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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

NOTICE OF PUBLIC MEETING AND PUBLIC HEARING

The State of New Mexico through the Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting.

Case No. 20895: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION'S RULE FOR COMPLIANCE AND ENFORCEMENT IN SECTIONS 3, 8, 9, AND 10 OF 19.15.5 NMAC; STATEWIDE.

The New Mexico Oil Conservation Division (OCD) proposes to amend (1) 19.15.5.3 NMAC to add the legal authority in Section 70-2-31 NMSA 1978; (2) 19.15.5.8 NMAC to state the duties and obligations of the OCD; (3) 19.15.5.9 NMAC to reorganize the section and remove superfluous language; and (4) 19.5.5.10 NMAC to describe the OCD's enforcement authority and the procedures that the OCD will follow to issue and adjudicate notices of violation and temporary cessation orders.

Purpose of Proposed Rule. The proposed rule implements the enforcement authority delegated to the OCD by the 2019 amendments to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.

Legal Authority. The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority and control of and over all persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), Section 70-2-12 (enumerating the powers of the Commission and OCD), and Section 70-2-31 (authorizing the Commission to adopt rules for the issuance and adjudication of enforcement actions, including the assessment of civil penalties). The public hearing is governed by the Commission's rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rule. The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, florene.davidson@state.nm.us, (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/ocd>, or in the OCD's offices in Santa Fe, Hobbs, Artesia or Aztec.

Public Hearing. The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on January 2, 2020, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing may be continued to the following day(s) if not completed.

* **Proposed Modifications, Technical Testimony, and Cross Examination.** Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file six copies of a Pre-Hearing Statement

conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on December 17, 2019. Filing may be accomplished by hand-delivery or first class or electronic mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or florene.davidson@state.nm.us. A person filing a Pre-Hearing Statement who intends to use projection equipment shall contact the Commission Clerk no later than seven business days prior to the hearing. Any person who presents technical testimony will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

* **Oral Comments.** Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony, and the person provides at least six copies conforming to the requirements of Subsection C of 19.15.3.12 NMAC. Any person who wishes to present non-technical testimony must indicate such intent on the sign-in sheet at the hearing. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

* **Written or Electronic Comments.** Any person may submit written or electronic comments on the proposed rule no later than 9:00 a.m. on January 2, 2020, unless extended by the Commission or the Chair of the Commission, by hand-delivery or first class or electronic mail to the Commission Clerk, Florene Davidson,

3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or florene.davidson@state.nm.us.

* **Wireless Access.** Wireless access will be available at the location of the hearing, but a person intending to use the access must provide the electronic device.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, florene.davidson@state.nm.us or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than December 17, 2019.

Technical Information. There is no technical information for the proposed rule.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Friday, January 3, 2020 from 9 a.m. to 11 a.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The purpose of the public hearing is to receive public input on the proposed repeal and replace of 6.63.5 NMAC, Licensure for School Psychologists, Pre K-12. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text

The purpose of the proposed repeal and replace of **6.63.5 NMAC, Licensure for School Psychologists, Pre K-12**, is to establish the requirements for a level 1 school psychologist, a level 2 school psychologist, and a level 3 supervising school psychologist, practicing in a school-related setting.

Statutory Authorization(s):

Sections 22-2-1, 22-2-2, and 22-10A-17 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Friday, January 3, 2020. The PED encourages the early submission of written comments. The public comment period is from November 26, 2019 to January 3, 2020 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to

contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of a new Rule, 17.9.2 NMAC - Procurement Requirements For Investor Owned Electric Utilities (New Rule), pertaining to procurements by New Mexico investor-owned electric public utilities.

Concise statement of proposed rule: The Rule intends to set forth the Commission's requirements for procurements by investor-owned electric utilities of supply-side and demand-side resources in order to ensure fair and robust competition for those resources and identify the most cost-effective resource options available to meet the energy needs of their customers and otherwise protect the public interest.

Copies of the Order Initiating Proposed Rulemaking containing additional information and filing instructions may be downloaded from the Proposed Rulemaking section of the Commission's website at: <http://www.nmprc.state.nm.us> under Case No. 18-00030-UT or by calling the Commission's Records Management Bureau at (505) 827-6968.

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as

follows: Written Initial Comments not later than March 15, 2020, and written Response Comments not later than April 15, 2020. Comments shall refer to Case No. 18-00030-UT. All written comments will be posted on the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 18-00030-UT within three days of receipt and will also be available for public inspection at the Commission's Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501.

A public hearing will be held on May 15, 2020, beginning at 9:30 a.m. at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the hearing is to receive oral comments. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close fourteen (14) days after the public hearing held on May 15, 2020 (date of record closure is May 29, 2020).

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled.

If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate

in any aspect of this process, please contact Mr. Isaac Sullivan-Leshin at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Section 2; the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et seq., (the "PUA") and the Public Regulation Commission Act, NMSA 1978, Section 8-8-1 through 8-8-21; NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), upon the Superintendent's own motion, proceeding pursuant to the Insurance Code, Section 59A-1-1 et seq. NMSA 1978 ("Insurance Code") and 13.1.4 NMAC, proposes a new rule **13.10.30 NMAC, Pharmacy Benefits Managers**

PURPOSE OF THE PROPOSED NEW RULE: The purpose of this new rule is implement and enforce the Pharmacy Benefits Manager Regulation Act.

SUMMARY OF THE PROPOSED RULE: The rule establishes requirements and procedures, including licensing, complaints, and payment of claims.

STATUTORY AUTHORITY: Legal authority for this rulemaking is found at Section 59A-61-3 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (www.osi.state.nm.us/index.php/legal/) or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance,

1120 Paseo de Peralta, Santa Fe, NM 87501.

OSI will hold a public hearing on the new rule 13.10.30 NMAC on January 10, 2020 at 9:00 a.m. at the NM Office of Superintendent of Insurance, 4th Floor PRC Hearing Room, Old PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501. The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on January 20, 2020. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance
Attention: Mariano Romero, Room 331
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689

Docket No.: 19-00050-RULE-LH IN THE MATTER OF A PROPOSED NEW RULE FOR PHARMACY BENEFITS MANAGERS, 13.10.30 NMAC

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any

filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Martinez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

DONE AND ORDERED this 26th day of November 2019
/S/JOHN G. FRANCHINI

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (Superintendent), upon the Superintendent’s own motion, proceeding pursuant to the Insurance Code, Section 59A-1 -1 et seq. NMSA 1978 (“Insurance Code”) and 13.1.4 NMAC, proposes to permanently adopt emergency rule 13.19.4 NMAC, MULTIPLE EMPLOYER WELFARE ARRANGEMENTS (“MEWA”).

PURPOSE AND SUMMARY OF THE PROPOSED RULE The purpose of this rule is to establish eligibility requirements, registration, reporting, oversight and transparency requirements for MEWAs. This rule also clarifies the applicability of state and federal statutes protecting consumers’ access to care.

STATUTORY AUTHORITY: Sections 59A-1-8, 59A-1-18, 59A-2-9, 59A-4-14, 59A-10-3, 59A-15-17, 59A-15-20, 59A-16-1, 59A-16-27, 59A-18-13.2, 59A-18-13.3, 59A-18-13.5, 59A-23-3, 59A-23C-3 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/legal/>) or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

OSI will hold a public hearing on the rule on January 9, 2020 at 10:00 a.m., Apodaca Hall, 2nd Floor of the Old PERA Building, 1120 Paseo De Peralta, Santa Fe, NM 87501 The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on January 20, 2020. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689

Docket No.: 19-00049-RULE-LH
IN THE MATTER OF
PERMANENTLY ADOPTING
EMERGENCY RULE 13.19.4
NMAC, MULTIPLE EMPLOYER
WELFARE ARRANGEMENTS

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or

facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Martinez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

DONE AND ORDERED this 26th day of November 2019.
/S/JOHN G. FRANCHINI

End of Notices of Rulemaking and Proposed Rules

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 in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

**PUBLIC EDUCATION
DEPARTMENT**

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 12 PUBLIC
SCHOOL ADMINISTRATION -
HEALTH AND SAFETY
PART 11 STUDENT
DIABETES MANAGEMENT**

6.12.11.1 ISSUING

AGENCY: Public Education Department herein after the department.

[6.12.11.1 NMAC – N, 11/26/2019]

6.12.11.2 SCOPE: This rule applies to school districts, local school boards, state-chartered charter schools and governing bodies, and private schools.

[6.12.11.2 NMAC – N, 11/26/2019]

6.12.11.3 STATUTORY

AUTHORITY: This rule is promulgated by the secretary of public education and the public education department under the authority of Sections 9-24-8, 22-2-1, 22-2-2, and 22-34-1 through 22-34-9 NMSA 1978.

[6.12.11.3 NMAC – N, 11/26/2019]

6.12.11.4 DURATION:

Permanent.

[6.12.11.4 NMAC – N, 11/26/2019]

6.12.11.5 EFFECTIVE

DATE: November 26, 2019, unless a later date is cited at the end of a section.

[6.12.11.5 NMAC – N, 11/26/2019]

6.12.11.6 OBJECTIVE:

The objective of this rule is to provide parameters for diabetes care personnel training and diabetes care management of students with diabetes in public schools.

[6.12.11.6 NMAC – N, 11/26/2019]

6.12.11.7 DEFINITIONS:

A. “Diabetes” means a metabolic disorder of type one or type two diabetes mellitus, complications related to diabetes mellitus, or prediabetes.

B. “Diabetes care personnel” means a school employee who volunteers to be trained and is trained in accordance with the provisions of this rule.

C. “Diabetes medical management plan” means a document developed and signed by a student’s personal health care practitioner and parent or guardian that describes the health services a student needs at school.

D. “Governing body” means:

(1) the school board of a school district;

(2) the entity that governs a state-chartered or locally chartered charter school; or

(3) the entity that governs a private school.

E. “Hyperglycemia” means blood glucose levels higher than normal medically established parameters.

F. “Hypoglycemia” means blood glucose levels lower than normal medically established parameters.

G. “School” means a public school, including a charter school, or private school that students attend in person.

H. “School employee” means a person employed by a school, a person employed by the department of health or a local health department or by the public education department who is assigned to a school or a contractor designated to provide diabetes management services at a school pursuant to the provisions of this rule.

I. “Self-administration” means a student’s own use of prescribed diabetes medication pursuant to a prescription from a health care practitioner.

J. “Self-management” means a student’s monitoring of blood glucose levels and for the presence of ketones.
[6.12.11.7 NMAC – N, 11/26/2019]

6.12.11.8 DIABETES CARE PERSONNEL TRAINING:

A. Each governing body shall ensure annual diabetes training programs are provided to all school nurses and diabetes care personnel. Training content for the annual diabetes training program, at a minimum, shall include:

(1) identification and treatment of hyperglycemia and hypoglycemia;

(2) appropriate actions to take when blood glucose levels are outside the target ranges indicated by a student’s diabetes medical management plan;

(3) understanding interpretation of health care practitioner instructions regarding diabetes medication drug dosage, frequency, and manner of administration;

(4) performance of finger stick blood glucose testing and ketone testing and recording of results;

(5) administration of glucagon and insulin and recording of results;

(6) administration of glucagon and insulin through the insulin delivery system;

(7) recognizing diabetes-related complications that require emergency assistance; and

(8) recommended schedules for food intake, the effect of physical activity upon blood glucose levels, and appropriate actions to be implemented in the case of a schedule disruption.

B. Each governing body shall ensure a minimum of two school employees, at each school attended by a student with diabetes, receive the training outlined in this rule.

C. Each governing body shall not require that diabetes care personnel be health care practitioners.

D. If at any time fewer than two school employees are available to be trained at a school, the principal or other school administrator shall distribute to all staff a written notice stating that the school is seeking volunteers to serve as diabetes care personnel. This notice shall inform staff of the following:

(1) the school is required to provide diabetes care to one or more students with diabetes and is seeking personnel willing to be trained to provide that care;

(2) the tasks to be performed by diabetes care personnel;

(3) participation is voluntary and no school, school district or governing body will take action against any staff member who does not volunteer to be designated;

(4) training will be provided to employees who volunteer to provide care; and

(5) the contact information of the person whom staff should contact in order to volunteer to be diabetes care personnel.

E. Annual diabetes training programs shall be provided by the school nurse if the school has a licensed school nurse or by a licensed health care practitioner with expertise in diabetes.

F. Each governing body shall also ensure annual training is provided to all school personnel with a primary responsibility for supervising a student with diabetes during some portion of the school

day that includes bus drivers responsible for transporting a student with diabetes. Training for these individuals must include:

(1) recognition of hyperglycemia;

(2) recognition of hypoglycemia; and

(3) actions to take in response to diabetes-related emergency situations.

[6.12.11.8 NMAC – N, 11/26/2019]

6.12.11.9 DIABETES MEDICAL MANAGEMENT PLAN:

A. The parent or legal guardian of the student with diabetes who seeks diabetes care while at school shall submit a diabetes medical management plan to the school.

B. Each school that receives a diabetes medical management plan shall review and implement the plan.

[6.12.11.9 NMAC – N, 11/26/2019]

6.12.11.10 SCHOOL DIABETES CARE:

A. Each governing body shall ensure that all students diagnosed with diabetes receive appropriate and necessary diabetes care as specified in the student’s diabetes medical management plan.

B. In accordance with a student’s diabetes medical management plan, a school nurse, or in the absence of a school nurse, diabetes care personnel shall perform diabetes care functions that may include:

(1) checking and recording the student’s blood glucose or ketone levels and assisting the student with recording these levels;

(2) responding to blood glucose levels that are outside of the student’s target range;

(3) administering glucagon and other emergency treatments as prescribed;

(4) administering insulin or assisting a student in administering insulin;

(5) providing oral diabetes medications as prescribed; and

(6) following instructions regarding meals, snacks and physical activity.

