

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

Volume XXXIII, Issue 2

January 25, 2022

Table of Contents

Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

Notice of Proposed Rulemaking and Public Hearing.....	95
---	----

ENVIRONMENT DEPARTMENT

WATER QUALITY CONTROL COMMISSION

Notice of Public Hearing to Consider Proposed Amendments to 20.6.4.9 NMAC - Standards for Interstate and Intrastate Surface Waters - Designation of Waters of the Upper Pecos Watershed as Outstanding	
National Resource Waters, No. WQCC 21-51 (R).....	95

GAME AND FISH DEPARTMENT

State Game Commission Meeting and Rule Making Notice.....	98
---	----

PUBLIC REGULATION COMMISSION

Notice of Proposed Rulemaking, Case No. 21-00224-PL.....	98
--	----

REGULATION AND LICENSING DEPARTMENT

CANNABIS CONTROL BOARD

Notice of Proposed Rule Amendment.....	99
--	----

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

REGULATION AND LICENSING DEPARTMENT

ACUPUNCTURE, BOARD OF

16.2.1 NMAC	R	General Provisions.....	101
16.2.3 NMAC	R	Licensure Requirements.....	101
16.2.5 NMAC	R	Temporary Licensing.....	101
16.2.8 NMAC	R	License Renewal.....	101
16.2.12 NMAC	R	Grounds for Denial, Suspension or Revocation of License.....	101
16.2.14 NMAC	R	Externships.....	101
16.2.15 NMAC	R	Inactive License.....	101
16.2.16 NMAC	R	Auricular Detoxification.....	101
16.2.17 NMAC	R	Licensure by Endorsement.....	101
16.2.21 NMAC	R	Licensure for Military Service members, Spouses and Veterans.....	101
16.2.1 NMAC	N	General Provisions.....	101
16.2.3 NMAC	N	Licensure Requirements.....	106
16.2.5 NMAC	N	Temporary Licensing.....	109
16.2.8 NMAC	N	License Renewal.....	113
16.2.12 NMAC	N	Grounds for Denial, Suspension or Revocation of License.....	116
16.2.14 NMAC	N	Externships.....	121
16.2.15 NMAC	N	Inactive License.....	126
16.2.16 NMAC	N	Auricular Detoxification.....	130
16.2.17 NMAC	N	Licensure by Endorsement.....	138
16.2.21 NMAC	N	Licensure for Military Service members, Spouses and Veterans.....	141

REGULATION AND LICENSING DEPARTMENT

CANNABIS CONTROL DIVISION

16.8.2 NMAC	A/E	Licensing and Operational Requirements for Cannabis Establishments....	143
16.8.8 NMAC	A/E	Cannabis Plant Limits and Process to Address Shortage of Cannabis Supply in the Medical Cannabis Program.....	151
16.8.11 NMAC	A/E	Fees.....	153

NUTRITION AND DIETETICS PRACTICE BOARD

16.14.3 NMAC	A	Requirements for Licensure.....	153
16.14.11 NMAC	A	Disciplinary Proceedings.....	157
16.14.12 NMAC	A	Licensure for Military Service Members, Spouses and Veterans.....	158

OCCUPATIONAL THERAPY, BOARD OF EXAMINERS FOR

16.15.2 NMAC	A	Licensing Requirements.....	158
16.15.3 NMAC	A	Supervision.....	163
16.15.4 NMAC	A	Continuing Education Requirements.....	165

PHYSICAL THERAPY BOARD

16.20.8 NMAC	R	Renewal Requirements and Continuing Education.....	167
16.20.8 NMAC	N	Renewal Requirements and Continuing Education.....	167
16.20.3 NMAC	A	Issuance of Licenses.....	171
16.20.12 NMAC	A	Licensing of Military Service Members, Spouses and Veterans.....	174

REAL ESTATE COMMISSION

16.61.1 NMAC	A	General Provisions.....	175
16.61.3 NMAC	A	Real Estate Broker's License: Examination and Licensing Application Requirements.....	179

SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSERS

PRACTICES BOARD

16.26.2 NMAC	A	Licensure Requirements.....	181
16.26.7 NMAC	A	Grounds for Disciplinary Action.....	185
16.26.11 NMAC	A	Licensure for Military Service Members, Spouses and Veterans.....	187

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

13.14.3 NMAC	A	Agreements Between Title Insurers and Title Insurance Agents.....	188
13.14.4 NMAC	A	Escrow Services.....	188
13.14.8 NMAC	A	Endorsements.....	189
13.14.9 NMAC	A	General Rate Provisions.....	189

Other Material Related to Administrative Law

ARCHITECTS, BOARD OF EXAMINERS FOR

Notice of Minor, Nonsubstantive Correction.....	191
---	-----

GOVERNOR, OFFICE OF THE

Governor's Executive Order 2022-004.....	191
--	-----

HEALTH, DEPARTMENT OF

1/7/2022 Amended Public Health Order.....	192
---	-----

REGULATION AND LICENSING DEPARTMENT

CANNABIS CONTROL DIVISION

Notice of Minor Nonsubstantive Correction.....	194
--	-----

Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Office of the State Auditor is in the process of amending 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies (“Audit Rule”). The Audit Rule establishes policies, procedures, rules, and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic engagements of governmental agencies and local public bodies of the state of New Mexico and is governed by Sections 12-6-1 to 12-6-14 NMSA 1978 (“Audit Act”). The amendments to the Audit Rule are proposed pursuant to the Audit Act, at Section 12-6-12 NMSA 1978 and Subsection A of Section 12-6-3 NMSA 1978. Section 12-6-12 NMSA 1978 states “[t]he state auditor shall promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with generally accepted auditing standards.”

A copy of the full text of the proposed amendments to the Audit Rule is available on the Office of the State Auditor’s website, at <https://www.saonm.org/auditing/financial-audits/state-auditor-rule>. The Office of the State Auditor will consider adopting the proposed new Audit Rule at a public hearing on February 28, 2022, at 1:30 p.m. The hearing will be a virtual meeting and members of the public may attend, listen, and participate via live streaming or telephone. Please see the prior link for additional information on attending the virtual public hearing.

Public comment is allowed prior to and at the public hearing on February 28, 2022. Please e-mail written comments on the proposed Audit Rule

to Liza Kerr, Director of Compliance and Quality Control, at Liza.Kerr@osa.state.nm.us between January 25, 2022 and February 28, 2022. If you are unable to e-mail comments, you may deliver written comments to the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, as soon as possible and no later than February 24, 2021. All written comments shall be posted to the Office of the State Auditor’s website within three days of receipt and can also be accessed from the link above.

Proposed amendments to the Audit Rule include the following: (i) clarifying certain definitions; (ii) adding language for agencies requiring a report to be released by a specific date; (iii) removing specific cites to Generally Accepted Government Audit Standards and referring to the most recent revision of those standards; (iv) requiring amounts reverted to the State to be included in Supplemental Information schedules or the notes; (v) updating requirements for component unit presentation to be at the discretion of the independent public accountant; and (vi) requiring an electronic version of the Financial Data Schedule instead of a hard copy. To the extent applicable, the full text for relevant technical information that served as a basis for proposed changes is available at gasb.org, and gao.gov.

If you are an individual with a disability who is in need of auxiliary aid or service to attend or participate in the public hearing, please contact the Office of the State Auditor at least one week prior to the public hearing. Please contact Liza Kerr at 505-476-3822 or Liza.Kerr@osa.state.nm.us if any such assistance is needed.

At the start of the meeting, the Office of the State Auditor shall announce the names of those members of the public body participating remotely. All members of the Office of the State

Auditor participating remotely shall identify themselves whenever they speak and be clearly audible to the other members of the public body and to the public. The Office of the State Auditor shall suspend discussion if the audio or video is interrupted until restored.

ENVIRONMENT DEPARTMENT WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.4.9 NMAC – STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS – DESIGNATION OF WATERS OF THE UPPER PECOS WATERSHED AS OUTSTANDING NATIONAL RESOURCE WATERS, NO. WQCC 21-51 (R)

The New Mexico Water Quality Control Commission (“Commission”) will hold a public hearing on Tuesday, April 12, 2022, and continuing on subsequent days, as necessary, via the WebEx video conferencing platform. The purpose of the hearing is to consider amendments to the Standards for Interstate and Intrastate Surface Waters, 20.6.4.9 NMAC, Designation of Waters of the Upper Pecos Watershed as Outstanding National Resource Waters. The Commission will begin its regular monthly meeting at 9:00 a.m. MDT, and the public hearing will begin at the conclusion of its regular business. Information for attending the virtual hearing via the WebEx conferencing platform will be available on the Commission website, <https://www.env.nm.gov/water-quality-control-commission/wqcc-meetings/>, at least 30 days prior to the hearing and as follows:

Meeting link:

<https://nmed-oit.webex.com/nmed-oit/j.php?MTID=m3703c9883544d95524c978e7792711a6>

Meeting number: 2453 489 2613

Meeting password: m5RyMJYPP93

To join by phone: +1-415-655-0001

Access code: 2453 489 2613

The proposed amendments to 20.6.4.9 NMAC, as petitioned for by the Village of Pecos, San Miguel County, the Upper Pecos Watershed Association, the New Mexico Acequia Association, and Molino de la Isla Organics, LLC (collectively, "Petitioners"), and docketed as No. WQCC 21-51 (R), propose designation of certain surface waters of the Upper Pecos Watershed in San Miguel County as Outstanding National Resource Waters ("ONRWs").

The petition and proposed amendments are available on the Commission's website, at <https://www.env.nm.gov/opf/docketed-matters/>. The petition may also be obtained electronically by contacting Pamela Jones, Commission Administrator, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87502, (505) 660-4305, or Pamela.Jones@state.nm.us.

The hearing will be conducted in accordance with the New Mexico Water Quality Act, NMSA 1978, § 74-6-6; the Rulemaking Procedures for the Water Quality Control Commission, 20.1.6 NMAC; and the Scheduling Order issued December 9, 2021. A copy of the Scheduling Order is available at <https://www.env.nm.gov/opf/docketed-matters/> or may be obtained from the Commission Administrator at the address and phone number above. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the public hearing.

Persons desiring to present technical testimony at the hearing must file with the Commission a written notice of intent. The notice of intent to present technical testimony shall:

1. Identify the person or entity for whom the witness(es) will testify;
2. State whether the person filing the statement supports or opposes the Petition;
3. Identify each witness, including name, address, affiliation(s), and educational and work background;
4. Estimate the length of the direct testimony of each witness;
5. Identify all exhibits which are part of the Record Proper and, for exhibits not part of the Record Proper, attach a copy;
6. List or make available all technical materials relied upon by each witness in making statement of technical of fact or opinion contained in his or her direct testimony; and
7. Attach a summary of the testimony of each witness, stating any opinion(s) to be offered by such witness, and an explanation of the basis for such opinion(s).

The deadline for filing notices of intent is 5:00 p.m. MST on Thursday, March 10, 2022, to the Commission Administrator. Any member of the general public may present non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony before or at the hearing.

All documents filed in this matter, including notices of intent, must be filed electronically via email to the Commission Administrator, at Pamela.Jones@state.nm.us

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pamela Jones, Commission Administrator, at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505)

660-4305 or email Pamela.jones@state.nm.us. (TDD or TTY) users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above.

**COMISIÓN DE CONTROL
DE LA CALIDAD DEL AGUA
DE NUEVO MÉXICO AVISO
DE AUDIENCIA PÚBLICA
PARA CONSIDERAR LAS
ENMIENDAS PROPUESTAS
A 20.6.4.9 NMAC - NORMAS
PARA AGUAS SUPERFICIALES
INTERESTATALES Y
ESTATALES DESIGNACIÓN DE
LAS AGUAS DE LA CUENCA
ALTA DE PECOS COMO AGUAS
DE RECURSOS NACIONALES
DESTACADOS, NÚM. WQCC 21-
51 (R)**

La Comisión de Control de la Calidad del Agua de Nuevo México ("Comisión") celebrará una audiencia pública el martes, 12 de abril de 2022, y continuará en los días siguientes, según sea necesario, a través de la plataforma de videoconferencia WebEx. El propósito de la audiencia es considerar las enmiendas a las Normas para Aguas Superficiales Interestatales y Estatales, 20.6.4.9 NMAC, Designación de Aguas de la Cuenca Alta de Pecos como Aguas de Recursos Nacionales Destacados. La Comisión iniciará su reunión mensual ordinaria a las 9:00 a.m. MST, y la audiencia pública comenzará al concluir sus asuntos ordinarios. La información para asistir a la audiencia virtual a través de la plataforma de conferencias WebEx estará disponible en el sitio web de la Comisión, <https://www.env.nm.gov/water-quality-control-commission/wqcc-meetings/>, al menos 30 días antes de la audiencia y de la siguiente manera:

Enlace a la reunión:

<https://nmed-oit.webex.com/nmed-oit/j.php?MTID=m3703c9883544d95524c978e7792711a6>

Número de la reunión: 2453 489 2613

Contraseña de la reunión: m5RyMJYPP93

Para unirse por teléfono: +1-415-655-0001

Código de acceso: 2453 489 2613

Las enmiendas propuestas a 20.6.4.9 NMAC, solicitadas por la localidad de Pecos, condado de San Miguel, la Asociación de la Cuenca Alta de Pecos, la Asociación de Acequias de Nuevo México y Molino de la Isla Organics, LLC (colectivamente, los "Peticionarios"), y registradas con el número WQCC 21-51 (R), proponen la designación de ciertas aguas superficiales de la Cuenca Alta de Pecos en el condado de San Miguel como Aguas de Recursos Nacionales Destacados ("ONRWs" por sus siglas en inglés).

La petición y las enmiendas

propuestas están disponibles en el sitio web de la Comisión, en <https://www.env.nm.gov/opf/docketed-matters/>. La petición también puede obtenerse electrónicamente poniéndose en contacto con Pamela Jones, administradora de la Comisión, 1190 S. St. Francis Drive, Santa Fe, Nuevo México 87502, (505) 660-4305, o Pamela.Jones@state.nm.us.

La audiencia se llevará a cabo de acuerdo con la Ley de Calidad del Agua de Nuevo México, NMSA 1978, § 74-6-6; los Procedimientos de Reglamentación de la Comisión de Control de la Calidad del Agua, 20.1.6 NMAC; y la Orden de Programación emitida el 9 de diciembre de 2021. Una copia de la Orden de Programación está disponible en <https://www.env.nm.gov/opf/docketed-matters/> o puede obtenerse de la administradora de la Comisión en la dirección y el número de teléfono mencionados anteriormente. Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar pruebas, datos, puntos de vista y argumentos pertinentes, de forma oral o por escrito, para presentar las pruebas pertinentes y para interrogar a los testigos que declaren en la audiencia pública.

Las personas que deseen presentar un testimonio técnico en la audiencia deberán presentar a la Comisión un aviso de intención por escrito. El aviso de intención de presentar un testimonio técnico deberá:

1. Identificar a la persona o entidad para la que testificará el testigo o testigos;
2. Indicar si la persona que presenta la declaración apoya o se opone a la Petición;
3. Identificar a cada testigo, incluyendo su nombre, dirección, afiliación(es) y su historial académico y laboral;
4. Estimar la duración del testimonio directo de cada testigo;
5. Identificar todas las pruebas instrumentales que forman parte del Registro Administrativo y en el caso de que las pruebas

instrumentales no formen parte del Registro Administrativo adjuntar una copia;

6. Enumerar o poner a disposición todos los materiales técnicos en los que se basó cada testigo para realizar la declaración técnica de hechos u opiniones contenida en su testimonio directo; y
7. Adjuntar un resumen de la declaración de cada testigo, indicando cualquier opinión que vaya a ofrecer y una explicación de la base de dicha opinión u opiniones.

La fecha límite para presentar los avisos de intención es a las 5:00 p.m. MST del jueves 10 de marzo de 2022, a la administradora de la Comisión. Cualquier miembro del público puede presentar comentarios públicos no técnicos en la audiencia o presentar una declaración no técnica por escrito en lugar de un testimonio oral antes o durante la audiencia.

Todos los documentos presentados sobre este asunto, incluidos los avisos de intención, deben presentarse electrónicamente por correo electrónico a la administradora de la Comisión, a Pamela.Jones@state.nm.us.

Si alguna persona requiere asistencia, un intérprete o ayuda auxiliar para participar en este proceso, comuníquese con Pamela Jones, administradora de la Comisión, al menos 14 días antes de la fecha de la audiencia en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, Nuevo México, 87502, teléfono (505) 660-4305 o correo electrónico Pamela.jones@state.nm.us. (TDD o TTY) los usuarios pueden acceder al número a través de la Red de Retransmisión de Nuevo México, 1-800-659-1779 (voz); usuarios de TTY: 1-800-659-8331).

El NMED no discrimina por motivos de raza, color, nacionalidad, discapacidad, edad o sexo en la administración de sus programas o actividades, como lo exigen las leyes y reglamentos aplicables. El NMED

es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de las consultas relativas a los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluyendo el Título VI de la Ley de Derechos Civiles de 1964, con sus enmiendas; la Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972, y la Sección 13 de las Enmiendas de la Ley Federal de Control de Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación del NMED, o si cree que ha sido discriminado con respecto a un programa o actividad del NMED, puede ponerse en contacto con: Coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. También puede visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una queja por discriminación.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") will be hosting a meeting and rule hearing on March 4, 2022 beginning at 9:00 a.m. at the New Mexico Tech Macey Center, 17 Olive Lane, Socorro, NM 87801. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Hunting and Fishing License Revocation rule.

Synopsis:

The proposal is to repeal and replace the Hunting and Fishing License Revocation rule, 19.31.2 NMAC,

which will become effective April 1, 2022.

Proposed changes include:

1. Changing the point value for various Chapter 17 violations. Creating a 40 pt category for the most serious offenses. Eliminating the 17, 15, and 7 point categories.
2. Creating a simpler revocation timeline structure which better addresses repeat violators or felony offenses.
3. Clarifying that the department may recommend increased or decreased revocation periods for egregious or mitigating circumstances to the hearing officer or commission.
4. Streamlining the suspension process for individuals who owe child support, have failed to pay a penalty assessment violation to the department, failed to pay civil restitution owed to the department, failed to appear in court on a wildlife violation or have been revoked in the wildlife violators compact.
5. Allowing video conference appearances by violators and witnesses at revocation hearings.
6. Removing redundant and/or obsolete language or definitions

A full text of changes will be available on the Department's website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Hunting and Fishing License Revocation rule at DGF-revocations@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 8:00 a.m. on February 28, 2022. The final proposed rule will be voted on by the Commission during a public meeting on March 4, 2022. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on March 4, 2022.

Full copies of text of the proposed new rule, technical information

related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us for updated information.

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 or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING CASE NO. 21-00224-PL

The New Mexico Public Regulation Commission (the "commission") hereby gives notice of its initiation of a proposed rulemaking to amend sections of **rule 18.60.5 NMAC, "Pipeline Safety Excavation Damage Prevention."**

Summary of the full text of the proposed rule and short explanation

of its purpose: The commission is considering amendments to sections of Rule 18.60.5 NMAC. The purpose of the rule was to implement Chapter 62, Article 14 NMSA 1978 by providing procedures for preventing damage to underground utilities and for dealing with damage when it occurs during excavation activities. The Rule as it currently stands requires requests to locate pipelines to be completed exactly within 48 hours on the second business day from the time when the request was submitted by an excavator. The proposed revised rule would require requests to locate utility lines to be completed by midnight on the second business day after the request, rather than the specific time of the request submission.

Legal authority authorizing the proposed rule and the adoption of the rule: New Mexico Constitution, Article XI, Sec. 2; New Mexico Public Regulation Commission Act, Section 8-8-1 et seq. NMSA 1978; Sections 62-14-7.1 and 62-14-10 NMSA 1978; Sections 70-3-1 et seq. NMSA 1978.

How a copy of the full text of the proposed rule can be obtained: A copy of the full text of the proposed rule and instructions for accessing the complete rulemaking record can be obtained from the rulemaking page on the commission's website at <https://www.nm-prc.org/rulemaking-proceedings/> or by calling Isaac Sullivan-Leshin of the commission's office of general counsel at (505) 670-4830.

How a person can comment on the proposed rule, where comments will be received and when comments are due:

Written initial comments and written response comments shall be filed by the deadlines below in accordance with NMPRC rules of procedure 1.2.2 NMAC. Comments can be electronically filed by sending them in PDF format to prc.records@state.nm.us. Comments shall refer to Case No. 21-00224-PL. Written initial

comments shall be filed no later than **March 15, 2022** and written response comments shall be filed no later than **March 29, 2022**. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

The record closure date for this proceeding is **April 19, 2022**. From that date through the completion of this proceeding, rulemaking participants will be forbidden from communicating with the commission or its representatives concerning substantive issues in this proceeding.

When and where a public rule hearing will be held and how a person can participate in the hearing: A public hearing will be held on **April 5, 2022, beginning at 2:00 p.m.** via the Zoom platform. Any person who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505) 670-4830 or isaac.sullivan-leshin@state.nm.us by no later than **12:00 noon on April 4, 2022** to sign up as a hearing participant. The commission's office of general counsel will email a Zoom invitation to all hearing participants the day before the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. The hearing will be held in order to receive oral comments. In the interest of administrative efficiency, commenters who have submitted written comments may be restricted from making oral comments at the discretion subject to the discretion of the Commission or its designee. In addition, any commenter may be limited to five minutes to speak, subject to the discretion of the commission or its designee. The commission or its designee may also determine that a spokesperson should 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. A court reporter will prepare a transcript of the hearing for filing the rulemaking docket, Docket No. 21-00224-PL. Any person with a disability requiring special assistance in order to participate in the hearing should contact Renada Peery-Galon at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

Instructions on how to access the complete rulemaking record, reports and other items filed in the commission's e-docket system can be found at <https://www.nm-prc.org/rulemaking-proceedings/>.

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

NOTICE OF PROPOSED RULE AMENDMENT

Public Hearing. The New Mexico Regulation and Licensing Department (RLD), Cannabis Control Division (CCD), will hold a public rule hearing on Tuesday, March 1, 2022 at 9:00am. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone. A PDF of the proposed rule and meeting details may be accessed through the Cannabis Control Division website: <https://ccd.rld.state.nm.us> or from Julia Valdez at the contact below.

Purpose of Rule Hearing. The purpose of the public rule hearing is to receive public on proposed rule amendments related to license application requirements, changes to packaging for cannabis products, increased plant counts, fees related to plant counts and definitional changes to clarify the related changes and licensing processes generally.

Any technical information used to inform the proposed rules will be accessible by visiting: <https://ccd.rld.state.nm.us/>.

Statutory Authority. Legal authority for this rulemaking may be found the Cannabis Regulation Act, NMSA 1978 Section 26-2C-1 through Section 26-2C-42 NMSA (2021). Additional authority may be found at NMSA 1978 Section 9-7-6(E) (2017) and at NMSA 9-16-6 (2021).

Public Comment. The Division will begin accepting public comment on the proposed rules beginning January 25, 2022. Please submit written comments on the proposed rules to Robert Sachs, Deputy Director of Policy for the Cannabis Control Division, via electronic mail at ccd.publiccomment@state.nm.us. Written comment may also be submitted by visiting the Division website at ccd.rld.state.nm.us or by mailing the comment to the following address:

Cannabis Control Division
Public Comment
c/o Robert Sachs
P.O. Box 25101
Santa Fe, NM
87504

All written public comments must be received by 5:00pm on Tuesday March 1, 2022. Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: ccd.rld.state.nm.us.

No later than January 25, 2022, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://ccd.rld.state.nm.us/> or by contacting the Cannabis Control Division at rld.cannabiscontrol@state.nm.us or (505) 476-4995.

Any individual with a disability who is in need of a reader, amplifier,

qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Terry Last, Policy Assistant for the Cannabis Control Division, rld.cannabiscontrol@state.nm.us or (505) 362-2924 at least seven (7) days prior to the hearing.

Summary of Proposed New Rules.

16.8.1 NMAC: GENERAL PROVISIONS

Part 1 provides general requirements for licensees established under the Cannabis Regulation Act and required definitions. The proposed amendments to be discussed at the hearing will include changes to definitions corresponding to proposed amendments to 16.8.2 NMAC, 16.8.6 NMAC and 16.8.11 NMAC as well as licensing processes generally.

16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS

Part 2 provides the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 governs the licensing and operational requirements for additional types of licensees. The proposed amendments to be discussed at the hearing will include changes to application requirements for licensure for various cannabis licenses.

16.8.3 NMAC: PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS

Part 3 provides the requirements related to packing, labeling, and commercial display of cannabis products as well as advertising and marketing requirements for licensees. The proposed amendments to be discussed at the hearing will include changes to packaging for cannabis products.

16.8.8 NMAC: CANNABIS PLANT LIMITS AND PROCESS

TO ADDRESS SHORTAGE OF CANNABIS SUPPLY IN THE MEDICAL CANNABIS PROGRAM

Part 8 provides the requirements related to cannabis plant limits for licensees with production activities as well as addressing shortages in the cannabis supply for medicinal use. The proposed amendments to be discussed at the hearing will include changes to maximum plant count for cannabis producer licenses.

16.8.11 NMAC: FEES

Part 11 provides the requirements related to fees for licensees. The proposed amendments to be discussed at the hearing will include changes to plant count fees for adult use and medical cannabis plants.

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.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.1 NMAC, Acupuncture and Oriental Medicine Practitioners - General Provisions (filed 7/13/2001) and replace it with 16.2.1 NMAC Acupuncture and Oriental Medicine Practitioners - General Provisions, adopted 01/12/2022 and effective 02/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.3 NMAC, Acupuncture and Oriental Medicine Practitioners - Application For Licensure (filed 04/20/2000) and replace it with 16.2.3 NMAC Acupuncture and Oriental Medicine Practitioners - Application For Licensure, adopted 1/12/2022 and effective 2/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.5 NMAC, Acupuncture and Oriental Medicine Practitioners - Temporary Licensing (filed 9/22/2003) and replace it with 16.2.5 NMAC Acupuncture and Oriental Medicine Practitioners - Temporary Licensing, adopted 1/12/2022 and effective 02/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.8 NMAC, Acupuncture and Oriental Medicine Practitioners - License Renewal (filed 1/11/2005) and replace it with 16.2.8 NMAC Acupuncture and Oriental Medicine Practitioners - License Renewal,

adopted 1/12/2022 and effective 02/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.12 NMAC, Acupuncture and Oriental Medicine Practitioners - Grounds For Denial, Suspension Or Revocation Of License - filed 7/13/2001 and replace it with 16.2.12 NMAC Acupuncture and Oriental Medicine Practitioners - Grounds For Denial, Suspension Or Revocation Of License - adopted 1/12/2022 and effective 2/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.14 NMAC, Acupuncture and Oriental Medicine Practitioners - Externships (filed 12/1/2000) and replace it with 16.2.14 NMAC Acupuncture and Oriental Medicine Practitioners - Externships, adopted 1/12/2022 and effective 2/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.15 NMAC, Acupuncture and Oriental Medicine Practitioners - Inactive License (filed 1/11/2005) and replace it with 16.2.15 NMAC Acupuncture and Oriental Medicine Practitioners - Inactive License, adopted 1/12/2022 and effective 2/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.16 NMAC, Acupuncture and Oriental Medicine Practitioners - Auricular Detoxification (filed 1/11/2005) and replace it with 16.2.16 NMAC Acupuncture and Oriental Medicine Practitioners - Auricular

Detoxification, adopted 1/12/2022 and effective 2/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.17 NMAC, Acupuncture and Oriental Medicine Practitioners - Licensure By Endorsement (filed 1/11/2005) and replace it with 16.2.17 NMAC Acupuncture and Oriental Medicine Practitioners - Licensure By Endorsement, adopted 1/12/2022 and effective 2/11/2022.

The New Mexico Board Acupuncture and Oriental Medicine reviewed at its 12/10/2021 hearing, to repeal its rule 16.2.21 NMAC, Acupuncture and Oriental Medicine Practitioners - Licensure for Military Service Members, Spouses And Veterans (filed 1/31/2014) and replace it with 16.2.21 NMAC Acupuncture and Oriental Medicine Practitioners - Licensure for Military Service Members, Spouses And Veterans, adopted 1/12/2022 and effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 1 GENERAL PROVISIONS

16.2.1.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine. [16.2.1.1 NMAC - Rp, 16.2.1.1 NMAC 02/11/2022]

16.2.1.2 SCOPE: All licensed doctors of oriental medicine, applicants, temporary licensees, applicants for temporary licensure, doctors of oriental medicine certified for expanded practice and applicants for certification, educational courses, externs, auricular detoxification specialists, educational programs and applicants for approval of educational programs.
[16.2.1.2 NMAC - Rp, 16.2.1.2 NMAC 02/11/2022]

16.2.1.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1, 2, 3, 7, 8, 8.1, 14.1 and 9, NMSA 1978.
[16.2.1.3 NMAC - Rp, 16.2.1.3 NMAC 02/11/2022]

16.2.1.4 DURATION: Permanent.
[16.2.1.4 NMAC - Rp, 16.2.1.4 NMAC 02/11/2022]

16.2.1.5 EFFECTIVE DATE: February 11, 2022 unless a later date is cited at the end of a section or paragraph.
[16.2.1.1 NMAC - Rp, 16.2.1.1 NMAC 02/11/2022]

16.2.1.6 OBJECTIVE: This part provides definitions for terms used in the rules in addition to those definitions in the Act, lists the board's duties, clarifies what are not public records, provides for inspection of the board's public records, and provides for telephone conferences.
[16.2.1.1 NMAC - Rp, 16.2.1.1 NMAC 02/11/2022]

16.2.1.7 DEFINITIONS: The following definitions apply to the rules and the act.

A. Definitions beginning with "A":

(1) **"A4M"** is the American academy of anti-aging medicine.

(2) **"ACAM"** is the American college of alternative medicine.

(3) **"ACAOM"** is the accreditation commission for acupuncture and oriental medicine.

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

(5) **"AMA"** is the American medical association.

(6) **"Animal acupuncture"** is acupuncture performed on any animal other than man. Animal acupuncture is authorized under the supervision of a doctor of veterinary medicine licensed in New Mexico and only under the guidelines of the rules of the New Mexico Veterinary Practice Act 61-14-1 to 61-14-20 NMSA 1978 and the rules of the New Mexico board of veterinary medicine 16.25.9.15 NMAC.

(7) **"Applicant"** is a person who has submitted to the board an application for licensure as a doctor of oriental medicine.

(8) **"Applicant for temporary licensure"** is a person who has submitted to the board an application for temporary licensure as a doctor of oriental medicine.

(9) **"Auricular acupuncture detoxification"** is an acupuncture related technique used only in the treatment and prevention of alcoholism, substance abuse and chemical dependency. Auricular acupuncture detoxification may be described or referred to as "auricular detoxification", "acupuncture detoxification", "auricular acupuncture detoxification", or "acudetox".

(10) **"Auricular detoxification specialist supervisor"** is a doctor of oriental medicine registered with the board under the provisions of 16.2.16.18 NMAC.

(11) **"Auricular detoxification specialist training program"** is a training program approved by the board

under the provisions of 16.2.16.26 NMAC to train certified auricular detoxification specialists and auricular detoxification supervisors.

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

(13) **"Authorized substances"** are the specific substances defined in the four certification in 16.2.20 NMAC that are authorized according to Paragraph (1) of Subsection C of Section 61-14A-8 NMSA 1978 of the act for prescription, administration, compounding and dispensing by a doctor of oriental medicine certified for a specific category of expanded practice as defined in 16.2.19 NMAC.

B. Definitions beginning with "B":

(1) **"Bioidentical hormones"** means compounds, or salt forms of those compounds, that have exactly the same chemical and molecular structure as hormones that are produced in the human body.

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

(3) **"Biomedicine"** is the application of the principles of the natural sciences to clinical medicine.

C. Definitions beginning with "C":

(1) **"Certified auricular detoxification specialist"** is a person certified by the board under the provisions of 16.2.16.10 NMAC to perform auricular

detoxification techniques, only on the ears, only in the context of an established treatment program and only under the supervision of an auricular detoxification supervisor registered with the board. A person certified pursuant to Paragraph (1) of Subsection B of 61-14A-4 NMSA 1978 shall use the title of "certified auricular detoxification specialist" or "C.A.D.S."

(2) **"Chief officer"** is the board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

(3) **"Clinical experience"** is the practice of acupuncture and oriental medicine as defined in the act, after initial licensure, certification, registration or legal recognition in any jurisdiction to practice acupuncture and oriental medicine. A year of clinical experience shall consist of not less than 500 patient hours of licensed acupuncture and oriental medical practice within a calendar year, seeing at least 25 different patients within that year. One patient hour is defined as one clock hour spent in the practice of oriental medicine with patients.

(4) **"Clinical skills examination"** is a board approved, validated, objective practical examination that demonstrates the applicants entry level knowledge of and competency and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine and of biomedicine.

(5) **"Complainant"** is the complaining party.

(6) **"Complaint committee"** is a board committee composed of the complaint committee chairperson and the complaint manager.

(7) **"Complaint committee chairperson"** is a member of the board appointed by the board's chairperson.

(8) **"Complaint manager"** is the board's administrator or any member of

the board appointed by the board's chairperson.

D. Definitions beginning with "D":

(1) **"Department"** is the state of New Mexico regulation and licensing department.

