] examination~~ results must be sent directly to the board office;

E. an applicant in any specialty defined above for which there is no WREB, CRDTS, NERB/ADEX, or SRTA specialty examination may substitute diplomate status for the examination;

F. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office; and

G. the board requires a level II background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-16-94, 5-31-95, 12-15-97, 02-14-00; 16.5.6.9 NMAC - Rn & A, 16 NMAC 5.6.9, 06-14-01; A, 3-29-02; A, 07-16-07; A, 07-19-10; A, 01-09-12]

16.5.6.10 DOCUMENTATION REQUIREMENTS:

Each applicant for a license by examination must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within [6] ~~six~~ months; applications are valid for [1] ~~one~~ year from the date of receipt;

B. official transcripts [and/or] or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. a copy of WREB,

CRDTS, NERB/ADEX, or SRTA score card or certificate from the appropriate specialty board;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental school within the past [twelve] 12 months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross; or the American safety and health institute (ASHI); cannot be a self-study course;

G. the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

I. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

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

K. in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program [and/or] or postgraduate training program to be sent directly to the board office from the accredited program.

[3-16-94, 5-31-95, 9-30-96, 12-15-97, 8-16-99; 16.5.6.10 NMAC - Rn & A, 16 NMAC 5.6.10, 06-14-01; A, 3-29-02; A, 07-16-07; A, 07-19-10; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.7 NMAC Sections 2, 6, 7, 8, 9, 10, 11, 13, 14 and 15, effective 01-09-12. This also amends part name.

PART 7 DENTISTS, TEMPORARY OR PUBLIC SERVICE LICENSURE

16.5.7.2 SCOPE: The provisions of 16.5.7 NMAC apply to all dentists applying for a temporary or a public service license to practice in New Mexico. [9-30-96; 16.5.7.2 NMAC - Rn, 16 NMAC 5.7.2, 12-14-00; A, 01-09-12]

16.5.7.6 OBJECTIVE: To establish the requirements for application for temporary or public service licensure as a dentist. [9-30-96; 16.5.7.6 NMAC - Rn, 16 NMAC 5.7.6, 12-14-00; A, 01-09-12]

16.5.7.7 DEFINITIONS: [RESERVED]

A. "Entity" means a dental or dental hygiene organization, foundation or officially recognized study club, which has a constitution, bylaws and whose officers or board of trustees are dentists or dental hygienists licensed in good standing in the state.

B. "Good standing" means having an active dental license in a jurisdiction for a period of at least three consecutive years immediately preceding the date of application, and a minimum of five years of dental licensure. The board shall consider stipulations, disciplinary, or administrative actions taken against a licensee by the issuing agency, within the previous five years, when determining whether a license is in good standing.

C. "In the state" or "in this state" means that a program has a physical presence in New Mexico in the form of a facility and a permanent faculty.

[9-30-96; 16.5.7.7 NMAC - Rn, 16 NMAC 5.7.7, 12-14-00; A, 01-09-12]

16.5.7.8 CATEGORIES OF TEMPORARY OR PUBLIC SERVICE LICENSES:

Applications for a temporary or a public service New Mexico dental license may be issued in the following categories for specific purposes if education and experience requirements are met.

A. Clinical educator. Dentists, not currently licensed in New Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued

for 48 hours; if the course lasts longer than two days, additional 48 hour licenses may be requested upon payment of the applicable fees; a temporary license may not be issued for less than 48 hours.

B. A student who is enrolled in [an ADA accredited] a commission of dental accreditation (CODA) dental specialty program or [an ADA accredited] a commission of dental accreditation (CODA) general practice dental residency program, or an advanced education in general dentistry program, who holds a current, valid license in good standing in another US jurisdiction, may be granted a temporary 48 hour license for the purpose of observing or assisting a licensed New Mexico practitioner in cases for educational purposes.

C. [If the] A resident or student [is] enrolled in [an] a commission of dental accreditation (CODA) accredited program in the state of New Mexico [and holds a current, valid license in good standing in another US jurisdiction, they may be granted a temporary license for up to 12 months. This temporary license may be renewed annually only for purposes of completing the educational program:] may be granted a public service license for up to 12 months. This public service license may be renewed annually only for the purpose of completing the education program and shall not be renewed once the residency or educational program is completed or the applicant is no longer enrolled, provided:

(1) the program in this state is accredited by the commission on dental accreditation (CODA);

(2) the residency program maintains a physical presence in New Mexico, including:

(a) a faculty and staff full time in New Mexico who holds a license in New Mexico in good standing in accordance with the degree they hold; and

(b) a facility in the state where residency students may attend lectures, seminars and receive clinical instruction;

(3) public service license for a dental resident or student may not be converted to any other public service license or license by credentials;

(4) the applicant must practice under the sponsorship of or be associated with a dentist holding a current license in good standing in this state;

(5) upon application by a resident or student, the participating residency or education program must supply documentation to the board of its accreditation status, faculty and facilities in New Mexico; and

(6) successful completion of a clinical board examination is not a requirement for a public service license to be granted to a student or resident under this section.

[C:] D. Clinical practice in underserved area or state institutions. A dentist may be granted temporary licensure to practice in a state institution, a program approved or maintained by the New Mexico department of health (NMDOH), or a program or clinic designated by the New Mexico department of health (NMDOH), as dental care underserved area (DCUA). The New Mexico department of health (NMDOH) may recommend to the New Mexico board of dental health care, counties, communities, county census divisions, or in the case of urban areas, neighborhoods, zip codes, and census tracts to be considered as dental care underserved areas (DCUA's). Areas recommended as DCUA's may reflect those areas designated by the federal government as dental health professional shortage areas (DHPSA). The New Mexico board of dental health care will request annually from NMDOH a written report of which areas are recommended as DCUA's and will update the listing throughout the year as appropriate. The New Mexico board of dental health care may designate DCUA's based upon these recommendations:

(1) the temporary license holder is restricted to work exclusively in the institution or program named on the application or the temporary license certificate;

(2) a temporary license for clinical practice in an underserved area or state institution is valid for [twelve] 12 months and shall expire at the end of that period; the board may re-issue the temporary license for three additional [twelve] 12 month periods; each license reissue must be approved by the board; the licensee must contact the board office three months prior to the expiration date to begin the re-issue process;

(3) the New Mexico board of dental health care shall rely upon the listing of recommended practices in underserved areas or state institutions, and the listing of recommended DCUA's provided by NMDOH in its review of applications for clinical practice in underserved areas; temporary licenses will be reissued only for sites and DCUA's that remain on the recommended listings by the New Mexico department of health;

(4) the applicant shall provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist in good standing, and bearing the signature of both; and

(5) the applicant shall provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist in good standing and bearing the signature of both;

[4] (6) a temporary license

to practice in an underserved area may be converted to a license by credentials provided the applicant:

(a) meets all requisite requirements listed in 16.5.8 NMAC and provides all documentation as required in 16.5.8.10 NMAC of these rules, with exception of the requirement to have a license in good standing for [5] five years;

(b) practices for at least 1000 hours per year under a temporary license in an underserved area for three consecutive years; one year of credit will be granted for;

(i) [an ADA accredited residency] a commission on dental accreditation residency (CODA) or ADA recognized specialty program; or

(ii) private practice of 1000 or more hours per year; and

(c) has no complaints under board investigation, actions pending or actions taken against the applicant's temporary license;

(d) has renewed the temporary license yearly, and has paid the required license fees;

(e) has maintained the same continuing education requirements of regularly licensed dentists as set forth in 16.5.10 NMAC of these rules; the annual continuing education requirements are to be based upon 1/3 prorated share of those required of a licensee applying for license renewal on a triennial basis; and

(f) applies for conversion of a temporary license to a license by credentials pursuant to 16.5.7.15 NMAC of these rules.

[D:] E. Emergency practitioner. Out of state specialists needed for emergency care in a hospital may be granted a temporary license:

(1) the information normally given in official documentation may be given in written or verbal form because of the emergency nature of the license;

(2) this category will be given a 48 hour temporary license but it may be extended in [forty-eight] 48 hour increments until the dentist can leave the patient to the care of others; and

(3) the New Mexico licensed dentist acting as the sponsor for the temporary licensee must be responsible for the validity of the following credentials:

(a) the license number in the state in which the applicant resides and practices, and the current status of the license;

(b) proof of liability insurance; and

(c) verification of status of hospital credentials in state of residence or practice.

[E:] F. R e p l a c e m e n t practitioner. A dentist may be granted temporary licensure for six or [twelve] 12 months to work exclusively with patients in the practice of a New Mexico licensed dentist who is unable to practice dentistry

because of physical or mental illness, injury, pregnancy, impairment, physical absence, or other condition approved by the board:

(1) the temporary license holder is restricted to work exclusively in the practice named on the application; and

(2) a temporary license as a replacement practitioner is valid for no longer than 12 months, and may not be re-issued.

[F:] G. [Charitable practitioner: Out of state dentist(s) desiring to practice at a board approved charitable event and receive no compensation may be granted a 48 hour temporary licensure for the charitable event. Charitable practitioner temporary licensee is restricted to work exclusively at the charitable event named on the application and must comply with the New Mexico Dental Health Care Act.

(1) The charitable event must be board approved 45 days prior to the scheduled charitable event.

(2) Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or a delegate(s) of the board will review and approve the application.

(3) The sponsoring charitable event entity shall appoint a NM licensed dentist(s) who will sponsor and be in association with during the time the applicant practices dentistry in New Mexico.

(4) Temporary licensure will be issued for 48 hours.

(5) The NM licensed dentists(s) acting as a sponsor(s) for the charitable practitioner temporary licensee(s) must be responsible for submitting documentation for each applicant. The sponsoring dentist must submit an affidavit attesting to the qualifications of the applicant and attesting to the following:

(a) verification of the license in good standing;

(b) verification of graduation from a council on dental accreditation (CODA) accredited dental school; and

(c) verification of having taken a course in infection control technique within the past 12 months.

(6) The completed applications must be filed with the New Mexico board of dental health care 10 days prior to the scheduled charitable event.

(7) The completed application signed and notarized must include:

(a) the application fee;

(b) the sponsor of the charitable event and the NM licensed dentist(s) sponsoring the applicant, with contact numbers;

(c) copy of current active license in good standing from the state the applicant is currently practicing;

(d) proof of liability insurance; and

~~(e) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR);~~

~~(8) Temporary license must be posted at the charitable event.~~

~~(9) Patients who receive dental care during the charitable event will be given a list of dentists whom they can contact if post-operative care is needed.~~

~~(10) Charitable practitioner licensure is not eligible for conversion to any other temporary license, or any conversion for New Mexico licensure by credentials.] Presumptive public service licensure for a charitable dental project. A dentist not holding a license in the state may be granted a presumptive public service license for up to 72 hours to participate in a board approved charitable project. Except as noted in this section the dentist shall otherwise be subject to the provisions of the dental practice act and the rules and regulations of the board. The presumptive public service license is valid only when:~~

~~(1) the charitable project is approved by the board 45 days prior to the scheduled event;~~

~~(2) the dentist receives no compensation for participating in the project;~~

~~(3) the project is sponsored by an entity as defined in 16.5.7.7 NMAC and that entity has been approved by the board to undertake the charitable project;~~

~~(4) the dentist holds a license in good standing in another jurisdiction and the license is verified by the sponsoring entity;~~

~~(5) the dentist has graduated from and holds a diploma from a dental school accredited by the commission on dental accreditation and a copy of the diploma is on file with the sponsoring entity;~~

~~(6) upon request the out-of-state dentist shall produce copies of their diploma and license in another jurisdiction;~~

~~(7) the dental care provided is within the scope and limits of the license the dentist holds in the other jurisdiction;~~

~~(8) the out-of-state dentist works under the indirect supervision of a dentist licensed in good standing in this state who is present at the charitable project;~~

~~(9) patients who receive dental care during the charitable project will be given a list of dentists whom they can contact if post-operative care is needed;~~

~~(10) a charitable public service license is not eligible for conversion to any other public service, regular license; or license by credentials; and~~

~~(11) no fee shall be required by the board for the presumptive public service license for a charitable project. [3-17-73, 3-16-94, 4-15-94, 5-31-95, 9-30-96; 16.5.7.8 NMAC - Rn & A, 16 NMAC 5.7.8, 12-14-00; A, 3-29-02; A, 07-17-08; A, 09-18-10; A, 01-09-12]~~

16.5.7.9 PREREQUISITE REQUIREMENTS FOR TEMPORARY AND PUBLIC SERVICE LICENSURE:

[Charitable] Presumptive public service practitioners as defined in Subsection [F] ~~G~~ of 16.5.7.8 NMAC are not required to comply with Subsection [~~D~~ and ~~E~~] D, E and F of this section. All other applicants for temporary or public service licensure must possess each of the following qualifications:

A. graduated and received a diploma from an accredited dental school or college as defined in 61-5A-12, A;

B. if the temporary or public service license is for a practice specialty, the applicant must have obtained a postgraduate degree or certificate from an accredited dental college, school of dentistry or other residency program that is accredited by the [~~American dental association~~] commission on dental accreditation;

C. hold a valid license in good standing from another state or territory of the United States;

D. applicants requesting a six or [~~twelve~~] 12 month temporary or public service license must pass the jurisprudence exam with a score of at least a 75 [~~percentile~~] percent;

E. for those applying for an initial temporary or public service license in public health dentistry or as a replacement practitioner, the board requires a level III background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fee directly to a board designated professional background service to initiate this service; the license may be provisionally issued while awaiting the report from a board designated professional background service; and

F. must have successfully passed clinical examination through WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board; the results of the clinical examination must be sent directly to the board office.

[3-14-73, 5-31-95; 16.5.7.9 NMAC - Rn & A, 16 NMAC 5.7.9, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 09-18-10; A, 01-09-12]

16.5.7.10 DOCUMENTATION REQUIREMENTS:

Except as otherwise required by Subsection F of 16.5.7.8 NMAC, [~~charitable~~] presumptive public service practitioners do not need to comply with the following for temporary or public service licensure. All other applicants for temporary or public service licensure must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within [6] six months. Applications are valid for [~~1~~] one year from

the date of receipt;

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

C. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [~~or~~], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

D. an affidavit from the New Mexico licensed dentist who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform; applicants for temporary licensure in underserved areas and state institutions must:

(1) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C of 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both; or

(2) provide an affidavit from the New Mexico department of health specifying supervision will be by a licensed New Mexico dentist and bearing the signature of both;

(3) report any changes in supervision or oversight of the temporary licensee to the board within [~~(30)~~-thirty] 30 days of the change; and

(4) provide proof of acceptable liability insurance coverage;

E. in addition, applicants requesting temporary licensure in public health dentistry or as a replacement practitioner must submit the following:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card;

(3) copy of clinical examination score card or certificate from the accepted examining agent;

[~~(3)~~] (4) proof of having taken a course in infection control technique within the past [~~twelve~~] 12 months;

[~~(4)~~] (5) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

[~~(5)~~] (6) the board will obtain

verification of applicant status from the national practitioners data bank; and

[(6)] (7) a level III status report from a board designated professional background service must be received directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board; the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

[(7)] (8) in addition to the documentation required above, an applicant for temporary licensure in a specialty area must request official transcripts from the residency program ~~and/or~~ or postgraduate training program to be sent directly to the board office from the accredited program. [3-14-73, 5-31-95, 9-30-96; 16.5.7.10 NMAC - Rn, 16 NMAC 5.7.10, 12-14-00; A, 06-14-01; A, 3-29-02, A, 07-16-07; A, 09-18-10; A, 01-09-12]

16.5.7.11 RE-EXAMINATION PROCEDURE: An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in Subsection D of 16.5.5 NMAC to retake the exam.

[9-30-96; 16.5.7.11 NMAC - Rn, 16 NMAC 5.7.11, 12-14-00; A, 01-09-12]

16.5.7.13 R E - I S S U E PROCEDURES: To remain eligible for temporary or public service licensure; temporary or public service license holders who are eligible for re-issue per 16.5.7.8 NMAC must contact the board office three months prior to the expiration date to begin the re-issue process. All requirements regarding re-issue are the same as the initial application as defined in 16.5.7.10 NMAC. The form, application and fee and proof of 20 hours of continuing education must be post-marked on or before the expiration date. [12-15-97; 16.5.7.13 NMAC - Rn, 16 NMAC 5.7.13, 12-14-00; A, 09-18-10; A, 01-09-12]

16.5.7.14 LIMITATION ON PRACTICE: Temporary or public service licensees shall engage in only those activities specified on the temporary or public service license for the time period designated.

A. Temporary or public service licensees shall only practice under the sponsorship or in association with a licensed New Mexico dentist or dental hygienist.

B. Temporary or public

service licensees and the approved sponsor or associate are responsible for compliance with the act and these rules.

[3-14-73, 5-31-95, 12-15-97, 16.5.7.14 NMAC - Rn, 16 NMAC 5.7.14, 12-14-00; A, 01-09-12]

16.5.7.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS:

A. Following the completion of the requirements listed in Subsection [(E)] D of 16.5.7.8 NMAC of these rules, the temporary licensee may complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for license by credentials.

D. Upon receipt of a complete application the board shall issue a New Mexico license by credentials unless there is any action pending against the temporary license. Then at the discretion of the board or it's agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials will be halted and the temporary license will no longer be renewed.

E. Conversion of a temporary license to practice dentistry does not allow conversion of a temporary anesthesia permit into one lasting more than the initial 12 months. After the 12 month period, an additional permit requires successful completion of an additional anesthesia exam and a facilities inspection. See Subsection C of 16.5.15.15 NMAC.

[16.5.7.15 NMAC - N, 3-29-02; A, 07-16-07; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.8 NMAC Sections 7, 8, 9, and 10, effective 01-09-12.

16.5.8.7 DEFINITIONS:

License in "good standing" is defined as having an active dental license in a jurisdiction for a period of at least three consecutive years immediately preceding the date of application, and a minimum of five years of dental licensure. The board [may] shall consider [disciplinary;] stipulations, disciplinary or administrative actions taken against [it] a licensee by the issuing agency, within the previous five years, when determining whether a license is in "good standing".

[8-15-95, 9-30-96, 12-15-97, 1-1-99, 8-16-99; 16.5.8.7 NMAC - Rn & A, 16 NMAC 5.8.7, 12-14-00; A, 01-09-12]

16.5.8.8 PREREQUISITE REQUIREMENTS FOR LICENSURE IN GENERAL PRACTICE: Each applicant for licensure as a general dentist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12 A;

B. completed 60 hours of approved continuing education during the past 36 months in compliance with [Section] 16.5.1.15 NMAC of these rules;

C. passed the dental national board examination as defined in Section 61-5A-12 A;

D. passed the jurisprudence exam with a score of at least 75 [percentile] percent;

E. holds a current active license in good standing by clinical examination in another state or territory of the United States, or has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application;

F. passed clinical examination through WREB, CRDTS, NERB/ADEX, SRTA or other examination accepted by the board;

[(F)]G. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules;

[(G)]H. the board requires a level II background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-16-94, 8-15-95, 9-30-96, 1-1-99, 8-16-99; 16.5.8.8 NMAC - Rn & A, 16 NMAC 5.8.8, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 01-09-12]

16.5.8.9 PREREQUISITE REQUIREMENTS FOR LICENSE IN SPECIALTY PRACTICE: Each applicant for a license to practice a dental specialty by credentials must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.

A. Graduated and received

a diploma from an accredited dental school as defined in 61-5A-12 A.

B. Have a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12 [D] E, in one of the specialty areas of dentistry recognized by the ADA.

C. Completed 60 hours of continuing education during the past 36 months in compliance with [Section] 16.5.1.15 NMAC of these rules.

D. Successfully completed the dental national board examination as defined in Section 61-5A-12 A.

E. An applicant in any specialty defined in Subsection E of 16.5.8.9 NMAC for which there is no specialty examination may substitute diplomate status for the examination.

[E:]E. Successfully completed an examination for [diplomate] diplomate status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology, other specialties approved by the American dental association; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomate status given by the American board of public health dentistry.

[F:]G. Completed the jurisprudence exam with a score of at least 75 percent.

[G:]H. Hold a current active license in good standing by examination in another state or territory of the United States.

[H:]L. The board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

[I:]J. The board requires a level II background status report from a board designated professional background service. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to a board designated professional background service to initiate this service. [3-16-94, 8-15-95, 9-30-96, 8-16-99, 06-13-01; 16.5.8.9 NMAC - Rn, 16 NMAC 5.8.9,

12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08; A, 01-09-12]

16.5.8.10 DOCUMENTATION REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within [6] six months; applications are valid for [±] one year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or scorecard;

D. copy of clinical examination score card or certificate from the accepted examining agent;

[D:]E. proof of having taken a course in infection control technique within the past twelve months;

[E:]E. proof of current life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

[F:]G. the board will obtain verification of applicant status from the national practitioner's data bank and the American association of dental examiners clearinghouse;

[G:]H. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form;

[H:]J. a level II status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

[I:]J. the board may deny, stipulate or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentist and Hygienist Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

[J:]K. proof of [sixty-(60)] 60 hours of continuing education during the [thirty-six-(36)] 36 months prior to licensure

in compliance with 16.5.1.15 NMAC of these rules;

[K:]L. dentists employed in uniform service practice shall furnish:

(1) a copy of the most recent commissioned officers effectiveness report, or equivalent, issued by the uniformed service dental service, and

(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

[L:]M. applicants for specialty by credentials in one of the following applicants for specialty license must submit: official transcripts from the residency program [and/or] or postgraduate training program, sent directly to the board office from the accredited program;

[M:]N. certificate of diplomate status from the specialty board, [if applicable submitted] must be sent directly to the board office; and

O. successfully completed an examination for diplomate status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomate status given by the American board of public health dentistry;

[N:]P. s u p p l e m e n t a l information may be requested by the board. [3-16-94, 8-15-96, 9-30-96, 12-15-97, 1-1-99, 8-16-99, 2-14-00; 16.5.8.10 NMAC - Rn, 16 NMAC 5.8.10, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-19-10; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.9 NMAC Sections 7, 8, 9, 10 and 11, add Section 12, effective 01-09-12.

