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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXIV, Issue 10

May 31, 2023

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## Notices of Rulemaking and Proposed Rules

### HEALTH, DEPARTMENT OF

#### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed adoption of amendments to rule Part 7.5.3 NMAC, “Exemptions From School, Childcare, and Pre-School Immunization”, Sections 6 (“Objective”), 7 (“Definitions”), 8 (“Requirements For Approval Of Exemptions From Immunization”), and 9 (“Review Criteria”). The public hearing will be held on July 7, 2023 at 9:00 a.m. MDT via web video conference and telephone. The hearing will be conducted to receive public comment regarding the adoption of the proposed rule amendments, which concern requirements for the approval of exemptions from immunization for children, pursuant to Section 24-5-3, NMSA 1978 (“Exemption From Immunization”).

The proposed amendments seek to make the following changes:

- Expand the list of medical practitioners who may issue a certificate or affidavit attesting that a required immunization would seriously endanger the life or health of a child, in accordance with a recent statutory amendment. The healthcare professionals who are qualified to issue an exemption certificate or affidavit are being expanded from a “duly licensed physician”, to “a licensed physician, a physician assistant or a certified nurse practitioner”.
- Include new definitions for “physician assistance” and “certified nurse practitioner”, and make certain edits to existing definitions.
- Change certain existing references to the Immunization Program Manager, to Immunization Program staff.
- Remove provisions authorizing the agency to provide a signed copy of a request

for exemption, and denial of an exemption request, to the administrative authority of a school, pre-school, or daycare center at which the affected child has been conditionally enrolled.

The purpose of the proposed rule amendments is to adopt the rule changes described, some of which are proposed in order to conform the Immunization Exemption rule to recent statutory amendments to Section 24-5-3 of the NM Immunization Act enacted via Senate Bill 81 of the 2023 legislative session, which go into effect on July 1, 2023.

The legal authority authorizing the proposed amendment of the rule by the Department is at Subsection E of Section 9-7-6, NMSA 1978, and the Immunization Act at 24-5-1 and 24-5-3 NMSA 1978.

A free copy of the full text of the proposed rule amendments can be obtained from the Department’s website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing, and anyone may offer public comments on the proposed rule amendments orally at the hearing. To access the hearing by telephone: please call 1-505-312-4308, phone conference i.d. code 460 889 552#. To access the hearing via internet: please go to <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, enter the following meeting i.d. code and passcode where indicated on screen—meeting i.d. code 248 667 629 571, Passcode: mj6X42, then click the “Join a meeting” button. All oral comments will be recorded.

Any person may submit written public comment concerning the rule amendments. Written comments may be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rules to the attention of:

Via Postal Mail:  
Kathryn Cruz, NMSIIS Manager  
P.O. Box 26110  
1190 St. Francis Drive, Suite S-1250  
Santa Fe, NM 87502-6110

Via E-mail: [Kathryn.Cruz@doh.nm.gov](mailto:Kathryn.Cruz@doh.nm.gov)

Mailed written comments must be received no later than 5:00 p.m. MDT on Wednesday, July 5, 2023. Written comments may also be submitted to the email address shown above through 5:00 pm MDT on the date of the hearing. All written comments will be published on the agency website at <http://nmhealth.org/publication/regulation/> within 3 business days of receipt, and will be available at the Office of the New Mexico Department of Health, at the address above, for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Brandy Sanchez by telephone at (505) 827-2997. The Department requests at least ten (10) days’ advance notice to provide requested special accommodations.

### PUBLIC EDUCATION DEPARTMENT

#### NOTICE OF PROPOSED RULEMAKING

##### Public Hearing

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing for the following proposed rulemaking on Thursday, July 6, 2023, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501:

- \* **New Rule 6.31.3 NMAC, Gifted and Talented Students**
- \* **Amendment to 6.31.2 NMAC,**

### Children with Disabilities/Gifted Children

#### \* Amendment to 6.29.1 NMAC, General Provisions

#### \* Repeal and replace of 6.19.7 NMAC, Demonstration of Competencies for High School Graduation

#### \* Amendment to 6.12.15 NMAC, COVID-19 School Requirements

The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comment on record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comment, please see the Public Comment section of this notice.

### Explanation of Purpose of Rulemaking, Summary of Text, and Statutory Authority, by Proposed Rule

#### 6.31.3 NMAC, Gifted and Talented Students

\* **Explanation:** The purpose of the proposed rulemaking is to establish new standards for identification and service for gifted students that will promote best practices for equity and diversity in gifted education.

\* **Summary:** The proposed new rule requires LEAs to submit gifted education program plans to the department, report gifted funding revenue and expenses in the Education Plan, follow more inclusive identification procedures, provide for annual review of gifted students' needs and programming on a gifted individual education plan (GIEP), and ensure the individual needs of gifted students are met with dispute resolution processes.

\* **Statutory Authority:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-13-6.1 NMSA 1978.

#### 6.31.2 NMAC, Children with Disabilities/Gifted Children

\* **Explanation:** The purpose of

the proposed rulemaking is to delete sections about gifted education, which will be provided for in the proposed new rule, 6.31.3 NMAC, and to make changes related to the issuance of standard, modified, and ability diplomas.

\* **Summary:** The proposed repeal and replace of this rule deletes standards for gifted education. Additionally, the rule is edited to remove conflicts with the requirements of the Individuals with Disabilities Education Act (IDEA), related to the federal provision that guarantees children with disabilities the right to a free appropriate public education (FAPE), after the receipt of a diploma through the alternative programs of study.

\* **Statutory Authority:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-13-5 NMSA 1978.

#### 6.29.1 NMAC, General Provisions

\* **Explanation:** The purpose of the proposed rulemaking is to require schools to implement, self-assess, and report Multi-Layered Systems of Support (MLSS), and to make changes related to the issuance of standard, modified, and ability diplomas.

\* **Summary:** The proposed amendment of this rule adds requirements for MLSS implementation, self-assessment, and reporting; removes conflicts with the requirements of IDEA, related to FAPE, after the receipt of a diploma through the alternative programs of study; updates all references to the annual Education Plan and NM School DASH; removes the limit of 45 days for classes to be taught by a substitute teacher; and removes requirements for length of school day to be promulgated in other rule.

\* **Statutory Authority:** Sections 9-24-8, 22-2-1, 22-2-2, 22-2C-3, 22-2C-4, 22-5-13, 22-13-1.1, 22-13-14, and 22-13-15 NMSA 1978.

#### 6.19.7 NMAC, Demonstration of Competencies for High School Graduation

\* **Explanation:** The purpose of the proposed rulemaking is to minimize

requirements for demonstrations of competency and update requirements to match available assessment instruments, and to make changes related to the issuance of standard, modified, and ability diplomas.

\* **Summary:** The proposed repeal and replace of this rule deletes extraneous requirements for demonstrations of competency and removes conflicts with the requirements of IDEA, related to FAPE, after the receipt of a diploma through the alternative programs of study.

\* **Statutory Authority:** Sections 9-24-8, 22-2-1, 22-2-2, 22-2C-4.1, 22-13-1.1, and 22-13-15 NMSA 1978.

#### 6.12.15 NMAC, COVID-19 School Requirements

\* **Explanation:** The purpose of the proposed rulemaking is to align the rule with the end to the federal and state government COVID-19 public health order.

\* **Summary:** The proposed amendment to the rule replaces references to COVID-19 with language that requires public schools to adhere to public health orders, executive orders, and department guidance.

\* **Statutory Authority:** Sections 9-24-8, 22-2-1, and 22-2-2 NMSA 1978.

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

### Public Comment

Interested parties may provide comment at the public hearing or may submit written comments by mail or e-mail.

#### Mailing Address

Policy and Legislative Affairs  
Division  
New Mexico Public Education  
Department  
300 Don Gaspar Avenue, Room 121  
Santa Fe, New Mexico 87501

#### E-Mail Address

Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Thursday, July 6, 2023. The PED encourages the early submission of written comments.

### Public Comment Period

The public comment period is from Tuesday, May 31, 2023, to Thursday, July 6, 2023, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

Copies of the proposed rules may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Police and Legislative Affairs webpage titled, "Proposed Rules," at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Terrazas at (505) 470-5303 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

## PUBLIC REGULATION COMMISSION

### NOTICE OF INTENT TO ISSUE EMERGENCY RULE

Adding "non-emergency medical transport services" requirements for Transportation Network Companies intending to provide this service under the newly adopted Senate Bill 485 that will take effect on July 1, 2023.

#### SPECIFIC AUTHORITY:

Pursuant to Paragraph (10) of Subsection B of Section 62-19-9 NMSA and Subsection C of

Section 65-7-4 NMSA 1978, the New Mexico Public Regulation Commission shall promulgate rules necessary or appropriate to carry out its powers. Paragraph (10) of Subsection B of Section 62-19-9 NMSA and Subsection C of Section 65-7-4 NMSA 1978, allows the Public Regulation Commission to promulgate emergency rules when there is a concern for public health, safety, or welfare. These emergency rules shall be temporary in nature and the amended rules will revert to their previous versions by effect of law 180 days after the emergency rule amendments are filed.

#### CONCISE EXPLANATORY STATEMENT:

On April 5, 2023, the Governor signed into law State Bill 485. State Bill 485 allows Transportation Network Companies to provide "non-emergency medical transport services" beginning on July 1, 2023. To ensure that the rules necessary to guide Transportation Network Companies in the promulgation of the new service, the Public Commission finds that following the State Rule Act's rulemaking procedures could cause imminent peril to public health, safety, or welfare.

#### DESCRIPTION OF EMERGENCY RULE AMENDMENTS:

The emergency temporary amendment to Rule 18.7.1 NMAC would add "non-emergency medical transport services" requirements in a manner that is consistent with Motor Carriers providing a similar service within the State. Specifically, the emergency rule will read:

#### 18.7.1.11 NON- EMERGENCY MEDICAL TRANSPORT SERVICES

A. May be provided only to riders who do not require medical intervention to maintain their level of response, airway, breathing and circulatory status, with the exception that self-administered oxygen is not to exceed six liters per minute via a nasal cannula; the oxygen container must be secured in accordance with

other state and federal laws; and

B. May not be provided to riders who are recumbent (for example, on transport gurneys) or require medical monitoring or medical intervention.

The emergency rule will last for 180 days or until replaced by a permanent rule, whichever is sooner.

## PUBLIC REGULATION COMMISSION

### NOTICE OF PROPOSED RULEMAKING CASE NO. 23- 00033-TR-P

The New Mexico Public Regulation Commission (the "Commission") gives notice of its initiation of a proposed rulemaking to amend **Rule 18.3.14, NMAC**. The amendment which may be adopted as the final rule in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending the current rules.

#### Concise statement of proposed rules:

The commission is considering a short-form amendment to the Minimum Personnel Requirements of Rule 18.3.14, NMAC. In particular, the commission is considering removing the terms "unusual" and "unforeseen" from Subsection A of 18.3.14 NMAC.

#### Constitutional and statutory authority:

New Mexico Constitution, Article XI, Sec. 2; Paragraph (11) of Subsection A of Section 65-2A-4 NMSA 1978, Paragraph (10) of Subsection B of Section 62-19-9 NMSA 1978 (2023), Section 62-19-21 NMSA 1978 (2023), and Section 65-6-4 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 rules may be obtained from the Rulemaking Proceedings section of the Commission's website at [www.nm-prc.org](http://www.nm-prc.org) under Case No. 23-



00033-TR-P or by calling LaurieAnn Santillanes in the 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. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at (505) 470-8535 or [melanie.sandoval@prc.nm.gov](mailto:melanie.sandoval@prc.nm.gov). Written initial comments shall be filed no later than **June 30th, 2023** and written response comments shall be filed no later than **July 14, 2023**. Comments shall refer to Case No. 23-00033-T. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

A public hearing will be held on **July 28, 2023, beginning at 2:00 p.m.** via Zoom platform. The Commission's Office of General Counsel will email a Zoom invitation to the persons on the official service list in this matter prior to the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. Any member of the public who wishes to make a comment at the hearing must contact LaurieAnn Santillanes at (505) 670-4830 or [LaurieAnn.Santillanes@prc.nm.gov](mailto:LaurieAnn.Santillanes@prc.nm.gov) by **no later than 12:00pm on July 26, 2023** 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. 23-00033-TR-P.

The record of this case will close on **August 11, 2023**. 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.

Any person with a disability requiring special assistance in order to participate in the hearing should contact LaurieAnn Santillanes at (505) 670-4830 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/>.

## PUBLIC REGULATION COMMISSION

### NOTICE OF PROPOSED RULEMAKING CASE NO. 23-00156-TR-P

The New Mexico Public Regulation Commission (the "Commission") gives notice of its initiation of a proposed rulemaking to amend **18.7.1 NMAC**. The amendment which may be adopted as the final rule in this proceeding may include all, part, or

none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending the current rules.

#### Concise statement of proposed rules:

The commission is considering amending the rules that apply to Transportation Network Companies (TNCs). Specifically, the commission will be adding "non-emergency medical transport services" requirements to the rules pertaining to TNCs found at 18.7.1 NMAC.

#### Constitutional and statutory authority:

New Mexico Constitution, Article XI, Sec. 2; Subsection C of Section 65-7-4 NMSA 1978, Paragraph (10) of Subsection B of Section 62-19-9 NMSA 1978 (2023), and Section 62-19-21 NMSA 1978 (2023).

#### How a copy of the full text of the proposed rule can be obtained:

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at [www.nm-prc.org](http://www.nm-prc.org) under Case No. 23-00156-TR-P or by calling LaurieAnn Santillanes in the 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. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at (505) 470-8535 or [melanie.sandoval@prc.nm.gov](mailto:melanie.sandoval@prc.nm.gov). Written initial comments shall be filed no later than **July 7th, 2023** and written response comments shall be filed no later than **July 21, 2023**. Comments shall refer to Case No. 23-00156-TR-P. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

A public hearing will be held on **August 11, 2023, beginning at 2:00 p.m.** via Zoom platform. The Commission's Office of General Counsel will email a Zoom invitation to the persons on the official service list in this matter prior to the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. Any member of the public who wishes to make a comment at the hearing must contact LaurieAnn Santillanes at (505) 670-4830 or LaurieAnn.Santillanes@prc.nm.gov by **no later than 12:00pm on August 9, 2023** 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. 23-00156-TR-P.

The record of this case will close on **August 25, 2023**. 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.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Bradford Borman at (505)412-3502 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/>.

## SUPERINTENDENT OF INSURANCE, OFFICE OF

### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance ("OSI" or "Superintendent") will hold a public hearing regarding amendments to THE NEW MEXICO TITLE INSURANCE RULES, TITLE 13, CHAPTER 14 NMAC, TO ADOPT MODERN TITLE INSURANCE FORMS. This hearing will commence on June 30, 2023, at 9:30 A.M. MST.

**PURPOSE OF THE PROPOSED RULE:** The purpose of this rulemaking is to promulgate forms and endorsements in accordance with the New Mexico Title Insurance Law, Chapter 59A, Article 30, New Mexico Statutes Annotated ("NMSA") 1978. "No title insurer or title insurance agent shall use any form of title insurance policy other than the uniform forms promulgated by the superintendent under the New Mexico Title Insurance Law." Section 59A-30-5 NMSA 1978 (1985).

This rulemaking will involve amendments to Parts 1, 8, and 18 of the Title Insurance Rules (New Mexico Administrative Code, Title 13, Chapter 14), and it will involve

consideration of the title insurance forms published by the American Land Title Association (ALTA), with certain changes thereto, as the title insurance forms to be promulgated by the Superintendent.

**STATUTORY AUTHORITY:** Section 59A-30-5 NMSA 1978 (1985).

**TO ATTEND THE HEARING:** This hearing will be held in-person at: Office of Superintendent of Insurance 1120 Paseo de Peralta, 4<sup>th</sup> Floor Hearing Room Santa Fe, NM 87501

The Superintendent designates Alfred Walker as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the "Rulemaking and Ratemaking" newsletter at: <http://newsletter.osi.state.nm.us/>.

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/case-view/5852> or by requesting a copy by calling (505) 490-7103.

Written comments will be accepted through 4:00 p.m. on June 30, 2023. Responses to written comments or oral comments will be accepted through 4:00 p.m. on July 10, 2023. All comments shall be filed electronically through the OSI eDocket <https://edocket.osi.state.nm.us/case-view/5852> or mailed to:

**OSI Records and Docketing  
NM Office of Superintendent of  
Insurance  
P.O. Box 1689, Santa Fe, NM  
87504-1689**

All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent

will consider all oral comments and will review all timely submitted written comments and responses. For help submitting a filing, please contact [osi-docketfiling@state.nm.us](mailto:osi-docketfiling@state.nm.us). The below docket number must be indicated on filed comments.

**Docket No. 2023-0028  
IN THE MATTER OF  
AMENDMENTS TO THE NEW  
MEXICO TITLE INSURANCE  
RULES, TITLE 13, CHAPTER  
14 NMAC, TO ADOPT MODERN  
TITLE INSURANCE FORMS**

**SPECIAL NEEDS:** Any person with a disability requiring special assistance to participate in the hearing should contact Louella Pacheco at (505) 490-7103 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this May 31, 2023.

/S/ JENNIFER A. CATECHIS  
SUPERINTENDENT OF  
INSURANCE

**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF**

**NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing at the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on July 6, 2023 from 10:00 am to 12:00 pm.

Summary: The proposed amendment updates language to conform with the 2023 legislative changes in the Human Rights Act to include removing gender specific language and the term “handicap”. The amendment also proposes procedural changes to the complaint process and the administrative hearing process to include adding clarifications to due

dates, methods of correspondence, and electronic communications.

Under NMSA 1978 §§28-1-1 to 28-1-14 and 28-23-1 through 28-23-6, the Department is the agency responsible for the Human Rights Bureau.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on July 5, 2023. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to [Andrea.Christman@state.nm.us](mailto:Andrea.Christman@state.nm.us). The proposed rule will be made available at least thirty days prior to the hearing.

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

**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF**

**NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing at the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on July 6, 2023 from 1:00 pm to 3:00 pm.

Summary: The proposed regulation amends the membership and participation requirements of the State Apprenticeship Council to include the NMDWS Cabinet Secretary and the Public Education Cabinet Secretary, or their designees, as non-voting, ex officio members. The amendment also changes the “commissioner of labor” to the “secretary of workforce solutions”.

Under NMSA 1978 §§50-7-1 to 50-7-4.1 and 50-7-7, NMDWS is the agency responsible for the State Apprenticeship Program and gives the Department legal authority for rule making.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Alternatively, written comments may be submitted via email to [andrea.christman@dws.nm.gov](mailto:andrea.christman@dws.nm.gov). Comments must be received no later than 5 p.m. on July 5, 2023.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to [Andrea.Christman@state.nm.us](mailto:Andrea.Christman@state.nm.us). The proposed rule will be made available at least thirty days prior to the hearing.

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

**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.

### ENVIRONMENT DEPARTMENT

**This is an amendment to 11.5.1 NMAC, Section 16 effective 05/31/2023**

#### 11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:

**A.** General: Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: [www.osha.gov](http://www.osha.gov)), are hereby incorporated into this section.

**B.** Exception: Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email, and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box 5469, Santa Fe, NM 87502, email: [nmenv-osha@state.nm.us](mailto:nmenv-osha@state.nm.us), Tel: (505) 476-8700, Fax: (505) 476-8734.