(2) **"Detoxification"** is a concept in integrative medicine based on the principle that illnesses can be caused by the accumulation of toxic substances (toxins) in the body. Therapeutic support of elimination of these toxins is detoxification.

(3) **"Doctor of oriental medicine"** is a physician licensed to practice acupuncture and oriental medicine pursuant to the act and as such has responsibility for his or her patient as a primary care physician or independent specialty care physician.

E. Definitions beginning with "E":

(1) **"Educational course"** is a comprehensive foundation of studies, approved by the board leading to demonstration of entry level competence in the specified knowledge and skills required for the four respective certifications in expanded practice. An educational course is not an educational program as this term is used in the act and the rules and as defined in 16.2.1 NMAC.

(2) **"Educational program"** is a board approved complete formal program that has the goal of educating a person to be qualified for licensure as a doctor of oriental medicine in New Mexico, is at least four academic years and meets the requirements of Section 61-14A-14 NMSA 1978 of the act and 16.2.7 NMAC.

(3) **"Expanded practice"** is authorized by of Section 61-14-8.1 NMSA 1978 of the act and is granted to a doctor of oriental medicine who is certified by the board after fulfilling the requirements, in addition to those necessary for licensure, defined in 16.2.19 NMAC. Expanded practice is in addition to the prescriptive

authority granted all licensed doctors of oriental medicine as defined in Paragraph (2) of Subsection G of Section 61-14A-3 NMSA 1978 of the act.

(4) **"Extern"** is a current applicant undergoing supervised clinical training by an externship supervisor, and who has satisfied the application requirements for extern certification and who has received an extern certification issued by the board pursuant to 16.2.14 NMAC.

(5) **"Externship"** is the limited practice of oriental medicine in New Mexico by an extern supervised by an externship supervisor pursuant to 16.2.14 NMAC.

(6) **"Externship supervisor"** is a doctor of oriental medicine who has at least five clinical experience, maintains a clinical facility and maintains appropriate professional and facility insurance, and who has satisfied the board's application requirements for an externship supervisor and has received an externship supervisor registration issued by the board pursuant to 16.2.14 NMAC.

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G": Good cause is the inability to comply because of serious accident, injury or illness, or the inability to comply because of the existence of an unforeseen, extraordinary circumstance beyond the control of the person asserting good cause that would result in undue hardship. The person asserting good cause shall have the burden to demonstrate that good cause exists.

H. Definitions beginning with "H": [RESERVED]

I. Definitions beginning with "I":

(1) **"Inactive licensee"** means a licensee in good standing whose license is placed on inactive status by the board and is therefore considered an inactive license in compliance with 16.2.15 NMAC.

(2) **“ICE”**
is the institute for credentialing excellence.

(3) **“IFM”** is the institute for functional medicine.

J. Definitions
beginning with “J”: [RESERVED]

K. Definitions
beginning with “K”: [RESERVED]

L. Definitions
beginning with “L”:

(1)
“Licensee” is a doctor of oriental medicine licensed pursuant to the act.

(2) **“License”**
has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

(3) **“Licensing candidate”** is an applicant whose initial application for licensure as a doctor of oriental medicine has been approved by the board.

(4) **“Licensing fee”** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

(5)
“Licensure by endorsement” is a licensing procedure for the experienced practitioner who completed his initial education in acupuncture and oriental medicine prior to the establishment of current educational standards and who has demonstrated his or her competency through a combination of education, examination, authorized legal practice and clinical experience as defined in 16.2.17 NMAC. Completion of the licensure by endorsement process results in full licensure as a doctor of oriental medicine.

(6) **“Limited temporary license”** is a license issued under the provisions of 16.2.5.12 NMAC for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized healthcare practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required

for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee. Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program.

(7) **“Live cell products”** are living cells from glandular tissues and other tissues.

M. Definitions
beginning with “M”: **“Military service member”** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

N. Definitions
beginning with “N”:

(1) **“Natural substances”** are substances that exist in or are produced by nature and have not been substantially transformed in character or use.

(2) **“NCA”** is a notice of contemplated action.

(3)
“NCCAOM” is the national certification commission for acupuncture and oriental medicine.

O. Definitions
beginning with “O”:

(1) **“Office”**
is the physical facility used for the practice of acupuncture and oriental medicine and auricular detoxification.

(2)
“Oxidative medicine” is the understanding and evaluation of the oxidation and reduction biochemical functions of the body and the prescription or administration of substances, and the use of devices and therapies to improve the body’s oxidation and reduction function and health.

P. Definitions
beginning with “P”:
“Protomorphogens” are extracts of glandular tissues.

Q. Definitions
beginning with “Q”: [RESERVED]

R. Definitions
beginning with “R”:

(1)
“Respondent” is the subject of the complaint.

(2) **“Rules”**
are the rules, promulgated pursuant to the act, governing the implementation and administration of the act as set forth in 16.2 NMAC.

S. Definitions
beginning with “S”:

(1)
“Substantial equivalent” means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 NMSA 1978 *et. seq.*

(2)
“Supervised clinical observation” is the observation of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

(3)
“Supervised clinical practice” is the application of acupuncture and oriental medical practice, in actual treatment situations under appropriate supervision.

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

T. Definitions
beginning with “T”:

(1)
“Temporary licensee” is a doctor of oriental medicine who holds a temporary license pursuant to the act, 61-14-12 NMSA 1978 and 16.2.5 NMAC.

(2)
“Therapeutic serum” is a product

obtained from blood by removing the clot or clot components and the blood cells.

(3)

“Treatment program” is an integrated program that may include medical and counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that is located at a fixed location or in a mobile unit and approved by the board under the provisions of 16.2.16.28 NMAC.

U. Definitions

beginning with “U”: **“USP 797”** is the United States pharmacopeia Chapter 797 pharmaceutical compounding.

V. Definitions

beginning with “V”: **“Veteran”** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

W. Definitions

beginning with “W”: [RESERVED]

X. Definitions

beginning with “X”: [RESERVED]

Y. Definitions

beginning with “Y”: [RESERVED]

Z. Definitions

beginning with “Z”: [RESERVED]
[16.2.1.7 NMAC - Rp, 16.2.1.7 NMAC 02/11/2022]

16.2.1.8 BOARD DUTIES: In addition to its duties described in the act, the board shall:

A. Keep a file of all approved educational programs.

B. Issue certificates of approval of educational programs.

C. Delegate its ministerial duties if it so chooses.

D. Notify the governor when any board member has missed three consecutive meetings.

E. Elect a chairperson and a vice-chairperson at the first board meeting after January first each year.

F. The board shall perform such other duties and shall exercise such other powers as may be conferred upon it by statute, or as may be reasonably implied from such statutory powers and duties and as may be reasonably necessary in the

performance of its responsibilities under the act.

[16.2.1.8 NMAC - Rp, 16.2.1.8 NMAC 02/11/2022]

16.2.1.9 PUBLIC

RECORDS: All records kept by the board shall be available for public inspection pursuant to the New Mexico Inspection of Public Records Act, Section 14-2-1, NMSA 1978, et seq., except as provided herein.

A. During the course of the processing and investigation of a complaint, and before the vote of the board as to whether to dismiss the complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, Section 61-1-1, NMSA 1978, et seq., and in order to preserve the integrity of the investigation of the complaint, records and documents that reveal confidential sources, methods, information or licensees accused, but not charged yet with a violation of the act, shall be confidential and shall not be subject to public inspection. Such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the board by any investigating agent or agency.

B. Upon the completion of the processing and investigation of the complaint, and upon the decision of the board to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege conferred by Subsection A of 16.2.1.9 NMAC shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection.

C. All tests and test questions by which applicants are tested shall not be available to public inspection, as there is a countervailing public policy requiring that such records remain confidential in order to ensure the integrity of a licensing exam intended to protect the public health, safety and welfare from incompetent practitioners.

D. The board or its administrator may charge a fee not to exceed one dollar per page for documents 11 inches by 17 inches or smaller in size for copying public records.

[16.2.1.9 NMAC - Rp, 16.2.1.9 NMAC 02/11/2022]

16.2.1.10 TELEPHONE

CONFERENCES: Pursuant to the provisions of the Open Meetings Act, Section 10-15-1.C, NMSA 1978, as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each board member participating by conference telephone can be identified when speaking, all participants are 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 who speaks during the meeting. Participation of a board member by such means shall constitute presence in person at the meeting.

[16.2.1.10 NMAC - Rp, 16.2.1.10 NMAC 02/11/2022]

16.2.1.11 DISASTER OR EMERGENCY PROVISION:

Doctors of oriental medicine, educational programs and auricular detoxification specialists currently licensed and in good standing or otherwise meeting the requirements for New Mexico licensure in a state which a federal disaster has been declared may apply for licensure in New Mexico under 16.2.1.11 NMAC during the four months following the declared disaster. The application for emergency provisional licensure shall be made to the board and shall include:

A. an application under this provision shall be made to the board that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number accompanied by proof of identity, which may include

a copy of drivers license, passport or other photo identification issued by a governmental entity; and the applicants signature on the affidavit made part of the application form;

B. an affidavit attesting to the consequences suffered by the applicant as a result of the federal disaster;

C. evidence of completion of requirements specified in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC; if the applicant is unable to obtain documentation from the federal declared disaster area or as a result of the declared federal disaster the board may accept other documentation in lieu of the forms required under 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC; the board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving licensure;

D. exceptions may be made for good cause;

E. an affidavit certifying that all the documents submitted with the application are true and accurate or are faithful copies of the original;

F. nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.2.3, 16.2.4, 16.2.7, 16.2.10, and 16.2.16 NMAC; and

G. the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine. [16.2.1.11 NMAC - Rp, 16.2.1.11 NMAC 02/11/2022]

History of 16.2.1 NMAC:

Pre-NMAC History:

AB 81-1, Regulations Governing Acupuncture Practitioners, 10/5/1981
AB 82-1, Regulations Governing Acupuncture Practitioners, 6/16/1982
AB 84-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, 3/13/1984
BCD 87-1, Emergency Regulations

Governing Acupuncture Practitioners, Tutors and Institutes, 10/30/1987
ACU 88-1 Regulations Governing Acupuncture Practitioners, Tutors and Institutes, 3/13/1989

ACU 91-1, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Definitions, 2/18/1991
Rule 1, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Authority and Purpose, 8/28/1992

Rule 2, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Definitions, 8/28/1992
ACU Rule 91-3, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Administrative Requirements, 2/18/1991
Rule 3, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Administrative Requirements, 1/26/1993

ACU Rule 91-13, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Board Duties, 2/18/1991

Rule 13, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Board Duties, 8/28/1992

ACU Rule 91-15, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Pertaining to Open Meeting, Public Records, and Confidentiality, 2/18/1991
Rule 15, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Pertaining to Open Meetings, Public Records and Confidentiality, 8/28/1992

History of Repealed Material:

16.2.1 NMAC - Acupuncture and Oriental Medicine Practitioners - General Provisions (filed 7/13/2001, Repealed effective 02/11/2022.

Other History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: 16 NMAC 2.1, Acupuncture and Oriental Medicine - General Provisions, filed 6/14/1996 - renumbered, reformatted and amended to 16.2.1 NMAC, effective 8/13/2001

16.2.1 NMAC - Acupuncture and Oriental Medicine Practitioners - General Provisions (filed 7/13/2001), replaced by 16.2.1 NMAC - Acupuncture and Oriental Medicine Practitioners - General Provisions, effective 02/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS

PART 3 APPLICATION FOR LICENSURE

16.2.3.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine. [16.2.3.1 NMAC - Rp, 16.2.3.1 NMAC, 2/11/2022]

16.2.3.2 SCOPE: All applicants for licensure as doctors of oriental medicine. [16.2.3.2 NMAC - Rp, 16.2.3.2 NMAC, 2/11/2022]

16.2.3.3 STATUTORY

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

[16.2.3.3 NMAC - Rp, 16.2.3.3 NMAC, 2/11/2022]

16.2.3.4 DURATION: Permanent.

[16.2.3.4 NMAC - Rp, 16.2.3.4 NMAC, 2/11/2022]

16.2.3.5 EFFECTIVE

DATE: February 11, 2022, unless a later date is cited at the end of a section.

[16.2.3.5 NMAC - Rp, 16.2.3.5 NMAC, 2/11/2022]

16.2.3.6 OBJECTIVE:

This part lists the requirements that an applicant must fulfill in order to apply

for licensure as a doctor of oriental medicine.

[16.2.3.6 NMAC - Rp, 16.2.3.6 NMAC, 2/11/2022]

16.2.3.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC.

[16.2.3.7 NMAC - Rp, 16.2.3.7 NMAC, 2/11/2022]

16.2.3.8 GENERAL REQUIREMENTS:

A. Any applicant who has been subject to any action or proceeding comprehended by Subsection A of 16.2.3.8 NMAC may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

B. Any applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq. [16.2.3.8 NMAC - Rp, 16.2.3.8 NMAC, 2/11/2022]

16.2.3.9 EDUCATIONAL PROGRAM REQUIREMENTS:

Every applicant shall provide satisfactory proof that he completed a board approved educational program as defined in 61-14A-14 NMSA 1978 of the act and 16.2.7 NMAC. If the educational program is no longer in existence, or if the applicant's records are not available 2 for good cause, the applicant shall submit an affidavit so stating and shall identify the educational program, and shall provide the address, dates of enrollment, and curriculum completed, along with such other information and documents as the board shall deem necessary. The

board, in its sole and sound discretion, may accept or reject as adequate and sufficient such evidence presented in lieu of the records otherwise required. [16.2.3.9 NMAC - Rp, 16.2.3.9 NMAC, 2/11/2022]

16.2.3.10 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license, including temporary licenses and auricular detoxification specialist certificates, issued by the board:

- (1) homicide;
- (2) aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;
- (3) robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;
- (5) driving under the influence of intoxicating liquor or drugs within the five years prior to the date of application;
- (6) trafficking controlled substances, specifically excluding cannabis or cannabis-derived products, within the five years prior to the date of application;
- (7) crimes involving child abuse or neglect;
- (8) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;

(9) making a false statement under oath or in any official document;

(10) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

[16.2.3.10 NMAC - Rp, 16.2.3.10 NMAC, 2/11/2022]

16.2.3.11 INITIAL LICENSURE APPLICATION:

Upon approval of an application for licensure that fulfills the requirements listed below, the board shall issue a license that will be valid until July 31 following the initial licensure, except that licenses initially issued after May 1 will not expire until July 31 of the next renewal period as defined in 16.2.8.9 NMAC; the application requirements for a license shall be receipt of the following by the board:

A. the fee for application for licensure specified in 16.2.10 NMAC;

B. an application for licensure that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

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

D. an affidavit as provided on the "initial licensure application" as to whether the applicant:

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

(2) has been a party to litigation in any jurisdiction related to the applicants

practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice;

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

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

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

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

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

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

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

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

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

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

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

[16.2.3.11 NMAC - Rp, 16.2.3.11 NMAC, 2/11/2022]

16.2.3.12 EXAMINATION REQUIREMENTS:

The examination requirements specified in 16.2.4 NMAC shall be received at the board office within 12 months of the receipt of the initial application at the board office, with the exception of the national certification commission for acupuncture and oriental medicine (NCCAOM) score requirements which need to be submitted to the board office within 24 months of the initial application.

[16.2.3.12 NMAC - Rp, 16.2.3.12 NMAC, 2/11/2022]

16.2.3.13 DOCUMENTS IN A FOREIGN LANGUAGE:

All documents submitted in a foreign language must be accompanied by an accurate translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an applicant's application shall be at the expense of the applicant.

[16.2.3.13 NMAC - Rp, 16.2.3.13 NMAC, 2/11/2022]

16.2.3.14 SUFFICIENCY OF DOCUMENT:

The board shall determine the sufficiency of the documentation that supports the application for licensure. The board may, at its discretion, request further proof of qualifications or require a personal interview with any applicant to establish his or her qualifications. If requested by the board, all further proof of qualifications shall be received at the board office at least 45 days before the clinical skills examination date. Any required

personal interview will be scheduled as determined by the board.
[16.2.3.14 NMAC - Rp, 16.2.3.14 NMAC, 2/11/2022]

16.2.3.15 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE: Documentation required for licensure shall be received at the board office no later than 12 months after the initial application is received at the board office, with the exception of the national certification commission for acupuncture and oriental medicine (NCCAOM) score requirements which need to be submitted to the board office within 24 months of the initial application.
[16.2.3.15 NMAC - Rp, 16.2.3.15 NMAC, 2/11/2022]

16.2.3.16 NOTIFICATION OF LICENSURE: The applicant shall be notified of approval or denial of his completed application requirements including examination requirements by mail postmarked no more than 21 days from the board's receipt of all required documentation. The board shall issue a license to all applicants who have met the requirements of 16.2.3 NMAC and 16.2.4 NMAC.
[16.2.3.16 NMAC - Rp, 16.2.3.16 NMAC, 2/11/2022]

16.2.3.17 EXPIRATION AND ABANDONMENT OF APPLICATION: If all application requirements have not been met within 24 months of the initial application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the application is abandoned and the applicant wants to reapply for licensure, the applicant shall be required to submit the completed current application form, pay the current application fee and satisfy the requirements for licensure then in effect at the time of the new application.
[16.2.3.17 NMAC - Rp, 16.2.3.17 NMAC, 2/11/2022]

History of 16.2.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:
AB 81-1, Regulations Governing Acupuncture Practitioners, filed 10/5/1981;
AB 82-1, Regulations Governing Acupuncture Practitioners, filed 6/16/1982;
AB 84-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1984;
BCD 87-1, Emergency Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 10/30/1987;
ACU 88-1 Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1989;
ACU Rule 91-5, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes Applications, filed 2/18/1991;
Rule 5, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes, Application for Licensing, filed 1/26/1993.

History of Repealed Material:

16.2.3.10 NMAC, 16.2.3.11 NMAC, and 16.2.3.12 NMAC (all filed 4/20/2000) repealed effective 7/27/2001.
16.2.3 NMAC - Application For Licensure filed 04/20/2000, Repealed 2/11/2022.

Other History:

Rule 5, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes, Application for Licensing (filed 1/26/1993) renumbered, reformatted and replaced by 16 NMAC 2.3, Application for Licensure, effective 7/1/1996.
16 NMAC 2.3, Application for Licensure (filed 6/14/1996) renumbered, reformatted, amended and replaced as 16.2.3 NMAC effective 5/20/2000.
16.2.3 NMAC - Application For Licensure filed 04/20/2000 Replaced 16.2.3 NMAC - Application For Licensure, effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 5 TEMPORARY LICENSING

16.2.5.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.5.1 NMAC - Rp 16.2.5.1 NMAC, 2/11/2022]

16.2.5.2 SCOPE: All licensees, applicants, temporary licensees, applicants for temporary licensure, externs, educational programs and applicants for approval of educational programs.
[16.2.5.2 NMAC - Rp 16.2.5.2 NMAC, 2/11/2022]

16.2.5.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 12, NMSA 1978.
[16.2.5.3 NMAC - Rp 16.2.5.3 NMAC, 2/11/2022]

16.2.5.4 DURATION:

Permanent.
[16.2.5.4 NMAC - Rp 16.2.5.4 NMAC, 2/11/2022]

6.2.5.5 EFFECTIVE

DATE: February 11, 2022, unless a later date is cited at the end of a section.
[16.2.5.5 NMAC - Rp 16.2.5.5 NMAC, 2/11/2022]

16.2.5.6 OBJECTIVE:

This part establishes requirements for temporary licensure and limited temporary licensure, prior disciplinary action relating to other licenses, prior litigation and prior felonies, the educational requirements for temporary licensure, the renewal period for temporary licensure and

the requirements for renewal of temporary licenses.

[16.2.5.6 NMAC - Rp 16.2.5.6 NMAC, 2/11/2022]

16.2.5.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC.

[16.2.5.7 NMAC - Rp 16.2.5.7 NMAC, 2/11/2022]

16.2.5.8 GENERAL REQUIREMENTS:

A. Any applicant for temporary licensure or applicant for a limited temporary license who has been subject to any action or proceeding comprehended by Subsection E of 16.2.5.10 NMAC and Subsection D of 16.2.5.12 NMAC, may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

B. Any applicant for temporary licensure or an applicant for a limited temporary license who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq. [16.2.5.8 NMAC - Rp 16.2.5.8 NMAC, 2/11/2022]

16.2.5.9 TEMPORARY LICENSE EDUCATIONAL REQUIREMENTS:

A. An applicant for temporary licensure shall provide satisfactory proof that he or she has completed an approved educational program. An applicant for temporary licensure who is legally recognized in any state or foreign country to practice another health care profession and who possesses knowledge and skills that are included in the scope

of practice of doctors of oriental medicine shall provide satisfactory proof that he or she has completed the education required for legal recognition in that state or foreign country.

B. The board, by a vote of the majority of the members of the board acting at a duly convened meeting of the board, may determine not to require the applicant for temporary licensure to complete the requirements of Subsection A of 16.2.5.9 NMAC, if the board determines that there is good cause and the health and safety of the citizens of New Mexico will not be jeopardized.

[16.2.5.9 NMAC - Rp 16.2.5.9 NMAC, 2/11/2022]

16.2.5.10 TEMPORARY LICENSE APPLICATION:

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

A. The fee for application for temporary license specified in 16.2.10 NMAC.

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

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

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

E. An affidavit as provided on the "temporary license application" as to whether the applicant:

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

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

(3) is in arrears on a court-ordered child support payment.

F. An official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where

the applicant has been licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act.

G. An affidavit as provided on the “temporary license application” stating that the applicant understands that:

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection E of 16.2.5.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

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

H. An affidavit as provided on the “temporary license application” stating that the applicant understands that:

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

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

(3) the applicant may only engage in those

activities authorized on the temporary license and only in association with the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program for the limited time specified on the temporary license.

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

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

K. An official copy of the applicant’s transcript that shall be sent directly to the board in a sealed envelope by the educational program from which the applicant received the

certificate or diploma, and that shall verify the applicant’s satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject. This copy of the transcript shall remain in the closed envelope secured with the official seal of the educational program and shall be sent by the applicant to the board along with the applicant’s application for licensure.

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

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

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

M. An accurate translation in English of all documents submitted in a foreign language. Each translated document shall bear the affidavit of the translator certifying that they are competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an application shall be at the expense of the applicant.

[16.2.5.10 NMAC - Rp 16.2.5.10 NMAC, 2/11/2022]

16.2.5.11 TEMPORARY LICENSE RENEWAL: A

temporary license issued by the board may be renewed a maximum of two times only, for a period of six months for each renewal. Renewals shall run sequentially so that a renewal shall begin immediately when the previous temporary license period expires.

Upon approval of an application for renewal of a temporary license that fulfills the requirements listed below, the board shall issue a temporary license. The application requirements for renewal of a temporary license shall be receipt of the following by the board:

A. The fee for renewal of a temporary license specified in 16.2.10 NMAC.

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

C. An affidavit from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico educational program attesting to the qualifications of the applicant and the activities the applicant will perform.

[16.2.5.11 NMAC - Rp 16.2.5.11 NMAC, 2/11/2022]

16.2.5.12 LIMITED TEMPORARY LICENSE

APPLICATION: Upon approval of an application for a limited temporary license that fulfills the requirements listed below, the board shall issue a limited temporary license that will be valid for the dates specified on the license but shall not exceed 12 consecutive months from the date of issuance and is not renewable. A limited temporary license shall be for the exclusive purpose of teaching a single complete course in acupuncture and oriental medicine and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally

recognized health care practitioners from jurisdictions other than New Mexico. A limited temporary license shall be required for any person who demonstrates, practices or performs diagnostic and treatment techniques on another person as part of teaching or assisting in the implementation of new techniques, if they are not a licensee or temporary licensee.

Limited temporary licenses shall not be issued to teachers for the purpose of teaching full semester courses that are part of an approved educational program. The limited temporary license shall include the name of the limited temporary license holder, the effective dates of the license, the name of the sponsoring New Mexico doctor of oriental medicine or New Mexico educational program, and a statement that the license shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, registered, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. The requirements for a limited temporary license shall be:

A. the fee for application for a limited temporary license specified in 16.2.10 NMAC;

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

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

D. an affidavit as to whether the applicant:

(1) has been

subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

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

(3) is in arrears on a court-ordered child support payment; and

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.5.12 NMAC, may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

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

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

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

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

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

G. a copy of the applicant's license, certification or registration or other document proving that the applicant is legally recognized in another state or country to practice acupuncture and oriental medicine or another health care profession and who possesses knowledge and skill that are included in the scope of practice of doctors of oriental medicine; the copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; for applicants in the United States who practice in a state in which there is no legal recognition, a copy of the certification document in acupuncture, Chinese herbal medicine or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the national certification commission for acupuncture and oriental medicine (NCCAOM) shall be sufficient; the copy shall include on it an affidavit by the applicant certifying that it is a true copy of the original; for applicants outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal

requirement for practice, the above provisions in this paragraph shall not apply; and

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

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

[16.2.5.12 NMAC - Rp 16.2.5.12 NMAC, 2/11/2022]

History of 16.2.5 NMAC:
Pre-NMAC History: None

History of Repealed Material:
16.2.5 NMAC, Temporary Licensing (filed 9/22/2000) - Repealed 11/22/2001;
16.2.5 NMAC Temporary Licensing (filed 9/22/2003) - Repealed 2/11/2022.

Other History:
16 NMAC 2.5, Acupuncture and Oriental Medicine - Temporary Licensing, (filed 6/14/1996) renumbered, reformatted and amended and replaced by 16.2.5 NMCA, Temporary Licensing, effective 10/22/2000;
16.2.5 NMAC, Temporary Licensing (filed 09/22/2000) replaced by 16.2.5 NMAC, Temporary Licensing,

effective 11/25/2001.

16.2.5 NMAC, Temporary Licensing (filed 9/22/2003) replaced by 16.2.5 NMAC, Temporary Licensing, effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

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

16.2.8.1 ISSUING
AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.8.1 NMAC - Rp, 16.2.8.1 NMAC, 2/11/2022]

16.2.8.2 SCOPE: All licensed doctors of oriental medicine and all licensed doctors of oriental medicine certified for expanded practice.
[16.2.8.2 NMAC - Rp, 16.2.8.2 NMAC, 2/11/2022]

16.2.8.3 STATUTORY
AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 8.1, 9 and 15, NMSA 1978.
[16.2.8.3 NMAC - Rp, 16.2.8.3 NMAC, 2/11/2022]

16.2.8.4 DURATION:
Permanent.
[16.2.8.4 NMAC - Rp, 16.2.8.4 NMAC, 2/11/2022]

16.2.8.5 EFFECTIVE
DATE: February 11, 2022, unless a later date is cited at the end of a section.
[16.2.8.5 NMAC - Rp, 16.2.8.5 NMAC, 2/11/2022]

16.2.8.6 OBJECTIVE:
This part defines the requirements for renewal of licenses.

[16.2.8.6 NMAC - Rp, 16.2.8.6 NMAC, 2/11/2022]

16.2.8.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC.

[16.2.8.7 NMAC - Rp, 16.2.8.7 NMAC, 2/11/2022]

16.2.8.8 LICENSE RENEWAL GENERAL REQUIREMENTS:

A. Except as otherwise provided in the act, these rules or state law, including but not limited to the board's right to deny an application for renewal pursuant to Section 61-14A-17 NMSA 1978, and the Parental Responsibility Act, Section 40-5A-1 NMSA 1978, et seq., each licensed doctor of oriental medicine shall be granted renewal of his license for one year upon receipt and approval by the board or its designee of completion of the following requirements.

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

C. Any applicant for license renewal who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC, may be subject to disciplinary action, including denial, suspension, or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1, NMSA 1978, et seq.

D. Any applicant for license renewal who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant

to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.

[16.2.8.8 NMAC - Rp, 16.2.8.8 NMAC, 2/11/2022]

16.2.8.9 LICENSING PERIOD:

The licensing period shall run from August 1 to the following July 31. A newly licensed doctor of oriental medicine shall be issued a license that shall be required to be renewed on July 31, except that licenses initially issued after May 1 shall not expire until July 31 of the next renewal period.

[16.2.8.9 NMAC - Rp, 16.2.8.9 NMAC, 2/11/2022]

16.2.8.10 ANNUAL LICENSE RENEWAL APPLICATION

The board will renew a doctor of oriental medicine's license upon receipt of a renewal application with the following supporting documentation, at the board office:

A. the license renewal fee specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board's online renewal process;

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

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

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration

during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings;

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

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

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

D. an affidavit as provided on the "annual license renewal form" regarding the applicant's license history since last renewing his license with the board stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture or oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

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

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

(2) an applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of

licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978;

F. an affidavit as provided on the “annual license renewal form” stating that the applicant understands that:

(1) each licensed doctor of oriental medicine is responsible for the timely submission of the annual renewal application and fees;

(2) the applicant is responsible for reading, understanding and complying with the state of New Mexico laws and rules regarding this application as well as the practice of acupuncture and oriental medicine;

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

(4) the applicant must notify the board within ten days if the applicant’s address changes;

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

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

I. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board in 16.2.9.8 NMAC; doctors of oriental medicine certified for the expanded practice shall submit satisfactory proof, as determined by the board, of completion of any expanded practice continuing education requirements established by the board in 16.2.9.9 NMAC [16.2.8.10 NMAC - Rp, 16.2.8.10 NMAC, 2/11/2022]

16.2.8.11 LATE LICENSE RENEWAL:

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

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

C. For doctors of oriental medicine certified for expanded practice, if proof of expanded practice continuing education as defined in 16.2.9.9 NMAC is received at the board office during the 60 day grace period, the renewal shall be considered a late license renewal and the applicant must pay the fee for late license renewal prior to license renewal. [16.2.8.11 NMAC - Rp, 16.2.8.11 NMAC, 2/11/2022]

16.2.8.12 EXPIRED LICENSE: At the end of the 60 day grace period provided by Section 61-14A-15 NMSA 1978, a licensee that has not renewed his license, nor completed all continuing education

requirements specified in 16.2.9.8 NMAC, the license is expired and the doctor of oriental medicine shall not practice oriental medicine until his expired license is renewed. For an expired license, if a properly completed application for license renewal is received at the board office within one year of the last regular renewal date, the license shall be renewed, provided all the requirements of late license renewal are completed in addition to the requirements of 16.2.8.11 NMAC and the licensee also pays the fee for expired license renewal specified in 16.2.10 NMAC. The licensee shall notify the board of his correct and current mailing address and of any address changes within ten days of the change. Any doctor of oriental medicine who fails to renew his expired license by the next July 31 annual license renewal date after the notification shall be required to apply as a new applicant. [16.2.8.12 NMAC - Rp, 16.2.8.12 NMAC, 2/11/2022]

16.2.8.13 [RESERVED]

History of 16.2.8 NMAC:

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

AB 81-1, Regulations Governing Acupuncture Practitioners, filed 10/5/1981;
AB 82-1, Regulations Governing Acupuncture Practitioners, filed 6/16/1982;
AB 84-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1984;
BCD 87-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 10/30/1987;
ACU 88-1 Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1989;
ACU Rule 91-8 Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Licensing, filed 2/18/1991;
Rule 8, Regulations Governing Acupuncture Practitioners, Tutors and

Institutes - Licensing, filed 8/28/1992.

History of Repealed Material: 16 NMAC 2.8.11 deleted effective 7/15/2001.

16.21.8 NMAC, License Renewal (filed 1/11/2005) repealed 2/11/2022.

Other History:

Rule 8, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Licensing (filed 8/28/1992) was renumbered, reformatted and replaced by 16 NMAC 2.8, License Renewal, effective 7/1/1996.

16 NMAC 2.8, License Renewal (filed 6/14/1996) was renumbered, reformatted, amended and replaced by 16.2.8 NMAC, License Renewal, effective 7/15/2001.

16.2.8 NMAC, License Renewal (filed 1/11/2005) was Replaced by 16.2.8 NMAC, License Renewal, effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS

PART 12 GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE

16.2.12.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine. [16.2.12.1 NMAC - Rp, 16.2.12.1 NMAC, 2/11/2022]

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

programs and applicants for approval of educational programs.

[16.2.12.2 NMAC - Rp, 16.2.12.2 NMAC, 2/11/2022]

16.2.12.3 STATUTORY

AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 17 NMSA 1978.

[16.2.12.3 NMAC - Rp, 16.2.12.3 NMAC, 2/11/2022]

16.2.12.4 DURATION:

Permanent.

[16.2.12.4 NMAC - Rp, 16.2.12.4 NMAC, 2/11/2022]

16.2.12.5 EFFECTIVE

DATE: February 11, 2022, unless a later date is cited at the end of a section or paragraph.

[16.2.12.5 NMAC - Rp, 16.2.12.5 NMAC, 2/11/2022]

16.2.12.6 OBJECTIVE:

This part clarifies the grounds for which the board may deny, suspend or revoke a license to practice acupuncture and oriental medicine or otherwise discipline a licensee, applicant, temporary licensee, applicant for temporary licensure, extern, extern supervisor or educational program in addition to those reasons listed in the act in Section 61-14A-17 NMSA 1978.

[16.2.12.6 NMAC - Rp, 16.2.12.6 NMAC, 2/11/2022]

16.2.12.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC.