16.5.9.7 DEFINITIONS: [~~“Non-dentist owner” means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services. Under the following stipulations an entity may function as a non-dentist owner without a New Mexico license:~~

~~A. government agencies providing dental services within affiliated facilities;~~

~~B. government agencies engaged in providing public health measures to prevent dental disease;~~

~~C. spouses of a deceased licensed dentist or dental hygienists for a period of one year following the death of the licensee;~~

~~D. accredited school of dentistry, dental hygiene or dental assisting providing dental services solely in an education setting only;~~

~~E. dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;~~

~~F. federally qualified health centers, as designated by the United States department of health and human services, providing dental services;~~

~~G. nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent person; and~~

~~H. hospitals licensed by the department of health.]~~

A. "Employee" means a licensee of the board employed or contracted with a non-dentist owner for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or enters into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

B. "Exempted entities" not included in non-dentist owner, under the following stipulations an entity may function as a non-dentist owner without a New Mexico license:

(1) government agencies providing dental services within affiliated facilities;

(2) government agencies engaged in providing public health measures to prevent dental disease;

(3) spouses of a deceased licensed dentist or dental hygienists for a period of one year following the death of the licensee;

(4) accredited school of dentistry, dental hygiene or dental assisting providing dental services solely in an education setting only;

(5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;

(6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;

(7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent person; and

(8) hospitals licensed by the department of health.

C. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services. [16.5.9.7 NMAC - N, 03-06-05; A, 01-09-12]

16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER: To employ and contract for dental services, a non-dentist owner [must] shall apply to the board for the proper license and adhere to the licensure criteria and fees as established by the rules of the board.

A. Unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

[A:](1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

[B:](2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico; [or]

[C:]B. the non-dentist owner licensee [must] shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

C. if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

D. non-dentist owner shall notify the board in writing within 30 days of any changes in ownership;

E. non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

F. non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);

G. non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

H. non dentist owners licensed after the effective date of these rules shall be limited to two New Mexico practices;

I. non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

J. the name and contact information of the non-dentist owner(s)

shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

K. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

L. no person other than another New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment; and

M. non-dentist owners shall maintain patient records for a minimum of six years.

[16.5.9.8 NMAC - N, 03-06-05; A, 07-16-07; A, 01-09-12]

16.5.9.9 RESPONSIBILITY OF DENTISTS AND DENTAL HYGIENIST EMPLOYED BY A NON-DENTIST OWNER: Dentists and dental hygienists employed by a non-dentist owner [must] shall report such employment in their initial and renewal applications, including the name, address and phone number of the non-dentist owner or corporation, and the name of their immediate manager or supervisor.

[16.5.9.9 NMAC - N, 03-06-05; A, 01-09-12]

16.5.9.10 DOCUMENTATION REQUIREMENTS: Each applicant for a non-dentist owner license [must] shall submit a completed application obtained from the board office with the required fees and the following documentation:

A. completed application signed and notarized by the individual that is the non-dentist owner or by the president of the parent corporation; applications are valid for one [(+)] year from the date of receipt;

B. the board requires a level II board designated professional background service report; the application for this service will be included application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporation entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporation in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

C. passed the jurisprudence examination with a score of at least 75 percent;

D. non-dentist owner(s) shall comply with Subsection C of this section within six months of the effective date of the rule;

[C:]E. verification of licensure in all states where the non-dentist owner holds or has held a license, or other health care profession; verification [must] shall be sent directly to the office from the other state(s) board, [must] shall include a raised seal, and [must] shall attest to the status, issue date, expiration date, license number, and other information contained on the form; and

[D:]E. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public.

[16.5.9.10 NMAC - N, 03-06-05; A, 07-16-07; A, 01-09-12]

16.5.9.11 LICENSURE PROCEDURE: Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

A. Initial license: Non-dentist owner licenses are issued for a period not to exceed three years. The licensee will renew the license on a triennial bases.

B. Posting: The license and subsequent renewal certificates [must] shall be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

C. License: This license is non-transferable.

D. Renewal: After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are considered expired.

(1) A completed renewal application with appropriate fees [must] shall be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received [thirty] 30 days prior to license expiration.

E. Late renewals: Renewal

applications post-marked after July 1 and prior to August 1 of the renewal year [must] shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, [must] shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics [must] shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

[16.5.9.11 NMAC - N, 03-06-05; A, 01-09-12]

16.5.9.12 PREREQUISITES FOR NON-DENTIST OWNER: Each applicant for licensure as a non-dentist owner shall possess the following:

A. shall be a United States citizen or United States legal resident;

B. shall be a resident of New Mexico or a corporation registered in New Mexico; and

C. non-dentist owner(s) or agent of corporation shall pass the New Mexico jurisprudence examination with 75 percent.

[16.5.9.12 NMAC - N, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.10 NMAC Sections 8, 9, and 11, effective 01-09-12.

16.5.10.8 HOURS REQUIRED: [Sixty] 60 hours of continuing education, a maximum of 30 hours can be on-line, webinars or self-study, are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at [twenty] 20 hours per full year of the initial licensing period. Initial licenses issued for less than a full year do not require continuing education for the first renewal.

[11/21/75...5/31/95; 16.5.10.8 NMAC - Rn , 16 NMAC 5.10.8, 04/17/06; A, 01/09/12]

16.5.10.9 COURSES REQUIRED: Continuing education

coursework must contribute directly to the practice of dentistry and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal.

A. Proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be self-study course.

B. Infection control. As further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

C. Education requirements: Any dentist holding enteral anxiolysis (minimal sedation), CSI, CSII, deep sedation and permit at large (AAL) are required to have a minimum of five hours of continuing education for the permit renewal (every six years) in medical emergencies, air way management, pharmacology, or anesthesia related topics.

[5/21/93...9/30/96; 16.5.10.9 NMAC - Rn & A, 16 NMAC 5.10.9, 04/17/06; A, 07/16/07; A, 07/19/10; A, 01/09/12]

16.5.10.11 EMERGENCY DEFERRAL:

A. Licensee unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

B. Licensee practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The board must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence.

(2) Upon return to the US, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[3/11/89...9/30/96; 16.5.10.11 NMAC - Rn , 16 NMAC 5.10.11, 04/17/06; A, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.12 NMAC Sections 8, 9, 10 and 11, effective 01-09-12.

16.5.12.8 RETIREMENT: A license to practice dentistry may be placed in retirement status one time through the following procedures:

A. the request for retirement status must be made in writing

to the board office prior to the expiration of the current license; dentists with an active practice located in New Mexico must include the following information:

- (1) the actual date of retirement;
- (2) proof of written notification of approaching retirement to all patients currently under active treatment;
- (3) the location where all active dental treatment records will be maintained for a minimum of ~~two~~ six years; active treatment records are records of patients treated in the two years previous to the date of retirement; the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records;

B. all dentists requesting retirement status may include a list of any continuing education courses taken since the last license renewal, including documentation required in 16.5.10 NMAC; and

C. board staff shall acknowledge receipt of the request for retirement status and at the next meeting of the board the request for retirement will be placed on the agenda; upon board approval of retirement status the licensee will be exempt from payment of the triennial renewal fees during the period of retirement;

D. the board may deny a request for retirement status if there are any current or pending complaints or disciplinary actions against the licensee;

E. a licensee desiring to go from active to inactive must sign a waiver and stipulation provided by the board foregoing the three year retirement. [3-14-73...5-31-95, 9-30-96; 16.5.12.8 NMAC - Rn, 16 NMAC 5.12.8, 12-14-00, A, 03-06-05; A, 01-09-12]

16.5.12.9 INACTIVE: A license to practice dentistry may be placed in inactive status one time through the following procedures.

A. The request for inactive status must be made by an application obtained from the board office prior to the expiration of the current license or the three-year eligibility of retirement status. Dentists with an active practice located in New Mexico must include the following information:

- (1) the actual date of inactivation request;
- (2) proof of written notification of approaching inactive status to all patients currently under active treatment;
- (3) the location where all active dental treatment records will be maintained for a minimum of ~~two~~ six years; active treatment records are records of patients treated in the two years previous to the date of inactive status; the notification to the board must include the name, address,

and telephone number of the person who is serving as the custodian of the records.

B. All dentists requesting inactive status shall include a list of any continuing education courses taken since the last license renewal, including documentation as set forth in 16.5.10 NMAC.

C. The board may deny a request for inactive status if there are any current or pending complaints or disciplinary actions against the licensee. [3-14-73...5-31-95, 12-15-97; 16.5.12.9 NMAC - Rn & A, 16 NMAC 5.12.9, 12-14-00; N, 03-06-05; A, 04-17-06; A, 01-09-12]

16.5.12.10 REINSTATEMENT FROM RETIREMENT STATUS: A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in 16.5.12.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) ~~twenty~~ 20 hours of approved continuing education courses related to the clinical practice of dentistry, per year of retirement; at least ~~twenty~~ 20 of these hours must be in the ~~twelve~~ 12 months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(3) proof of infection control course within the past ~~twelve~~ 12 months; and

(4) ~~sixty~~ 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

- (1) drug enforcement administration (DEA), and
- (2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners' data bank.

D. Verification of licensure in all states where the applicant holds or has

held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, expiration date and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of retirement and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from retirement status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in retirement status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a retired license is not requested after three years of retirement, and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.12.10 NMAC - Rn, 16.5.12.9 NMAC & A, 03-06-05; A, 04-17-06; A, 07-16-07; A, 07-19-10; A, 01-09-12]

16.5.12.11 REINSTATEMENT FROM INACTIVE STATUS: A licensee whose license has been placed in inactive status may request reinstatement to active license status within nine years of the date of inactivation as indicated in 16.5.12.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee and proof of the following continuing education courses:

(1) ~~twenty~~ 20 hours of approved continuing education courses related to the clinical practice of dentistry, per year of inactivation; at least ~~twenty~~ 20 of these hours must be in the ~~twelve~~ 12 months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(3) proof of infection control course within the past ~~twelve~~ 12 months;

(4) proof of medical emergency course during the past ~~twelve~~ 12 months;

and

(5) [sixty] 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA); and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners' data bank.

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

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of inactivation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from inactive status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in inactive status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of an inactive license is not requested after nine years of inactivation, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico or six years if the licensee signs affidavit foregoing three years for retirement as defined in 16.5.12.8 NMAC.

[16.5.12.11 NMAC - N, 03-06-05; A, 04-17-06; A, 07-16-07; A, 07-19-10; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.13 NMAC, Section 9, effective 01-09-12.

16.5.13.9 REINSTATEMENT OF REVOKED LICENSE:

Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation [must] shall re-apply as a new applicant and meet all requirements for initial licensure.

A. Applicants for reinstatement [must] shall provide verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession within the previous year. Verification [must] shall be sent directly to the board office from the other state(s) board, [must] shall include a raised seal, and [must] shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[3/14/73, 5/31/95; 16.5.13.9 NMAC - Rn, 16 NMAC 5.13.9, 04/17/06; A, 07/16/07; A, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.15 NMAC Sections 7 and 10, effective 01-09-12.

16.5.15.7 DEFINITIONS:

[A. "Conscious sedation" means a minimally depressed level of consciousness that retains the patients' ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than conscious sedation.

B. "Deep sedation" means an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof.

C. "General anesthesia" means a induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

D. "Monitor" means to watch or check on:

E. "Nitrous oxide inhalation analgesia" means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command:

F. "Prescribed administration" means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist's authorization:

G. "Combination inhalation-enteral sedation (combined conscious sedation)" - conscious sedation using inhalation and enteral agents. Nitrous oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation or general anesthesia:

H. "Anxiolysis" the diminution or elimination or reduction of anxiety:

I. "Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa. (ie oral, rectal, sublingual)

A. "Anxiolysis" the diminution or elimination or reduction of anxiety:

B. "Combination inhalation-enteral sedation (combined conscious sedation)" - conscious sedation using inhalation and enteral agents. Nitrous oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation or general anesthesia.

C. "Conscious sedation" means a minimally depressed level of consciousness that retains the patients' ability to independently and continuously maintain an airway and respond appropriately to

physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than conscious sedation.

D. "Deep sedation" means an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof.

E. "Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa. (ie oral, rectal, sublingual)

F. "General anesthesia" means a induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

G. "Monitor" means to watch or check on.

H. "Nitrous oxide inhalation analgesia" means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

I. "Prescribed administration" means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist's authorization. [16.5.15.7 NMAC - Rp, 16.5.15.7 NMAC, 3-17-05; A, 07-16-07; A, 01-09-12]

16.5.15.10 ADMINISTRATION OF NITROUS OXIDE OR ENTERAL ANXIOLYSIS (MINIMAL SEDATION) ANALGESIA:

A. NITROUS OXIDE:

(1) Registration required: Each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon initial application or upon request, and contain information to

verify the dentist, facility, and staff meet the requirements specified in Paragraph (2) of Subsection A of 16.5.15.10 NMAC. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

(2) Requirements for registration: Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(a) completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training;

(b) have adequate equipment which includes fail-safe features and a 25% minimum oxygen flow and an effective scavenging system;

(c) each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification;

(d) all use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist;

(e) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate; and

(f) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

B. ENTERAL ANXIOLYSIS (MINIMAL SEDATION):

(1) Each licensed dentist who holds a nonrestricted DEA license and who administers or supervises the administration of enteral anxiolytic medication shall be responsible for the following:

(a) completed a course of training while a student in an accredited school of dentistry or through postgraduate training;

(b) enteral shall be administered only in the office setting and patient shall be monitored;

(c) have adequate equipment to monitor patients vital signs;

(d) each dentist and auxiliary personnel who monitors shall have current basic life certification;

(e) all use of enteral medication shall be under the indirect supervision of a licensed dentist;

(f) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate during procedures and effect of medication;

(g) shall verify the patient has other means of transportation to be released from the office;

(h) administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of the practice and prescriptive authority of the dentist [and] does not produce oral conscious sedation [and]; does not require the dentist to hold a conscious sedation I permit.

[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 3-17-05; A, 07-16-07; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.16 NMAC Sections 7 and 10 and add sections 12, 13 and 14, effective 01-09-12. This also amends part name.

PART 16 DENTISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS

16.5.16.7 DEFINITIONS: [RESERVED]

A. "Addiction" means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. "Chronic pain" means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

D. "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or damage.

E. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

F. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

G. "Tolerance" means

a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[9-30-96; 16.5.16.7 NMAC - Rn, 16 NMAC 5.16.7, 12-14-00; A, 01-09-12]

16.5.16.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to [his] his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient's records and x-rays regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

~~[(6) failure of a dentist to comply with the following advertising guidelines:~~

~~_____ (a) shall not advertise in a false, fraudulent, or misleading manner;~~

~~_____ (b) shall include in the advertisement the dentist's name, address and telephone number;~~

~~_____ (c) shall not advertise a practice specialty in a false, fraudulent or misleading manner; and~~

~~_____ (d) shall not include a specialty in any advertisement unless the dentist is licensed by the board to practice the specialty;]~~

(6) failure of a dentist to comply with the following advertising guidelines, no person shall:

_____ (a) practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/

her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

_____ (b) conduct, maintain, operate, own, or provide a dental office in the state of licensure, either directly or indirectly, under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name as it appears on the license or renewal certificate as issued by the board or his/her commonly used name;

_____ (c) hold himself/herself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in the state of licensure under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name as it appears on the license or renewal certificate as issued by the board or his/her commonly used name;

_____ (d) operate, manage, or be employed in any room or office where dental service is rendered or conducted under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name as it appears on the license or renewal certificate as issued by the board or his/her commonly used name;

_____ (e) practice dentistry without displaying his/her full name or his/her commonly used name as it appears on the license or renewal certificate as issued by the board in front of each dental office location if the office is in a single-story or single-occupancy building, or without displaying his/her full name or his/her commonly used name as it appears on the license or renewal certificate as issued by the board on the outside of the entrance door of each dental office if the office is in a multi-occupancy or multi-story building;

_____ (f) shall include in the advertisement the dentist's name, address and telephone number;

_____ (g) shall not advertise a practice in a false, fraudulent or misleading manner; and

_____ (h) shall not advertise as a specialist unless the dentist is licensed by the board to practice the specialty.

(7) failure to use appropriate infection control techniques and sterilization procedures;

(8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits

in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe, dispense or administer drugs outside the scope of dental practice;

(11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual misconduct;

(13) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American dental association;

(14) the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing abusive billing practices;

(16) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(17) violation of any order of the board, including any probation order;

(18) injudicious prescribing, administration, or dispensing of any drug or medicine;

(19) failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state [or], surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent supervision of a dental hygienist or dental assistant;

(21) cheating on an examination for licensure; or

(22) failure to comply with the terms of a signed collaborative practice agreement;

(23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care under part 17 of these rules;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to make available to patients a method to contact the treating dentist or other licensed dentist [or emergency agency], when the dentist is not available for patient emergencies; dentists who practice in communities with fewer than five dentists may refer their patients to a

medical facility in case of dental emergency;

(26) conviction of either a misdemeanor or a felony punishable by incarceration;

(27) aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient abandonment;

(29) habitually addicted as defined in 61.5A-21 4 & 6 and 61.5B-3. (C) and (D) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 NMSA 1978] or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board; its investigators or representatives with information requested by the board; and

(31) failure to appear before the board when requested by the board in any disciplinary proceeding.

[9-13-69, 10-21-70, 4-11-81, 3-9-89, 3-11-89, 10-16-92, 5-31-95, 6-4-96, 2-14-00; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12-14-00; A, 07-16-07; A, 07-19-10; A, 01-09-12]

16.5.16.12 REVOCATION OF LICENSE FOR DISCIPLINARY ACTIONS:

A licensee whose license is revoked for disciplinary actions shall:

A. provide proof of written notification of practice closure to all patients currently under active treatment;

B. notification to patients should include where and how dental treatment records may be obtained and contact information for dentists available; and

C. provide to the board the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of closure; the notification to the board shall include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.16.12 NMAC - N, 01-09-12]

16.5.16.13 REINSTATEMENT OF REVOKED LICENSE FOR DISCIPLINARY ACTIONS:

A licensee whose license has been revoked for disciplinary actions may request reinstatement of the license after the terms of the settlement agreement have been met. Upon approval from the board and receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement shall include the reinstatement fee, the triennial renewal fee, impairment

fee, and proof of the following continuing education courses:

(1) 20 hours of approved continuing education courses related to the clinical practice of dentistry, per year of revocation; at least 20 of these hours shall be in the 12 months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(3) proof of infection control course within the past 12 months; and

(4) 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of revocation as well as any continuing education taken during the revoked period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA), and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners' data bank.

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

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of revocation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license may be reinstated and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in revocation status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a revoked license is not requested within three years after settlement agreement has been met, application for a new license shall be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.16.13 NMAC - N, 01-09-12]

16.5.16.14 REINSTATEMENT OF SUSPENDED LICENSE FOR DISCIPLINARY ACTIONS:

For licenses suspended for greater than six months; a licensee whose license has been suspended for disciplinary actions in addition to meeting the terms of the settlement agreement shall also meet the following conditions before reinstatement of licensure:

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

B. the board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of suspension and information on any existing impairment; the reinstated license will expire as defined in 16.5.11 NMAC; and

C. a dentist with a license in suspended status may not practice dentistry in New Mexico until proof of active licensure is approved by the board and issued by the board office.

[16.5.16.14 NMAC - N, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.17 NMAC Sections 7, 8, 9, 10, 11, 12 and 13, effective 01-09-12.

16.5.17.7 DEFINITIONS:

~~A. "Acting consulting dentist" means a dentist who meets the qualifications of a consulting dentist who is named by a consulting dentist to act in his place when that dentist will be away from his practice for more than two weeks.~~

~~B. "Collaborative practice agreement" means a written agreement between a dentist who meets the qualifications of 16.5.17.9 NMAC to be a consulting dentist as defined in 16.5.17 NMAC of these rules, and a collaborative practice dental hygienist. This agreement shall follow the format as determined by the board.~~

~~C. "Collaborative practice of dental hygiene" means the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Section 61-5A 4(B) in a cooperative working relationship with a consulting dentist but without general supervision, as set forth by the rules jointly established by the board and~~

committee:

D. "Consulting (collaborative) dentist" means a dentist who meets the qualifications specified in section 16.5.17.9 NMAC of this rule and who agrees to serve or continues to serve as a patient's dentist of record in collaboration and consultation with the practice dental hygienist as specified in the rules.

E. "Non-participating dentist" is a dentist who does not wish to collaborate with a collaborative practice dental hygienist.