C. A school nurse or at least one diabetes care personnel shall be at each school where a student with diabetes is attending and shall be available to provide care to each student with diabetes pursuant to this rule during regular school hours, all school-sponsored activities, trips, extended offsite school-sponsored excursions, extracurricular activities where a student with diabetes is a participant, and on buses where the bus driver has not been trained in diabetes care and a student with diabetes is a passenger.

[6.12.11.10 NMAC – N, 11/26/2019]

6.12.11.11 SCHOOL ASSIGNMENT: DIABETES CARE PROVISION:

A. Students diagnosed with diabetes shall attend the school they would otherwise attend if they were not diagnosed with diabetes, and the diabetes care specified in the student’s diabetes medical management plan shall be provided at the student’s school.

B. Each governing body shall not restrict a student diagnosed with diabetes from attending any school on the basis that:

(1) the student is diagnosed with diabetes;

(2) the school does not have a full-time school nurse; or

(3) the school does not have trained diabetes care personnel.

C. A school shall not require nor compel parents or guardians to provide diabetes care for a student with diabetes at school or school-related activities.

D. Each governing body may allow a parent or guardian to volunteer to assume the official responsibility of diabetes care for a student diagnosed with diabetes should the parent or guardian be attending a school sponsored activity, trip, extended offsite excursion, or extracurricular activity in which the student with diabetes is participating.

[6.12.11.11 NMAC – N, 11/26/2019]

6.12.11.12 DIABETES SELF-MANAGEMENT:

A. Upon written request of a parent or guardian of a student with diabetes and authorization by the student’s diabetes medical management plan, and upon demonstrated proficiency, a student shall be permitted to:

(1) perform self-management blood glucose monitoring to check blood glucose and ketones;

(2) administer prescribed medication for the treatment of diabetes including the self-administration of insulin through the insulin delivery system that the student uses as determined in the student’s diabetes medical management plan;

(3) treat hyperglycemia as determined in the student’s medical management plan; and

(4) treat hypoglycemia as determined in the student’s diabetes medical management plan.

B. A student with diabetes shall be permitted to self-manage in any area of the school or school grounds.

C. A student with diabetes shall be permitted to possess on the student’s person at all times all necessary supplies and equipment to perform these monitoring and treatment functions.

D. If a student’s parent or guardian or the student requests, the student shall have access to a private area for performing diabetes care tasks.

E. Each governing body shall develop written policies or procedures to address safe storage of medical supplies and for the safe and appropriate storage of diabetes medication.

[6.12.11.12 NMAC – N, 11/26/2019]

6.12.11.13 ENFORCEMENT AND REPORTING:

A. A student with diabetes and the student’s parent or guardian may submit a written administrative complaint, via e-mail

or via mail, to the secretary or secretary’s designee containing a statement of the facts on which the complaint is based specific to any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care, or to permit self-management of diabetes per the Student Diabetes Management Act. The secretary or secretary’s designee may require additional documentation to be provided by the parent or guardian, school district or charter school before responding to the complaint. Such additional documentation, if requested, shall be due within 10 days of the request. The secretary or secretary’s designee, at the secretary’s discretion, may require a hearing to be conducted within 60 days of receipt of the complaint or additional documentation, whichever is later, and to include a representative of the school district or charter school, before the secretary or secretary’s designee. The secretary or the secretary’s designee shall provide a written response with a final decision within 30 days of receipt of the complaint or within 30 days of the hearing’s conclusion, whichever is later.

B. Governing bodies shall submit the following data to the department by October 15, 2020, and no later than October 15 every year thereafter, in a format required by the department for the preceding school year:

(1) the number of students within the school district or state charter school with a diagnosis of diabetes;

(2) the date(s) of the diabetes care training(s) provided to diabetes care personnel;

(3) the name(s) of the licensed school nurse or licensed health care practitioner who provided the diabetes care training(s);

(4) a copy of the agenda for the diabetes care training(s);

(5) the name(s) and title(s) of each staff person identified as a diabetes care personnel;

(6) the name(s) and title(s) of any other personnel who received the diabetes care training(s); and

(7) the school(s) in which each identified diabetes care personnel provides services.

C. The department will post each district and state charter school report on the department’s website by November 15, 2020, and by November 15 every year thereafter.

[6.12.11.13 NMAC – N, 11/26/2019]

6.12.11.14 APPLICATION OF OTHER LAWS:

A. The provisions in this rule shall not constitute the practice of nursing and school districts and governing bodies shall be exempted from all applicable statutory or regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a licensed health care practitioner in the provision of diabetes care as provided within this rule.

B. The provisions in this rule shall not alter, diminish or limit the rights and remedies of eligible students and parents or guardians as made available under any other state or federal law, including Section 504 of the Federal Rehabilitation Act, the Federal Americans with Disabilities Act of 1990 and the Federal Individuals with Disabilities Education Act.

[6.12.11.14 NMAC – N, 11/26/2019]

HISTORY OF 6.12.11 NMAC: [RESERVED]

PUBLIC REGULATION COMMISSION

The Public Regulation Commission approved the emergency repeal of its rule 10.25.3 NMAC - Parental responsibility (filed 6/28/2019) and replace it with 10.25.3 NMAC - Parental responsibility, adopted on 11/13/2019 and effective 11/26/2019.

The Public Regulation Commission approved at its 11/13/2019 hearing

to repeal its emergency rule 10.25.5 NMAC - Fire prevention and public occupancy (filed 1/28/2019) and replace it with 10.25.5 NMAC - Fire prevention and public occupancy effective 11/26/2019.

PUBLIC REGULATION COMMISSION

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 3 PARENTAL RESPONSIBILITY**

10.25.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission, State Fire Marshal Division, Post Office Box 1269, Santa Fe, NM 87504-1269. [10.25.3.1 NMAC - Rp, 10.25.3.1 NMAC, 11/26/2019]

10.25.3.2 SCOPE: This rule applies to all persons required to have a license issued by the state fire marshal in order to sell fireworks. [10.25.3.2 NMAC - Rp, 10.25.3.2 NMAC, 11/26/2019]

10.25.3.3 STATUTORY AUTHORITY: Sections 8-8-6, 8-8-15, 40-5A-9 and 60-2C-3 NMSA 1978. [10.25.3.3 NMAC - Rp, 10.25.3.3 NMAC, 11/26/2019]

10.25.3.4 DURATION: Permanent. [10.25.3.4 NMAC - Rp, 10.25.3.4 NMAC, 11/26/2019]

10.25.3.5 EFFECTIVE DATE: November 26, 2019, unless a later date is cited at the end of a section. [10.25.3.5 NMAC - Rp, 10.25.3.5 NMAC, 11/26/2019]

10.25.3.6 OBJECTIVE: The purpose of this rule is to implement the requirements of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, as they apply to the issuance, renewal,

suspension or revocation of fireworks vendor licenses. [10.25.3.6 NMAC - Rp, 10.25.3.6 NMAC, 11/26/2019]

10.25.3.7 DEFINITIONS: All terms defined in the Parental Responsibility Act shall have the same meanings in this rule unless defined below.

A. HSD means the New Mexico human services department.

B. License means a display distributor, distributor, manufacturer, retailer, specialty retailer or wholesaler license issued to an individual pursuant to the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978.

C. Statement of compliance means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support.

D. Statement of non-compliance means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support. [10.25.3.7 NMAC - Rp, 10.25.3.7 NMAC, 11/26/2019]

10.25.3.8 SANCTIONS: If an applicant or licensee is not in compliance with a judgment and order for support, the state fire marshal shall:

A. deny an application for a license;

B. deny the renewal of a license;

C. have grounds for suspension or revocation of a license. [10.25.3.8 NMAC - Rp, 10.25.3.8 NMAC, 11/26/2019]

10.25.3.9 CERTIFIED LIST:

A. Receipt of certified list from HSD: Upon receipt of HSDs certified list of obligors not in compliance with a judgment and order for support, the state fire marshal shall match the certified list

of obligors against the current list of applicants and licensees. By the end of the month in which the certified list of obligors is received from HSD, the state fire marshal shall report to HSD the names of applicants and licensees who are on the certified list of obligors and the action the state fire marshal has taken in connection with such applicants and licensees.

B. Receipt of application: Upon the later receipt of an application for license or renewal, the state fire marshal shall match the applicant against the most recent certified list of obligors. [10.25.3.9 NMAC - Rp, 10.25.3.9 NMAC, 11/26/2019]

10.25.3.10 INITIAL NOTICE:

A. Notification by letter: Upon determination that an applicant or licensee appears on HSD's certified list of obligors, the state fire marshal shall notify the applicant or licensee by letter that the applicant or licensee must provide the state fire marshal with a subsequent statement of compliance within 30 days of the date the state fire marshal mailed the notification.

B. Contents of letter: The notice letter to applicants and licensees shall advise that failure to timely provide the statement of compliance shall result in commencement of a formal hearing brought by the state fire marshal before the state fire board for rejection of an application or suspension or revocation of an issued license as provided in 10.25.3.11 NMAC.

C. Retailer permits: In order to ensure compliance with the Parental Responsibility Act, every distributor, wholesaler, or manufacturer, before issuing retail permits to individuals, must receive a letter of clearance from the state fire marshal or his designee, stating that the individual applicant is not on the HSD certified list of obligors in violation of a child support judgment and order. Retail permits issued by distributors, wholesalers, and manufacturers to individuals are invalid without state fire marshal's

clearance being attached and available for display. Telefaxed transmission of the state fire marshal's clearance letter is permissible.

[10.25.3.10 NMAC - Rp, 10.25.3.10 NMAC, 11/26/2019]

10.25.3.11 PROCEEDING TO REJECT APPLICATION OR TO SUSPEND OR REVOKE LICENSE:

If an applicant or licensee fails to respond to the initial notice as required by 10.25.3.10 NMAC, the state fire marshal shall file and serve a complaint upon the applicant or licensee. If the state fire marshal's complaint for rejection of an application or suspension or revocation of a license is based solely on the respondent's failure to comply with a judgment and order of support, and there are no additional grounds based on violations of the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978, the complaint shall state:

A. the grounds for the state fire marshals proposed action, and

B. that a hearing shall be held before the state fire board at least 30 days after the date the complaint is mailed, unless the respondent applicant or licensee provides the state fire marshal with a statement of compliance prior to the hearing date.

[10.25.3.11 NMAC - Rp, 10.25.3.11 NMAC, 11/26/2019]

10.25.3.12 EVIDENCE AND PROOF:

In any hearing under 10.25.3.11 NMAC, relevant evidence is limited to the accuracy or veracity of the statement of non-compliance. The statement of non-compliance is conclusive evidence requiring the state fire marshal to take the rejection, suspension or revocation action under 10.25.3.11 NMAC, and is rebuttable only with a subsequent statement of compliance. Upon presentation of the subsequent statement of compliance, the state fire marshal shall dismiss the rejection, suspension or revocation action if it is based solely upon licensee or permittees failure to comply with a judgment and order for support.

[10.25.3.12 NMAC - Rp, 10.25.3.12 NMAC, 11/26/2019]

10.25.3.13 ORDER: When an action to reject an application or suspend or revoke a license or permit is taken by the state fire marshal solely because the applicant, licensee or permittee is not in compliance with a judgment and order for support, the final order shall state that:

A. in application rejection actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

B. in suspension actions, the respondent may be reinstated for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

C. in revocation actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal.

[10.25.3.13 NMAC - Rp, 10.25.3.13 NMAC, 11/26/2019]

10.25.3.14 PROCEDURES:

Proceedings and administrative hearings held pursuant to this rule shall be governed by Section 60-2C-11 NMSA 1978 and the New Mexico public regulation commission rules of procedure, 1.2.2 NMAC.

[10.25.3.14 NMAC - Rp, 10.25.3.14 NMAC, 11/26/2019]

HISTORY OF 10.25.3 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as:

SCC Rule 95-03-FM, Parental Responsibility Act Rule, filed 10/18/95.

History of Repealed Material:

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed 5/9/1997 effective 6/28/2019.

10.25.3 NMAC, State Fire Marshal - Parental Responsibility filed 6/28/2019 effective 11/26/2019.

NMAC History:

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed 5/9/1997 was replaced by 10.25.3 NMAC State Fire Marshal - Parental Responsibility, effective 6/28/2019. 10.25.3 NMAC, State Fire Marshal - Parental Responsibility filed 6/28/2019 was replaced by 10.25.3 NMAC, State Fire Marshal - Parental Responsibility, effective 11/26/2019.

PUBLIC REGULATION COMMISSION

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 5 FIRE PREVENTION AND PUBLIC OCCUPANCY**

10.25.5.1 ISSUING

AGENCY: New Mexico Public Regulation Commission.

[10.25.5.1 NMAC - Rp, 10.25.5.1 NMAC, 11/26/2019]

10.25.5.2 SCOPE:

A. This rule establishes the state's minimum requirements that apply to structures, processes, premises and safeguards regarding:

(1) the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices;

(2) conditions hazardous to life, property or public welfare in the occupancy of structures or premises;

(3) fire hazards in the structure or on the premises from occupancy or operation;

(4) matters related to the construction, extension, repair, alteration or removal of fire protection systems; and

(5) conditions affecting the safety of firefighters and emergency responders during emergency operations.

B. This rule does not apply to detached one- and two-family dwellings and townhouses not more than three stories above

grade plane in height with a separate means of egress and their accessory structures not more than three stories above grade in height built to the New Mexico Residential Building Code.

C. Other state agencies have adopted rules that may or may not apply and that may or may not affect this rule.

(1) The construction industries division of the New Mexico regulation and licensing department (CID) adopts regulations for all construction pursuant to Title 14 NMAC, Housing and Construction, Chapters 5 through 10 NMAC, setting forth the state's minimum requirements that include provisions on fire prevention.

(2) The New Mexico environmental improvement board has adopted rules for aboveground and underground storage tanks containing petroleum or hazardous substances and rules governing hazardous waste administered by the environment department in Title 20, Chapter 5 NMAC.