[16.2.12.7 NMAC - Rp, 16.2.12.7 NMAC, 2/11/2022]

16.2.12.8 AUTHORITY

AND PROCEDURE: The board may refuse to issue, or may suspend, or revoke any license, in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in the Act and clarified in 16.2.12 NMAC.

[16.2.12.8 NMAC - Rp, 16.2.12.8 NMAC, 2/11/2022]

16.2.12.9 FAILURE TO USE PRE-STERILIZED SINGLE USE NEEDLES:

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who fails to use pre-sterilized single use needles.

[16.2.12.9 NMAC - Rp, 16.2.12.9 NMAC, 2/11/2022]

16.2.12.10 FAILURE TO FOLLOW PROPER INSTRUMENT STERILIZATION PROCEDURE:

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who fails to use sterile instruments or fails to follow proper instrument sterilization procedures including the use of biological monitors and the keeping of accurate records of sterilization cycles and equipment service maintenance as described in the manufacturer's instruction manual, the current edition of "clean needle technique manual for acupuncturists" published by the national acupuncture foundation, and the instrument sterilization protocols used by New Mexico hospitals and the American hospital association.

[16.2.12.10 NMAC - Rp, 16.2.12.10 NMAC, 2/11/2022]

16.2.12.11 FAILURE TO FOLLOW CLEAN NEEDLE TECHNIQUE:

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who fails to follow clean needle technique as defined in the current edition of "clean needle technique manual for acupuncturists" published by the national acupuncture foundation.

[16.2.12.11 NMAC - Rp, 16.2.12.11 NMAC, 2/11/2022]

16.2.12.12 FALSE

REPORTING: Pursuant to the Act, Paragraph (5) of Subsection A of

Section 61-14A-17 NMSA 1978, a doctor of oriental medicine temporary licensee, applicant, applicant for temporary licensure, extern, educational program or applicants for approval of an educational program shall be guilty of unprofessional conduct who willfully makes or files false reports or records in his or her practice of acupuncture and oriental medicine, or who files false statements for collection of fees for services that were not rendered. [16.2.12.12 NMAC - Rp, 16.2.12.12 NMAC, 2/11/2022]

16.2.12.13 OUT OF STATE DISCIPLINARY ACTION:

Pursuant to the Act, Paragraphs (3) and (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, an applicant, a temporary licensee, an applicant for temporary licensure or an extern shall be guilty of incompetence or unprofessional conduct for any act or omission which has resulted in disciplinary action against him or her by the licensing or disciplinary authority, or court in another state, territory, or country which would constitute incompetence if it had been committed in New Mexico. [16.2.12.13 NMAC - Rp, 16.2.12.13 NMAC, 2/11/2022]

16.2.12.14 PROCURING LICENSE BY FRAUD: Pursuant to the Act Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, an applicant, a temporary licensee, an applicant for temporary licensure or an extern shall be guilty of fraud or deceit in procuring or attempting to procure or renew a license or a temporary license to practice in the profession of acupuncture and oriental medicine if he makes false statements, or provides false or misleading information on his or her application. [16.2.12.14 NMAC - Rp, 16.2.12.14 NMAC, 2/11/2022]

16.2.12.15 MISREPRESENTATION: Pursuant to the Act, Paragraphs (5) and (14) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental

medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct and attempting to attract patronage in an unethical manner who guarantees a cure will result from the performance of professional services. [16.2.12.15 NMAC - Rp, 16.2.12.15 NMAC, 2/11/2022]

16.2.12.16 FALSE

ADVERTISING: Pursuant to the Act, Paragraph (13) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, instructor in an educational course or program or applicant for approval of an educational program shall be guilty of advertising by means of knowingly false statements who makes or publishes or causes to be made or published any advertisement, offer, statement or other form of representation, oral or written, that directly or by implication is false, misleading or deceptive. [16.2.12.16 NMAC - Rp, 16.2.12.16 NMAC, 2/11/2022]

16.2.12.17 FALSE

ADVERTISING BY APPLICANTS: Pursuant to the Act, Paragraphs (7) and (13) of Subsection A of Sections 61-14A-17 NMSA 1978, an applicant or an applicant for temporary licensure shall be guilty of violating the provisions of the act, specifically Section 61-14A-4 NMSA 1978, and shall be guilty of advertising by means of knowingly false statements who advertises his or her practice of acupuncture and oriental medicine if he does such advertising prior to being licensed by the board. [16.2.12.17 NMAC - Rp, 16.2.12.17 NMAC, 2/11/2022]

16.2.12.18 EDUCATIONAL

FRAUD: Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program

shall be guilty of unprofessional conduct who practices fraud, deceit, gross negligence, or misconduct in the clinical practice or in relation to the operation of an educational program in acupuncture and oriental medicine. [16.2.12.18 NMAC - Rp, 16.2.12.18 NMAC, 2/11/2022]

16.2.12.19 FAILURE TO

KEEP RECORDS: Pursuant to Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who fails to keep written records reflecting the course of treatment of the patient. [16.2.12.19 NMAC - Rp, 16.2.12.19 NMAC, 2/11/2022]

16.2.12.20 FAILURE TO PROVIDE RECORDS TO

PATIENT: Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who fails to make available to a patient or client, upon request, copies of patient records in their possession, or under their control that have been prepared for and paid for by the patient or client. The patient records must be provided to the patient or client within 30 days of the request. [16.2.12.20 NMAC - Rp, 16.2.12.20 NMAC, 2/11/2022]

16.2.12.21 BREACH OF

CONFIDENTIALITY: Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who reveals personally identifiable facts, data or information obtained in a professional capacity, without the prior consent of the

patient or client, except as authorized or required by law.

[16.2.12.21 NMAC - Rp, 16.2.12.21 NMAC, 2/11/2022]

16.2.12.22 DELEGATION OF RESPONSIBILITIES TO UNQUALIFIED PERSONS:

Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, a temporary licensee or an extern shall be guilty of incompetence who:

A. delegates professional responsibilities to a person when the doctor of oriental medicine, temporary licensee or extern delegating such responsibilities knows or has reason to know that the person is not qualified by education, by experience or by licensure or certification to perform the responsibilities; or

B. fails to exercise appropriate supervision over temporary licensees or students who are authorized to practice only under the supervision of the doctor of oriental medicine or temporary licensee.

[16.2.12.22 NMAC - Rp, 16.2.12.22 NMAC, 2/11/2022]

16.2.12.23 ABANDONMENT OF PATIENTS:

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who abandons or neglects a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandons professional employment in a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients.

[16.2.12.23 NMAC - Rp, 16.2.12.23 NMAC, 2/11/2022]

16.2.12.24 SOLICITATION:

Pursuant to the Act, Paragraph (14) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of attempting to attract patronage in an unethical manner who solicits patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate oral or written response from the recipient.

[16.2.12.24 NMAC - Rp, 16.2.12.24 NMAC, 2/11/2022]

16.2.12.25 FEE SPLITTING:

Pursuant to the Act, Paragraph (14) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of attempting to attract patronage in an unethical manner who engages in fee splitting. "Fee splitting" means paying or offering to pay a business or professional person or receiving or offering to receive from a business or professional person a commission, rebate, or compensation for bringing or referring a patient or dividing or offering to divide fees received for service for bringing or referring a patient. A division of fees between or among practitioners in the same practice or fee arrangements to cover patients during temporary absences is not fee splitting and is not prohibited by this provision.

[16.2.12.25 NMAC - Rp, 16.2.12.25 NMAC, 2/11/2022]

16.2.12.26 FINANCIAL

EXPLOITATION: Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who exercises undue influence on the

patient or client in such manner as to exploit the patient or client for the financial gain of the doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program or of a third party.

[16.2.12.26 NMAC - Rp, 16.2.12.26 NMAC, 2/11/2022]

16.2.12.27 SEXUAL ABUSE, EXPLOITATION AND MISCONDUCT:

Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, an applicant, a temporary licensee, an applicant for temporary licensure or an extern shall be guilty of unprofessional conduct who commits an act of sexual abuse, exploitation or misconduct, by exercising influence within a doctor/patient or teacher/student relationship for purposes of engaging a patient or student in sexual activity or who engages in sexual contact or the suggestion of sexual contact with a patient or student during the doctor/patient or teacher/student relationship within an educational program, unless a sexual relationship with the patient or student preceded the professional relationship as doctor/patient or teacher/student.

If the licensee, temporary licensee or extern and the patient mutually desire a personal/sexual relationship, the licensee, temporary licensee or extern shall immediately terminate the professional relationship with a written and signed termination of care agreement, make an appropriate referral to another health care practitioner, and wait before engaging in such a relationship for a time when it is reasonably certain based on the factors enumerated below that the professional relationship has no influence on the personal/sexual relationship. The licensee, temporary licensee or extern who engages in such a personal/sexual relationship, following the cessation or termination of treatment, bears the burden of providing proof that there has been no exploitation, in light of all relevant factors, including:

A. the amount of time that has passed since care was terminated;

B. the nature and duration of the care;

C. the circumstances of termination;

D. the patient's personal history;

E. the patient's mental status;

F. the likelihood of adverse impact on the patient and others; and

G. any statements or actions made by the licensee, temporary licensee or extern during the course of care suggesting or inviting the possibility of a post termination relationship with the patient. Each of the following acts constitutes sexual abuse, exploitation or misconduct:

(1) physical or verbal sexual contact or intercourse during the course of the professional relationship, whether in or out of the practitioner's place of business;

(2) failure to maintain appropriate professional boundaries even if the patient is perceived as seductive;

(3) failure to provide the patient with an opportunity to undress and dress in private;

(4) failure to provide the patient with the opportunity to wear underwear or a smock during treatment;

(5) failure to obtain informed verbal consent before undraping or treating the patient's breasts, buttocks or genitals;

(6) use of inappropriate parts of the practitioner's body to brace the patient;

(7) palpation beyond that which is necessary to accomplish a competent examination or treatment;

(8) sexual repartee, innuendo, jokes or flirtation;

(9) sexual comments about the patient's person or clothing;

(10) inquiry into the patient's sexual history or behavior beyond that which is necessary for a competent examination, diagnosis or treatment; the practitioner shall not be unnecessarily intrusive; the practitioner shall not verbalize any unprofessional comments concerning the patient's sexual history or behavior; and

(11) attempting to diagnose or treat a sexual issue beyond the practitioner's scope of training or practice.
[16.2.12.27 NMAC - Rp, 16.2.12.27 NMAC, 2/11/2022]

16.2.12.28 CONVICTION OF CRIME: Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, applicant, temporary licensee, applicant for temporary licensure or extern shall be guilty of incompetence if convicted of any misdemeanor or felony relating to the practice of acupuncture and oriental medicine, identified as a disqualifying criminal conviction in 16.2.3.10 NMAC. For the purpose of this section, conviction includes any finding of guilt by a court or jury, any plea or judgment of conditional discharge, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred.
[16.2.12.28 NMAC - Rp, 16.2.12.28 NMAC, 2/11/2022]

16.2.12.29 PERMITTING INSERTION OR REMOVAL OF ACUPUNCTURE NEEDLES: Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, applicant, temporary licensee, applicant for temporary licensure or extern shall be guilty of unprofessional conduct who permits, directs or supervises the insertion or removal of acupuncture needles by an unlicensed agent or employee. This provision shall not apply to a patient carrying out the instructions of his

or her doctor of oriental medicine, temporary licensee or extern when it is part of the patient's treatment providing that the instructions are simple and clear and there is no danger to the patient. This provision shall not apply to a student enrolled in an educational program practicing under the direct supervision of a teacher as part of the educational program in which he or she is enrolled.

[16.2.12.29 NMAC - Rp, 16.2.12.29 NMAC, 2/11/2022]

16.2.12.30 PERMITTING THE PRESCRIPTION OF SUBSTANCES AND PROCEDURES: Pursuant to the Act, Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, applicant, temporary licensee, applicant for temporary licensure or extern shall be guilty of unprofessional conduct who permits, directs or supervises the prescription of substances or procedures within the scope of practice of a doctor of oriental medicine by an unlicensed agent or employee. This provision shall not apply to a patient carrying out the instructions of his or her doctor of oriental medicine, temporary licensee, or extern when it is part of the patient's treatment providing that the instructions are simple and clear and there is no danger to the patient. This provision shall not apply to a student enrolled in an educational program practicing under the direct supervision of a teacher as part of the educational program in which he is enrolled.
[16.2.12.30 NMAC - Rp, 16.2.12.30 NMAC, 2/11/2022]

16.2.12.31 FAILURE TO OBTAIN INFORMED CONSENT: Pursuant to Paragraph (5) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine, temporary licensee, extern, educational program or applicant for approval of an educational program shall be guilty of unprofessional conduct who fails to obtain, from the patient, a written informed consent for diagnosis and treatment that gives

the patient at least a description of the types of diagnostic and treatment services used and any associated potential risks and sensations. The written informed consent shall also contain an explanation that the following will be discussed orally with the patient:

A. an estimate of the number of times the patient may need to return for treatment;

B. the frequency of treatment; and

C. the possible outcome of the diagnostic procedure or treatment service. The written informed consent shall also contain a statement that the patient shall have the choice to accept or reject the proposed diagnostic procedure or treatment, or any part of it, before or during the diagnosis or treatment. [16.2.12.31 NMAC - Rp, 16.2.12.31 NMAC, 2/11/2022]

16.2.12.32

INCOMPETENCE AND UNPROFESSIONAL CONDUCT:

The specifications of incompetence and unprofessional conduct defined in the act and 16.2.12 NMAC shall not be exclusive of the types of acts and omissions which may be found by the board to constitute incompetence or unprofessional conduct.

[16.2.12.32 NMAC - Rp, 16.2.12.32 NMAC, 2/11/2022]

16.2.12.33 ACUPUNCTURE

ON ANIMALS: A person who is not licensed under the Veterinary Practice Act, including a licensed doctor of oriental medicine, is prohibited from practicing veterinary medicine, including acupuncture on an animal, as defined by the Veterinary Practice Act, except under direct supervision of a licensed veterinarian pursuant to 16.25.9.15 NMAC, or superseding rule. A licensed doctor of oriental medicine is guilty of unprofessional conduct who:

A. practices acupuncture on an animal or renders related services on an animal in violation of the Veterinary Practice Act; or

B. advertises or solicits clients for the practice of acupuncture

on an animal except as permitted by rule promulgated by the board of veterinary medicine; or

C. accepts a fee directly from a client for services rendered on an animal. [16.2.12.33 NMAC - Rp, 16.2.12.33 NMAC, 2/11/2022]

16.2.12.34 DISCIPLINARY ACTION AND FINES:

A licensee, temporary licensee, applicant, applicant for temporary licensure, extern, extern supervisor or educational program is subject to disciplinary proceedings, including fines, in accordance with the uniform Licensing Act, Sections 61-1-1 NMSA 1978 through 61-1-35, as amended, for violations of the act or for violations of 16.2.12 NMAC. Fines may be assessed for each violation. Fines may be assessed in addition to other disciplinary action taken by the board for repeated or serious violations or for providing false or misleading information to the board.

A. Violations of specific rules applicable to educational programs may result in denial, suspension or revocation of the educational program approval or in assessment of fines as described below:

(1) failure to provide the board complete, accurate transcripts pursuant to Paragraphs (1) & (2) of Subsection C of 16.2.3.13 NMAC - \$1000.00;

(2) failure to furnish the board, its investigators, or agents with information requested by the board or failure to allow visits or inspections of the institute or facility pursuant to 16.2.7.8 NMAC or Subsection M of Section 16.2.7.9 NMAC - \$1000.00;

(3) failure to provide the board with the names and educational qualifications of all teaching supervisors, resident teachers and visiting teachers as required by Subsection G of Section 16.2.7.9 NMAC - \$500.00;

(4) failure to provide at least 900 hours of supervised clinical practice and

observation with at least 400 of those hours as actual treatment hours with the student as the primary student practitioner pursuant to Subsection C of Section 16.2.7.9 NMAC - \$500.00;

(5) failure to notify board of ownership or program changes pursuant to 16.2.7.13 NMAC - \$200.00;

(6) failure to maintain and enforce appropriate guidelines and procedures for termination and transfer of clinic patients pursuant to 16.2.12.23 NMAC - \$ 500.00; and

(7) failure to comply with any other provisions required of an educational program, a fine not to exceed \$1,000.00 for each violation.

B. A licensee, temporary licensee, applicant, applicant for temporary licensure, extern or an extern Supervisor is subject to disciplinary proceedings in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-35 NMSA 1978, as amended, for violations of the act, Section 61-14A-17 NMSA 1978, or the Rules. The board has authority to take action that may result in denial of a license, failure to renew a license, suspension of a license, revocation of a license, restriction or limitation on the scope of practice, requirement to complete remedial education, monitoring of the practice by a supervisor approved by the board, censure or reprimand, compliance with conditions of probation or suspension for a specific period of time, corrective action as specified by the board, or payment of a fine not to exceed \$1,000.00 for each violation.

C. Violations of specific rules applicable to extern supervisors and externs as defined in 16.2.14 NMAC may result in suspension or revocation of the externship supervisor registration or the extern certification or in assessment of a fine not to exceed \$1000.00 for each violation. [16.2.12.34 NMAC - Rp, 16.2.12.34 NMAC, 2/11/2022]

16.2.12.35 EXPANDED PRESCRIPTIVE AUTHORITY INCOMPETENCE: Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine certified for the expanded prescriptive authority shall be guilty of incompetence if he, when diagnosing and treating a patient, does not possess and apply the knowledge and use the skill and care ordinarily used by similarly certified doctors of oriental medicine.
[16.2.12.35 NMAC - Rp, 16.2.12.35 NMAC, 2/11/2022]

16.2.12.36 INCOMPETENCE: Pursuant to the Act, Paragraph (3) of Subsection A of Section 61-14A-17 NMSA 1978, a doctor of oriental medicine or a doctor of oriental medicine certified in expanded practice who injudiciously prescribes, administers, or dispenses a drug as defined in the New Mexico Drug, Device and Cosmetic Act shall be guilty of incompetence.
[16.2.12.36 NMAC - Rp, 16.2.12.36 NMAC, 2/11/2022]

History of 16.2.12 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:
AB 81-1, Regulations Governing Acupuncture Practitioners, filed 10/5/1981;
AB 82-1, Regulations Governing Acupuncture Practitioners, filed 6/16/1982;
AB 84-1, Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1984;
BCD 87-1, Emergency Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 10/30/1987;
ACU 88-1 Regulations Governing Acupuncture Practitioners, Tutors and Institutes, filed 3/13/1989;
ACU Rule 91-9, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Sanitation, filed 2/18/1991;
Rule 9, Regulations Governing

Acupuncture Practitioners, Tutors and Institutes - Sanitation, filed 1/26/1993;
ACU Rule 91-10, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Advertisement, filed 2/18/1991;
Rule 10, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Titles, filed 1/27/1993;
ACU Rule 91-14, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Grounds for Denial, Suspension or Revocation of License, filed 2/18/1991;
Rule 14, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Grounds for Denial, Suspension or Revocation of License, filed 1/26/1993;
ACU Rule 91-15, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Pertaining to Open Meetings, Public Records, and Confidentiality, filed 2/18/1991;
Rule 15, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Pertaining to Open Meetings, Public Records, and Confidentiality, filed 8/28/1992;
ACU Rule 91-16, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Guidelines for Sterilization or Reusable Acupuncture Needles, filed 5/11/1992;
Rule 16, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Guidelines for Sterilization or Reusable Acupuncture Needles, filed 1/26/1993.

History of Repealed Material:
Rule 9, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Sanitation (filed 1/26/1993) and Rule 10, Regulations Governing Acupuncture Practitioners, Tutors and Institutes - Titles (filed 1/27/1993) both repealed effective 6/20/2001.
16.2.12 NMAC, Grounds For Denial, Suspension Or Revocation Of License - filed 7/13/2001 Repealed effective 2/11/2022.

Other History:
Rule 14, Regulations Governing Acupuncture Practitioners, Tutors and Institutes- Grounds for Denial,

Suspension or Revocation of License (filed 1/26/1993) and Rule 16, Regulations Governing Acupuncture Practitioners, Tutors and Institutes- Guidelines for Sterilization or Reusable Acupuncture Needles (filed 1/26/1993) both renumbered, reformatted, amended and replaced by 16 NMAC 2.12, Grounds For Denial, Suspension Or Revocation Of License, effective 7/1/1996.
16 NMAC 2.12, Grounds For Denial, Suspension Or Revocation Of License (filed 6/14/1996) renumbered, reformatted and amended to 16.2.12 NMAC, Grounds For Denial, Suspension Or Revocation Of License, effective 08/13/2001.
16.2.12 NMAC, Grounds For Denial, Suspension Or Revocation Of License - filed 7/13/2001 Replaced by 16.2.12 NMAC, Grounds For Denial, Suspension Or Revocation Of License - effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS PART 14 EXTERNSHIPS

16.2.14.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.2 SCOPE: All licensed Doctors of Oriental Medicine, Applicants, Externship Supervisor applicants, Externship Supervisors, Extern applicants, and Externs.
[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.3 STATUTORY AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 61-

14A-9 and 61-14A-14.1 NMSA 1978. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.4 DURATION: Permanent.

[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.5 EFFECTIVE DATE: February 11, 2022 unless a later date is cited at the end of a section.

[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.6 OBJECTIVE: The purpose of an externship is to provide recent graduates the opportunity to practice under supervision while preparing for licensure. This part establishes the requirements regarding the education and certification for an extern, scope of practice of an extern, the requirements for an externship supervisor, issuance of an externship supervisor registration, fees, change of externship supervisor, the expiration on an extern certification, the revocation of an externship supervisor registration or extern certification, and the grounds for denial, suspension or revocation of the externship supervisor's license or extern's potential license.

[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.7 DEFINITIONS: Refer to definitions in 16.2.1.7 NMAC.

[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.8 GENERAL REQUIREMENTS FOR EXTERNS:

A. An extern applicant who has been subject to any action or proceeding described in Subsection C of 16.2.14.10 NMAC or who has violated the Act or the rules, may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-

1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978.

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

C. An extern applicant must be an applicant for licensure. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.9 EDUCATIONAL AND EXAMINATION REQUIREMENTS FOR EXTERNS:

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

B. An extern applicant shall provide satisfactory proof from the national certification commission for acupuncture and oriental medicine that he or she has successfully passed the following:

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

(2) the national certification commission for acupuncture and oriental medicine approved clean needle technique course; and

(3) the national certification commission for acupuncture and oriental medicine point location module.

C. An extern applicant must have graduated from a board approved educational program within twelve (12) months of filing the application for extern certification. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.10 EXTERN CERTIFICATION

APPLICATION: Upon approval of an application for extern certification

that fulfills the requirements listed below, the board shall issue an extern certification. In the interim between regular board meetings, whenever a qualified applicant for extern certification has filed his or her application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary extern certification that will suffice until the next regular meeting of the board. In no event shall the applicant begin the practice of acupuncture and oriental medicine until the extern certification or interim temporary extern certification is issued by the board. The application requirements for extern certification shall be receipt of the following by the board:

A. the fee for application for extern certification specified in 16.2.10 NMAC;

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

C. an affidavit as provided on the "extern certification application" as to whether the applicant:

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

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

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

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

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

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.3.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978; and

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

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

(4) the scope of practice of an extern shall be limited to the practice of acupuncture and oriental medicine as defined in the act and 16.2.2 NMAC, except that the extern shall not prescribe or administer any herbal, nutritional, homeopathic or any other medicines or substances; when diagnosing and treating a patient, the extern shall practice only within the limits of his or her education and training; the extern shall possess

and apply the knowledge, and use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to their limited clinical experience; and

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

(a) upon licensure;

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

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

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

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

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

(9) the board may refuse to issue, or may suspend, or revoke any license, extern certification or externship supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in Section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC.

F. an accurate translation in English of all documents submitted in a foreign language; each translated document

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

[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.11 REQUIREMENTS AND RESPONSIBILITIES OF EXTERNSHIP SUPERVISORS:

A. The externship supervisor shall:

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

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

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

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

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

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

(7) notify the board in writing, within five days

working days, when the extern enters into an extern supervisory contract with the externship supervisor or terminates the externship participation.

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

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

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

[16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.12 ISSUANCE OF EXTERNSHIP SUPERVISOR REGISTRATION:

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

A. the fee for application for externship supervisor registration specified in 16.2.10 NMAC;

B. an application for externship supervisor registration that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

C. proof of five years of clinical experience; and

D. proof of maintaining a clinical facility; and

E. proof of appropriate professional and facility insurance; and

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

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

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

(a) upon licensure;

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

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

(3) in no event shall an extern practice under extern

certification(s) for more than a total of 12 months or after failing the board's clinical skills examination more than once; the extern certification is not renewable; exceptions for good cause shall not apply to the extern certification; and

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

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

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

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

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

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

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

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

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

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

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

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

(11) the extern supervisor must notify the board within ten days if the extern supervisor's address changes; and

(12) the board may refuse to issue, or may suspend, or revoke any license, externship supervisor registration or externship supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in section 61-14A-17 NMSA 1978 of the act and clarified in 16.2.12 NMAC. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.13 CHANGE OF EXTERNSHIP SUPERVISOR: If the externship relationship terminates before the expiration of the extern certification, the extern may reapply to be supervised by another externship supervisor by filing the appropriate forms required by the board. The extern certification time limit of 12 months shall remain the same and shall not be extended. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.14 SCOPE OF PRACTICE OF AN EXTERN: The scope of practice of an Extern shall be limited to the practice of acupuncture and oriental medicine as defined in the Act and 16.2.2 NMAC,

except that the Extern shall not prescribe or administer any herbal, nutritional, homeopathic or any other medicines or substances. When diagnosing and treating a patient, the Extern shall practice only within the limits of his or her education and training. The Extern shall possess and apply the knowledge, and use the skill and care ordinarily used by reasonably well-qualified Doctors of Oriental Medicine practicing under similar circumstances, giving due consideration to their limited clinical experience.

[16.2.14.14 NMAC - N, 1/1/2001; A, 7/26/2001]

16.2.14.15 COMPENSATION: Any compensation contract is solely between the Externship Supervisor and the Extern and is not the province of the Board. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.16 EXTERN LIMITATIONS: In no event shall an extern practice under extern certification(s) for more than a total of 12 months or after failing the board's clinical skills examination more than once. The extern certification is not renewable. Exceptions for good cause shall not apply to the extern certification. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.17 EXPIRATION OF AN EXTERN CERTIFICATION: An Extern certification shall expire automatically 12 months after the date of issuance unless the certificate expires sooner for any of the following reasons:

- A. Upon licensure;
 - B. If the Extern fails the Board's Clinical Skills Examination more than once; or
 - C. If the Extern is no longer under the supervision of the Externship Supervisor.
- [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.18 GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE, CERTIFICATION OR REGISTRATION: The Board may refuse to issue, or may suspend, or revoke any license, Extern certification or Externship Supervisor registration in accordance with the Uniform Licensing Act, 61-1-1 to 61-1-31 NMSA 1978, for reasons authorized in section 61-14A-17 NMSA 1978 of the Act and clarified in 16.2.12 NMAC. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

16.2.14.19 EXTERN SUPERVISOR CONFLICT OF INTEREST: The externship supervisor shall not be a member of the extern's family or a member of the extern's household. "Member of the extern's family" means a spouse, child, stepchild, grandchild, parent, grandparent, sibling, uncle, aunt, niece, or nephew, or other relative by blood, marriage, or legal process with whom the supervisor has or has had a close familial relationship. The supervisor shall not have a conflict of interest with the extern, such as a past or present familial, social, fiduciary, business, financial, or physician-patient relationship, that impairs or compromises or appears to impair or compromise the supervisor's neutrality, independence, or objectivity. If a conflict of interest arises during the supervision, the supervisor shall immediately report the conflict of interest to the board and shall cease supervision of the extern. [16.2.14.1 NMAC - Rp, 16.2.14.1 NMAC, 2/11/2022]

History of 16.2.14 NMAC:

Pre-NMAC History: None

History of Repealed Material: 16.2.14 NMAC, Acupuncture And Oriental Medicine Practitioners - Externships filed 12/1/2000 Repealed effective 2/11/2022.

Other History:

16.2.14 NMAC, Acupuncture And Oriental Medicine Practitioners - Externships filed 12/1/2000, was Replaced by 16.2.14 NMAC, Acupuncture And Oriental Medicine Practitioners - Externships effective 2/11/2022.

**REGULATION AND
LICENSING DEPARTMENT
ACUPUNCTURE, BOARD OF**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 2 ACUPUNCTURE
AND ORIENTAL MEDICINE
PRACTITIONERS
PART 15 INACTIVE
LICENSE**

16.2.15.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine. [16.2.15.1 NMAC - Rp, 16.2.15.1 NMAC, 2/11/2022]

16.2.15.2 SCOPE: All licensed and inactive licensed doctors of oriental medicine. [16.2.15.2 NMAC - Rp, 16.2.15.2 NMAC, 2/11/2022]

16.2.15.3 STATUTORY AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 15, NMSA 1978. [16.2.15.3 NMAC - Rp, 16.2.15.3 NMAC, 2/11/2022]

16.2.15.4 DURATION: Permanent. [16.2.15.4 NMAC - Rp, 16.2.15.4 NMAC, 2/11/2022]

16.2.15.5 EFFECTIVE DATE: February 11, 2022 unless a later date is cited at the end of a section. [16.2.15.5 NMAC - Rp, 16.2.15.5 NMAC, 2/11/2022]

16.2.15.6 OBJECTIVE: This part defines the requirements

for renewal of licenses and the procedures to place an active license on inactive status or to reinstate the license to active status. [16.2.15.6 NMAC - Rp, 16.2.15.6 NMAC, 2/11/2022]

16.2.15.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC. [16.2.15.7 NMAC - Rp, 16.2.15.7 NMAC, 2/11/2022]

16.2.15.8 INACTIVE LICENSE GENERAL

PROVISIONS: A licensee in good standing is eligible to have his or her license placed on inactive status. A licensee who failed to renew his or her license by July 31st shall renew the license in accordance with the provisions of 16.2.8.10 NMAC, 16.2.8.11 NMAC and 16.2.8.12 NMAC before the licensee can apply for an inactive license.

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

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

An inactive licensee shall not teach acupuncture and oriental medicine at an educational program.

C. Providing or offering to provide oriental medical services, engaging in the practice of acupuncture and oriental medicine or teaching acupuncture and oriental medicine at an educational program by an inactive licensee shall be grounds for disciplinary action by the board for unprofessional conduct and potentially for other appropriate reasons pursuant to Section 61-14A-17 NMSA 1978 of the Act and 16.2.12 NMAC.

D. An inactive licensee shall comply with the disciplinary requirements of Section 61-14A-17 NMSA 1978 of the act and 16.2.12 NMAC. [16.2.15.8 NMAC - Rp, 16.2.15.8 NMAC, 2/11/2022]

16.2.15.9 INACTIVE

LICENSE APPLICATION: A licensee in good standing may apply to have his or her license placed on inactive status. Upon approval of an application for an inactive license that fulfills the requirements listed below, the board shall place the license on inactive status. The application requirements for an inactive license shall be receipt of the following by the board:

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

B. an inactive license application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

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

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care

professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

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

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

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

D. an official license history since last renewing his or her license with the board, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture, oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.9 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq; and

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

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

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

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

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

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

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

(6) providing or offering to provide oriental medical services, engaging in the practice of acupuncture and oriental medicine or teaching acupuncture and oriental medicine at an educational program by an inactive licensee shall be

grounds for disciplinary action by the board for unprofessional conduct and potentially for other appropriate reasons pursuant to Section 61-14A-17 NMSA 1978 of the Act and 16.2.12 NMAC; and

(7) an inactive licensee shall comply with the appropriate requirements of Section 61-14A-17 NMSA 1978 of the Act and 16.2.12 NMAC; and

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

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

[16.2.15.9 NMAC - Rp, 16.2.15.9 NMAC, 2/11/2022]

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

A. the administrative fee for inactive license renewal specified in 16.2.10 NMAC paid by check or money order in U.S. funds,

or by credit card in U.S. funds if using the board's online renewal process; and

B. an inactive license application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

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

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

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

(3) an inactive license must be renewed annually. [16.2.15.10 NMAC - Rp, 16.2.15.10 NMAC, 2/11/2022]

16.2.15.11 INACTIVE LICENSE EXPIRATION: An inactive license that is not renewed by September 30 shall expire and the person shall reapply for licensure as a new applicant. [16.2.15.11 NMAC - Rp, 16.2.15.11 NMAC, 2/11/2022]

16.2.15.12 INACTIVE LICENSE REINSTATEMENT GENERAL PROVISIONS: An inactive licensee whose license has been inactive for varying periods up to 15 years may apply to have the inactive license reinstated. The following provisions apply:

A. applicants for inactive license reinstatement who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.;

B. applicants for inactive license reinstatement

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

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

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

E. once an inactive license has been reinstated, the licensee may not apply for inactive license status again for five years. [16.2.15.12 NMAC - Rp, 16.2.15.12 NMAC, 2/11/2022]

16.2.15.13 INACTIVE LICENSE REINSTATEMENT APPLICATION - 5 YEARS OR LESS: An inactive licensee whose license has been inactive for five years or less may apply to have their license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. the administrative fee for inactive license reinstatement application specified in 16.2.10

NMAC paid by check or money order in U.S. funds;

B. an inactive license reinstatement application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number;

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

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

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

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

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

D. an official license history since last renewing his or her license with the board, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice acupuncture, oriental medicine or any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act;

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.15.13 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq; and

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

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

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

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

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

G. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is

competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

H. satisfactory proof as determined by the board of completion of any continuing education requirements established by the board for all years the license was on inactive status.