F. "Standard collaborative practice protocols" is the protocol to be used by the collaborative practice dental hygienist to treat a patient, as specified in section 16.5.17.13 NMAC of this part.

G. "Written prescription orders" means instructions from the consulting dentist to the collaborative hygienist to perform those allowable treatments requiring a diagnosis and treatment plan, subject to the limitations of section 16.5.17.12 NMAC of these rules, or directions written to modify the standard collaborative practice protocols, or the collaborative practice agreement.

H. "Verbal prescription or orders" means instructions not communicated in written form, which must be recorded in the patient's record or the protocol agreement by both the collaborative hygienist and the consulting dentist when given.]

A. "Acting consulting dentist" means a dentist who meets the qualifications of a consulting dentist who agrees to act as the consulting dentist when that dentist will be away from his/her practice for more than two weeks. An approved collaborative agreement shall be signed by the acting consulting dentist and the licensed dental hygienist prior to the consulting dentist leaving.

B. "Collaborative practice agreement" means a written agreement between a dentist who meets the qualifications of 16.5.17.9 NMAC to be a consulting dentist as defined in 16.5.17 NMAC of these rules, and a collaborative practice dental hygienist. This agreement shall follow the format as determined by the board and committee. A new agreement shall be signed and submitted to the board for approval each renewal period.

C. "Collaborative practice of dental hygiene" means the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Section 61-5A 4(B) in a cooperative working relationship with a consulting dentist but without general supervision, as set forth by the rules jointly established by the board and committee.

D. "Consulting (collaborative) dentist" means a dentist who meets the qualifications specified in 16.5.17.9 NMAC of this rule and who agrees to serve or continues to serve as a patient's dentist of record in collaboration and consultation with the practice dental hygienist as specified in the rules.

E. "Non-participating dentist" is a dentist who does not wish to collaborate with a collaborative practice dental hygienist.

F. "Standard collaborative practice protocols" is the protocol to be used by the collaborative practice dental hygienist to treat a patient, as specified in 16.5.17.13 NMAC of this part.

G. "Verbal prescription or orders" means instructions not communicated in written form, shall be recorded in the patient's record or the protocol agreement by both the collaborative hygienist and the consulting dentist when given.

H. "Written prescription orders" means instructions from the consulting dentist to the collaborative hygienist to perform those allowable treatments requiring diagnosis and treatment plan, subject to the limitations of 16.5.17.12 NMAC of these rules, or directions written to modify the standard collaborative practice protocols, or the collaborative practice agreement.

[2-14-00; 16.5.17.7 NMAC - Rn & A, 16 NMAC 5.17.7, 12-14-00; A, 01-09-12]

16.5.17.8 CERTIFICATION FOR THE COLLABORATIVE PRACTICE OF DENTAL HYGIENE:

The board, based on the recommendation of the dental hygienists committee, will certify qualified dental hygienists for collaborative practice.

A. Prerequisite requirements for certification. Each applicant for certification as a collaborative practice dental hygienist [must] shall possess the following qualifications:

(1) possess a current New Mexico dental hygiene license in good standing;

(2) have been engaged in the active practice of dental hygiene as defined in 61-5A-4(B) of the act for not less than:

(a) 2400 hours of active practice for the past eighteen months; or

(b) a total of 3,000 hours of active practice and has been engaged in active practice for two of the past three years;

(3) meet the educational criteria for licensure in Section 61-5A 13 (A) of the act; and

(4) have 15 hours of continuing education in clinical dental hygiene in the [twelve-(+2)] 12 months prior to certification, which includes courses in infection control and medical emergencies.

B. Documentation

requirements. Each applicant for certification as a collaborative practice dental hygiene [must] shall submit a completed application, the required fees and following documentation:

(1) verification of a current active license;

(2) proof of the active practice of dental hygiene as defined in 16.5.17.8 NMAC of this part; this proof may be in the form of notarized letters from employers, supervisors of dental clinics of one of the uniformed services of the United States, or faculty administrators of accredited schools; if this documentation cannot be obtained, the applicant may request to provide other proof of the required hours to the committee for consideration;

(3) basic life support (BLS) or cardiac pulmonary resuscitation (CPR); proof of current certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(4) proof of 15 hours of continuing education related to the clinical practice of dental hygiene; and

(5) a copy of a signed collaborative practice agreement between a dental hygienist and a consulting dentist.

C. Renewal requirements. Each dental hygienist certified for collaborative practice shall:

(1) submit a completed renewal application for certification for collaborative practice, along with the triennial renewal application for their license, accompanied by the required fees as defined in 16.5.18 NMAC;

(2) complete 60 hours of continuing education every triennial renewal period; if the initial certification period is less than three years, the required continuing education will be prorated at 20 hours per full year of certification; 60 hours to include:

(a) basic life support (BLS) or cardiac pulmonary resuscitation (CPR); proof of current certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(b) infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

(c) medical emergencies: as for new certification defined in Paragraph (4) of Subsection A of 16.5.17.8 NMAC;

(3) submit a current list of all consulting dentists to the board with each renewal application; and

(4) submit a copy of the signed collaborative practice agreement(s) and protocols between a dental hygienist and a consulting dentist per renewal period.

[2-14-00; 16.5.17.8 NMAC - Rn, 16 NMAC 5.17.8, 12-14-00; A, 04-16-08; A, 07-19-10; A, 01-09-12]

16.5.17.9 QUALIFICATIONS FOR CONSULTING DENTISTS: A consulting dentist ~~[must]~~ shall meet the following qualifications:

A. possess a current New Mexico dental license in good standing;

B. maintains an active clinical general dentistry or public health practice within the state and within a reasonable referral distance from the collaborative dental hygiene practice as determined by the board upon recommendation of the dental hygienists committee.

[2-14-00; 16.5.17.9 NMAC - Rn & A, 16 NMAC 5.17.9, 12-14-00; A, 01-09-12]

16.5.17.10 RESPONSIBILITIES OF A CONSULTING DENTIST: The consulting dentist shall:

A. in collaboration with the dental hygienist, provide for the patient's additional needed dental care;

B. be available to provide consultation to the collaborative practice dental hygienist;

C. make provisions for a qualified acting consulting dentist to act in his/her place should he/she be away from his practice for more than two weeks;

D. maintain an appropriate level of contact and communication with the collaborative practice dental hygienist;

E. in conjunction with the collaborative practice dental hygienist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;

F. assure that each collaborative practice dental hygienist is duly licensed and certified for collaborative practice by the board of dental health care;

G. maintain a separate and distinct collaborative practice agreement with each collaborative practice dental hygienist for whom he/she serves as a consulting dentist;

H. provide verbal or written prescriptions to the collaborative practice dental hygienist for those procedures requiring a diagnosis;

I. provide verbal or written prescriptions to the collaborative practice dental hygienist when the consulting dentist deems it appropriate to provide exception to the standardized protocols;

J. provide a written prescription within ~~[(7)]~~ seven business days following a verbal prescription or order;

K. maintain in the patients record a duplicate of the written prescriptions or orders as described in Subsection H ~~[of 16.5.17.10 NMAC]~~ through Subsection J of 16.5.17.10 NMAC;

L. provide a written diagnosis and treatment recommendations from the records provided by the collaborative practice dental hygienist to the patient and the hygienist within ~~[thirty]~~ 30 days of receipt of such records;

M. each collaborative agreement will be kept on file by the collaborative practice dental hygienist and the consulting dentist, the basic format of the agreement will be provided with the application by the board.

[2-14-00; 16.5.17.10 NMAC - Rn & A, 16 NMAC 5.17.10, 12-14-00; A, 04-16-08; A, 01-09-12]

16.5.17.11 RESPONSIBILITIES OF A COLLABORATIVE PRACTICE DENTAL HYGIENIST: The collaborative practice dental hygienist shall:

A. refer each patient for a dental examination every ~~[twelve (12)]~~ 12 months, as well as anyone who may require further dental services, to the patient's consulting dentist or to a dental specialist in the case of an emergency;

B. in conjunction with the consulting dentist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;

C. assure that each consulting dentist is duly licensed by the board of dental health care; by verification with the board office;

D. maintain a collaborative practice agreement with each consulting dentist; and

E. maintain an appropriate level of contact and communication with the consulting dentist;

F. ~~[shall]~~ contact the patient's dentist of record, if not a consulting dentist, prior to treating the patient to give the dentist the option of becoming a consulting dentist;

G. ~~[shall]~~ offer the patient a choice of the collaborative practice dental hygienist's consulting dentists if the patient's dentist of record chooses to be a non-participating dentist;

H. not to perform any treatment if the patient does not have an active consulting dentist on record with the collaborative practice dental hygienist;

I. follow the standardized protocol unless modified by the consulting dentist by prescription or order;

J. follow the verbal and written prescriptions and orders of the consulting dentist for those treatments requiring a diagnosis;

K. forward all records and x-rays, or duplicates, to the consulting dentist within 14 days;

L. assure that each consulting dentist meets the requirements of a consulting dentist as stated in 16.5.17.9

NMAC; and

M. a copy of the collaborative agreement shall be on file with the board office; any changes to this agreement shall be filed with the board office within 60 days.

[2-14-00; 16.5.17.11 NMAC - Rn & A, 16 NMAC 5.17.11, 12-14-00; A, 01-09-12]

16.5.17.12 COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:

A. A dental hygienist in a collaborative practice may perform the procedures in a dental hygienist's scope of practice listed in 16.5.29 NMAC without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee.

~~[A-]B.~~ A collaborative practice dental hygienist may have more than one consulting dentist.

~~[B-]C.~~ A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

~~[C-]D.~~ The collaborative practice dental hygienist may own and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

~~[D-]E.~~ The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing Act, against a dental hygienist certified in collaborative practice.

F. Collaborative dental hygienist can administer local anesthesia under general supervision as defined in 16.5.28.8 NMAC and 16.5.28.12 NMAC.

G. A collaborative dental hygienist may assess for pit and fissure sealants without a dentist's evaluation as provided in Subsection D of 16.5.29.8 NMAC.

H. A collaborative dental hygienists may prescribe, administer and dispense topically applied fluoride and topically applied antimicrobials as provided for in 16.5.29.11 NMAC.

I. Perform dental hygiene focused assessment.

~~[E-]J.~~ A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the ~~[indirect]~~ general supervision of a dentist; and only if certified to do so through the committee and ratified by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental

hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) ~~[must]~~ shall be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every [6] ~~six~~ months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental hygienist as in 16.5.17.12 NMAC, ~~[must]~~ shall be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in residential or long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/order from the consulting dentist; such treatments include but are not limited to, root planing, sealant application in presence of cavitation, administration of therapeutic agents and other services defined in Section 61-5A-4(B) as within the scope of dental hygiene practice but which require a dentists diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist;

(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;

(8) provide in office bleaching systems unless under indirect supervision of a consulting dentist.

[2-14-00; 16.5.17.12 NMAC - Rn & A, 16 NMAC 5.17.12, 12-14-00; A, 06-14-01; A, 04-16-08; A, 07-19-10; A, 01-09-12]

16.5.17.13 STANDARD COLLABORATIVE PRACTICE PROTOCOLS: All protocols will include

but are not limited to: review of health history charting of existing teeth and restorations, periodontal charting as necessary, and notations of potential pathology. Protocols may be amended upon written order of the consulting dentist. Time intervals for these protocols ~~[must]~~ shall be established in the collaborative practice agreement as provided in Subsection G of 16.5.17.13 NMAC.

A. Protocols for children 12 and under:

(1) appropriate panoramic or occlusal x-rays;

(2) two bitewing x-rays;

(3) prophylaxis/scaling;

(4) topical fluoride treatment;

(5) other radiographs as indicated by consultation with the dentist.

B. Protocols for teenagers:
(1) appropriate panoramic or full mouth radiographs;

(2) two or four bitewing x-rays;

(3) prophylaxis/scaling;

(4) topical fluoride treatment;

(5) other radiographs as indicated by consultation with the dentist.

C. Protocols for adults:
(1) full mouth or panoramic radiograph;

(2) bitewing radiographs annually;

(3) complete periodontal charting;

(4) prophylaxis/scaling or gross debridement and consultation with the consulting dentist if periodontal assessment suggests periodontal involvement.

D. All other procedures not listed in the protocols shall require a prescription from the consulting dentist as stated in Subsections H ~~[of 16.5.17.10 NMAC]~~ and ~~[Subsection]~~ N of 16.5.17.10 NMAC.

E. Guidelines for patient release forms, to include a disclaimer signed by the patient or legal guardian that the dental hygiene services rendered do not preclude the need for routine examinations by a dentist.

F. Both the consulting dentist and the collaborative practice dental hygienist shall sign a copy of this or amended protocol and keep on file.

G. Changes to practice protocol ~~[and/or]~~ and agreements ~~[must]~~ shall be ~~[in]~~ prescribed in writing by the consulting dentist and recorded by both the consulting dentist and the collaborative practice dental hygienist.

[2-14-00; 16.5.17.13 NMAC - Rn, & A, 16 NMAC 5.17.13, 12-14-00; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.19 NMAC Sections 8 and 9, effective 01-09-12.

16.5.19.8 PREREQUISITE REQUIREMENTS FOR LICENSE: Each applicant for licensure as a dental hygienist by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13 of the act;

B. passed the dental hygiene national board examination as defined in Section 61-5A-13 A;

C. passed the WREB; CRDTS, NERB/ADEX; ~~[or]~~ SRTA or other clinical examination [as defined in Subsections I, J, K, and L of 16.5.1.7 NMAC] approved by the committee and ratified by the board; the results of the ~~[WREB; CRDTS, NERB/ADEX or SRTA exam]~~ clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB; CRDTS, NERB/ADEX or SRTA for examination, and

(2) ~~[WREB; CRDTS, NERB/ADEX or SRTA]~~ results of the clinical examination must be sent directly to the board office; and

D. passed the jurisprudence ~~[exam]~~ examination with a score of at least 75 ~~[percentile]~~ percent;

E. the committee requires a level III background status report from a board designated professional background service for new graduates, and a level II background status report from a board designated professional background service for any other applicant; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-14-73, 10-4-86, 3-7-88, 5-31-95; A, 12-15-97, A, 8-16-99; 16.5.19.8 NMAC - Rn & A, 16 NMAC 5.19.8, 12-30-02; A, 07-17-08; A, 07-19-10; A, 01-09-12]

16.5.19.9 DOCUMENTATION REQUIREMENTS: Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. official transcripts

or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of [~~WREB; CRDTS, NERB/ADEX or SRFA certificate or~~] clinical examination score card or certificate;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental hygiene school within the past 12 months;

F. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [~~or~~], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

G. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the committee.
[3-14-73, 3-7-88, 10-4-86, 5-31-95, 9-30-96, 12-15-97; 16.5.19.9 NMAC - Rn & A, 16 NMAC 5.19.9, 12-30-02; A, 04-16-08; A, 07-17-08; A, 07-19-10; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.20 NMAC Sections 8, 9 and 10, effective 01-09-12.

16.5.20.8 PREREQUISITE REQUIREMENTS FOR LICENSE: Each applicant for licensure as a dental hygienist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least [2] two academic years of dental hygiene curriculum as defined in Section 61-5A-13, NMSA 1978 of the act;

B. completed 15 hours of continuing education during the past year; these hours must meet the qualifications as

defined in 16.5.1.15 NMAC;

C. passed the dental hygiene national board examination as defined in Section 61-5A-13 A., NMSA 1978;

D. passed the jurisprudence [~~exam~~] examination with a score of at least 75 percent;

E. holds a current active license in good standing obtained through a clinical examination in another state or territory of the United States;

F. the committee requires a level [III] II background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service;

G. all licenses held by the applicant must have been in good standing for [2] two years prior to application;

H. the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.
[3-28-91 . . . 5-31-95, 9-30-96, 8-16-99; 16.5.20.8 NMAC - Rn, & A, 16 NMAC 5.20.8, 06-14-01; A, 03-06-05, A, 04-16-08; A, 7-17-08; A, 01-09-12]

16.5.20.9 DOCUMENTATION REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within [6] six months affixed to the application; applications are valid for [1] one year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or score card;

D. proof of having taken a course in infection control technique within the past [~~twelve~~] 12 months;

E. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [~~or~~], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

F. proof of 15 hours of continuing education during the 12 months prior to application;

G. a status report must be received at the board office directly from a board designated professional background

service; the results of the board designated professional background service background check must either indicate no negative findings or, if there are negative findings, those findings will be considered by the committee:

(1) the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

(2) supplemental information may be requested by the committee; and

H. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.
[3-28-91, 5-31-95, 9-30-96, 8-16-99; 16.5.20.9 NMAC - Rn & A, 16 NMAC 5.20.9, 06-14-01; A, 04-16-08; A, 07-19-10; A, 01-09-12]

16.5.20.10 RE-EXAMINATION

PROCEDURE: An applicant who does not obtain a passing score on the jurisprudence [~~exam~~] examination must submit the re-examination fee as defined in Subsection D of 16.5.18 NMAC to re-take the exam.
[9-30-96; 16.5.20.10 NMAC - Rn, 16 NMAC 5.20.10, 06-14-01; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.21 NMAC Sections 2, 6, 7, 8, 9, 10, 11, 13, 14 and 15, effective 01-09-12. This also amends the part name.

PART 21 D E N T A L HYGIENISTS, TEMPORARY OR PUBLIC SERVICE LICENSURE:

16.5.21.2 SCOPE: The provisions of Part 21 of Chapter 5 apply to all dental hygienists applying for a temporary or public service license to practice in New Mexico.
[9-30-96; 16.5.21.2 NMAC - Rn, 16 NMAC 5.21.2, 12-30-02; A, 01-09-12]

16.5.21.6 OBJECTIVE: To establish the requirements for application for temporary or public service licensure as a dental hygienist.
[9-30-96; 16.5.21.6 NMAC - Rn, 16 NMAC 5.21.6, 12-30-02; A, 01-09-12]

16.5.21.7 DEFINITIONS [RESERVED]:

A. "Entity" means a dental or dental hygiene organization, foundation or officially recognized study club, which has a constitution, bylaws and whose officers or board of trustees are dentists or dental hygienists licensed in good standing in the state.

B. "Good standing" means having an active dental hygiene license in a jurisdiction for a period of at least two consecutive years immediately preceding the date of application. The committee as ratified by the board shall consider stipulations, disciplinary, or administrative actions taken against a licensee by the issuing agency, within the previous two years, when determining whether a license is in good standing.

C. "In the state" or "in this state" means that a program has a physical presence in New Mexico in the form of a facility and a permanent faculty. [9-30-96; 16.5.21.7 NMAC - Rn, 16 NMAC 5.21.7, 12-30-02; A, 01-09-12]

16.5.21.8 CATEGORIES OF TEMPORARY OR PUBLIC SERVICE LICENSES: Temporary or public service dental hygiene licenses may be issued in the following categories for specific purposes, if education and experience requirements are met.

A. Clinical educator.

(1) Dental hygienists, not currently licensed in New Mexico, who provide continuing education or training that includes clinical demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for [forty eight] 48 hours (two days). If the course lasts longer than two days, additional [forty eight] 48 hour licenses may be requested upon payment of the applicable fees.

(2) Dental hygienists, not currently licensed in New Mexico, who intend to serve as a faculty member of an accredited dental hygiene program must apply for a temporary or public service license. The temporary or public service license is issued for [twelve] 12 months and may be renewed one time. Temporary or public service licensees must be granted a license under the provisions of [Part 19 of these rules or 16.5.21.15 NMAC of this section] 16.5.19 NMAC or 16.5.21.15 NMAC prior to the expiration date of the temporary or public service license to continue uninterrupted practice of dental hygiene in New Mexico.

B. Public health dental hygiene. A dental hygienist may be granted temporary or public service licensure to practice in a state institution, public health clinic or public health program approved or maintained by the New Mexico department of health. The temporary or public service license holder is restricted to work exclusively in the institution or program

named on the application. A temporary or public service license may be issued for six or [twelve] 12 months and may be renewed one time. Temporary or public service licensees must be granted a license under the provisions of [Part 19 of these rules] 16.5.19 NMAC or 16.5.21.15 NMAC prior to the expiration date of the temporary or public service license to continue uninterrupted practice of dental hygiene in New Mexico.

C. [Charitable dental hygienist: Out of state dental hygienist(s) desiring to practice at a board approved charitable event and receive no compensation may be granted a 48 hour temporary licensure for the charitable event. Charitable dental hygienist temporary licensee is restricted to work exclusively at the charitable event named on the application and must comply with the New Mexico Dental Health Care Act.

(1) The charitable event must be board approved 45 days prior to the scheduled charitable event.

(2) Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or a delegate(s) of the committee will review and approve the application.

(3) The sponsoring charitable event entity shall appoint a NM licensed dentist(s) or dental hygienist(s) who will sponsor and be in association with during the time the applicant practices dental hygiene in New Mexico.

(4) Temporary licensure will be issued for 48 hours.

(5) The NM licensed dentist(s) or dental hygienist(s) acting as a sponsor(s) for the charitable dental hygienist temporary licensee(s) must be responsible for the submitting documentation for each applicant; the sponsoring dentist or dental hygienist must submit an affidavit attesting to the qualification of the applicant and attesting to the following:

(a) verification of the license in good standing;

(b) verification of graduation from a council on dental accreditation (CODA) dental hygiene school; and

(c) verification of having taken a course in infection control technique within the past 12 months.

(6) The completed applications must be filed with the New Mexico board of dental health care 10 days prior to the scheduled charitable event.