(3) The board of licensure for professional engineers and surveyors has adopted rules for the design of fire protection and alarm systems pursuant to Title 16, Chapter 39 NMAC.

(4) CID has jurisdiction over all contractors and journeymen installers of fire protection systems and establishes the minimum requirements for licenses and certificates pursuant to the Construction Industries Licensing Act and to Title 14, Chapter 6, Part 6 NMAC on CID license classifications and scopes.

D. AHJs, defined below, may adopt fire protection requirements that are more stringent than 10.25.5 NMAC, provided such requirements do not conflict with this rule. The authority for administration and interpretation of construction-related sections of the NMFC, defined below, that apply to construction projects requiring a building permit is the responsibility of the chief building official or the AHJ. The FM, defined below, shall have the authority for the

administration and interpretation of fire protection systems and the chief building official of an AHJ shall have the authority for the administration and interpretation of building codes other than fire protections systems. [10.25.5.2 NMAC - Rp, 10.25.5.2 NMAC, 11/26/2019]

10.25.5.3 STATUTORY AUTHORITY: Sections 8-8-6, 8-8-15, 59A-52-15, and 59A-52-16 NMSA 1978.

[10.25.5.3 NMAC - Rp, 10.25.5.3 NMAC, 11/26/2019]

10.25.5.4 DURATION: Permanent.

[10.25.5.4 NMAC - Rp, 10.25.5.4 NMAC, 11/26/2019]

10.25.5.5 EFFECTIVE DATE: November 26, 2019 unless a later date is cited at the end of a section.

[10.25.5.5 NMAC - Rp, 10.25.5.5 NMAC, 11/26/2019]

10.25.5.6 OBJECTIVE: The purpose of this rule is to prescribe minimum requirements for the installation, operation and maintenance of fire protection and life safety features in buildings and structures necessary to reasonably protect life and property from the hazards created by fire, explosion, and similar emergencies, and which minimum requirements shall not conflict with the provisions of the Construction Industries Licensing Act.

[10.25.5.6 NMAC - Rp, 10.25.5.6 NMAC, 11/26/2019]

10.25.5.7 DEFINITIONS: In addition to the definitions in 10.25.1 NMAC:

A. "Authority Having Jurisdiction (AHJ)" means an organization, office, or individual responsible for enforcing the minimum requirements of codes, standards and permits for approving equipment, materials and installations or a procedure within its jurisdiction.

B. "Certificate of Fitness" means the State Fire

Marshal's verification document of a fire protection installation, maintenance and inspection company's competence in the methods and materials of the specific fire system subject to the permit, which is obtained pursuant to 10.25.2 NMAC.

C. "Fire Code Official" shall have the meaning provided in Section 202 of the IFC.

D. "Fire Marshal (FM)" means the fire marshal with the authority over permitting and inspections of fire systems within a particular political subdivision of the state.

E. "IFC" means the New Mexico currently-adopted international fire code, 2015 edition, published by the International Code Council and is available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

F. "Life Safety Features" means compliance with NFPA 1 and NFPA 101 for structures built on or before November 15, 2007, and the NMFC for structures build after November 15, 2007.

G. "NFPA 1" means the fire prevention code, 1997 edition, published by the National Fire Protection Association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101.

H. "NFPA 101" means the life safety code, 1997 edition, published by the National Fire Protection Association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101.

I. "New Mexico Fire Code (NMFC)" means the New Mexico fire code created by this rule including the IFC currently-adopted by the construction industries division of the regulation and licensing department in New Mexico by reference.

J. "State Fire Marshal (SFM)" means the director

of the state fire marshal division under the public regulation commission who has the authority for final determination of the application of the fire provisions of this rule throughout the state.

[10.25.5.7 NMAC - Rp, 10.25.5.7 NMAC, 11/26/2019]

10.25.5.8 ADOPTION OF NATIONAL STANDARD: The SFM adopts the IFC which is then incorporated by reference as revised in this rule. In this rule, revisions are numbered to correspond with the section numbering of the IFC and such revisions further amend such sections of the IFC. All references in the IFC to the International Mechanical Code mean the New Mexico Mechanical Code, CID rule 14.9.2 NMAC. All references in the IFC to the International Plumbing Code mean the New Mexico Plumbing Code, CID rule 14.8.2 NMAC. For purposes of this rule, the application of building code section 102.4 of the IFC, 2015 edition, means that the design and construction of new structures shall comply with the currently adopted New Mexico Building Code (NMBC), CID rule 14.7.2 NMAC, and any alterations, additions, changes in use or changes in structures required by the NMFC, and shall be made in accordance with the currently adopted NMBC, CID rule 14.7.2 NMAC.

[10.25.5.8 NMAC - Rp, 10.25.5.8 NMAC, 11/26/2019]

10.25.5.9 CHAPTER 1 ADMINISTRATION:

A. Section 101 General.

(1) Section 101.1 Title. Insert in brackets: New Mexico.

(2) Section 101.2 Scope. This section of the IFC shall not apply. 10.25.5.2 NMAC defines the scope of this rule.

(3) Section 101.2.1 Appendices. The appendices of the IFC shall not apply, except where adopted by an AHJ.

(4) Sections

101.3 through 101.5. See the corresponding sections of the IFC.

B. Section 102.3 (Applicability, Change in use or occupancy.) Delete this section and replace with the following: “Changes shall not be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the NMBC. Subject to the approval of the building code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure allowed to be occupied for purposes in other groups without conforming to all of the requirements of this code and the NMBC for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.”

C. Section 104 General authority and responsibilities. If Section 104.6 (official records) or any other provision of the NMFC conflicts with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, the provisions of the Inspection of Public Records Act shall control.

D. Section 105 permits. The following sections of the IFC are deleted: Section 105.6, Section 105.7.2 through 105.7.5, Section 105.7.8 through 105.7.16 and Section 105.7.18. All permits required through the CID permitting process are strictly within the authority of CID. The NMFC establishes the state minimum fire code allowing local jurisdictions and political subdivisions the ability to enact stricter ordinances provided the state minimum is complied with by all such jurisdictions. The SFM requires permits and licenses for fireworks as provided in 10.25.6 NMAC.

E. Certificates of fitness. The SFM requires certificates of fitness for the installation, inspection, maintenance and repair of fire protection systems as provided in 10.25.2 NMAC.

F. Section 105.3 Conditions of a Permit. This section is deleted in its entirety and replaced with the following language: “105.3 conditions of a permit. Such permission, if granted in Section 105.1.2.2, shall not be construed as authority to violate, cancel or set aside any other provisions of this code or other applicable regulations or laws of the jurisdiction.”

G. Section 105.4.1 Construction documents: submittals. This section is deleted in its entirety and replaced with the following language:

(1) One set of construction documents shall be submitted to the Building Official, SFM or FM, who is the AHJ for the construction project.

(2) All construction documents that are submitted to the SFM shall comply with the plans submittal information provided by the SFM on their respective website and shall be submitted with the applicant’s certificate of fitness number, permit application and permit number or building official unique identifier and shall comply with the approval process provided in 10.25.5.16 NMAC and with the CID regulation on permits, CID rule 14.5.2 NMAC.

H. Section 106.2.2 Approval Required. Change the last sentence to read, “Any portions that do not comply shall be corrected and such portion shall not be covered or concealed prior to inspection as required by the fire code official.”

I. Section 108 Board of appeals. This section is deleted in its entirety and replaced with the following language: The appeal processes provided in Sections 59A-52-21 and 59A-52-22 NMSA 1978 shall apply and may be initiated by filing an appeal as provided in 10.25.1 NMAC.

J. Section 109 Violations. The penalties listed in section 109.4 of the IFC shall not apply in New Mexico. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

K. Section 111 Stop work order. The penalties listed in section 111.4 of the IFC shall not apply. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

L. Section 113 Fees. This section of the IFC shall not apply.
[10.25.5.9 NMAC - Rp, 10.25.5.9 NMAC, 11/26/2019]

10.25.5.10 CHAPTER 2 DEFINITIONS:

A. Definitions defined by the SFM or the NMFC shall apply specifically to the enforcement and requirements of 10.25.5 NMAC. Terms not defined in this rule but defined in the New Mexico Building Code, CID rule 14.7.2 NMAC, the New Mexico Residential Building Code, CID rule 14.7.3 NMAC, the New Mexico Existing Building Code, CID rule 14.7.7 NMAC, the New Mexico Mechanical Code, CID rule 14.9.2 NMAC, the New Mexico Plumbing Code, CID rule 14.8.2 NMAC, the New Mexico Electrical Code, CID rule 14.10.4 NMAC, or the National Fire Protection Association's (NFPA) NFPA 54 shall have the meanings as ascribed in those codes.

B. Section 202 General Definitions. The definition of "record drawings" is deleted in its entirety and replaced with the following language: "record drawings" means submittals and amended submittals that document the location of all appurtenances of fire protection systems to include any corrections incurred during final acceptance.
[10.25.5.10 NMAC - Rp, 10.25.5.10 NMAC, 11/26/2019]

10.25.5.11 CHAPTER 3 GENERAL REQUIREMENTS:

A. Section 301.1 Scope. This section applies as mandated by the local AHJ.

B. Section 301.2 Permits. This Section shall apply to the extent mandated by the local AHJ.

C. Section 304.1.2 Vegetation. This section applies to the extent mandated by the local AHJ.

D. Section 307, Open burning, recreational fires and portable outdoor fireplaces. This section of the IFC applies only and to the extent mandated by the local AHJ.

E. Section 308.3 Group A Occupancies Exception #2. Delete the word "international" and replace with the word "New Mexico".
[10.25.5.11 NMAC - Rp, 10.25.5.11 NMAC, 11/26/2019]

10.25.5.12 CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS: In section 405.5 Record keeping, item number 7 is deleted and replaced with the following language: "Problems encountered and corrective actions for the problems encountered."
[10.25.5.12 NMAC - Rp, 10.25.5.12 NMAC, 11/26/2019]

10.25.5.13 CHAPTER 6 BUILDING SERVICES AND SYSTEMS: Amend section 603.9 to add "if required by the fire code official" at the end of the section.
[10.25.5.13 NMAC - Rp, 10.25.5.13 NMAC, 11/26/2019]

10.25.5.14 CHAPTER 9 FIRE PROTECTION SYSTEMS: Throughout chapter 9, the following shall apply:

A. Delete the term "International Mechanical Code" where used in this chapter and replace with the term "New Mexico Mechanical Code".

B. Delete the term "International Plumbing Code" where used in this chapter and replace with the term "New Mexico Plumbing Code".

C. Section 904.12 Commercial cooking systems. The replacement of commercial cooking equipment, including but not limited to a stove, hood, deep fryer, grill, griddle, or any other device used in the cooking process, shall comply with this Section and with the Uniform Mechanical Code as adopted by reference in CID rule 14.9.2.13 NMAC.

D. Section 905.3.4.1 Hose and Cabinet. Insert the following sentence at the end of

this section, "Unless required by a fire code official, one and one-half inch hoses and hose cabinets are not required for class II and class III standpipe systems.

[10.25.5.14 NMAC - Rp, 10.25.5.134NMAC, 11/26/2019]

10.25.5.15 CHAPTER 10 MEANS OF EGRESS: See Section 10 of the NMBC, CID rule 14.7.2 NMAC, and IFC section 1031, Maintenance of the Means of Egress.
[10.25.5.15 NMAC - Rp, 10.25.5.15 NMAC, 11/26/2019]

10.25.5.16 CHAPTER 56 EXPLOSIVES AND FIREWORKS: This chapter of the IFC and 10.25.6 NMAC apply to fireworks. If there is any conflict between this chapter of the IFC and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978, the Fireworks Licensing and Safety Act shall control.
[10.25.5.16 NMAC - Rp, 10.25.5.16 NMAC, 11/26/2019]

10.25.5.17 REPEAL OF CODES: NFPA 1 and NFPA 101 are repealed except as provided in 10.25.5.19 NMAC.
[10.25.5.17 NMAC - Rp, 10.25.5.17 NMAC, 11/26/2019]

10.25.5.18 APPROVAL OF FIRE PROTECTION SYSTEMS: Prior to beginning construction or occupancy of any building or structure regulated by the currently-adopted New Mexico Building Codes and the NMFC, the contractor shall apply for a permit and submit drawings for plan review by the AHJ and approval of the fire protection system from the SFM or FM, as appropriate, of a fire protection system for the building or structure. The review and approval of fire protection systems is in addition to all review required by CID pursuant to Title 14 of the New Mexico administrative code.

A. Filing drawings with the SFM for review.

(1) Documents required. The contractor shall submit one set of drawings for the building or structure. Submittals shall be in accordance with “Plans Submittal Information” obtained via the SFM website and this rule. For convenience, a contractor may submit additional sets of drawings and an envelope with prepaid postage directly to the SFM for the SFM’s use in returning the drawings after review. Electronic filing of fire protection plans will be accepted via electronic plans review software that is compatible with software used by the SFM.

(2) Where to submit. The contractor shall submit drawings of the fire protection system to the fire code enforcement bureau of the SFM in compliance with 10.25.1 NMAC or to an AHJ as required by the AHJ. The SFM shall not accept drawings by facsimile transmission.

(3) Requirements for drawings. The drawings shall clearly indicate fire protection systems in sufficient detail to establish compliance with applicable codes and standards, and shall include the signature and seal of the licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act (found at Chapter 61, Article 23 NMSA 1978) that prepared the drawings. Drawings submitted shall comply with plans submittal information provided by the SFM on its website.

(4) Fees. The SFM does not require any fees for review of fire protection systems.

B. Third party review. The FM or FM, as appropriate, in their sole discretion, may require third party review of drawings if specialized expertise or knowledge is needed, and shall so notify the contractor in writing with a cost estimate if so determined. If the contractor agrees to proceed with review, the contractor shall file written approval by the method provided in 10.25.1.8 NMAC and shall pay directly to the third party the cost of such review before the SFM or FM, as appropriate, returns the drawings.