~~**C.** Reporting novel coronavirus: Within four (4) hours of learning that an employee tested positive for the coronavirus disease 2019 (COVID-19), each employer shall report the positive test to the bureau at the email, telephone or facsimile number specified in Subsection B of this section.]~~

[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A/E, 12/3/2020, A,

1/26/2021; A, 05/31/2023]  
~~[The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>.]~~

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

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.1 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - General Provisions (filed 11/14/2019) and replace it with 16.5.1 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - General Provisions, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.4 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Emergency Licensure and Certification Provisions (filed 3/16/2006) and replace it with 16.5.4 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Emergency Licensure and Certification Provisions, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.6 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dentists, Licensure by Examination (filed 11/14/2019) and replace it with 16.5.6 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dentists,

Licensure by Examination, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.8 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dentists, Licensure by Credentials (filed 21/1/2000) and replace it with 16.5.8 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dentists, Licensure by Credentials, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.9 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Non-Dentist Owners (filed 2/4/2005) and replace it with 16.5.9 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Non-Dentist Owners, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.15 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dentists, Anesthesia/Sedation Administration (filed 2/16/2018) and replace it with 16.5.15 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dentists, Anesthesia/Sedation Administration, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.17 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dentists and Dental Hygienists, Collaborative Practice (filed 12/1/2000) and replace it with 16.5.17 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dentists and Dental Hygienists, Collaborative Practice, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.19 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dental Hygienists, Licensure by Examination (filed 12/16/2002) and replace it with 16.5.19 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dental Hygienists, Licensure by Examination, adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.20 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dental Hygienists, Licensure by Credentials (filed 6/1/2000) and replace it with 16.5.20 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dental Hygienists, Licensure by Credentials adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.28 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dental Hygienists, Local Anesthesia Certification (filed 3/16/2006) and replace it with 16.5.28 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dental Hygienists, Local Anesthesia Certification adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.33 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dental Assistants, Requirements for Certification (filed 12/1/2000) and replace it with 16.5.33 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dental Assistants, Requirements for Certification adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.39 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dental Assistants, Practice and Supervision (filed 9/10/2002) and replace it with 16.5.39

NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dental Assistants, Practice and Supervision adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.42 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Expanded Function Dental Auxiliary, Requirements for Certification (filed 12/9/2011) and replace it with 16.5.42 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Expanded Function Dental Auxiliary, Requirements for Certification adopted 4/14/2023 and effective 5/31/2023.

The New Mexico Board of Dental Health Care reviewed at its 4/14/2023 hearing, to repeal its rule 16.5.61 NMAC, Dentistry (Dentists, Dental Hygienists. Etc., - Dental Therapists, Licensure and Certification (filed 4/30/2021) and replace it with 16.5.61 NMAC, Dentistry (Dentists, Dental Hygienists. Etc.), - Dental Therapists, Licensure and Certification adopted 4/14/2023 and effective 5/31/2023.

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

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

**16.5.1.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care.  
[16.5.1.1 NMAC - Rp,  
16.5.1.1 NMAC, 5/31/2023]

**16.5.1.2 SCOPE:** The provisions in 16.5.1 NMAC apply to all parts of Chapter 5 and provide relevant information to all licensees

or certificate holders or anyone affected or interested in the licensing and regulation of dentists, dental hygienists and dental assistants, dental therapists, and non-dentist owners.  
[16.5.1.2 NMAC - Rp, 16.5.1.2 NMAC, 5/31/2023]

**16.5.1.3 STATUTORY AUTHORITY:** Section 61-5A-1 through Section 61-5A-29, NMSA 1978, (Repl. Pamp. 1996). 16.5.1.10 NMAC is authorized by Subsection C of Section 10-15-1 NMSA 1978, (Repl. Pamp. 1993) 16.5.1.11 NMAC and 16.5.1.12 NMAC are authorized by Section 14-2-1 through 14-2-16, NMSA 1978, (Repl. Pamp. 1993). 16.5.1.26 NMAC is authorized by Section 14-16-18, NMSA 1978.  
[16.5.1.3 NMAC - Rp, 16.5.1.3 NMAC, 5/31/2023]

**16.5.1.4 DURATION:** Permanent.  
[16.5.4 NMAC - Rp, 16.5.4 NMAC, 5/31/2023]

**16.5.1.5 EFFECTIVE DATE:** May 31, 2023, unless a different date is cited at the end of a section.  
[16.5.1.5 NMAC - Rp, 16.5.1.5 NMAC, 5/31/2023]

**16.5.1.6 OBJECTIVE:** The objective of Part 1 is to set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16.  
[16.5.1.6 NMAC - Rp, 16.5.1.6 NMAC, 5/31/2023]

**16.5.1.7 DEFINITIONS:**  
**A. Definitions**  
**beginning with the letter "A":**  
**(1) "Act"**  
means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.  
**(2)**  
**"Assessment"** means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition,

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

(3)

“Authorization” means written or verbal permission from a dentist to a dental hygienist, dental assistant, dental therapist, community dental health coordinator, expanded function dental auxiliary, or dental student to provide specific tests, treatments or regimes of care.

**B. Definitions beginning with the letter “B”:**  
[RESERVED]

**C. Definitions beginning with the letter “C”:**

(1)

“CDCA/WREB/CITA” means the commission of dental competency assessments, the western regional examining board and the council of interstate testing agencies; a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

(2) “CITA”

means the council of interstate testing agencies, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

(3) “Close

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

(4)

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

(5) “CRDTS”

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

(6) “Current

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

**D. Definitions beginning with the letter “D”:**

(1) “Dental

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

(2)

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

(3)

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

(4) “Direct

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

(a)

is physically present throughout the performance of the act;

(b)

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

(c)

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

(d) is

capable of responding immediately if any emergency should arise.

(5)

“Disqualifying criminal conviction” means a conviction for a crime that is job-related for the position in question and consistent with business necessity.

**E. Definitions beginning with the letter “E”:**

(1)

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

(2)

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

**F. Definitions beginning with the letter “F”:**  
[RESERVED]

**G. Definitions beginning with the letter “G”:**

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

**H. Definitions beginning with the letter “H”:**  
[RESERVED]

**I. Definitions beginning with the letter “I”:**

(1) “Impaired

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

(2) “Indirect

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

**J. Definitions beginning with the letter “J”:**

“Jurisprudence exam” means the examination given regarding the laws,

rules and regulations, which relate to the practice of dentistry, dental hygiene, dental therapy and dental assisting in the state of New Mexico.

**K. Definitions beginning with the letter “K”:**  
[RESERVED]

**L. Definitions beginning with the letter “L”:**  
“**Licensee**” means an individual who holds a valid license to practice dentistry, dental therapy or dental hygiene in New Mexico. This also includes non-dentist owners who are licensed in New Mexico.

**M. Definitions beginning with the letter “M”:**  
“**Mobile dental facility**” means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

**N. Definitions beginning with the letter “N”:**  
(1) “**NERB/CDCA**” means the former north east regional board of dental examiners, now called the commission of dental competency assessments, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

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

**O. Definitions beginning with the letter “O”:**  
[RESERVED]

**P. Definitions beginning with the letter “P”:**  
(1) “**Palliative procedures**” means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

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

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

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

(5) “**Provider**” means a provider of dental health care services, including but not limited to dentists, dental hygienists, dental therapists, community dental health coordinators and dental assistants, including expanded function dental auxiliaries.

**Q. Definitions beginning with the letter “Q”:**  
[RESERVED]

**R. Definitions beginning with the letter “R”:**  
[RESERVED]

**S. Definitions beginning with the letter “S”:**

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

(2) “**SRTA**” means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

(3) “**Supervising dentist**” means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current

medical history and for purposes of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

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

**T. Definitions beginning with the letter “T”:**

(1) “**Teledentistry**” means a dentist’s, dental hygienist’s or dental therapist’s use of electronic information, imaging and communication technologies, including interactive audio, video and data communications as well as store-and-forward technologies, to provide and support dental health care delivery, diagnosis, consultation, treatment, transfer of dental data and education.”

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

**U. Definitions beginning with the letter “U”:**  
[RESERVED]

**V. Definitions beginning with the letter “V”:**  
[RESERVED]

**W. Definitions beginning with the letter “W”:**

(1) “**WREB**” means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

(2) “**Written authorization**” means a signed and dated prescription from a supervising dentist to provide specific tests, treatments or regimes of care in

a specified location for 30 days following the date of signature.

**X. Definitions beginning with the letter “X”:**  
[RESERVED]

**Y. Definitions beginning with the letter “Y”:**  
[RESERVED]

**Z. Definitions beginning with the letter “Z”:**  
[RESERVED]  
[16.5.1.7 NMAC - Rp, 16.5.1.7 NMAC, 5/31/2023]

**16.5.1.8 LICENSE DISPLAY:** A valid license, certificates or permits must be displayed and must be visible to the public in each place of employment or business of the licensee.  
[16.5.1.8 NMAC - Rp, 16.5.1.8 NMAC, 5/31/2023]

**16.5.1.9 RESPONSIBILITY OF LICENSEE OR CERTIFICATE HOLDER:**

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

**B.** The board must be informed of current practice address(s) for all licensees or certificate holders. Any change in practice address(s) must be reported to the board in writing within 30 days of the change.  
[16.5.1.9 NMAC - Rp, 16.5.1.9 NMAC, 5/31/2023]

**16.5.1.10 SEVERABILITY:** If any part of these rules are held invalid by a court of competent jurisdiction, the remaining provisions of the rules shall remain in force and effect, unless otherwise determined by a court of competent jurisdiction.  
[16.5.1.10 NMAC - Rp, 16.5.1.10 NMAC, 5/31/2023]

**16.5.1.11 TELEPHONE CONFERENCES:** As authorized by Subsection C of Section 10-15-1 NMSA 1978 of the Open Meetings Act, NMSA 1978, when it is difficult or impossible for a member of the board or committee to attend a meeting in person, the member may participate through a conference telephone. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board or committee who speaks during the meeting.  
[16.5.1.11 NMAC - Rp, 16.5.1.11 NMAC, 5/31/2023]

**16.5.1.12 PUBLIC RECORDS:** Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record at the time of filing with the board. Upon notification of the defendant, the notice of contemplated action, or the pre notice of contemplated action settlement agreed upon prior to the issuance of an notice of contemplated action and the information contained in the complaint file becomes a public record and subject to disclosure. With the exemption of voluntarily admission to a monitored treatment program shall not be public record. (Refer to 61-5A-25, NMSA 1978).  
[16.5.1.12 NMAC - Rp, 16.5.1.12 NMAC, 5/31/2023]

**16.5.1.13 INSPECTION OF PUBLIC RECORDS:** The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16, NMSA 1978. The board administrator is the custodian of the board’s records.  
[16.5.1.13 NMAC - Rp, 16.5.1.13 NMAC, 5/31/2023]

**16.5.1.14 NON-PUBLIC RECORDS:** The following records are considered confidential and are not subject to public inspection:

**A.** letters of reference, if applicable;  
**B.** medical reports or records of chemical dependency, physical or mental examinations or treatment as outlined in the rules governing the impaired practitioner program;  
**C.** examination scores;  
**D.** the contents of any examination used to test for an individual’s knowledge or competence;  
**E.** investigative files;  
**F.** written and oral communication relating to actual or potential disciplinary action, including complaints; and  
**G.** matters of opinion.  
[16.5.1.14 NMAC - Rp, 16.5.1.14 NMAC, 5/31/2023]

**16.5.1.15 GUIDELINES FOR APPROVED CONTINUING EDUCATION:**

**A.** Continuing education is defined as dental related education that contributes to the existing knowledge base of a licensee or certificate holder, which would include but not limited to; treatment modalities, advances in science, patient health, safety, and management; practice and workplace management for the practice of dentistry, dental therapy, dental hygiene and dental assisting.

**B. Credit hours:**  
**(1)** one hour of credit will be granted for every hour of contact instruction.  
**(2)** eight hours shall be the maximum number of continuing education credits granted in a single day.

**C. Approved providers and sponsors:** The following providers are approved for delivering continuing education.

**(1)** local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional associations or organizations; and affiliate organization using their approved CE program designations.  
**(2)** institutions accredited by the United States department of education.



(3) Federal and State Governmental agencies such as military dental division or the Veterans Administration.

(4) hospitals and medical clinics.

(5) board approved study clubs as further defined in Subsection H of 16.5.1.15 NMAC.

**D.** Approved methods for acquiring continuing education:

(1) attendance at scientific meetings or sessions.

(2) live virtual webinars. (i.e., courses conducted live, in real-time with the ability to interact with the speaker.

(3) Self-study. A method of instruction that is self-paced such as those offered through magazines, articles, pre-recorded audio or video recordings which are viewed or listened to at a later date.

(a) a post instruction examination must be successfully completed for all self-study methods.

(b) a licensee is allowed a maximum of 30 hours in the category of self-study per triennial renewal period.

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

(5) Courses not sponsored by a recognized provider as indicated in Subsection C of 16.5.1.15 NMAC may be approved for credit by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters.

**E.** Basic life support (BLS) or cardiopulmonary resuscitation (CPR). A licensee is eligible to receive hour for hour credit for course taken to acquire this certification.

(1) Certification must be acquired through a live hands-on course or through a hybrid method where demonstration of skills is still required.

(2) Certification acquired through a self-study only course, is not allowed.

**F.** Additional approved activities eligible for continuing education credit:

(1) presenting. An original presentation by a licensee is eligible to receive hour for hour credit for preparation and delivery of such presentation. A licensee shall be allowed a maximum of eight hours each triennial period. The licensee shall retain as proof of such presentation an outline, date, place and sponsor of the presentation.

(2) clinical examiners for regional boards. A licensee participating in the training and calibration sessions of a regional board examination shall be allowed a maximum of 24 hours each triennial period.

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

(4) approved charitable events. A licensee participating in a board or dental hygiene committee approved charitable event shall be allowed a maximum of eight hours each triennial period.

(5) graduate or post-graduate. Courses taken by a licensee at institutions of higher education for the purpose of receiving a dental related degree, advanced degree or certificate are eligible for continuing education credit. A licensee shall be allowed 10 hours per semester credit hour, as assigned in the course catalogue of the educational institution.

(6) professional training programs. Such as those taken for acquiring expanded certifications or education. Examples include but not limited to, trainings for local anesthesia and expanded function dental auxiliary certification. When given by an approved provider

as defined in Subsection C of 16.5.1.15.

(7) academic Teaching. A licensee who instructs as a full, part, or adjunct faculty, at a dental related program is allowed a maximum of 5 continuing education hours per semester credit hour that is taught at an institution of higher education. Not to exceed a maximum of 10 credit hours per triannual renewal.

(8) jurisprudence exam. A licensee or certificate holder may take the board's open book jurisprudence examination, up to once a year, and be granted three hours of continuing education credit for successfully passing the exam with a score of seventy-five percent or above. There will be a twenty-five dollar (\$25) administrative fee for the exam to cover the cost of handling.

**G.** Course limitations and courses not allowed.

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

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

(3) CE received as part of declaratory decree or as a result of disciplinary order shall not count toward the total triennial continuing education hours needed by the licensee or certificate holder.

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

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

(2) Organized for the purpose of scientific study.

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

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

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

(2) pamphlet of course with same information as requested on certificate along with proof of purchase;

(3) course attendance sheet submitted from the sponsor;

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

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

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

[16.5.1.15 NMAC - Rp, 16.5.1.15 NMAC, 5/31/2023]

#### **16.5.1.16 CONTROL AND PREVENTION OF BLOODBORNE INFECTIONS:**

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

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

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

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

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

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

C. Infection control training. All providers shall have formal training in infection control techniques. Training is a requirement for licensure, as well as for renewal of all licenses and certificates.

The course must be approved in

accordance with 16.5.1.15 NMAC or sponsored by the occupational safety and health administration.

D. Evaluation of provider with blood borne infection.

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

(2) Evaluation of individual cases. Providers who have transmissible blood borne infections and who perform invasive procedures which might cause increased risk of transmission are strongly urged to submit to a voluntary evaluation process established by the New Mexico department of health. Individual evaluations conducted under the auspices of the New Mexico department of health will be strictly confidential unless that agency recommends practice restrictions. The New Mexico department of health will notify the board and committee of recommended practice restrictions. Any violation of practice restrictions will be considered grounds for disciplinary action by the board and committee.

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

E. Confidentiality for dental health care workers.

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

(2) Any retrospective studies of New Mexico providers shall be carried out under the guidance and direction of the New Mexico department of health.

[16.5.1.16 NMAC - Rp, 16.5.1.16 NMAC, 5/31/2023]

**16.5.1.17 BOARD OF DENTAL HEALTH CARE:**

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

**B.** Committee members. Two dentist members and two public members from the board shall be elected to serve as members of the dental hygienists committee at the first regularly scheduled meeting in each calendar year.

[16.5.1.17 NMAC - Rp, 16.5.1.17 NMAC, 5/31/2023]

**16.5.1.18 DENTAL HYGIENIST COMMITTEE:**

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

**B.** Board members. Two dental hygienists members of the committee shall be elected to serve as members of the board of dental health care by a simple majority vote at the first regularly scheduled meeting in the calendar year.

[16.5.1.18 NMAC - Rp, 16.5.1.18 NMAC, 5/31/2023]

**16.5.1.19 BOARD AND COMMITTEE MEETINGS:**

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

[16.5.1.19 NMAC - Rp, 16.5.1.19 NMAC, 5/31/2023]

**16.5.1.20 [RESERVED]**

[16.5.1.20 NMAC - Rp, 16.5.1.20 NMAC, 5/31/2023]

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

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

**A.** be a current New Mexico licensed dentist; and

**B.** within 60 days, of initial agreement or contract with insurance company or third party payer, the reviewing dentist must provide the board office with the dentist's license number and name of the insurance company or third party payer for which the dentist is providing claims review services. [16.5.1.21 NMAC - Rp, 16.5.1.21 NMAC, 5/31/2023]

**16.5.1.22 LEGAL EXPERT WITNESS REQUIREMENTS:**

A dentist who testifies in a malpractice case(s) or legal case(s) involving New Mexico licensed dentists and procedures performed in New Mexico must also be a current New Mexico licensed dentist and in good standing. [16.5.1.22 NMAC - Rp, 16.5.1.22 NMAC, 5/31/2023]

**16.5.1.23 PARENTAL RESPONSIBILITY ACT; DELEGATION OF AUTHORITY:**

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

[16.5.1.23 NMAC - Rp, 16.5.1.23 NMAC, 5/31/2023]

**16.5.1.24 RECORD**

**KEEPING:** All records of patient treatment must be maintained for at

least six years. If a dentist or non-dentist owner retires or is no longer practicing in New Mexico, the dentist or non-dentist owner must provide the following documentation to the board office:

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

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

**C.** the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients in the 12 previous months to the date of closing practice, the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.1.24 NMAC - Rp, 16.5.1.24, 5/31/2023]

**16.5.1.25 CODE OF ETHICS:** Unless otherwise stated in the rules or statute, the board, licensees and certificate holders shall refer to the most recent version of the American dental association (ADA) code of ethics for guidance.

[16.5.1.25 NMAC - Rp, 16.5.1.25 NMAC, 5/31/2023]

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

[16.5.1.26 NMAC - Rp, 16.5.1.26 NMAC, 5/31/2023]

**16.5.1.27 PROTECTIVE PATIENT STABILIZATION:**

Unless otherwise stated in rules or statute, the board, licensees and certificate holders shall refer to the American academy of pediatric dentistry's guidelines on protective patients stabilization.