[16.2.15.13 NMAC - Rp, 16.2.15.13 NMAC, 2/11/2022]

16.2.15.14 INACTIVE LICENSE REINSTATEMENT APPLICATION - FIVE TO TEN

YEARS: An inactive licensee whose license has been inactive for more than five years and less than ten years may apply to have their inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license. The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. fulfillment of the requirements of 16.2.15.13 NMAC; and

B. either of the following:

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

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

[16.2.15.14 NMAC - Rp, 16.2.15.14 NMAC, 2/11/2022]

16.2.15.15 INACTIVE LICENSE REINSTATEMENT APPLICATION - MORE THAN 10 YEARS:

An inactive licensee whose license has been inactive for more than 10 years may apply to have their inactive license reinstated. Upon approval of an application for inactive license reinstatement that fulfills the requirements listed below, the board shall reinstate the inactive license.

The application requirements for inactive license reinstatement shall be receipt of the following by the board:

A. fulfillment of the requirements of 16.2.15.13 NMAC;

B. passing the clinical skills examination;

C. passing the board approved jurisprudence examination; and

D. either of the following:

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

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

[16.2.15.15 NMAC - Rp, 16.2.15.15 NMAC, 2/11/2022]

16.2.15.16 INACTIVE LICENSE EXPIRATION:

An inactive license that has been inactive for more than 15 years shall expire and the person who was previously licensed shall be required to apply as a new applicant.

[16.2.15.16 NMAC - Rp, 16.2.15.16 NMAC, 2/11/2022]

History of 16.2.15 NMAC:
Pre-NMAC History: None

History of Repealed Material:

16.2.15 NMAC, Acupuncture And Oriental Medicine Practitioners - Inactive License (filed 1/11/2005) Repealed 2/11/2022.

Other History:

16.2.15 NMAC, Acupuncture And Oriental Medicine Practitioners - Inactive License (filed 1/11/2005) was Replaced by 16.2.15 NMAC, Acupuncture And Oriental Medicine Practitioners - Inactive License effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

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

16.2.16.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine. [16.2.16.1 NMAC - Rp, 16.2.16.1 NMAC, 2/11/2022]

16.2.16.2 SCOPE:

Doctors of oriental medicine, certified auricular detoxification specialist applicants, certified auricular detoxification specialists, auricular detoxification specialist supervisor applicants, auricular detoxification specialist supervisors, auricular detoxification specialist training program applicants, auricular detoxification specialist training programs, treatment programs and treatment program applicants. [16.2.16.2 NMAC - Rp, 16.2.16.2 NMAC, 2/11/2022]

16.2.16.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-4.1 NMSA 1978. [16.2.16.3 NMAC - Rp, 16.2.16.3 NMAC, 2/11/2022]

16.2.16.4 DURATION:

Permanent. [16.2.16.4 NMAC - Rp, 16.2.16.4 NMAC, 2/11/2022]

16.2.16.5 EFFECTIVE

DATE: February 11, 2022 unless a later date is cited at the end of a section. [16.2.16.5 NMAC - Rp, 16.2.16.5 NMAC, 2/11/2022]

16.2.16.6 OBJECTIVE:

Part 16 establishes the requirements regarding the training and certification of a certified auricular detoxification specialist, the scope of practice of a certified auricular detoxification specialist, the requirements for registration of an auricular detoxification specialist supervisor, the responsibilities of an auricular detoxification specialist supervisor, the approval of an auricular detoxification specialist training program, and the approval of a treatment program. Part 16 establishes the provisions for the renewal or expiration of a certified auricular detoxification specialist certification, auricular detoxification specialist training program and a substance abuse treatment program. Part 16 establishes the grounds for denial, suspension or revocation of a certified auricular detoxification specialist certification, an auricular detoxification specialist supervisor registration, an auricular detoxification specialist training program approval and a treatment program approval. [16.2.16.6 NMAC - Rp, 16.2.16.6 NMAC, 2/11/2022]

16.2.16.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC. [16.2.16.7 NMAC - Rp, 16.2.16.7 NMAC, 2/11/2022]

16.2.16.8 CERTIFIED AURICULAR DETOXIFICATION SPECIALISTS GENERAL REQUIREMENTS:

A. A certified auricular detoxification specialist applicant who has been subject to any action or

proceeding described in Subsection H of 16.2.16.10 NMAC or who has violated the act or the rules, may be subject to disciplinary action, including denial, suspension or revocation of certification, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

B. A certified auricular detoxification specialist applicant who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of certification, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq. [16.2.16.8 NMAC - Rp, 16.2.16.8 NMAC, 2/11/2022]

16.2.16.9 CERTIFIED AURICULAR DETOXIFICATION SPECIALISTS TRAINING AND EXAMINATION

REQUIREMENTS: A certified auricular detoxification specialist applicant shall provide satisfactory proof that he or she has successfully completed a board approved auricular detoxification specialist training program as defined in 16.2.16.26 NMAC that specifies successful completion of:

A. clean needle technique training; and
B. a board approved clean needle technique examination; and

C. the board approved jurisprudence examination covering the act and the rules with a score of not less than ninety percent. [16.2.16.9 NMAC - Rp, 16.2.16.9 NMAC, 2/11/2022]

**16.2.16.10 CERTIFIED
AURICULAR DETOXIFICATION
SPECIALIST CERTIFICATION**
APPLICATION: Upon approval of a certified auricular detoxification

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

A. the auricular detoxification specialist certification application fee specified in 16.2.10 NMAC; and

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

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

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

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

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

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

(1) has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, the practice of auricular detoxification, the provision of medical or counseling services for disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency, or related to any other profession including other health care professions for which the applicant is licensed, certified, registered or legally recognized to practice including resignation from practice, withdrawal or surrender of applicants license, certificate or registration during the pendency of disciplinary proceedings or investigation for potential disciplinary proceedings; or

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

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

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

H. an affidavit as provided on the certified detoxification specialist application form attesting the disciplinary record of the applicant with regard to each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, under

any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

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

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

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

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

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

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

(4) the certified auricular detoxification

specialist certification must be renewed annually by July 31; and

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

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

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

L. an affidavit as provided on the certified auricular detoxification specialist application form stating that the applicant understands that a certified auricular detoxification specialist is authorized to perform only the following, for the purpose of harm reduction or treating and preventing alcoholism, substance abuse or chemical dependency and only within a board approved treatment program that demonstrates experience in disease prevention, harm reduction, or the treatment or prevention of alcoholism, substance abuse or chemical dependency:

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

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

devices that do not penetrate the skin are: seeds, grains, stones, metal balls, magnets and any small sterilized, spherical object that is non-reactive with the skin; and

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

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

[16.2.16.10 NMAC - Rp, 16.2.16.10 NMAC, 2/11/2022]

16.2.16.11 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST SCOPE OF PRACTICE AND TITLE:

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

(1) auricular acupuncture detoxification using the five auricular point national acupuncture detoxification association

(NADA) procedure, or other board approved auricular procedure; and

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

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

(1) seeds or grains;

(2) stones;

(3) metal

balls;

(4) magnets;

and

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

C. a certified auricular detoxification specialist shall use the title certified auricular detoxification specialist or CADS.

[16.2.16.11 NMAC - Rp, 16.2.16.11 NMAC, 2/11/2022]

16.2.16.12 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST RENEWAL GENERAL REQUIREMENTS:

A. Except as provided otherwise in the act, or in these rules, or pursuant to other State law, including but not limited to the board's right to deny an application for renewal pursuant to Section 61-14A-17 NMSA 1978, and the Parental Responsibility Act, Section 40-5A-1, NMSA 1978, et seq., each certified auricular detoxification specialist shall be granted renewal of his or her certification for one year upon receipt and approval by the board or its designee, completion of the requirements specified in 16.2.16.13 NMAC.

B. Any applicant for renewal who is licensed, certified, registered or legally recognized to practice any profession, including health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine

Practice Act, shall provide an affidavit regarding the disciplinary record of the applicant since last renewing his or her certification with the board.

C. Any applicant for renewal who has been subject to any action or proceeding comprehended by Subsection D of 16.2.16.13 NMAC, may be subject to disciplinary action at any time, including denial, suspension or revocation of certification, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

D. Any applicant for renewal who provides the board with false information or makes a false statement to the board may be subject to disciplinary action at any time, including denial, suspension or revocation of certification, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq.
[16.2.16.12 NMAC - Rp, 16.2.16.12 NMAC, 2/11/2022]

16.2.16.13 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST RENEWAL:

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

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

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

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

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

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

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

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

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

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

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection C of 16.2.8.10 NMAC

may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq. and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq; and

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

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

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

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

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

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

I. an accurate translation in English of all documents submitted in a foreign language; each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the

document and the English language and that the translation is a true and faithful translation of the foreign language original; each translated document shall also bear the affidavit of the translator certifying that the translation is a true and faithful translation of the original; each affidavit shall be signed before a notary public; the translation of any document relevant to an application shall be at the expense of the applicant; and

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

[16.2.16.13 NMAC - Rp, 16.2.16.13 NMAC, 2/11/2022]

16.2.16.14 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST LATE RENEWAL:

A certified auricular detoxification specialist whose application to renew their certification is received late at the board's office during the 60 day period following the required date of renewal shall have their certification renewed if the applicant for late certification renewal completes the requirements of 16.2.16.13 NMAC and pays the auricular detoxification specialist certification late renewal fee specified in 16.2.10 NMAC.

[16.2.16.14 NMAC - Rp, 16.2.16.14 NMAC, 2/11/2022]

16.2.16.15 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST EXPIRED CERTIFICATION:

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

[16.2.16.15 NMAC - Rp, 16.2.16.15 NMAC, 2/11/2022]

16.2.16.16 CERTIFIED AURICULAR DETOXIFICATION SPECIALIST INACTIVE STATUS:

A certified auricular detoxification specialist in good standing may place their certification on inactive status for up to three years by notifying the board of their intention to do so. Renewal fees will not be due during the period of inactivity. The certified auricular detoxification specialist shall not engage in the practice of auricular detoxification while the certification is inactive. If certification has not been reactivated within three years of its being placed on inactive status, the certification shall be considered expired. Should the certified auricular detoxification specialist wish to reactivate an inactive certification, they may do so by notifying the board, and with board approval, performing eight complete auricular detoxification treatments directly supervised by a registered auricular detoxification supervisor within a board-approved training or treatment program within three months prior to reactivation; satisfying any additional requirements for certification imposed by the board at the time of recertification; paying a single auricular detoxification specialist certification renewal fee specified in 16.2.10 NMAC; and complying with all other requirements of 16.2.16.13 NMAC.

[16.2.16.16 NMAC - Rp, 16.2.16.16 NMAC, 2/11/2022]

16.2.16.17 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR REQUIREMENTS AND RESPONSIBILITIES:

A. The auricular detoxification specialist supervisor shall:

(1) be a licensed doctor of oriental medicine;

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

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

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

(5) directly visit each certified auricular detoxification specialist under his supervision at the treatment program site at intervals of not more than six weeks with the first visit occurring not more than two weeks after supervision has begun for the first year, then at least once per year thereafter at the supervisor's discretion with regular meetings by electronic methods (telephone, email, teleconferencing as examples) at intervals to be determined by the supervisor;

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

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

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

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

C. the auricular detoxification specialist supervisor shall terminate the supervisory relationship if the auricular detoxification specialist supervisor has the reasonable belief that the certified auricular detoxification specialist has violated the act or the rules; in such case the auricular

detoxification specialist supervisor shall notify the board and the certified auricular detoxification specialist's employer, in writing, within five working days that the supervisory relationship is terminated and give in writing the reasons for the termination.

[16.2.16.17 NMAC - Rp, 16.2.16.17 NMAC, 2/11/2022]

16.2.16.18 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR REGISTRATION

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

A. the auricular detoxification specialist supervisor registration application fee specified in 16.2.10 NMAC;

B. proof of successful completion of an official national acupuncture detoxification association (NADA) course, or another board-approved training program, or a CV demonstrating experience,

or education in the field of harm reduction and alcoholism, substance abuse and chemical dependency at least equivalent to that provided in a NADA training, and three letters of reference attesting to the applicant's competence and experience in the field of auricular treatment for harm reduction, auricular treatment of alcoholism, substance abuse or chemical dependency;

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

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

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

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

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

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

spherical object that in non-reactive with the skin; and

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

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

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

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

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

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

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

(4) directly visit each certified auricular detoxification specialist under his supervision at the treatment program site at intervals of not more than

six weeks for the first year, then at least once per year thereafter at the supervisor's discretion with regular meetings by electronic methods (telephone, email, teleconferencing as examples) at intervals to be determined by the supervisor;

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

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

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

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

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

(10) notify the board within ten days if the auricular detoxification supervisor's address changes or phone number changes. [16.2.16.18 NMAC - Rp, 16.2.16.18 NMAC, 2/11/2022]

16.2.16.19 CHANGE OF SUPERVISOR: If the auricular detoxification specialist supervisor

relationship terminates for any reason, each party must notify the board in writing within five working days of this fact.

[16.2.16.19 NMAC - Rp, 16.2.16.19 NMAC, 2/11/2022]

16.2.16.20 COMPENSATION:

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

[16.2.16.20 NMAC - Rp, 16.2.16.20 NMAC, 2/11/2022]

16.2.16.21 AURICULAR DETOXIFICATION SPECIALIST SUPERVISOR CONFLICT

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

[16.2.16.21 NMAC - Rp, 16.2.16.21 NMAC, 2/11/2022]

16.2.16.22 [RESERVED]

16.2.16.23 [RESERVED]

16.2.16.24 [RESERVED]

16.2.16.25 [RESERVED]

16.2.16.26 AURICULAR DETOXIFICATION SPECIALIST TRAINING PROGRAM

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

A. the auricular detoxification specialist training program approval application fee specified in 16.2.10 NMAC; and

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

C. a curriculum that shall include at least:

(1) 30 hours of classroom didactic education covering the following subjects related to auricular detoxification: history and overview of the auricular detoxification profession; point descriptions, and locations and use

of the NADA five auricular point national acupuncture detoxification association (NADA) procedure or other board approved procedures; acupuncture needle description, insertion and removal techniques, the use of devices that do not penetrate the skin of the ear; trial treatment (explanation of what happens during a treatment and practice on class members); public health and laws and regulations; exposure control; clean needle technique training; occupational health and safety administration (OSHA) requirements; integration of auricular detoxification within the treatment program; concepts of acupuncture and oriental medicine as related to addiction and recovery (the concept of “empty fire”, etc.); client management issues and strategies (special populations); ethical and legal issues (confidentiality, HIPAA, the pertinent laws and rules of the state of New Mexico, etc.); and the nature of addiction and recovery; and

(2)

40 client hours (40 successfully completed treatments) under direct supervision by a board approved CADS supervisor at a site and with a supervisor pre-approved in writing by the training program, documented by a HIPAA-compliant form in which the privacy of clients is respected; and

D. an affidavit

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

(1) the

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

(2) the

auricular detoxification specialist training program registration must be renewed annually by July 31; and

(3) the

auricular detoxification specialist training program must notify the board within ten days if the program’s address or phone number changes; and

(4) the board

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

E. the name or

names of the trainer(s) who shall be teaching in the program and copies of their qualifications as trainers from NADA or other oriental medicine and auricular acupuncture drug detoxification, harm reduction, substance abuse or relapse-prevention-related education and experience approved by the board to train auricular detoxification specialist trainers; and

F. approval of

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

[16.2.16.26 NMAC - Rp, 16.2.16.26 NMAC, 2/11/2022]

16.2.16.27 AURICULAR DETOXIFICATION SPECIALIST TRAINING PROGRAM

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

A. the auricular

detoxification specialist training program approval renewal fee specified in 16.2.10 NMAC paid by check or money order in U.S. funds, or by credit card in U.S. funds if using the board’s online renewal process; and

B. an application for

auricular detoxification specialist training program renewal that is complete and in English on a form provided by the board that shall

include the applicant’s name, address, phone number, fax number and email address, if available; and

C. an affidavit

as provided on the auricular detoxification specialist training program renewal of approval application form stating that the program continues to provide at a minimum the curriculum required by the board in 16.2.16.26 NMAC; and

D. an affidavit

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

(1) the

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

(2) the

auricular detoxification specialist training program registration must be renewed annually by July 31; and

(3) the

auricular detoxification specialist training program must notify the board within 10 days if the program’s address or phone number changes; and

(4) the board

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

E. if the applicant

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

[16.2.16.27 NMAC - Rp, 16.2.16.27 NMAC, 2/11/2022]

16.2.16.28 TREATMENT

PROGRAM APPROVAL: All treatment programs focused on disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency that are officially recognized by a federal, state or local government agency shall automatically be approved by the board. Upon approval of a treatment program application for approval that fulfills the requirements listed below, the board shall issue a treatment program approval. In the interim between regular board meetings, whenever a qualified applicant for a treatment program approval has filed an application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary treatment program approval that will suffice until the next regular meeting of the board. The application requirements for a treatment program approval shall be receipt of the following by the board:

A. the treatment program approval application fee specified in 16.2.10 NMAC;

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

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

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

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

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

(5) the name of the auricular detoxification supervisor and the certified auricular detoxification specialist, if known; and

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

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

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

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

[16.2.16.28 NMAC - Rp, 16.2.16.28 NMAC, 2/11/2022]

16.2.16.29 GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF LICENSE, CERTIFICATION, REGISTRATION OR APPROVAL:

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

[16.2.16.29 NMAC - Rp, 16.2.16.29 NMAC, 2/11/2022]

History of 16.2.16 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

16.2.16 NMAC, Acupuncture And Oriental Medicine Practitioners - Auricular Detoxification filed 1/11/2005 Repealed 2/11/2022.

Other History:

16.2.16 NMAC, Acupuncture And Oriental Medicine Practitioners - Auricular Detoxification filed 1/11/2005 was Replaced by 16.2.16 NMAC, Acupuncture And Oriental

Medicine Practitioners - Auricular Detoxification effective 2/11/2022.

**REGULATION AND LICENSING DEPARTMENT
ACUPUNCTURE, BOARD OF**

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS

PART 17 LICENSURE BY ENDORSEMENT

16.2.17.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine. [16.2.17.1 NMAC - Rp, 16.2.17.1 NMAC, 2/11/2022]

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

[16.2.17.2 NMAC - Rp, 16.2.17.2 NMAC, 2/11/2022]

16.2.17.3 STATUTORY

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

[16.2.17.3 NMAC - Rp, 16.2.17.3 NMAC, 2/11/2022]

16.2.17.4 DURATION:

Permanent.

[16.2.17.41 NMAC - Rp, 16.2.17.4 NMAC, 2/11/2022]

16.2.17.5 EFFECTIVE

DATE: February 11, 2022, unless a later date is cited at the end of a section.

[16.2.17.5 NMAC - Rp, 16.2.17.5 NMAC, 2/11/2022]

16.2.17.6 OBJECTIVE:

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

[16.2.17.6 NMAC - Rp, 16.2.17.6 NMAC, 2/11/2022]

16.2.17.7 DEFINITIONS:

Refer to definitions in 16.2.1.7 NMAC (Section 7 of Part 1 of the rules).
[16.2.17.7 NMAC - Rp, 16.2.17.7 NMAC, 2/11/2022]

16.2.17.8 GENERAL REQUIREMENTS:

A. An applicant for licensure by endorsement shall have five years of clinical experience, within the last six years as defined in 16.2.1.7 NMAC immediately preceding application.

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

C. Any applicant for licensure by endorsement who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978, et seq.

D. Any applicant for licensure by endorsement who provides the board with false information or makes a false statement to the board may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and to the Uniform Licensing Act Section 61-1-1 NMSA 1978, et seq.
[16.2.17.8 NMAC - Rp, 16.2.17.8 NMAC, 2/11/2022]

16.2.17.9 EDUCATIONAL PROGRAM REQUIREMENTS:

A. An applicant for licensure by endorsement shall provide proof that he completed an educational program in acupuncture that fulfilled the requirements of the

national certification commission for acupuncture and oriental medicine in place in 1992 or if graduated after 1992 is in compliance with the educational program requirements in 16.2.7 NMAC or that was accredited by the accreditation commission for acupuncture and oriental medicine, ACAOM, formerly the national accreditation commission for schools and colleges of acupuncture and oriental medicine and ACSCAOM.

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

C. If an applicant graduated before 1992 from an educational program lacking annual approval status from the board for the year of graduation, as defined in 16.2.7.10 NMAC, then the applicant shall apply for a single instance review. The applicant must obtain an approval of the educational program for use by a single applicant and will need to submit the following to the board:

(1) the required application fee as specified in 16.2.10 NMAC, paid by check or money order in U.S. funds; and

(2) an application on a form prescribed by the board, completed and in English, that contains the matriculation date for the educational program, the information necessary to verify that the standards of professional education required by 16.2.17.9 NMAC and an official copy of the curriculum.

[16.2.17.9 NMAC - Rp, 16.2.17.9 NMAC, 2/11/2022]

16.2.17.10**INITIAL LICENSURE BY ENDORSEMENT APPLICATION:**

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

A. the fee for application for licensure by endorsement specified in 16.2.10 NMAC;

B. a licensure by endorsement application that is complete and in English on a form provided by the board that shall include the applicant's name, address, date of birth and social security number, if available;

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

D. an affidavit as provided on the initial licensure by endorsement application form as to whether the applicant:

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

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

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

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

E. an official license history, which is a certificate from each jurisdiction stating the disciplinary record of the applicant, from each jurisdiction where the applicant has been licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act; and

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

(1) an applicant who has been subject to any action or proceeding comprehended by Subsection D of 16.2.17.10 NMAC may be subject to disciplinary action at any time, including denial, suspension or revocation of licensure, pursuant to the provisions of the act, Section 61-14A-17 NMSA 1978; and subject to the Uniform Licensing Act, Section 61-1-1 NMSA 1978, et seq., and subject to the Criminal Offender Employment Act, Section 28-2-1, NMSA 1978 et seq.; and

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

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

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

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

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

H. a copy of the applicant's certificate or diploma from an educational program evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC; this copy shall include on it an affidavit certifying that it is a true copy of the original;

I. a copy of the applicant's transcript from the educational program in acupuncture or oriental medicine evidencing completion of the educational program in acupuncture as defined above in 16.2.17.9 NMAC; this copy shall include on it an affidavit certifying that it is a true copy of the original;

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

K. proof of clinical experience as required in Subsection A of 16.2.17.8 NMAC;

L. proof of successful completion of the examinations required below in 16.2.17.11 NMAC; and

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

[16.2.17.10 NMAC - Rp, 16.2.17.10 NMAC, 2/11/2022]

16.2.17.11 EXAMINATION

REQUIREMENTS: The following requirements shall be received at the board's office within 24 months of the receipt of the initial licensure by endorsement application:

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

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

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

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

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

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

C. proof of successful completion of the New Mexico clinical skills examination specified in 16.2.4.10 NMAC; and

D. proof of successful completion of the board approved and board administered jurisprudence examination specified in 16.2.4.10 NMAC.

[16.2.17.11 NMAC - Rp, 16.2.17.11 NMAC, 2/11/2022]

16.2.17.12 DOCUMENTS

IN A FOREIGN LANGUAGE: All

documents submitted in a foreign language must be accompanied by an accurate translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and faithful translation of the foreign language original. Each translated document shall also bear the affidavit of the applicant certifying that the translation is a true and faithful

translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an applicant's application shall be at the expense of the applicant.

[16.2.17.12 NMAC - Rp, 16.2.17.12 NMAC, 2/11/2022]

16.2.17.13 SUFFICIENCY OF DOCUMENT:

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

[16.2.17.13 NMAC - Rp, 16.2.17.13 NMAC, 2/11/2022]

16.2.17.14 DEADLINE FOR COMPLETING ALL REQUIREMENTS FOR LICENSURE:

All documentation required for licensure by endorsement shall be received at the board office no later than 24 months after the initial application for licensure by endorsement is received at the board office.

[16.2.17.14 NMAC - Rp, 16.2.17.14 NMAC, 2/11/2022]

16.2.17.15 NOTIFICATION OF LICENSURE:

The applicant for licensure by endorsement shall be notified of approval or denial of his or her completed application requirements including examination requirements by mail postmarked no more than 21 days from the board's receipt of all required documentation. The board shall issue a license to all applicants who have met the requirements of 16.2.17 NMAC.

[16.2.17.15 NMAC - Rp, 16.2.17.15 NMAC, 2/11/2022]

16.2.17.16 EXPIRATION AND ABANDONMENT OF APPLICATION:

If all licensure by

endorsement application requirements have not been met within 24 months of the initial licensure by endorsement application, the application will expire and will be deemed abandoned. Exceptions may be made, at the board's discretion, for good cause. If the licensure by endorsement application is abandoned and the applicant for licensure by endorsement wants to reapply, the applicant for licensure by endorsement shall be required to submit the completed current licensure by endorsement application form, pay the current application fee and satisfy the requirements for licensure by endorsement in effect at the time of the new licensure by endorsement application. The board shall notify the applicant for licensure by endorsement of pending abandonment of the licensure by endorsement application by mail postmarked at least 60 days before the date of abandonment which is the expiration of the 24 month deadline for completing all requirements for licensure by endorsement. The board shall notify the applicant for licensure by endorsement of abandonment of the application by mail postmarked no more than 21 days after the date of abandonment.

[16.2.17.16 NMAC - Rp, 16.2.17.16 NMAC, 2/11/2022]

History of 16.2.17 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

16.2.17 NMAC, Acupuncture And Oriental Medicine Practitioners - Licensure by Endorsement filed 1/11/2005 Repealed effective 2/11/2022.

Other History:

16.2.17 NMAC, Acupuncture And Oriental Medicine Practitioners - Licensure by Endorsement filed 1/11/2005 was Replaced by 16.2.17 NMAC, Acupuncture And Oriental Medicine Practitioners - Licensure by Endorsement effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE PRACTITIONERS

PART 21 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

16.2.21.1 ISSUING

AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.21.1 NMAC - Rp, 16.2.21.1 NMAC, 2/11/2022]

16.2.21.2 SCOPE: This part sets forth application procedures to expedite licensure for military service members, spouses, and veterans.

[16.2.21.2 NMAC - Rp, 16.2.21.2 NMAC, 2/11/2022]

16.2.21.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to and in accordance with the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 to -22 NMSA 1978, (specific authority to promulgate rules is Subsection B of 61-14A-8 NMSA 1978, and Section 61-1- (HB 180) NMSA 1978.

[16.2.21.3 NMAC - Rp, 16.2.21.3 NMAC, 2/11/2022]

16.2.21.4 DURATION:

Permanent.

[16.2.21.4 NMAC - Rp, 16.2.21.4 NMAC, 2/11/2022]

16.2.21.5 EFFECTIVE

DATE: February 11, 2022 unless a later date is cited at the end of a section.

[16.2.21.5 NMAC - Rp, 16.2.21.5 NMAC, 2/11/2022]

16.2.21.6 OBJECTIVE: The purpose of this part is to expedite licensure for military service members, their spouses and veterans pursuant to Section 61-1-34 NMSA 1978.

[16.2.21.6 NMAC - Rp, 16.2.21.6 NMAC, 2/11/2022]

16.2.21.7 DEFINITIONS:

A. “License” is a doctor of oriental medicine pursuant to the Act.

B. “Licensee” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

C. “Licensing fee” has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

D. “Military service member” has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

E. “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

F. “Substantially equivalent” means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 NMSA 1978, et.seq.

G. “Veteran” has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.2.21.7 NMAC - Rp, 16.2.21.7 NMAC, 2/11/2022]

16.2.21.8 APPLICATION REQUIREMENTS:

A. Applications for licensure shall be completed on a form provided by the board.

B. The applicant shall provide a complete application that includes the following information:

(1) a completed application and corresponding fee pursuant to 16.2.10.9 NMAC;

(2) satisfactory evidence that the applicant is currently licensed in another jurisdiction, including a branch of the United States armed forces, and holds a current license in good standing; the applicant further must provide satisfactory evidence that he has met the minimal licensing requirements in that jurisdiction and that they are substantially equivalent to the licensing requirements for New Mexico licensees in acupuncture and oriental medicine; and

(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.

(4) proof as described in Subsection C below.

C. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member’s military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent’s DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy military service member’s orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member’s federal tax return or other government or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board/commission as soon as practicable but no later than 30 days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 NMSA 1978, et. seq. [16.2.21.8 NMAC - Rp, 16.2.21.8 NMAC, 2/11/2022]

16.2.21.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance specified in 16.2.3 NMAC, application for licensure or 16.2.17 NMAC licensure by endorsement and for the renewal of a license specified in 16.2.8 NMAC pursuant to 61-14A-15 NMSA 1978.

B. A license issued pursuant to this section shall be valid for one year or until July 31 unless renewed.

C. The board office mails license renewal notifications to licensees before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

D. The renewal application will be available online at the board’s website and in paper copy if requested from the board office and must be received at the board office

on or before July 31, except that licenses initially issued after May 1 shall not expire until July 31 of the next renewal period.

E. To renew a license, the licensee must submit the following documentation on or before July 31: a completed license renewal application, verification of continuing education, and the applicable renewal fee at the time of renewal.

F. As a courtesy, the board, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.
[16.2.21.9 NMAC - Rp, 16.2.21.9 NMAC, 2/11/2022]

History of 16.2.21 NMAC:

16.2.21.9 NMAC, Acupuncture And Oriental Medicine Practitioners - Licensure For Military Service Members, Spouses And Veterans filed 1/31/2014 Repealed effective 2/11/2022.

Other History:

16.2.21.9 NMAC, Acupuncture And Oriental Medicine Practitioners - Licensure For Military Service Members, Spouses And Veterans filed 1/31/2014 was Replaced by 16.2.21.9 NMAC, Acupuncture And Oriental Medicine Practitioners - Licensure For Military Service Members, Spouses And Veterans effective 2/11/2022.

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.2 NMAC amending Sections 22, 24, 25, 30, 32, 36, 38, 44 and 46, effective 1/13/2022.

16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:

A. An initial application or renewal for cannabis producer licensure shall include the following:

- (1)** Contact information for the applicant and the cannabis establishment, to include:
 - (a)** applicant's full legal name;
 - (b)** applicant's date of birth, if applicable;
 - (c)** applicant's mailing address;
 - (d)** applicant's contact telephone number;
 - (e)** applicant's contact email address;
 - (f)** applicant's business physical address and mailing address, if different;
 - (g)** applicant's business legal name, including a DBA name if applicable;
 - (h)** applicant's business web address, if applicable;
 - (i)** applicant's business hours of operation;
 - (j)** name and contact information for each controlling person; and
 - (k)** demographic data pursuant to the Cannabis Regulation Act;
- (2)** proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;
- ~~**(3)** legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to produce cannabis in a portable document format (.pdf), and if requested by the division, digital photographic photos;~~

~~**(4)**~~ **(3)**

demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:

- (a)** documentation from a water provider that the applicant has the right to use water from the provider and that the

use of water from cannabis production is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

- (i)** a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;
- (ii)** a subfile order or decree issued by a water rights adjudication court;
- (iii)** the findings of an office of the state engineer hydrographic survey; or
- (iv)** other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

~~**(5)**~~ **(4)** a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:

- (a)** drip irrigation and water collection;
- (b)** natural lighting and energy efficiency measures;
- (c)** renewable energy generation; and
- (d)**

estimated water and energy use related to the applicants cultivation plan;

~~**(6)**~~ **(5)** if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

~~**(7)**~~ **(6)** a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

~~[(6)] (7)~~ a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

~~[(9)] (8)~~ the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

~~[(10)] (9)~~ certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

~~[(11)] (10)~~ certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

~~[(12)] (11)~~ certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

~~[(13)] (12)~~ certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

~~[(14)] (13)~~ certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin

Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

~~[(15)] (14)~~ certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

~~[(16)] (15)~~ certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

~~[(17)] (16)~~ applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

~~[(18)] (17)~~ certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the

applicant shall adhere to local zoning ordinance;

~~(18)~~
certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.24 NMAC and description of the location of the land or facility used for the cannabis establishment and the method(s) to be used to produce cannabis which shall be made immediately available upon request by the division;

~~(19)~~
an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

~~(20)~~ payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

B. Verification of information: The division may verify information contained in each application and accompanying documentation, including:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.
[16.8.2.22 NMAC – N, 08/22/2021; A/E, 12/06/2021; A/E, 01/13/2022]

16.8.2.24 PRODUCER PREMISES DIAGRAM:

A. An applicant must ~~[submit to the division, with the application,]~~ maintain on its licensed premise at all times, a complete and detailed diagram of the ~~[proposed]~~ premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules. ~~[The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.]~~

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence. [16.8.2.24 NMAC - N, 08/24/2021; A/E, 01/13/2022]

16.8.2.25 PHYSICAL MODIFICATION OF PRODUCER PREMISES

A. Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises ~~[from the premises diagram filed with the division]~~.

B. Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.