(7) The completed application signed and notarized must include:

(a) the application fee;

(b) the sponsor of the charitable event and the NM licensed dentist(s) or dental hygienist sponsoring the applicant, with contact numbers;

(c) copy of current active license in good standing from the state the applicant

is currently practicing;

(d) proof of liability insurance; and

(e) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR);

(8) Temporary license must be posted at the event.

(9) Patients who receive dental care during the charitable event will be given a list of dentists or dental hygienists whom they can contact if post-operative care is needed.

(10) Charitable dental hygienist licensure is not eligible for conversion to any other temporary license, or any conversion for New Mexico licensure by credentials.] Presumptive public service licensure for charitable dental hygiene projects: A dental hygienists not holding a license in the state may be granted a presumptive public service license for up to 72 hours to participate in a committee approved, and ratified by the board, charitable project. Except as noted in this section the dental hygienist shall otherwise be subject to the provisions of the dental practice act and the rules and regulations of the board. The presumptive public service license is valid only when:

(1) the charitable project is approved by the board 45 days prior to the scheduled event;

(2) the dental hygienist receives no compensation for participating in the project;

(3) the project is sponsored by an entity as defined in 16.5.21.7 NMAC and that entity has been approved by the committee, and ratified by the board, to undertake the charitable project;

(4) the dental hygienist holds a license in good standing in another jurisdiction and the license is verified by the sponsoring entity;

(5) the dental hygienist has graduated from and holds a diploma from a dental hygiene school accredited by the commission on dental accreditation and a copy of the diploma is on file with the sponsoring entity;

(6) upon request of the out-of-state dental hygienist shall produce copies of their diploma and license in another jurisdiction;

(7) the dental hygiene care provided is within the scope and limits of the license the dental hygienist holds in the other jurisdiction;

(8) the out-of-state dental hygienist works under the indirect supervision of a dentist licensed in this state who is present at the charitable project;

(9) patients who receive dental hygiene care during the charitable project will be given a list of dentists whom they can contact if post-operative care is needed;

(10) a charitable public service license is not eligible for conversion to any

other temporary or public service, regular license, or license by credentials, and

(11) no fee shall be required by the board for the presumptive public service license for a charitable project. [3-14-73, 5-31-95, 9-30-96; 16.5.21.8 NMAC - Rn & A, 16 NMAC 5.21.8, 12-30-02; A, 09-18-10; A, 01-09-12]

16.5.21.9 REQUIREMENTS FOR TEMPORARY OR PUBLIC SERVICE LICENSURE: [Charitable dental]

Presumptive public service dental hygienist as defined in Subsection C of 16.5.21.8 NMAC are not required to comply with Subsection C of this section. All other applicants for temporary or public service licensure must possess each of the following qualification:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13; and

B. hold a valid license obtained through a clinical examination in another state or territory of the United States;

C. applicants requesting a six or [twelve] 12 month temporary or public service license are required to successfully complete the jurisprudence [exam] examination. [3-14-73, 5-31-95, 9-30-96; 16.5.21.9 NMAC - Rn, 16 NMAC 5.21.9, 12-30-02; A, 09-18-10; A, 01-09-12]

16.5.21.10 DOCUMENTATION REQUIREMENTS:

Except as otherwise required by Subsection C of 16.5.21.8 NMAC, [charitable] presumptive public service dental hygienist do not need to comply with the following for [temporary] presumptive public service licensure. All other applicants for temporary or public service licensure must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

C. copies of all valid licenses and a letter from the applicant attesting to the status of each license;

D. an affidavit from the New Mexico licensed dental hygienist or dentist who will sponsor the applicant, attesting to the qualifications of the applicant and the activities the applicant will perform;

E. a list of activities to

be practiced and the time period for which the temporary or public service license is requested;

F. in addition, applicants requesting temporary or public service licensure in public health must submit the following documentation:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card; and

(3) proof of having taken a course in infection control technique within the past 12 months.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.10 NMAC - Rn, 16 NMAC 5.21.10, 12-30-02; A, 04-16-08; A, 09-18-10; A, 01-09-12]

16.5.21.11 RE-EXAMINATION PROCEDURE:

An applicant who does not obtain a passing score on the jurisprudence [exam] examination must submit the re-examination fee as defined in Subsection D of 16.5.18.8 NMAC to re-take the exam. [9-30-96; 16.5.21.11 NMAC - Rn, 16 NMAC 5.21.11, 12-30-02; A, 09-18-10; A, 01-09-12]

16.5.21.13 LIMITATION ON LICENSE:

A. Temporary or public service licensees shall engage in only those activities specified on the temporary or public service license for the time period designated.

B. Temporary or public service licensees shall only practice under the sponsorship, or in association with, a licensed New Mexico dental hygienist or dentist.

C. Temporary or public service licensees and the approved sponsor or associate are responsible for compliance with the act and these rules. [3-14-73, 5-31-95; 16.5.21.13 NMAC - Rn, 16 NMAC 5.21.13, 12-30-02; A, 01-09-12]

16.5.21.14 R E - I S S U E PROCEDURES:

To remain eligible for temporary or public service licensure; temporary or public service license holders who are eligible for reissue per Paragraph (2) of Subsection A and Subsection B of 16.5.21.8 NMAC must contact the board office three months prior to the expiration date to begin the re-issue process. All requirements regarding re-issue are the same as the initial application as defined in 16.5.21.8 NMAC. The application, fee and proof of 15 hours of continuing education must be post-marked on or before the expiration date. [16.5.21.14 NMAC - N, 12-30-02; A, 09-18-

10; A, 01-09-12]

16.5.21.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS OR EXAMINATION:

Temporary licenses may be renewed once for a 12 month time period. After that renewal the license is no longer eligible for re-issue. If uninterrupted practice of dental hygiene in New Mexico is desired after two [(2)] years, then a temporary licensee must convert to a dental hygiene license by credentials or examination. Only temporary licenses previously issued for 12 months are eligible for conversion to a permanent license by credential or examination.

A. Following the completion of the requirements for licensure, some of which were submitted with the temporary application, the applicant will complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials or examination.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for license by credentials or examination.

D. Upon receipt of a complete application a committee member shall approve a New Mexico license by credential or examination unless there is any action pending against the temporary license. Then at the discretion of the committee or its agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials or examination will be halted and the temporary license will no longer be renewed. [16.5.21.15 NMAC - N, 12-30-02; A, 09-18-10; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.23 NMAC Sections 8, 9, and 11, effective 01/09/12.

16.5.23.8 HOURS REQUIRED:

[Forty-five] 45 hours of continuing education, a maximum of 30 hours can be on-line, webinars or self-study are required during each triennial renewal cycle as defined in 16.5.1 NMAC. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at [fifteen] 15

hours per full year of the initial licensing period. Initial licenses issued for less than a full year do not require continuing education for the first renewal.

[11/21/75, 5/31/95; 16.5.23.8 NMAC - Rn, 16 NMAC 5.23.8, 04/17/06; A, 01/09/12]

16.5.23.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dental hygiene and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal:

A. basic life support (BLS) or cardiac pulmonary resuscitation (CPR): proof of current certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

B. infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period. [11/21/75, 4/12/92, 5/21/93, 5/31/95, 9/30/96; 16.5.23.9 NMAC - Rn & A, 16 NMAC 5.23.9, 04/17/06; A, 04/16/08; A, 07/19/10; A, 01/09/12]

16.5.23.11 EMERGENCY DEFERRAL:

A. A licensee unable to fulfill the continuing education requirements may apply to the committee for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the committee.

B. A licensee practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The committee must be notified prior to license expiration that the licensee will be outside the US, including the period of the absence.

(2) Upon return to the US, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

[3/11/89, 9/30/96; 16.5.23.1 NMAC - Rn, 16 NMAC 5.23.1, 04/17/06; A, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.25 NMAC Sections 10 and 11, effective 01-09-12.

16.5.25.10 REINSTATEMENT FROM RETIREMENT STATUS: A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, a completed application, and proof of the following continuing education courses.

(1) There will be 10 CE hours/year of retirement, up to 30 hours, required for reinstatement.

(2) The requirements of the infection control hours and the basic life support hours taken in the past [twelve] 12 months may be included toward these required hours:

(a) proof of infection control course within the past [twelve] 12 months;

(b) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(c) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

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

B. The request for reinstatement from retirement status, including a statement of the applicant's activities during the period of retirement and any existing impairments, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned.

The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in retirement status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of a retired license is not requested within three years of retirement and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico.

[16.5.25.10 NMAC - Rn, 16.5.25.9 NMAC, 03-06-05 & A, 03-06-05; A, 04-16-08; A, 07-19-10; A, 01-09-12]

16.5.25.11 REINSTATEMENT FROM INACTIVE STATUS: A licensee whose license has been placed in inactive status may request reinstatement of the inactive license to active license status within nine years of the date of inactive status as indicated in 16.5.25.8 NMAC. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) there will be 10 CE hours for each year of inactive status required for reinstatement; the hours may be accumulated at any time during the year(s) of inactivation; the requirements of the infection control hours and the basic life support hours, and medical emergency course taken in the past [twelve] 12 months may be included toward these required hours;

(2) proof of infection control course within the past [twelve] 12 months;

(3) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(4) proof of medical emergency course during the past [twelve] 12 months;

(5) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period; and

(6) verification of licensure in all

states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification must be sent directly to the board office from the other states boards, must include a raised seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.

B. The request for reinstatement from inactive status, including a statement of the applicant's activities during the period of inactivation and any existing impairment, shall be reviewed by a subcommittee as designated by the chair. If the subcommittee finds the application in order and is satisfied the applicant has fulfilled all required continuing education and submitted the fees, the subcommittee may approve the license reinstatement and the previous license number reassigned. The license will be read into the committee and board records at the next scheduled meeting. If the subcommittee finds that the application is not in order, the application will go to the entire committee for review. The reinstated license will expire as defined in 16.5.24 NMAC.

C. A dental hygienist with a license in inactive status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

D. If reinstatement of an inactive license is not requested within nine years of inactivation, application for a new license must be made by examination or credentials in order to practice dental hygiene in New Mexico or the license must be permanently retired. [16.5.25.11 NMAC - N, 03-06-05; A, 04-17-06; A, 04-16-08; A, 07-19-10; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.26 NMAC, Section 9, effective 01/09/12.

16.5.26.9 REINSTATEMENT OF REVOKED LICENSE FOR NON-RENEWAL:

A. Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation [must re-apply] shall apply as a new applicant and meet all requirements for initial licensure.

B. Applicants for reinstatement [must] shall provide for verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health

care profession within the previous year. Verification [must] shall be sent directly to the board office from the other state(s) board, [must] shall include a raised seal, and [must] shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

C. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, a dental hygienists committee member, will review and may approve the application. The committee may formally accept the approval of the application at the next scheduled meeting.

[3/14/73...5/31/95, 1/1/99; 16.5.26.9 NMAC - Rn, 16 NMAC 5.26.9, 04/17/06; A, 04/16/08; A, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.28 NMAC Section 9, add Sections 7, 8, 9, and 10, new section 12, effective 01-09-12.

16.5.28.7 DEFINITIONS: [RESERVED] "Two consecutive years" means at least 1200 hours per year for two consecutive year.

[9/30/96; 16.5.28.7 NMAC - Rn, 16 NMAC 5.28.7, 04/17/06; A, 01/09/12]

16.5.28.8 REQUIREMENT TO BE CERTIFIED: Local anesthesia may only be performed by dental hygienists who have been certified by the committee to perform the expanded function. The administration of local anesthesia requires the indirect supervision of a dentist. Local anesthesia may be administered by a dental hygienist under general supervision under the following conditions; the dental hygienist shall:

A. be currently certified to administer local anesthesia in New Mexico and have a New Mexico license in good standing;

B. have administered local anesthesia under the indirect supervision of a dentist for at least two consecutive years;

C. administered at least 20 cases of local anesthesia under the indirect supervision of the same dentist during that two year period;

D. provide a signed affidavit from the supervising dentist attesting to the length of employment, supervision, and observation of the 20 certifying cases, and attest that the dental hygienist is qualified to administer local anesthesia and to handle possible emergencies or side effects in a dental facility.

[3/14/73, 5/31/95; 16.5.28.8 NMAC - Rn, 16 NMAC 5.28.8, 04/17/06; A, 01/09/12]

16.5.28.9 CERTIFICATION BY EXAMINATION: Applicants for certification in local anesthesia by exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of an approved educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program; and

(3) successfully pass a written and clinical local anesthesia examination administered by WREB; the results of the WREB exam are valid in New Mexico for a period not to exceed five years.

B. Documentation:

(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;

(2) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia; and

(3) certificate or score card from WREB indicating successful completion and date of local anesthesia exam. [3/14/73, 4/10/81, 5/31/95, 12/15/97; 16.5.28.9 NMAC - Rn, 16 NMAC 5.28.9, 04/17/06; A, 04/16/08; A, 07/17/08; A, 09/18/10; A, 01/09/12]

16.5.28.10 CERTIFICATION BY CREDENTIALS: Applicants for certification in local anesthesia by credentials must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of educational coursework in local anesthesia; and

(3) administration of local anesthesia in the practice of dental hygiene for at least three of the past five years.

B. Documentation:

(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association [or], the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;

(2) proof of successful completion of educational coursework in local anesthesia;

(3) proof of certification by examination to practice local anesthesia in another state;

(4) a letter of verification from each jurisdiction where the applicant holds a certificate for administering local anesthesia, sent directly from the board in each jurisdiction, describing any disciplinary action taken against the applicant; and

(5) proof of administration of local anesthesia while engaged in the practice of dental hygiene in at least three of the past five consecutive years; proof may be by notarized letters from employers, supervisors of dental clinics of the uniformed services of the United States, or faculty administrators of schools of dental hygiene or dentistry. [3/16/94, 5/31/95, 12/15/97; 16.5.28.10 NMAC - Rn, 16 NMAC 5.28.10, 04/17/06; A, 04/16/08; A, 07/17/08; A, 09/18/10; A, 01/09/12]

16.5.28.12 LIMITATIONS OF LOCAL ANESTHESIA

ADMINISTRATION: Administration of local anesthetic under general supervision may occur when:

A. certification has been received as defined in 16.5.28.11 NMAC and meets the following requirements:

(1) the supervising or consulting dentist has written or verbally ordered local anesthetic for the specific patient; and

(2) verbal orders shall be converted to written record or electronic record in the patient's dental record; and

B. emergency medical services are available by:

(1) local 911 service with a response time of less than 10 minutes; or

(2) by arrangement with a local physician(s), oral surgeon, or other medical or dental professional holding an ACLS certification; this arrangement to provide emergency services shall be in writing and on file in the board office with the dental hygienists license; and

C. indirect supervision is required for continuing education and clinical examinations.

[16.5.28.12 NMAC - N, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.29 NMAC Sections 7, 8, 9 and 10, add new Section 11, effective 01/09/12.

16.5.29.7 DEFINITIONS: [RESERVED]

A. "Cavitation" means a break in the continuous, solid surface of the enamel of a tooth, created either by genetic formation or demineralization.

B. "Dental hygiene-

focused assessment" means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

C. "Topical therapeutic agents" means agents applied to the teeth or gingiva that have a therapeutic effect locally with limited or no systemic effect.

[9/30/96; 16.5.29.7 NMAC - Rn, 16 NMAC 5.29.7, 04/17/06; A, 01/09/12]

16.5.29.8 SCOPE OF PRACTICE:

A dental hygienist may perform dental hygiene services as defined in Section 61-5A-4[~~B~~ and ~~C~~] (B) and (C) of the act with the supervision defined. In addition, a licensed hygienist may:

A. prescribe, administer or dispense therapeutic agent as per the formulary as defined in Subsection C of 16.5.29.11 NMAC;

B. function as an expanded function dental auxiliary after passing the certifying exam and completing the apprenticeship accepted by the board;

C. function as a community dental health coordinator after completing a program certified by the board;

D. except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

E. except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

F. administration of local anesthesia as defined in 16.5.28 NMAC; and

G. such other closely related services as permitted by the rules of the committee and the board.

[10/21/70, 5/31/95; 16.5.29.8 NMAC - Rn, 16 NMAC 5.29.8, 04/17/06; A, 01/09/12]

16.5.29.9 LIMITATIONS ON PRACTICE:

Dental hygienists shall not perform, or attempt to perform, the following services or procedures:

A. removal of, or addition to, the hard or soft tissues of the oral cavity, other than diseased crevicular tissue;

B. placement or insertion of any permanent filling material;

C. diagnosis and dental treatment planning;

D. the final fitting, adaptation, seating and cementation of any fixed or removable dental appliance or restoration, including but not limited to inlays, crowns, bands, space maintainers, habit devices or splints;

E. final impressions for restorations or prosthetic appliances;

F. irrigation and

medication of canal, cone try-in, reaming, filing, or filling of root canals; [and]

G. other services defined as the practice of dentistry in Section 61-5A-4[~~A~~](A) of the act and not specifically listed in Section 61-5A-4[~~B~~ and ~~C~~]; (B) and (C) NMSA 1978, unless exempted by regulation; and

H. apply pit and fissure sealants without a dentist evaluation in cases where the tooth does exhibit cavitation of the enamel surface.

[3/14/73, 4/10/81, 3/11/89, 5/31/95; 16.5.29.9 NMAC - Rn, 16 NMAC 5.29.9, 04/17/06; A, 01/09/12]

16.5.29.10 PRACTICE SETTINGS:

New Mexico licensed dental hygienists may practice in the following settings; with supervision as defined in 16.5.1 NMAC:

A. the office of a New Mexico licensed dentist;

B. a clinic or clinics operated or approved by an executive agency of the state of New Mexico;

C. a hospital with written authorization;

D. a state licensed nursing home or long term care facility with written authorization;

E. a school regulated by the New Mexico department of education; or

F. a medical office for the application of topical preventative therapeutics.

[5/31/95, 12/15/97; 16.5.29.10 NMAC - Rn, 16 NMAC 5.29.10, 04/17/06; A, 04/16/08; A, 01/09/12]

16.5.29.11 DENTAL HYGIENISTS PRESCRIPTIVE AUTHORITY:

A dental hygienist may prescribe, administer and dispense a fluoride supplement, topically applied fluoride, and topically applied antimicrobials from the following formulary under the following stipulations.

A. A New Mexico licensed dentist shall supervise, at least by general supervision the prescribing, administration or dispensing by the hygienist. In a collaborative hygiene practice the formulary used by the dental hygienist and situations for each therapeutic agent must be set forth in the collaborative practice agreement. Dental hygienists shall keep as part of the patient record a clear documentation of the therapeutic agent prescribed, administered or dispensed, the date and reason.

B. Under no circumstances shall a dental hygienist be allowed to prescribe, dispense or administer:

(1) drugs whose primary effect is systemic; and

(2) dangerous drugs or controlled substances as defined in the pharmacy act

(NMSA 1978, Section 61-11-1 et seq.) controlled substances act (NMSA 1978, Sections 31-30-1 et seq.) or Drug Device and Cosmetic Act (NMSA 1978, Sections 26-1-1 et seq.).

C. Dental hygienists may prescribe from the following list:

(1) fluoride supplements (all using sodium fluoride):

(a) tablets – 0.5 mg, 1.1 mg, 2.2 mg;

(b) lozenges – 2.21 mg;

(c) drops – 1.1 mg/mL;

(2) topical anti-caries treatments (all using sodium fluoride unless otherwise stated):

(a) toothpastes – 1.1% or less (or stannous fluoride 0.4%);

(b) topical gels – 1.1% or less (or stannous fluoride 0.4%);

(c) oral rinses – 0.05%, 0.2%, 0.44%, 0.5%;

(d) oral rinse concentrate (used in periodontal disease) – 0.63% stannous fluoride;

(e) fluoride varnish – 5 %;

(f) prophylaxis pastes (containing approximately 1.23% sodium fluoride and used for cleaning and polishing procedures as part of professional dental prophylaxis treatment):

(3) topical anti-infectives:

(a) chlorhexidine gluconate :

(i) rinses – 0.12%;

(ii) periodontal chips

(for insertion into the periodontal pocket);

(b) tetracycline impregnated fibers (inserted subgingivally into the periodontal sulcus);

(c) doxycycline hyclate periodontal gel (inserted subgingivally into the periodontal sulcus); and

(d) minocycline hydrochloride periodontal paste (inserted subgingivally into the periodontal sulcus).

[16.5.29.11 NMAC - N, 01/09/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.30 NMAC, Sections 7 and 10 and add Sections 12, 13 and 14, effective 01-09-12. This also amends the part name.

PART 30 D E N T A L HYGIENISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS

16.5.30.7 DEFINITIONS: [RESERVED]

A. “Addiction” means a neurobehavioral syndrome with genetic and environmental influences that result

in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. “Chronic pain” means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. “Drug abuser” means a person who takes a drug or drugs for other than legitimate medical purposes.