C. Return of drawings. If the SFM or FM, as appropriate, approves the drawings, the drawings shall be stamped “approved”, with the SFM or FM, as appropriate, retaining one complete set of drawings or submittals. If the SFM or FM, as appropriate, rejects the drawings or submittals or does not approve the drawings, an explanation for the basis for rejection or non approval shall be given to the contractor. The contractor shall pick up approved drawings if prior arrangements have not been agreed to for return by mail.

D. Rejection. The SFM or FM, as appropriate, may reject fire protection system drawings for the following reasons:

- (1)** the drawings are incomplete;
- (2)** the drawings indicate a violation of these rules or applicable codes and standards;
- (3)** the submitted drawings are not in accordance with Title 16, Chapter 39 NMAC;
- (4)** no certificate of fitness is on file with the SFM;
- (5)** the drawings or submittals contain a misrepresentation or inaccuracy;
- (6)** third party review of the drawings or submittals reveals a violation of these rules, applicable codes or standards;
- (7)** all SFM or FM requirements have not been included in the submittals; or
- (8)** any other valid reason as determined by the SFM.

E. Re-submission. If drawings are rejected, the contractor may correct the deficiencies noted in the rejection letter. New submittals shall be submitted by the same process for filing original drawings for review.

F. Construction.
(1) Construction may commence upon approval of plans and issuance of the proper permits.

(2) After installation of the fire protection system has been completed, a request for inspection shall be made to the FM. The request may be made orally or in writing to the FM or as otherwise required by the SFM.

G. Inspection and testing. The SFM or FM, as appropriate, will inspect the fire protection system of a building or structure within a reasonable period of time after a request for inspection. The SFM or FM, as appropriate, shall notify the AHJ of approval or rejection of drawings or of the fire protection system, and, if applicable, the AHJ may request a letter indicating the system is in compliance with approved plans and applicable codes and standards. The SFM or FM, as appropriate, shall not approve the installation if the inspection indicates:

- (1)** a violation of this rule or applicable codes and standards;
- (2)** the fire protection system was not installed in compliance with the drawings;
- (3)** the fire protection system was not installed by a licensed entity and certified journeyman;
- (4)** no valid certificate of fitness is on file with the SFM;
- (5)** the final acceptance testing of each fire protection system is not recorded as complete; or
- (6)** any other valid reason as determined by the SFM.

H. Re-inspection. If the FM does not approve the installation of the fire protection system and the responsible party corrects the deficiencies noted in the inspection, the responsible party may re-apply for inspection following the same procedure as for the initial inspection.

[10.25.5.18 NMAC - Rp, 10.25.5.5.18 NMAC, 11/26/2019]

10.25.5.19 CODE REQUIREMENTS FOR EXISTING BUILDINGS AND STRUCTURES: For purposes of this section, “constructed” shall mean that the contractor has begun any substantial portion in the design, permitting or building of a building or structure. A change in occupancy requires approval from the appropriate building code official. All new construction, alteration, repair, and additions require adherence to applicable building codes and laws.

A. Existing buildings and structures.

(1) Upon an inspection being conducted by the FM, an owner or contractor is not required to renovate or adapt an existing building or structure to comply with the currently-adopted NMFC, but shall comply with the requirements in place when the existing building or structure was constructed. See IFC, Section 104.

(2) Following the adoption of this provision, an existing structure or part of a structure that changes its occupancy classification, however done, must comply with the currently-adopted NMFC.

(3) Following the adoption of this provision, an existing fire protection system that is replaced, repaired, or altered by the FM, whose classification has not changed, shall comply with the currently-adopted NMFC. The system shall comply with the currently-adopted New Mexico Existing Building Code.

(4) Fire protection systems constructed prior to November 15, 2007, which fall under NFPA 1, 1997 edition, and NFPA 101, 1997 edition, shall be required to have a permit using the requirements of the currently-adopted NMFC, section 105, for the installation of any new, altered, remodeled, repaired or partial fire protection system.

(5) Fire protection systems plans which were initially submitted to the AHJ for review under the currently-adopted

NMFC as per the requirements for new construction under Subsection B of 10.25.2.19 NMAC will be inspected per the currently-adopted NMFC.

B. New construction.

Any new building, new alteration, new addition, or new structure after the effective date of the adoption of the currently-adopted NMFC shall comply with the currently-adopted NMFC.

C. Variance. The SFM may grant a variance from any of the requirements of this subsection if the applicant demonstrates to the SFM’s satisfaction that the variance sought does not degrade the overall protection of individuals from fire and similar emergencies.

D. Hazard to life or property. Notwithstanding any other provision of these rules, if the FM or AHJ determines that a nonconforming facility constitutes an immediate hazard to life or property, the FM or AHJ shall so notify the contractor or owner of the facility in writing, and shall permit the contractor a reasonable period of time to comply with current rules. If the contractor does not comply with the notification and its requirements within the time specified, the FM or AHJ may order the owner or contractor to take the facility out of service.

[10.25.5.19 NMAC - Rp, 10.25.5.5.19 NMAC, 11/26/2019]

HISTORY OF 10.25.5 NMAC:

Pre-NMAC History: none.

History of Repealed Material:

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) repealed 11/15/2007.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) repealed, effective 6/28/2019.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 1/28/2019) repealed, effective 11/26/2019.

NMAC History:

10 NMAC 25.6, Safe Handling and Sale of Fireworks, effective 6/9/1997.

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) was replaced by 10.25.5 NMAC, Fire Prevention and Public

Occupancy, effective 11/15/2007. 10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 6/28/2019.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 1/28/2019) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 11/26/2019.

PUBLIC REGULATION COMMISSION

This is an amendment to 10.25.1 NMAC, Sections 3, 4, 8, 9, 12 and 15 effective 11/26/2019. This amendment is a permanent replacement of the emergency amendment to 10.25.1 NMAC, Sections 3, 4, 8, 9, 12 and 15 effective 6/28/2019.

10.25.1.3 STATUTORY

AUTHORITY: Sections 8-8-6, 8-8-15, [8-8-21,] 59A-52-2, 59A-52-15, 59A-52-16, and 60-2C-3 NMSA 1978. [As required by Subsection C of Section 8-8-15 NMSA 1978 of the Public Regulation Commission Act and by Paragraph (1) of Subsection A of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this rule is adopted as an emergency rule because the rule is necessary to prevent an imminent peril to, and to preserve, the public peace, health, safety, or general welfare to govern fire prevention, control of fires, and safe egress from and use of public occupancies.] [10.25.1.3 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.4 DURATION:

[Temporary. As provided by Subsection E of Section 14-4-5.6 NMSA 1978 of the State Rules Act, this emergency rule is temporary and shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule.] Permanent.

[10.25.1.4 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.8 REQUIREMENTS FOR FILED DOCUMENTS:

In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the fire marshal, including applications referenced in 10.25.6 NMAC, shall be filed as follows.

A. Address for filing documents.

(1) Documents filed by mail shall be addressed to the New Mexico fire ~~[marshal's office]~~ marshal division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico fire ~~[marshal's office]~~ marshal division located on the ~~[second]~~ fourth floor of ~~[142 West Palace Avenue]~~ 1120 Paseo de Peralta, in Santa Fe, New Mexico.

B. Required format.

All reports, articles, applications and other documents filed with the fire marshal shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink.

C. Facsimile filing prohibited. The fire marshal will not accept documents for filing or applications submitted by facsimile.

D. Date of filing.

The fire marshal shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the fire marshal's ~~[office]~~ division, unless the document is returned pursuant to 12.3.1.11 NMAC, except that if the fire marshal receives a document after regular business hours, the fire marshal shall stamp and consider it received on the next regular business day.

[10.25.1.8 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.9 APPLICATIONS, FORMS AND GUIDELINES:

A. Mandatory applications. For ease and consistency of data entry, the fire marshal has prepared mandatory permit and license applications for compliance with 10.25.2 and 10.25.6 NMAC.

B. Optional permit application and guidelines. The fire marshal provides an optional permit application for display fireworks, described in Subsection E of 10.25.6.8 NMAC, and other guidelines to aid in fire prevention and safety, and to assist in carrying out certain requirements of these rules.

C. How to obtain.

Interested persons may obtain copies of mandatory and optional applications, forms, and guidelines:

(1) by calling the fire ~~[marshal's office]~~ marshal division at ~~[505-827-3550]~~ 505-476-0080 or 1-800-244-6702;

(2) at the fire ~~[marshal's office]~~ marshal division located on the ~~[second]~~ fourth floor of ~~[142 West Palace Avenue]~~ 1120 Paseo de Peralta in Santa Fe;

(3) by writing to the fire ~~[marshal's office]~~ marshal division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269; or

(4) from the fire ~~[marshal's]~~ marshal website: [http://www.nmprc.state.nm.us/\[sfm.htm\]](http://www.nmprc.state.nm.us/[sfm.htm]).

[10.25.1.9 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.12 REQUESTS FOR COPIES:

A. Filing of request.

A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered as provided in 12.3.1.9 NMAC, or sent by facsimile to (505) 827-3778. If a person cancels a request within ~~[twenty-four]~~ (24) 24 hours, the fire marshal shall not assess any fees.

B. Estimate of fees.

When the fire marshal receives a

request for copies, the fire marshal's office shall issue an informal estimate of fees. The fire marshal shall charge the fees enumerated in Subsection C of 1.2.2.8 NMAC, public regulation commission rules of procedure.

C. Completion of request.

(1) If the person approves the estimate, the fire marshal shall prepare the copies within the time periods provided in the Inspection of Public Records Act, Section 14-2-1 *et seq.* NMSA 1978.

(2) When the requested documents are ready, the fire marshal shall provide a written statement of fees due and shall release the copies electronically upon payment of all fees due.

[10.25.1.12 NMAC - N, 11/15/2007; A, 9/1/2008; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.15 APPEALS: A

person aggrieved by any order of the fire marshal may appeal the decision:

A. to the commission in accordance with Section 59A-52-21 NMSA 1978, by filing an appeal with the New Mexico Public Regulation Commission Docketing Office by mail to P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or by delivery to the P.E.R.A. Building, Room ~~[406]~~ 413, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501; or

B. to district court in accordance with Section 59A-52-22 NMSA 1978.

[10.25.1.15 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

PUBLIC REGULATION COMMISSION

This is an amendment to 10.25.6 NMAC, Sections 3, 4 and 8 effective 11/26/2019. This amendment is a permanent replacement of the emergency amendment to 10.25.6 NMAC, Sections 3, 4 and 8 effective 6/28/2019.

10.25.6.3 STATUTORY

AUTHORITY: Sections ~~8-8-6,~~ 8-8-15, ~~[8-8-21,]~~ 59A-52-15, and

60-2C-3 NMSA 1978. [As required by Subsection C of Section 8-8-15 NMSA 1978 of the Public Regulation Commission Act and by Paragraph (1) of Subsection A of Section 14-4-5-6 NMSA 1978 of the State Rules Act, this rule is adopted as an emergency rule because the rule is necessary to prevent an imminent peril to, and to preserve, the public peace, health, safety, or general welfare to increase the observance of safety precautions in handling fireworks and decrease the number of fireworks related accidents in New Mexico.]
 [10.25.6.3 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.6.4 DURATION:
 [Temporary. As provided by Subsection E of Section 14-4-5-6 NMSA 1978 of the State Rules Act, this emergency rule is temporary and shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule.] Permanent.
 [10.25.6.4 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.6.8 LICENSES AND PERMITS FOR SALE OF FIREWORKS: The fire marshal issues licenses and permits as provided in Section 60-2C-4 NMSA 1978. Local governing bodies may have additional requirements for fireworks sale or use.

A. Application procedures and forms. Any person may apply for a license or permit to sell fireworks as provided in Section 60-2C-4 NMSA 1978 by submitting a required application to the fire marshal as provided in 10.25.1.9 NMAC. The following information shall be included in each application for a permit or license involving fireworks:

- (1) the applicant's name and mailing address;
- (2) the applicant's telephone number and social security number;

(3) any company or corporate name or name the applicant is using for business purposes;

(4) the type of permit or license requested;

(5) the physical address where applicant [proposes to] will sell fireworks and a description of the type of structure in which applicant proposes to sell fireworks;

(6) name and phone number of a contact person at the location where applicant proposes to sell fireworks;

(7) the name and address of applicant's primary supplier of fireworks; and

(8) the following statement: "All information provided on and with this form is true and correct to the best of my knowledge and belief. I have read, reviewed and understand the New Mexico laws and rules regarding safe packaging, handling and sale of fireworks. I agree to fully comply with these laws and rules as a condition of obtaining and operating pursuant to a fireworks license or permit. I understand that the approval of this application depends upon compliance with Sections 60-2C-1 through 60-2C-11 NMSA 1978 of the Fireworks Licensing and Safety Act. In the event that my license or permit is lost or destroyed, I understand that I shall immediately notify the Fire Marshal's office and that I am not entitled to a refund of the original application fees, but must submit a new application and pay a \$20.00 replacement fee for the type of license or permit required for that location. I understand that Section 60-2C-4 NMSA 1978 does not permit the fire marshal to process applications for a license or permit during any holiday selling periods";

(9) each application shall contain the date and notarized signature of the applicant; and

(10) an applicant shall submit fees required by Section 60-2C-4 NMSA 1978 with each application following the provisions of 10.25.1.13 NMAC.

B. Review of application. The fire marshal shall review all applications for licenses and permits. Unless otherwise prohibited by law, the fire marshal shall issue licenses and permits within 30 days of receipt of complete applications. The fire marshal shall disapprove and return incomplete applications within 30 days of receipt.