C. Material or substantial changes, alterations, or modifications requiring approval include:

(1) when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;

(2) when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;

(3) re-roofing and application of roof coatings that requires a building permit and inspections; or

(4) changing the occupancy activities conducted

in or the use of an area ~~[identified in the last premises diagram provided to the division]~~ that requires a new certificate of occupancy or fire inspection.

D. Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:

~~[(1)]~~ a new premises diagram that conforms to requirements set forth in 16.8.2.18 NMAC;

~~[(2)]~~ (1) a copy of the applicable building permit; and ~~[(3)]~~ (2) a new certificate of occupancy, if applicable.

E. Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;

F. Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and

G. The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request. [16.8.2.25 NMAC - N, 08/24/2021; A/E, 01/13/2022]

16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:

A. An initial application or renewal for cannabis manufacturer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's mailing address;
- (c) applicant's contact telephone number;
- (d) applicant's contact email address;
- (e) applicant's business physical address and mailing address, if different;

(f) applicant's business legal name, including a DBA name if applicable;

(g) applicant's business web address, if applicable;

(h) applicant's business hours of operation;

(i) name and contact information for each controlling person;

(j) demographic data pursuant to the Cannabis Regulation Act; and

(k) license type sought (Class I, Class II, Class III, or Class IV);

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

~~[(3)] legible and accurate diagram containing information required by 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, in a portable document format (.pdf), and if requested by the division, digital photographic photos;~~

~~[(4)] (3)~~ demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule;

~~[(5)] (4)~~ if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

~~[(6)] (5)~~ a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

~~[(7)] (6)~~ a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

~~[(8)] (7)~~ if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

~~[(9)] (8)~~ if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

~~[(10)] (9)~~ for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles

and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;

~~[(11)] (10)~~ certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(12)] (11)~~ certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(13)] (12)~~ certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(14)] (13)~~ certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(15)] (14)~~ certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

~~[(16)] (15)~~ certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three

years immediately preceding the date of the application;

~~(17)~~ (16)

certification the applicant is not licensed under the Liquor Control Act.

~~(18)~~ (17)

applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

~~(19)~~ (18) an

attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer:

~~(20)~~ (19)

certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

(20)

certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, which shall be made immediately available upon request by the division:

(21)

an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation

of these rules may result in denial of the license application or revocation of a license issued; and

(22) payment

of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

C. Trade secrets:

Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to 7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within ten days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.30 NMAC – N/E, 09/08/2021; A/E, 12/02/2021; N, 12/28/2021; A/E, 01/13/2022]

16.8.2.32 MANUFACTURER PREMISES DIAGRAM:

A. An applicant must [submit to the division, with the

~~application,] maintain on its licensed premise at all times, a complete and detailed diagram of the [proposed] premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. [The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.]~~

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured, and the location of the extraction area. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.32 NMAC – N/E, 09/08/2021; N, 12/28/2021; A/E, 01/13/2022]

16.8.2.36 APPLICATION REQUIREMENTS FOR CANNABIS RETAILER LICENSE:

A. An initial application or renewal for cannabis retailer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

(a) applicant's full legal name;

(b) applicant's date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person;

(k) demographic data pursuant to the Cannabis Regulation Act; and

(l) license type sought;

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

~~[(3)] (3) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements, in a portable document format (.pdf), and if requested by the division, digital photographic photos;~~

~~[(4)] (3)~~ if applicable, certification the applicant is in good standing with the New

Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

~~[(5)] (4)~~ a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

~~[(6)] (5)~~ a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

~~[(7)] (6)~~ certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(8)] (7)~~ certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(9)] (8)~~ certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(10)] (9)~~ certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~[(11)] (10)~~ certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

~~[(12)] (11)~~

certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

~~[(13)] (12)~~

certification the applicant is not licensed under the Liquor Control Act;

~~[(14)] (13)~~

certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

~~(14)~~

certification the applicant will maintain at all times a legible and accurate diagram and description containing information required by 16.8.2.38 NMAC and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements which shall be made immediately available upon request by the division;

~~(15)~~

if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

~~(16)~~ applicant's

social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or

the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merged, federally designated opportunity zone, or other rural historic communities;

(17)

an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(18) payment

of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

- (1) contacting the applicant or controlling person by telephone, mail, or electronic mail;
 - (2) conducting an on-site visit;
 - (3) requiring a face-to-face or virtual meeting and the production of additional documentation; or
 - (4) consulting with state or local governments.
- [16.8.2.36 NMAC – N, 12/28/2021, A/E 01/13/2022]

16.8.2.38 RETAIL PREMISES DIAGRAM:

A. An applicant [~~submit to the division, with the application,~~] maintain on its licensed premise at all times, a complete and detailed diagram of the [proposed] premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. [~~The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.~~]

B. The diagram shall show the boundaries of the property and the proposed premises to be

licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.38 NMAC – N, 12/28/2021; A/E, 01/13/2022]

16.8.2.44 APPLICATION REQUIREMENTS FOR CANNABIS TESTING LABORATORY LICENSE:

A. Contents of application:

(1) for any initial or renewal application, contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's mailing address;
- (c) applicant's contact telephone number;

(d) applicant's contact email address;

(e) applicant's business physical address and mailing address, if different;

(f) applicant's business legal name, including a DBA name, if applicable;

(g) applicant's business web address, if applicable;

(2) for any initial application, information about controlling persons, to include:

(a) name and contact information;

(b) documentation of legal name change, if applicable;

(c) criminal history screening documents, as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(d) a detailed description of any criminal convictions, including for each: the date of the conviction; dates of incarceration, probation, or parole; description of the offense; and any evidence of rehabilitation, including court documents, personal or professional references, completion of treatment, employment records, and other relevant information;

(e) demographic data pursuant to the Cannabis Regulation Act; and

(f) A copy of identification issued by a federal or state government, including name, date of birth, and picture and indicating the person is at least 21 years of age;

(3) for any renewal application, certifications that the applicant:

(a) attests to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued;

(b) will adhere to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules, including:

(i) testing requirements;

(ii) transport requirements;

(iii) security requirements;

(iv) quality assurance requirements; and

(v) the prohibition on any person holding an interest in one or more cannabis testing laboratories from holding an interest in any other cannabis license other than a cannabis research laboratory;

(c) will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(d) has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application; and

(e) is not licensed at the same location under the Liquor Control Act;

(f) has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance; and

(g) maintain on its licensed premise at all times, a complete and detailed diagram of the premises containing information required by 16.8.2.46 NMAC, which shall be made immediately available to the division upon request.

(4) for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:

(a) a list of categories of testing for which licensure is sought; and

~~legible and accurate premises diagram containing information required by 16.8.2.46 NMAC, in a portable document format (.pdf), and if requested by the division, digital photographs;~~

~~(b)~~ (b) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees, or premises are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities; and

(5) for any initial or renewal application, payment of any required fees as set forth in 16.8.11 NMAC.

B. Initial demonstration of capability: The division requires the submission of an initial demonstration of capability (IDC) for every test a cannabis testing laboratory intends to conduct, except tests for research and development purposes only. The IDC must identify a limit of quantitation that is equal to or lower than the action level for the specified test.

(1) An IDC is required whenever:

(a) an initial application is submitted, except that an applicant may instead

submit evidence of prior completion of an IDC as a requirement of licensing under the Lynn and Erin Compassionate Use Act;

(b) the cannabis testing laboratory proposes to use a new analytical instrument to test for an analyte; or

(c) the cannabis testing laboratory proposes material changes to testing methods.

(2) Every IDC shall include the following elements:

(a) Demonstration of method calibration: The calibration range shall use at least five calibration points consisting of five different concentration levels of target compounds. The calibration range shall include a low calibration point equal to, or less than, the action level for each targeted compound. The cannabis testing laboratory shall provide the equation and the type of curve fit used for the calibration range, and the percent relative standard deviation or the goodness of fit. The percent relative standard deviation shall be less than twenty percent, or the goodness of fit (correlation coefficient) shall be 0.995 or better.

(b) Demonstration of method accuracy and precision: A cannabis testing laboratory shall supply the quantitation data for five positive control samples analyzed by its testing method utilizing median or mid-level calibration concentration. The cannabis testing laboratory shall identify and justify acceptance criteria and shall calculate and provide the calculated mean (average) result and the standard deviation. Any standard deviations greater than twenty percent shall be noted and explained.

(c) Demonstration of method detection limit: A cannabis testing laboratory shall calculate its method detection limit using a generally accepted method.

(d) Demonstration of low system background: A cannabis testing laboratory shall supply the analytical

data of at least three negative control samples that do not contain any target analytes.

(e)

Demonstration of analyte identification: A cannabis testing laboratory that uses, high performance liquid chromatography (HPLC) or gas chromatography with flame ionization detector or photoionization detector (GC-FID or GC-PID/ FID) instrumentation shall supply analytical data where each targeted compound is analyzed as a single compound giving it its characteristic retention time. A cannabis testing laboratory that uses gas chromatography–mass spectrometry (GCMS), liquid chromatography–mass spectrometry (LCMS), or liquid chromatography–tandem mass spectrometry (LCMSMS) instrumentation shall supply analytical data with the characteristic mass spectrum of each targeted compound.

C. Continuing

demonstration of capability: A cannabis testing laboratory shall submit a continuing demonstration of capability (CDC) for each test performed annually as part of the laboratory's application for renewal of licensure. A CDC may consist of:

(1) Evidence

that the cannabis testing laboratory has the test within its current scope of accreditation to the current standards of ISO/IEC 17025, *Testing and Calibration Laboratories*;

(2) Evidence

that each analyst performing the test has successfully completed, within the previous year, relevant proficiency testing administered by a provider accredited to the standards of ISO/IEC 17043, *Conformity Assessment—General Requirements for Proficiency Testing*; or

(3) The re-performance of the IDC.

D. Verification of

information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by

telephone, mail, or electronic mail; (2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

E. Trade secrets:

Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret by clearly identifying such information as “confidential trade secrets” on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act. [16.8.2.44 NMAC – N, 01/11/2022; A/E, 01/13/2022]

16.8.2.46 TESTING LABORATORY PREMISES DIAGRAM:

A. Detailed diagram

required: An applicant [~~submit to the division, with the application,~~] maintain on its licensed premise at all times, a complete and detailed diagram of the [~~proposed~~] premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. [~~The division shall deny an application if the premises does not qualify for~~

~~licensure pursuant to federal, state, or local laws.]~~

B. Contents of

diagram: The diagram shall show:

(1) the boundaries of the property and the proposed premises to be licensed;

(2) if applicable, the uses of any portion of the property not included in the premises;

(3) a brief statement or description of the principal activity to be conducted in each area on the premises;

(4) the dimensions of each area where testing of cannabis products will take place;

(5) the location and identity of equipment; and

(6) entrances and exits;

C. Format of

diagram: The diagram shall:

(1) be drawn to scale;

(2) be rendered in black and white print; and

(3) contain no highlighting.

[16.8.2.46 NMAC – N, 01/11/2022; A/E, 01/13/2022]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.8 NMAC amending Sections 9 and 10, effective 1/13/2022.

16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:

A. Initial license

designation: For the purpose of determining the number of mature cannabis plants a licensee may be allocated to cultivate, all cannabis producer and vertically integrated cannabis establishment licenses issued on or after August 15, 2021, will be designated by the division as a level 1, level 2, level 3, or level 4. Cannabis plant count level placement shall be based on the following factors:

(1) applicant's requested mature cannabis plant limit level;

(2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;

~~[(3) applicant's facility diagram and canopy size;]~~

~~[(4)]~~ (3) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;

~~[(5)]~~ (4) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and

~~[(6)]~~ (5) applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities.

B. Designated mature cannabis plant levels:

(1) Level 1:
~~[201—1,000]~~ 401 – 2,000 mature cannabis plants;

(2) Level 2:
~~[1,001—3,000]~~ 2,001 – 6,000 mature cannabis plants;

(3) Level 3: ~~[3,001—6,000]~~ 6,001 – 12,000 mature cannabis plants; or

(4) Level 4: ~~[6,001—8,000]~~ 12,001 – 16,000 mature cannabis plants.

C. Incremental increase: A licensee may increase the number of mature cannabis plants, at the time of renewal and one other time per year. An authorized mature

cannabis plant count increase shall only be approved in increments of ~~[500]~~ 1,000 mature cannabis plants.

D. Limit of incremental increase: A licensee may be allowed to increase its authorized mature cannabis plant count up to four increments at a time upon application and approval by the division.

E. Immature Plants: For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensee's approved cannabis plant level.

F. Maximum cannabis plant count: In no event shall a licensee be permitted to grow more than ~~[10,000]~~ 20,000 mature cannabis plants at one time.
[16.8.8.9 NMAC - N, 08/24/2021; A/E, 01/13/2022]

16.8.8.10 PLANT INCREASE REQUEST:

A. A licensee may request an increase of the number of mature plants licensed at the time of renewal and at one other time per year. To be considered for approval by the division, the licensee shall provide, in addition to required fees set forth in 16.8.11 NMAC, the following information to demonstrate the licensee's capacity for a mature cannabis plant count increase, licensee's compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules:

(1) a current inventory of mature cannabis plants and harvested cannabis;

(2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;

~~[(3) applicant's facility diagram and canopy size;]~~

~~[(4)]~~ (3) applicant's reported number of plants harvested in the preceding three months;

~~[(5)]~~ (4) applicant's medical cannabis and commercial cannabis sales in the preceding three months;

~~[(6)]~~ (5) applicant's total cannabis sales; and

~~[(7)]~~ (6) progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities.

B. The division shall make a determination to approve or deny a licensee's request to increase mature cannabis plant count based on the information provided and the following factors:

(1) the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;

(2) the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;

(3) the existence of any pending or final enforcement action taken by the division against the licensee;

(4) whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;

(5) whether the licensee's cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and

(6) the completeness of information and data provided to the division.

C. Ground for Denial: The division may deny a request for additional mature cannabis plants based on the information

provided or for violating the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the licensee exceeding its authorized mature cannabis plant count during the prior three-month period.

[16.8.8.10 NMAC - N, 08/24/2021; A/E, 01/13/2022]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.11 NMAC amending Section 11, effective 1/13/2022.

16.8.11.11 ANNUAL PER PLANT FEE:

A. Commercial cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be accessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1:
[~~\$10.00~~] \$5.00 per mature cannabis plant;
- (2) Level 2:
[~~\$10.00~~] \$5.00 per mature cannabis plant;
- (3) Level 3:
[~~\$10.00~~] \$5.00 per mature cannabis plant; and
- (4) Level 4
and above: [~~\$10.00~~] \$5.00 per mature cannabis plant.

B. Medical cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set

forth in 16.8.2.17 NMAC. Plant fees shall be accessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1:
[~~\$5.00~~] \$2.50 per mature cannabis plant;
 - (2) Level 2:
[~~\$5.00~~] \$2.50 per mature cannabis plant;
 - (3) Level 3:
[~~\$5.00~~] \$2.50 per mature cannabis plant; and
 - (4) Level 4
and above: [~~\$5.00~~] \$2.50 per mature cannabis plant.
- [16.8.11.11 NMAC - N, 08/24/2021; A/E 01/13/2022]

REGULATION AND LICENSING DEPARTMENT NUTRITION AND DIETETICS PRACTICE BOARD

This is an amendment to 16.14.3 NMAC, Sections 8, 9, 10 and 11, effective 2/9/2022.

16.14.3.8 REQUIREMENTS FOR DIETITIAN LICENSE:

A. Prerequisites:
(1) valid current registration with CDR which includes successful completion of the CDR examination and gives the applicant the right to use the term "registered dietitian" or "RD" or (2) license in another state which has standards for licensure not less stringent than those in New Mexico.

B. Documentation:
Each applicant for a license to practice as a dietitian must submit the required fees and following documentation:

- (1) a completed and signed application;
- (2) a copy of CDR card; [and]
- (3) applicants who are currently, or have previously been, licensed in another state(s) must provide a copy of each license and a verification of license status directly to the board from the state(s) where licensed; and

(4) a background check shall be conducted within past 90 days for initial licensure only.

C. Disqualifying convictions: Conviction by a court of competent jurisdiction of any of the following potentially disqualifying felony criminal convictions:

(1) homicide, involuntary or voluntary manslaughter;

(2) manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;

(3) kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;

(6) crimes involving child abuse or neglect, child endangerment;

(7) crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property;

(8) crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds.

D. Other convictions:
This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt

or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

E. Mental competency: Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

(2) Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise.

F. Scope of conduct: Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony convictions listed in Subsection A of this rule.

G. Prohibited disclosure: In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

- (1)** an arrest not followed by a valid conviction;
- (2)** a conviction that has been sealed, dismissed, expunged or sealed;
- (3)** a juvenile adjudication; or
- (4)** a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

H. Notice and hearing:

If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/licensee will receive notice and opportunity for a hearing. [3/30/1990...8/31/1996; 16.14.3.8 NMAC - Rn, 16 NMAC 14.3.8, 11/22/2005; A, 8/1/2011; A, 2/9/2022]

16.14.3.9 REQUIREMENTS FOR NUTRITIONIST LICENSE:

A. Education requirements: Each applicant for a license as a nutritionist must have one of the following:

- (1)** master's degree or doctorate in human nutrition, nutrition education, foods and nutrition, or public health nutrition from a college or university accredited by a member of the council on post-secondary accreditation; or
- (2)** valid current evidence of membership in one of the following organizations: American clinical board of nutrition or American society for nutrition.

B. Additional requirements:

- (1)** pass an examination related to entry level nutrition practice and nutrition care services which has been approved by the board; or
- (2)** be licensed in another state which has standards for licensure not less stringent than those in New Mexico.

C. Documentation: Each applicant for license to practice as a nutritionist must submit the required fees and following documentation:

- (1)** completed and signed application;
- (2)** official transcript verifying degree required in Paragraph (1) of Subsection A of 16.14.3.9 NMAC, mailed directly from the college or university; or
- (3)** proof of membership in the organizations specified in Paragraph (2) of Subsection A of 16.14.3.9 NMAC;
- (4)** applicants who are currently, or have previously

been, licensed in another state(s) must provide a copy of each license and a verification of license status directly to the board from the state(s) where licensed;

(5) a background check shall be conducted within past 90 days for initial licenses only.

D. Disqualifying convictions: Conviction by a court of competent jurisdiction of any of the following potentially disqualifying felony criminal convictions:

- (1)** homicide, involuntary or voluntary manslaughter;
 - (2)** manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;
 - (3)** kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;
 - (4)** rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
 - (5)** crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;
 - (6)** crimes involving child abuse or neglect, child endangerment;
 - (7)** crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property;
 - (8)** crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds.
- E. Other convictions:** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include

a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

F. Mental competency: Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

(2) Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise.

G. Scope of conduct: Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

H. Prohibited disclosure: In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or sealed;

(3) a juvenile adjudication; or

(4) a conviction for any crime other

than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

I. Notice and hearing:

If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/ licensee will receive notice and opportunity for a hearing.
[3/30/1990...8/31/1996; 16.14.3.9 NMAC - Rn, 16 NMAC 14.3.9, 11/22/2005; A, 8/1/2011; A, 2/9/2022]

16.14.3.10 REQUIREMENTS FOR NUTRITION ASSOCIATE LICENSE:

A. Education
requirements: Each applicant for a license as a nutrition associate must have:

(1) a baccalaureate or higher degree from a college or university accredited by a member of the council on post-secondary accreditation; and

(2) completion of the academic requirements that qualify the applicant for an internship or equivalent program as approved by the commission on dietetic registration; and

B. Additional
requirements:

(1) pass an examination related to entry level nutrition practice and nutrition care services which has been approved by the board; or

(2) be licensed in another state which has standards for licensure not less stringent than those in New Mexico.

C. Documentation:
Each applicant for a license to practice as a nutrition associate must submit the required fees and following documentation:

(1) completed and signed application;

(2) official transcript verifying degree required in Paragraph (1) of Subsection A of 16.14.3.10 NMAC, mailed directly from the college or university; and

(3) American dietetic association verification statement completed by a program

director which verifies eligibility for an internship or equivalent program approved by CDR; and

(4) applicants who are currently, or have previously been, licensed in another state(s) must provide a copy of each license and a verification of license status directly to the board from the state(s) where licensed; [and]

(5) completed employment information form documenting supervision by a New Mexico licensed dietitian or nutritionist; documentation is required for subsequent changes in employment or supervision; and

(6) a background check shall be conducted within past 90 days for initial licenses only.

D. Disqualifying convictions: Conviction by a court of competent jurisdiction of any of the following potentially disqualifying felony criminal convictions:

(1) homicide, involuntary or voluntary manslaughter;

(2) manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;

(3) kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;

(6) crimes involving child abuse or neglect, child endangerment;

(7) crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property;

(8) crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds.

E. Other convictions:
This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

F. Mental competency:
Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any
such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

(2) Any
applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise.

G. Scope of conduct:
Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

H. Prohibited disclosure: In connection with an application for licensure or licensure renewal, the board shall not use,

distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

(1) an arrest
not followed by a valid conviction;

(2) a
conviction that has been sealed, dismissed, expunged or sealed;

(3) a juvenile
adjudication; or

(4)
a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

I. Notice and hearing:

If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/ licensee will receive notice and opportunity for a hearing. [3/30/1990...8/31/1996; 16.14.3.10 NMAC - Rn, 16 NMAC 14.3.10, 11/22/2005; A, 8/1/2011; A, 2/9/2022]

16.14.3.11 INITIAL LICENSES AND LICENSE PERIOD:

A. The board shall issue an initial license to an applicant who meets the requirements of the Nutrition and Dietetics Practice Act and has paid the fees required under Part 2. If the applicant fails to pay all required fees within 30 days of notification of board approval, the application shall be deemed withdrawn. The applicant shall then be required to reapply and pay all fees required under Part 2.

B. All licenses will be valid for one year.

(1) The issue date for all initial licenses will be the date payment is received following board approval of the request for licensure.

(2) Each renewal license shall be valid for a period of one year beginning the day after the date of expiration of the license being renewed.

(3) Licenses which lapse and are then reinstated will be valid for one year from the first day of the month following board approval of reinstatement.

(4) New licenses which are issued as the result of a change of licensing category will be valid for one year from the date of issuance of the new license.

C. Applications for registration shall be completed on a form provided by the nutrition and dietetics board.

D. The applicant shall provide a complete application that includes the following information:

(1) Applicant's full name;

(2) current mailing address;

(3) current electronic mail address, if any;

(4) date of birth;

(5) background check, if required; and

(6) proof as described in Subsection C below.

E. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a)
for military service member: copy of military orders;

(b)
for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c)
for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d)
for dependent children of military service members: copy of military service member's orders listing

dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

F. The license or registration shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

G. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

H. A license issued pursuant to this section shall be valid for the time period that is specified in the Nutrition and Dietetics Act. [4/7/1993; 16.14.3.11 NMAC - Rn, 16 NMAC 14.3.11, 11/22/2005; A, 2/9/2022]

REGULATION AND LICENSING DEPARTMENT NUTRITION AND DIETETICS PRACTICE BOARD

This is an amendment to 16.14.11 NMAC, Section 11, effective 2/9/2022.

16.14.11.11 DISCIPLINARY GUIDELINES: In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines the applicant or licensee has violated the Nutrition & Dietetics Act or the board's regulations. The following shall subject the licensee to disciplinary action by the board:

A. Fraud or deceit in procuring or attempting to procure a license to practice as a dietitian or nutritionist

B. Knowingly practicing as dietitian or nutritionist or using any designation with his/her name tending to imply, without a valid license, that he/she is a nutritionist/dietitian; or knowingly aiding, assisting, procuring, advising, or encouraging any unlicensed person to practice as a nutritionist/dietitian or use any designation with his/her name tending to imply that he/she is a nutritionist/dietitian without a valid license.

C. Conviction by a court of competent jurisdiction of any of the following disqualifying felony criminal convictions:

(1) homicide, involuntary or voluntary manslaughter;

(2) manufacturing of controlled substances, trafficking in controlled substances or distribution of controlled substances, driving while under the influence of drugs or intoxicating liquor;

(3) kidnapping, false imprisonment, simple assault, simple battery, aggravated assault or aggravated battery or domestic violence offenses;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult/elder abuse, neglect, endangerment or financial exploitation;

(6) crimes involving child abuse or neglect, child endangerment;

(7) crimes involving robbery, larceny, extortion, burglary, tampering with evidence or receiving stolen property.

(8) crimes involving fraud (including but not limited to insurance, medicare, medicaid and prescription), forgery, embezzlement, credit card fraud or misappropriation of funds

D. This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

E. Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

(2) Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise.

F. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Nutrition and Dietetics Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

G. In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate or admit into evidence at an adjudicatory proceeding any criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or sealed;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the potentially disqualifying felony criminal convictions listed in Subsection A of this rule.

H. If the board reserves approval of an applicant or licensee due to a potentially disqualifying felony criminal conviction, the applicant/licensee will receive notice and opportunity for a hearing. [16.14.11 NMAC – N, 2/9/2022]

REGULATION AND LICENSING DEPARTMENT NUTRITION AND DIETETICS PRACTICE BOARD

This is an amendment to 16.14.12 NMAC, Sections 7, 9 and 10, effective 2/9/2022.

16.14.12.7 DEFINITIONS:

A. “Military service member” means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this Section.

C. “Spouse” means any partner of a “military service member” or “recent veteran” whose marriage to the “military service member” or “recent veteran” has been legally recognized by any state or country.

D. “License” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

E. “Licensing fee” has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA

F. “Military service member” has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

G. “Substantially equivalent” means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Nutrition and Dietitian Act.

H. “Veteran” has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.14.12.7 NMAC – N, 03/31/2015; A, 2/9/2022]

16.14.12.9 FEES:

A. An applicant seeking licensure under 16.14.12 NMAC shall refer to part 2 of Chapter 14 for applicable fees.

B. Military service members, spouse, dependents, and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license if the military service member, spouse, dependent, or veteran can provide proof of licensure from another state or jurisdiction.

[16.14.12.9 NMAC - N, 03/31/2015; A, 2/9/2022]

16.14.12.10 RENEWAL REQUIREMENTS:

A. A license or certificate issued pursuant to this section shall not be renewed unless the license or certificate holder satisfies the requirements for the issuance and for the renewal of a license or certificate pursuant to Chapter 61, Articles 7A NMSA 1978.

B. The licensee or certificate holder issued under 16.14.12 NMAC shall submit the documentation required under the following part: refer to 16.14.3 NMAC requirements for licensure.

C. All licenses and certificates issued under 16.14.12 NMAC shall be valid for a period not to exceed one year.

D. Prior to the expiration of the license, all licensees or certificate holders shall apply for registration renewal and shall pay the renewal fee as set forth in 16.14.2 NMAC.

E. As a courtesy, the board will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the nutrition & dietetics board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[16.14.12.10 NMAC - N, 03/31/2015; A, 2/9/2022]

REGULATION AND LICENSING DEPARTMENT OCCUPATIONAL THERAPY, BOARD OF EXAMINERS FOR

This is an amendment to 16.15.2 NMAC, Sections 7, 9, 10, 13, 14, 16 and 19, effective 2/24/2022.

16.15.2.7 DEFINITIONS:

[A:] “Military service member” [means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.] has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

[B:] Recent veteran: means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

C. Spouse: means a person married to the military service member or recent veteran, in a marriage recognized by the state of New Mexico.]

[6/14/1997; 16.15.2.7 NMAC - Rn, 16 NMAC 15.2.7, 6/29/2000; A, 1/30/2015; A, 2/24/2022]

16.15.2.9 INITIAL APPLICATION FOR LICENSURE:

A. An application packet may be obtained from the state licensure board office.

B. The application must be submitted on completed forms as supplied by the board.

C. A photograph of the applicant taken within six ~~[(6)]~~ months prior to filing application must be submitted with the application. (Passport size recommended; scanned or computer-generated photographs must be printed on photo quality paper).

D. Application fees in the form of a check or money order must be submitted in full with the application. Personal checks may delay processing of your application for up to ~~[ten-(10)]~~ 10 days.

E. Verification of registration or certification may be provided in any of the following ways.

(1) Written verification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) certifying that the applicant's certification is active and in good standing.

(2) Written verification of initial certification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) and verification of licensure from each state in which the applicant has been licensed. Such proof of licensure must be received by the board directly from the state boards where currently and previously licensed. For applicants who practiced in states that do not require licensure, written verification of employment shall be received by the board office directly from the applicant's previous employers on a verification of employment form to be provided by the board.

F. An occupational therapy assistant (OTA), shall file with the board a signed, current statement of supervision by the occupational therapist (OT) who will be responsible for the supervision

of the occupational therapy assistant (OTA) within 20 business days of starting employment as an OTA. Both the supervisor and supervisee carry responsibility for notifying the board within ~~[ten-(10)]~~ 10 work days when there is a change of supervisor.

G. On-line applications will require a notarized signature card be filed with the board office.

H. All licenses are the property of the board and shall forthwith be returned to the board, if requested.

I. No license is valid without the official board seal.

J. ~~[Questions of felony convictions or misdemeanors involving moral turpitude have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to; certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.]~~ Convictions for any of the following offenses, or their equivalents in any other jurisdiction are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

(1) crimes involving homicide; murder, manslaughter, or resulting in death;

(2) crimes involving human trafficking, or trafficking in controlled substances;

(3) kidnapping, false imprisonment, assault, aggravated assault, battery or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;

(5) crimes involving great bodily harm, adult abuse, injury to pregnant woman, child abuse, neglect, abandonment, stalking, aggravated stalking, custodial interference, unlawful interference with custody, sabotage,

financial exploitation, exploitation of a care facility resident's property, or criminal damage to property of a household member;

(6) contributing to the delinquency of a minor, unlawful carrying of a deadly weapon on school premises, unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages, or a felon in possession of a firearm;

(7) crimes involving the unauthorized distribution of sensitive images;

(8) crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud or unauthorized use of a credit card; receiving stolen property, stolen vehicles, money laundering, or burglary tools;

(9) crimes involving unlawful taking, embezzlement or fraudulently obtaining a vehicle or motor vehicle;

(10) crimes involving making a bomb scare, arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;

(11) crimes involving seizing or exercising control of a bus by force or violence or by threat of force or violence;

(12) Violation of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act;

(13) crimes involving the unlawful disposal of, use or sale of an unclaimed body;

(14) intentionally hampering, obstructing, tampering or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act;

(15) crimes involving the second or subsequent offense of certain prohibited acts of the owner of a dangerous or potentially dangerous dog in the Dangerous Dog Act;

(16) crimes involving cruelty to animals, dog

fighting, cockfighting, unlawful tripping of an equine causing the maiming, crippling or death of the equine, injury to police dog, police horse or fire dog;

(17) crimes involving the use of telephone to terrify, intimidate, threaten, harass, annoy or offend;

(18) crimes involving the use of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder;

(19) violations of the Model State Commodity Code, the New Mexico Uniform Securities Act, the Mortgage Loan Company Act, Uniform Money Services Act, or the New Mexico Mortgage Loan Originator Licensing Act;

(20) crimes involving procuring or attempting to procure telecommunications service by theft or intentional damage of, communications or public utility equipment, whether customer or utility-owned, which created a public safety hazard or causes a disruption of communications services or public utility services to 10 or more households;

(21) crimes involving violations of the Election Code;

(22) crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract;

(23) crimes involving jury tampering, impersonating a peace officer, or disarming a peace officer;

(24) crimes involving escape from custody,

community custody release program, jail or penitentiary, or fleeing a law enforcement officer;

(25) crimes involving unlawful rescue, procuring escape, or conniving at, aiding or assisting escape of a person confined or held in lawful custody or confinement, or harboring or aiding a felon;

(26) crimes involving furnishing articles for a prisoner's escape, furnishing drugs or liquor to a prisoner, or bringing contraband into a prison or jail;

(27) crimes involving tax evasion or tax fraud;

(28) willful failure to collect and pay over taxes;

(29) crimes involving attempts to evade or defeat any tax;

(30) crimes involving paying or receiving public money for services not rendered;

(31) crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;

(32) crimes involving violations of the Cigarette Enforcement Act;

(33) crimes involving the Savings and Loan or the Credit Union Act;

(34) crimes involving perjury, false swearing of oath or affidavit, false voting, falsifying documents, filing false documents, making false statements, making an unauthorized withdrawals, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

(35) crimes involving an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act,

(36) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;

(37) crimes involving any contractor or

subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted;

(38) crimes involving knowingly authorizing or assisting in the publication, advertising, distribution or circulation of any false statement or representation concerning any subdivided land offered for sale or lease, or with knowledge that any written statement relating to the subdivided land is false or fraudulent, issuing, circulating, publishing or distributing it;

(39) crimes involving making or permitting a false public voucher;

(40) crimes involving a false public voucher, false reports, uttering false statements, paying or receiving public money for services not rendered;

(41) crimes involving violations of the New Mexico Uniform Securities Act;

(42) crimes involving extortionate extensions of credit or racketeering;

(43) crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;

(44) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of an official act, or illegal kickbacks;

(45) failing to comply with the registration or verification requirements of the Sex Offender

Registration and Notification Act;

(46) crimes involving the practice of medicine, dentistry, optometry or osteopathic medicine

without a license or authorization of the appropriate regulating authority;

(47) second or subsequent conviction of Chiropractic Physician Practice Act;

(48) crimes involving certain violations of the Optometry Act;

(49) crimes involving the Medicaid Fraud Act;

(50) fourth or subsequent conviction for driving under the influence of intoxicating liquor or drugs;

(51) crimes involving controlled substances, including violations of the Controlled Substances Act;

(52) crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;

(53) crimes involving violations of the New Mexico Subdivision Act or the Mortgage Foreclosure Consultant Prevention Act;

(54) misuse of funds;

(55) intent to defraud uses on a public security or instrument of payment;

(56) crimes involving a violation of the Governmental Conduct Act; or

(57) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

K. the board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection J of this rule.

L. the board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying convictions listed in Subsection J of this rule.

M. nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Occupational Therapy Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions

listed in Subsection J of this rule.