D. “Pain” means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or and damage.

C. “Patient abandonment” means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

E. “Physical dependence” means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

F. “Tolerance” means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time.

[9-30-96; 16.5.30.7 NMAC - Rn, 16 NMAC 5.30.7, 12-14-00; A, 01-09-12]

16.5.30.10 GUIDELINES: The committee shall define the following as guidelines for disciplinary action.

A. “Gross incompetence” or “gross negligence” means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

B. “Unprofessional conduct” means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one’s license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental hygiene profession;

(2) failure to advise the patient in simple understandable terms of the treatment rendered, the expectations for success, and the responsibility the patient must assume;

(3) failure to inform dentist [and/

or] or patient of periodontal assessment;

(4) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(5) sexual misconduct;

(6) failure to use appropriate infection control techniques and sterilization procedures;

(7) breach of ethical standards, an inquiry into which the committee will begin by reference to the code of ethics of the American dental hygienists’ association;

(8) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(9) violation of any order of the committee [or], and ratified by the board, including any probation order;

(10) injudicious administration of any drug or medicine;

(11) failure to report to the committee or board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental hygiene or professional association or society, in lieu of, and while under disciplinary investigation by [that state] any authority;

(12) deliberate and willful failure to reveal, at the request of the committee, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the committee or board; and

(13) cheating on an examination for licensure;

(14) failure of a dental hygienist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent, or misleading manner, and

(b) shall include in the advertisement the name of the hygienist, the name of the employer dentist(s), the practice address(es) and telephone number(s);

(15) failure of a collaborative practice dental hygienists to refer a patient for dental care; or

(16) failure of a collaborative practice dental hygienist to comply with the terms of a signed collaborative practice agreement;

(17) failure of a collaborative practice dental hygienist to professionally and effectively communicate with a patients dentist of record, or consulting dentist, in a professional manner in regard to a shared patient’s care under 16.5.17 NMAC of these rules;

(18) assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(19) conviction of either a misdemeanor or a felony punishable by incarceration;

(20) aiding and abetting a dental auxiliary who is not properly certified;

(21) patient abandonment;

(22) habitually addicted as defined in 61.5A-21 4 & 6 and 61.5B-3.(C) and (D) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 NMSA 1978] or habitual or excessive use or abuse of alcohol;

(23) failure of the licensee to furnish the committee; its investigators or representatives with information requested by the committee, and ratified by the board; and

(24) failure to appear before the board when requested by the committee, and ratified by the board, in any disciplinary proceeding.

[3-14-73, 4-10-81, 10-16-92, 5-31-95, 9-30-96, 1-1-99, 2-14-00; 16.5.30.10 NMAC - Rn & A, 16 NMAC 5.30.10 12-14-00; A, 07-19-10; A, 01-09-12]

16.5.30.12 REVOCATION OF COLLABORATIVE LICENSE FOR DISCIPLINARY ACTIONS: A collaborative practice licensee whose license is revoked for disciplinary actions shall:

A. provide proof of written notification of practice closure to all patients currently under active treatment;

B. notification to patients should include where and how dental treatment records may be obtained and contact information for dentists available; and

C. provide to the board the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of closure; the notification to the board shall include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.30.12 NMAC - N, 01-09-12]

16.5.30.13 REINSTATEMENT OF REVOKED LICENSE FOR DISCIPLINARY ACTIONS:

A licensee whose license has been revoked for disciplinary actions may request reinstatement of the license after the terms of the settlement agreement have been met. Upon approval from the committee, and ratified by the board, and receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement shall include the reinstatement fee, the triennial renewal fee, impairment

fee, and proof of the following continuing education courses:

(1) 20 hours of approved continuing education courses related to the clinical practice of dental hygiene, per year of revocation; at least 20 of these hours shall be in the 12 months previous to the request;

(2) proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

(3) proof of infection control course within the past 12 months; and

(4) 45 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of revocation as well as any continuing education taken during the revoked period.

B. Applicant shall authorize the American association of dental examiners clearinghouse to send verification of status directly to the board office.

C. The board will obtain electronic verification of applicant status from the national practitioners' data bank.

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

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of revocation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license may be reinstated and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dental hygienist with a license in revocation status may not practice dental hygiene in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a revoked license is not requested within three years after settlement agreement has been met, application for a new license shall be made by examination or credentials in order to practice dental hygiene in New Mexico. [16.5.30.13 NMAC - N, 01-09-12]

16.5.30.14 REINSTATEMENT OF SUSPENDED LICENSE FOR DISCIPLINARY ACTIONS: For licenses

suspended for greater than six months; a licensee whose license has been suspended for disciplinary actions in addition to meeting the terms of the settlement agreement shall also meet the following conditions before reinstatement of licensure:

A. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene, or other health care profession; verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form;

B. the board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of suspension and information on any existing impairment; the reinstated license will expire as defined in 16.5.11 NMAC; and

C. a dental hygienist with a license in suspended status may not practice dental hygiene in New Mexico until proof of active licensure is approved by the board and issued by the board office.

[16.5.30.14 NMAC - N, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.33 NMAC Sections 7, 8, 9, 10, 11, 12, 13 and 14, effective 01-09-12.

16.5.33.7 DEFINITIONS:

[A. "Training program" means a course of study resulting in applicant eligibility for expanded function certification.

B. "DANB" means the dental assisting national board.

C. "Indirect supervision" means a licensee is present in the treatment facility while authorized treatments are being performed by a dental assistant.

D. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan and not physically present and in facilities as designated by rule of the board.

E. "Rubber cup coronal polishing" means the use of a rubber cup or a bristle brush to remove soft debris and stain from above the gingival margin.

F. "Limited certificate" means a radiographic certificate that limits the holder to take only extra oral dental films.]

A. "DANB" means the dental assisting national board.

B. "Direct supervision"

means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed;

(3) evaluates and approves the procedure performed before the patient departs the care setting; and

(4) is capable of responding immediately if any emergency should arise.

C. "General supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

D. "Indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in 61-5A-3.

E. "Limited certificate" means a radiographic certificate that limits the holder to take only extra oral dental films.

F. "Rubber cup coronal polishing" means the use of a rubber cup or a bristle brush to remove soft debris and stain from above the gingival margin.

G. "Supervision" means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

H. "Training program" means a course of study resulting in applicant eligibility for expanded function certification.

[10-21-70...5-31-95, 9-30-96, 2-14-00; 16.5.33.7 NMAC - Rn, 16 NMAC 5.33.7, 12-14-00; A, 3-29-02; A, 12-30-02; A, 07-19-10; A, 01-09-12]

16.5.33.8 REQUIREMENTS:

A. A licensee shall not allow dental assistants to perform oral radiography under any level of supervision that are not certified or in authorized training by the New Mexico board of dental health care [(NMBODHC)];

B. A licensee shall not allow dental assistants to perform coronal

polishing, topical fluoride application, or application of pit and fissure sealants under general supervision without certification by the [(NMBODHC)] board;

C. Dental assistants who perform oral radiography under any level of supervision are required to be certified by the [(NMBODHC)] board. Dental assistants who perform coronal polishing, application of topical fluoride or, application of pit and fissure sealants both intra and extra oral radiography under general supervision are required to be certified by the [(NMBODHC)] board except those enrolled in a recognized dental assisting program and complying with the following:

(1) have completed the didactic portion of the radiography curriculum;

(2) are exposing [radiograph] radiographs with supervision of a licensee or an assistant certified in radiography; and

(3) if exposing x-rays on a human must have a written prescription from a dentist.

D. Expanded function certification offered by the [(NMBODHC)] board is distinct from certification offered by DANB. DANB certification gives the individual the right to use the initials C.D.A after their name, but does not qualify the individual to perform expanded functions without being certified by the [(NMBODHC)] board.

[9-7-84...9-30-96; 16.5.33.8 NMAC - Rn, 16 NMAC 5.33.8, 12-14-00; A, 3-29-02; A, 9-30-02; A, 12-30-02; A, 03-06-05; A, 07-16-07; A, 01-09-12]

16.5.33.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR DENTAL RADIOGRAPHY:

A. Education requirements:

(1) study by independent preparation or in a training course on radiation health and safety within the past 36 months; and

(2) have assisted with [and/or] or observed five [(5)] cases of full mouth intra oral radiographic series or five [(5)] extra oral radiographs if applying for a limited certificate.

B. Examination requirements:

(1) Pass the [(NMBODHC)] board or DANB written examination on radiation health and safety. Evidence of successful completion shall be posted in the dental office or dental assisting school and will serve as a training permit for six months from the date of examination.

(2) Pass the technique test demonstrating proficiency in the exposure of a full-mouth intra oral radiographic series or panoramic film as established by the [(NMBODHC)] board.

(3) If an applicant chooses to provide only a panoramic film the certificate

holder is limited to taking only extra oral films.

(4) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra oral radiographic series of radiographs or a panoramic film, develop, mount, and label the films. The exam must be done independently and submitted to the [(NMBODHC)] board office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two board or committee members and serve as the technique test required for certification.

(5) Pass the take home jurisprudence examination.

C. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[9-7-84, 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.9 NMAC - Rn & A, 16 NMAC 5.33.9, 12-14-00; 16.3.33.9 NMAC - A, 2-28-02; A, 12-30-02; A, 03-06-05; A, 07-16-07; A, 01-09-12]

16.5.33.10 EDUCATION AND EXAMINATION REQUIREMENTS FOR RUBBER CUP CORONAL POLISHING AND APPLICATION OF TOPICAL FLUORIDE CERTIFICATION:

A. Education requirements:

Study by independent preparation or in a training course on rubber cup coronal polishing and application of topical fluoride and have assisted with [and/or] or observed five [(5)] cases of rubber cup coronal polishing on children [and/or] and adults and five [(5)] applications of topical fluoride.

B. Examination requirements:

(1) Pass a [(NMBODHC)] board or DANB written examination on rubber cup coronal polishing and application of topical fluoride;

(2) Perform the technique while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and application of topical fluoride on five [(5)] adults [and/or] and children and five [(5)] applications of topical fluoride on children; and

(3) Pass the take home jurisprudence examination.

C. Exemptions:

(1) A dental hygiene student

enrolled in an accredited school of dental hygiene having passed a curriculum for rubber cup coronal polishing and application of topical fluoride may be granted a certificate without meeting the other requirements of this section.

(2) A dental assistant who is certified to perform rubber cup coronal polishing and application of topical fluoride in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

(3) A dental assistant who holds a current CDA certification issued by DANB may be issued a certificate for rubber cup coronal polishing and application of topical fluoride without meeting the other requirements of this section.

[8-11-89...9-30-96, 1-1-98, 2-14-00; 16.5.33.10 NMAC - Rn, 16 NMAC 5.33.10, 12-14-00; A, 3-29-02; A, 12-30-02; A, 01-09-12]

16.5.33.11 EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS FOR APPLICATION OF PIT AND FISSURE SEALANTS CERTIFICATION:

A. Experience requirements: The applicant must have 2080 hours of clinical chair side dental assisting within the two years prior to applying for certification.

B. Education requirements:

(1) Study by independent preparation or a training course on pit and fissure sealant application; and

(2) Assisted with [and/or] and observed application of [twelve (12)] 12 pit and fissure sealants.

C. Examination requirements:

(1) Pass a [NMBODHC] board or DANB examination on the application of pit and fissure sealants.

(2) Following successful completion of the examination, apply pit and fissure sealants while being personally observed by a licensed dentist or dental hygienist on five [(5)] patients.

(3) Pass the take home jurisprudence examination.

D. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene having passed a curriculum for pit and fissure sealants and rubber cup coronal polishing, may be granted a certificate without meeting the other requirements of this section.

(2) A dental assistant who is certified to perform application of pit and fissure sealants in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[5-31-95, 9-30-95, 2-14-00; 16.5.33.11

NMAC - Rn, 16 NMAC 5.33.11, 12-14-00; A, 3-29-02; 16.5.33.11 NMAC - Rn, 16.5.33.12 NMAC & A, 12-30-02; A, 01-09-12]

16.5.33.12 REQUIRED DOCUMENTATION: Each applicant for an expanded function dental assistant certificate must submit to the [NMBODHC] board or its agent the required fees and following documentation.

A. Completed application with a passport quality photo taken within [6] six months affixed to the application and the completed jurisprudence take home exam. Applications are valid for [1] one year from the date of receipt.

B. Dental radiography:

(1) proof of passing the [NMBODHC] board or DANB written examination on radiation health and safety;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in radiography verifying the applicant has:

(a) assisted with [and/or] and observed five [(5)] cases of full-mouth intra oral radiographic series or five [(5)] panoramic films if applying for a limited certification; and

(b) that upon reaching competency, the applicant independently exposed the radiographs submitted for technique examination;

(3) the completed full mouth intra oral radiographic series or a panoramic film as required for the technique exam described in 16.5.33.9 NMAC [of these rules].

C. Rubber cup coronal polishing and application of topical fluoride:

(1) proof of passing the [NMBODHC] board or DANB written examination for rubber cup coronal polishing and application of topical fluoride;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and topical fluoride application that the applicant has:

(a) assisted with [and/or] and observed five [(5)] cases of rubber cup coronal polishing on adults [and/or] and children and five [(5)] applications of topical fluoride on children; and

(b) while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing, application of topical fluoride provided rubber cup coronal polishing on five [(5)] adults [and/or] and five children; and, provide applications of topical fluoride on five [(5)] children.

D. Pit and fissure sealants:

(1) Proof of passing the [NMBODHC] board approved examination on application of pit and fissure sealants.

(2) An affidavit from a supervising

dentist or dental hygienist verifying that the applicant has:

(a) assisted with [and/or] and observed placement of [twelve (12)] 12 pit and fissure sealants; and

(b) while being personally observed by a dentist or dental hygienist, the applicant successfully place pit and fissure sealants on six [(6)] patients.

(3) Proof of 2080 hours of chair side dental assisting experience within two years immediately prior to application for certification.

(4) The completed jurisprudence exam.

[9-30-96, 1-1-98, 2-14-00; 16.5.33.12 NMAC - Rn, 16 NMAC 5.33.12, 12-14-00; 16.5.33.12 NMAC - Rn, 16.5.33.13 NMAC & A, 12-30-02; A, 07-16-07; A, 01-09-12]

16.5.33.13 CERTIFICATION BY CREDENTIALS: Applicants for certification by credentials shall provide to the [NMBODHC] board or its agent:

A. verification of a current active certificate from another state, or

B. an official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function, or

C. proof of current, valid, certification as a CDA issued by DANB; and

D. all certifications, letters and validations must be received directly by the board office from the state, institution, or DANB.

[8-11-89... 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.13 NMAC - Rn & A, 16 NMAC 5.33.13, 12-14-00; 16.5.33.13 NMAC - Rn, 16.5.33.14 NMAC & A, 12-30-02; A, 07-17-08; A, 01-09-12]

16.5.33.14 RE-EXAMINATION PROCEDURE:

A. An applicant who does not obtain a passing score on the required written exam must re-apply and pay the required fees in order to retake the examination.

B. Applicants for certification in radiography will be allowed to submit radiographs for the technique exam three times. With each failure the supervising dentist, dental hygienist, or dental assistant certified in dental radiography will be notified of their responsibility for training the applicant.

C. After a third failure, the applicant and supervising dentist, dental hygienist, or dental assistant certified in radiography will be required to submit to the [NMBODHC] board a plan for remediation, including steps that will be taken to assure clinical competency.

[1-1-98, A, 8-16-99; 16.5.33.14 NMAC - Rn, 16 NMAC 5.33.14, 12-14-00; A, 3-29-02;

16.5.33.14 NMAC - Rn, 16.5.33.15 NMAC & A, 12-30-02; A, 01-09-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.36 NMAC Sections 8, 9, 10 and 11, effective 01/09/12.

16.5.36.8 HOURS REQUIRED: [Thirty] 30 hours of continuing education are required during each triennial renewal cycle. Continuing education received after submission of renewal materials but prior to actual expiration date may be used for the requirements of the next renewal cycle. Continuing education requirements are pro-rated at [ten] 10 hours per year for individuals licensed for less than three years. [8/11/89, 9/30/96, 12/15/97; 16.5.36.8 NMAC - Rn, 16 NMAC 5.36.8, 04/17/06; A, 01/09/12]

16.5.36.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dental assisting. The following courses are required for license renewal:

A. three hours of radiographic technique or safety and protection;

B. as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

C. proof of current certification in basic life support (BLS) or cardiac pulmonary resuscitation (CPR) accepted by the American heart association [or] the American red cross or the American safety and health institute (ASHI); cannot be a self-study course [~~;-dental assistants who provide prescribed administration of nitrous oxide, or who monitor the use of any analgesia or anesthesia shall have current basic life support certification].~~

[8/11/89, 5/21/93, 5/31/95, 9/30/96; 16.5.36.9 NMAC - Rn & A, 16 NMAC 5.36.9, 04/17/06; A, 07/16/07; A, 07/19/10; A, 01/09/12]

16.5.36.10 VERIFICATION OF CONTINUING EDUCATION: The board will select renewal applications for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified in [Section 14.6 of Part 1 now Subsection F of 16.5.1.14 NMAC] Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education

records must be maintained for one year following the renewal cycle in which they are earned.

[5/31/95, 9/30/96; 16.5.36.10 NMAC - Rn, 16 NMAC 5.36.10, 04/17/06; A, 01/09/12]

16.5.36.11 EMERGENCY DEFERRAL: A certificate holder who is unable to fulfill the continuing education requirements may apply to the board for an emergency deferral of the requirements due to extenuating circumstances as defined in 16.5.1.7 NMAC. Deferrals of up to four months may be granted by a designee of the board.

[5/31/95, 9/30/96; 16.5.36.11 NMAC - Rn, 16 NMAC 5.36.11, 04/17/06; A, 01/09/12]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 18.15.3 NMAC, Sections 8 and 12, effective 12-30-11.

18.15.3.8 OPERATION REQUIREMENTS:

A. License not required: Drivers of off-highway motor vehicles are not required to be licensed.

B. Prohibitions: A person shall not operate an off-highway motor vehicle:

(1) in a careless, reckless or negligent manner so as to endanger the person or property of another;

(2) while under the influence of intoxicating liquor or drugs as provided by Section 66-8-102 NMSA 1978;

(3) while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;

(5) on or within an earthen tank or other structure meant to water livestock or wildlife, unless the off-highway motor vehicle is on a route designated by the landowner or land management agency as an off-highway motor vehicle route;

(6) in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;

(7) in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling, unless the person operates the vehicle on a closed course or track;

(8) unless in possession of the person's registration certificate or nonresident permit and the registration decal is attached to the off-highway vehicle as

outlined in 18.15.3.12 NMAC;

(9) unless the vehicle with an internal combustion engine is equipped with a spark arrester approved by the United States forest service; provided that a snowmobile is exempt from this provision;

(10) when conditions such as darkness limit visibility to five hundred feet (500) or less, unless the vehicle is equipped with:

(a) one or more headlights of sufficient candlepower to light objects at a distance of one hundred-fifty feet (150); and

(b) at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred feet (200') under normal atmospheric conditions;

(11) that produces noise that exceeds ninety-six (96) decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287;

(12) where off-highway motor vehicle traffic is prohibited under local, state, or federal rules or regulations.

C. Requirements for minors: A person under the age of eighteen (18) shall not operate an off-highway motor vehicle:

(1) or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear that meets the standards established by the department in these rules;

(2) without an off-highway motor vehicle safety permit; or

(3) while carrying a passenger.

D. Visual supervision: A person under the age of eighteen (18) but at least ten (10) years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of eighteen (18) who has a valid driver's license. This rule does not apply to a person who is at least:

(1) thirteen (13) years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) fifteen (15) years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

E. Minors under 10 years of age: A person under the age of ten (10) shall not operate an off-highway motor vehicle unless:

(1) the all-terrain vehicle is an age-appropriate size-fit vehicle established by rule of the department; and

(2) the person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the department.

F. Organized tour exception: The requirements of Subsections

D and E of this section do not apply to a person who is part of an organized tour under the guidance or direction of a guide certified by the department under these rules.

G. Noise standard: An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds ninety-six (96) decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition.

H. Prohibited areas of operation. A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time; or

(2) any paved street or highway except as provided in Subsection B of Section 66-3-1011 NMSA 1978.

I. Public lands restrictions. A person shall not operate an off-highway motor vehicle on state game commission owned, controlled, or administered land or on land owned, controlled, or administered by the state parks division of the energy, minerals and natural resources department except in compliance with Subsections C and D of Section 66-3-1011 NMSA 1978.

J. Public highway restrictions: Off-highway motor vehicles may only be driven adjacent to a highway for the purpose of gaining access to or returning from areas designed for the operation of off-highway vehicles by the shortest possible route and when no other route is available or when the area adjacent to a highway is being used as a staging area. Such use must occur between the highway and fencing that separates the highway from private or public lands, and the operator of the off-highway motor vehicle shall yield to all vehicles entering or exiting the highway, in a manner that does not interfere with highway traffic. When snow conditions permit, an off-highway motor vehicle may be operated on the right-hand side of a highway, parallel, but not closer than ten feet (10) to the inside of the plow bank.

K. Accidents and accident reports: The driver of an off-highway motor vehicle involved in an accident resulting in injuries to or the death of a person or resulting in damage to public or private property to the extent of five hundred dollars (\$500) or more shall immediately notify a law enforcement agency of the accident and the facts relating to the accident. If the driver is under the age of eighteen, the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident.

[18.15.3.8 NMAC - Rp, 18.15.3.8 NMAC, 5-28-10; A, 12-30-11]

18.15.3.12 DISPLAY OF IDENTIFICATION PLATES:

A. All off-highway motor vehicles: shall display an identification decal or plate assigned to the vehicle for which it is issued by the division, or a suitable decal as issued by the department for validation purposes, which shall contain the year and month for which it expires, except those exempted under this rule or 66-3-1005 NMSA 1978.