C. Damaged or lost license or permit. The fire marshal will not issue duplicate fireworks licenses or permits. If a license or permit is lost or damaged, the vendor shall immediately notify the fire marshal who shall revoke the license or permit. The fire marshal will not refund any fees for a lost or damaged license or permit. If the vendor wishes to continue to sell fireworks at that location, the vendor shall submit the \$20.00 fee required by section 60-2C-4 NMSA 1978 for a replacement license or permit.

D. Special provisions for retailer permits. Applicants may obtain retailer permits for the sale of fireworks from the fire marshal or from a licensed manufacturer, distributor or wholesaler.

(1) Products list. Any person with a retailer permit shall maintain a complete written list of products for sale, available on inspection by an AHJ, of all fireworks at each retail location.

(2) Obtaining books of 20 retailer permits. A licensed manufacturer, distributor or wholesaler may obtain books of 20 retailer permits from the fire marshal by following the process in Subsection A of 10.25.6.8 NMAC.

(3) Requirements for resale of retailer permits. A licensed manufacturer, distributor or wholesaler may resell retailer permits in books of 20, by requiring the same mandatory application form, fees and other requirements in Subsection A of 10.25.6.8 NMAC. A licensed manufacturer, distributor or wholesaler shall account for all fees collected and permits sold.

(a) Semi-annual report. On January

31 and July 31 of each year, a licensed manufacturer, distributor or wholesaler that has purchased any books of 20 retailer permits shall provide a report to the fire marshal detailing the numbers of sold and unsold permits, with all information required by Section 60-2C-3 NMSA 1978. The report shall include a copy of each permit application and permit issued, as well as the name and address of each location permitted for the sale of fireworks.

(b)

Unsold permits. If a licensed manufacturer, distributor or wholesaler has not sold all permits in books of 20 purchased, it may request in writing that the fire marshal issue to it credit toward new permits. The written request shall contain a list of all unsold permit numbers and shall include the original unsold permits.

(c)

Inspection list. On or before June 15 of each year, each licensed manufacturer, distributor and wholesaler shall provide to the fire marshal a list of locations of sales of fireworks for the retailer permits it has sold to assist the fire marshal in conducting inspections of these locations.

E. Display permit.

The fire marshal provides an optional permit application for display fireworks as required by Section 60-2C-9 NMSA 1978, available as provided in 10.25.1 NMAC, for the use of counties and municipalities requiring such display permits.

F.

Revocation of license or permit.

(1)

Notwithstanding any other provision of these rules, if the fire marshal determines that any licensee's or permittee's actions or facility constitutes:

(a)

a hazard to life or property, the fire marshal shall so notify the licensee or permittee in writing, and shall permit him a reasonable period of time to comply with these rules and to eliminate the hazard; if the licensee or permittee does not comply with the notification and its requirements within the time specified, the fire

marshal may revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements;

(b) an

imminent hazard to life or property, the fire marshal shall order the licensee or permittee to eliminate the hazard immediately; if the licensee or permittee fails to eliminate the hazard immediately, the fire marshal shall revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements and demonstrate that the hazard has been eliminated.

(2) If any

retailer possesses fireworks not permitted by Section 60-2C-7 NMSA 1978, the fire marshal shall revoke the retailer's permit and confiscate the impermissible fireworks using the procedure required by 10.25.6.11 NMAC.

[10.25.6.8 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

**REGULATION AND LICENSING DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

The Regulation and Licensing Department - Dental Board reviewed at its 10/25/2019 hearing, 16.5.1 NMAC - Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions filed 12/1/2000. The Board has decided to repeal 16.5.1 NMAC - Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions filed 12/1/2000 and replace it with 16.5.1 NMAC - Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions, adopted 11/14/2019 and effective 12/14/2019.

The Regulation and Licensing Department - Dental Board reviewed at its 10/25/2019 hearing, 16.5.6 NMAC - Dentist, Licensure by Examination filed 6/1/2001. The Board has decided to repeal 16.5.6 NMAC - Dentist, Licensure by Examination filed 6/1/2001 and replace it with 16.5.6 NMAC -

Dentist, Licensure by Examination, adopted 11/14/2019 and effective 12/14/2019.

The Regulation and Licensing Department - Dental Board reviewed at its 10/25/2019 hearing, 16.5.10 NMAC - Dentists, Continuing Education Requirements filed 3/16/2006. The Board has decided to repeal 16.5.10 NMAC - Dentists, Continuing Education Requirements filed 3/16/2006 and replace it with 16.5.10 NMAC - Dentists, Continuing Education Requirements, adopted 11/14/2019 and effective 12/14/2019.

The Regulation and Licensing Department - Dental Board reviewed at its 10/25/2019 hearing, 16.5.16 NMAC, Dentists, Disciplinary Proceedings filed 12/9/2011. The Board has decided to repeal 16.5.16 NMAC, Dentists, Disciplinary Proceedings filed 12/9/2011 and replace it with 16.5.16 NMAC, Dentists, Disciplinary Proceedings, adopted 11/14/2019 and effective 12/14/2019.

The Regulation and Licensing Department - Dental Board reviewed at its 10/25/2019 hearing, 16.5.30 NMAC, Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions filed 12/9/2011. The Board has decided to repeal 16.5.30 NMAC, Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions filed 12/9/2011 and replace it with 16.5.30 NMAC, Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions, adopted 11/14/2019 and effective 12/14/2019.

**REGULATION AND
LICENSING DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 5 DENTISTRY
(DENTISTS, DENTAL
HYGIENISTS, ETC.)
PART 1 GENERAL
PROVISIONS**

16.5.1.1 ISSUING

AGENCY: New Mexico Board of Dental Health Care.

[16.5.1.1 NMAC – Rp,
16.5.1.1NMAC, 12/14/2019]

16.5.1.2 SCOPE: The provisions in 16.5.1 NMAC apply to all parts of Chapter 5 and provide relevant information to all licensees or certificate holders or anyone affected or interested in the licensing and regulation of dentists, dental hygienists and dental assistants.

[16.5.1.2 NMAC - Rp, 16.5.1.2 NMAC, 12/14/2019]

16.5.1.3 STATUTORY

AUTHORITY: Section 61-5A-1 through Section 61-5A-29, NMSA 1978, (Repl. Pamp. 1996). Section 16.5.1.10 NMAC is authorized by Subsection C of Section 10-15-1 NMSA 1978, (Repl. Pamp. 1993) Section 16.5.1.11 NMAC and 16.5.1.12 NMAC are authorized by Section 14-2-1 through 14-2-16, NMSA 1978, (Repl. Pamp. 1993). Section 16.5.1.26 NMAC is authorized by Section 14-16-18, NMSA 1978.

[16.5.1.3 NMAC - Rp, 16.5.1.3 NMAC, 12/14/2019]

16.5.1.4 DURATION:

Permanent.

[16.5.4 NMAC - Rp, 16.5.4 NMAC, 12/14/2019]

16.5.1.5 EFFECTIVE

DATE: December 14, 2019, unless a different date is cited at the end of a section.

[16.5.1.5 NMAC - Rp, 16.5.1.5 NMAC, 12/14/2019]

16.5.1.6 OBJECTIVE:

The objective of Part 1 is to set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16.

[16.5.1.6 NMAC - Rp, 16.5.1.6 NMAC, 12/14/2019]

16.5.1.7 DEFINITIONS:

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. “CITA” means the council of interstate testing agencies, 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.

E. “Close personal supervision” means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

F. “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.

G. “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.

H. “Current patients of record” means the New Mexico licensed dentist has seen the patient in the practice in the last 12 months.

I. “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.

J. “Dental record” means electronic, photographic, radiographic or manually written records.

K. “Diagnosis” means the identification or determination of the nature or cause of disease or condition.

L. “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.

M. “Electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

N. “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.

O. “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.

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

Q. “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.

R. “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.

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

T. “NERB/CDCA” means the former north east regional board of dental examiners, now called the commission of dental competency assessments, 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.

U. “Mobile dental facility” means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

V. “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 Subsection G of 61-5A-5 NMSA 1978.

W. “Palliative procedures” means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

X. “Portable dental unit” means a non-facility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

Y. “Professional background service” means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

Z. “Protective patients stabilization” means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.

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

BB. “Specialist” means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.

CC. “SRTA” 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.

DD. “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.

EE. “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.

FF. “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.

GG. “Third Party payer” means an organization other than the patient (1st party) or the health care provider (2nd party) involved in the financing of personal health services.

HH. “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.

II. “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. [16.5.1.7 NMAC - Rp, 16.5.1.7 NMAC, 12/14/2019]

16.5.1.8 LICENSE DISPLAY: A valid license, certificates or permits must be displayed and must be visible to the public in each place of employment or business of the licensee. [16.5.1.8 NMAC - Rp, 16.5.1.8 NMAC, 12/14/2019]

16.5.1.9 RESPONSIBILITY OF LICENSEE OR CERTIFICATE HOLDER:

A. It is the responsibility of the licensee or certificate holder to keep the board informed of a current mailing address. All correspondence, including renewal forms, will be mailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of address.

B. The board must be informed of current practice address(s) for all licensees or certificate holders. Any change in practice address(s) must be reported to the board in writing within 30 days of the change.

[16.5.1.9 NMAC - Rp, 16.5.1.9 NMAC, 12/14/2019]

16.5.1.10 SEVERABILITY:

If any part of these rules are held invalid by a court of competent jurisdiction, the remaining provisions of the rules shall remain in force and effect, unless otherwise determined by a court of competent jurisdiction.

[16.5.1.10 NMAC - Rp, 16.5.1.10 NMAC, 12/14/2019]

16.5.1.11 TELEPHONE CONFERENCES:

As authorized by Subsection C of Section 10-15-1 NMSA 1978 of the Open Meetings Act, NMSA 1978, when it is difficult or impossible for a member of the board or committee to attend a meeting in person, the member may participate through a conference telephone. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board or committee who speaks during the meeting.

[16.5.1.11 NMAC - Rp, 16.5.1.11 NMAC, 12/14/2019]

16.5.1.12 PUBLIC RECORDS:

Except as provided herein and except as otherwise

provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the board. Upon notification of the defendant, the notice of contemplated action, or the pre notice of contemplated action settlement agreed upon prior to the issuance of an notice of contemplated action and the information contained in the complaint file becomes a public record and subject to disclosure.

With the exemption of voluntarily admission to a monitored treatment program shall not be public record. (Refer to 61-5A-25, NMSA 1978).

[16.5.1.12 NMAC - Rp, 16.5.1.12 NMAC, 12/14/2019]

16.5.1.13 INSPECTION OF PUBLIC RECORDS:

The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16, NMSA 1978. The board administrator is the custodian of the board's records.

[16.5.1.13 NMAC - Rp, 16.5.1.13 NMAC, 12/14/2019]

16.5.1.14 NON-PUBLIC RECORDS:

The following records are considered confidential and are not subject to public inspection:

A. letters of reference, if applicable;

B. medical reports or records of chemical dependency, physical or mental examinations or treatment as outlined in the rules governing the impaired practitioner program;

C. examination scores;

D. the contents of any examination used to test for an individual's knowledge or competence;

E. investigative files;

F. written and oral communication relating to actual or potential disciplinary action, including complaints; and

G. matters of opinion.

[16.5.1.14 NMAC - Rp, 16.5.1.14 NMAC, 12/14/2019]

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) 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) clinical examiners for regional boards shall be allowed up to 24 hours per triennial period;

(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;

(11) participation in a board or dental hygiene committee board approved charitable event to include a post-event survey; charitable event credits shall be limited to eight hours per triennial period.

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) A course that includes a post study course examination 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 30 credits per triennial period will be allowed in the category of on-line, webinar, or self-study.

(5) A license or certificate holder may take the board's open book jurisprudence examination, up to once a year, and be granted three hours of continuing education credit for successfully passing the exam with a score of seventy-five percent or above. There will be a twenty-five dollar (\$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 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.

[16.5.1.15 NMAC - Rp, 16.5.1.15 NMAC, 12/14/2019]

16.5.1.16 CONTROL AND PREVENTION OF BLOODBORNE INFECTIONS:

The following rules are enacted to prevent transmission of the human immunodeficiency virus (HIV), hepatitis B infectious state (i.e. acute infection and chronic carriers only) (HBV), the hepatitis C virus (HCV), and other blood borne infections.

A. Requirements for providers. Any provider licensed or certified by the New Mexico board of dental health care must comply with the guidelines established in this rule. A provider who fails to use appropriate infection control techniques and sterilization procedures to protect patients may be subject to disciplinary action by the board.

B. Infection control as a standard of care. In offices and facilities providing dental services, compliance with the following policies and procedures are required to further reduce the low risk of infection:

(1) implementation of policies and procedures to minimize occupational

exposure to potentially infectious materials (e.g. blood); guidelines or recommendations of the American dental association, American dental hygienists' association, center for disease control, and the occupational safety and health administration must be followed;

(2) strict adherence to infection control practices and universal barrier precautions are mandatory in all dental care settings and shall include sterilization of instruments and hand pieces, after each use, by any acceptable sterilization technique as currently recognized by the center for disease control; and

(3) policies and procedures must be implemented to report and manage patient and provider exposure to blood; affected individuals must be notified when exposure may constitute a significant risk of transmission of blood borne infection; the notification must include the nature of possible infection, but need not include the identity of the provider should the provider be the known source of infection.

C. Infection control training. All providers shall have formal training in infection control techniques. Training is a requirement for licensure, as well as for renewal of all licenses and certificates. The course must be approved in accordance with Section 16.5.1.15 NMAC or sponsored by the occupational safety and health administration.

D. Evaluation of provider with blood borne infection.

(1) Counseling and testing recommended. The board and committee strongly recommend counseling and testing of any provider for HIV, HBV, HCV and other blood borne infections.

(2) Evaluation of individual cases. Providers who have transmissible blood borne infections and who perform invasive procedures which might cause increased risk of transmission are strongly urged to submit to a voluntary evaluation process

established by the New Mexico department of health. Individual evaluations conducted under the auspices of the New Mexico department of health will be strictly confidential unless that agency recommends practice restrictions.