N. in connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection J of this rule.

[6/14/1997; 2/14/1998; 16.15.2.9 NMAC - Rn, 16 NMAC 15.2.9, 6/29/2000; A, 4/3/2003; A, 8/29/2005; A, 1/30/2015; A 2/24/2022]

16.15.2.10 PROVISIONAL PERMITS:

A. Any persons who have completed the education and experience requirements of the occupational therapy act and who have applied for the national board for certification in occupational therapy (NBCOT) examination may apply for a provisional permit.

B. The provisional permit allows the applicant to practice occupational therapy under the supervision of a licensed occupational therapist as defined in 16.15.3 NMAC.

C. The provisional permit is in effect for a maximum of six ~~[(6)]~~ months after issuance. Failure to sit for the NBCOT examination within six ~~[(6)]~~ months automatically voids the provisional permit. A license may be issued when results of the examination have been made public.

D. The provisional permit will automatically be invalidated upon notice to the board that the applicant has failed the examination.

E. Any previous failures of the NBCOT certification exam will prevent a person from obtaining a provisional permit.

F. Persons practicing on a provisional permit shall file with the board a signed current statement of supervision by the occupational therapist or occupational therapists (OT or OTs) who will be responsible for the supervision of the person practicing on a provisional permit. Both the supervisor and supervisee carry responsibility for notifying the board within ~~[(ten-10)]~~ 10 work days when there is a change of supervisor.

G. Persons practicing on a provisional permit pending certification as an occupational therapy assistant (OTA) or an occupational therapist (OT) are not eligible to supervise. (Refer 16.15.3 NMAC)

H. All provisional permits are the property of the board and shall forthwith be returned to the board, if requested.

I. The provisional permit requires the official board seal and is valid for no more than six months.

[6/14/1997; 16.15.2.10 NMAC - Rn, 16 NMAC 15.2.10, 6/29/2000; A, 4/3/2003; A, 2/24/2022]

16.15.2.13 ANNUAL RENEWAL:

A. Annual renewal fees in the form of a check or money order must be remitted when due or license will expire automatically.

B. Licenses may be renewed upon receipt of a renewal application submitted on the form provided by the board, or via on-line renewal application through the board's on-line professional licensing system, the applicable annual renewal fee, and proof of continuing education requirements pursuant to regulations of the board.

C. The annual renewal date is October 1st of each year. All licenses issued by the board will expire on September 30th of each year.

D. At the time of renewal, an occupational therapy assistant shall confirm no changes to the statement of supervision filed at the time of initial application. If a change in supervision has occurred, a

new statement of supervision must be submitted along with the completed renewal application.

[6/14/1997; 16.15.2.13 NMAC - Rn & A, 16 NMAC 15.2.13, 6/29/2000; A, 4/3/2003; A 2/24/2022]

16.15.2.14 EXPIRED LICENSE OR NON-PRACTICE:

A. A license not renewed on the annual renewal date is expired.

B. Validation of competency for applicants who have not practiced since his or her graduation from an occupational therapy program, or who have not practiced as an occupational therapist or occupational therapy assistant for a period of more than three ~~[(3)]~~ years, full licensure requires the following:

(1) a completed application form as required under 16.15.2.9 NMAC;

(2) passage of the jurisprudence exam;

(3) ~~[twenty-~~ 15 continuing education contact hours for each year the applicant was not practicing as an occupational therapist or occupational therapy assistant, not to exceed ~~[one hundred-~~ 75 hours (course work to be pre-approved by the board);

(4) the board may require the applicant to provide or demonstrate additional evidence of his or her competency to practice (e.g. passage of the national board for certification in occupational therapy exam, AOTA courses, university sponsored courses, supervision or mentorship.

[6/14/1997; 16.15.2.14 NMAC - Rn & A, 16 NMAC 15.2.14, 6/29/2000; A, 4/3/2003; A, 8/29/2005; A, 1/30/2015; A, 2/24/2022]

16.15.2.16 REINSTATEMENT OF LICENSURE:

A. Reinstatement of a New Mexico occupational therapist or occupational therapy assistant license that has lapsed for less than one year requires the following:

(1) completion of the renewal form;

(2) payment of late fee;

(3) proof of the required continuing education contact hours;

(4) passage of the jurisprudence examination and

(5) submit a notarized statement, by the therapist, that they have not practiced occupational therapy in New Mexico while their license was expired.

B. Reinstatement of an occupational therapist or occupational therapy assistant license that has lapsed in New Mexico for more than one ~~[(1)]~~ year, where there is evidence of continued practice with an unrestricted license/registration/certification in another state requires the following:

(1) completion of the initial application;

(2) payment of the application;

(3) payment of the current year renewal fee;

(4) proof of ~~[twenty (20)]~~ 15 continuing education hours for each year of the lapsed New Mexico license; not to exceed ~~[one hundred (100)]~~ 75 hours or where there is evidence of continued practice with an unrestricted license, registration or certification from another U.S. jurisdiction as well as evidence of meeting the continuing education requirement in that same U.S. jurisdiction during the period of lapse;

(5) passage of the jurisprudence examination; and

(6) verification of all current, valid unrestricted licenses/registrations/certifications from other U.S. jurisdictions; verifications may be received by the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and include the following data:

(a) name and address of the applicant;

(b) license/registration/certification number and date of issuance;

(c) expiration date of the license/registration/certification;

(d) a statement of whether the applicant was denied a license/registration/certification by the agency;

(e) a statement of whether any disciplinary action is pending or has been taken against the applicant; and;

(f) receipt of verification of employment for states not requiring licensure, registration, or certification.

[16.15.2.16 NMAC - N, 8/29/2005; A, 1/30/2015; A, 2/24/2022]

16.15.2.19 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS: Application Requirements.

A. Applications for registration shall be completed on a form ~~[(electronic or hard copy)]~~ provided by the ~~[department.]~~ board of examiners for occupational therapy.

B. ~~[The information shall include:]~~ The applicant shall provide a complete application that includes the following information:

(1) ~~[completed application and fee]~~ applicant's full name;

(2) ~~[satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 2 through 34 NMSA 1978;]~~ current mailing address;

(3) ~~[proof of honorable discharge (DD214) or military identification card or proof of marriage for spousal status;]~~ current electronic mail address, if any;

(4) date of birth;

(5) background check, if required; and

(6) proof as described in Subsection C below.

C. [Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-21 NMSA 1978.] The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirement for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouse of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service member: copy of military service member's order listing dependent child, or copy of military order and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board as soon as practicable but no later than 30 days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specific in the Occupational Therapy Act.

G. A license issued pursuant to this section shall not be renewed unless the license holder satisfies that requirements for renewal set forth in 16.15.2.13 NMAC pursuant to Subsection A of Section 61-12A-9 NMSA 1978.

H. As a courtesy, the board will send via electronic mail license renewal notification to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.
[16.15.2.19 NMAC - N, 1/30/2015; A, 2/13/2015; A 2/24/2022]

REGULATION AND LICENSING DEPARTMENT OCCUPATIONAL THERAPY, BOARD OF EXAMINERS FOR

This is an amendment to 16.15.3 NMAC, Sections 7 and 8, effective 2/24/2022.

16.15.3.7 DEFINITIONS: In this section, the following terms have the meanings indicated:

A. "Aide" means a person who is not licensed by the board and who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function under the guidance and responsibility of the occupational therapist and may be supervised by the occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competency.

B. "Board" means the board of examiners for occupational therapy.

C. "Competence" refers to an individual's capacity to perform job responsibilities.

D. "Competency" refers to an individual's actual performance in a specific situation.

E. "Limited permit holder" means an individual who has completed the academic and fieldwork requirements of this Act for occupational therapists or occupational therapy assistants, has not yet taken or received the results of the entry level certification examination, and has applied for and been granted limited permit status.

F. "Occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico.

G. "Occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists an occupational therapist under the supervision of the occupational therapist.

H. "Supervision" means a cooperative process in which two or more people participate in a joint effort to establish, maintain, and elevate a level of competence and performance. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development.

I. "Supportive services" means tasks that include providing patient transport, routine maintenance of equipment or work areas, setup, preparation, and cleanup of equipment of work areas, and supporting licensed practitioners during treatment or intervention while under the direct supervision of the licensed practitioner.

[16.15.3.7 NMAC - Rp, 16.15.3.7 NMAC, 1/30/2015; A: 2/24/2022]

16.15.3.8 SUPERVISION:

A. Occupational therapy assistants: supervision involves guidance and oversight related to the delivery of occupational therapy services and the facilitation of professional growth and competence. It is the responsibility of the occupational therapist and the occupational therapy assistant to seek the appropriate quality and frequency of supervision to ensure safe and effective occupational therapy service delivery.

(1) The specific frequency, methods, and content of supervision may vary by practice setting and is dependent upon the:

- (a) complexity of client needs;
- (b) number and diversity of clients;
- (c) skills of the occupational therapist and the occupational therapy assistant;
- (d) type of practice setting;
- (e) requirements of the practice setting; and
- (f) other regulatory requirements.

(2) More frequent supervision may be necessary when:

- (a) the needs of the client and the occupational therapy process are complex and changing;
- (b) the practice setting provides occupational therapy services to a large number of clients with diverse needs; or
- (c) the occupational therapist and occupational therapy assistant determine that additional supervision is necessary to ensure safe and effective delivery of occupational therapy services.

(3) A variety of types and methods of supervision may be used. Methods may include direct face-to-face contact and indirect contact. Examples of methods or

types of supervision that involve direct face-to-face contact include but are not limited to observation, modeling, co-treatment, discussions, teaching, instruction, and video conferencing. Examples of methods or types of supervision that involve indirect contact include but are not limited to phone conversations, written correspondence, electronic exchanges, and other methods using secure telecommunication technology. All methods should be compliant with confidentiality requirements of government agencies, facilities, employers, or other appropriate bodies.

(4) Occupational therapists and occupational therapy assistants must document a supervision plan and supervision contacts. Documentation shall include the:

- (a) frequency of supervisory contact;
- (b) method(s) or type(s) of supervision;
- (c) content areas addressed;
- (d) names and credentials of the persons participating in the supervisory process.

(5) An occupational therapist is limited to supervising three or fewer occupational therapy assistants during their first year of licensure as an occupational therapist.

(6) After the first year of licensure, an occupational therapist must make the decision on the number of appropriate occupational therapy assistants to be supervised depending on the experience of the occupational therapy assistant, complexity of the patient or client needs and the setting of care.

B. Non-licensed personnel, including aides, is an individual who provides supportive services to the occupational therapist and the occupational therapy assistant. Non-licensed personnel do not provide skilled occupational therapy services. Non-licensed personnel

must be trained by the occupational therapist or occupational therapy assistant to perform specifically designated tasks, and the non-licensed personnel must first demonstrate competency to be able to perform the assigned, delegated client and non-client related tasks.

(1) The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the non-licensed personnel, to carry out client and non-client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan.

(2) The occupational therapy assistant may supervise the non-licensed personnel.

(3) Non-client-related tasks include clerical and maintenance activities and preparation of the work area or equipment.

(4) Client-related tasks are routine tasks during which the aide may interact with the client but does not act as a service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

(a) The outcome anticipated for the delegated task is predictable.

(b) The situation of the client and the environment is stable and will not require that judgement, interpretations, or adaptations be made by the non-licensed personnel.

(c) The client has demonstrated some previous performance ability in executing the task.

(d) The task routine and process have been clearly established.

(5) When performing delegated client-related tasks, the supervisor must ensure that the non-licensed personnel:

(a) is trained and able to demonstrate competency in carrying out the

selected task and using equipment, if appropriate;

(b)

has been instructed on how to specifically carry out the delegated task with the specific client, and;

(c)

knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapist assistant.

(6) The

supervisor of the aide must be documented and include;

(a)

information about frequency and methods of supervision used.

(b)

the content of the supervision; and

(c)

the names and credentials of all persons participating in the supervisory process.

[16.15.3.8 NMAC - Rp, 16.15.3.8 NMAC, 1/30/2015; A, 2/24/2022]

REGULATION AND LICENSING DEPARTMENT OCCUPATIONAL THERAPY, BOARD OF EXAMINERS FOR

This is an amendment to 16.15.4 NMAC, Sections 8 and 9, effective 2/24/2022.

16.15.4.8 ANNUAL CONTINUING EDUCATION REQUIREMENTS:

A. Every licensed occupational therapist and occupational therapy assistant must earn a minimum of ~~[twenty (20)]~~ 15 continuing education contact hours per year during each year of licensure. Continuing education contact hours must be earned prior to license renewal the following year. The first year during which ~~[twenty (20)]~~ 15 contact hours must be earned is the year beginning on October 1st following license issuance and ending on the following September 30th. Occupational therapists and occupational therapy assistants licensed during the first year will be

expected to pay the annual renewal fee. ~~[and may submit continuing education contact hours during this first year for carryover. A maximum of twenty (20) contact hours may be carried over.]~~

B. No license will be renewed in the absence of satisfactory evidence that the required continuing education contact hours have been earned.

C. The board office will ~~[mail a renewal application to each licensee at least thirty (30) days]~~ send electronic notifications to all licensees prior to the expiration date of the license.

D. Each licensee is responsible for submitting the required renewal fee and continuing education by the expiration.

E. Each licensee is responsible for filing address changes and maintaining a current address with the board office.

[16.15.4.8 NMAC - Rp, 16.15.4.8 NMAC, 1/30/2015; A, 2/24/2022]

16.15.4.9 APPROVAL OF CONTINUING EDUCATION:

A. No licensee may obtain credit for any continuing education contact hours without approval of those continuing education contact hours by the board.

B. Prior approval of continuing education contact hours may be obtained upon request by the licensee or continuing education provider. Final determination of values and approval of continuing education contact hours will remain at the discretion of the board.

C. Continuing education contact hours may be earned in the following ways:

(1)

Attendance at a seminar, workshop, webinar, on-line course, or program; applicants must provide all of the following:

(a)

program agenda with number of contact hours;

(b)

evidence that the program attended was sponsored by a component of the American occupational therapy

association or some other sponsor approved by the board for continuing education credit;

(c)

statement of the program's subject matter and stated objectives;

(d)

statement indicating the instructor's background/expertise; and

(e)

proof of actual program attendance; such proof shall be a certificate of completion signed by the presenter or program sponsor.

(2)

Preparation and presentation of a workshop/in-service. Credit may be given only once for preparation or presentation of the same workshop and the board will determine the number of continuing education contact hours approved. Applicant must provide proof of preparation and presentation. Proof of preparation may be an outline, copy of handouts, presentation slides, and a copy of the agenda showing name of licensee as presenter. Contact hours for the presenter will be calculated at three ~~[(3)]~~ times the number of hours of audience participation (e.g. a two ~~[(2)]~~ hour workshop equals six ~~[(6)]~~ hours for the presenter). ~~[A maximum of twelve (12) contact hours per renewal year is allowed in this area.]~~

(3)

Completion of accredited university college or community courses.

Applicant must provide the name of the course; number of credit hours; inclusive dates of attendance; completed transcript or grade report with a passing grade of "C" or better, name of instructor and institution; and a brief summary indicating the course's relationship to the licensee's present or future position in the field of occupational therapy. Non-credit community college courses may be accepted at the board's discretion. A maximum of ~~[twenty (20)]~~ 20 contact hours is allowed for a three ~~[(3)]~~ credit course; a maximum of ~~[fifteen (15)]~~ 15 contact hours is allowed for a two ~~[(2)]~~ credit course; and a maximum of ~~[ten (10)]~~ 10 contact hours is allowed for a one ~~[(1)]~~ credit course.

(4)

Attendance at workplace in-service programs. The applicant must provide the name of the program; number of hours spent in the program; inclusive dates of attendance; name of the instructor or supervisor of the program; name of the institution; and a brief course summary indicating the course's relationship to the philosophical tenets of occupational therapy. ~~[A maximum of ten (10) contact hours will be allowed in this area.]~~

(5) **Reading**

a book. The applicant must provide the name of the book; number of pages; name of the author; and a typewritten summary explaining how the information obtained from the book applies to physical therapy philosophical tenets of occupational therapy. The board may approve, on an individual basis, up to two [(2)] contact hours for each book read. ~~[A maximum of four (4) contact hours will be allowed in this area.]~~

(6) **Writing a**

book. The applicant must provide a copy of the book written. The book will be returned to the licensee upon request.

(a)

The book must have been copyrighted in the year for which the continuing education contact hours are requested.

(b)

Up to ~~[forty (40)]~~ 40 contact hours may be awarded at the board's discretion.

(7) **Audio**

or Visual Media. An applicant must provide the title of the audio and visual media; the length of presented material, time; name of the presenter; and a summary of the presentation and how it pertains to the philosophical tenets of occupational therapy. ~~[A maximum of ten (10) contact hours per year is allowed in this area.]~~

(8)

Presentation of a paper. The applicant must provide a copy of the paper along with the duration and location of the presentation. The presentation must have been made in the year for which the continuing

education contact hours are requested. Credit may be given only once for any individual presentation and the board will determine the number of continuing education contact hours approved.

(9)

Publication of a paper or article.

The applicant must provide a copy of the published paper, which must have been published prior to license renewal. Publication must be in a recognized journal or publication. The board will determine the number of continuing education contact hours approved.

(10)

Conducting research. The board will determine the number of continuing education contact hours approved. The applicant must provide the following:

(a)

title and description of research project, including brief timeline;

(b)

names of other persons involved in project (i.e., co-investigators or supervisors);

(c)

a brief statement indicating philosophical tenants of occupational therapy;

(d)

provide a copy of the completed annual research report.

(11)

Specialty/certification programs.

Applicants or licensees wishing to receive continuing education for certification programs must submit a certificate of completion signed by the program sponsor. The licensee or applicant must indicate how the specialty/certification maintains the philosophical tenets of occupational therapy. The board will determine the number of continuing education contact hours approved.

(12)

Supervising level II fieldwork.

Applicants should provide a copy of the student evaluation (cover and signature pages only). The student's name should be blacked out for confidentiality. A maximum of ~~[twelve (12)]~~ 12 contact hours will be approved for each OT fieldwork

II rotation of ~~[twelve (12)]~~ 12 weeks. A maximum of eight [(8)] contact hours will be approved for each OTA fieldwork II rotation of eight [(8)] weeks. ~~[A maximum of twelve (12) contact hours per renewal year is allowed in this area.]~~

(13)

Mentoring. Applies to an OT or OTA who has been practicing at least one [(+)] year prior to entering a new area of practice only. Mentoring shall occur for a minimum of six [(6)] months and no longer than one [(+)] year. The mentor shall have at least one [(+)] year of experience in the specialty area of practice and not be the direct supervisor of the mentored therapist. The "mentoring log" should be used as proof of hours mentored. ~~[Both the mentor and mentored will be allowed up to a maximum of five (5) contact hours per year.]~~

(14)

Competency assessment or knowledge and skills assessment related to the practice of occupational therapy. A licensee who completes an online or in person training on competency assessment or on knowledge and skills assessment activities related to occupational therapy that is offered by an employer or an approved provider may claim a maximum of two hours of continuing education during each renewal period. If audited, an applicant must provide the following documentation: a certificate of completion or similar document that includes the name of the course or training, the date and location where the training was offered, the sponsoring organization and the time attended.

D. Credit screening

procedures are as follows:

(1) the board

or its designee must approve each request for continuing education credit;

(2) the

licensee will be informed of the board's action within ~~[thirty (30)]~~ 30 calendar days of receipt of the request; and

(3) the

licensee whose request has been denied may appeal to the board within

[thirty (30)] 30 calendar days of the notification of the board's decision.

E. Continuing education audit.

(1) The board shall audit a percentage of renewal applications each year to verify the continuing education requirement.

(2) If a notice of audit letter is received with the annual renewal form, evidence of continuing education hours earned during the renewal year must be submitted to the board as requested and as required in the Occupational Therapy Act and by this rule.

(3) If the licensee is not audited, all documentation of attendance and agendas should be retained by the licensee for a minimum of three [(3)] years immediately preceding the current renewal.

(4) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

(5) Proof of attendance for all continuing education programs is required on all renewal applications submitted after the expiration date.

F. [Credit for excess continuing education contact hours accumulated may be used only during the following year. Documentation of excess continuing education contact hours which are being submitted for credit must be submitted with the annual renewal fee and application.] The board will allow a maximum of [twenty (20)] 15 continuing education contact hours to be carried over into the next licensing year. The 15 continuing education hours must be earned during the renewal period of October 1st through September 30th.

G. Ineligible activities include, but are not limited to:

(1) Orientation and in-service programs dealing with organizational structures, processes, or procedures.

(2) Meeting for purposes of policy making.

(3) Annual association or organization and non-educational meetings.

(4) Entertainment or recreational activities or meetings.

(5) Committee meetings, holding of offices or serving as an organizational delegate.

(6) Visiting exhibitors and:

(7) CPR education.
[16.15.4.9 NMAC - Rp, 16.15.4.9 NMAC, 1/30/2015; A, 2/24/2022]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

The New Mexico Physical Therapy Board has approved the repeal of its rule 16.20.8 NMAC - Renewal Requirements and Continuing Education (filed 8/14/2000) and replaced it with 16.20.8 NMAC - Renewal Requirements and Continuing Education adopted on 1/6/2022 and effective 2/24/2022.

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 20 PHYSICAL THERAPISTS PART 8 RENEWAL REQUIREMENTS AND CONTINUING EDUCATION

16.20.8.1 ISSUING AGENCY: New Mexico Physical Therapy Board.
[16.20.8.1 NMAC - Rp, 16.20.8.1 NMAC, 2/24/2022]

16.20.8.2 SCOPE: All individuals who wish to practice physical therapy in the state of New Mexico.
[16.20.8.2 NMAC - Rp, 16.20.8.2 NMAC, 2/24/2022]

16.20.8.3 STATUTORY AUTHORITY: Section 61-12-10 NMSA 1978.

[16.20.8.3 NMAC - Rp, 16.20.8.3 NMAC, 2/24/2022]

16.20.8.4 DURATION: Permanent.
[16.20.8.4 NMAC - Rp, 16.20.8.4 NMAC, 2/24/2022]

16.20.8.5 EFFECTIVE DATE: October 15, 1997, unless a later date is cited at the end of a section.
[16.20.8.5 NMAC - Rp, 16.20.8.5 NMAC, 2/24/2022]

16.20.8.6 OBJECTIVE: The objective of Part 8 of Chapter 20 is to inform licensees of continuing education requirements for license renewal.
[16.20.8.6 NMAC - Rp, 16.20.8.6 NMAC, 2/24/2022]

16.20.8.7 DEFINITIONS:
A. One "contact hour" requires 60 minutes.
B. "Lecture" means an educational talk given by a qualified individual.

C. "Continuing professional education" means learning experiences which enhance and expand the skills, knowledge, and abilities of physical therapists and physical therapist assistants to enable them to remain current and render competent professional service to clients, the profession, and the public.

D. "Fellowship" means a planned program designed to provide greater depth in a specialty or subspecialty area and requires a minimum of 1000 hours of instruction.

E. "Panel" means the presentation of a number of views by several qualified individuals on a given subject.

F. "Workshop" means a series of meetings designed for intensive study, skill development, or discussion in a specific field of interest.

G. "Seminar/In-service" means directed study for

a group for advanced study, work or discussion in a specific field of interest.

H. “Symposium”

means a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

[16.20.8.7 NMAC – Rp, 16.20.8.7 NMAC, 2/24/2022]

16.20.8.8 RENEWAL REQUIREMENT:

A. Renewal of license.

(1) A licensed physical therapist and a physical therapist assistant shall apply for license renewal and pay the renewal fee as set forth in 16.20.5 NMAC, Schedule of Fees.

(2) Licenses will be renewed biennially. Licenses will expire on February 1 following no more than two years of licensure.

B. The board office will mail a renewal notice to each licensee no later than December 15 at the address on record. Timely renewal of license is the full and complete responsibility of the licensee. If the licensee does not receive the renewal notification within a reasonable time after December 15, it is the responsibility of the licensee to contact the board office. Non-receipt of the renewal form by the licensee will not exempt licensure expiration or late penalty fees.

C. Each licensee is responsible for submitting the required renewal fee by the expiration date whether or not a renewal notice is received by the licensee and licensee shall not practice if license is expired.

D. All license renewals postmarked after February 1 will be subject to a late fee of \$250 for a physical therapist and \$200 for a physical therapist assistant. (Refer to 16.20.5 NMAC, Schedule of Fees.) [16.20.8.8 NMAC – Rp, 16.20.8.8 NMAC, 2/24/2022]

16.20.8.9 CONTINUING EDUCATION REQUIREMENT: Continuing education is required for

license renewal of physical therapists and physical therapist assistants in order to ensure that New Mexico licensees are providing the highest quality professional services.

A. Thirty hours of continuing education will be required biennially, except those who will renew their license for the first time. No continuing education is required of those who are renewing for the first time. All continuing education hours must be earned during the current two year renewal period of February 1 through January 31.

B. The board shall audit a percentage of renewal applications each year to verify the continuing education requirement. If the licensee is audited, proof of participation in or presentation of continuing education activity must be submitted along with a renewal form.

(1) If a notice of audit is received with the license renewal notice, the licensee must submit evidence of continuing education hours earned during the current biennial renewal cycle to the board as requested and as required in the Physical Therapy Act and by this rule.

(2) If the licensee is not audited, the licensee will have to sign an affidavit attesting to the completion of the required hours of continuing education and the licensee shall retain all documentation of attendance for the previous cycle immediately preceding the current renewal.

(3) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

C. Licensees serving in the armed forces reserve or national guard.

(1) The license of a physical therapist or physical therapist assistant who does not earn the required continuing education contact hours as provided in this section due to his or her call to active duty in the armed forces reserves or the New Mexico national guard, will

not lapse for failure to earn continuing education hours.

(2) A physical therapist or physical therapist assistant who was or is called to active duty in the armed forces reserves or New Mexico national guard is required to provide official documentation that the licensee is a member of the armed forces reserves or the national guard and was or is being called to active duty.

(3) Upon the physical therapist or physical therapist assistant's return to civilian status, the licensee shall pay the license renewal fee and resume earning continuing education contact hours prorated according to the licensee's months of service as required to maintain his or her licensure as a physical therapist or physical therapist assistant.

[16.20.8.9 NMAC – Rp, 16.20.8.9 NMAC, 2/24/2022]

16.20.8.10 CONTINUING EDUCATION CREDIT

CARRYOVER: No carryover hours will be permitted. Thirty continuing education hours must be earned during the current two year renewal period of February 1 through January 31.

[16.20.8.10 NMAC – Rp, 16.20.8.10 NMAC, 2/24/2022]

16.20.8.11 FAILURE TO MEET CONTINUING EDUCATION REQUIREMENTS:

Failure to meet continuing education requirements will cause the board to refuse to renew the physical therapist or physical therapist assistant license in accordance with the Uniform Licensing Act.

[16.20.8.11 NMAC – Rp, 16.20.8.11 NMAC, 2/24/2022]

16.20.8.12 APPROVAL OF CONTINUING EDUCATION CONTACT HOURS:

A. The process for approval of continuing education is as follows:

(1) the board or its designee will approve each request for continuing education credit; course approval must be

requested by the course sponsor prior to the course or retroactively; however, licensee's are not required to obtain approval but can request approval prior to a course or retroactively to ascertain that a course is acceptable as continuing education;

(2) the party requesting approval will be informed of the board's or designee's determination within 30 calendar days of receipt of the request;

(3) the course sponsor or licensee whose request has been denied may appeal the denial at the next board meeting; and

(4) the same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.

B. Programs must follow the criteria and guidelines established by the board as follows to receive continuing education credit:

(1) each program or any course(s), with board approval that are sponsored by the APTA/NMAPTA will automatically be accepted for CEU approval without the need to apply for such approval;

(2) each program addresses needs (problems and issues) faced by physical therapists and physical therapist assistants;

(3) each program has specific written learning outcomes (objectives) based on identified needs;

(4) each program is planned and conducted by qualified individuals;

(5) program content and instructional methods for each program are based on learning objectives; and

(6) participants demonstrate their attainment of the learning outcomes, (i.e., various methods can be used such as: questions, discussions, written oral exercises, problems, case studies, etc.); and

(7) programs approved by the APTA will be automatically accepted by the board.

C. Final determination of values of continuing education will remain at the discretion of the board.

D. Programs considered appropriate for continuing education, include, but are not limited to those listed below.

(1) **Live programs**, (i.e., various programs such as workshops, in-service two-way video conferencing, etc.) awarded by providing the board with the following:

(a) certificate of completion;
(b) course schedule;
(c) learning outcomes (objectives); and
(d) name of instructor and credentials; 30 contact hours will be accepted).

(2) In the case of **university or college courses** taken for credit, provide the board with:

(a) name of course;
(b) number of course credit hours;
(c) inclusive dates of attendance;
(d) name of instructor and instructor's credentials;
(e) published course description from college or university;

(f) completed transcript or grade report with a passing grade of "C" or better;
(g) name of institution; and

(h) brief course summary demonstrating the course's relationship to physical therapy; (maximum 30) contact hours are awarded for each three credit course).

(3) **Physician in-service programs** or regular physical therapy staff in-service programs, provide the board with:

(a) name of program;
(b) number of hours spent in program;

(c) inclusive dates of attendance;

(d) name of instructor or supervisor of program; documentation of instructor background and expertise;

(e) name of institution; and

(f) brief course summary demonstrating the course's relationship to physical therapy; (maximum allowed biennially is 30 contact hours).

(4) **Management courses:** (maximum allowed biennially is 15 contact hours.)

(5) **Preparation or presentation of a workshop/in-service**, awarded on a case by case basis for any one given presentation, by providing the board the following:

(a) proof of preparation may be an outline, copy of handouts, copy and
(b)

a copy of the agenda showing name of licensee as presenter; (maximum allowed biennially is 15 contact hours);

(c) contact hours for the presenter will be calculated at three times the number of hours of audience participation (e.g., a two hour workshop equals six hours for the presenter).

(6) **Certificate courses for an advanced specialty**, provide the board a certificate of completion signed by the program sponsor. (Maximum allowed biennially is 30 contact hours.)

(7) **Reading journal articles**, provide the board the following:

(a) title of article and journal;
(b) author and author's credentials'; and
(c)

summary (subject of article, what was learned, and how it relates to the physical therapy scope of practice or the licensee's position; (maximum allowed per article is one-half contact hour); (maximum allowed biennially is 15 contact hours).