[16.5.1.27 NMAC - Rp, 16.5.1.27 NMAC, 5/31/2023]

**16.5.1.28 MOBILE DENTAL FACILITIES AND PORTABLE DENTAL UNITS:**

Dentists and dental hygienists that perform services in mobile dental facilities or use portable dental units shall use the following guidelines:

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

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

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

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

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

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

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

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

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

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

(5) collaborative hygienists in compliance with rules established in 16.5.17 NMAC.

[16.5.1.28 NMAC - Rp, 16.5.1.28 NMAC, 5/31/2023]

**16.5.1.29 ADVERTISING, PROMOTIONS AND SPECIALTY RECOGNITIONS FOR ALL LICENSEES:** This rule applies to

advertising in all types of media that is directed to the public. No dentist, dental hygienist, non-dentist owner, or their representatives shall advertise in any form of communication in a manner that is misleading, deceptive, or false. The licensee will be responsible for any third party making such false claims or misleading advertising on their (licensee's) behalf.

**A. Definitions:**

(1) for the purposes of this section, "advertising/advertisement" is:

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

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

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

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

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

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

(2) "bait advertising" is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise or services, in order to sell something else, usually at a higher price or on

a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise or services of the type so advertised. See 16 U.S.C Section 238.

**B. General requirements:**

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

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

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

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

to the following, and if substantiated, is a violation and subject to disciplinary action by the board:

- (1) a known material misrepresentation of fact;
- (2) the omission of a fact necessary to make the statement considered as a whole not materially misleading;
- (3) advertising that is intended to be or is likely to create an unjustified expectation about the results the dentist or dental hygienist can achieve;
- (4) advertising that contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purpose of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Individual experiences are not a substitute for scientific research. Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;
- (5) the false or misleading use of a claim regarding licensure, certification, registration, permitting, listing, education, professional memberships or an unearned degree;
- (6) advertising that uses patient testimonials unless the following conditions are met:
  - (a) the patient's name, address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the Board upon request by the board;

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

(c) if compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such testimonial must include a statement that the patient has been compensated for such testimonial;

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

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

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

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

(9) the use of bait advertising as outlined in federal trade commission guidelines;

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

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

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

(13) the use of any personal testimonial by the

licensee attesting to a quality or competence of a service or treatment.

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

(15) print advertising that contains all applicable conditions and restrictions of an offer that is not clearly legible or visible. The board will consider font size and positioning within the advertisement as to what is determined as false, misleading or deceptive;

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

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

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

(19) failure to practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

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

(21) advertising or making claims that a licensee or practice claims to be superior to any other licensee or practice, including, but not limited to, descriptions of

being “the highest quality”, a “super-dentist” or “super-general dentist/practitioner”, “specially-trained hygienist”, “hygienist specializing in non-surgical periodontics”, or similar;

**D. Specialty Practice and Advertising:** the board may discipline a dentist for advertising or otherwise holding himself/herself out to the public as a practicing a dental specialty unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation (CODA) in one to the specialty areas of dentistry recognized by the American dental association. See Subsection E and F of Section 61-5A-12 NMSA 1978.

**E. Acronyms:**  
In addition to those acronyms required by law pertaining to one’s business entity such as professional corporation (P.C.) or limited liability company (L.L.C.), dentists or dental hygienists may only use DDS, DMD, RDH, MD, PhD, MA, MS, BA, BS. Any credential that does not meet this requirement must be completely spelled out.  
[16.5.1.29 NMAC - Rp, 16.5.1.29 NMAC, 5/31/2023]

**16.5.1.30 CRIMINAL OFFENDERS EMPLOYMENT**

**ACT:** Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify and applicant from receiving or retaining a license or certificate by the board.

- A. Physical harm to others:**
- (1) murder;
  - (2) manslaughter;
  - (3) assault;
  - (4) battery;
  - (5) abandonment of a child resulting in death or great bodily harm;
  - (6) abuse of a child;

- (7) kidnapping;
- (8) false imprisonment;
- (9) sexual assault.
- B. Property damage:**
  - (1) shooting at property;
  - (2) criminal damage to property;
  - (3) dangerous use of explosives;
  - (4) graffiti;
  - (5) arson.
- C. Fraud:**
  - (1) misrepresentation fraudulent statements or alterations of documents;
  - (2) improper sale, disposal, removal or concealing of encumbered property;
  - (3) tax fraud;
  - (4) conspiracy;
  - (5) medicaid, medicare or insurance fraud;
  - (6) money laundering.
- D. Theft:**
  - (1) breaking and entering;
  - (2) larceny;
  - (3) robbery;
  - (4) burglary;
  - (5) shoplifting;
  - (6) I.D. theft;
  - (7) credit card or other financial information;
  - (8) receiving or transferring stolen property.
- E. Financial crimes:**
  - (1) embezzlement;
  - (2) extortion;
  - (3) Receiving stolen property;
  - (4) forgery;
  - (5) receiving illegal kickbacks;
  - (6) racketeering;
  - (7) falsification of documents;
  - (8) white collar crimes.
- F. Drug offenses:**
  - (1) drug trafficking;

- (2) possession;
- (3) contributing to the delinquency of a minor.
- G. Sex crimes:**
  - (1) distribution of pornography;
  - (2) human trafficking;
  - (3) criminal sexual penetration or contact;
  - (4) failure to register with the sex offender and notification act.
- H. Any crimes identified under Section 61-5A-21, NMSA 1978.**
- I. Miscellaneous:**
  - (1) felon in possession of a firearm;
  - (2) bribery of an official;
  - (3) accepting a bribe;
  - (4) gambling and gaming crimes;
  - (5) stalking;
  - (6) terrify, intimidate, threaten, harass, annoy or offend another;
  - (7) escape from incarceration;
  - (8) DWI;
  - (9) practicing a profession without a license or on a revoked or suspended license;
  - (10) violation of the subdivision act, mortgage foreclosure act, mortgage loan company act or uniform money services act.
  - (11) violation of the controlled substance act.
- J. 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 16.5.1.30 NMAC.**
- K. 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 16.5.1.30 NMAC.**

**L.** 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 Dental Health Care 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 16.5.1.30 NMAC.

**M.** 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 16.5.1.30 NMAC. [16.5.1.30 NMAC - Rp, 16.5.1.30 NMAC, 5/31/2023]

#### **History of 16.5.1 NMAC:**

##### **Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 8/14/1969; BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 9/21/1970; BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 02/12/1973; Article I, Board of Dentistry, filed 3/11/1981; Rules 1.1-1.8, Dental Hygiene Committee Rules and Regulations, filed 11/20/1987 BOD Rule 1, Board of Dentistry, filed 2/9/1989; BOD Rule 14, Public Records Policy, filed 3/13/1992;

BOD Rule 15, The Control and Prevention of the Transmission of Blood borne Infections in Dental Offices and Facilities, filed 9/16/1992; BODHC Rule 1-95, General Provisions, filed 5/5/1995; BODHC Rule 2-95, Definitions, filed 5/5/1995; BODHC Rule 3-95, Guidelines for Approved Continuing Education, filed 5/5/1995; BODHC Rule 4-95, Control and Prevention of the Transmission of Blood borne Infections, filed 5/5/1995; BODHC Rule 5-95, Savings Clause, filed 5/5/1995.

##### **History of Repealed Material:**

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

16.5.1 NMAC, Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions filed 12/1/2000, Repealed effective 12/14/2019.

16.5.1 NMAC, Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions filed 11/14/2019, Repealed effective 5/31/2023.

##### **Other History:**

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

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

16.5.1 NMAC, Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions filed 12/1/2000 was replaced by Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions, effective 12/14/2019. 16.5.1 NMAC, Dentistry (Dentists,

Dental Hygienists, Etc.) - General Provisions filed 11/14/2019 was replaced by Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions, effective 5/31/2023.

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

### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 4 EMERGENCY LICENSURE AND CERTIFICATION PROVISIONS**

**16.5.4.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care. [16.5.4.1 NMAC - Rp, 16.5.5.6 NMAC, 5/31/2023]

**16.5.4.2 SCOPE:** The provisions of 16.5.4 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who qualifies to obtain a license or certification under the provisions for emergency licensure in New Mexico. [16.5.4.2 NMAC - Rp, 16.5.4.2 NMAC, 5/31/2023]

**16.5.4.3 STATUTORY AUTHORITY:** Section 61-5A-1 through Section 61-5A-30 NMSA 1978 (1996 Repl. Pamp.). [16.5.4.3 NMAC - Rp, 16.5.4.3 NMAC, 5/31/2023]

**16.5.4.4 DURATION:** Permanent. [16.5.4.4 NMAC - Rp, 16.5.4.4 NMAC, 5/31/2023]

**16.5.4.5 EFFECTIVE DATE:** May 31, 2023, unless a later date is cited at the end of a section. [16.5.4.5 NMAC - Rp, 16.5.4.5 NMAC, 5/31/2023]

**16.5.4.6 OBJECTIVE:**  
To establish rules to govern the emergency licensure or certification for all licensee and certificate holders affected by a declared disaster. [16.5.4.6 NMAC - Rp, 16.5.4.6 NMAC, 5/31/2023]

**16.5.4.7 DEFINITIONS:**  
[RESERVED]

**16.5.4.8 REQUIREMENTS FOR EMERGENCY LICENSURE:**

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

- (1) receipt by the board of a completed application;
- (2) licensing qualifications and documentation requirements 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC for Dentists, 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC for Dental Hygienists, 16.5.33 NMAC for Dental Assistants 16.5.42 NMAC for Expanded Function Dental Auxiliary and 16.5.50 NMAC for Community Dental Health Coordinators, and 16.5.61 NMAC for dental therapists;

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

or documents are not available or destroyed in a disaster, an affidavit certifying this will be required.

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

- (1) application fee;
- (2) background check by a professional background information service; and
- (3) transcripts from an ADA accredited program.

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

**D.** Nothing in this section shall constitute a waiver of the requirements for licensure or certification for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC, dental therapists in 16.5.61 NMAC and community dental health coordinator as required in 16.5.50 NMAC.

**E.** Licenses and certifications issued under the emergency provision shall expire four months, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made 30 days prior to the date of expiration and may be renewed no more than once. The applicant must obtain a permanent or temporary license or certification within eight months of the issuance of the initial emergency license or certificate. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license or certification renewal. The board will renew an emergency license or certificate for a period of four months for the following renewal fees:

- (1) dentists \$100.00 emergency license renewal fee;
- (2) dental hygienists \$ 50.00 emergency license renewal fee;
- (3) dental assistants \$ 10.00 emergency certificate renewal fee;
- (4) expanded function dental auxiliary \$ 10.00 emergency certificate renewal fee;
- (5) community dental health coordinator \$ 10.00 emergency certificate renewal fee;
- (6) dental therapists \$10.00 emergency certificate renewal fee.

**F.** Licensees issued a license or certificate under the emergency provision are subject to all provisions of the Dental Health Care Act, Article 5A and the rules and regulations, Title 16 Chapter 5, specifically the disciplinary proceedings Section 61-5A-21 NMSA 1978.

[16.5.4.8 NMAC - Rp, 16.5.4.8 NMAC, 5/31/2023]

**16.5.4.9 EMERGENCY LICENSE TERMINATION:**

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

- (1) the issuance of a permanent or temporary license for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; dental assistants as required in 16.5.33 NMAC; expanded function dental auxiliary as required in 16.5.42 NMAC, dental therapists in 16.5.61 NMAC and community dental health coordinators as required in 16.5.50 NMAC; or
- (2) proof that the emergency license or certificate holder has engaged in fraud deceit; misrepresentation in procuring or attempting to procure a license or certificate under this section.



**B.** Termination of an emergency license or certificate shall not preclude application for permanent licensure or certification. [16.5.4.9 NMAC - Rp, 16.5.4.9 NMAC, 5/31/2023]

**HISTORY OF 16.5.4 NMAC:  
[RESERVED]**

**History of Repealed Material:**  
16.5.4 NMAC, Emergency Licensure And Certification Provisions filed 3/16/2006 Repealed effective 5/31/2023.

**Other History:**  
16.5.4 NMAC, Emergency Licensure And Certification Provisions filed 3/16/2006 Replaced 16.5.4 NMAC, Emergency Licensure And Certification Provisions effective 5/31/2023.

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

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

**16.5.6.1 ISSUING**  
**AGENCY:** New Mexico Board of Dental Health Care.  
[16.5.6.1 NMAC - Rp, 16.5.6.1 NMAC, 5/31/2023]

**16.5.6.2 SCOPE:** The provisions of 16.5.6 NMAC apply to all applicants for licensure by examination as a general dentist or specialty practitioner.  
[16.5.6.2 NMAC - Rp, 16.5.6.2 NMAC, 5/31/2023]

**16.5.6.3 STATUTORY**  
**AUTHORITY:** 16.5.6 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-12,

NMSA 1978, (Repl. Pamp. 1996).  
[16.5.6.3 NMAC - Rp, 16.5.6.3 NMAC, 5/31/2023]

**16.5.6.4 DURATION:**  
Permanent.  
[16.5.6.4 NMAC - Rp, 16.5.6.4 NMAC, 5/31/2023]

**16.5.6.5 EFFECTIVE**  
**DATE:** May 31, 2023, unless a later date is cited at the end of a section.  
[16.5.6.5 NMAC - Rp, 16.5.6.5 NMAC, 5/31/2023]

**16.5.6.6 OBJECTIVE:**  
To establish the requirements for application for licensure as a dentist by examination.  
[16.5.6.6 NMAC - Rp, 16.5.6.6 NMAC, 5/31/2023]

**16.5.6.7 DEFINITIONS:**  
For the purposes of these rules, "dental public health" is specialty practice focused on preventing and controlling dental diseases and promoting dental health through organized community efforts. Since the diplomat examination does not test clinical skills, dentists licensed based on diplomat status shall not practice clinical dentistry.  
[16.5.6.7 NMAC - Rp, 16.5.6.7 NMAC, 5/31/2023]

**16.5.6.8 PREREQUISITE**  
**REQUIREMENTS FOR**  
**GENERAL PRACTICE LICENSE:**  
Each applicant for a license to practice dentistry by examination must possess the following qualifications:

**A.** graduated and received a diploma from an accredited dental school as defined in Subsection A of 61-5A-12 NMSA 1978;

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

**C.** passed a board approved clinical examination which includes hands-on periodontal and restorative procedures, the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

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

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

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

**E.** the board requires a background status report from a board designated professional background service the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.6.8 NMAC - Rp, 16.5.6.8 NMAC, 5/31/2023]

**16.5.6.9 PREREQUISITE**  
**REQUIREMENTS FOR**

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

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

**B.** a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in Subsection E of 61-5A-12 NMSA 1978 in one of the following specialty areas:

**(1)** dental

public health,

**(2)** endodontics,

**(3)** oral and maxillofacial surgery,

**(4)** orthodontics and dento-facial orthopedics,

**(5)** oral pathology,

**(6)** pediatric dentistry,

**(7)** periodontology,

(8) prosthodontics, or  
(9) other specialties approved by the American dental association;

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

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

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

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

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

[16.5.6.9 NMAC - Rp, 16.5.6.9 NMAC, 5/31/2023]

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

A. completed application; applications are valid for one year from the date of receipt;

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

C. a copy of clinical examination score card or certificate from the appropriate specialty board;

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

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

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

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

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

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

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

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

the accredited program.  
[16.5.6.10 NMAC - Rp, 16.5.6.10 NMAC, 5/31/2023]

**16.5.6.11 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as set forth in Subsection D of 16.5.5.8 NMAC to re-take the exam.  
[16.5.6.11 NMAC - Rp, 16.5.6.11 NMAC, 5/31/2023]

**16.5.6.12 LICENSURE PROCEDURE:**

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

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

B. Any application that cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting.

[16.5.6.12 NMAC - Rp, 16.5.6.12 NMAC, 5/31/2023]

**History of 16.5.6 NMAC:**

**Pre-NMAC History:**

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

Article II, Examination to Practice Dentistry, filed 3/11/1981.

Article II, Examination to Practice Dentistry, filed 1/12/1982.

Article, II, Examination to Practice Dentistry, filed 3/30/1982.

Article, II, Examination to Practice Dentistry, filed 2/5/1988.

BOD Rule 3, Examination to Practice Dentistry, filed 2/9/1989.

BODHC Rule DS 1-95, Dentistry, General Practice Licensure, filed 5/5/1995.

BODHC Rule DS 2-95, Dentistry, Specialty Licensure by Examination, filed 5/5/1995.

**History of Repealed Material:**

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

16.5.6 NMAC - Dentist, Licensure by Examination filed 11/14/2019, Repealed effective 5/31/2023.

**Other History:**

16 NMAC 5.6, Dentists, Licensure by Examination, filed 9/17/1996;

16 NMAC 5.6, Dentists, Licensure by Examination, filed 9/17/1996

- renumbered, reformatted and amended to 16.5.6 NMAC, Dentists, Licensure by Examination, effective 6/14/2001.

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

16.5.6 NMAC - Dentist, Licensure by Examination filed 11/14/2019 was replaced by 16.5.6 NMAC - Dentist, Licensure by Examination, effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 5 DENTISTRY  
(DENTISTS, DENTAL  
HYGIENISTS, ETC.)  
PART 8 DENTISTS,  
LICENSURE BY CREDENTIALS**

**16.5.8.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.8.1 NMAC - Rp, 16.5.6.1 NMAC, 5/31/2023]

**16.5.8.2 SCOPE:** The provisions of 16.5.8 NMAC apply to all applicants for licensure as a general or specialty dentist by credentials.

[16.5.8.2 NMAC - Rp, 16.5.8.2 NMAC, 5/31/2023]

**16.5.8.3 STATUTORY**

**AUTHORITY:** 16.5.8 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-12 NMSA 1978.

[16.5.8.3 NMAC - Rp, 16.5.8.3 NMAC, 5/31/2023]

**16.5.8.4 DURATION:**

Permanent.

[16.5.8.4 NMAC - Rp, 16.5.8.4 NMAC, 5/31/2023]

**16.5.8.5 EFFECTIVE**

**DATE:** May 31, 2023, unless a later date is cited at the end of a section.

[16.5.8.5 NMAC - Rp, 16.5.8.5 NMAC, 5/31/2023]

**16.5.8.6 OBJECTIVE:**

To establish the requirements for application for licensure as a dentist by credentials held through licensure in another state(s).

[16.5.8.6 NMAC - Rp, 16.5.8.6 NMAC, 5/31/2023]

**16.5.8.7 DEFINITIONS:**

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

[16.5.8.7 NMAC – Rp, 16.5.8.7 NMAC, 5/31/2023]

**16.5.8.8 PREREQUISITE REQUIREMENTS FOR LICENSURE IN GENERAL**

**PRACTICE:** Each applicant for licensure as a general dentist by credentials must possess the following qualifications:

**A.** graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA 1978;

**B.** completed 60 hours of approved continuing education during the past 36 months in

compliance with 16.5.1.15 NMAC of these rules;

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

**D.** passed the jurisprudence exam with a score of at least seventy-five percent;

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

**F.** passed a clinical examination approved by the board;

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

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

[16.5.8.8 NMAC - Rp, 16.5.8.8 NMAC, 5/31/2023]

**16.5.8.9 PREREQUISITE REQUIREMENTS FOR LICENSE IN SPECIALTY PRACTICE:**

Any dentist who has taken a clinical examination accepted by the board and who has completed and passed a CODA accredited specialty program in one of the ADA recognized specialties may be issued a specialty license by the board. Each applicant for a license to practice a dental specialty by credentials must

possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.