The New Mexico department of health will notify the board and committee of recommended practice restrictions. Any violation of practice restrictions will be considered grounds for disciplinary action by the board and committee.

(3) Impairment evaluation. If a dental health care provider licensed or certified by the board has a functional impairment due to blood borne infection or other medical impairment, they must contact the impaired committee of the board.

E. Confidentiality for dental health care workers.

(1) The board and committee recognize providers are not required to disclose blood borne infections to patients or employers unless they cannot perform the essential duties of their job or practice, or unless the provider poses a danger to patient safety.

(2) Any retrospective studies of New Mexico providers shall be carried out under the guidance and direction of the New Mexico department of health. [16.5.1.16 NMAC - Rp, 16.5.1.16 NMAC, 12/14/2019]

16.5.1.17 BOARD OF DENTAL HEALTH CARE:

A. Officers. The board shall elect a 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.

[16.5.1.17 NMAC - Rp, 16.5.1.17 NMAC, 12/14/2019]

16.5.1.18 DENTAL HYGIENIST COMMITTEE:

A. Officers. The committee shall elect a 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.

[16.5.1.18 NMAC - Rp, 16.5.1.18 NMAC, 12/14/2019]

16.5.1.19 BOARD AND COMMITTEE MEETINGS:

The board and committee shall meet at least four times a year, regular meetings shall not be more than 120 days apart, and only two of those meetings may be public rules hearings.

[16.5.1.19 NMAC - Rp, 16.5.1.19 NMAC, 12/14/2019]

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 - Rp, 16.5.1.20 NMAC, 12/14/2019]

16.5.1.21 CONSULTING SERVICES; CLAIMS REVIEW BY INSURANCE COMPANIES OR THIRD PARTY PAYERS:

A dentist who reviews dental insurance or third party payment claims for patients being treated by a dentist in New Mexico must meet the following requirements:

A. be a current New Mexico licensed dentist; and

B. within 60 days, of initial agreement or contract with insurance company or third party payer, the reviewing dentist must provide the board office with the dentist's license number and name

of the insurance company or third party payer for which the dentist is providing claims review services. [16.5.1.21 NMAC - Rp, 16.5.1.21 NMAC, 12/14/2019]

16.5.1.22 LEGAL EXPERT WITNESS REQUIREMENTS: A dentist who testifies in a malpractice case(s) or legal case(s) involving New Mexico licensed dentists and procedures performed in New Mexico must also be a current New Mexico licensed dentist and in good standing. [16.5.1.22 NMAC - Rp, 16.5.1.22 NMAC, 12/14/2019]

16.5.1.23 PARENTAL RESPONSIBILITY ACT; DELEGATION OF AUTHORITY: The authority of the New Mexico board of dental health care to issue a notice of contemplated action, to refer cases in which a notice of contemplated action has been issued for administrative prosecution, to hold hearings and issue decision and orders to any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in Section 40-5A-1, et seq., NMSA 1978, may be delegated to the New Mexico regulation and licensing department. This section shall not be construed to deprive the board of its authority to issue a notice of contemplated action for any violation of the Parental Responsibility Act, to refer a case for administrative prosecution, hold a hearing or issue a decision and order for any violation of the Parental Responsibility Act. [16.5.1.23 NMAC – Rp, 16.5.1.23 NMAC, 12/14/2019]

16.5.1.24 RECORD KEEPING: All records of patient treatment must be maintained for at least six years. If a dentist or non-dentist owner retires or is no longer practicing in New Mexico, the dentist or non-dentist owner must provide the following documentation to the board office:

A. actual date of retirement or date of no longer practicing in New Mexico;

B. proof of written notification to all patients currently under active treatment; and

C. the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients in the 12 previous months to the date of closing practice, 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. [16.5.1.24 NMAC - Rp, 16.5.1.24, 12/14/2019]

16.5.1.25 CODE OF ETHICS: Unless otherwise stated in the rules or statute, the board, licensees and certificate holders shall refer to the most recent version of the American dental association (ADA) code of ethics for guidance. [16.5.1.25 NMAC - Rp, 16.5.1.25 NMAC, 12/14/2019]

16.5.1.26 ELECTRONIC SIGNATURES: The board will accept electronic signatures on all applications and renewals submitted for professional licensure under the Dental Health Care Act, Sections 61-5A-1 to-30, NMSA 1978. [16.5.1.26 NMAC - Rp, 16.5.1.26 NMAC, 12/14/2019]

16.5.1.27 PROTECTIVE PATIENT STABILIZATION: Unless otherwise stated in rules or statute, the board, licensees and certificate holders shall refer to the American academy of pediatric dentistry's guidelines on protective patients stabilization. [16.5.1.27 NMAC - Rp, 16.5.1.27 NMAC, 12/14/2019]

16.5.1.28 MOBILE DENTAL FACILITIES AND PORTABLE DENTAL UNITS: Dentists and dental hygienists that perform services in mobile dental facilities or use portable dental units shall use the following guidelines:

A. Maintain all records, either paper or electronic in a secure form or location.

B. Provide to the board, upon request, all treatment records and locations of treatment.

C. Provide to the board, upon request, the name, address, and contact information of the owner/operator of the mobile dental facility.

D. Provide each patient, parent, or guardian with the name(s) of the dentist or hygienist providing treatment and contact information immediately after treatment.

E. Have agreements in place with New Mexico licensed dentists for any immediate follow-up care.

F. Dentists and hygienists shall display a copy of their license and registration within or directly outside the mobile dental facility or areas in which portable dental units are utilized. Exceptions:

(1) occasional services provided to a patient of record of a fixed dental office who is treated outside of the dental office;

(2) services publicly funded and provided solely as a public health measure;

(3) services provided to a patient by an accredited dental or dental hygiene school;

(4) services by a dentist, physician, or CRNA providing sedation in a dental office;

(5) collaborative hygienists in compliance with rules established in 16.5.17 NMAC. [16.5.1.28 NMAC - Rp, 16.5.1.28 NMAC, 12/14/2019]

16.5.1.29 ADVERTISING, PROMOTIONS AND SPECIALTY RECOGNITIONS FOR ALL LICENSEES: This rule applies to advertising in all types of media that is directed to the public. No dentist, dental hygienist, non-dentist owner, or their representatives shall advertise in any form of communication in a manner that is misleading, deceptive, or false. The licensee will be responsible for any third party making such false claims or misleading advertising on their (licensee's) behalf.

A. Definitions:
(1) for the purposes of this section, “advertising/advertisement” is:

(a) any written or printed communication for the purpose of soliciting, describing, or promoting a dentist’s, hygienist’s, non-dentist owner’s licensed activity, including, but not limited to, a brochure, letter, pamphlet, newspaper, directory listing, periodical, business card or other similar publication;

(b) any radio, television, internet, computer network or similar airwave or electronic transmission which solicits or promotes the dental practice’

(c) “advertising” or “advertisement” does not include any of the following;

(i) any printing or writing on buildings, uniforms or badges, where the purpose of the writing is for identification;

(ii) any printing or writing on memoranda or other communications used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of the dental practice;

(iii) any printing or writing on novelty objects or dental care products.

(2) “bait advertising” is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise or services, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise or services of the type so advertised. See 16 U.S.C Section 238.

B. General requirements:

(1) at the time any type of advertisement is

placed, the licensee must in good faith possess and provide to the board upon request information that would substantiate the truthfulness of any assertion, omission, or claim set forth in the advertisement;

(2) the board recognizes that clinical judgment must be exercised by a dentist or dental hygienist. Therefore, a good faith diagnosis that the patient is not an appropriate candidate for the advertised dental or dental hygiene service or product is not a violation of this rule;

(3) licensee shall be responsible for, and shall approve any advertisement made on behalf of the dental or dental hygiene practice, except for brand advertising, i.e. advertising that is limited to promotion of the name of the practice or dental corporation. The licensee shall maintain a record documenting their approval and shall maintain such record for a period of three years.

C. The term false advertising means advertising, including labeling, which is misleading in any material respect; and in determining whether any advertising is misleading, there shall be taken into account among other things not only representations made by statement, word, design, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity to which the advertising related under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. See Section 57-15-2 NMSA 1978. Misleading, deceptive, or false advertising includes, but is not limited to the following, and if substantiated, is a violation and subject to disciplinary action by the board:

(1) a known material misrepresentation of fact;

(2) the omission of a fact necessary to make the statement considered as a whole not materially misleading;

(3) advertising that is intended to be or is likely to

create an unjustified expectation about the results the dentist or dental hygienist can achieve;

(4) advertising that contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purpose of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Individual experiences are not a substitute for scientific research. Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;

(5) the false or misleading use of a claim regarding licensure, certification, registration, permitting, listing, education, professional memberships or an unearned degree;

(6) advertising that uses patient testimonials unless the following conditions are met:

(a) the patient’s name, address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the Board upon request by the board;

(b) dentists or dental hygienists who advertise dental or dental hygiene services, which are the subject of the patient testimonial, must have actually provided these services to the patient making the testimonial;

(c) if compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such

testimonial must include a statement that the patient has been compensated for such testimonial;

(d)

a specific release and consent for the testimonial shall be obtained from the patient;

(e)

any testimonial shall indicate that results may vary in individual cases;

(7) advertising

that makes an unsubstantiated medical claim or is outside the scope of dentistry, unless the dentist or dental hygienist holds a license, certification, or registration in another profession and the advertising and or claim is within the scope authorized by the license, certification, or registration in another profession;

(8) advertising

that makes unsubstantiated promises or claims, including but not limited to claims that the patient will be cured;

(9) the use of

bait advertising as outlined in federal trade commission guidelines;

(10) advertising

that includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind if it does not indicate that it is a paid endorsement;

(11) advertising

that infers or gives the appearance that such advertisement is a news item without using the phrase "paid advertisement";

(12) the

promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;

(13) the use

of any personal testimonial by the licensee attesting to a quality or competence of a service or treatment.

(14) advertising

that claims to provide services at a specific rate and fails to disclose that a dental benefit plan may provide payment for all or part of the services;

(15) print

advertising that contains all applicable conditions and restrictions of an offer that is not clearly legible or visible. The board will consider font size and positioning within the advertisement

as to what is determined as false, misleading or deceptive;

(16) audio

advertising that contains all applicable conditions and restrictions that is broadcast at different speed and volume of the main recording and offer;

(17) failure

to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's or non-dentist owner's name(s), address and contact information or direct reference where the name of the dentist(s) or non-dentist owner(s) can be found, including, but not limited to, an internet website;

(18) failure to

update website(s) wherein the names of the current dentist(s) are for each office location within 30 days of the change;

(19) failure to

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;

(20) failure to

practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;

(21) advertising

or making claims that a licensee or practice claims to be superior to any other licensee or practice, including, but not limited to, descriptions of being "the highest quality", a "super-dentist" or "super-general dentist/practitioner", "specially-trained hygienist", "hygienist specializing in non-surgical periodontics", or similar;

D. Specialty Practice

and Advertising: the board may discipline a dentist for advertising or otherwise holding himself/herself out to the public as a practicing a dental specialty unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-

graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation (CODA) in one to the specialty areas of dentistry recognized by the American dental association. See Subsection E and F of Section 61-5A-12 NMSA 1978.

E. Acronyms:

In addition to those acronyms required by law pertaining to one's business entity such as professional corporation (P.C.) or limited liability company (L.L.C.), dentists or dental hygienists may only use DDS, DMD, RDH, MD, PhD, MA, MS, BA, BS. Any credential that does not meet this requirement must be completely spelled out.

[16.5.1.29 NMAC - N, 12/14/2019

History of 16.5.1 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 8/14/1969; BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 9/21/1970; BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 02/12/1973; Article I, Board of Dentistry, filed 3/11/1981; Rules 1.1-1.8, Dental Hygiene Committee Rules and Regulations, filed 11/20/1987; BOD Rule 1, Board of Dentistry, filed 2/9/1989; BOD Rule 14, Public Records Policy, filed 3/13/1992; BOD Rule 15, The Control and Prevention of the Transmission of Blood borne Infections in Dental Offices and Facilities, filed 9/16/1992; BODHC Rule 1-95, General Provisions, filed 5/5/1995; BODHC Rule 2-95, Definitions, filed 5/5/1995; BODHC Rule 3-95, Guidelines for Approved Continuing Education, filed 5/5/1995;

BODHC Rule 4-95, Control and Prevention of the Transmission of Blood borne Infections, filed 5/5/1995;
 BODHC Rule 5-95, Savings Clause, filed 5/5/1995.

History of Repealed Material:

BDE 73-1, Rules and Regulations of the New Mexico Board of Dentistry (filed 2/12/1973) repealed by Article XIV, filed 3/12/1981.

16.5.1 NMAC, Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions filed 12/1/2001, Repealed effective 12/14/2019.

Other History:

BODHC Rule 1-95, General Provisions; BODHC Rule 2-95, Definitions; BODHC Rule 3-95, Guidelines for Approved Continuing Education; BODHC Rule 4-95, Control and Prevention of the Transmission of Blood borne Infections; BODHC Rule 5-95, Savings Clause all (filed 5/5/1995) were renumbered, reformatted, amended and replaced by 16 NMAC 5.1, General Provisions, effective 09/30/1996.

16 NMAC 5.1, General Provisions (filed 9/17/1996) was renumbered, reformatted and amended to 16.5.1 NMAC, General Provisions, effective 12/14/2000.

16.5.1 NMAC, Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions filed 12/1/2001 was replaced by Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions, effective 12/14/2019.

**REGULATION AND LICENSING DEPARTMENT
 DENTAL HEALTH CARE,
 BOARD OF**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
 CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
 PART 6 DENTISTS, LICENSURE BY EXAMINATION**

16.5.6.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.

[16.5.6.1 NMAC - Rp, 16.5.6.1 NMAC, 12/14/2019]

16.5.6.2 SCOPE: The provisions of 16.5.6 NMAC apply to all applicants for licensure by examination as a general dentist or specialty practitioner.