<p>(8) Conducting physical therapy research, provide the board the following:</p> <p>(a) title and description of research project, including brief timeline;</p> <p>(b) names of other persons involved in project (i.e., co-investigators or supervisors);</p> <p>(c) a brief statement indicating how participation in the project is related to the licensee's present or future position in the field of physical therapy;</p> <p>(d) a brief statement indicating how participation in the project is benefiting the applicant's therapy skills or research skills; and</p> <p>(e) provide a copy of the research report (if project has been completed); (if report is incomplete), credit will be allowed by providing the listed information or by receipt of the college transcript; (the board will determine the number of contact hours allowed); (maximum allowed biennially is 30 contact hours).</p> <p>(9) Home study courses, awarded by providing the board with the following:</p> <p>(a) certificate of completion;</p> <p>(b) course schedule;</p> <p>(c) learning outcomes (objectives); and</p> <p>(d) name of instructor and credentials; (maximum allowed biennially is 30 contact hours).</p> <p>(10) Internet courses, awarded by providing the board with the following:</p> <p>(a) certificate of completion;</p> <p>(b) course schedule;</p> <p>(c) learning outcomes (objectives); and</p> <p>(d) name of instructor and credentials; (maximum allowed biennially is 30 contact hours).</p>	<p>(11) Alternative medicine seminars, provide the board a letter from the licensee explaining how the course relates to the physical therapy scope of practice. The board will approve these courses on a case by case basis.</p> <p>(12) Courses where certificates of attendance are not issued, provide the board the following:</p> <p>(a) a canceled check for the course registration fee (submit copy of front and back of check);</p> <p>(b) proof of transportation (i.e., copy of plane ticket and hotel receipt); and</p> <p>(c) list of courses attended and hours attended (i.e., copy descriptions of courses and hours from program agenda).</p> <p>(13) Credit for supervising a student in clinical education, provide the board with a copy of the cover and signature page (with student's name blacked out to maintain confidentiality) of the student evaluation completed by the licensee-supervisor. One continuing education contact hour may be approved for each 40 contact hours of supervision in clinical education. The maximum number of continuing education contact hours approved for supervision in clinical education is 15 contact hours biennially.</p> <p>(14) Residencies, fellowships, and examinations.</p> <p>(a) Successful completion of a specialty examination may be submitted for continuing education consideration. A list of the specialty examinations that qualify for continuing education will be maintained by the board. The maximum number of continuing education contact hours is 30 biennially.</p> <p>(b) Successful completion of an American physical therapy association (APTA) credentialed residency or fellowship program may be submitted for continuing education consideration. The maximum number of continuing</p>	<p>education contact hours is 30 biennially.</p> <p>(c) Successful completion of an examination of the federation of state boards of physical therapy pertaining to continued competence may be submitted for continuing education consideration. The maximum number of continuing education contact hours is 30 biennially.</p> <p>(15) The American physical therapy association code of ethics for physical therapists and standards of ethical conduct for physical therapist assistants, online course or live program, awarded by providing the board with the following:</p> <p>(a) certificate of completion;</p> <p>(b) course schedule;</p> <p>(c) learning outcomes (objectives); and</p> <p>(d) name of instructor and credentials; (the maximum number of contact hours awarded will be accepted).</p> <p>(16) Education presentations on state and federal legislative updates, and APTA house of delegates at NMAPTA business meetings, awarded by providing the board with the following:</p> <p>(a) proof of attendance;</p> <p>(b) outline of agenda; and</p> <p>(c) name of instructor and instructor's credentials; (maximum allowed biennially is eight contact hours or four contact hours annually).</p> <p>E. Ineligible activities include, but are not limited to:</p> <p>(1) orientation and in-service programs dealing with organizational structures, processes, or procedures;</p> <p>(2) meetings for purposes of policy making;</p> <p>(3) annual association, chapter, district, or organizational and non-educational meetings;</p> <p>(4) entertainment or recreational meetings or activities;</p>
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(5) committee meetings, holding of offices, serving as an organizational delegate;
 (6) visiting exhibits; and
 (7) CPR education.
 [16.20.8.12 NMAC – Rp, 16.20.8.9 NMAC, 2/24/2022]

HISTORY of 16.20.8 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records and Archives:

Rule 80-1, Continuing Education, filed 4/18/1980
 Rule 80-2, New Rules and Regulations (Continuing Education), filed 4/18/1980
 Rule 83-8, Continuing Education, filed 3/29/1983
 Rule 88-7, Continuing Education, filed 2/19/1988
 Rule 89-7, Continuing Education, filed 8/1/1989
 Rule 91-7, Continuing Education, filed 5/8/1991
 Rule 92-7, Continuing Education, filed 9/3/1992
 Rule 92-7, Continuing Education, filed 1/28/1993
 Rule 89-11, Preferred Provider of Continuing Education Units, filed 8/1/1989
 Rule 91-11, Preferred Provider of Continuing Education Units, filed 5/8/1991
 Rule 92-11, Preferred Provider of Continuing Education Units, filed 9/3/1992.

History of the Repealed Material:

16.20.8 NMAC, Renewal Requirements and Continuing Education (filed 8/14/2000) Repealed effective 2/24/2022

Other History:

Rule 92-7, Continuing Education (filed 1/28/1993) renumbered, reformatted, amended and replaced by 16 NMAC 20.8, Continuing Education, effective 10/15/1997.
 16 NMAC 20.8, Continuing Education (filed 9/30/1997) renumbered, reformatted, amended and replaced by 16.20.8 NMAC,

Continuing Education, effective 8/31/2000.

16.20.8 NMAC, Renewal Requirements and Continuing Education (filed 8/14/2000) Replaced by 16.20.8 NMAC, Renewal Requirements and Continuing Education, effective 2/24/2022

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

This is an amendment to 16.20.3 NMAC, Sections 7, 8 and 9, effective 2/24/2022.

16.20.3.7 DEFINITIONS:

~~[RESERVED]~~ **“Disqualifying criminal conviction”** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.20.3.7 NMAC - Rp, 16.20.3.7 NMAC, 11/1/2004; A, 2/24/2022]

16.20.3.8 APPLICATION FOR LICENSURE.

A. The board may issue a license to an applicant, other than one applying for licensure by reciprocity, who fulfills the following requirements:

- (1) completes the application;
- (2) includes a passport-size photograph taken within the preceding 12 months and affixes it to the application;
- (3) pays the non-refundable application fee in full as provided in Part 5;
- (4) passes the jurisprudence exam (as specified in 16.20.2.10 NMAC) and pays the non-refundable exam fee as provided in Part 5;
- (5) submits official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
 - (a) post-baccalaureate degree in physical therapy;
 - (b) associate degree as a physical therapist assistant;

(6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program requirements by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:

(a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

(b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

(7) passes the national physical therapy licensure examination (NPTE) (as specified in 16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

(8) Effective February 1, 2020, all applicants for licensure must submit nationwide and statewide department of public safety (DPS) criminal history screening background check. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall be paid by the applicant.

(a) Applicants will follow the criminal background check process required by the New Mexico department of public safety or its agents.

(b)

Applications for exam or endorsement will not be processed without results of a criminal background check.

(c)

If the criminal background check reveals a crime of moral turpitude or relevant felony or violation of the New Mexico physical therapy practice act, the applicant will be notified to submit copies of legal documents and other related information to the board that will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three consecutive years, full licensure requires fulfilling the following requirements:

(1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

(2) provides proof of having taken 15 continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

(3) provides evidence of additional competency to practice as required by the board.

C. [Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court-ordered sanction.] Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from

receiving or retaining a license issued by the board/commission:

(1) crimes involving homicide, murder, manslaughter, assisting suicide or resulting in death;

(2) crimes involving human trafficking, or trafficking in controlled substances;

(3) crimes involving kidnapping, false imprisonment, assault, aggravated assault, battery or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, prostitution, or other sexual crimes;

(5) crimes involving great bodily harm, adult abuse, child abuse, neglect, abandonment, stalking, aggravated stalking, custodial interference, unlawful interference with custody, injury to pregnant woman, breaking and entering, damage to property of a household member, or exploitation of a care facility resident's property;

(6) contributing to the delinquency of a minor, unlawful carrying of a deadly weapon on school premises, unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages, or a felon in possession of a firearm;

(7) criminal damage to property, damaging insured property, falsely obtaining services or accommodations;

(8) accepting the earnings of a prostitute;

(9) crimes involving the unauthorized distribution of sensitive images, computer abuse or unauthorized computer use;

(10) crimes involving ransom, robbery, larceny, extortion, burglary, sabotage, fraud, forgery, embezzlement, identity theft, credit card fraud, credit card theft, dealing in credit cards of another, unauthorized use of a credit card, receiving or transferring stolen property, money laundering, shoplifting, or stolen vehicles

(11) crimes

involving making a bomb scare, arson, explosives, incendiary devices, facsimile bombs, hoax explosives, deadly weapons, or firearms;

(12) crimes

involving seizing or exercising control of a bus by force or violence or by threat of force or violence;

(13) violation

of Partial-Birth Abortion Ban Act or the Endowed Care Cemetery Act;

(14) crimes

involving the unlawful disposal of, use or sale of an unclaimed body;

(15)

intentionally hampering, obstructing, tampering or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act;

(16) crimes

involving the second or subsequent offense of certain prohibited acts of the owner;

(17) crimes

involving cruelty to animals, dog fighting, cockfighting, unlawful tripping of an equine causing the maiming, crippling or death of the equine, injury to police dog, police horse or fire dog;

(18) crimes

involving the use of telephone to terrify, intimidate, threaten, harass, annoy or offend;

(19) crimes

involving the use of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder;

(20) violations

of the Model State Commodity Code, the Uniform Securities Act, the Mortgage Loan Company Act, the Mortgage Loan Originator Licensing Act, the Savings

(21) violations

of the Election Code or the Indian Arts and Crafts Sales Act;

(22) crimes

involving procuring or attempting to procure telecommunications service without paying charge.

theft or intentional damage of communications or public utility equipment, whether customer- or utility-owned, which created a public safety hazard or causes a disruption of communications services or public utility services to ten or more households;

(23) crimes involving bribery, intimidating witnesses, retaliation against a witness, tampering with evidence, tampering with public records, performing an official act for personal gain, demanding or receiving a bonus, gratuity or bribe, unlawful interest in a contract involving an irrigation district, or receiving profits derived from an unlawful interest in a contract involving an irrigation district, or unlawful interest in a public contract

(24) crimes involving jury tampering, or impersonating a police officer;

(25) crimes involving escape from custody, community custody release program, jail or penitentiary, fleeing a law enforcement officer;

(26) crimes involving unlawful rescue, procuring escape, or conniving at, aiding or assisting escape of a person confined or held in lawful custody or confinement, or harboring or aiding a felon;

(27) crimes involving furnishing articles for a prisoner's escape, furnishing drugs or liquor to a prisoner, or bringing contraband into a prison or jail;

(28) crimes involving tax evasion or tax fraud;

(29) willful failure to collect and pay over taxes;

(30) crimes involving attempts to evade or defeat any tax;

(31) crimes involving violations of officers or employees engaging in the administration of the property tax who buy property sold for delinquent property taxes that is unlawful;

(32) crimes involving paying or receiving public money for services not rendered;

(33) crimes involving violations of the Cigarette Tax Act, including packaging cigarettes and counterfeit stamps;

(34) crimes involving violations of the Cigarette Enforcement Act;

(35) crimes involving the Credit Union Act;

(36) crimes involving perjury, public assistance, false swearing of oath or affidavit, false voting, falsely obtaining services or accommodations, falsifying documents, filing false documents, making false statements, making unauthorized withdrawals, issuing a worthless check, obtaining information under false pretenses, or providing the credit bureau information of a consumer to an entity who is not authorized to receive that information;

(37) unlawful dealing in federal food coupons or WIC checks, unlawful use of food stamp identification card or medical identification card;

(38) crimes involving the Medicaid Fraud Act,

(39) failure to reimburse the human services department upon receipt of third party payment;

(40) an act or omission, with intent to defraud, expressly declared to be unlawful by the Banking Act;

(41) crimes involving improper disposition of certain court funds or improper sale, disposal, removal or concealing of encumbered property;

(42) crimes involving the possession of 4 or more incomplete credit cards or machinery, plates or other contrivance;

(43) crimes involving altering or changing engine or other number of a vehicle or motor vehicle;

(44) crimes involving any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction and knowingly and intentionally applies the proceeds to a use other than

paying those persons with whom he contracted;

(45) crimes involving a false public voucher, false reports, uttering or making false statements, paying or receiving public money for services not rendered;

(46) crimes involving unlawful influencing, unlawful sale of a lottery ticket, unlawful representation of a business or individual as a credit union, conducting business as a credit union when not authorized to do so;

(47) crimes involving extortionate extensions of credit or racketeering;

(48) crimes involving the Pyramid Promotional Scheme Act or Antitrust Act;

(49) crimes involving the unlawful request, receipt, or offer to another that is exchanged for the promised performance of an official act, performance of an official act for personal gain or illegal kickbacks;

(50) failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(51) crimes involving the practice of medicine, dentistry, optometry or osteopathic medicine without a license or authorization of the appropriate regulating authority;

(52) second or subsequent conviction of Chiropractic Physician Practice Act;

(53) crimes involving certain violations of the Optometry Act;

(54) fourth or subsequent driving under the influence of intoxicating liquor or drugs;

(55) crimes involving controlled substances, including violations of the Controlled Substances Act;

(56) crimes involving violations of the Drug Precursor Act or the Drug, Device and Cosmetic Act;

(57) misuse of public funds;

(58) intent to defraud uses on a public security or instrument of payment;

(59) crimes involving commercial gambling, dealing in gambling devices, possession of an unlicensed or illegal gaming device, or a violation of the Gaming Control Act;

(60) crimes involving a violation of the Horse Racing Act;

(61) crimes involving having possession with the intent to sell or resell alcoholic beverages that have been manufactured or transported in violation of state law, or manufacturing any spirituous liquor by a person who is not a licensed distiller or rectifier manufacturing;

(62) crimes involving selling or giving alcoholic beverages to minors, and possession of alcoholic beverages to minors, or the manufacture, possession, offering to sell or sale of any alcoholic beverages in the state that are not in accordance with the Liquor Control Act, or other violations of the Liquor Control Act;

(63) willfully attempting to evade or defeat any fee or other payment imposed pursuant to the Professional Athletic Competition Act;

(64) second or subsequent conviction for failing to comply with restrictions imposed by proclamation of the governor under the Riot Control Act during a state of emergency, or failure to comply with proclamation of the governor;

(65) willfully setting on fire or igniting or causing to be set on fire or ignited any building equipment or anything whatsoever at or within any mine when any person is present in such mine when any person is present in such mine at the time, or willfully setting fire upon state lands;

(66) crimes involving a violation of the Procurement Code;

(67) crimes involving a violation of the Governmental Conduct Act; or

(68) an attempt, solicitation, or conspiracy involving any of the felonies in this Subsection.

D. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection C of this rule.

E. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection C of this rule or

F. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Physical Therapy Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

G. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[D.] H. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

[E.] I. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC as well as those requirements listed in 16.20.9 NMAC.

[F.] J. Initial application is valid for a period of 12 months.

[16.20.3.8 NMAC - Rp, 16.20.3.8 NMAC, 11/1/2004; A, 3/2/2006; A, 1/12/2008; A, 8/1/2009; A, 8/16/2010; A, 7/27/2017; A, 7/28/2019; A, 2/24/2022]

16.20.3.9 ~~[BIENNIAL- LICENSING AS OF AUGUST 2009 FOR NEW APPLICANTS:~~

A. Initial Licensure:

(1) for an applicant whose first physical therapy or physical therapist assistant license is issued between August 1, 2009, and January 31, 2010, that license will be valid until February 1, 2011;

(2) for an applicant whose first physical therapy or physical therapist license is issued between February 1, 2010, and July 31, 2010, that license will be valid until February 1, 2012;

(3) no license will be issued for a period exceeding 24 months;

(4) this section expires on July 31, 2010.

B. License renewals will be done in accordance with the requirements set forth in 16.20.8 NMAC and 16.20.5 NMAC.]

[RESERVED]

[16.20.3.9 NMAC - Rp, 16.20.3.9 NMAC, 11/1/2004; A, 3/2/2006; A, 1/12/2008; 16.20.3.9 NMAC - N, 8/1/2009; Repealed, 2/24/2022]

REGULATION AND LICENSING DEPARTMENT PHYSICAL THERAPY BOARD

This is an amendment to 16.20.12 NMAC, Section 7, 8 and 9, effective 2/24/2022.

16.20.12.7 DEFINITIONS:

A. ~~["Military service member"~~ means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.] **"Military service member"** has the same meaning as defined in

Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

B. ~~["Recent Veteran"]~~ means a person who has received an honorable discharge or separation from military service within the two (2) years immediately preceding the date the person applied for an occupational or professional license pursuant to this section; "Veteran" has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.20.12.7 NMAC - N, 9/30/2014; A, 2/24/2022]

16.20.12.8 APPLICATION REQUIREMENTS:

A. Applications for [registration] license shall be completed on a form provided by the board.

B. [The information shall include:

~~(1) Completed application and fee pursuant to 16.20.3.11 and 16.20.3.8 and 16.20.5.8 NMAC;~~

~~(2) Satisfactory evidence that the applicant holds a license, issued by another jurisdiction, including a branch of armed forces of the United States, that is current and in good standing and that the applicant has met the minimal licensing requirements that are substantially equivalent to the New Mexico physical therapy or physical therapist assistant licensing requirements;~~

~~(3) Proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status]~~ The applicant shall provide a complete application that includes the following information:

(1) applicant's full name;

(2) current mailing address;

(3) current electronic mail address if any;

(4) date of birth;

(5) background check, if required; and

(6) proof as described in Subsection C below.

C. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:
(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board/commission as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay

and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Physical Therapy Practice Act. [16.20.12.8 NMAC - N, 9/30/2014; A, 2/24/2022]

16.20.12.9 RENEWAL REQUIREMENTS: ~~[A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance set forth in 16.20.3 NMAC and for the renewal of a license set forth in 16.20.8 NMAC]~~

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in Section 16.20.8.8 NMAC pursuant to Subsection K of 61-12D-10 NMSA 1978.

B. As a courtesy, the board will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board/commission. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date. [16.20.12.9 NMAC - N, 9/30/2014; A, 2/24/2022]

REGULATION AND LICENSING DEPARTMENT REAL ESTATE COMMISSION

This is an amendment to Section 16.61.1 NMAC, Section 7, effective, 2/25/2022.

16.61.1.7 DEFINITIONS:

A. **"Acceptable financial institution":** is a federally insured bank, savings and loan or title company authorized to do business in the state of New Mexico.

B. **"Agency":** the fiduciary relationship created solely by the express written agency

agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

C. “Agent”: the brokerage authorized solely, by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, “agent” means the person who has been authorized to act by that associate broker’s qualifying broker. In the case of residential property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the property management agreement. In the case of commercial property management, the property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) pursuant to a property management agreement if the property management agreement specifically creates an agency relationship.

D. “Associate broker”: a person holding a New Mexico associate broker’s license who is affiliated with a New Mexico qualifying broker.

E. “Broker”: any person holding a current New Mexico associate broker’s or qualifying broker’s real estate license.

F. “Brokerage”: a person, corporation, partnership or association qualified by a New Mexico licensed qualifying broker to conduct real estate brokerage activity in New Mexico.

G. “Brokerage relationship”: the relationship between a customer or client and a brokerage for the provision of services in connection with a real estate transaction.

H. “Brokerage trust account”: an account at an acceptable financial institution

established by the qualifying broker for the purpose of holding money belonging to others received during a real estate sales transaction.

I. “Broker duties”: certain duties owed by brokers to prospective buyers, sellers, owners and tenants, and broker obligation to other brokers as set forth in Part 16.61.19.8 NMAC.

J. “Broker in charge”: a New Mexico licensed real estate broker qualified to be a qualifying broker who has been designated in writing by the qualifying broker to assume responsibility for the brokerage during a period of time when supervision by the qualifying broker is not possible.

K. “Client”: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

L. “Commercial real estate”: real estate that is zoned for business or commercial use by a city or county; or designated by a city or county to allow five or more multi-family units; provided that all units are located on a single parcel of land with a single legal description.

M. “Core course”: the four-hour commission-approved continuing education course that all brokers are required to complete annually as a condition of license renewal.

N. “Core elective course”: commission-approved advanced continuing education course in residential transactions, commercial transactions, property management transactions, or vacant land/ranch transactions required once during each three-year cycle, core elective courses advance the broker’s practice of real estate by one or more of the following:

- (1) improve broker transactional expertise focusing on, but not limited to, contractual and disclosure forms used in the practice of real estate, real estate title issues, contracts, and real estate transactional negotiating skills;
- (2) improves broker business practices and

professionalism focusing on, but not limited to, broker responsibilities and duties;

(3) improves broker awareness of issues that impact the public and real estate transactions focusing on, but not limited to, land development, jurisdictional taxation issues; or

(4) increases the broker knowledge of third party services within a transaction. The number of core elective hours required for both associate brokers and qualifying brokers is further defined at 16.61.13.8 NMAC.

O. “Credit hour(s)”: credits toward education requirements as assigned by the real estate commission for each commission-approved course.

P. “Custodial account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of an owner. The account shall be established in the owner’s name under the qualifying broker’s control. This account may be interest bearing.

Q. “Customer”: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

R. “Designated agent”: a broker who is designated in writing by their qualifying broker to represent a client of the brokerage as their exclusive agent in a real estate transaction.

S. “Designated agency”: a policy chosen by the qualifying broker of a brokerage that discloses to a client of the brokerage that the broker representing them as an agent by means of an express written agency agreement is their only representative in the brokerage. The designated agency disclosure is made at the time that the client and the brokerage enter into an express written agency agreement, or at such time that the qualifying broker of a brokerage determines the need to designate one broker of the brokerage as agent of the buyer and another

as agent of the seller in the same transaction.

T. “Distance education”: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

U. “Dual agency”: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in a real estate transaction rather than as an exclusive agent for either party to the transaction.

V. “Dual agent”: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have modified existing exclusive agency agreements with the brokerage.

W. Elective Course: a commission approved elective course not considered as intensive in focus as a core elective course in a broad array of topics directly and indirectly related to the practice of real estate or the skills necessary to practice real estate including: real estate law and practice; real estate financing, mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure. This broad category of courses also includes courses associated with various national and state designations and certifications not already categorized as core electives; courses in personal and property protection for the broker and clients; broker skills-related offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker’s service to the public; other skills offerings related to broker professional development, broker customer relations skills, broker sales promotion including

salesmanship, negotiation, marketing techniques, servicing the client, or similar courses.

X. “Employee”: for the purposes of Paragraph (1) of Subsection C of Section 61-29-2 NMSA 1978 of the real estate license law, a person employed by an owner of real property, or a person employed by the brokerage acting on behalf of the owner of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following:

(1) does the employer withhold income tax from the person’s wages, salary, or commission;

(2) does the employer pay a portion of the person’s FICA tax;

(3) is the person covered by workers’ compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person.

Y. “Errors and omissions insurance”: a type of professional liability insurance that provides insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverage’s, limitations, and exclusions of the specific insurance policy or policies in place.

Z. “Exclusive agency”: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, subagency, residential property management, and may include commercial property management.

AA. “Expired license”: an associate broker’s or qualifying broker’s license that has not been renewed as of the last day of the

month following the broker’s birth month at the end of the broker’s three-year licensing cycle.

BB. “Express written agreement”: any written agreement signed by all parties pertaining to a real estate transaction or the provision of real estate services.

CC. “Facilitator”: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

DD. “Foreign broker”: a real estate broker who does not hold a real estate license issued by the New Mexico real estate commission, but who holds a current and valid real estate broker’s license issued by another state in the United States, a province of Canada, or any other sovereign nation.

EE. “Honesty and reasonable care and ethical and professional conduct”: conduct that a reasonable person would understand to meet standards of professionalism and ethical conduct within a profession, including but not limited to good faith, competence, trustworthiness, diligence, and lawful behavior.

FF. “Inactive broker”: a New Mexico licensed real estate broker not currently affiliated with a New Mexico real estate brokerage and therefore ineligible to participate in any brokerage activity or collect fees or commissions in connection with such activity except as provided in Subsection C of 16.61.9.8 NMAC.

GG. “In house transaction”: a transaction in which both sides of the transaction occur under the supervision of one qualifying broker in the same brokerage.

HH. “Land title trust account”: a pooled interest-bearing account subject to the land title trust fund act.

II. “Military service member”: a person, the spouse of a person, or the dependent children

of a person, who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard. For purposes of this definition, any dependent child must be a dependent for federal income tax purposes.

JJ. “Owner or property owner”: a person who is recognized and held responsible by law as the owner of real property, including real property held by any legally recognized entity in which the owner has an interest of ten percent or more.

KK. “Party to the transaction”: a client or customer or any other person who utilizes real estate related services subject to the jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

LL. “Person”: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

MM. “Post-licensing course”: the commission-approved new broker business practices course required within the first year of licensure of brokers first licensed in New Mexico as associate brokers on or after January 1, 2009.

NN. “Principal”: any person who authorizes or employs another to do certain acts on behalf of that person.

OO. “Property ledger”: a record of deposits and disbursements within a trust account or custodial account that are associated with the same property or owner.

PP. “Property management”: real estate services as specified by a written management agreement between a property owner [~~or owner association~~] and a third party property management company; which includes, but are not limited to, the marketing, showing, renting and leasing of real property; the collection and disbursement of funds on behalf of owners [~~or owner associations~~]; the supervision

of employees and vendors; the coordination of maintenance and repairs; the management of tenant relations; or the preparation of leases or rental agreements, financial reports, disclosure certificates, resale certificates, and other documents [~~or the undertaking of any of the foregoing activities on behalf of a homeowners’ or unit owners’ association~~]. In the course of listing and marketing properties for sale, inspections of the property, repairs and maintenance incident to the sale and authorized by the owner shall not be considered property management. Advertising and taking reservations for vacation rental properties shall not be considered property management.

QQ. “Property management trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money belonging to others received during the management of real property for others.

RR. “Property manager”: a broker who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others [~~including owner associations~~]. A residential property manager is an agent of the owner(s) of the property for the purpose of performing the obligations of the owner(s) under the Uniform Owner-Resident Relations Act and under the rental or lease agreement. A commercial property manager may be an agent of the owner(s) as determined by the contract with the owner(s).

SS. “Qualifying broker”: a broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, and who discharges the responsibilities of a qualifying broker as set forth in 16.61.16.9 NMAC.

TT. “Recent veteran”: a person who has received an honorable discharge or separation from military service within the three years immediately preceding the date the person applied for a real estate broker’s license.

UU. “Reconciliation”: the process by which the property ledgers within a trust account or custodial account are balanced with the trust account or custodial account and the account or custodial account is balanced with the bank statement.

VV. “Referral”: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

WW. “Responsible person”: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Paragraph (7) of Subsection A of Section 61-29-12 NMSA 1978.

XX. “Residential real estate”: real estate which is zoned for private use as a living facility by a city or county; or designated by a city or county to allow four or less multi-family units on a single parcel of land with a single legal description.

YY. “Scope of authority”: the range of authority granted by the principal to act on behalf of that principal.

ZZ. “Special trust account”: an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of a named party to a transaction. This account may be interest bearing.

AAA. “Sponsor”: an organization or entity approved by the real estate commission to offer courses approved by the real estate commission.

BBB. “Subagent”: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

CCC. “Transaction coordinator”: a person engaged by a broker who assists the broker in the processing of the real estate

transaction, and whose services may include, but not be limited to, the following: gathering necessary information and paperwork for and from buyers and sellers, overseeing and organizing contractual deadlines, communicating and coordinating with lenders, title companies, inspectors, other brokers in the transaction and the parties to the contract to facilitate the closing of the real estate transaction, and assembling the final real estate transaction file for closing. A transaction coordinator involved in real estate transactions in New Mexico must have a New Mexico broker's license. A person assisting with real estate transactions who is not licensed is an unlicensed assistant.

DDD. "Transaction":

any real estate activity subject to the jurisdiction of the commission.

EEE. "Transaction broker":

a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship. The transaction broker relationship is a non-fiduciary relationship.

FFF. "Trust account":

an account at an acceptable financial institution established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction which includes a brokerage trust account, property management trust account or special trust account.

GGG. "Unlicensed assistant":

a person who does not hold an active New Mexico broker's license and works under the supervision of a responsible person to perform duties for the brokerage as provided in 16.61.21 NMAC.

HHH. "Vacation rental":

With the exception of hotels and motels, a vacation rental is the rental of real property by a renter who does not manifest an intent to make the real property a permanent residence. Evidence that the renter does not intend to make the real property a permanent residence includes, but is not limited to, the following: landlord/property manager supplies all furnishings, appliances,

bedding, towels, utensils, plates, and silverware.

III. "Virtual office":

A real estate brokerage office that provides communication and address services without providing dedicated office space.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1/1/2012; A, 1/1/2017, A, 1/15/2018; A, 1/1/2019; A, 1/3/2021; A, 2/25/2022]

**REGULATION AND
LICENSING DEPARTMENT
REAL ESTATE COMMISSION**

This is an amendment to 16.61.3 NMAC, Section 9 and 15, effective 2/25/2022.

**16.61.3.9 EXAMINATION
AND LICENSING
REQUIREMENTS:**

A. Associate broker's license: prior to applying for an associate broker's license, an applicant must pass both a national broker examination prescribed by the commission, and the New Mexico real estate broker's examination prescribed by the commission.

B. Examination application.

(1)

Applications to take the prescribed broker's examination(s) are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved 30-hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics. These pre-licensing courses must have been completed within the three years prior to application to take the examinations. Exam candidates who are licensed as associate brokers and are taking the broker's examination to upgrade to qualifying broker are exempt from the three-year time limit and must only provide documentation of course completion.

(2) Exam

candidates originally licensed as real estate salespersons or brokers or licensees in other states or jurisdictions may apply for waivers from completing the real estate principles and practice and real estate law courses in New Mexico and from taking the national portion of the broker's examination if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent. A New Mexico associate broker upgrading to qualifying broker will be exempt from taking the national portion of the broker's exam.

(3) Except in

a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commission has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved 30-hour broker basics course.

(4) License

applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam

applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the 30-hour broker basics course.

(6) All other

applicants for the examination shall attach to their license examination application certificates documenting completion of one 30-hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the

time of making application to take

the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed \$95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than 90 calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. Associate Broker License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examinations six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that the applicant has passed both portions of the examination with a minimum score of 75, documentation of having been fingerprinted for purposes of matching with state and national arrest record databases, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in 16.61.5 NMAC of the commission rules, and a non-

refundable license application fee not to exceed \$270. Recent veteran applicants and military service members, their spouses and dependent children, are exempt from the license application fee for the first period of licensure.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

[E. ~~Military service members and recent veterans:~~

~~(1) The commission shall, process the application and issue a license to the spouse of a military service member, a dependent child of a military service member, or a recent veteran that meets all the requirements for licensure as a real estate broker in New Mexico:~~

~~(2) A license issued pursuant to this part is not a provisional license and confers the same rights, privileges, and responsibilities as any other license issued by the commission:~~

~~(3) A license issued pursuant to this part shall not be renewed unless the licensee satisfies the commission's requirements for license renewal:~~

~~(4) Military service members and recent veteran applicants, their spouses and dependent children, are exempt from the license application fee for the first period of licensure:]~~

E. Expedited licensure for military service members, spouses, children, and veterans.

(1) Applicants for licensure shall meet the following requirements:

(a) complete an application on a form provided by the real estate commission;

(b) include on the application the applicant's full name, current mailing address, and email address if any, date of birth, and proof of a criminal background check obtained through fingerprinting.

(2) The applicant shall also provide

documentation that they are licensed and in good standing in another jurisdiction, including a branch of the United States armed forces, and have met the minimum licensing requirements in a jurisdiction with requirements that are substantially equivalent to New Mexico licensing requirements.

(3) The applicant shall provide documentation as follows:

(a) for a military service member, a copy of military orders;

(b) for a spouse of military service member, a copy of military service member's military orders, and a copy of the marriage license;

(c) for spouses of deceased military service members, a copy of decedent's form DD 214 and a copy of the marriage license;

(d) for dependent children of military service members, a copy of military service member's orders listing dependent children, or a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): a copy of form DD 214 showing proof of honorable discharge.

(4) The license shall be issued by the real estate commission as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application, and provides proof a criminal background check obtained by fingerprinting.

(5) Military service members and veterans shall not pay and the real estate commission shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

(6) A license issued pursuant to this section shall be valid for a period of three years from

the date of issuance to the last day of the month following the licensee's birth month.

F. License renewal requirements.

(1) A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.61.11.8 NMAC pursuant to Chapter 61, Article 61-29-11 D NMSA 1978.

(2) As a courtesy, the real estate commission will send via electronic mail license renewal notifications to licensees before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of timely renewal on or before the expiration date.

[16.61.3.9 NMAC – Rp, 16.61.3.9, 1/15/2018; A, 1/3/2021; A, 1/25/2022]

16.61.3.15 FELONY CRIMINAL CONVICTIONS:

A. Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying felony criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the real estate commission. This includes a felony conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon, or an appeal of the conviction has been sought. These felony convictions include:

(1) homicide, voluntary or involuntary manslaughter;

(2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;

(3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect, or financial exploitation;

(6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous uses of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property; and;

(8) financial crimes involving fraud, forgery, embezzlement, and credit card fraud.

B. The real estate commission shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The real estate commission shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule, and without a hearing as provided in the uniform licensing act.

D. Nothing in this rule prevents the real estate commission from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the real estate license law, regardless of whether the individual was convicted of a felony crime for such conduct or whether the felony crime for which the individual was convicted is listed as one of the disqualifying felony criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the real estate commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying felony criminal convictions listed in Subsection A of this rule.

[16.61.3.15 NMAC - N, 1/25/2022]

**REGULATION AND LICENSING DEPARTMENT
SPEECH-LANGUAGE
PATHOLOGY, AUDIOLOGY AND
HEARING AID DISPENSERS
PRACTICES BOARD**

This is an amendment to 16.26.2 NMAC, Sections 9, 10, 17, 18, and 19 effective 2/10/2022.

16.26.2.9 PERSONS AND PRACTICES NOT AFFECTED:

A. Recognized professional groups: The act does not prohibit members of recognized professional groups, other than speech-language pathologists, audiologists [and/or] and hearing aid dispensers, from doing appropriate work in the area of communication disorders consistent with their professional qualifications and with the standards and ethics of their respective professions. Such professional groups include, but are not limited to the following:

(1) physicians licensed to practice medicine in New Mexico;

(2) orthodontists;

(3) certified teachers of the deaf.

B. Students: The act does not restrict the supervised

activities of a speech-language pathology or an audiology student which constitute a part of his or her supervised course of study wherein the student is designated as a speech-language pathology student, audiology student or other such title clearly indicating the training status appropriate to his or her level of training.

[16.26.2.9 NMAC - Rp, 16 NMAC 26.2.9, 2/3/2006; A, 2/10/2022]

16.26.2.10 REQUIREMENTS

FOR ALL APPLICANTS: An applicant for a license to practice under the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act must submit the following:

- A.** a complete and signed application on a form prescribed by the board;
- B.** a check or money order payable to the board for the applicable fee(s) outlined in 16.26.6.8 NMAC;
- C.** documentation relevant to the license sought under 16.26.2 NMAC; and
- D.** certification that the applicant is not guilty of any activities listed in Section 61-14B-21 NMSA 1978; and
- E.** The certification that the applicant has not been convicted of felonies listed in Subsection E of 16.26.8 NMAC.