**A.** Graduated and received a diploma from an accredited dental school as defined in Subsection A of Section 61-5A-12 NMSA 1978.

**B.** Have a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in Subsection E of Section 61-5A-12 NMSA 1978, in one of the specialty areas of dentistry recognized by the ADA.

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

**D.** Successfully completed the dental national board examination as defined in Subsection A of Section 61-5A-12 NMSA 1978.

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

**F.** Successfully completed an examination for diplomat status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

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

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

**G.** Completed the jurisprudence exam with a score of at least seventy-five percent.

**H.** Hold a current active license in good standing by

examination in another state or territory of the United States.

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

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

[16.5.8.9 NMAC - Rp, 16.5.8.9 NMAC, 5/31/2023]

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

**A.** completed application; applications are valid for one year from the date of receipt;

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

**C.** copy of national board examination certificate or scorecard;

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

**E.** proof of having taken a course in infection control technique within the past twelve months;

**F.** proof of current life support (BLS) or cardiac pulmonary resuscitation (CPR) certification

accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;

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

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

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

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

**K.** proof of 60 hours of continuing education during the 36 months prior to licensure in compliance with 16.5.1.15 NMAC of these rules;

**L.** dentists employed in uniform service practice shall furnish:

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

(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

**M.** applicants for specialty by credentials in one of the following applicants for specialty license must submit: official transcripts from the residency program or postgraduate training program, sent directly to the board office from the accredited program;

**N.** certificate of diplomat status from the specialty board, must be sent directly to the board office; and

**O.** successfully completed an examination for diplomat status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

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

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

**P.** supplemental information may be requested by the board.

[16.5.8.10 NMAC - Rp, 16.5.8.10 NMAC, 5/31/2023]

**16.5.8.11 RE-EXAMINATION PROCEDURE:**

An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in Subsection D of 16.5.5.8 NMAC to re-take the exam. [16.5.8.11 NMAC - Rp, 16.5.8.11 NMAC, 5/31/2023]

**16.5.8.12 LICENSURE PROCEDURE:** Upon receipt of a completed application, including all documentation and fees, the secretary-treasurer or delegate of the board will review and may approve the application when the applicant holds a

valid license obtained through clinical exam. The board shall formally accept the approval of the application at the next scheduled meeting. All applications for licensure by credentials based on uniform service practice will be taken to the board for review and final determination of eligibility for licensure at the next scheduled meeting.

**A.** Initial dental licenses are issued for a period not to exceed three years as defined in 16.5.11.8 NMAC.

**B.** Any application that cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting.

[16.5.8.12 NMAC - Rp, 16.5.8.12 NMAC, 5/31/2023]

**HISTORY OF 16.5.8 NMAC:**

**Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 8/14/1969; BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 9/21/1970; BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 2/12/1973; BODHC Rule DS 11-95, Dentists, Licensure by Credentials, filed 7/31/1995.

**History of Repealed Material:**

Article XIV, Repeals BDE 73-1, Rules and Regulations of the New Mexico Board of Dentistry, filed 2/12/1973.

16.5.8 NMAC, Dentists, Licensure by Credentials, filed 12/1/2000 Repealed effective 5/31/2023.

**Other History:**

16 NMAC 5.8, Dentists, Licensure by Credentials, filed 7/31/1995;

16 NMAC 5.8, Dentists, Licensure by Credentials, filed 9/17/1996-renumbered, reformatted and amended to 16.5.8 NMAC, Dentists,

Licensure by Credentials, effective 12/14/2000.

16.5.8 NMAC, Dentists, Licensure by Credentials, filed 12/1/2000 Replaced by 16.5.8 NMAC, Dentists, Licensure by Credentials, effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

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

**PART 9 NON-DENTIST OWNERS**

**16.5.9.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.9.1 NMAC - Rp, 16.5.9.1 NMAC, 5/31/2023]

**16.5.9.2 SCOPE:** The provisions of 16.5.9 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who wishes to own a practice and is not a dentist or collaborative practice dental hygienist licensed in New Mexico.

[16.5.9.2 NMAC - RP, 16.5.9.2 NMAC, 5/31/2023]

**16.5.9.3 STATUTORY**

**AUTHORITY:** Sections 61-5A-1 through Section 61-5A-30 NMSA 1978.

[16.5.9.3 NMAC - Rp, 16.5.9.3 NMAC, 5/31/2023]

**16.5.9.4 DURATION:**

Permanent.

[16.5.9.4 NMAC - Rp, 16.5.9.4 NMAC, 5/31/2023]

**16.5.9.5 EFFECTIVE**

**DATE:** May 31, 2023, unless a later date is cited at the end of a section.

[16.5.9.5 NMAC - Rp, 16.5.9.5 NMAC, 5/31/2023]

**16.5.9.6 OBJECTIVE:** To set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16, and to all persons and entities affected or regulated by Chapter 5 of Title 16. [16.5.9.6 NMAC - Rp, 16.5.9.6 NMAC, 5/31/2023]

**16.5.9.7 DEFINITIONS:**

**A. "Employee"** means a licensee of the board employed or contracted with a non-dentist owner for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or enters into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

**B. "Exempted entities"** not included in non-dentist owner, under the following stipulations an entity may function as a non-dentist owner without a New Mexico license:

- (1) government agencies providing dental services within affiliated facilities;
- (2) government agencies engaged in providing public health measures to prevent dental disease;
- (3) spouses of a deceased licensed dentist or dental hygienists for a period of one year following the death of the licensee;
- (4) accredited school of dentistry, dental hygiene or dental assisting providing dental services solely in an education setting only;
- (5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;
- (6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;
- (7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent person; and

(8) hospitals licensed by the department of health.

**C. "Non-dentist owner"** means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services.

[16.5.9.7 NMAC - Rp, 16.5.9.7 NMAC, 5/31/2023]

**16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER:**

To employ and contract for dental services, a non-dentist owner shall apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board.

**A.** unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

**B.** the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

**C.** if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

**D.** non-dentist owner shall notify the board in writing within 30 days of any changes in ownership;

**E.** non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

**F.** non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);

**G.** non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

**H.** non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

**I.** the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

**J.** the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

**K.** no person other than a New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment, including, referrals or prescriptions of laboratory services;

**L.** non-dentist owners shall maintain patient records for a minimum of six years; and

**M.** a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

**N.** the non-dentist owner shall be subject to the provisions of 16.5.58 NMAC.

[16.5.9.8 NMAC - Rp, 16.5.9.8 NMAC, 5/31/2023]

**16.5.9.9 RESPONSIBILITY OF DENTISTS**

**AND DENTAL HYGIENIST EMPLOYED BY A NON-DENTIST OWNER:** Dentists and dental hygienists employed by a non-dentist owner shall report such employment in their initial and renewal applications, including the name, address and phone number of the non-dentist owner or corporation, and the name of their immediate manager or supervisor.

[16.5.9.9 NMAC - Rp, 16.5.9.9 NMAC, 5/31/2023]

**16.5.9.10 DOCUMENTATION REQUIREMENTS:** Each applicant for a non-dentist owner license shall submit a completed application obtained from the board office with the required fees and the following documentation:

**A.** completed application signed by the individual that is the non-dentist owner or by the president of the parent corporation; applications are valid for one year from the date of receipt;

**B.** the board requires a board designated professional background service report; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporation entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporation in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

**C.** passed the jurisprudence examination with a score of at least seventy-five percent;

**D.** non-dentist owner(s) shall comply with

Subsection C of this section within six months of the effective date of the rule;

**E.** verification of licensure in all states where the non-dentist owner holds or has held a license, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form; and

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

[16.5.9.10 NMAC - Rp, 16.5.9.10 NMAC, 5/31/2023]

**16.5.9.11 LICENSURE PROCEDURE:**

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

**A. Initial license:** Non-dentist owner licenses are issued for a period not to exceed three years. The licensee shall apply for renewal on a triennial basis.

**B. Posting:** The license and subsequent renewal certificates shall be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

**C. License:** This license is non-transferable.

**D. Renewal:** After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are considered expired.

**(1)** A completed renewal application with

appropriate fees shall be post-marked on or before July 1 of the renewal year.

**(2)** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration.

**E. Late renewals:** Renewal applications post-marked after July 1 and prior to August 1 of the renewal year shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

**(1)** Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of ten-dollars (\$10) per day from August 1 to the date of the postmark or hand-delivery to board office.

**(2)** If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

**F. Fees:**  
**(1)** Initial  
 License: \$300.  
**(2)** Renewal:  
 \$150.

[16.5.9.11 NMAC - Rp, 16.5.9.11 NMAC, 5/31/2023]

**16.5.9.12 PREREQUISITES FOR NON-DENTIST OWNER:**

Each applicant for licensure as a non-dentist owner shall possess the following:

**A.** a corporate entity must be registered in New Mexico; and

**B.** an individual non-dentist owner(s) or agent of a corporation shall pass the New

Mexico jurisprudence examination with seventy-five percent.  
[16.5.9.12 NMAC - Rp, 16.5.9.12 NMAC, 5/31/2023]

**HISTORY OF 16.5.9 NMAC:  
[RESERVED]**

**History of Repealed Material:**  
16.5.9 NMAC, Non-Dentist Owners, filed 2/4/2005 Repealed effective 5/31/2023.

**Other History:**  
16.5.9 NMAC, Non-Dentist Owners, filed 2/4/2005 Replaced by 16.5.9 NMAC, Non-Dentist Owners, effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 5 DENTISTRY  
(DENTISTS, DENTAL  
HYGIENISTS, ETC.)  
PART 15 DENTISTS,  
ANESTHESIA/SEDATION  
ADMINISTRATION**

**16.5.15.1 ISSUING  
AGENCY:** New Mexico Board of Dental Health Care.  
[16.5.15.1 NMAC - Rp, 16.5.15.1 NMAC, 5/31/2023]

**16.5.15.2 SCOPE:** The provisions of Part 15 of Chapter 5 apply to all dentists who hold or who are applying for certification to administer anesthesia or analgesia.  
[16.5.15.2 NMAC - Rp, 16.5.15.2 NMAC, 5/31/2023]

**16.5.15.3 STATUTORY  
AUTHORITY:** Part 15 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, 61.5A-22 NMSA 1978 (1996 Repl. Pamp.).  
[16.5.15.3 NMAC - Rp, 16.5.15.3 NMAC, 5/31/2023]

**16.5.15.4 DURATION:**  
Permanent.  
[16.5.15.4 NMAC - Rp, 16.5.15.4 NMAC, 5/31/2023]

**16.5.15.5 EFFECTIVE  
DATE:** May 31, 2023, unless a later date is cited at the end of a section.  
[16.5.15.5 NMAC - Rp, 16.5.15.5 NMAC, 5/31/2023]

**16.5.15.6 OBJECTIVE:**  
**A.** To establish guidelines and procedures for the regulation of dentists who administer nitrous oxide inhalation analgesia, anxiolysis, minimal sedation, moderate sedation (formerly conscious sedation I and II), and deep sedation, or general anesthesia in an office located in New Mexico. Unless otherwise defined in this Part 15, the board will reference the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists" and "guidelines for teaching pain control and sedation to dentists and dental students".

**B.** These guidelines are not meant to regulate the existing precedent where New Mexico licensed dentists may have hospital privileges to provide anesthesia/sedation to dental patients in the operating room or emergency room based on their training, education and policy of the hospital.  
[16.5.15.6 NMAC - Rp, 16.5.15.6 NMAC, 5/31/2023]

**16.5.15.7 DEFINITIONS:**  
**A.** "Anxiolysis" the diminution or elimination or reduction of anxiety without a concomitant reduction of the patient's awareness or ability to react to stimuli. For the purposes of these rules, only a single dose of a single drug within the normal therapeutic dose is allowed.

**B.** "American society of anesthesiologists (ASA) classification" is the physical status classification system as defined by the American society of anesthesiologists.

**C.** "Combination inhalation-enteral sedation (combined conscious sedation)" -

conscious sedation using inhalation and enteral agents. Nitrous oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation or general anesthesia.

**D.** "CODA" means the commission on dental accreditation.

**E.** "Conscious sedation" means a minimally depressed level of consciousness that retains the patients' ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than conscious sedation. For the purposes of this chapter, conscious sedation is further defined as minimal and moderate sedation.

**F.** "Deep sedation" means an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof.

**G.** "Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (ie oral, rectal, sublingual).

**H.** "End tidal carbon dioxide (ETCO<sub>2</sub>) capnography" means monitoring of the concentration or partial pressure of end tidal carbon dioxide in respiratory gases.

**I.** "General anesthesia" means an induced state of unconsciousness, accompanied by partial or complete loss of



protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

**J. “Minimal sedation”** means a minimally depressed level of consciousness, produced by a pharmacological method that retains the patient’s ability to independently and continuously maintain an airway and respond normally to tactile and verbal commands. Although cognitive function and coordination may be modestly impaired, ventilation and cardiovascular functions are unaffected. If more than one enteral drug is administered to achieve the desired effect, with or without concurrent use of nitrous oxide inhalation, the guidelines for moderate sedation must apply. The administration of an enteral drug exceeding the maximum recommended single dose during a single appointment is considered to be moderate sedation. Concomitant use of nitrous oxide with any sedative agent may produce minimal, moderate or deep sedation or general anesthesia.

**K. “Moderate sedation”** means a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain patent airway, and spontaneous ventilation is adequate, cardiovascular function is usually maintained. In accord with this particular definition, the drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. A patient whose response is reflex withdrawal from painful stimuli is considered to be in a deeper state than that moderate sedation.

**L. “Monitor”** means to constantly watch or check on the condition of the patient.

**M. “Nitrous oxide inhalation analgesia”** means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

**N. “Parenteral”** means any technique of administration in which the drug is injected through the dermis or into blood vessel (i.e.; intramuscular, subcutaneous, or intravenous injections).

**O. “Prescribed administration”** means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist’s authorization.

**P. “Titration”** means the incremental dosing of an intravenous or inhalation drug until the desired effect is reached. One must know if the previous dose of the drug has taken full effect before administering additional increments. [16.5.15.7 NMAC - Rp, 16.5.15.7 NMAC, 5/31/2023]

#### **16.5.15.8 REQUIREMENT TO BE REGISTERED OR**

**CERTIFIED:** Dentists who administer nitrous oxide inhalation analgesia in New Mexico are required to be registered with the board.

Dentists who administer minimal sedation, moderate sedation, deep sedation, or general anesthesia in New Mexico are required to obtain an anesthesia permit from the board. Any dentist who fails to comply with these rules may be subject to disciplinary action by the board. Anesthesia permits valid on the effective date of this rule continue to be valid until the expiration date indicated on the permit.

**A. Permit requirements:** (In order of increasing complexity higher level permit includes all lower level permits within the scope of that permit).

**(1) Anxiolysis** only: No permit necessary (single

drug/single dose, within the normal therapeutic dose for anxiolysis).

**(2) Nitrous oxide alone:** Permit required, no practitioner or facility exam required.

**(3) Minimal sedation:** Permit required, no exam of practitioner or facility, affidavit of compliance required (single enteral drug, with or without nitrous oxide, below the maximum recommended dose).

**(4) Moderate sedation:** Permit required, affidavit of compliance, oral, written, and facility exam required at the discretion of the board or its anesthesia committee (single enteral drugs above the maximum recommended dose, multiple enteral drugs, enteral drug plus nitrous oxide, any parenteral drugs).

**(5) Deep sedation/general anesthesia:** Permit required, affidavit of compliance, practitioner and facility exam required at the discretion of the board or its anesthesia committee.

**B. Facility limitations:** If the dentist of a facility approved for a sedation permit utilizes a certified registered nurse anesthetist (CRNA) to provide the sedation, the CRNA may only administer sedation up to the permit level of the operating dentist and the facility.

[16.5.15.8 NMAC - Rp, 16.5.15.8 NMAC, 5/31/2023]

#### **16.5.15.9 ANESTHESIA COMMITTEE:**

**A. Appointment:** All members of the anesthesia committee serve at the pleasure of the board.

The board chair will appoint members to serve on the anesthesia committee for five year terms beginning on July 1. Individuals for consideration may be nominated by the New Mexico dental association, any local dental society, or the anesthesia committee.

**B. Terms:** Each member shall be appointed to serve a term of five years, however, the appointments shall be staggered so that no more than forty percent of the members will expire in any given year.

**C. Committee composition:** The anesthesia committee shall consist of licensed dentists, including at least one board certified oral and maxillofacial surgeon, one general dentist, one dentist board member, one dentist not engaged in the use of sedation techniques, and when possible, representatives of other interested dental specialties. Each anesthesia committee member should be currently practicing some form of sedation and be currently qualified as an examiner, except the non-sedating dentist.

**D. Duties:** Establish policies and procedures for the evaluation of applications, inspections of facilities, and examination of applicants; make recommendations to the board in regard to each application; report to the board, as needed, at regularly scheduled board meetings the status of activities of the anesthesia committee; inform the board of any licensee who fails to cooperate with the requirements for application, registration or renewal of permits; inspect facilities upon request of the board; and upon request, assist the board in the investigation of complaints concerning the administration of anesthesia or analgesia.

**E. Designated examiners:** The anesthesia committee chair may appoint a designated examiner with an anesthesia permit of an equal or greater level to perform evaluations on licensed dental applicants to serve at the pleasure of the New Mexico board of dental health care (NMBODHC) chair. This designated examiner must be actively practicing his anesthesia level to be considered by the board.  
[16.5.15.9 NMAC - Rp, 16.5.15.9 NMAC, 5/31/2023]

**16.5.15.10 PEDIATRIC GUIDELINES:** Unless otherwise described in this section, all anesthesia for patients 12 years and under shall follow the American academy of pediatric dentistry's "guideline for monitoring and

management of pediatric patients during and after sedation for diagnostic and therapeutic procedures".  
[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 5/31/2023]

**16.5.15.11 ADMINISTRATION OF ENTERAL ANXIOLYSIS:**

**A. Registration:** No permit required. Enteral anxiolysis consist of the administration of a single dose enteral drug, not in combination with nitrous oxide or another drug, that does not exceed the normal therapeutic single dose of the drug recommended by the manufacturer in published literature. Anxiolytic drugs should be within the scope of practice and prescriptive authority of the practitioner. Anxiolytic drugs are for the sole purpose of diminution of anxiety related to dental treatment.

**B. Education/training:** it is assumed that all dentists who have successfully completed a course of study at an accredited dental school have the education for this level of anxiolysis.

**(1)** The dentist must have an active current dental license, current drug enforcement administration (DEA) registration and current New Mexico controlled substances registration and be registered with the New Mexico board of pharmacy.

**(2)** Each dentist who administers or auxiliary who monitors enteral anxiolysis shall have current basic life support certification.

**C. Facility/records:** The dentist must have appropriate equipment to monitor vital signs and appropriate emergency equipment and drugs for the anxiolytic agent used.

**(1)** Records should reflect the dose and drug administered.

**(2)** Records should reflect how the patient was released from the office and if accompanied by a driver.

**(3)** All administration of anxiolytic drugs shall be under the indirect supervision

or prescription of a dentist.  
[16.5.15.11 NMAC - Rp, 16.5.15.11 NMAC, 5/31/2023]

**16.5.15.12 ADMINISTRATION OF NITROUS OXIDE INHALATION ANALGESIA:**

**A. Registration:** Permit required, each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon request. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

**B. Education/qualifications:** Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

**(1)** completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training that includes a minimum of 14 hours of course time and management of clinical cases.