B. Identification plate or decal: shall at all times be securely fastened to the vehicle for which it is issued, and shall be mounted or affixed in a position clearly visible, shall be maintained in a condition so as to be clearly legible, and displayed only for the period for which it is valid. Nothing shall be used to block, dim, or cover any portion of the plate or decal. All identification devices or decals issued on or after January 1, 2012 shall be displayed as follows:

(1) Motorcycles shall display decal horizontally on the left fork leg of the motorcycle, and shall be visible from the left side of the motorcycle.

(2) ATVs shall display decal horizontally on the left rear quadrant on permanent plastic or metal frame and visible from the left side of the all-terrain vehicle.

(3) UTV/ROV shall display decal horizontally on the left front quarter panel of a recreational off-highway vehicle.

(4) Snowmobiles shall display decal horizontally on the left tunnel on the back of snowmobile.

C. Exceptions: No off-highway vehicle shall deviate from this display requirement except as described below:

(1) unless displaying a valid license plate, temporary registration, or dealer demonstration permit, and the plate, temporary registration, or dealer permit is visible from the rear of the vehicle;

(2) non-residents who have a valid off-highway vehicle permit displayed on their off-highway vehicle that is currently in compliance with another state's off-highway vehicle registration, user fee or similar law or rule demonstrated by certificate of registration, permit or similar evidence.

D. Replacement fee: The division shall charge seven dollars and fifty cents (\$7.50) transition fee to replace a previously issued license plate for a decal when requested by the registered owner of an off-highway motor vehicle. The previously issued license plate will be surrendered upon reissue of a decal, and the decal will be valid for the remaining term of the registration.

[18.15.3.12 NMAC - N, 12-30-11]

[Continued on page 906]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 11, 12, 13, 14 and 15 effective January 1, 2012.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA): The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal medicaid application. If institutionalization began:

- (A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.
- (B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.
- (C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.
- (D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.
- (E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.
- (F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.
- (G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.
- (H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.
- (I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.
- (J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.
- (K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.
- (L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.
- (M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.
- (N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.
- (O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.
- (P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.
- (Q) On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.
- (R) On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.
- (S) On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.
- (T) On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.
- (U) On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.
- (V) On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.
- (W) On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.
- (X) On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION	AMOUNT
A. Personal needs allowance for institutionalized spouse	\$63
B. Minimum monthly maintenance needs allowance (MMMNA)	\$1,839
C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:	

(1) If allowable shelter expenses of the community spouse exceed \$552 deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

(2) Excess shelter allowance may not exceed a maximum of [~~\$900~~] \$1,002.

- D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.
- E. Dependent family member income allowance (if applicable) calculated as follows: $1/3 \times \text{MMMNA} - \text{dependent member's income}$
- F. Non-covered medical expenses
- G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed [~~\$2,739~~] \$2,841.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08, A, 1-1-09, A, 4-1-09; A, 7-1-09; A, 7-1-11; A, 1-1-12]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

DATE	AVERAGE COST PER MONTH
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application	\$ 2,377 per month

	register on or after Jan. 1, 1993	
E.	Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
F.	Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
G.	Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month
H.	Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
I.	Jan. 1, 1998 - Dec 31, 1998	\$3,119 per month
J.	Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
K.	Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
L.	Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
M.	Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
N.	Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
O.	Jan. 1, 2004 - Dec. 31, 2004	\$3,899 per month
P.	Jan. 1, 2005 - Dec. 31, 2005	\$4,277 per month
Q.	Jan. 1, 2006 - Dec. 31, 2006	\$4,541 per month
R.	Jan. 1, 2007 - Dec. 31, 2007	\$4,551 per month
S.	Jan. 1, 2008 - Dec. 31, 2008	\$4,821 per month
T.	Jan. 1, 2009 - Dec. 31, 2009	\$5,037 per month
U.	Jan. 1, 2010 - Dec. 31, 2010	\$5,269 per month
V.	Jan. 1, 2011 - Dec.31, 2011	\$5,774 per month
W.	Jan. 1, 2012	\$6,015 per month

Any fraction of a month remaining when this calculation is completed is dropped.

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06 ; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12]

8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE SAVINGS PROGRAMS (QMB, SLIMB/QI1 AND QD): The following resource standards are inclusive of the \$1,500 per person burial exclusion:

- A. individual [~~\$8,180 and~~] \$8,440 and
- B. couple [~~\$13,020~~] \$13,410.

[8.200.510.14 NMAC - N, 1-1-01; A, 1-1-02; 8.200.510.14 NMAC - N, 7-15-10; A, 1-1-11; A, 1-1-12]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:

- A. Jan.2012 \$786,000
- [A-] B. Jan. 2011 \$758,000
- [B-] C. Jan. 2010 \$750,000

[8.200.510.15 NMAC - N, 1-11-11; A, 1-1-12]

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

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16 and 20, effective January 1, 2012.

8.200.520.12 COLA DISREGARD COMPUTATION

Current amt/cost of living	Benefit period
Current Title II amount=	Benefit before [†/††] <u>1/12</u>
<u>[0] 1.037</u>	
<u>Benefit before 1/12=</u>	<u>Benefit before 1/11</u>
<u>0</u>	
<u>Benefit before 1/11=</u>	Benefit before 1/10
1.058	
<u>Benefit before 1/10=</u>	Benefit before 1/09
1.058	
<u>Benefit before 1/09=</u>	Benefit before 1/08
1.023	
<u>Benefit before 1/08 =</u>	Benefit before 1/07
1.033	
<u>Benefit before 1/07 =</u>	Benefit before 1/06
1.041	
<u>Benefit before 1/06 =</u>	Benefit before 1/05
1.027	
<u>Benefit before 1/05 =</u>	Benefit before 1/04
1.021	
<u>Benefit before 1/04 =</u>	Benefit before 1/03
1.014	
<u>Benefit before 1/03 =</u>	Benefit before 1/02

1.026	
<u>Benefit before 1/02 =</u>	Benefit before 1/01
1.035	
<u>Benefit before 1/01 =</u>	Benefit before 1/00
1.025	
<u>Benefit before 1/00 =</u>	Benefit before 1/99
1.013	
<u>Benefit before 1/99 =</u>	Benefit before 1/98
1.021	
<u>Benefit before 1/98 =</u>	Benefit before 1/97
1.029	
<u>Benefit before 1/97 =</u>	Benefit before 1/96
1.026	
<u>Benefit before 1/96 =</u>	Benefit before 1/95
1.028	
<u>Benefit before 1/95 =</u>	Benefit before 1/94
1.026	
<u>Benefit before 1/94 =</u>	Benefit before 1/93
1.030	
<u>Benefit before 1/93 =</u>	Benefit before 1/92
1.037	
<u>Benefit before 1/92 =</u>	Benefit before 1/91
1.054	
<u>Benefit before 1/91 =</u>	Benefit before 1/90
1.047	
<u>Benefit before 1/90 =</u>	Benefit before 1/89
1.040	
<u>Benefit before 1/89 =</u>	Benefit before 1/88
1.042	
<u>Benefit before 1/88 =</u>	Benefit before 1/87
1.013	
<u>Benefit before 1/87 =</u>	Benefit before 1/86
1.031	
<u>Benefit before 1/86 =</u>	Benefit before 1/85
1.035	
<u>Benefit before 1/85 =</u>	Benefit before 1/84
1.035	
<u>Benefit before 1/84 =</u>	Benefit before 7/82
1.074	
<u>Benefit before 7/82 =</u>	Benefit before 7/81
1.112	
<u>Benefit before 7/81 =</u>	Benefit before 7/80
1.143	
<u>Benefit before 7/80 =</u>	Benefit before 7/79
1.099	
<u>Benefit before 7/79 =</u>	Benefit before 7/78
1.065	
<u>Benefit before 7/78 =</u>	Benefit before 7/77
1.059	

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 1-1-12]

8.200.520.13 FEDERAL BENEFIT RATES

YEAR	Individual	Inst.	Indiv.	Couple	Inst.	Couple
	FBR	FBR	VTR	FBR	FBR	VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00

1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33

Ineligible child deeming allocation: [~~\$319.00~~] \$350.00

Part B premium is [~~\$115.40~~] \$99.90 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 1-1-11; A, 4-1-11; A, 1-1-12]

8.200.520.15 SSI LIVING ARRANGEMENTS

A. Individual living in his/her own household who own or rent

Payment amount: [~~\$674~~] \$698 Individual
 [~~\$1,011~~] \$1,048 Couple

B. Individual receiving support and maintenance payments: For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$674 -- \$224.66 = \$449.34~~] \$689 - \$232.66 = \$456.34 Individual
 [~~\$1,011 -- \$337.00 = \$674.00~~] \$1,048 - \$349.33 = \$698.67 Couple

C. Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$674 -- \$224.66 = \$449.34~~] \$689 - \$232.66 = \$456.34 Individual
 [~~\$1,011 -- \$337.00 = \$674.00~~] \$1,048 - \$349.33 = \$698.67 Couple

D. Child living in home with his/her parent(s)

Payment amount: [~~\$674~~] \$698

E. Individual in institution

Payment amount: \$30.00

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-1-12]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES: Effective [~~January 1, 2011~~] January 1, 2012, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$2,022~~] \$2,094.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-1-11; A, 1-1-12]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

<u>DATE</u>	<u>CALENDAR QUARTER AMOUNT</u>
Jan 2012 – Dec. 2012	\$1,130 per calendar quarter
Jan. 2011 – Dec. 2011	\$1,120 per calendar quarter
Jan. 2010 – Dec. 2010	\$1,120 per calendar quarter
Jan. 2009 – Dec. 2009	\$1,090 per calendar quarter
Jan. 2008 – Dec. 2008	\$1,050 per calendar quarter
Jan. 2007 – Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 – Dec. 2006	\$970 per calendar quarter
Jan. 2005 – Dec. 2005	\$920 per calendar quarter
Jan. 2004 – Dec. 2004	\$900 per calendar quarter
Jan. 2003 – Dec. 2003	\$890 per calendar quarter

Jan. 2002 – Dec. 2002

\$870 per calendar quarter

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10; A, 2-26-10; A, 1-1-11; A, 1-1-12]

NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.10 NMAC, Sections 1, 2, 6, 7, 8, 9, 11 and 13, effective January 6, 2012.

16.10.10.1 ISSUING AGENCY:

New Mexico [Board of Medical Examiners] Medical Board, hereafter called the board. [16.10.10.1 NMAC - Rp 16 NMAC 10.10.1, 7/15/01; A, 1/6/12]

16.10.10.2 SCOPE: This part applies to licensees and any entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care.

[16.10.10.2 NMAC - Rp 16 NMAC 10.10.2, 7/15/01; A, 1/6/12]

16.10.10.6 OBJECTIVE: This part provides requirements for health care entities to provide reports to the board of all malpractice payments made on behalf of licensees, and all actions adversely affecting licensing or clinical privileges [and actions] of licensees. This part also provides requirements for licensees to report adverse actions that affect licensing or clinical privileges, or are taken by a governmental or law enforcement agency.

[16.10.10.6 NMAC - Rp 16 NMAC 10.10.6, 7/15/01; A, 8/6/04; A, 1/6/12]

16.10.10.7 DEFINITIONS:

A. "Adversely affecting" means reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges, or membership in a health care entity to include: terminating employment for cause, or without cause when based on incompetency or behavior affecting patient care and safety, or physician being allowed to resign rather than being terminated for such reasons. This does not include those instances in which a peer review entity requires supervision of a physician for purposes of evaluating that physician's professional knowledge or ability.

B. "Clinical privileges" include privileges, membership on the medical staff, employment, and other circumstances under which a physician or physician assistant is permitted by a healthcare entity to furnish medical care.

C. "Termination of employment" includes the termination

of employment by a healthcare entity for cause, or without cause if related to clinical competence or behavior impacting patient safety/care, or allowing resignation in lieu of termination for such reason.

[E:]D. "Health care entity" means:

(1) a hospital, HMO, a physician group or other health care institution that is licensed to provide health care services in New Mexico;

(2) an entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care; or

(3) a professional society or a committee or agent thereof, of physicians or physician assistants or other licensed health care practitioners at the national, state or local level, that follows a formal peer review process for the purpose of furthering quality health care, including without limitation a health maintenance organization or other prepaid medical practice which is licensed or determined to be qualified by any state.

[D:]E. "Medical malpractice action or claim" means a written claim or demand for compensation based on the furnishing, or failure to furnish, health care services, and includes, without limitation, the filing of a cause of action, based on the law of tort, brought in any court of any state or the United States seeking monetary damages whether resulting in a settlement or in a judgment.

[E:]E. "Professional review action" means an action [or recommendation] of a health care entity:

(1) taken in the course of professional review activity;

(2) based on the competence, conduct, or impairment of an individual physician or physician assistant or other health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and,

(3) which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the physician or physician assistant.

[F:]G. "Professional review activity" means an activity of a health care entity with respect to an individual physician or physician assistant:

(1) to determine whether the physician or physician assistant may have clinical privileges with respect to, or membership in, the entity;

(2) to determine the scope or conditions of such privileges or membership; or

(3) to change or modify such privileges or membership.

[G:]H. "Credentialing discrepancy" means, for the purposes of 16.10.10 NMAC, an error or omission in an application.

[16.10.10.7 NMAC - Rp 16 NMAC 10.10.7, 7/15/01; A, 1/6/12]

16.10.10.8 REPORTING OF MEDICAL MALPRACTICE PAYMENTS.

Each person or entity, including an insurance company, which makes a payment under a policy of insurance, self-insurance or otherwise, in settlement of, or in whole or partial satisfaction of, a judgment in a malpractice action or claim must file a report with the board containing the information listed below.

A. such reports must be submitted to the board within thirty days of payment;

B. include at a minimum the name, license number, and social security number of the named physician or physician assistant;

C. the name and address of the person or entity making the payment;

D. name, title and telephone number of the official submitting the report on behalf of the entity; date or dates on which the act(s) or omission(s) giving rise to the claim occurred;

E. date of judgment or settlement;

F. amount paid, date of payment and whether payment is in satisfaction of a judgment or constitutes a settlement;

G. description of terms of the judgment or settlement and any conditions attached thereto, including terms of payment;

H. description of the alleged acts or omissions and injuries or illnesses upon which the action or claim is based; and,

I. the physician or physician assistant's official addendum to the data bank report.

[16.10.10.8 NMAC - Rp 16 NMAC 10.10.8.1, 7/15/01; A, 1/6/12]

16.10.10.9 REPORTING OF ADVERSE ACTIONS ON CLINICAL PRIVILEGES.

A. Actions that must be reported by the health care entity:

(1) any professional review action that adversely affects the clinical privileges of a physician or physician assistant [~~for a period longer than thirty days~~] except as provided in Subsection C of this section;

(2) acceptance of the surrender of clinical privileges or any restriction of such privileges while the physician or physician assistant is under investigation by the entity relating to possible [~~competency~~] incompetency or improper professional conduct; or, in return for not conducting an investigation or proceeding;

(3) in the case of a professional society, when it takes professional

review action which adversely affects the membership of a physician or physician assistant in the society;

(4) failure to complete medical records if the failure is related to the physician's professional competence or conduct and adversely affects or could adversely affect a patient's health or welfare;

(5) a positive drug test for illegal substances, alcohol or unprescribed medication and prescription medication not supported by appropriate diagnosis (if physician has voluntarily self reported to the New Mexico monitored treatment program (MTP), the board will not require name of physician, as it will be in a blind report from MTP).

B. Report contents. All adverse actions must:

(1) be reported to the board within thirty days of final action;

(2) include at a minimum the name, license number, and social security number of the physician or physician assistant; a description of the act(s) or omission(s) or other reasons for the action or for the surrender of privileges; action taken, date of the action and effective date of action; and,

(3) [the] any physician or physician assistant's official addendum to the data bank report shall be reported.

C. The following actions do not require reporting to the board:

(1) actions based on the physician or physician assistant's association, or lack of association, with a professional society or association;

(2) actions based on fees, advertising, or other competitive acts intended to solicit or retain business;

(3) actions based on the physician or physician assistant's participation in prepaid group health plans [~~—salaried employment, or any other manner of delivering health care services~~];

(4) actions based on the physician or physician assistant's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or

(5) any other matter that does not relate to the competence or professional conduct of a physician or physician assistant;

(6) failure to complete charts (except to the extent reportable under Paragraph (4) of Subsection A of this part), maintain insurance or perform other administrative obligations that results in a suspension of clinical privileges.

[16.10.10.9 NMAC - Rp 16 NMAC 10.10.8.3, 7/15/01; A, 4/18/02; A, 1/6/12]

16.10.10.11 SANCTIONS FOR FAILURE TO REPORT.

A. Medical malpractice payments. Any health care entity or person failing to report malpractice payments

required by this rule shall be subject to a civil penalty not to exceed ~~[\$2,000]~~ \$10,000.

B. Adverse actions. Any hospital, health care entity or professional review body failing to comply with the reporting requirements set forth in [this rule] Section 9 of this part shall be subject to a civil penalty not to exceed ~~[\$2,000]~~ \$10,000 and will be reported by the board to the data bank as required by 42 U.S.C. § 11133.

[16.10.10.11 NMAC - Rp 16 NMAC 10.10.8.2 & 10.10.8.5, 7/15/01; A, 1/6/12]

16.10.10.13 LICENSEE REPORTING REQUIREMENTS.

~~[Consistent with Section 61-6-15(D)21 NMSA 1978, in addition to the reporting requirements in 16.10.10.8 (medical malpractice), 16.10.10.9 (adverse actions on clinical privileges), and 16.10.10.10 (credentialing discrepancies), a licensee must report any actions taken by another licensing jurisdiction, any governmental agency, any law enforcement agency, or any court for acts or conduct similar to acts or conduct that would constitute grounds for action under the Medical Practice Act. Reports must be received by the board within 45 days from the date the action occurs. For the purpose of this section, the "action occurs" when the decision making body makes the decision. An appeal of the decision does not alter or add to the time of the requirement that the action be reported within 45 days from the date the decision making body makes the decision.]~~

A. Consistent with Section 61-6-15(D)(21) NMSA 1978, in addition to the reporting requirements in Sections 8, 9 and 10 of this part, a licensee is required to report to the board any adverse action taken by: another licensing jurisdiction; a peer review body; a health care entity; a professional or medical society or association; a governmental agency; a law enforcement agency, including arrests; and any court for acts or conduct similar to acts or conduct that would constitute grounds for action under the Medical Practice Act. Reports shall be received by the board within 45 days from the date the action occurs. For the purpose of this section, the "action occurs" on the date when the decision-making body has made a final decision. Any appeal of the final decision does not alter or add to the time of the requirement that the action be reported within 45 days from the date the decision-making body makes the decision. In the case of an arrest, the arrest shall be reported within 45 days of occurrence. In the case of adverse action taken by a peer review body, health care entity, or professional or medical society or association, refer to Section 9 of this part to determine what action must be reported.

B. Failure to report any adverse action shall constitute

unprofessional or dishonorable conduct pursuant to Subsection D of Section 61-6-15 NMSA 1978 of the Medical Practice Act and shall be subject to any penalty that may be imposed pursuant to Section 61-6-15 NMSA 1978.

[16.10.10.13 NMAC - N, 8/6/04; A, 1/6/12]

NEW MEXICO SHEEP AND GOAT COUNCIL

This is an amendment to 21.35.2 NMAC, Sections 1 and 8, effective December 30, 2011. This rule is also reformatted and renumbered from 21 NMAC 35.2 to comply with current NMAC requirements.

21.35.2.1 ISSUING AGENCY:
[Jim Sachse, Chairman, New Mexico Sheep and Goat Council, 3125 Dona Ana Road, Las Cruces, NM 88005, Telephone (505) 523-0521.] New Mexico Sheep and Goat Council.

[8/15/97; 21.35.2.1 NMAC - Rn & A, 21 NMAC 35.2.1, 12/30/2011]

[MSC 5600, P.O. Box 30005, Las Cruces, NM 88005, Telephone (575) 646-4929]

21.35.2.8 ASSESSMENT:

A. The council assessment rate is set at ~~[forty cents (\$.40)]~~ fifty cents (\$.50) per head for all sheep and haired goats in New Mexico.

B. The council assessment will be collected by the board at the time ownership of the animals is transferred.

C. Any producer who has paid a council assessment is entitled to a refund of the amount paid by making written application to the council. Refunds shall be made within thirty (30) days of the date of request.

D. The refund application will be provided by the board.

[8/15/97; 21.35.2.8 NMAC - Rn & A, 21 NMAC 35.2.8, 12/30/2011]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to forms attached to 11.4.4 NMAC, effective 12/31/2011.