[16.5.6.2 NMAC - Rp, 16.5.6.2 NMAC, 12/14/2019]

16.5.6.3 STATUTORY AUTHORITY: 16.5.6 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-12, NMSA 1978, (Repl. Pamp. 1996).

[16.5.6.3 NMAC - Rp, 16.5.6.3 NMAC, 12/14/2019]

16.5.6.4 DURATION: Permanent.

[16.5.6.4 NMAC - Rp, 16.5.6.4 NMAC, 12/14/2019]

16.5.6.5 EFFECTIVE DATE: December 14, 2019, unless a later date is cited at the end of a section.

[16.5.6.5 NMAC - Rp, 16.5.6.5 NMAC, 12/14/2019]

16.5.6.6 OBJECTIVE: To establish the requirements for application for licensure as a dentist by examination.

[16.5.6.6 NMAC - Rp, 16.5.6.6 NMAC, 12/14/2019]

16.5.6.7 DEFINITIONS: For the purposes of these rules, “dental public health” is specialty practice focused on preventing and controlling dental diseases and promoting dental health through organized community efforts. Since the diplomat examination does not test clinical skills, dentists licensed based on diplomat status shall not practice clinical dentistry.

[16.5.6.7 NMAC - Rp, 16.5.6.7 NMAC, 12/14/2019]

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 Section 61-5A-12 A, NMSA 1978;

B. successfully completed the dental national board examination as defined in Section 61-5A-12 A, NMSA 1978;

C. passed a board approved clinical examination; including periodontal and restorative procedures on patients in a clinical setting, the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to a board accepted examining agent for examination; and

(2) 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 seventy five 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.

[16.5.6.8 NMAC - Rp, 16.5.6.8 NMAC, 12/14/2019]

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 Subsection A of 61-5A-12 NMSA; and

B. a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in Subsection E of 61-5A-12 NMSA 1978 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,
- (8) prosthodontics, or
- (9) other specialties approved by the American dental association;

C. successfully completed the dental national board examination as defined in Subsection A of 61-5A-12 NMSA 1978;

D. passed a specialty clinical examination approved by the board; the results of the exam are valid in New Mexico for a period not to exceed five years; examination results must be sent directly to the board office;

E. an applicant in any specialty defined above for which there is no specialty clinical examination may substitute diplomat status for the examination;

F. completed the jurisprudence exam with a score of at least seventy five 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.

[16.5.6.9 NMAC - Rp, 16.5.6.9 NMAC, 12/14/2019]

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 six months; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with an 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 clinical examination 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 12 months;

F. 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;

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 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 or postgraduate training program to be sent directly to the board office from the accredited program.

[16.5.6.10 NMAC - Rp, 16.5.6.10 NMAC, 12/14/2019]

16.5.6.11 RE-EXAMINATION PROCEDURE:

An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as set forth in Subsection D of 16.5.5.8 NMAC to re-take the exam. [16.5.6.11 NMAC - Rp, 16.5.6.11 NMAC, 12/14/2019]

16.5.6.12 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 dental licenses are issued for a period not to exceed three years, as defined in Section 16.5.11.8 NMAC.

B. Any application that cannot be approved by the delegate of the board will be reviewed by the

entire board at the next scheduled meeting.
 [16.5.6.12 NMAC - Rp, 16.5.6.12 NMAC, 12/14/2019]

History of 16.5.6 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:
 Article II, Examination to Practice Dentistry, filed 3/11/1981.
 Article II, Examination to Practice Dentistry, filed 1/12/1982.
 Article, II, Examination to Practice Dentistry, filed 3/30/1982.
 Article, II, Examination to Practice Dentistry, filed 2/5/1988.
 BOD Rule 3, Examination to Practice Dentistry, filed 2/9/1989.
 BODHC Rule DS 1-95, Dentistry, General Practice Licensure, filed 5/5/1995.
 BODHC Rule DS 2-95, Dentistry, Specialty Licensure by Examination, filed 5/5/1995.

History of Repealed Material:

16.5.6 NMAC - Dentist, Licensure by Examination filed 6/1/2001, Repealed effective 12/14/2019.

Other History:

16 NMAC 5.6, Dentists, Licensure by Examination, filed 9/17/1996;
 16 NMAC 5.6, Dentists, Licensure by Examination, filed 9/17/1996 - renumbered, reformatted and amended to 16.5.6 NMAC, Dentists, Licensure by Examination, effective 6/14/2001.
 16.5.6 NMAC - Dentist, Licensure by Examination filed 6/1/2001 was replaced by 16.5.6 NMAC - Dentist, Licensure by Examination, effective 12/14/2019.

**REGULATION AND LICENSING DEPARTMENT
 DENTAL HEALTH CARE,
 BOARD OF**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
 CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
 PART 10 DENTISTS, CONTINUING EDUCATION REQUIREMENTS**

16.5.10.1 ISSUING
AGENCY: New Mexico Board of Dental Health Care.
 [16.5.10.1 NMAC - Rp, 16.5.10.1 NMAC, 12/14/2019]

16.5.10.2 SCOPE: The provisions of Part 10 of Chapter 5 apply to all licensed dentists who are applying to renew their license.
 [16.5.10.2 NMAC - Rp, 16.5.10.2 NMAC, 12/14/2019]

16.5.10.3 STATUTORY
AUTHORITY: Part 10 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-10 NMSA 1978 (1996 Repl. Pamp).
 [16.5.10.3 NMAC - Rp, 16.5.10.3 NMAC, 12/14/2019]

16.5.10.4 DURATION:
 Permanent.
 [16.5.10.4 NMAC - Rp, 16.5.10.4 NMAC, 12/14/2019]

16.5.10.5 EFFECTIVE
DATE: December 14, 2019, unless a later date is cited at the end of a section.
 [16.5.10.5 NMAC - Rp, 16.5.10.5 NMAC, 12/14/2019]

16.5.10.6 OBJECTIVE:
 To establish criteria for continuing education for dentists licensed in New Mexico.
 [16.5.10.6 NMAC - Rp, 16.5.10.6 NMAC, 12/14/2019]

16.5.10.7 DEFINITIONS:
[RESERVED]
 [16.5.10.7 NMAC - Rp, 16.5.10.7 NMAC, 12/14/2019]

16.5.10.8 HOURS
REQUIRED: 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 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.
 [16.5.10.8 NMAC - Rp, 16.5.10.8 NMAC, 12/14/2019]

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, 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. Anesthesia/Sedation: Any dentist holding a minimal, moderate or deep sedation/general anesthesia permit is required to follow continuing education requirements as set forth in 16.5.15.20 NMAC.

D. Management of pain with controlled substances. Any dentists who holds a Federal drug enforcement administration registration to prescribe controlled substances shall successfully complete three continuing dental or medical education hours, as defined in Part 16.5.57 NMAC, in appropriate courses that shall include:

(1) an understanding of the pharmacology and risks of controlled substances,
 (2) a basic awareness of the problems of abuse, addiction and diversion,
 (3) awareness of state and federal regulations for the prescription of controlled substances, and
 (4) management of the treatment of pain.
 [16.5.10.9 NMAC - Rp, 16.5.10.9 NMAC, 12/14/2019]

16.5.10.10 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.
 [16.5.10.10 NMAC - Rp, 16.5.10.10 NMAC, 12/14/2019]

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.
 [16.5.10.11 NMAC - Rp, 16.5.10.11 NMAC, 12/14/2019]

HISTORY OF 16.5.10 NMAC:
Pre-NMAC History: The material in this part was derived from that previously files with the commission of public records - state records center and archives as:
 Article XIII, Disciplinary Proceedings, filed 3/12/1981.
 Article XIII, Disciplinary Proceedings, filed 1/12/1982.
 Article XIII, Disciplinary Proceedings, filed 3/30/1982.
 That applicable portion of Article XIII, Disciplinary Proceedings replaced by BOD Rule 12, Continuing Education Requirements, filed 2/9/1989.
 That applicable portion of BOD Rule 12, Continuing Education Requirements replaced by BODHC Rule DS 5-95, Dentists, Continuing Education Requirements, filed 5/5/1995.

History of Repealed Material:
 16.5.10 NMAC - Dentists, Continuing Education Requirements filed 3/16/2006, Repealed 12/14/2019.

Other History:
 BODHC Rule DS 5-95, Dentists, Continuing Education Requirements (filed 5/5/1995) was renumbered, reformatted, amended and replaced by 16 NMAC 5.10, Dentists, Continuing Education Requirements, effective 9/30/1996.
 16 NMAC 5.10, Dentists, Continuing Education Requirements (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.10 NMAC, Dentists, Continuing Education Requirements, effective 4/17/2006.
 16.5.10 NMAC - Dentists, Continuing Education Requirements filed 3/16/2006 was replaced by 16.5.10 NMAC - Dentists, Continuing

Education Requirements effective 12/14/2019.

**REGULATION AND LICENSING DEPARTMENT
 DENTAL HEALTH CARE,
 BOARD OF**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
 CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
 PART 16 DENTISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS**

16.5.16.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
 [16.5.16.1 NMAC - Rp, 16.5.16.1 NMAC, 12/14/2019]

16.5.16.2 SCOPE: The provisions of Section 16.5.16 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a dentist licensed by the board.
 [16.5.16.2 NMAC - Rp, 16.5.16.2 NMAC, 12/14/2019]

16.5.16.3 STATUTORY AUTHORITY: Section 16.5.16 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).
 [16.5.16.3 NMAC - Rp, 16.5.16.3 NMAC, 12/14/2019]

16.5.16.4 DURATION: Permanent.
 [16.5.16.4 NMAC - Rp, 16.5.16.4, 12/14/2019]

16.5.16.5 EFFECTIVE DATE: December 14, 2019, unless a later date is cited at the end of a section.
 [16.5.16.5 NMAC - Rp, 16.5.16.5 NMAC, 12/14/2019]

16.5.16.6 OBJECTIVE:
To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.
[16.5.16.6 NMAC - Rp, 16.5.16.6 NMAC, 12/14/2019]

16.5.16.7 DEFINITIONS:
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.

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. "Direct reference"
means a phone number or website where names and contact information of the licensee can be referenced.

D. "Drug abuser"
means a person who takes a drug or drugs for other than legitimate medical purposes.

E. "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.

F. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

G. "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.

H. "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.
[16.5.16.7 NMAC - Rp, 16.5.16.7 NMAC, 12/14/2019]

16.5.16.8 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, the Dental Health Care Act or the Impaired Dentists and Dental Hygienists Act.
[16.5.16.8 NMAC - Rp, 16.5.16.8 NMAC, 12/14/2019]

16.5.16.9 ACTIONS:
A. The board may fine, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

B. The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the Act or Rules.
[16.5.16.9 NMAC - Rp, 16.5.16.9 NMAC, 12/14/2019]

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/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 within 15 business days 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, including:

(a) an owner dentist or supervisor causing an employee dentist to make a referral for dental treatment based on contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by referral to another practitioner, and failure to notify the patient of such contractual obligations for referrals;

(b) an owner dentist or supervisor causing an employee dentist to use a dental laboratory due to contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by the use of another dental laboratory.

(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 advertising and specialty recognition rules as defined in 16.5.1.29 NMAC.

(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 most current 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 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, 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 as defined in Section 16.5.17 NMAC;

(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 current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;

(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 Section 61.5A-21 4 & 6 or Subsection C and D of Section 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, Section (30-31-1 NMSA 1978) or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board within 10 business days of request, its investigators or representatives with information requested by the board;

(31) failure to appear before the board when requested by the board in any disciplinary proceeding;

(32) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 seq.;

(33) fraudulent record keeping;

(34) failure to properly install amalgam separator as defined in Section 16.5.58 NMAC;

(35) failure to properly operate and maintain amalgam separator as defined in 16.5.58 NMAC; and

(36) failure to properly dispose of amalgam waste as defined in Section 16.5.58 NMAC. [16.5.16.10 NMAC - Rp, 16.5.16.10, 12/14/2019]

16.5.16.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations. [16.5.16.11 NMAC - Rp, 16.5.16.11 NMAC, 12/14/2019]

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 - Rp, 16.5.16.12 NMAC, 12/14/2019]

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 Section 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 - Rp, 16.5.16.13, 12/14/2019]

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 Section 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 - Rp, 16.5.16.14 NMAC, 12/14/2019]

HISTORY OF 16.5.16 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 08/14/1969; BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 09/21/1970; BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 02/12/1973; Article XIII, Disciplinary Proceedings, filed 03/11/1981; Article XIII, Disciplinary Proceedings, filed 01/12/1982; Article XIII, Disciplinary Proceedings, filed 03/30/1982; BOD Rule 11, Disciplinary Proceedings, filed 02/09/1989; BODHC Rule DS 9-95, Dentists, Disciplinary Proceedings, filed 05/05/1995.

History of Repealed Material:

Article XIV, Repeals BDE 73-1, Rules and Regulations of the New Mexico Board of Dentistry, filed 2/12/1973. 16.5.16 NMAC, Dentists, Disciplinary Proceedings filed 12/9/2011, Repealed 12/14/2019.

Other History:

16 NMAC 5.16, Dentists, Disciplinary Proceedings, filed 09/17/1996;
 16 NMAC 5.16, Dentists, Disciplinary Proceedings, filed 09/17/1996- renumbered, reformatted and amended to 16.5.16 NMAC, Dentists, Disciplinary Proceedings, effective 12/14/2000.
 16.5.16 NMAC, Dentists, Disciplinary Proceedings filed 12/9/2011 was replaced by 16.5.16 NMAC, Dentists, Disciplinary Proceedings, effective 12/14/2019.