**(2)** each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification.

**(3)** current permit holder's education would be grandfathered by the New Mexico laws in effect at the time of original issue of their permit. However, safety standards must be updated to current state and ADA guidelines.

**C. Facility/records:** The dental facility shall have adequate equipment which includes fail-safe features and a twenty five percent minimum oxygen flow and an effective scavenging system.

**(1)** all use of nitrous oxide inhalation analgesia

shall be under the indirect supervision of a licensed dentist holding a nitrous oxide permit.

(2) the patient's records shall reflect evidence of appropriate monitoring by qualified dental personnel of vital signs, including blood pressure, pulse, and respiratory rate. Dose (percent) of nitrous oxide time of administration and time of release of patient should be recorded.

[16.5.15.12 NMAC - Rp, 16.5.15.12 NMAC, 5/31/2023]

### 16.5.15.13 ADMINISTRATION OF MINIMAL SEDATION:

A. Minimal sedation is the use of a single enteral drug in a single or divided doses to achieve the desired effect as described in the definitions. The total dose of the single enteral drug shall not exceed the maximum recommended dose for the drug as recommended by the manufacturer and as published in scientific literature. Doses above this maximum recommended dose are considered moderate sedation, and moderate sedation guidelines will apply. A single drug combined with nitrous oxide may produce minimal, moderate, deep sedation or general anesthesia. It is the responsibility of the dentist to titrate the level of nitrous oxide to achieve only minimal sedation. If more than one enteral drug is administered to achieve the desired anxiolytic/sedation effect, with or without the concomitant use of nitrous oxide, the guidelines for moderate sedation will apply.

B. Registration: Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve minimal sedation shall be registered with the board. An application form will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in 16.5.15.19 NMAC. Administration of minimal sedation without registration is a violation of these rules and may result in disciplinary action against the licensee.

C. Education/ qualifications: The dentist must have completed a course of training while a student in an accredited school of dentistry or through board approved post graduate training. To administer minimal sedation the dentist must satisfy the following criteria:

(1) training to a level of competency in a minimal sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students".

(2) courses must include 16 hours of course time plus clinically oriented experiences during which competency in enteral and combined nitrous oxide-enteral minimal sedation is demonstrated.

(a) if the training received was pre-doctoral, while in dental school, the applicant should submit proof of course content completed as included in a course description from the dental education program.

(b) if the course of study was postgraduate training, proper course completion forms must be submitted.

(3) Each dentist administering and auxiliary monitoring, minimal sedation shall have current basic life support certification.

D. Facility/records: The facility in which minimal sedation is administered must comply with the following:

(1) have adequate equipment to monitor patient's vital signs;

(2) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, pulse oximetry, and respiratory rate during procedures and effect of medication;

(3) all use of enteral medication shall be under the indirect supervision of a licensed dentist;

(4) shall verify the patient has other means of transportation to be released from the office;

(5) administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of practice and prescriptive authority of the dentist so as not to produce conscious sedation; does not require the dentist to hold a minimal sedation permit;

(6) a log of drugs used, dosage or amount of drug used and date of administration must be maintained separate from the patient's record;

(7) ASA classification of the patient and informed consent is required. [16.5.15.13 NMAC - Rp, 16.5.15.13 NMAC, 5/31/2023]

### 16.5.15.14 ADMINISTRATION OF MODERATE SEDATION (Formerly conscious sedation I and II):

A. Moderate sedation may be achieved by several methods: The end point of sedation, as in the definition, is the important factor. Drugs used here should have a wide safety margin so as to not allow patients to easily slide to deep sedation or general anesthesia. The dentist should also be aware that titrating an enteral dose of medication is difficult due to onset of action and multiple variables.

(1) moderate enteral sedation (previously conscious sedation I) is achieved by the use of: single enteral drugs in doses as needed up to and above the maximum recommended single dose, or two or more enteral drugs used in combination, or single or multiple enteral drugs combined with nitrous oxide;

(2) moderate parenteral sedation (previously conscious sedation II) is achieved by the use of single or multiple parenteral drugs, with or without nitrous oxide.

**B. Registration:**  
Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve moderate sedation shall be registered with the board. Moderate sedation permits are issued for a specific practice location (facility). An application form will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in 16.5.15.19 NMAC. Administration of moderate sedation without registration is a violation of these rules and may result in disciplinary action against the licensee.

**C. Education/qualifications:** To administer moderate sedation by any means the dentist must satisfy one of the following criteria:

(1) training to a level of competency in moderate sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students". The above involves completion of 60 hours of didactic instruction and administration of moderate sedation for at least 20 individually managed patients in a pre-doctoral program at a CODA accredited school, verifiable by the board, or in a post-doctoral continuing education program acceptable to the board and its anesthesia committee; or

(2) completion of CODA accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage moderate sedation as described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students".

**D.** To administer moderate enteral sedation, the dentist must have current certification in basic life support. Moderate enteral

sedation does not require ETCO2 capnography monitoring.

**E.** To administer moderate parenteral sedation, the dentist must have current certification in advanced cardiac life support. Moderate parenteral sedation does require ETCO2 capnography or precordial stethoscope monitoring.

**F.** Auxiliary clinical personnel must have current certification in basic life support.

**G.** The dentist must sign an affidavit of compliance. An oral and written examination administered by the anesthesia committee or designee will be required if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel on the applicant's part to meet with an examiner. The applicant's facility may also be subject to inspection and approval by the anesthesia committee or its designated examiner.

**H.** Current permit holder's sedation education would be grandfathered in by board rules in effect at the time of original issue of their permit. However, safety standards must be updated to the current board and American dental association (ADA) guidelines.

**I. Facility/records:**  
(1) the dentist must maintain a properly equipped facility for the administration of moderate sedation, staffed with supervised auxiliary personnel capable of handling procedures, problems and emergencies that may arise;

(2) the facility along with the dentist providing the sedation will be evaluated. The moderate sedation permit is valid only at the facility approved by the permit;

(3) the patients shall be monitored and records shall reflect that the pre-operative patient evaluation, including American society of anesthesiologists (ASA) classification, pre-operative preparation, electrocardiogram (ECG) (for parenteral sedation), pulse oximetry, and blood pressure.

ETCO2 capnography or precordial stethoscope monitoring is only required for moderate parenteral sedation. Recovery and discharge also needs to be performed and documented in accordance with the current "ADA guidelines for the use of sedation and general anesthesia by dentists";

(4) a facility permitted for moderate sedation does not allow for the use of deep sedation or general anesthesia in that facility regardless of the licensee providing anesthesia;

(5) a log of drugs used, dosage or amount of drugs used and date of administration must be maintained separate from the patient's record;

(6) informed consent is required.

**J. Restrictions:** A dentist with a moderate sedation (formerly conscious sedation II) permit shall not administer or employ any agent(s) which has a narrow margin for maintaining consciousness, or is federally classified as a general anesthetic including, but not limited to:

(1) ultra-short acting barbiturates including, but not limited to, sodium methohexital, thiopental, and thiamylal;

(2) alkylphenols-propofol (diprivan) including precursors or derivatives;

(3) neuroleptic agents;

(4) dissociative agents - i.e. ketamine;

(5) etomidate, and similarly acting drugs;

(6) volatile inhalational agents; or

(7) any quantity of agent(s) or technique(s), or any combination thereof, that renders a patient deeply sedated or generally anesthetized.

**K.** The drugs/ techniques enumerated in Subsection J of 16.5.15.14 NMAC are presumed to produce general anesthesia and may only be used by a licensee holding a valid deep sedation/general anesthesia permit issued by the board,

or by a corresponding licensing board if the licensee is not a dentist (eg., MD, CRNA).

[16.5.15.14 NMAC - Rp, 16.5.15.14 NMAC, 5/31/2023]

**16.5.15.15 ADMINISTRATION OF DEEP SEDATION/GENERAL ANESTHESIA:**

**A.** Registration:  
Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve deep sedation or general anesthesia (DS/GA) shall be registered with the board. DS/GA permits are issued for a specific practice location (facility). An application form and affidavit of compliance will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in 16.5.15.19 NMAC. Administration of DS/GA without registration is a violation of these rules and may result in disciplinary action against the licensee. The dentist must sign an affidavit of compliance. An oral and written examination administered by the anesthesia committee or designee will be required if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel by the applicant to meet with an examiner. The applicant's facility is also subject to inspection and approval by the anesthesia committee or its designated examiner.

**B.** Education/qualifications:

(1) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(2) completion of a CODA accredited post-doctoral training program (e.g. oral and maxillofacial surgery, dental anesthesiology), which affords

comprehensive and appropriate training necessary to administer and manage deep sedation/general anesthesia, commensurate with these rules;

**C.** Current permit holders' sedation education would be grandfathered by the New Mexico laws in effect at the time of original issue of their permit. However, safety standards must be updated to current board and ADA guidelines.

**D.** Facility/records:  
(1) the dentist maintains a properly equipped facility for the administration of deep sedation or general anesthesia in accordance with the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(2) the office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto;

(3) the dentist must have current advanced cardiac life support certification (ACLS) and auxiliary clinical personnel have current basic life support certification;

(4) the patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, ASA classification, ECG, pulse oximetry, blood pressure and ETCO2 capnography monitoring recovery, discharge and documentation was performed in accordance with the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(5) the dentist passes the examination and receives approval after facility inspection, or affidavit acceptance, by the anesthesia committee or designated examiner;

(6) a log of drugs used, dosage or amount of drugs and date of administration must be maintained separate from the patient's record;

(7) informed consent is required;

(8) a dentist administering deep sedation/general anesthesia must document current, successful completion of an advanced cardiac life support (ACLS) course, or an equivalent as approved by the anesthesia committee;

**E.** Anesthesia permit at large: This permit allows the holder to provide sedation and anesthesia services to patients in dental offices on an out-patient basis. The holder of the "anesthesia permit at large" assumes all responsibility for the administration of the sedation or general anesthesia in the dental office.

(1) to hold an "anesthesia permit at large" a dentist must meet the requirements in Section 16.5.15.15 NMAC deep sedation/general anesthesia, and is only available for dentist anesthesiologists and oral and maxillofacial surgeons;

(2) the holder of a "permit at large" may be evaluated and inspected by the anesthesia committee as deemed necessary to assure safety to the public;

(3) the holder of such a permit agrees to have available at all times all monitors, emergency equipment, and other necessary drugs and materials when administering conscious sedation, deep sedation, and general anesthesia;

(4) the permit holder will inform the board of all dental facilities where anesthesia services are to be provided and follow all other procedures as outlined in 16.5.15.15 NMAC, deep sedation/general anesthesia.

[16.5.15.15 NMAC - Rp, 16.5.15.12 NMAC, 5/31/2023]

**16.5.15.16 SEDATION/ANESTHESIA PROVIDED BY OUTSIDE PERSONNEL:**

**A.** Provided by dentists (DDS or DMD) or physicians (MD or DO):

(1) administration of sedation by another duly qualified dentist or physician requires the operating dentist to have completed a course in advanced cardiac life support (no certification

necessary) and to have current certification in basic life support;

(2) the operating dentist must ensure that the dentist/physician DS/GA permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of parenteral sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. For DS/GA, advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available. Appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan;

(3) a dental facility utilizing a dentist or physician for deep sedation/general anesthesia, needs to be registered with the board and must submit verifying forms of the residency-trained dentist/physician's general anesthesia training, hospital credentials, and current license and anesthesia permits to practice in the state of New Mexico.

**B.** Provided by certified registered nurse anesthetists (CRNA):

(1) administration by a qualified certified nurse anesthetist (CRNA) requires the operating dentist to have oversight of the CRNA to perform sedation. If the dentist of a facility approved for sedation utilizes a CRNA to provide the sedation, the CRNA may only administer sedation up to the permit level of the facility and the dentist.

(2) the operating dentist shall ensure that the CRNA is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the staff of an accredited New Mexico hospital in the community in which the anesthesia occurs. The operating dentist shall be responsible for notifying the anesthesia committee

of the New Mexico board of dental health care of all the anesthetists used.

(3) the operating dentist, working with a CRNA, is responsible for the adequacy of the facility, and aiding in the treatment of emergencies associated with the administration of parenteral sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. The CRNA is responsible for the sedation administration.

[16.5.15.16 NMAC - Rp, 16.5.15.13 NMAC, 5/31/2023]

**16.5.15.17 REPORTING ADVERSE INCIDENTS:**

**A.** Each licensed dentist must submit a written report to the board within thirty days after any significant morbidity or mortality or other incident which results in temporary or permanent physical or mental injury of a patient during, or as a result of, nitrous oxide inhalation analgesia, conscious sedation administered via oral, rectal, or parenteral routes, deep sedation, or general anesthesia.

**B.** The report is required regardless of the need for hospitalization after the incident and shall include the following:

(1) description of the dental procedure;

(2) description of the pre-operative physical condition of the patient;

(3) list of drugs and dosage administered and route of administration;

(4) description in detail of techniques utilized in administering the drugs utilized;

(5) the names of auxiliary personnel in attendance; and

(6) description of the adverse occurrence to include the following: detailed description of symptoms of any incident; treatment initiated on the patient; response of the patient to the treatment; description of the patient's condition

on termination of treatment; and copies of the patient record, medical history and operative report.

[16.5.15.17 NMAC - Rp, 16.5.15.14 NMAC, 5/31/2023]

**16.5.15.18 FAILURE TO REPORT:** Failure to comply with the reporting requirements of Section 16.5.15.17 NMAC of this part shall be grounds for disciplinary action against the licensee. In accordance with the provisions of the Uniform Licensing Act, the board may take any actions enumerated in 16.5.16 NMAC, including revocation of the sedation/anesthesia permit.

[16.5.15.18 NMAC - Rp, 16.5.15.15 NMAC, 5/31/2023]

**16.5.15.19 PERMIT APPLICATION PROCEDURE FOR MINIMAL AND MODERATE SEDATION, AND DEEP SEDATION/GENERAL ANESTHESIA:**

**A.** Applications may be obtained from the board office. The completed application, accompanied by the required permit fee as defined in 16.5.5 NMAC, the application is forwarded to the anesthesia committee for evaluation. After review of the completed application and any other documentation, including a signed affidavit of compliance (if required), the anesthesia committee may recommend a permit for minimal, moderate, or deep sedation/general anesthesia. An oral and written examination of the applicant applying for moderate parenteral sedation or deep sedation/general anesthesia may be required, as described in Subsection B of 16.5.15.19 NMAC.

**B.** Examination/evaluation: The anesthesia committee will require an oral and written examination of emergency protocols and practices from the applicant dentist for moderate parenteral sedation and deep sedation/general anesthesia, if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This

may require travel by the applicant dentist to meet with an evaluator. This along with the original application, cases examples supplied, and affidavit of compliance will be used to evaluate the competency of the applicant. If an office inspection is needed, the evaluator may need to schedule a facility inspection with the applicant. The anesthesia committee uses the American association of oral and maxillofacial surgeon's office anesthesia evaluation manual as a guide for the examinations. Incomplete applications will be returned by the anesthesia committee to the board office with a clear indication of the deficient areas.

**C.** After receipt of proper documentation, completion of an affidavit of compliance, and the successful passing of the oral and written examination (if required), the anesthesia committee and the secretary-treasurer of the board may issue a permit to administer the level of sedation for which the applicant was approved. Ratification of this permit will occur at the next regular scheduled meeting, unless substantial subsequent evidence compels the board to deny or delay approval of the permit.

**D.** Final action: after final evaluation of the application and examination results, the anesthesia committee recommends final action on the application to the board. The board makes final determination on approval of the permit. If an application is determined incomplete for failure to meet the requirements of 16.5.15 NMAC, the areas of non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.19 NMAC - Rp, 16.5.15.16 NMAC, 5/31/2023]

#### **16.5.15.20 PERMIT EXPIRATION AND RENEWAL:**

**A.** Expiration: Sedation/anesthesia permits are issued for six years from the last day of the month in which the initial permit was issued. Nitrous oxide analgesia permits do not expire.

**B.** Renewal: Renewal applications will not be sent to each dentist prior to the expiration date of the sedation/anesthesia permit. It is the responsibility of the permit holder to start the renewal process within six months prior to the expiration date. The completed application, along with the required fee must be returned to the board office prior to permit expiration. The permit renewal application will be forwarded to the anesthesia committee, which will renew the permit holder's affidavits for administration and facility or examine the permit holder as required. The anesthesia committee may require the applicant applying for a renewal permit to pass another oral examination and the facility used by the dentist may be subject to another inspection. This decision will be based on credentials of the applicant or past experience with sedation treatments.

**C.** Education requirements:

**(1)** minimal sedation - holders of permits in minimal sedation must have a minimum of eight hours of continuing education every six-year renewal period in medical emergencies, air way management, pharmacology, or anesthesia related topics;

**(2)** moderate sedation (formerly conscious sedation I and II), deep sedation and general anesthesia - holders of permits for moderate sedation, deep sedation or general anesthesia must have a minimum of 16 hours of continuing education every six-year renewal period in medical emergencies, airway management, pharmacology, or anesthesia related topics.

**D.** New facility evaluation: a dentist who holds a moderate sedation, deep sedation or general anesthesia permit and who relocates his practice requires a new facility permit based on re-examination, or affidavit of compliance. A new permit fee will be charged.

**E.** Re-examination/evaluation: The board may require a re-examination or a re-evaluation of

the credentials, facilities, equipment, personnel, and procedures of a permit holder to determine if the dentist is currently qualified to administer anesthesia. The board or its agents shall notify the dentist to be re-examined or re-evaluated 180 days in advance of permit expiration. The notification will indicate the content and format of the examination/evaluation.

**F.** Permit expiration: Failure of a dentist to renew his license and permit, or to schedule a required office re-evaluation within thirty days of receipt of the notification, or failure on the part of the licensee to successfully complete the examination/evaluation, will cause the permit to expire.

**G.** Verification of continuing education: The board requires verification of continuing education credits for sedation. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for 6 years following the renewal cycle in which they are earned. Additionally, and at renewal time, holders of any permit level may be requested to demonstrate competency in maintenance of airway patency to the anesthesia committee, it's designated examiner or the board either on a "board approved" simulator, or other device as may be acceptable to the board. There may be an announced audit of any permit holder by the anesthesia committee or by the board designated examiner during the permitted time for the purpose of demonstrating airway management and airway competency, either on the board designated model or other device approved by the board.

[16.5.15.20 NMAC - Rp, 16.5.15.17 NMAC, 5/31/2023]

#### **HISTORY OF 16.5.15 NMAC: Pre NMAC History:**

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

Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General Anesthesia, filed 09/04/1986;  
BOD Rule 13, Administration Of Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General Anesthesia, filed 02/09/1989;  
BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07/31/1995.

**History of Repealed Material:** 85-1, Repealer, filed 10/29/1985.

16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, filed 2/15/2005- Repealed effective 3/18/2018.

16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, filed 2/16/2018- Repealed effective 5/31/2023.

**NMAC History:**

16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, (filed 2/15/2005) was replaced by 16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, effective 3/18/2018.

**Other History:**

BODHC Rule DS 8-95, Dentists, Analgesia Administration (filed 07/31/1995); renumbered, reformatted and replaced by 16 NMAC 5.15, Dentists, Analgesia Administration, effective 09/30/1996;

16 NMAC 5.15, Dentists, Analgesia Administration (filed 09/17/1996), replaced by 16.5.15 NMAC, Dentists, Analgesia Administration, effective 05/31/2002.

16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, (filed 2/15/2005) was replaced by 16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, effective 3/18/2018.