[16.26.2.10 NMAC - Rp, 16 NMAC 26.3.8, 2/3/2006; A, 11/29/2008; A, 4/6/2016; A, 2/14/2017; A, 2/10/2022]

16.26.2.17 QUALIFICATION FOR LICENSURE FOR CLINICAL FELLOWS:

A. A clinical fellow (CF) must meet all academic course work and practicum requirements for a master's degree in speech-language pathology, speech pathology, communication disorders or audiology or both or equivalent degree(s) regardless of degree name that would enable the individual to successfully be granted certification from a nationally recognized speech-language and or hearing association after completion of the clinical

fellowship if the individual chooses to apply national certification.

B. Procedure for applying for licensure as a clinical fellow.

(1) An individual will complete application including appropriate fee and clinical fellow plan and submit to the board office at the initiation of the clinical fellow period. The individual shall also submit:

- (a)** official transcripts verifying at least a master's degree in speech-language pathology, audiology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name; or
- (b)** a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and
- (c)** certify that the individual has received no reprimands of unprofessional conduct or incompetency; and
- (d)** file a CFY plan that meets with board approval that designates a clinical fellow supervisor who is licensed in accordance of this act and is practicing in the same field as the clinical fellow.

(e) CFY means no less than nine months full time employment defined as a minimum of 32 clock hours of work per week. This requirement also may be fulfilled by part time employment as follows:

- (i)** work of 15 - 19 hours per week over 18 months;
- (ii)** work of 20 - 24 hours per week over 15 months; or
- (iii)** work of 25 - 31 hours per week over 12 months.

(iv) In the event that part time employment is used to fulfill a part of the CFY, one-hundred percent of the minimum hours of part time work

per week requirements must be spent in direct professional experience as defined above. Professional employment of less than 15 hours per week will not fulfill any part of this requirement.

(f) a clinical fellow in audiology is not required to have a temporary hearing aid training permit.

(g) the clinical fellow must understand and abide by the code of ethics adopted by the board.

(2) Speech-language pathologist's supervision requirements for CFYs:

(a) Duties of clinical fellow supervisor: Clinical fellow supervision must be based on no less than 36 occasions of monitoring. These can include on site monitoring activities such as conferences with the clinical fellow, evaluation of written reports, evaluation by professional colleagues or may be executed by correspondence.

(b) Should the clinical fellow supervisor suspect at anytime during the clinical fellow plan that the clinical fellow under her/his clinical fellow supervision will not meet regulations, the clinical fellow supervisor must counsel the clinical fellow both orally and in writing and maintain careful written records of all contacts, contracts and conferences in the ensuing months.

(c) It is the responsibility of the clinical fellow to request feedback from their supervisor when the clinical fellow requires such feedback.

C. Completion of clinical fellowship: Upon completion of CFY, the CF is required to submit application for licensure as a speech-language pathologist or audiologist or both.

[16.26.2.17 NMAC - Rp, 16 NMAC 26.3.14, 2/3/2006; A, 1/15/2015; A, 2/10/2022]

16.26.2.18 TEMPORARY PARAPROFESSIONAL LICENSURE AS AN

**APPRENTICE IN SPEECH-
LANGUAGE (ASL):****A.** Prerequisite requirements:

(1) Acceptance of a temporary paraprofessional licensee as an apprentice in speech-language is subject to board approval. Such licensees shall:

(a) be working towards a license pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(b) certify that [he/she] they are not guilty of any activities listed in Section 61-14B-21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act; and

(c) provide proof of having met educational, supervision, and employment requirements.

(2) It is the responsibility of the apprentice in speech-language and the supervising speech-language pathologist to insure the distinction between the roles of the apprentice in speech-language and the graduate student.

B. Educational requirements:

(1) a baccalaureate degree in speech-language pathology or communication disorders or baccalaureate degree in another field with 30 semester hours of credit in speech-language pathology or communication disorders;

(2) enrolled in a master's degree program in speech-language pathology or communication disorders and completes a minimum rate of nine semester hours per year of graduate courses in communication disorders per year; or

(a) if not accepted into a master's degree program in speech-language pathology or communication disorders, the applicant must be currently enrolled in nine semester hours of graduate courses per year with at least three hours in communication disorders, six hours may be taken in a related field; and

(b) acceptance in a master's degree program must take place within two years of initial license; and

(3) maintains a minimum of a 3.0 GPA in communication disorders course work or master's degree program.

C. Supervision requirements:

(1) Work of the apprentice in speech-language must be supervised by a speech-language pathologist licensed by this act and who has a minimum of two years experience in the field.

(a) Minimum of ten percent of contact time of the apprentice in speech-language must be direct supervision.

(b) Minimum of ten percent of contact time of the apprentice in speech-language must be indirect supervision.

(2) It is recommended that the speech-language pathologist's and audiologist's direct caseload size be limited to no more than 40 clients.

(a) A speech-language pathologist may supervise a maximum of three apprentices at one time.

(b) The supervising speech-language pathologist is expected to appropriately reduce their direct caseload for each apprentice they supervise, ensuring the maintenance of high professional standards as stated in the code of ethics.

(c) It is the responsibility of the supervising speech-language pathologist and the apprentice in speech-language to ensure the distinction between the roles of the apprentice in speech-language and the graduate student.

D. Employment requirements:

(1) Terms of employment must require at least a temporary paraprofessional license as an apprentice in speech-language. The role of the apprentice in speech-language shall be determined in collaboration with the supervising speech-language pathologist (SLP) and the employer.

(2) Employment duties must be limited to the following:

(a) conduct speech-language [and/or] and hearing screenings;

(b) conduct treatment programs and procedures that are planned, selected [and/or] and designed by the supervising SLP;

(c) prepare written daily plans based on the overall intervention plan designed by the supervising SLP;

(d) record, chart, graph, or otherwise display data relative to the client performance and report performance changes to the supervising SLP;

(e) maintain daily service/delivery treatment notes and complete daily charges as requested;

(f) report but not interpret data relative to client performance to teachers, family, or other professionals;

(g) assist the speech-language pathologists during assessment of clients, such as those who are difficult to test;

(h) perform clerical duties, including maintenance or therapy/diagnostic material/equipment, client files, as directed by the SLP supervisor;

(i) participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

E. Employment duties must not include any of the following:

(1) administer diagnostic tests;

(2) interpret data into diagnostic statements or clinical management strategies or procedures;

(3) select or discharge clients for services;

(4) interpret clinical information including data or impressions relative to client performance;

(5) treat clients without following the individualized treatment plan;

(6) independently compose clinical reports except for progress notes to be held in the client's file;

(7) refer a client to other professionals or agencies;

(8) provide client or family counseling;

(9) develop or modify a client's individual treatment plan: IEP/IFSP/ clinical report or plan of care in anyway without the approval of the SLP supervisor;

(10) disclose clinical or confidential information;

(11) sign any formal documents without the supervising SLP co-signature;

(12) represent [himself/herself] themselves as a speech-language pathologist.

F. Documentation required: All applicants for temporary paraprofessional license as an apprentice in speech-language are required to provide the following documentation to the board each year:

(1) a completed board approved license application form, signed in the presence of a notary public;

(2) the required license application fee; and

(3) a completed board approved verification of employment form verifying:

(a) applicant's employment;

(b) performance responsibilities of the apprentice in speech-language;

(c) limitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);

(d) provision for supervision by an SLP licensed according to this act;

(4) a completed board approved verification of education form verifying:

(a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;

(b) current degree plan once the applicant is admitted to a master's degree program; and

(c) official copy of transcripts from college or university.

[16.26.2.18 NMAC - Rp, 16 NMAC 26.2.15, 2/3/2006; A, 11/29/2008; A, 6/7/2010; A, 1/15/2015; A, 2/10/2022]

16.26.2.19 BILINGUAL MULTICULTURAL ENDORSEMENT:

A. Prerequisites for an endorsement: Any person applying for bilingual-multicultural endorsement shall:

(1) file a completed application;

(2) pay the fees required under 16.26.6 NMAC;

(3) submit required documentation as outlined in Subsections B through D below; and

(4) certify that the applicant is not guilty of any of the any of the activities listed in Section 61-14B-21 NMSA 1978.

B. Eligibility of non-licensed speech language pathology applicants: A speech-language pathology applicant who applies for a bilingual-multicultural endorsement must submit the following documentation:

(1) a copy of a board-approved application for a license to practice as a New Mexico speech language pathologist or license issued by another state or country as a SLP or bilingual SLP; and

(2) proof of language(s) proficiency and experience as evidenced by:

(a) an official transcript from a university's bilingual or multicultural speech-language pathology certificate program with a minimum eighty percent score in courses taken, and proof that the applicant has passed a board-approved language proficiency assessment; or

(b) if a university transcript and a language proficiency assessment are not available, a letter of verification from a university, tribe or other recognized official entity documenting successful completion of a language proficiency rubric with a minimum of seventy percent in all domains/areas that apply to the specified language, and proof of five years of experience; or

(c) in the event that an applicant cannot provide the documentation required in Subparagraphs (a) or (b) of Paragraph (2) of Subsection B of 16.26.2.19 NMAC, the board may consider other evidence of proficiency and experience on a case-by-case basis.

C. Eligibility of currently licensed New Mexico speech-language pathology applicants: A New Mexico licensed speech-language pathologist who applies for a bilingual-multicultural endorsement must submit the following documentation:

(1) proof that the applicant has a New Mexico license to practice as a speech-language pathologist that is in good standing, or licensed by another state or country as a SLP or bilingual SLP that is in good standing; and

(2) proof that the applicant is proficient in the specified language(s) as evidenced by:

(a) having passed a board-approved language proficiency assessment; or

(b) a letter of verification from a university, tribe or other recognized official entity documenting successful completion of a language proficiency rubric with a minimum of seventy percent in all domains/areas that apply to the specified language; or

(c) in the event that an applicant cannot provide the documentation required in Subparagraphs (a) or (b) of Paragraph (2) of Subsection C of 16.26.2.19 NMAC, the board may consider other evidence of proficiency on a case-by-case basis; and

~~[(3) — proof that the applicant has a current bilingual~~

~~endorsement from the New Mexico public education department; or~~

~~(4)] (3) proof that the applicant has a minimum of five years practicing with clients who utilize a language other than English as evidenced by a sworn and notarized affidavit from the applicant.~~

D. Eligibility of licensees from other jurisdictions: A speech-language pathologist licensed by another jurisdiction who applies for a bilingual-multicultural endorsement must submit the following:

(1) proof that the applicant has a license to practice as a speech-language pathologist in good standing in another jurisdiction;

(2) a copy of a board-approved application for a license to practice as a New Mexico speech language pathologist;

~~(3) proof that the applicant has a minimum of five years practicing with clients who utilize a language other than English as evidenced by a sworn and notarized affidavit from the applicant; and~~

~~(4)] (3) proof that the applicant is proficient in the specified language(s) as evidenced by:~~

~~(a) [a current bilingual endorsement issued by a state public education department; or] the applicant has a minimum of five years practicing with clients who utilize a language other than English as evidenced by a sworn and notarized affidavit from the applicant; or~~

~~(b) having passed a board-approved language proficiency assessment; or~~

~~(c) a letter of verification from a university, tribe or other recognized official entity documenting successful completion of a language proficiency rubric with a minimum of seventy percent in all domains/areas that apply to the specified language; or~~

~~(d) in the event that an applicant cannot provide the documentation required in Subparagraphs (a), (b) or (c) of Paragraph (4) of Subsection D of~~

16.26.2.19 NMAC, the board may consider other evidence of proficiency on a case-by-case basis.

[16.26.2.19 NMAC - N, 4/6/2016; A, 2/10/2022]

REGULATION AND LICENSING DEPARTMENT SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSERS PRACTICES BOARD

**This is an amendment to 16.26.7
NMAC, Sections 7 and 8, effective
2/10/2022**

16.26.7.7 DEFINITIONS:
~~[RESERVED]~~ disqualifying criminal conviction has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

[16.26.7.7 - N, 2/10/2022]

**16.26.7.8 DISCIPLINARY
GROUNDS AND DENIAL OF
LICENSURE:** In accordance with the provisions of the Uniform Licensing Act, the board may take disciplinary action if the board determines that the applicant or licensee has violated the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the board's rules. The following ~~[shall]~~ may subject the applicant or licensee to disciplinary action by the board.

A. Engaging in unprofessional conduct: Unprofessional conduct includes, but is not limited to, the following:

(1) violations of the principles of ethics or the ethical proscriptions as set forth in board regulations concerning its Code of Ethics (16.26.9 NMAC);

~~(2) violating a provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act including practicing without a license;]~~

(2) for an audiologist or dispensing otorhinolaryngologist to accept a case referred from a hearing aid dispenser

and not return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.

~~[(3) committing any of these crimes, for which a certified copy of the record of conviction shall be conclusive evidence of conviction;~~

~~(a) a felony;~~

~~(b) a misdemeanor substantially related to the practice of speech language pathology, audiology or hearing aid dispensing or a misdemeanor involving moral turpitude; and~~

~~(c) violating the Controlled Substances Act (Sections 30-31-1 to 30-31-41 NMSA 1978)~~

~~(4) attempting to practice with a license, certificate or registration to practice speech-language pathology, audiology or hearing aid dispensing under a revoked, suspended or denied license from another jurisdiction, territory or possession of the United States or another country for actions similar to acts described within this section.~~

~~(5) for an audiologist or dispensing otorhinolaryngologist, accepting a referral from a hearing aid dispenser but failing to return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.~~

~~(6) fraud or deceit in procuring or attempting to procure a license;~~

~~(7) selling or fitting the first hearing aid of a child under 16 years of age who has not been examined and cleared for the hearing aid by an otolaryngologist or a dispensing audiologist who has~~

earned certification by a national professional association;

~~(8) — selling or fitting a hearing aid on a person who has not been tested, except for replacement aids;~~

~~(9) — using untruthful or misleading advertising;~~

~~(10) — misrepresenting the license or applicant's status as being a medical doctor;~~

~~(11) — becoming addicted to a habit-forming drug or other substance to such a degree as to render the license or applicant unfit to practice;~~

~~(12) — willfully or negligently practicing beyond the scope of the Speech-Language Pathology, Audiology and Hearing-Aid Dispensing Practices Act.]~~

B. Engaging in acts that constitute incompetence: Incompetence includes, but is not limited to, the following:

(1) failure to possess the knowledge, apply the skill or provide the care required by generally accepted standards of the professions of speech-language pathology, audiology or hearing aid dispensing; or

(2) violation of the principles of ethics II or the ethical proscriptions thereunder as set forth in board regulations relating to professional competence (Subsections D and E of 16.26.9.8 NMAC);

(3) a finding of incompetence may be based upon a single act or omission of competence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence.

~~[C. — A finding of incompetence may be based upon a single act or omission of competence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence.]~~

~~[D.] C.~~ Aiding or abetting the practice by a person not licensed by the board. Aiding or abetting the

practice of speech language pathology by a person not licensed by the board includes, but is not limited to, the following:

~~(1) — Authorizing or otherwise permitting a speech language paraprofessional or assistant working under the licensee's supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.~~

~~(2) — Failing to ensure that a speech language paraprofessional or assistant working under the licensee's supervision follows the plan of care; and~~

~~(3) — Authorizing or otherwise permitting an apprentice in speech language pathology working under the licensee's supervision to conduct any of the duties set forth in Subsection E of 16.26.2.18 NMAC of the boards rules.]~~

(1) A licensee shall not authorize or otherwise permit a speech language paraprofessional or assistant working under his or her supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.

(2) A licensee shall ensure that a speech language paraprofessional or assistant working under his or her supervision follows the plan of care.

(3) A licensee shall not authorize or otherwise permit an apprentice in speech language pathology working under his or her supervision to conduct any of the duties set forth in Subsection E of 16.26.2.18 NMAC of the boards rules and shall ensure that the apprentice only engages in those duties authorized in Subsection D of 16.26.2.18 NMAC of the boards rules.

~~[E.] D.~~ Failing to deliver to any person supplied with a hearing aid a receipt which contains the following information:

(1) licensee's license number and signature;

(2) the sponsor's/supervisor's signature

approving of the fitting if the seller is a clinical fellow, graduate student or trainee;

(3) address of the licensee's regular place of business;

(4) make and model of the hearing aid;

(5) full financial terms of the sale;

(6) statement as to whether the hearing aid is new, used or reconditioned;

(7) statement that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser, audiologist, clinical fellow, trainee or graduate student and not as a medical diagnosis or prescription;

(8) terms of guarantee, if any.

(9) hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems.

E. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

(1) homicide or manslaughter;

(2) trafficking, or trafficking in controlled substances;

(3) human trafficking, kidnapping, false imprisonment, use of force or threats of force against school employees or healthcare workers, arson, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, failure to register as a sex offender, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect or financial exploitation;

(6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion,

burglary, bribery, fraud, tax fraud or evasion, forgery, embezzlement, credit card fraud, misuse of public funds or benefits, making false statements, offering or soliciting an illegal kickback or government action, tampering with public records, perjury;

(8) escape from a custody or possession of deadly weapons in custody;

(9) practicing healthcare without a license;

(10) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

F. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection E of this rule.

G. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

H. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

I. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule. [11/7/98, 11/27/99, 12/5/99; 16.26.7.8 NMAC - Rn & A, 16 NMAC 26.7.8, 2/3/06; A, 11/28/2017; A, 2/10/2022]

HISTORY OF 16.26.7 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSERS PRACTICES BOARD

This is an amendment to 16.26.11 NMAC, Sections 8 and 9, effective 2/10/2022

16.26.11.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the board.

[B.] A completed application shall include:

(1) The required fee as outlined in 16.26.6 NMAC;

(2) Satisfactory evidence that the applicant for licensure for a military service member, spouse or veteran from another state holds a current license in good standing with no pending disciplinary action, provided the requirements for the current license held meet or exceed requirements for licensure for speech-language pathology, audiology or hearing aid dispensing in the State of New Mexico; and

(3) Proof of honorable discharge (DD214), military ID card, or other recognized proof of military spouse status.]

B. The applicant shall provide a complete application that includes the following information:

(1) applicant's full name;

(2) current mailing address;

(3) current electronic mail address, if any;

(4) date of birth;

(5) certification that they have not been convicted of any disqualifying criminal convictions as outlined in Subsection E of 16.26.7.8 NMAC;

(6) proof as described in Subsection C below.

C. The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD 214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board as soon as practicable but no

later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Act.
[16.26.11.8 NMAC - N, 1/29/2015; A, 11/28/2017; A, 2/10/2022]

16.26.11.9

RENEWAL REQUIREMENTS: [A license issued pursuant to this section shall not be renewed unless the license holder submits the following:

A. A complete renewal application accompanied by the required documents listed under 16.26.4 NMAC.

B. Payment of required renewal fees under 16.26.6 NMAC.

C. Documentation required for initial licensure under 16.26.2 NMAC.]

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.26.4 NMAC pursuant to Chapter 61, Article 14B NMSA 1978.

B. As a courtesy, the board, will send via electronic mail license renewal notifications to licensees or registrants before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.
[16.26.11.9 NMAC - N, 1/29/2015; A, 2/10/2022]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

This is an amendment to 13.14.3 NMAC, Adding new Section 13 and amending & renumbering 14 & 15, effective 2/1/2022.

13.14.3.13 **CHARGE TO BE MADE FOR ALL SERVICES:**

A. A title insurance agency or agent or title insurer shall not furnish services, information, subdivision ownership lists, farm packages, estimates or income production potential, pre-search or listing packages, information kits or similar packages containing information about one or more parcels of real property without making a charge for the same.

B. A title insurance agency or agent or title insurer shall collect charges in the ordinary course of their business operations. A title insurance agency or agent or title insurer shall not provide additional or new services to an individual who has failed to pay charges for prior services.

[13.14.3.13 NMAC – Rp 13.14.13 NMAC, 2/1/2022]

~~[13.14.3.13]~~ 13.14.3.14 **[RESERVED] DUTIES OF TITLE INSURERS WITH RESPECT TO AGENCIES:**

A. A title insurer shall not accept title insurance business from an agency unless there is in force a written agreement between the title insurer and the agency.

B. For each agency, the title insurer shall have on file a statement of financial condition. The statement shall include an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of affairs as of the prior December 31. The agency shall certify the statement is true and correct.

C. A title insurer shall, at least annually, conduct a review of the underwriting, claims, and escrow practices of the agency which shall include a review of the title insurance

policy form inventory and processing operations. If the agency does not maintain separate financial institution or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the agency.

D. Within 30 days after executing or terminating an agreement with an agency, a title insurer shall provide written notification of the appointment or termination and the reason for the termination to OSI. The notice of appointment of an agency shall be made on a form prescribed or approved by OSI.

E. A title insurer shall maintain an inventory of all title insurance policy forms or title insurance policy numbers allocated to each agency.

F. Before entering into an agreement with an agency, a title insurer shall confirm that the agency has a current and appropriate license to transact title insurance business.
[13.14.3.14 NMAC – N, 1/1/2021, Rn & A, 2/1/2022]

~~[13.14.3.14]~~ 13.14.3.15 **[RESERVED]**

[13.14.3.14 NMAC - Rn, 13 NMAC 14.4.14, 5/15/2000; Repealed 1/1/2021; Rn, 2/1/2022]

~~[13.14.3.15]~~ 13.14.3.16 **[RESERVED]**

[13.14.3.15 NMAC - N, 7/1/2006; Repealed 1/1/2021, Rn, 2/1/2022]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

This is an amendment to 13.14.4 NMAC, Section 8, effective 2/1/2022.

13.14.4.8 REQUIREMENTS FOR PROVIDING ESCROW SERVICES: A title insurer or title insurance agency providing escrow services shall:

A. only accept funds pursuant to escrow instructions;

B. not make changes to escrow instructions without the consent of all parties in the manner specified by the escrow instructions;

C. receive and handle all funds pursuant to the requirements of Sections 58-28-1 et seq. and 59A-12-22 NMSA 1978;

(1) an escrow account shall be separate from all operating accounts, and shall be designated as an escrow, trust or custodial account by the financial institution and in the books and records of the title insurer or title insurance agency; and

(2) title insurers and title insurance agencies are prohibited from receiving for their own use any interest from escrow accounts or money accepted for escrow, except that nothing herein shall preclude participation in the Land Title Trust Fund Act pursuant to the Mortgage Loan Company Act, Section 58-28-1 NMSA 1978 et seq.;

D. disburse or deliver escrow funds only in accordance with escrow instructions;

E. disburse funds only out of an escrow account deposited for that transaction and that are available funds in compliance with Section 59A-30-5.1 NMSA 1978 and Subsection F of Section 59A-30-3 NMSA 1978;

F. interplead or hold any funds that are the subject of conflicting demands by the parties to an escrow until the title insurer or title insurance agency receives written instructions signed by all parties to the escrow transaction which resolve the conflict or until a final court order;

G. upon completion of an escrow transaction, deliver to each party a written statement of the escrow specifying all receipts and disbursements of funds made by or on behalf of each party to the escrow, whether disbursed to or from the escrow account, including from whom received and to whom made, except that when the transaction involves consumer credit, the most current version of the federal truth in lending regulation, 12. C.F.R. § 1026, shall

govern the delivery of documents to the parties;

H. act with impartiality toward all parties to an escrow in the disbursement of funds; and

I. comply with all escrow audits ordered by OSI and make available to OSI all information requested by the superintendent. [13.14.4.8 NMAC – Rp, 13.14.4.8 NMAC, 1/1/2021, A, 2/1/2022]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

This is an amendment to 13.14.8 NMAC, Section 14, effective 2/1/2022.

13.14.8.14 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:

A. Upon being furnished with a satisfactory survey:

(1) NM form 50 and NM form 50.1 may be attached to a loan policy;

(2) NM form 56 and NM form 56.1 may be attached to an owner's policy covering unimproved land;

(3) NM form 57 and NM form 57.1 may be attached to an owner's policy covering improved land; and

(4) NM Forms 50, 50.1, 56, 56.1, 57, and 57.1 shall not be attached to policies issued on one to four family residential property.

B. Each endorsement is to be issued only in conjunction with the issuance of survey coverage pursuant to Subsection C of 13.14.5.12 NMAC.

C. Paragraph (3) (b) of NM form 50, Paragraph 4 of NM form 50.1, Paragraph (2) of NM form 56 and NM form 56.1, Paragraph (2) (b) of NM form 57, or Paragraph 3 of NM form 57.1, as appropriate, may be deleted ~~[if minerals rights have been severed and]~~ by the insurer, in its discretion, if the insurer deems the risk of [such] issuing

minerals coverage to be [acceptable] unacceptable.

[13.14.8.14 NMAC – Rp, 13.14.8.16 NMAC, 1/1/2021, A, 2/1/2022]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

This is an amendment to 13.14.9 NMAC, Sections 8, 10, 12, 17 and 37, effective 2/1/2022.

13.14.9.8 SCHEDULE OF PREMIUM RATES: The rates and charges authorized by these rules shall be established by order of the superintendent in a title rate case conducted pursuant to Subsection A of Section 59A-30-8 NMSA 1978, or as amended or supplemented by order issued after a hearing conducted pursuant to Subsection B of Section 59A-30-8 NMSA 1978. All references to rates and charges in these rules shall mean the rates and charges established by the superintendent's order in the most recent rate hearing case, including any amending or supplementing order, in effect at the time the premium or charge is incurred. On his own motion, or at the request of an interested person, the superintendent may, at any time, conduct a formal or informal hearing to consider whether to promulgate a new or amended rate or charge. [13.14.9.8 NMAC – Rp, 13.14.9.8 NMAC, 1/1/2021; A, 2/1/2022]

13.14.9.10 PREMIUM RATES INCLUSIVE: The premium rates and charges established by the superintendent include all premiums for title insurance, examination of the title or titles to be insured, determining that each insured estate has been created, conveyed or modified as shown in the policy, and determining what exceptions, if any, to insert in or delete from the policies to be issued as provided in these rules. No other rates or charges ~~[may]~~ shall be charged for title insurance or title services. [13.14.9.10 NMAC – Rp, 13.14.9.10 NMAC, 1/1/2021; A, 2/1/2022]

13.14.9.12 REBATES AND UNAUTHORIZED DISCOUNTS:

A title insurance agency or title insurer shall charge the applicable rates and charges for each transaction and shall not offer or grant a credit, discount or rebate that is not authorized by these rules.

[13.14.9.12 NMAC – Rp, 13.14.9.12 NMAC, 1/1/2021; A, 2/1/2022]

13.14.9.17 NON-PAYMENT OF PREMIUM: No policy or endorsement (excluding pro formas) shall be issued without payment in full of the premium for such policy or endorsement within 15 days of the issuance of any policy or endorsement in accordance with Section 59A-30-5.1 NMSA 1978.

In the event that [all premium due is not paid in full] payment in available funds is not made within 15 days of the issuance of any policy or endorsement, the title insurer shall cancel the policy or endorsement. The title insurer shall mail the insured(s) and lender notice of the cancellation by certified mail, return receipt requested, to the last known address, and by first class mail. Cancellation shall be effective 10 days after mailing notice to the insured. A title insurance agency shall promptly notify the title insurer of the non-receipt of premiums within the period specified herein.

[13.14.9.17 NMAC – Rp, 13.14.9.17 NMAC, 1/1/2021; A, 2/1/2022]

13.14.9.37 COMPUTATION OF RATES WHEN INSURED PROPERTY IS NOT IDENTICAL:

When only a portion of the land previously insured is being insured by a reissue owner's policy or by a subsequent issue loan policy, or when the land previously insured is only a portion of the land being insured by a reissue owner's policy or by a subsequent issue loan policy, the rates shall be adjusted in proportion to the areas insured in the original policy and the current policy. For example, if the original policy insured one acre and the current policy insures three acres, the reissue rates will apply to one-third of the current value up to the face amount of the original policy;

but, if the situation is reversed, the reissue rates will only apply up to one-third of the face amount of the original policy. In no event shall the reissue rates be applied to allow more than ~~[100%]~~ one hundred percent of the face amount of the original policy to be used cumulatively in the computation of reissue rates.

[13.14.9.37 NMAC – Rp, 13.14.9.37 NMAC, 1/1/2021; A, 2/1/2022]

End of Adopted Rules

Other Material Related to Administrative Law

ARCHITECTS, BOARD OF EXAMINERS FOR

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The N.M. Board of Examiners for Architects gives Notice of a Minor, Nonsubstantive Correction to 16.30.3 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 8: Subsection A was not shown and the amendment was not in short-form. There was no deleted or new text in Subsection A. The preexisting language of Subsection A remains:

A. The examination and reciprocity committee shall make its recommendations to the board regarding the qualifications of applicants for registration. A majority vote of the board shall be required in determining those applicants qualified for registration.

A copy of this Notification will be filed with the official version of each of the above rules.

GOVERNOR, OFFICE OF THE

EXECUTIVE ORDER 2022-004

RENEWING THE STATE OF PUBLIC HEALTH EMERGENCY INITIALLY DECLARED IN EXECUTIVE ORDER 2020-004, OTHER POWERS INVOKED IN THAT ORDER, AND ALL OTHER ORDERS AND

DIRECTIVES CONTAINED IN EXECUTIVE ORDERS TIED TO THE ONGOING PUBLIC HEALTH EMERGENCY

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of January 6, 2022 the Centers for Disease Control and Prevention (“CDC”) reported over 57 million people have been infected in the United States, with over 829,000 related deaths, and the New Mexico Department of Health has reported 364,861 positive COVID-19 cases and 5,969 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of

emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT**:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030, 2021-044, 2021-049, 2021-054, 2021-058, 2021-061, and 2021-067 shall be renewed and extended through February 4, 2022.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders

appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on January 7, 2022 and shall remain in effect until February 4, 2022 unless renewed, modified, or rescinded.

ATTEST:

**DONE AT THE EXECUTIVE
OFFICE**

**THIS 7TH DAY OF JANUARY
2022**

/ S /

**MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE
OF NEW MEXICO**

/ S /

**MICHELLE LUJAN GRISHAM
GOVERNOR**

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
ACTING SECRETARY DAVID
R. SCRASE, M.D.**

January 7, 2022

**Public Health Emergency Order
Clarifying that Current Guidance
Documents, Advisories, and
Emergency Public Health Orders
Remain
in Effect; and Amending Prior
Public Health Emergency Orders
to
Impose Certain Public Health
Measures**

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and

business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division;

B. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

C. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19;

D. February 26, 2021 Public Health Emergency Order Implementing Administration

Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and

E. December 2, 2021 Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated and Receive Booster Vaccines.

3. The December 10, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through February 4, 2022;

WHEREAS, confirmed cases in the United States have risen to more than 57 million and confirmed COVID-19 infections in New Mexico have risen to over 361,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 827,000 Americans and over 5,900 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State

of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury

or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

I HEREBY DIRECT AS FOLLOWS:

(1) Unless a healthcare provider instructs otherwise, all individuals ages 2 years and older shall wear a mask or multilayer cloth face covering in all indoor public settings except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe

Practices requirements for in person instruction contained in the New Mexico's Public Education Department's "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Public and private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the COVID-19 Response Toolkit for New Mexico's Public Schools.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through February 4, 2022.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19.

ATTEST:

**DONE AT THE EXECUTIVE
OFFICE**

**THIS 7TH DAY OF JANUARY
2022**

/ S /

**MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE
OF NEW MEXICO**

/ S /

**DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE
NEW MEXICO DEPARTMENT
OF HEALTH**

**REGULATION AND
LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION**

**NOTICE OF MINOR
NONSUBSTANTIVE
CORRECTION**

The Regulation and Licensing
Department, Cannabis Control
Division gives Notice of a Minor,
Nonsubstantive Correction to 16.8.11
NMAC.

Pursuant to the authority granted
under State Rules Act, Subsection D
of Section 14-4-3 NMSA 1978, please
note that the following minor, non-
substantive corrections to spelling,
grammar and format have been made
to all electronic copies of the above
rule:

Section 11: In Subsections A
and B, there were incorrect reference
to ‘subparagraph A’. The correct
reference should read, and was
changed to, ‘Subsection A’.

A copy of this Notification will be
filed with the official version of each
of the above rules.

**End of Other Material
Related to Administrative
Law**

2022 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 11
Issue 2	January 13	January 25
Issue 3	January 27	February 8
Issue 4	February 10	February 22
Issue 5	February 24	March 8
Issue 6	March 10	March 22
Issue 7	March 24	April 5
Issue 8	April 7	April 19
Issue 9	April 21	May 3
Issue 10	May 5	May 24
Issue 11	May 26	June 7
Issue 12	June 9	June 21
Issue 13	July 1	July 12
Issue 14	July 14	July 26
Issue 15	July 28	August 9
Issue 16	August 11	August 23
Issue 17	August 25	September 13
Issue 18	September 15	September 27
Issue 19	September 29	October 11
Issue 20	October 13	October 25
Issue 21	October 27	November 8
Issue 22	November 17	November 29
Issue 23	December 1	December 13
Issue 24	December 15	December 27

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