**REGULATION AND
 LICENSING DEPARTMENT
 DENTAL HEALTH CARE,
 BOARD OF**

**TITLE 16 OCCUPATIONAL
 AND PROFESSIONAL
 LICENSING
 CHAPTER 5 DENTISTRY
 (DENTISTS, DENTAL
 HYGIENISTS, ETC.)
 PART 30 DENTAL
 HYGIENISTS, DISCIPLINARY
 PROCEEDINGS, LICENSE
 REVOCATION OR SUSPENSION
 FOR DISCIPLINARY ACTIONS**

16.5.30.1 ISSUING
AGENCY: New Mexico Board of Dental Health Care.
 [16.5.30.1 NMAC - Rp, 16.5.30.1 NMAC, 12/14/2019]

16.5.30.2 SCOPE: The provisions of 16.5.30 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensed dental hygienist.
 [16.5.30.2 NMAC - Rp, 16.5.30.2 NMAC, 12/14/2019]

16.5.30.3 STATUTORY AUTHORITY: 16.5.30 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21, NMSA 1978, (Repl. Pamp. 1996).
 [16.5.30.3 NMAC - Rp, 16.5.30.3 NMAC, 12/14/2019]

16.5.30.4 DURATION:
 Permanent.
 [16.5.30.4 NMAC - Rp, 16.5.30.4 NMAC, 12/14/2019]

16.5.30.5 EFFECTIVE DATE: December 14, 2019, unless a later date is cited at the end of a section.
 [16.5.30.5 NMAC - Rp, 16.5.30.5 NMAC, 12/14/2019]

16.5.30.6 OBJECTIVE:
 To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.
 [16.5.30.6 NMAC - Rp, 16.5.30.6 NMAC, 12/14/2019]

16.5.30.7 DEFINITIONS:
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.

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. "Direct reference"
 means a phone number or website where names and contact information of the dental hygienists(s) can be referenced.

D. "Drug abuser"
 means a person who takes a drug or drugs for other than legitimate medical purposes.

E. "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.

F. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

G. "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, administration of an antagonist, or a combination of these.

H. "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.
 [16.5.30.7 NMAC - Rp, 16.5.30.7 NMAC, 12/14/2019]

16.5.30.8 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, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act.
 [16.5.30.8 NMAC - Rp, 16.5.30.8 NMAC, 12/14/2019]

16.5.30.9 ACTIONS:
A. The committee may assess fines, deny, revoke, suspend, stipulate, or otherwise limit a license if it is determined the licensee is guilty of violating any of the provisions outlined in the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

B. The committee may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

C. The committee shall take into consideration the dual role of dental hygienists as professionals and employees when taking disciplinary action against a licensee. In the event the complaint is ruled to be based primarily in the role of employee, the

committee may share the findings with the board so appropriate action may be considered for the employer/dentist.

[16.5.30.9 NMAC - Rp, 16.5.30.9, 12/14/2019]

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 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 most recent version of the American dental hygienists association's code of ethics;

(8) fraud, deceit or misrepresentation in any application;

(9) violation of any order of the committee, 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 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 advertising rules in 16.5.1.29 NMAC;

(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) failure of a collaborative dental hygienist to comply with the advertisement rules as defined in 16.5.1.29 NMAC;

(19) failure to practice dental hygiene 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;

(20) failure to practice dental collaborative hygiene without displaying his/her full name as it appears on the license issued by the board on the entrance door of each office;

(21) 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;

(22) conviction of either a misdemeanor or a felony punishable by incarceration;

(23) aiding and abetting a dental auxiliary who is not properly certified;

(24) patient abandonment;

(25) habitually addicted as defined in Paragraph (4) & (6) of Subsection A of Section 61.5A-21 and Subsections C and D of Section 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, Section 30-31-1 NMSA 1978 or habitual or excessive use or abuse of alcohol;

(26) failure of the licensee to furnish the committee within 10 business days of request; its investigators or representatives with information requested by the committee, and ratified by the board;

(27) failure to appear before the board when requested by the committee, and ratified by the board, in any disciplinary proceeding; and

(28) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 seq., NMSA1978.

[16.5.30.10 NMAC - Rp, 16.5.30.10 NMAC, 12/14/2019]

16.5.30.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the committee is authorized to issue action

investigative subpoenas and to employ experts with regard to pending investigations.

[16.5.30.11 NMAC - Rp, 16.5.30.11 NMAC, 12/14/2019]

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 - Rp, 16.5.30.12 NMAC, 12/14/2019]

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 - Rp, 16.5.30.13 NMAC, 12/14/2019]

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 - Rp, 16.5.30.14 NMAC, 12/14/2019]

HISTORY OF 16.5.30 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 8/14/1969;
 BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 9/21/1970;
 BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 2/12/1973;

Article XIII, Disciplinary Proceedings, filed 3/11/1981;
 Article XIII, Disciplinary Proceedings, filed 1/12/1982;
 Article XIII, Disciplinary Proceedings, filed 3/30/1982;
 BOD Rule 11, Disciplinary Proceedings, filed 2/9/1989;
 BODHC Rule DH 10-95, Dental Hygienists, Disciplinary Proceedings, filed 5/5/1995.

History of Repealed Material:

BDE 73-1, Rules and Regulations of the New Mexico Board of Dentistry (filed 2/12/1973) repealed by Article XIV, filed 3/12/1981.

16.5.30 NMAC, Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions filed 12/9/2011, Repealed effective 12/14/2019.

Other History:

BODHC Rule DH 10-95, Dental Hygienists, Disciplinary Proceedings (filed 5/5/1995) was renumbered, reformatted and amended into the first version of NMAC as 16 NMAC 5.30, Dental Hygienists, Disciplinary Proceedings, effective 9/30/1996.

16 NMAC 5.30, Dental Hygienists, Disciplinary Proceedings (filed 9/17/1996) was renumbered, reformatted and amended to 16.5.30 NMAC, Dental Hygienists, Disciplinary Proceedings, effective 12/14/2000.

16.5.30 NMAC, Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions filed 12/9/2011

was replaced by 16.5.30 NMAC, Dental Hygienists, Disciplinary Proceedings, License Revocation or Suspension for Disciplinary Actions, effective 12/14/2019.

**REGULATION AND LICENSING DEPARTMENT
 DENTAL HEALTH CARE,
 BOARD OF**

This is an amendment to 16.5.14 NMAC, Sections 7 and 9, effective 12/14/2019.

16.5.14.7 DEFINITIONS:

A. “Adjunctive dental services” means additional procedures, as recognized by the board, used for increasing efficiency, safety, outcome, or performance of dental treatment, including, but not limited to, cosmetic procedures or therapies.

B. “Botulinum toxin” means a neurotoxin that temporarily reduces muscle contraction.

C. “Dermal fillers” means a resorbable substance injected below the skin surface to reduce lines, wrinkles, or facial grooves, and for the purpose of this rule, are for the oral and maxillofacial regions of the body.

D. “Obstructive sleep apnea” means a spectrum of abnormal breathing during sleep that occurs when there is partial or complete collapse of the airway.

E. “Sleep-related breathing disorders” includes, for the purpose of this section, snoring, upper airway resistance syndrome, and obstructive sleep apnea. These disorders must be diagnosed by a physician.

F. “Upper airway resistance syndrome” is a partial collapse of the airway that is an intermediate form of abnormal breathing between snoring and obstructive sleep apnea.

[16.5.14.7 NMAC - N, 7/17/2013; A, 12/14/2019]

16.5.14.9 GUIDELINES FOR DENTISTS TREATING

SLEEP-RELATED BREATHING DISORDERS:

A. Dentists treating patients that have been diagnosed by a physician with sleep-related breathing disorders, including, but not limited to, primary snoring, upper airway resistance syndrome or obstructive sleep apnea are to follow these guidelines published by the American dental association, the American academy of dental sleep medicine and American academy of sleep medicine.

(1) “the role of dentistry in the treatment of sleep-related breathing disorders” (American dental association);

(2) “dental sleep medicine standards for screening, treating and managing adults with sleep-related breathing disorders” (American academy of dental sleep medicine);

(3) “clinical practice guideline for the treatment of obstructive sleep apnea and snoring with oral appliance therapy: an update for 2015” (joint statement, American academy of sleep medicine and American academy of dental sleep medicine).

B. Dentists cannot diagnose sleep related breathing disorders, but are a vital partner in treating these conditions in collaboration with medical colleagues. [16.5.14.9 NMAC - N, 12/14/2019]

**REGULATION AND LICENSING DEPARTMENT
 DENTAL HEALTH CARE,
 BOARD OF**

This is an amendment to 16.5.42 NMAC, Section 9, effective 12/14/2019.

16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL [AUXILIARY] AUXILIARY:

A. satisfactory completion of an expanded function dental auxiliary course at an institution. Where the dental assisting program is accredited by the joint commission on

dental accreditation, and approved by the board. The applicant must be certified in all four expanded functions as defined in Section 16.5.33 NMAC; 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 Section 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 expanded function dental auxiliary (EFDA) certification by the supervising dentist as defined in Subsection G of Section 16.5.42.7 NMAC;

(5) instructors must have higher or same level of licensure or certification in respective courses they are teaching;

C. pass a clinical examination accepted by the board for certification of EFDA;

D. completed the jurisprudence examination with a score of at least seventy five 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;

(1) the board will send to the EFDA candidate upon

receipt of the completed application the following:

(a) permit to start apprenticeship to be displayed during apprenticeship; and

(b) affidavit form to be signed by supervising dentist at start and completion of apprenticeship;

(2) 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;

(3) once the permit is issued by the board office the EFDA candidate has 180 days to complete the apprenticeship; (a grace period of no more than 60 days may be granted by the board chair or vice-chair) and

(4) upon completion of the apprenticeship the candidate must return the EFDA permit and the signed affidavit to the board; once the permit and signed affidavit have been received and verified by the board a certificate for EFDA may be issued.

[16.5.42.9 NMAC - N, 1/9/2012; A, 06/14/2012; A, 7/17/2013; A, 12/16/2015; A, 3/18/2018; A, 12/14/2019]

**REGULATION AND LICENSING DEPARTMENT
DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.57 NMAC, Section 7 and 8, effective 12/14/2019.

**16.5.57.7 DEFINITIONS:
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.

B. "Accepted guideline" means the most current clinical pain management guideline developed by the American geriatrics society or the American pain society or a clinical pain management guideline based on evidence and expert opinion that has been accepted by the New Mexico medical board.

[B] C. "Acute pain" means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

[C] D. "Chronic pain" means pain that persists after reasonable dental efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months "chronic pain" does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

[D] E. "Clinical expert" means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

[E] F. "Drug abuser" means a person who takes a drugs or controlled substances for other than legitimate dental purposes.

G. "Opioid analgesic" means buprenorphine, butorphanol, codeine, hydrocodone, hydromorphone, levorphanol, meperidine, methadone, morphine, nalbuphine, oxycodone, ocymorphone, pentazocine and propoxyphene as well as their brand names, isomers and combinations.

H. "Opioid antagonist" means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body, including naloxone and such other medications approved by the board of

pharmacy for the reversal of opioid analgesic overdoses.

[F] I. “Pain” means acute or chronic pain or both.

[G] J. “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.

[H] K. “Prescription monitoring program (PMP)” means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data is used to support efforts in education, research, enforcement, and abuse prevention.

[I] L. “Therapeutic purpose” means the use of pharmaceutical and non-pharmaceutical dental treatment that conforms substantially to accepted guidelines for pain management.

[J] M. “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. [16.5.57.7 NMAC - N, 7/17/2013; A, 12/14/2019]

16.5.57.8 GUIDELINES:

The following regulations shall be used by the board to determine whether a dentist’s prescriptive practices as consistent with the appropriate treatment of pain.

A. The treatment of pain with drugs or controlled substances is a legitimate dental practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing or controlled substances to meet

the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following.

(1) A dentist shall complete an evaluation. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication for or contra-indication against the use of controlled substance.

(2) A dentist shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The dentist shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The dentist shall discuss the risks and benefits of using controlled substances with the patient or surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs or controlled substances prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for controlled substances shall include indications for use.

(6) The management of patients needing chronic pain control requires monitoring by the dentist. The

dentist shall periodically review the course of treatment for chronic pain, the patient’s state of health, and any new information about the etiology of the chronic pain at least every six months. Chronic pain patients shall receive all chronic pain management prescriptions from one dentist and one pharmacy whenever possible.

(7) In addition, a dentist shall consult, when indicated by the patient’s condition, with health care professionals who are experienced in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(8) If, in a dentist’s opinion, a patient is seeking pain medication for reasons that are not medically justified, the dentist is not required to prescribe controlled substances for the patient.

(9) A dentist who prescribes, distributes or dispenses an opioid analgesic for the first time to a patient shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist. With respect to a patient to whom an opioid analgesic has previously been prescribed, distributed or dispensed by the dentist, the dentist shall advise the patient on the risks of overdose and inform the patient of the availability of an opioid antagonist on the first occasion that the dentist prescribes, distributes or dispenses an opioid analgesic each calendar year.

(10) A dentist who prescribes an opioid analgesic for a patient shall co-prescribe an opioid antagonist if the amount of opioid analgesic being prescribed is at least a five-day supply. The prescription for the opioid antagonist shall be accompanied by written information regarding the temporary effects of the opioid antagonist and techniques for administering the opioid antagonist. That written information shall contain a warning that a person administering the opioid antagonist should call 911 immediately after administering the opioid antagonist.

C. The board will evaluate the quality of care on

the following basis: appropriate diagnosis and evaluation; appropriate indication for the treatment prescribed; documented change or persistence of the recognized indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the dentist's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

D. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

E. A dentist who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Dental Health Care Act or board rules. [16.5.57.8 NMAC - N, 7/17/2013; A, 12/14/2019]

End of Adopted Rules

2019 New Mexico Register

Submittal Deadlines and Publication Dates

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Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
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Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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2020 New Mexico Register

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Issue 20	October 15	October 27
Issue 21	October 29	November 10
Issue 22	November 13	November 24
Issue 23	December 3	December 15
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