16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, (filed 2/16/2018) was replaced by 16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 5 DENTISTRY  
(DENTISTS, DENTAL  
HYGIENISTS, ETC.)  
PART 17 DENTISTS  
AND DENTAL HYGIENISTS,  
COLLABORATIVE PRACTICE**

**16.5.17.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.17.1 NMAC - Rp, 16.5.17.1 NMAC, 5/31/2023]

**16.5.17.2 SCOPE:** The provisions of 16.5.17 NMAC apply to all dentists, dental hygienists and dental assistants who work in a collaborative practice arrangement.  
[16.5.17.2 NMAC - Rp, 16.5.17.2 NMAC, 5/31/2023]

**16.5.17.3 STATUTORY**

**AUTHORITY:** 16.5.17 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-4 NMSA 1978.

[16.5.17.3 NMAC - Rp, 16.5.17.3 NMAC, 5/31/2023]

**16.5.17.4 DURATION:**

Permanent.

[16.5.17.4 NMAC - Rp, 16.5.17.4 NMAC, 5/31/2023]

**16.5.17.5 EFFECTIVE**

**DATE:** May 31, 2023, unless a different date is cited at the end of a section.

[16.5.17.5 NMAC - Rp, 16.5.17.5 NMAC, 5/31/2023]

**16.5.17.6 OBJECTIVE:**

To regulate the collaborative practice of dental hygiene in New Mexico.

[16.5.17.6 NMAC - Rp, 16.5.17.6 NMAC, 5/31/2023]

**16.5.17.7 DEFINITIONS:**

**A. "Acting consulting**

**dentist"** means a dentist who meets the qualifications of a consulting dentist who agrees to act as the consulting dentist when that dentist will be away from his/her practice for more than two weeks. An approved collaborative agreement shall be signed by the acting consulting dentist and the licensed dental hygienist prior to the consulting dentist leaving.

**B. "Collaborative practice agreement"** means a written agreement between a dentist who meets the qualifications of 16.5.17.9 NMAC to be a consulting dentist as defined in 16.5.17 NMAC of these rules, and a collaborative practice dental hygienist. This agreement shall follow the format as determined by the board and committee. A new agreement shall be signed and submitted to the board for approval each renewal period.

**C. "Collaborative practice of dental hygiene"** means the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Subsection B of 61-5A-4 NMSA 1978, in a cooperative working relationship with a consulting dentist but without general supervision, as set forth by the rules jointly established by the board and committee.

**D. "Consulting (collaborative) dentist"** means a dentist who meets the qualifications specified in 16.5.17.9 NMAC of this rule and who agrees to serve or continues to serve as a patient's dentist of record in collaboration and consultation with the practice dental hygienist as specified in the rules.

**E. "Non-participating dentist"** is a dentist who does not wish to collaborate with a collaborative practice dental hygienist.

**F. "Standard collaborative practice protocols"** is the protocol to be used by the collaborative practice dental hygienist to treat a patient, as specified in 16.5.17.13 NMAC of this part.

**G. "Verbal prescription or orders"** means



instructions not communicated in written form, shall be recorded in the patient's record or the protocol agreement by both the collaborative hygienist and the consulting dentist when given.

**H. "Written prescription orders"** means instructions from the consulting dentist to the collaborative hygienist to perform those allowable treatments requiring diagnosis and treatment plan, subject to the limitations of 16.5.17.12 NMAC of these rules, or directions written to modify the standard collaborative practice protocols, or the collaborative practice agreement.

[16.5.17.7 NMAC - Rp, 16.5.17.7 NMAC, 5/31/2023]

#### **16.5.17.8 CERTIFICATION FOR THE COLLABORATIVE PRACTICE OF DENTAL HYGIENE:**

The board, based on the recommendation of the dental hygienists committee, will certify qualified dental hygienists for collaborative practice.

**A.** Prerequisite requirements for certification. Each applicant for certification as a collaborative practice dental hygienist shall possess the following qualifications:

- (1) possess a current New Mexico dental hygiene license in good standing;
- (2) have been engaged in the active practice of dental hygiene as defined in Subsection B of 61-5A-4 NMSA 1978 of the act for not less than:

(a) 2400 hours of active practice for the past 18 months; or

(b) a total of 3,000 hours of active practice and has been engaged in active practice for two of the past three years;

(3) meet the educational criteria for licensure in Subsection A of 61-5A-13 NMSA 1978 of the act; and

(4) have 15 hours of continuing education in clinical dental hygiene in the 12

months prior to certification, which includes courses in infection control and medical emergencies.

**B.** Documentation requirements. Each applicant for certification as a collaborative practice dental hygiene shall submit a completed application, the required fees and following documentation:

(1) verification of a current active license;

(2) proof of the active practice of dental hygiene as defined in 16.5.17.8 NMAC of this part; this proof may be in the form of letters from employers, supervisors of dental clinics of one of the uniformed services of the United States, or faculty administrators of accredited schools; if this documentation cannot be obtained, the applicant may request to provide other proof of the required hours to the committee for consideration;

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

(4) proof of 15 hours of continuing education related to the clinical practice of dental hygiene; and

(5) a copy of a signed collaborative practice agreement between a dental hygienist and a consulting dentist.

**C.** Renewal requirements. Each dental hygienist certified for collaborative practice shall:

(1) submit a completed renewal application for certification for collaborative practice, along with the triennial renewal application for their license, accompanied by the required fees as defined in 16.5.18 NMAC;

(2) complete 60 hours of continuing education every triennial renewal period; if the initial certification period is less than three years, the required continuing education will be prorated at 20 hours per full year of certification; 60 hours to include:

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

(b) infection control: as further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

(c) medical emergencies: as for new certification defined in Paragraph (4) of Subsection A of 16.5.17.8 NMAC;

(3) submit a current list of all consulting dentists to the board with each renewal application; and

(4) submit a copy of the signed collaborative practice agreement(s) and protocols between a dental hygienist and a consulting dentist per renewal period. [16.5.17.8 NMAC - Rp, 16.5.17.8 NMAC, 5/31/2023]

#### **16.5.17.9 QUALIFICATIONS FOR CONSULTING DENTISTS:**

A consulting dentist shall meet the following qualifications:

**A.** possess a current New Mexico dental license in good standing;

**B.** maintains an active clinical general dentistry or public health practice within the state and within a reasonable referral distance from the collaborative dental hygiene practice as determined by the board upon recommendation of the dental hygienists committee.

[16.5.17.9 NMAC - Rp, 16.5.17.9 NMAC, 5/31/2023]

#### **16.5.17.10 RESPONSIBILITIES OF A CONSULTING DENTIST:**

The consulting dentist shall:

**A.** in collaboration with the dental hygienist, provide for the patient's additional needed dental care;

**B.** be available to provide consultation to the collaborative practice dental hygienist;

C. make provisions for a qualified acting consulting dentist to act in his/her place should he/she be away from his practice for more than two weeks;

D. maintain an appropriate level of contact and communication with the collaborative practice dental hygienist;

E. in conjunction with the collaborative practice dental hygienist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;

F. assure that each collaborative practice dental hygienist is duly licensed and certified for collaborative practice by the board of dental health care;

G. maintain a separate and distinct collaborative practice agreement with each collaborative practice dental hygienist for whom he/she serves as a consulting dentist;

H. provide verbal or written prescriptions to the collaborative practice dental hygienist for those procedures requiring a diagnosis;

I. provide verbal or written prescriptions to the collaborative practice dental hygienist when the consulting dentist deems it appropriate to provide exception to the standardized protocols;

J. provide a written prescription within seven business days following a verbal prescription or order;

K. maintain in the patients record a duplicate of the written prescriptions or orders as described in Subsection H through Subsection J of 16.5.17.10 NMAC;

L. provide a written diagnosis and treatment recommendations from the records provided by the collaborative practice dental hygienist to the patient and the hygienist within 30 days of receipt of such records;

M. each collaborative agreement will be kept on file by the collaborative practice dental hygienist and the consulting dentist, the basic format of the agreement will be provided with the application by the board.

[16.5.17.10 NMAC - Rp, 16.5.17.10 NMAC, 5/31/2023]

**16.5.17.11 RESPONSIBILITIES OF A COLLABORATIVE PRACTICE DENTAL**

**HYGIENIST:** The collaborative practice dental hygienist shall:

A. refer each patient for a dental examination every 12 months, as well as anyone who may require further dental services, to the patient’s consulting dentist or to a dental specialist in the case of an emergency;

B. in conjunction with the consulting dentist, be responsible and liable for acts and omissions in the collaborative dental hygiene practice;

C. assure that each consulting dentist is duly licensed by the board of dental health care; by verification with the board office;

D. maintain a collaborative practice agreement with each consulting dentist; and

E. maintain an appropriate level of contact and communication with the consulting dentist;

F. contact the patient’s dentist of record, if not a consulting dentist, prior to treating the patient to give the dentist the option of becoming a consulting dentist;

G. offer the patient a choice of the collaborative practice dental hygienist’s consulting dentists if the patient’s dentist of record chooses to be a non-participating dentist;

H. not to perform any treatment if the patient does not have an active consulting dentist on record with the collaborative practice dental hygienist;

I. follow the standardized protocol unless modified by the consulting dentist by prescription or order;

J. follow the verbal and written prescriptions and orders of the consulting dentist for those treatments requiring a diagnosis;

K. forward all records and x-rays, or duplicates, to the consulting dentist within 14 days;

L. assure that each consulting dentist meets the requirements of a consulting dentist as stated in 16.5.17.9 NMAC;

M. a copy of the collaborative agreement shall be on file with the board office; any changes to this agreement shall be filed with the board office within 60 days.

N. the collaborative dental hygienist shall be subject to provisions of 16.5.58 NMAC.

[16.5.17.11 NMAC - Rp, 16.5.17.11 NMAC, 5/31/2023]

**16.5.17.12 COLLABORATIVE DENTAL HYGIENE PRACTICE AND LIMITATIONS:**

A. A dental hygienist in a collaborative practice may perform the procedures in a dental hygienist’s scope of practice listed in 16.5.29 NMAC without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee.

B. A collaborative practice dental hygienist may have more than one consulting dentist.

C. A dentist shall have a consulting agreement with no more than three collaborative practice dental hygienists. The board may grant exception to this limitation for public health settings on a case-by-case basis.

D. The collaborative practice dental hygienist may own and manage a dental hygiene practice, or enter into a contractual arrangement, in any location or setting in New Mexico.

E. The committee, through the board, may take any disciplinary action allowed by the Uniform Licensing Act, against a dental hygienist certified in collaborative practice.

F. Collaborative dental hygienist can administer local anesthesia under general supervision as defined in 16.5.28.8 NMAC and 16.5.28.12 NMAC.

G. A collaborative dental hygienist may assess for pit and fissure sealants without a dentist’s

evaluation as provided in Subsection D of 16.5.29.8 NMAC.

**H.** A collaborative dental hygienists may prescribe, administer and dispense topically applied fluoride and topically applied antimicrobials as provided for in 16.5.29.11 NMAC.

**I.** Perform dental hygiene focused assessment.

**J.** A collaborative practice dental hygienist shall not:

(1) administer local anesthesia except under the general supervision of a dentist; and only if certified to do so through the committee and ratified by the board;

(2) administer a drug or medication, except those directly indicated as dental topical therapeutic or preventive agents; other therapeutic agents may only be dispensed if the collaborative practice dental hygienist holds a class C clinic license; any drugs dispensed as a class C clinic (as designated and defined by the New Mexico board of pharmacy) shall be on the specific individual authorization of a dentist:

(a) all non-controlled substance medications requiring a prescription or order from the dentist may only be dispensed for immediate use in the collaborative practice dental hygienist office, and only on the specific order or protocol from the consulting dentist; a log of these dispensing shall be kept and a copy of this log shall be sent to the corresponding consulting dentist every six months; collaborative practice dental hygienists may not dispense or administer any controlled substance;

(b) prescription drugs, which are kept in bulk at the collaborative practice dental hygienist's office, to be dispensed or used by the collaborative practice dental hygienist as in 16.5.17.12 NMAC, shall be purchased on an order or prescription by a consulting dentist;

(3) diagnose dental disease, but may advise the patient of suspected pathology and periodontal status;

(4) perform oral hygiene procedures on any patient identified as having a significant health risk from the procedures; unless the patients' current health history has been reviewed by the patient's dentist of record or the consulting dentist; or for patients who reside in residential or long term care facilities, the patient's dentist or physician;

(5) perform treatments requiring the diagnosis of a dentist without a prescription/order from the consulting dentist; such treatments include but are not limited to, root planing, sealant application in presence of cavitation, administration of therapeutic agents and other services defined in Subsection B of 61-5A-4 NMSA 1978 as within the scope of dental hygiene practice but which require a dentist's diagnosis;

(6) modify the standard collaborative practice protocol without a prescription or order from the consulting dentist;

(7) take impressions for bleaching trays, deliver bleaching materials or provide systems of home bleaching, or provide instructions to patients on using bleaching materials unless it is authorized on a case by case basis by prescription from a consulting dentist;

(8) provide in office bleaching systems unless under indirect supervision of a consulting dentist.

**K.** Effective July 1, 2015, a collaborative practice hygienist who owns a dental practice shall register with the board as a non-dentist owner. No additional license or fee is required for this registration. A collaborative practice hygienist who owns a dental practice must notify the board, in writing, if the dental practice has been sold or has closed.

[16.5.17.12 NMAC - Rp, 16.5.17.12 NMAC, 5/31/2023]

**16.5.17.13 STANDARD COLLABORATIVE PRACTICE PROTOCOLS:** All protocols will include but are not limited to: review of health history charting of existing

teeth and restorations, periodontal charting as necessary, and notations of potential pathology. Protocols may be amended upon written order of the consulting dentist. Time intervals for these protocols shall be established in the collaborative practice agreement as provided in Subsection G of 16.5.17.13 NMAC.

**A.** Protocols for children 12 and under:

(1) appropriate panoramic or occlusal x-rays;

(2) two bitewing x-rays;

(3) prophylaxis/scaling;

(4) topical fluoride treatment;

(5) other radiographs as indicated by consultation with the dentist.

**B.** Protocols for teenagers:

(1) appropriate panoramic or full mouth radiographs;

(2) two or four bitewing x-rays;

(3) prophylaxis/scaling;

(4) topical fluoride treatment;

(5) other radiographs as indicated by consultation with the dentist.

**C.** Protocols for adults:

(1) full mouth or panoramic radiograph;

(2) bitewing radiographs annually;

(3) complete periodontal charting;

(4) prophylaxis/scaling or gross debridement and consultation with the consulting dentist if periodontal assessment suggests periodontal involvement.

**D.** All other procedures not listed in the protocols shall require a prescription from the consulting dentist as stated in Subsections H and N of 16.5.17.10 NMAC.

**E.** Guidelines for patient release forms, to include a disclaimer signed by the patient or legal guardian that the dental hygiene services rendered do not preclude the

need for routine examinations by a dentist.

**F.** Both the consulting dentist and the collaborative practice dental hygienist shall sign a copy of this or amended protocol and keep on file.

**G.** Changes to practice protocol and agreements shall be prescribed in writing by the consulting dentist and recorded by both the consulting dentist and the collaborative practice dental hygienist.  
[16.5.17.13 NMAC - Rp, 16.5.17.13 NMAC, 5/31/2023]

**16.5.17.14 DENTAL ASSISTANTS IN COLLABORATIVE DENTAL HYGIENE PRACTICE:**  
Collaborative practice dental hygienists may work with and supervise dental assistants, including dental assistants certified to perform functions as defined in 16.5.39 NMAC of these rules.  
[16.5.17.14 NMAC - Rp, 16.5.17.14 NMAC, 5/31/2023]

**HISTORY OF 16.5.17 NMAC:**  
**Pre-NMAC History:** None.

**History of Repealed Material:**  
16.5.17 NMAC, Dentists and Dental Hygienists, Collaborative Practice, filed 12/1/2000 Repealed effective 5/31/2023.

**Other History:**  
16 NMAC 5.17, Dentists and Dental Hygienists, Collaborative Practice, filed 1/28/2000;  
16 NMAC 5.17, Dentists and Dental Hygienists, Collaborative Practice, filed 1/28/2000 - renumbered, reformatted and amended to 16.5.17 NMAC, Dentists and Dental Hygienists, Collaborative Practice, effective 2/14/2000.  
16.5.17 NMAC, Dentists and Dental Hygienists, Collaborative Practice, filed 12/1/2000 Replaced by 16.5.17 NMAC, Dentists and Dental Hygienists, Collaborative Practice, effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 19 DENTAL HYGIENISTS, LICENSURE BY EXAMINATION**

**16.5.19.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care.  
[16.5.19.1 NMAC – Rp, 16.5.19.1 NMAC, 5/31/2023]

**16.5.19.2 SCOPE:** The provisions of Part 19 of Chapter 5 apply to all applicants for licensure as a dental hygienist by examination. Part 19 also applies to dental hygienists previously licensed in New Mexico who have allowed their license to expire and do not qualify for licensure by credentials.  
[16.5.19.2 NMAC - Rp, 16.5.19.2 NMAC, 5/31/2023]

**16.5.19.3 STATUTORY AUTHORITY:** Part 19 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-13 NMSA 1978.  
[16.5.19.3 NMAC - Rp, 16.5.19.3 NMAC, 5/31/2023]

**16.5.19.4 DURATION:** Permanent.  
[16.5.19.4 NMAC - Rp, 16.5.19.4 NMAC, 5/31/2023]

**16.5.19.5 EFFECTIVE DATE:** May 31, 2023, unless a later date is cited at the end of a section.  
[16.5.19.5 NMAC – Rp, 16.5.19.5 NMAC, 5/31/2023]

**16.5.19.6 OBJECTIVE:** To establish the requirements for application for licensure by examination.

[16.5.19.6 NMAC - Rp, 16.5.19.6 NMAC, 5/31/2023]

**16.5.19.7 DEFINITIONS:**  
[RESERVED]  
[16.5.19.7 NMAC - Rp, 16.5.19.7 NMAC, 5/31/2023]

**16.5.19.8 PREREQUISITE REQUIREMENTS FOR LICENSE:** Each applicant for licensure as a dental hygienist by examination must possess the following qualifications:  
**A.** graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13 NMSA 1978;  
**B.** passed the dental hygiene national board examination as defined in Section 61-5A-13 NMSA 1978;

**C.** passed a clinical examination approved by the committee and ratified by the board; the results of the clinical examination are valid in New Mexico for a period not to exceed five years:

**(1)** the applicant shall apply directly to a board accepted examining agent for examination, and  
**(2)** results of the clinical examination must be sent directly to the board office; and

**D.** passed the jurisprudence examination with a score of at least seventy-five percent;

**E.** the committee requires a background status report from a board designated professional background service the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[16.5.19.8 NMAC - Rp, 16.5.19.8 NMAC, 5/31/2023]

**16.5.19.9 DOCUMENTATION REQUIREMENTS:** Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

**A.** completed application, applications are valid for one year from the date of receipt;

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

**C.** copy of clinical examination score card or certificate;

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

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

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

**G.** verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form; and

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

[16.5.19.9 NMAC – Rp, 16.5.19.9 NMAC, 5/31/2023]

**16.5.19.10 RE-EXAMINATION PROCEDURE:** An applicant who does not obtain a passing score on the jurisprudence exam must submit the re-examination fee as defined in Subsection D of 16.5.18.8 NMAC to re/take the exam.