STATE OF NEW MEXICO
WORKERS' COMPENSATION ADMINISTRATION

WCA No.: _____

_____, Worker,

v. _____, and

_____, Employer/Insurer.

APPLICATION TO WORKERS' COMPENSATION JUDGE

- 1. Type of injury: [Occupational]-Accidental Work Injury Occupational Disease
2. Worker's Full Name: Mailing Address: City/State/Zip: Telephone No.:
3. Worker's date of birth: Age: Sex: M F
4. Worker's Social Security No.:
5. Full Name of Employer: Employer's Address: City/State/Zip: Telephone No.:
6. Insurance Carrier: Address: City/State/Zip: Telephone No.:
7. Date of Accident: a. City and County of accident: b. Worker's job at time of accident: c. Worker's wages at time of accident: d. Worker's average weekly wage: e. Weekly compensation rate: f. How did the accident occur: g. Type of injury/diagnosis: h. Nature of the injury: i. Part(s) of the body injured: j. Name and address of treating Doctor(s): k. First date Worker was unable to perform job duties: l. Date of maximum medical improvement: m. Impairment rating: Date assessed: n. Doctor's Name: o. Has Worker been released to work by a Doctor? p. Has Worker returned to work since the accident? q. Name and address of current Employer: r. Highest level of school completed by Worker:
8. a. This application seeks the following relief: Physical Examination of Worker Independent Medical Examination Approval of Stipulated Reimbursement Agreement under Section 52-5-17 Supplemental Compensation Order Consolidate payments into quarterly payments (not a lump sum under Section 52-5-12) Determination of: Bad Faith/Unfair Claims Processing Fraud or Retaliation Attorney Fees, Amount: \$
b. Why is this application being filed? (Be specific, use additional pages, if necessary.)

9. Is an interpreter needed for the hearings on this application? ___ Yes ___ No.
 If yes, what language? _____ Worker will not be responsible for cost.

 Worker's Signature

 Attorney's Signature

 Date

 Worker/Attorney's Name

 Worker/Attorney's Address

 Worker/Attorney's City, State, Zip

 Worker/Attorney's Telephone & Fax Number

A Summons for each adverse party shall be filed with the application if one has not been previously filed. If Worker is filing this application, an Authorization to Release Medical Information form shall be filed with the application for Physical Examination of Worker or Independent Medical Examination only. [A Request for Setting and self-addressed stamped envelopes for all parties entitled to notice must be submitted with this Application or it will not be accepted for filing by the WCA Clerk of the Court.]

If you have questions, please call the Ombudsman Hotline at 505-841-6894 or 1-866-967-5667.

STATE OF NEW MEXICO

WORKERS' COMPENSATION ADMINISTRATION

_____,
 Worker,
 v.
 _____, and
 _____,
 Employer/Insurer.

WCA No.: _____

WORKERS' COMPENSATION COMPLAINT

1. Type of injury: _____ [~~Occupational~~] Accidental Work Injury _____ Occupational Disease
2. Worker's Full Name: _____
 Mailing Address: _____
 City/State/Zip: _____
 Telephone No.: (____) _____
3. Worker's date of birth: ____/____/____ Age: ____ Sex: ____M____F
4. Worker's Social Security Number: _____-_____-_____
5. Full Name of Employer: _____
 Employer's Address: _____
 City/State/Zip: _____
 Telephone No.: (____) _____
6. Insurance Carrier: _____
 Address: _____
 City/State/Zip: _____
 Telephone No.: (____) _____
7. Date of Accident: _____
 - a. City and County of accident: _____
 - b. Worker's job at time of accident: _____
 - [e-] c. Worker's wages at time of accident: \$ ____ hour \$ ____ bi-weekly \$ ____ month \$ ____ year]
 - c. Worker's average weekly wage: _____
 - d. Weekly compensation rate: _____
 - [d-] e. How did the accident occur: _____
 - [f-] f. Type of injury/diagnosis: _____]
 - f. Nature of the injury: _____
 - [e-] g. Part(s) of the body injured: _____
 - [g-] h. Name and address of treating Doctor(s): _____
 - [h-] i. First date Worker was unable to perform job duties: _____
 - [i-] j. Date of maximum medical improvement: _____

[j-] k. Impairment rating: _____ Date assessed: _____

Doctor's Name: _____

[k-] l. Has Worker been released to work by a Doctor? ___ Yes ___ No [check one]

If yes, please indicate the date Worker was released to work: _____

[l-] m. Has Worker returned to work since the accident? ___ Yes ___ No [check one]

If yes, please indicate the date Worker returned to work: _____

[m-] n. Name and address of current Employer: _____

[n-] o. Highest level of school completed by Worker: _____

8. a. What benefit or relief is being sought?

1. Complaints by Worker:

___ Temporary Total Disability _____ Death Benefits

___ Permanent Total Disability _____ Attorney Fees

___ Permanent Partial Disability _____ Disfigurement

___ Safety Device Increase (name device): _____

___ Mental Impairment: ___ Primary ___ Secondary

___ Medical Benefits (list here or attach unpaid bills): _____

___ Determination of: ___ Bad Faith/Unfair Claims Processing ___ Fraud or ___ Retaliation

___ Other (specify): _____

2. Complaints by Employer:

___ Determination of Compensability/Benefits

___ Safety Device Decrease (name device): _____

___ Reimbursement Right

___ Credit for Overpayment

___ Suspension or Reduction of Benefits (state grounds): _____

___ Other (specify): _____

b. State all reasons supporting this complaint (be specific; use additional pages, if necessary): _____

9. Is an interpreter needed for the hearings on this complaint? ___ Yes ___ No.

If yes, what language? _____ If yes, Employer must furnish.

If you have questions, call 1-800-255-7965, Mediation Bureau.

10. Medicare Eligibility:

a. Is Worker a current Medicare beneficiary? Yes No

b. Has Worker applied for Social Security Disability benefits in the past 5 years? Yes No

c. Has Worker been diagnosed with End Stage Renal Disease? Yes No

(See 42 USC 426-1)

Worker's Signature

Attorney's Signature

Date

Worker/Attorney's Name

Worker/Attorney's Address

Worker/Attorney's City, State, Zip

Worker/Attorney's Telephone & Fax Number

A Summons for each adverse party and insurer shall be filed with the Complaint. If the Worker is filing this Complaint, an Authorization to Release Medical Information form shall be filed with the Complaint.

**STATE OF NEW MEXICO
WORKERS' COMPENSATION ADMINISTRATION**

_____, WCA No.: _____
Worker,

v. _____, and

_____,
Employer/Insurer.

JOINT PETITION FOR LUMP SUM ~~(SETTLEMENT)~~ PAYMENT (SECTION 52-5-12 (D))

This form should be used to request a lump sum settlement pursuant to §52-5-12 (D). In order to use this form, the parties must agree to the settlement, explain the terms of the settlement below and sign this joint petition. By filing this joint petition the parties [~~are submitting~~] submit to the jurisdiction of the Workers' Compensation Administration. This form should not be used for [~~return-to-work or partial lump sum for debt~~]. Please note: This settlement may be affected by federal Medicare regulations if benefits for future medical care are affected. petitions based on Return-to-Work or Partial Lump Sum for Debt. The parties should NOTE that this settlement may be affected by federal Medicare regulations if it contemplates closing future medical care.

1. Type of injury: [~~Occupational~~] Accidental Work Injury Occupational Disease [check one]
2. Worker's Full Name: _____
 Mailing Address: _____
 City/State/Zip: _____
 Telephone No.: (____) _____
3. Worker's date of birth: ___/___/___ Age: ___ Sex: ___M ___F [check one]
4. Worker's Social Security Number: _____-_____-_____
5. Full Name of Employer: _____
 Employer's Address: _____
 City/State/Zip: _____
 Telephone No.: (____) _____
6. Insurance Carrier: _____
 Address: _____
 City/State/Zip: _____
 Telephone No.: (____) _____
7. Date of Accident: _____
 - a. City and County of accident: _____
 - b. Worker's job at time of accident: _____
 - [e.] Worker's wages at time of accident: \$ ___ hour \$ ___ bi-weekly \$ ___ month \$ ___ year]
 - c. Worker's average weekly wage: _____
 - d. Weekly compensation rate: _____
 - [d.] e. How did the accident occur: _____
 - [f.] Type of injury/diagnosis: _____]
 - f. Nature of the injury: _____
 - [e.] g. Part(s) of the body injured: _____
 - [g.] h. Name and address of treating Doctor(s): _____
 - [h.] i. First date Worker was unable to perform job duties: _____
 - [i.] j. Date of maximum medical improvement: _____
 - [j.] k. Impairment rating: _____ Date assessed: _____
 Doctor's Name: _____
 - [k.] l. Has Worker been released to work by a Doctor? ___ Yes ___ No [check one]
 If yes, please indicate the date Worker was released to work: _____
 - [t.] m. Has Worker returned to work since the accident? ___ Yes ___ No [check one]
 If yes, please indicate the date Worker returned to work: _____
 - [m.] n. Name and address of current Employer: _____
 - [n.] o. Highest level of school completed by Worker: _____
- [8.] a. Average weekly wage: _____
 b. Weekly compensation rate: _____
 c. Disability rating, if known: _____
9. a. The proposed settlement is (___) Total (___) Partial:
 b. The proposed settlement is by agreement and is undisputed by the parties? ___ Yes ___ No]
8. Undisputed total/partial lump sum settlement.
 - a. Is the proposed settlement ___ Total or ___ Partial? [check one]
 - b. Is the proposed settlement by agreement of the parties? ___ Yes ___ No [check one]
 - c. Describe the nature of the proposed settlement, why there is a need to settle the proceeding under the agreed terms, and how the proposed settlement provides substantial justice for the parties:

REQUEST FOR RELIEF

9. A request is made for approval of a lump-sum settlement as follows:
 - a. **Indemnity.** The parties agree that if this proposed settlement is approved by the WCA Judge the Employer/Insurer will make a lump sum payment to Worker of \$ _____ in lieu of weekly compensation benefits. This lump sum payment is for [check one]:
 1. all weekly payments, both any unpaid past and future benefits (total lump sum), or
 2. a portion of remaining weekly payments (partial lump sum).
 If a partial lump sum is approved, Worker will have _____ [# of weeks] of future weekly compensation benefits remaining after approval.
 - b. **Medical benefits** will [check one]:

- 1. _____ remain open under Section 52-1-49, NMSA (Rep.Pamp.2003),
- 2. _____ remain open for this term of years: _____ [number of years/months], or
- 3. _____ be closed.

If medical benefits will remain open for a term of years, future medical benefits will remain open for _____ years from the date of final approval of the settlement. If future medical benefits will be closed, Worker shall receive \$ _____ in lieu of future medical benefits.

c. _____ Payment request does _____ or does not _____ [check one] include a lump sum for mental impairment, if any. *Copies of medical records may be attached to the petition as may be relevant to medical care, impairment, or other issues, if applicable.*

d. _____ The parties seek award or approval of a Worker's attorney fees in the amount of \$ _____, including gross receipts tax, if Worker is represented by counsel. Worker's attorney's tax ID #: _____.

e. _____ Other: _____

10. Is an interpreter needed for the hearings on this complaint? ___ Yes ___ No. [check one]

If yes, what language? _____ [Worker will not be responsible for cost:] If an interpreter is needed, Employer/Insurer must furnish.

If you have questions, please call the Ombudsman Hotline at 505-841-6894 or 1-866-967-5667.

IF THE [VERIFICATION] PETITION IS NOT SIGNED BY THE WORKER AND THE EMPLOYER/INSURER, THE PETITION WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.

VERIFICATION OF THE WORKER

I, _____, Worker, verify I have read this petition for lump sum settlement approval. In accordance with NMRA 1-011(B), I swear and affirm under penalty of perjury under the laws of the State of New Mexico that representations I make in this petition [is] are true and correct, and that I understand the terms and conditions of the proposed lump sum settlement agreement. I understand that approval of this agreement will affect my future entitlement to workers' compensation benefits.

Date

Worker's signature

Signature of Worker's Attorney (if any)

Name

Address

City, State, Zip code

Telephone & Fax Number

E-mail address (optional)

APPROVAL OF THE EMPLOYER/INSURER/OTHER [(UNDISPUTED PETITIONS)]

I, _____, Employer/Insurer/Attorney, state that I have read this petition for lump sum settlement approval, that I sign this Joint Petition with full authority to do so, [and] I also confirm that I understand the terms and conditions of the lump sum settlement agreement[-] and I understand that approval of this agreement will affect my company's/client's obligation to pay under this settlement, and its future obligation to pay workers' compensation [benefits].

Date

Signature

Name

Address

City, State, Zip

Telephone & Fax Number

E-mail address (optional)

~~[A HEARING BEFORE AND APPROVAL BY A WORKERS' COMPENSATION JUDGE IS REQUIRED BEFORE THE LUMP SUM AGREEMENT CAN BECOME EFFECTIVE. A REQUEST FOR SETTING, PROPOSED ORDER AND SELF-ADDRESSED STAMPED ENVELOPES FOR ALL PARTIES ENTITLED TO NOTICE MUST BE SUBMITTED WITH THIS PETITION OR IT WILL NOT BE ACCEPTED FOR FILING BY THE WCA CLERK OF THE COURT.]~~

[5/26/87, 6/20/89, 10/28/93, 3/3/94, 6/1/96, 9/25/96; 10/1/98; 11.4.4 NMAC, Appendix A - Rn, 11 NMAC 4.4 Appendix A, 06/13/03; A, 08/31/05; A, 12/31/07; A/E, 07/1/09; A/E, 2/19/10; A, 12/31/11]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Explanatory paragraph: This is an amendment to 11.4.7 NMAC, Sections 7, 9 and 12, effective 12-31-11. The amendment to Section 7, Subsection M of 11.4.7 updates the copyrighting information for the newest edition of the Current Procedural Terminology ("CPT") of the American Medical Association. The dates contained in Section 9 have been changed to allow the current rule to stay in place for another year. The formula to calculate anesthesia payment rates have been changed in Section 12.

11.4.7.7 DEFINITIONS: For the purposes of these rules, the following definitions apply to the provision of all services:

M. "Current procedural terminology ("CPT")" means a systematic listing and coding of procedures and services performed by HCPs of the American medical association, adopted in the director's annual order. Each procedure or service is identified with a numeric or alphanumeric code (CPT code). This was developed and copyrighted by the American medical association. The five character codes included in the rules governing the healthcare provider fee schedule are obtained from current procedural terminology (CPT®), copyright [2009] 2010 by the American medical association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of the rules governing the healthcare provider fee schedule is with WCA and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in rules governing the healthcare provider fee schedule. Fee schedules, relative value units, conversion factors or related components are not assigned by the AMA, are not part of CPT, and AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of rules governing the healthcare provider fee schedule should refer to the most recent

current procedural terminology which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DRARS apply. CPT is a registered trademark of the American medical association.

[4-1-91, 12-30-91, 12-31-91, 2-24-92, 10-30-92, 1-15-93, 3-18-94, 1-31-95, 8-1-96, 8-15-97, 10-01-98; 11.4.7.7 NMAC - Rn, 11 NMAC 4.7.7, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 1-1-07; A, 12-31-07; A, 12-31-08; A, 12-31-09; A, 12-31-10; A, 12-31-11]

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11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. All hospitals shall be reimbursed at the hospital ratio itemized in the official WCA listing that becomes effective on December 31, [2010] 2011, for all services rendered from December 31, [2010] 2011 to December 31, [2011] 2012, except as provided in Subsection B of this temporary rule. Any new hospital shall be assigned a ratio of 67%.

C. All hospitals shall provide to the WCA:

(1) the most recent full year filing of their HCFA/CMS 2552 G-2 worksheet prepared on behalf of the organization, by February 1, [2011] 2012;

E. Method of payment for FASCs:

(1) All FASCs will provide global billing by CPT code on a CMS-1500 and shall be paid by the assigned centers for medicare and medicaid services (CMS) ambulatory payment classification (APC) base payment rate times 1.3 effective for services from December 31, [2010] 2011 to December 31, [2011] 2012. See <http://www.cms.gov/HospitalOutpatientPPS/AU> under Addendum B, October [2010] 2011. No adjusted conversion factors or index values are to be applied. Payment will be made in accordance with the APC base payment rate assigned for that service in Addendum B dated October [2010] 2011. Absent an assigned APC base payment rate, services shall be paid BR.

F. Subsections A-E of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. December 31, [2011] 2012, and shall be of no force or effect with respect to any services provided thereafter.

[01-24-91, 4-1-91, 12-30-91, 12-31-91, 1-18-92, 10-30-92, 1-15-93, 10-28-93, 2-23-94, 3-14-94, 12-2-94, 1-31-95, 8-1-96, 9-1-96, 8-15-97, 4-30-98, 10-01-98, 6-30-99; 11.4.7.9 NMAC - Rn & A, 11.4.7.9 NMAC, 8-07-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06; A, 1-1-07; A, 12-31-07; A, 12-31-08; A, 12-31-09; A, 12-31-10; A, 12-31-11]

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11.4.7.12 ANESTHESIA

A. The maximum allowable amount for the CPT code series 00100-01999 (which is specific to the field of anesthesia), shall be determined by including a monetary conversion factor of [\$50.68] \$53.07 which shall be multiplied by the basic unit values, time units, and any physical status or qualifying circumstances modifiers to determine the maximum allowable amount. The units need to be separate in this equation.

B. The "basic unit value" assigned to each procedure in the CPT code series 00100-01999 in the *ASA relative value guide* adopted by the director in his annual order shall be used when billing.

C. "Time units" shall be recorded and billed in 15-minute increments and fractions of units rounded to the nearest fraction (1/15th) of a unit. For example, 19 minutes is billed as follows:

19 minutes = 1 unit (15 minutes) + 4/15 of a unit (4 minutes)

1 unit = [\$50.68] \$53.07

4 minutes = [\$50.68 / 15 = \$3.38]

\$53.07 / 15 = \$3.54

[\$3.38 x 4 = \$13.52] \$3.54 x 4 = \$14.16

19 minutes = [\$50.68 + \$13.52 = \$64.20] \$53.07 + 14.16 = \$67.23

D. Physical status modifiers may be used in billing, as appropriate, and shall adhere to the coding and unit value assignments in the *ASA relative value guide* adopted by the director in his annual order.

E. Qualifying circumstances modifiers may be used in billing, as appropriate, and shall adhere to the coding and unit value assignments in the *ASA relative value guide* adopted by the director in his annual order.

[1-15-93, 8-1-96, 8-15-97, 10-01-98, 6-30-99; 11.4.7.12 NMAC - Rn, 11 NMAC 4.7.12, 8-30-02, A, 10-25-02; A, 1-14-05; A, 12-31-07; A, 12-31-09; A, 12-31-11]

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NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.12 NMAC, Sections 7, 8, 9, 10 and 12, effective 12-31-11.

11.4.12.7 DEFINITIONS:

A. "Claim" means any allegation of entitlement to benefits under Chapter 258, Laws of 2003, which has been communicated to the uninsured employer's fund or to the fund through the workers' compensation administration.

B. "Eligible" and "eligibility" mean that the claim is properly subject to payment by the fund to the extent that the claim is compensable. The compensability determination is independent of the eligibility determination.

C. "Fund" means the uninsured employers' fund established by Chapter 258, Laws of 2003 as administered by the workers' compensation administration.

D. "Fund administrator" means a designee of the director charged with administering the fund and implementing the provisions of this rule.

E. "TRD" means the New Mexico taxation and revenue department.

F. "UEF in-house counsel" means lawyers who are employees of the workers' compensation administration who litigate claims on their merits on behalf of the fund.

[11.4.12.7 NMAC - N, 10/15/03; A, 11/15/04; A, 12/31/11]

11.4.12.8 PROCEDURES FOR SUBMISSION OF CLAIMS:

[The workers' compensation administration is initiating a pilot program where the eligibility of any UEF claims filed on or after April 1, 2008, will be determined at mediation pursuant to NMSA 1978, Section 52-5-5. Subsections A through G will apply to claims filed before April 1, 2008. Subsections H through J will apply to all claims filed on or after April 1, 2008. All other sections of Part 12 remain unchanged and apply to all claims.

A. Claims may be submitted by any written request for payment addressed to the uninsured employers' fund that states the name, social security number and address of the injured worker, the name and address of the employer for whom the worker was working when the worker was injured or became ill and the date of injury or onset of occupational illness.

(1) If a claim for benefits is submitted to the clerk on a complaint form and names the fund as a party, the clerk will not accept such complaints for filing or assign the complaint for mediation until an

eligibility determination is made and is final, notwithstanding the provisions of any other rule:

(2) The clerk is authorized and directed to transfer any complaint naming the fund to the fund administrator for eligibility determination. The clerk shall date stamp the complaint upon receipt. No further proceedings on the complaint shall take place, until the eligibility determination is made and is final, notwithstanding the provisions of any other rule:

(3) The date of presentation to the fund shall be deemed to be the earliest date shown on the claim or complaint by an official WCA date stamp.