[16.5.19.10 NMAC - Rp, 16.5.19.10 NMAC, 5/31/2023]

**16.5.19.11 LICENSURE PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, and successful completion of the examination requirements, a committee member will review the application and may approve for licensure. The recommendation of the committee will be given to the board to formally accept the approval of the application at the next scheduled meeting.

**A.** Initial dental hygiene licenses are issued for a period not to exceed three years, as defined in Part 24.

**B.** Any application that cannot be approved by the committee member will be reviewed by the entire committee at the next scheduled meeting.

[16.5.19.11 NMAC - Rp, 16.5.19.11 NMAC, 5/31/2023]

**HISTORY OF 16.5.19 NMAC:**  
[RESERVED]

**History of Repealed Material:**  
16.5.19 NMAC, Dental Hygienists, Licensure By Examination filed 12/16/2002 Repealed effective 5/31/2023.

**Other History:**  
16.5.19 NMAC, Dental Hygienists, Licensure By Examination filed 12/16/2002 Replaced by 16.5.19 NMAC, Dental Hygienists, Licensure By Examination effective 5/31/2023.

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(DENTISTS, DENTAL  
HYGIENISTS, ETC.)  
PART 20 DENTAL**

**HYGIENISTS, LICENSURE BY CREDENTIALS**

**16.5.20.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.20.1 NMAC - Rp, 16.5.20.1 NMAC, 5/31/2023]

**16.5.20.2 SCOPE:** The provisions of 16.5.20 NMAC apply to all applicants for licensure as a dental hygienist who are currently licensed in another state by examination.

[16.5.20.2 NMAC - Rp, 16.5.20.2 NMAC, 5/31/2023]

**16.5.20.3 STATUTORY**

**AUTHORITY:** 16.5.20 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-13 NMSA 1978.

[16.5.20.3 NMAC - Rp, 16.5.20.3 NMAC, 5/31/2023]

**16.5.20.4 DURATION:**

Permanent.

[16.5.20.4 NMAC - Rp, 16.5.20.4 NMAC, 5/31/2023]

**16.5.20.5 EFFECTIVE**

**DATE:** May 31, 2023, unless a later date is cited at the end of a section.

[16.5.20.5 NMAC - Rp, 16.5.20.5 NMAC, 5/31/2023]

**16.5.20.6 OBJECTIVE:**

To establish the requirements for applicants for dental hygiene licensure based on their licensure and practice in another state.

[16.5.20.6 NMAC - Rp, 16.5.20.6 NMAC, 5/31/2023]

**16.5.20.7 DEFINITIONS:**

[RESERVED]

[16.5.20.7 NMAC - Rp, 16.5.20.7 NMAC, 5/31/2023]

**16.5.20.8 PREREQUISITE REQUIREMENTS FOR**

**LICENSE:** Each applicant for licensure as a dental hygienist by credentials must possess the following qualifications:

**A.** graduated and received a diploma from an accredited dental hygiene program consisting of

at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13, NMSA 1978 of the act;

**B.** completed 15 hours of continuing education during the past year; these hours must meet the qualifications as defined in 16.5.1.15 NMAC;

**C.** passed the dental hygiene national board examination as defined in Section 61-5A-13 A., NMSA 1978;

**D.** passed the jurisprudence examination with a score of at least seventy-five percent;

**E.** holds a current active license in good standing obtained through a clinical examination in another state or territory of the United States;

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

**G.** all licenses held by the applicant must have been in good standing for two years prior to application;

**H.** the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules. [16.5.20.8 NMAC - Rp, 16.5.20.8 NMAC, 5/31/2023]

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

**A.** completed application, applications are valid for one year from the date of receipt;

**B.** official transcripts or an original letter on letterhead with an embossed seal verifying successfully passing all required courses from the dental hygiene

program, to be sent directly to the board office from the accredited program;

**C.** copy of national board examination certificate or score card;

**D.** proof of having taken a course in infection control technique within the past 12 months;

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

**F.** proof of 15 hours of continuing education during the 12 months prior to application;

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

**(1)** the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

**(2)** supplemental information may be requested by the committee; and  
**H.** verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include an embossed seal, and must attest to the status, issue date, expiration date, license number, and other information contained on the form.

[16.5.20.9 NMAC – Rp, 16.5.20.9 NMAC, 5/31/2023]

**16.5.20.10 RE-EXAMINATION PROCEDURE:** An applicant who does not obtain a

passing score on the jurisprudence examination must submit the re-examination fee as defined in Subsection D of 16.5.18 NMAC to re-take the exam.

[16.5.20.10 NMAC - Rp, 16 NMAC, 5/31/2023]

#### **16.5.20.11 LICENSURE**

**PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, and successful completion of the jurisprudence examination, a designee of the committee will review the application and may approve for licensure. The recommendation of the committee will be given to the board to formally accept the approval of the application at the next scheduled meeting.

**A.** Initial dental hygiene licenses are issued for a period not to exceed three years as defined in 16.5.24 NMAC.

**B.** Any application which cannot be approved by the delegate of the committee will be reviewed by the entire committee at the next scheduled meeting.

[16.5.20.11 NMAC - Rp, 16.5.20.11, 5/31/2023]

#### **HISTORY OF 16.5.20 NMAC:**

##### **Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: Article VIII, Licensing of Dental Hygienists, filed 3/12/1981; Article VIII, Licensing of Dental Hygienists, filed 1/12/1982; Article, VIII, Licensing of Dental Hygienists, filed 3/30/1982; BOD Rule 7, Licensing of Dental Hygienists, filed 2/9/1989; BODHC Rule DH 2-95, Dental Hygienists, Requirements for Licensure by Credentials, filed 5/5/1995.

##### **History of Repealed Material:**

16.5.20 NMAC, Dental Hygienists, Licensure by Credentials filed 6/1/2000 Repealed effective 5/31/2023.

**Other History:**

16 NMAC 5.20, Dental Hygienists, Licensure by Credentials, filed 9/17/1996;  
 16 NMAC 5.20, Dental Hygienists, Licensure by Credentials, filed 9/17/1996 - renumbered, reformatted and amended to 16.5.20 NMAC, Dental Hygienists, Licensure by Credentials, effective 6/14/2001.  
 16.5.20 NMAC, Dental Hygienists, Licensure by Credentials filed 6/1/2000 Replaced by 16.5.20 NMAC, Dental Hygienists, Licensure by Credentials effective 5/31/2023.

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**TITLE 16 OCCUPATIONAL  
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CHAPTER 5 DENTISTRY  
(DENTISTS, DENTAL  
HYGIENISTS, ETC.)  
PART 28 DENTAL  
HYGIENISTS, LOCAL  
ANESTHESIA CERTIFICATION**

**16.5.28.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.  
 [16.5.28.1 NMAC - Rp, 16.5.28.1 NMAC, 5/31/2023]

**16.5.28.2 SCOPE:** The provisions of Part 28 of Chapter 5 apply to all dental hygienist who hold or who are applying for certification to administer local anesthesia.  
 [16.5.28.2 NMAC - Rp, 16.5.28.2 NMAC, 5/31/2023]

**16.5.28.3 STATUTORY**

**AUTHORITY:** Part 28 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-6 NMSA 1978 (1996 Repl. Pamp.).  
 [16.5.28.3 NMAC - Rp, 16.5.28.3 NMAC, 5/31/2023]

**16.5.28.4 DURATION:**

Permanent.

[16.5.28.4 NMAC - Rp, 16.5.28.4 NMAC, 5/31/2023]

**16.5.28.5 EFFECTIVE**

**DATE:** May 31, 2023, unless a later date is cited at the end of a section.  
 [16.5.28.5 NMAC - Rp, 16.5.28.5 NMAC, 5/31/2023]

**16.5.28.6 OBJECTIVE:**

To establish guidelines and procedures for the regulation of dental hygienists who administer local anesthesia in an office located in New Mexico.  
 [16.5.28.6 NMAC - Rp, 16.5.28.6, 5/31/2023]

**16.5.28.7 DEFINITIONS:**

**“Two consecutive years”** means at least 1200 hours per year for two consecutive year.  
 [16.5.28.7 NMAC - Rp, 16.5.28.7 NMAC, 5/31/2023]

**16.5.28.8 REQUIREMENT**

**TO BE CERTIFIED:** Local anesthesia administration is not included as a function of dental hygiene licensure; it may only be performed by dental hygienists who have been separately certified by the committee to perform the expanded function. The administration of local anesthesia requires the indirect supervision of a dentist. Local anesthesia may only be administered by a dental hygienist under general supervision as outlined in Section 16.5.28.11 NMAC.  
 [16.5.28.8 NMAC - Rp, 16.5.28.8 NMAC, 5/31/2023]

**16.5.28.9 CERTIFICATION**

**BY CURRICULUM OR NON-CURRICULUM:** Applicants for certification in local anesthesia by curriculum or exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

**A. Qualifications:**

(1) a current active license in good standing to practice dental hygiene in New Mexico;  
 (2) proof of successful completion of educational coursework in local anesthesia, by either;

(a)

curriculum: successful completion of an educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, or

(b)

non-curriculum: successful completion of a board approved continuing educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC.

(3)

Successfully pass a board approved examination, the results of the exam are valid in New Mexico for a period not to exceed five years. If the educational coursework in local anesthesia was obtained by;

(a)

curriculum: a board approved written local anesthesia exam is required.

(b)

non-curriculum: a board approved written and clinical local anesthesia exam is required.

**B. Documentation:**

(1) copy of

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

(2) proof of

successful completion of educational coursework in local anesthesia;

(a)

transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as part of the regular curriculum for the dental hygiene degree; or

(b)

copy of certificate showing successful completion of a board approved continuing education program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training;

continuing education program must comply with requirements in 16.5.1.15 NMAC.

(3)

certificate or score card from a board approved exam indicating successful completion and date of local anesthesia exam, as required per Paragraph (9) of Subsection A of Section 16.5.28 NMAC.

[16.5.28.9 NMAC - Rp, 16.5.28.9 NMAC, 5/31/2023]

**16.5.28.10 CERTIFICATION BY CREDENTIALS:**

Applicants for certification in local anesthesia by credentials must possess the following qualifications and submit the required fees and documentation, along with a completed application.

**A. Qualifications:**

(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of educational coursework in local anesthesia by;

(a) curriculum: successful completion of an educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, or

(b) non-curriculum: successful completion of a board approved continuing educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC; and

(3) successfully pass a board approved examination, the results of the exam do not have to be within a specific time frame. If educational coursework in local anesthesia was obtained by;

(a) curriculum: a board approved written local anesthesia exam is required.

(b) non-curriculum: a board approved

written and clinical local anesthesia exam is required.

(4)

administration of local anesthesia in the practice of dental hygiene for at least three of the past five years.

**B. Documentation:**

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

(2) proof of successful completion of educational coursework in local anesthesia;

(a) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as part of the regular curriculum for the dental hygiene degree, or

(b) copy of certificate showing successful completion of a board approved continuing education program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training; continuing education program must comply with requirements in 16.5.1.15 NMAC; and

(3) proof of active certification to administer local anesthesia;

(a) letter of verification from each jurisdiction where the applicant holds a certificate for administering local anesthesia, or if the jurisdiction doesn't supply licensees with a separate certification, then a letter is needed stating that local anesthesia is not a separate designation from the license but is part of the dental hygiene license; sent directly form the board in each jurisdiction, and describing any disciplinary action taken against the applicant; and

(b) if the applicants previous license includes the local anesthesia designation or certification is expired or inactive the applicant must show proof of completion of a board

approved continuing education course in administration of local anesthesia that includes a hand on-portion. Continuing education course must comply with requirements in 16.5.1.15 NMAC.

(4) proof of administration of local anesthesia while engaged in the practice of dental hygiene in at least three of the past five consecutive years; proof may be by notarized letters from employers, supervisors of dental clinics of the uniformed services of the United States, or faculty administrators of schools of dental hygiene or dentistry.

[16.5.28.10 NMAC - Rp, 16.5.28.10 NMAC, 5/31/2023]

**16.5.28.11 CERTIFICATION OF LOCAL ANESTHESIA UNDER GENERAL SUPERVISION:**

An applicant for certification in local anesthesia under general supervision must possess the following qualifications and submit the following documentation along with a completed application.

A. An applicant must possess the following qualifications:

(1) have a current active license in good standing to practice dental hygiene in New Mexico;

(2) possess a New Mexico certification to administer local anesthesia under the indirect supervision of a licensed dentist; and

(3) have administered 20 cases of local anesthesia under the indirect supervision of a dentist during two consecutive years.

B. An applicant must provide the board office with the following documentation:

(1) a copy of a current New Mexico dental hygiene license;

(2) a copy of the applicant's certificate to administer local anesthesia under indirect supervision; and

(3) a signed affidavit, on a board-approved form, from the supervising dentist attesting



to the applicant's qualifications for a certificate to administer local anesthesia under general supervision. The affidavit is valid for subsequent or additional locations in which the applicant may practice.

[16.5.28.11 NMAC - Rp, 16.5.28.11 NMAC, 5/31/2023]

#### **16.5.28.12 CERTIFICATION**

**PROCEDURE:** Upon receipt of a completed local anesthesia application, including all required documentation and fees, a committee member or designee of the committee will review the application and determine eligibility for certification. [16.5.28.11 NMAC - Rp, 16.5.28.11 NMAC, 5/31/2023]

#### **16.5.28.13 LIMITATIONS OF LOCAL ANESTHESIA**

##### **ADMINISTRATION:**

Administration of local anesthetic under general supervision may occur when:

**A.** certification has been received as defined in Section 16.5.28.11 NMAC and meets the following requirements:

(1) the supervising or consulting dentist has written or verbally ordered local anesthetic for the specific patient; and

(2) verbal orders shall be converted to written record or electronic record in the patient's dental record; and

**B.** emergency medical services are available by:

(1) local 911 service with a response time of less than 10 minutes; or

(2) by arrangement with a local physician(s), oral surgeon, or other medical or dental professional holding an advanced cardiovascular life support (ACLS) certification; this arrangement to provide emergency services shall be in writing and on file in the board office with the dental hygienists license; and

**C.** indirect supervision is required for continuing education and clinical examinations.

[16.5.28.12 NMAC - Rp, 16.5.28.13 NMAC, 5/31/2023]

#### **HISTORY OF 16.5.28 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:

Article XI, Practice of Dental Hygiene, filed 3/12/1981.

Article XI, Practice of Dental Hygiene, filed 1/12/1982.

Article XI, Practice of Dental Hygiene, filed 3/30/1982.

Article XI, Practice of Dental Hygiene, filed 2/5/1988.

BOD Rule 9, Practice of Dental Hygiene, filed 2/9/1989.

That applicable portion of BOD Rule 9, Practice of Dental Hygiene replaced by BODHC Rule DH 8-95, Dental Hygienists, Local Anesthesia Certification, filed 5/5/1995.

#### **History of Repealed Material:**

16 5.28 NMAC, Dental Hygienists - Local Anesthesia Certification filed 3/16/2006, Repealed effective 5/31/2023.

#### **Other History:**

BODHC Rule DH 8-95, Dental Hygienists, Local Anesthesia Certification (filed 5/5/1995) was renumbered, reformatted, amended and replaced by 16 NMAC 5.28, Dental Hygienists, Local Anesthesia Certification, effective 9/30/1996.

16 NMAC 5.28, Dental Hygienists, Local Anesthesia Certification (filed 9/17/1996) renumbered, reformatted, amended and replaced by 16.5.28 NMAC, Dental Hygienists, Local Anesthesia Certification, effective 04/14/2006.

16 5.28 NMAC, Dental Hygienists - Local Anesthesia Certification filed 3/16/2006, Replaced by 16 5.28 NMAC, Dental Hygienists - Local Anesthesia Certification, effective 5/13/2023.

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

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

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

#### **PART 33 DENTAL ASSISTANTS, REQUIREMENTS FOR CERTIFICATION**

#### **16.5.33.1 ISSUING**

**AGENCY:** New Mexico Board of Dental Health Care.

[16.5.33.1 NMAC - Rp, 16.5.33.1 NMAC, 5/31/2023]

**16.5.33.2 SCOPE:** The provisions of 16.5.33 NMAC apply to all applicants for certification as a dental assistant in New Mexico. 16.5.33 NMAC also applies to dental assistants previously certified in New Mexico who have allowed their certificate to expire.

[16.5.33.2 NMAC - Rp, 16.5.33.2 NMAC, 5/31/2023]

#### **16.5.33.3 STATUTORY**

**AUTHORITY:** 16.5.33 NMAC is promulgated pursuant to the Dental Health Care Act, NMSA 1978 Section 61-5A-5 and Section 61-5A-6 (1996 Repl. Pam.).

[16.5.33.3 NMAC - Rp, 16.5.33.3 NMAC, 5/31/2023]

#### **16.5.33.4 DURATION:**

Permanent.

[16.5.33.4 NMAC - Rp, 16.5.33.4 NMAC, 5/31/2023]

#### **16.5.33.5 EFFECTIVE**

**DATE:** May 31, 2023, unless a later date is cited at the end of a section.

[16.5.33.5 NMAC - Rp, 16.5.33.5 NMAC, 5/31/2023]

#### **16.5.33.6 OBJECTIVE:**

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

**A.** independent preparation for the requirements;

**B.** attendance in a dental assisting program;

C. attendance in an accredited dental hygiene school; and  
 D. New residents of New Mexico with current certificates in expanded functions in their previous state (credentials).  
 [16.5.33.6 NMAC - Rp, 16.5.33.6 NMAC, 5/31/2023]

**16.5.33.7 DEFINITIONS:**

A. “DANB” means the dental assisting national board.

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

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed;
- (3) evaluates and approves the procedure performed before the patient departs the care setting; and

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

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

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

E. “Limited certificate” means a radiographic certificate that limits the holder to take only extra oral dental films.

F. “Rubber cup coronal polishing” means the use of a rubber cup or a bristle brush to remove soft debris and stain from above the gingival margin.

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

H. “Training program” means a course of study resulting in applicant eligibility for expanded function certification.  
 [16.5.33.7 NMAC - Rp, 16.5.33.7 NMAC, 5/31/2023]

**16.5.33.8 REQUIREMENTS:**

A. A licensee shall not allow dental assistants to perform oral radiography under any level of supervision that are not certified or in authorized training by the New Mexico board of dental health care.

B. A licensee shall not allow dental assistants to perform coronal polishing, topical fluoride application, or application of pit and fissure sealants under general supervision without certification by the board.

C. Dental assistants who perform oral radiography under any level of supervision are required to be certified by the board. Dental assistants who perform coronal polishing, application of topical fluoride or, application of pit and fissure sealants both intra and extra oral radiography under general supervision are required to be certified by the board except those enrolled in a recognized dental assisting program and complying with the following:

- (1) have completed the didactic portion of the radiography curriculum;
- (2) are exposing radiographs with supervision of a licensee or an assistant certified in radiography; and
- (3) if exposing x-rays on a human must have a written prescription from a dentist.

D. Expanded function certification offered by the board is distinct from certification offered by DANB. DANB certification gives the individual the right to use the initials C.D.A after their name, but does not qualify the individual to perform expanded functions without being certified by the board.  
 [16.5.33.8 NMAC - Rp, 16.5.33.8 NMAC, 5/31/2023]

**16.5.33.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR DENTAL RADIOGRAPHY:**

A. Education requirements:  
 (1) study by independent preparation or in a training course on radiation health and safety within the past 36 months; and  
 (2) have assisted with or observed five cases of full mouth intra oral radiographic series or five extra oral radiographs if applying for a limited certificate.