(4) If a claim is presented to the fund administrator prior to the running of the statute of limitations, the date of presentation shall toll the statute of limitations for purposes of filing against the fund:

B. All claims naming the fund as a party shall be submitted to the fund administrator for an eligibility determination:

(1) Only those claims for injuries or illnesses that arose from accidents or exposures occurring on or after June 22, 2003, shall be eligible to make claims against the fund:

(2) Only claims that would have been subject to the terms of the Workers' Compensation Act or Occupational Disease Disablement Law at the time of the injury or exposure shall be eligible to make claims against the fund:

(3) Only claims by workers employed by those employers who, despite the obligation to do so, were not insured pursuant to the Workers' Compensation Act shall be eligible to make claims against the fund:

(4) A worker shall not be eligible to make a claim against the fund if the worker has filed a valid election pursuant to Section 52-1-7 NMSA 1978:

(5) No claim that is eligible for payment by an insurer's guaranty fund, a self-insurer's guaranty fund, or pursuant to the joint and several liability provisions contained in the by-laws or other authorizing documents of a certified group self-insurer shall be eligible to make claims against the fund unless that source of payments is demonstrated by the worker to be insolvent and unable to assume the claim:

(6) A district court determination that the employer of a worker making the claim was not insured at the time of the worker's injury or occupational illness shall be conclusive with respect to the issue of insurance coverage only. In such cases, all other eligibility issues are reserved for the fund:

C. The fund shall notify the parties of the eligibility determination in writing, via certified mail, return receipt requested, at the addresses shown on the

claim within fifteen (15) working days of receipt of the notification of the claim against the fund as determined by the earliest date stamp appearing on the face of the claim. If the claim is not eligible, the notice shall inform the worker why the claim is not eligible:

(1) Failure to claim the notice of denial from the post office shall not operate to toll the time limits set herein:

(2) Failure to claim the notice will be treated as actual delivery for purposes of further proceedings upon return of the notice to the WCA by the post office:

D. If a party wants a review of the eligibility determination, a request for review shall be filed with the clerk within fourteen (14) days from the date of actual or constructive receipt of the eligibility determination. The request for review shall contain all the information required in Rule 11.4.12.8 NMAC and shall specify the reason or reasons for disagreement with the eligibility determination:

(1) The director or his designee shall conduct such hearing without undue delay:

(a) The director or his designee shall hold a hearing on any request for review of an eligibility determination:

(b) At any hearing on eligibility, the claimant shall have the burden of proving that the claim arose under the Workers' Compensation Act or Occupational Disease Disablement Law and that the employer was uninsured:

(c) At any hearing on eligibility, the records of the WCA shall be rebuttably presumed to establish the insurance status of the employer as of the date of injury:

(d) At any hearing on eligibility, the rules of evidence shall be relaxed to the extent necessary to achieve substantial justice:

(e) With respect to any hearing on eligibility, no pre-hearing discovery or motions practice shall be permitted without specific authorization from the director or his designee:

(f) Telephonic and video conferencing appearances shall be permitted, to the extent permitted by law, to facilitate the appearance of the parties:

(2) The director or his designee shall issue an order within 15 working days of the hearing, which order shall be transmitted to the parties via first class US mail at their last known address:

(3) If a party wishes to contest the decision of the director or his designee, he or she may file a writ of certiorari to the district court to appeal the decision. Proceedings for a writ of certiorari shall be governed by SCRA 1-075:

E. After the determination of eligibility is made, if either party wishes to resume resolution of the dispute brought

in the complaint, that party shall file a request to resume dispute resolution with the clerk:

~~F. If a mediator or WCJ determines that it is more likely than not that a complaint before them presents a claim that is eligible for payment by the uninsured employers' fund, the mediator or WCJ shall amend the caption of the complaint to name the fund as a party. Any complaint amended pursuant to this provision shall be forthwith returned to the WCA clerk for further processing pursuant to the provisions of this rule, notwithstanding the provisions of any other rule.~~

~~G. The fund may seek a stay of the time limits prescribed in this part, for good cause shown, by presenting the request to the director or designee with notice to all parties to the claim against the fund.~~

~~H. For all claims filed on or after April 1, 2008,]~~

~~A. All claims shall be submitted on a complaint for workers' compensation benefits naming the uninsured employers' fund. The complaint shall contain the name, social security number, telephone number and address of the injured worker, the name, [and] address, and telephone number of the employer for whom the worker was working when the worker was injured or became ill and the date of injury or onset of occupational illness. It shall be the duty of the worker to keep the WCA clerk of the court informed at all times of any changes to worker's address and telephone number.~~

(1) The date of presentation to the fund shall be deemed to be the earliest date shown on the claim or complaint by an official WCA date stamp.

(2) If a claim is presented to the fund administrator prior to the running of the statute of limitations, the date of presentation shall toll the statute of limitations for purposes of filing against the fund.

~~[F.] B. Eligibility for benefits [for all claims filed on or after April 1, 2008].~~

(1) The initial determination of worker's eligibility for benefits and the compensability of the claim shall be made at the mediation conference required by NMSA 1978, Section 52-5-5.

(2) Only those claims for injuries or illnesses that arose from accidents or exposures occurring on or after June 22, 2003, shall be eligible to make claims against the fund.

(3) Only claims that would have been subject to the terms of the Workers' Compensation Act or Occupational Disease Disablement Law at the time of the injury or exposure shall be eligible to make claims against the fund.

(4) Only claims by workers employed by those employers who, despite

the obligation to do so, were not insured pursuant to the Workers' Compensation Act shall be eligible to make claims against the fund.

(5) A worker shall not be eligible to make a claim against the fund if the worker has filed a valid election pursuant to Section 52-1-7 NMSA 1978.

(6) No claim that is eligible for payment by an insurer's guaranty fund, a self-insurer's guaranty fund, or pursuant to the joint and several liability provisions contained in the by-laws or other authorizing documents of a certified group self-insurer shall be eligible to make claims against the fund unless that source of payments is demonstrated by the worker to be insolvent and unable to assume the claim.

(7) A district court determination that the employer of a worker making the claim was not insured at the time of the worker's injury or occupational illness shall be conclusive with respect to the issue of insurance coverage only. In such cases, all other eligibility issues are reserved for the fund.

~~[F.] C. If a mediator or WCJ determines that it is more likely than not that a complaint before them presents a claim that is eligible for payment by the uninsured employers' fund, the mediator or WCJ shall amend the caption of the complaint to name the fund as a party. Any complaint amended pursuant to this provision shall be forthwith returned to the WCA clerk for further processing pursuant to the provisions of NMSA 1978, Section 52-5-5, notwithstanding the provisions of any other rule.~~

[11.4.12.8 NMAC - N, 10/15/03; A, 11/15/04; A/E, 4/1/08; A, 12/31/11]

11.4.12.9 C L A I M S ADMINISTRATION:

A. The WCA may contract with a ~~[claims administrator or third party administrator]~~ an independent adjusting company for the adjusting of those claims that are determined to be eligible for payment by the fund, purchase a loss portfolio transfer covering some or all of the liabilities of the fund, or may purchase a policy of commercial insurance to cover the liabilities of the fund upon a finding by the director that such purchases are in the best interests of the workers eligible to receive benefits from the fund and the entities paying assessment to support the fund.

(1) The ~~[claims administrator, third party administrator or insurer]~~ fund, in conjunction with the independent adjusting company, if any, shall pay, or oppose, claims on their merits, and shall be treated for purposes of mediation and adjudication of disputes as a party with all rights and responsibilities applicable under law.

(2) ~~[The claims administrator,~~

~~third party administrator or insurer]~~ With approval of the director, the independent adjusting company may engage outside counsel for representation when necessary.

(3) The ~~[claims administrator]~~ fund or the independent adjusting company may solicit information concerning the average weekly wage of the claimant from the employer. Provision of such information to the ~~[claims administrator]~~ fund or the independent adjusting company shall not constitute an admission that the claimant was an employee. In the event that the employer does not respond to the request for wage information, the employer will be informed, in writing, at the last known address of the employer, or by any means authorized by the director or his designee, that wages are in dispute and that the employee's evidence concerning wages shall be used to calculate average weekly wage. In the event that the employer does not respond within a reasonable time from the date the letter described in this paragraph, an affidavit from the worker concerning the wages earned while employed by the uninsured employer shall be deemed sufficient evidence upon which to pay benefits. Any suspected ~~[inaccurate]~~ fraudulent reporting of wages by any party shall be reported to the enforcement bureau for investigation.

(4) In the event of a dispute concerning the wage basis for benefits, the ~~[claims administrator is]~~ fund and the independent adjusting company are authorized to pay indemnity benefits, under reservation of rights, to the worker based upon available wage information.

B. With respect to any complaint filed with the WCA arising from a dispute about the provision of any benefit due on any claim eligible for payment by the fund, the fund and the employer at the time of injury or last injurious exposure shall be named as parties.

C. The ~~[claims administrator, third party administrator or insurer]~~ independent adjusting company shall regularly report to the WCA on expenditures made to and on behalf of workers from the fund.

(1) The ~~[claims administrator, third party administrator or insurer]~~ independent adjusting company shall file the first report of injury or illness (E1.2) with the WCA within 10 days of the eligibility determination and provide a copy of the E1.2 to the worker.

(2) The ~~[claims administrator, third party administrator or insurer]~~ independent adjusting company shall file all payment reports required by law.

(3) The ~~[claims administrator, third party administrator or insurer]~~ independent adjusting company shall maintain records sufficient to allow the WCA director or his designee to audit the administration of claims and shall provide those records

upon request to the WCA. The ~~[claims administrator, third party administrator or insurer]~~ independent adjusting company shall be subject to audit by the WCA or its contractor with respect to the administration of claims against the fund.

(4) The ~~[claims administrator, third party administrator or insurer]~~ independent adjusting company shall actively support the WCA in its efforts to provide information to the public concerning the fund and to prosecute penalty collection proceedings against an uninsured employer pursuant to this rule.

~~[D.]~~ Lump sum payments:

~~(1) All requests for lump sum payments shall be set for hearing.~~

~~(2) The director's office shall be noticed and treated as a party for all lump sum petitions involving payments from the fund.]~~

~~[E.]~~ D. The fund shall have the right to subrogation that would otherwise be available to the payer.

(1) The ~~[claims administrator, third party administrator or insurer shall]~~ independent adjusting company may pursue subrogation rights on behalf of, and at the direction of, the fund.

(2) The ~~[claims administrator, third party administrator or insurer]~~ independent adjusting company shall be entitled to retain reimbursement for reasonable legal fees and expenses plus 10% of the sum recovered in subrogation net of legal fees and expenses. The remainder of the subrogation recovery shall be paid to the fund.

~~[F.]~~ E. The fund shall be liable only for those benefits that are due under the Workers' Compensation Act or Occupational Disease Disablement Law.

(1) The fund shall be entitled to the protections of the exclusive remedy provisions of the Workers' Compensation Act or Occupational Disease Disablement Law to the same extent it would if it were the insured employer of any worker who is eligible for benefits against the fund.

(2) The fund shall not be subject to claims for payments of a judgment obtained in a third party lawsuit, nor for payment of a judgment obtained in a tort action against an uninsured employer.

~~[G.]~~ E. Duplicate recovery of workers' compensation benefits is strictly prohibited.

(1) The fund shall immediately cease payments to or on behalf of any worker who is receiving workers' compensation payments from another source for the same injury and arising out of the same accident.

(2) The fund shall have the right of first reimbursement for workers' compensation benefit payments made that duplicate any payments received by the injured worker from another source and may offset subsequent payments, institute

collection proceedings, request criminal investigation or seek any other lawful remedy to recover duplicate payments of workers' compensation benefits.

~~[H.]~~ G. Payments under the fund shall not constitute payments by the employer for purposes of the exclusive remedy provisions of the act. The fund shall be entitled to assert all defenses and subrogation rights that would be available to an insured employer.

[11.4.12.9 NMAC - N, 10/15/03; A, 11/15/04; A, 12/31/11]

11.4.12.10 F I N A N C I A L RESPONSIBILITY OF EMPLOYER:

~~[A.]~~ The employer shall pay claims, costs, interest and penalties for which it becomes obligated under the New Mexico Workers' Compensation Act, the Occupational Disease Disablement Law, and Uninsured Employers' Fund (UEF) Act.

~~[B.]~~ Once ~~UEF determinations of eligibility and compensability have been finalized by the~~ UEF in worker's favor, the employer shall post an irrevocable letter of credit, a surety bond or other form of security as approved by the director in an amount of up to eighty thousand dollars (\$80,000.00) as determined by the UEF administrator on a form specified by the director or his designee.

~~(1) The security shall be issued in favor of the New Mexico uninsured employers' fund.~~

~~(2) The issuer of the surety bond or letter of credit shall not have a controlling interest over the employer nor shall the employer have a controlling interest over the issuer of the surety bond or letter of credit.~~

~~(3) The issuer of the surety bond or letter of credit shall have a rating that is within the parameters of acceptability set forth in an order published by the director.~~

~~(4) In the event of a default by an employer to reimburse the UEF as required by law, the security shall be used to reimburse the UEF for benefits paid to or on behalf of worker, costs incurred, statutory pre-judgment interest and statutory penalty.~~

~~(5) Upon finalization of eligibility and compensability determinations in worker's favor by the UEF, the fund administrator shall so notify the employer by certified mail/return receipt at the employer's last known business address. Should the employer fail or refuse to accept the certified notice, then, in such case, the employer will be notified by personal service of process.~~

~~(6) The employer shall have thirty (30) days from the date of receipt of the certified notice or notice by personal service within which to post the surety bond, letter of credit, or other form of security as approved by the director. The employer, within the same period of time, shall also provide proof of compliance to the director or his designee.~~

~~(7) If the employer defaults on the posting of security, the workers' compensation administration may seek injunctive relief to cease continued business operations of the employer.]~~

[11.4.12.10 NMAC - N, 10/15/03; A, 11/15/04; N/E, 12/23/05; A, 12/31/11]

11.4.12.12 P E N A L T I E S COLLECTED FROM UNINSURED EMPLOYERS:

If the ~~[fund]~~ WCA director or workers' compensation judge determines that an employer was obligated to pay workers' compensation benefits to or on behalf of a worker and has not done so due to its failure to obtain and keep in force a policy of workers' compensation insurance that is valid pursuant to the Workers' Compensation Act, the WCA director ~~[or his designee shall seek a penalty from the employer of not less than 11.5% and not more than 150% of all benefits paid to or on behalf of the worker.]~~ or the workers' compensation judge shall impose a penalty against the employer of not less than fifteen percent and not more than fifty percent of the value of the total award in connection with the claim that shall be paid into the uninsured employers' fund. The determination of the appropriate percentage of penalty imposed shall be treated as a statutorily authorized discretionary act by a state agency, for purposes of judicial review. This penalty is separate from, and in addition, to any penalty or remedy sought against an uninsured employer pursuant to NMSA 1978, Sections 52-1-61 or 52-1-62 for failure to have insurance when required to do so. This penalty is intended to protect the health, safety and welfare of the citizens of the state of New Mexico and shall be considered a governmental penalty for purposes of the dischargeability provisions of the federal bankruptcy code.

A. Any final compensation order addressing the compensability of the workers' claim shall not be subject to collateral attack.

B. ~~[At any penalty hearing, the]~~ The actual benefits provided to or on behalf of a worker or his dependants shall be presumed valid as the basis for the assessment of a penalty.

C. Billing and medical records in the possession of the ~~[WCA's claims adjustment contractor]~~ UEF or the independent adjusting company shall be considered records of the WCA for purposes of authentication.

~~[D.]~~ No ~~pre-hearing discovery or motions practice shall be permitted in penalty proceedings without specific authorization from the director's hearing officer, and for good cause shown.]~~

~~[E.]~~ D. Telephonic and videoconferencing shall be permitted to the extent permitted by law to facilitate the participation of the parties.

[F.] E. The WCA may use any legal process for collecting the penalty, including, but not limited to, reduction of the penalty to judgment in district court, seeking and obtaining writs of garnishment and execution, contempt citations or any other legal process in aid of collection and participating as a party in any bankruptcy action, including filing an involuntary petition in federal bankruptcy court to liquidate personal or business assets for the purpose of enforcing the penalty.

[G.] E. For the purposes of these actions, the WCA shall, at all times act pursuant to the commissions of its personnel as special assistant attorneys general. All proceedings before the WCA director for enforcement of the provisions of this section shall be conducted in accordance with 11 NMAC 4.5.

[H.] G. The fund may seek reimbursement of the costs of any legal action instituted in a proceeding to determine or collect a penalty pursuant to this subsection ~~[- but shall not seek reimbursement of legal fees, provided that the fund may collect reasonable attorneys fees to offset the fees incurred by the retention of outside counsel to collect any penalty].~~

[11.4.12.12 NMAC - Rn, 11.4.12.10 NMAC, 12/23/05; A, 12/31/11]

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

The Department of Workforce Solutions is repealing the following obsolete Job Training Partnership Act rules, effective 12/30/2011.

JNMD No. 5-95, JNMD No. 11-93, JNMD No. 12-95, JNMD No. 14-93, JNMD No. 27-94, JNMD No. 33-89, JNMD No. 44-88, JNMD No. 45-90, JNMD No. 48-93, JNMD No. 50-95, JNMD No. 63-92, JBD No. 15-84, JBD No. 30-84, JBD No. 31-84, JBD No. 34-84, JBD No. 38-86, JBD No. 39-86, JGI No. 6-84, JGI No. 8-86, JGI No. 10-87, JGI No. 15-84, JGI No. 32-84, JGI No. 33-86, JGI No. 34-84, JGI No. 35-84, JGI No. 37-84, JGI No. 38-85, JGI No. 40-84, JGI No. 43-85, JGI No. 44-85, JGI No. 48-85, JGI No. 49-85, JGI No. 53-86, JGI No. 54-86, JGI No. 55-87, JGI No. 63-87, JGI No. 64-87, JGI No. 68-86, JGI No. 69-86, JGI No. 73-87, JGI No. 74-87, JGI No. 75-87, JGI No. 76-87, JGI No. 77-87, JGI No. 78-87, JGI No. 80-87, JGI No. 84-87, JGI No. 85-87, JGI No. 87-87, JGI No. 88-87, JGI No. 91-88, JGI No. 92-88, JSI No. 3-89, JSI No. 4-88, JSI No. 19-94, JSI No. 31-91, JSI No. 36-95, JSI No. 39-89, JSI No. 41-88, JSI No. 43-95, JSI No. 47-93, JSI No. 51-95, JSI No. 70-90, JSI No. 72-88, JSI No. 82-88, JSI No. 94-88, JSI No. 95-95, JSI No. 96-94, JSI No. 97-89, JSI No. 98-89, JSI No. 100-

89, JSI No. 101-89, JSI No. 102-89, JSI No. 103-89, JSI No. 104-90, JSI No. 105-90, JSI No. 106-90, JSI No. 109-94, JSI No. 110-93, 11 NMAC 2. A. 1-97, 11 NMAC 2.C. 1-95, 11 NMAC 2. A. 2-97, 11 NMAC 2. A. 5-98, 11 NMAC 2. A. 9-98, 11 NMAC 2. A. 11-97, 11 NMAC 2. A. 13-99, 11 NMAC 2. A. 14-97, 11 NMAC 2. A. 17-98, 11 NMAC 2. A. 20-97, 11 NMAC 2. A. 28-97, 11 NMAC 2. A. 30-98, 11 NMAC 2. A. 50-98, 11 NMAC 2. A. 56-98, 11 NMAC 2. A. 57-99 and 11.2.97 NMAC

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment

The proposed changes to the WCA Healthcare Provider Fee Schedule, Parts 2, 7 and 12 of the WCA Rules were released for public inspection on October 1, 2011, as well as changes to three forms: Workers' Compensation Complaint, Application to Workers' Compensation Judge and Joint Petition for Lump Sum Payment. Public comment opened on October 13, 2011 and was accepted through November 14, 2011. Public comment to consider additional amendments to 11.4.7.12 was extended until November 23, 2011.

Statutory Physicians Fee Schedule

The WCA received comment supporting the proposed changes to the medical fee schedule. Prior to issuing a final fee schedule, the WCA Director followed the processes established by NMSA 1978, 52-4-5, by soliciting comments from the Medical Advisory Committee and at a public hearing conducted on October 27, 2011. The fee schedule changes will be implemented as proposed.

Part 7 - Payments for Healthcare Services

The WCA received a comment suggesting that the anesthesiology rate currently in place be reviewed. The WCA conducted a comparison study of the New Mexico anesthesia maximum allowable payment rate with seven surrounding states and found that the current rate was below the 60th percentile. The fee was accordingly increased. Public comment was extended by an additional 9 days to allow the public a chance to comment on the amendment. No additional comments were received. The rule will be promulgated as revised.

Part 12 - UEF Rules

At the public hearing, a question was asked as to why the lump sum provisions contained in Part 12 were deleted. All statutory lump sum payment provisions under the Workers' Compensation Act are available to UEF workers. The lump sum language was deleted as it was duplicative.

Another question was received at the hearing about the right of the UEF to change healthcare providers as the UEF routinely asserts it is not a party to a claim for

purposes of advancing costs. The Court of Appeals has previously ruled that the UEF does not have the authority to select or to change healthcare providers under NMSA 1978, §52-1-49. Therefore, the language pertaining to change of HCP will be stricken.

All other amendments will be promulgated as proposed.

Part 2 - Safety Rules

The WCA received numerous comments concerning the proposed changes to the WCA safety rules at Part 2 amending the annual inspection and extra-hazardous employers sections. Because of the breadth of the comments received, the WCA will conduct additional fact-finding and may form a task force to consider refining the language of the proposed rule. A response to public comment will be issued at a later date upon adoption of a final rule. The proposed rule as released will not be promulgated at this time.

Forms

At the hearing, comment was received concerning the reason for the inquiry into Medicare eligibility on the proposed Complaint form. A statement regarding a worker's Medicare eligibility is relevant and will facilitate other parties' compliance with federal laws in the event conditional payments have been made by Medicare for worker-related care or in the event a medical claim is closed through settlement. A claimant's Medicare eligibility may also be relevant for a judge's determination of whether to approve a lump sum settlement and closure of a claim. The forms will be promulgated as proposed.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

Ned S. Fuller, Director
N.M. Workers' Compensation
Administration
December 15, 2011

**End of Other Related Material
Section**

Submittal Deadlines and Publication Dates 2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 15
Issue Number 4	February 16	February 29
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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