B. Examination requirements:  
 (1) Pass the board or DANB written examination on radiation health and safety.  
 (2) After passing the board or DANB written exam must apply to the board for a training permit which allows the dental assistant to perfect radiography technique. The permit is valid for six months after passing the written exam.

(3) Pass the technique test demonstrating proficiency in the exposure of a full-mouth intra oral radiographic series or panoramic film as established by the board within six months of passing the written exam.

(4) If an applicant chooses to provide only a panoramic film the certificate holder is limited to taking only extra oral films.

(5) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra oral radiographic series of radiographs or a panoramic film,

develop, mount, and label the films. The exam must be done independently and submitted to the board office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two board or committee members and serve as the technique test required for certification.

(6) Pass the take home jurisprudence examination.

(7) When extenuating circumstances exist as defined in 16.5.1.7 NMAC, and the dental assistant cannot submit to the board exposed radiographs, the dental assistant may request an extension of time. The request must be put in writing and submitted to the board office prior to the deadline.

C. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[16.5.33.9 NMAC - Rp, 16.5.33.9 NMAC, 5/31/2023]

**16.5.33.10 EDUCATION AND EXAMINATION REQUIREMENTS FOR RUBBER CUP CORONAL POLISHING AND APPLICATION OF TOPICAL FLUORIDE CERTIFICATION:**

A. Education requirements: Study by independent preparation or in a training course on rubber cup coronal polishing and application of topical fluoride and have assisted with or observed five cases of rubber cup coronal polishing on children and adults and five applications of topical fluoride.

B. Examination requirements:

(1) pass a board or DANB written examination on rubber cup coronal polishing and application of topical fluoride;

(2) perform the technique while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and application of topical fluoride on five adults and children and five applications of topical fluoride on children; and

(3) pass the take home jurisprudence examination.

C. Exemptions:

(1) a dental hygiene student enrolled in an accredited school of dental hygiene having passed a curriculum for rubber cup coronal polishing and application of topical fluoride may be granted a certificate without meeting the other requirements of this section;

(2) a dental assistant who is certified to perform rubber cup coronal polishing and application of topical fluoride in another state with requirements not less stringent than those in New Mexico may be certified based on credentials;

(3) a dental assistant who holds a current CDA certification issued by DANB may be issued a certificate for rubber cup coronal polishing and application of topical fluoride without meeting the other requirements of this section.

[16.5.33.10 NMAC - Rp, 16.5.33.10 NMAC, 5/31/2023]

**16.5.33.11 EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS FOR APPLICATION OF PIT AND FISSURE SEALANTS CERTIFICATION:**

A. Experience requirements: The applicant must have 2080 hours of clinical chair side dental assisting within the two years prior to applying for certification.

B. Education requirements:

(1) study by independent preparation or a training

course on pit and fissure sealant application; and

(2) assisted with and observed application of 12 pit and fissure sealants.

C. Examination requirements:

(1) pass a board or DANB examination on the application of pit and fissure sealants;

(2) following successful completion of the examination, apply pit and fissure sealants while being personally observed by a licensed dentist or dental hygienist on five patients;

(3) pass the take home jurisprudence examination.

D. Exemptions:

(1) a dental hygiene student enrolled in an accredited school of dental hygiene having passed a curriculum for pit and fissure sealants and rubber cup coronal polishing, may be granted a certificate without meeting the other requirements of this section;

(2) a dental assistant who is certified to perform application of pit and fissure sealants in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[16.5.33.11 NMAC - Rp, 16.5.33.11 NMAC, 5/31/2023]

**16.5.33.12 REQUIRED**

**DOCUMENTATION:** Each applicant for an expanded function dental assistant certificate must submit to the board or its agent the required fees and following documentation.

A. Completed application and the completed jurisprudence take home exam. Applications are valid for one year from the date of receipt.

B. Dental radiography:  
(1) proof of passing the board or DANB written examination on radiation health and safety;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in radiography verifying the applicant has:

(a) assisted with and observed five cases of full-mouth intra oral radiographic series or five panoramic films if applying for a limited certification; and

(b) that upon reaching competency, the applicant independently exposed the radiographs submitted for technique examination;

(3) the completed full mouth intra oral radiographic series or a panoramic film as required for the technique exam described in 16.5.33.9 NMAC.

C. Rubber cup coronal polishing and application of topical fluoride:

(1) proof of passing the board or DANB written examination for rubber cup coronal polishing and application of topical fluoride;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and topical fluoride application that the applicant has:

(a) assisted with and observed five cases of rubber cup coronal polishing on adults and children and five applications of topical fluoride on children; and

(b) while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing, application of topical fluoride provided rubber cup coronal polishing on five adults and five children; and, provide applications of topical fluoride on five children.

D. Pit and fissure sealants:

(1) proof of passing the board approved examination on application of pit and fissure sealants;

(2) an affidavit from a supervising dentist or dental hygienist verifying that the applicant has:

(a) assisted with and observed placement of 12 pit and fissure sealants; and

(b) while being personally observed by a dentist or dental hygienist, the applicant successfully place pit and fissure sealants on six patients.

(3) proof of 2080 hours of chair side dental assisting experience within two years immediately prior to application for certification;

(4) the completed jurisprudence exam. [16.5.33.12 NMAC - Rp, 16.5.33.12 NMAC, 5/31/2023]

**16.5.33.13 CERTIFICATION**

**BY CREDENTIALS:** Applicants for certification by credentials must possess the following qualifications:

A. verification of certification in all states where the applicant holds or has held a certificate to practice dental assisting; verification must be sent directly to the board office from the other state(s) board, must include a seal, and must attest to the status, issue date, expiration date, certification number, and other information contained on the form;

B. an official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function; or

C. proof of current, valid, certification as a CDA issued by DANB; and

D. all certifications, letters and validations must be received directly by the board office from the state, institution, or DANB;

E. the board may deny, stipulate, or otherwise limit a certification if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or the rules;

F. pass the jurisprudence exam with a score of a least seventy-five percent;

G. all certificates held by the applicant must have been in good standing for two years prior to application; and

H. the board may deny, stipulate, or otherwise limit

a certification if it is determined the applicant holds or has held a certification in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act or these rules.

[16.5.33.13 NMAC - Rp, 16.5.33.13 NMAC, 5/31/2023]

**16.5.33.14 RE-EXAMINATION PROCEDURE:**

A. An applicant who does not obtain a passing score on the required written exam must re-apply and pay the required fees in order to retake the examination.

B. Applicants for certification in radiography will be allowed to submit radiographs for the technique exam three times. With each failure the supervising dentist, dental hygienist, or dental assistant certified in dental radiography will be notified of their responsibility for training the applicant.

C. After a third failure, the applicant and supervising dentist, dental hygienist, or dental assistant certified in radiography will be required to submit to the board a plan for remediation, including steps that will be taken to assure clinical competency.

[16.5.33.14 NMAC - Rp, 16.5.33.14 NMAC, 5/31/2023]

**16.5.33.15 CERTIFICATION**

**PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees the Secretary-Treasurer or delegate of the board will review the application and determine eligibility for certification. The certificate must be displayed so that it is visible to the public.

[16.5.33.15 NMAC - Rp, 16.5.33.15 NMAC, 5/31/2023]

**16.5.33.16 [RESERVED]**

[16.5.33.16 NMAC - Rp, 16.5.33.16 NMAC, 5/31/2023]

**HISTORY OF 16.5.33 NMAC:**

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

BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 8/14/1969;  
 BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 9/21/1970;  
 BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 2/12/1973;  
 Article XII, Dental Assistants, filed 3/12/1981;  
 Article XII, Dental Assistants, filed 1/12/1982;  
 Article XII, Dental Assistants, filed 8/8/1984;  
 Article XII, Dental Assistants, filed 2/5/1988;  
 BOD Rule 10, Dental Assistants, filed 2/9/1989;  
 BODHC Rule DA 1-95, Dental Assistants, Practice and Certification, filed 5/5/1995.

**History of Repealed Material:**

Article XIV, Repeals BDE 73-1, Rules and Regulations of the New Mexico Board of Dentistry, filed 2/12/1973.  
 16.5.33 NMAC, Dental Assistants, Requirements for Certification, filed 12/1/2000 Repealed effective 5/31/2023.

**Other History:**

16 NMAC 5.33, Dental Assistants, Requirements for Certification, filed 9/17/1996;  
 16 NMAC 5.33, Dental Assistants, Requirements for Certification, filed 9/17/1996 - renumbered, reformatted and amended to 16.5.33 NMAC, Dental Assistants, Requirements for Certification, effective 12/14/2000.  
 16.5.33 NMAC, Dental Assistants, Requirements for Certification, filed 12/1/2000 Replaced by 16.5.33 NMAC, Dental Assistants, Requirements for Certification, effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL  
 AND PROFESSIONAL  
 LICENSING  
 CHAPTER 5 OCCUPATIONAL  
 AND PROFESSIONAL  
 LICENSING GENERAL  
 PROVISIONS  
 PART 39 DENTAL  
 ASSISTANTS, PRACTICE AND  
 SUPERVISION**

**16.5.39.1 ISSUING**  
**AGENCY:** New Mexico Board of Dental Health Care.  
 [16.5.39.1 NMAC - Rp, 16.5.39.1 NMAC, 5/31/2023]

**16.5.39.2 SCOPE:** The provisions of Part 39 of Chapter 5 apply to all dental assistants with current expanded function certification.  
 [16.5.39.2 NMAC - Rp, 16.5.39.2 NMAC, 5/31/2023]

**16.5.39.3 STATUTORY**  
**AUTHORITY:** Part 39 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, 61-5A-5 and 61-5A-6 NMSA 1978 (1996 Repl. Pam.).  
 [16.5.39.3 NMAC - Rp, 16.5.39.3 NMAC, 5/31/2023]

**16.5.39.4 DURATION:**  
 Permanent.  
 [16.5.39.4 NMAC - Rp, 16.5.39.4 NMAC, 5/31/2023]

**16.5.39.5 EFFECTIVE**  
**DATE:** May 31, 2023, unless a later date is cited at the end of a section.  
 [16.5.39.5 NMAC - Rp, 16.5.39.5 NMAC, 5/31/2023]

**16.5.39.6 OBJECTIVE:** To establish those procedures, which may be provided by dental assistants, the procedures which require expanded function certification, and the procedures which may not be performed by dental assistants, regardless of certification or

supervision.  
 [16.5.39.6 NMAC - Rp, 16.5.39.6 NMAC, 5/31/2023]

**16.5.39.7 DEFINITIONS:**  
**[RESERVED]**  
 [16.5.39.7 NMAC - Repealed, 5/31/2023]

**16.5.39.8 PRACTICE AND REQUIRED SUPERVISION:**  
 Dental assistants may provide any basic supportive dental procedure, not excluded elsewhere in rule or in statute if the procedure is performed under the indirect supervision of a dentist. The following expanded function procedures may be performed without certification under indirect supervision as long as the procedure is approved by the dentist or dental hygienist upon completion:

- A.** rubber cup coronal polishing (not to be represented as a prophylaxis);
- B.** application of topical fluoride;
- C.** pit and fissure sealant application.

[16.5.39.8 NMAC - Rp, 16.5.39.8 NMAC, 5/31/2023]

**16.5.39.9 PROCEDURES REQUIRING CERTIFICATION:**  
 The following procedures are allowable under general supervision if the dental assistant is certified by the Board:

- A.** Place and expose dental radiographs;
- B.** Rubber cup coronal polishing;
- C.** Application of topical fluoride; and
- D.** Pit and fissure sealants.

[16.5.39.9 NMAC - Rp, 16.5.39.9 NMAC, 5/31/2023]

**16.5.39.10 NON-ALLOWABLE PROCEDURES:**  
 Licensees may not delegate the performance of the following procedures to auxiliary personnel:

- A.** removal of, or addition to, the hard or soft tissue of the oral cavity;

- B.** diagnosis and treatment planning;
- C.** final impressions, to include physical and digital impressions, for multiple-unit restorations or prosthetic appliances;
- D.** final fitting and adaptation of prostheses;
- E.** final fitting, adaptation, seating and cementation of any fixed or removable dental appliance or restoration, including but not limited to inlays, crowns, space maintainers, habit devices, anti-snoring or sleep apnea appliances or splints;
- F.** irrigation and medication of canals, cone try-in, reaming, filing or filling of root canals;
- G.** other services defined as the practice of dentistry or dental hygiene in Subsection A, B and C of Section 61-5A-4 NMSA 1978;
- H.** bleaching or whitening teeth without direct or indirect supervision of a dentist; and
- I.** laser-assisted non-surgical periodontal treatment. [16.5.39.10 NMAC - Rp, 16.5.39.10 NMAC, 5/31/2023]

**HISTORY OF 16.5.39 NMAC:  
Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: Article XII, Dental Assistants, 3/12/1981; Article XII, Dental Assistants, 1/12//1982; Article XII, Dental Assistants, 8/8/1984; Article XII, Dental Assistants, 2/5/1988; BOD Rule 10, Dental Assistants, 2/9/1989; BODHC Rule DA 1-95, Dental Assistant, Practice and Certification, 5/5/1995.

**History of Repealed Material:**

16.5.39 NMAC, Dental Assistants, Practice and Certification filed 9/10/2002 Repealed effective 5/31/2023.

**Other History:**

BODHC Rule DA 1-95, Dental Assistant, Practice and Certification, filed 5/5/1995 was renumbered, reformatted to and replaced by 16 NMAC 5.39, Dental Assistants, Practice and Certification, filed 9/17/1996. 16 NMAC 5.39, Dental Assistants, Practice and Certification, filed 9/17/96 was renumbered, reformatted and amended to 16.5.39 NMAC, effective 9/30/2002. 16.5.39 NMAC, Dental Assistants, Practice and Certification filed 9/10/2002 Replaced by 16.5.39 NMAC, Dental Assistants, Practice and Certification effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 5 DENTISTRY  
(DENTISTS, DENTAL  
HYGIENISTS, ETC.)  
PART 42 EXPANDED  
FUNCTION DENTAL  
AUXILIARY, REQUIREMENTS  
FOR CERTIFICATION**

**16.5.42.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care. [16.5.42.1 NMAC - Rp, 16.5.42.1 NMAC, 5/31/2023]

**16.5.42.2 SCOPE:** The provisions of Part 42 of Chapter 5 apply to all applicants for certification; to active, expired and suspended certificate holders; and to anyone who requests a list of certified expanded function dental auxiliary or other public records. [16.5.42.2 NMAC - Rp, 16.5.42.2 NMAC, 5/31/2023]

**16.5.42.3 STATUTORY AUTHORITY:** Part 42 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Section 61-5A-5,

61-5A-6 and 61-5A-6.1 NMSA 1978. [16.5.42.3 NMAC - Rp, 16.5.42.3 NMAC, 5/31/2023]

**16.5.42.4 DURATION:** Permanent.

[16.5.42.4 NMAC - Rp, 16.5.42.4 NMAC, 5/31/2023]

**16.5.42.5 EFFECTIVE DATE:** May 31, 2023, unless a later date is cited at the end of a section. [16.5.42.5 NMAC - Rp, 16.5.42.5 NMAC, 5/31/2023]

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

**A.** Completed an expanded function dental auxiliary program at an institution where the dental assisting program is accredited by the joint commission on dental accreditation (CODA).

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

**C.** Candidates who possess a current certificate in good standing in expanded function dental auxiliary from another state or jurisdiction (credentials). [16.5.42.6 NMAC - Rp, 16.5.42.6 NMAC, 5/31/2023]

**16.5.42.7 DEFINITIONS:**  
**A. "Apprenticeship"**

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

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

**C. “Continuous employment”** means 1,000 hours per year for any five consecutive years.

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

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed; and
- (3) evaluates and approves the procedure performed before the patient departs the care setting.

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

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

**G. “Supervising dentist”** means a New Mexico licensed dentist who has no current action or inquires pending by the board and who provides supervision, instruction and recommendation for an EFDA candidate to the board. [16.5.42.7 NMAC - Rp, 16.5.42.7 NMAC, 5/31/2023]

**16.5.42.8 REQUIREMENTS:** EFDA who performs the duties defined under 16.5.46.9 NMAC are required to be certified by the board. [16.5.42.8 NMAC - Rp, 16.5.42.8 NMAC, 5/31/2023]

**16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL AUXILIARY:**

**A.** satisfactory completion of an expanded function dental auxiliary course at an institution where the dental assisting program is accredited by the joint commission on dental accreditation, and approved by the board. The applicant must be certified in all four expanded functions as defined in 16.5.33 NMAC; or

**B.** for dental auxiliaries that have five years’ experience and “independent preparation” for the requirements:

- (1) applicant must have a minimum of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;
- (2) achieved certification in all expanded functions as defined in 16.5.33 NMAC;
- (3) taken a course of study in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function and passed a post-test approved by the board verifying readiness for taking the certification examination;
- (4) recommended for an expanded function dental auxiliary (EFDA) certification by the supervising dentist as defined in Subsection G of 16.5.42.7 NMAC;
- (5) instructors must have higher or same level of licensure or certification in respective courses they are teaching;

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

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

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

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

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

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

**F.** after passing a board accepted examination or being certified by credentials, EFDA candidates must complete an apprenticeship under the close personal supervision of a supervising dentist;

(1) the board will send to the EFDA candidate upon receipt of the completed application the following:

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

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

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

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

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

[16.5.42.9 NMAC - Rp, 16.5.42.9 NMAC, 5/31/2023]

**16.5.42.10 REQUIRED DOCUMENTATION:**

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

**A.** Each application for licensure who completed an EFDA program as defined in Subsection A

of 16.5.42.9 NMAC must submit the following documentation:

- (1) completed application;
- (2) official transcripts or certification verifying successful completion of an EFDA program accredited by the commission on dental accreditation;
- (3) copy of clinical examination accepted by the board for certification as EDFA; the results of the exam are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination;

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

(4) affidavit letter from supervising dentists.

(5) proof of certifications in all 4 expanded functions as defined in 16.5.33 NMAC no later than July 1, 2019.

**B.** An applicant who has not graduated from a program as defined in Subsection A of 16.5.42.9 NMAC can apply for certification if they meet all requirements in Subsection B, C, D and F of 16.5.42.9 NMAC and must submit the following:

- (1) completed application;
- (2) shall provide proof of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;
- (3) shall have achieved certification in all expanded functions as defined in 16.5.33 NMAC;

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

(5) shall provide an affidavit executed on dentist letterhead from a supervising

dentist recommending the applicant for EFDA certification and verifying the applicant's competency; and  
(6) copy of clinical examination score card or certificate.

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

(1) completed application;

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

(3) copy of clinical examination score card or certificate; the results of the examination are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination, and

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

(4) affidavit letter from the supervising dentist of competency.  
[16.5.42.10 NMAC - Rp, 16.5.42.10 NMAC, 5/31/2023]

**16.5.42.11 CERTIFICATION**

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

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

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

[16.5.42.11 NMAC - Rp, 16.5.42.11 NMAC, 5/31/2023 1/9/2012]

**16.5.42.12 TIMELINE FOR PREVIOUSLY ISSUED EFDA PERMITS AND EXPANDED FUNCTIONS:** All current EFDA

certification permit holders must have all four expanded functions as defined in 16.5.33 NMAC no later than July 1, 2019. EFDA permits will suspend automatically if such expanded functions certifications are not current. Once those expanded functions are certified, the EFDA permit will become valid until its regular expiration period.

[16.5.42.12 NMAC - Rp, 16.5.42.12 NMAC, 5/31/2023]

**HISTORY OF 16.5.42 NMAC: [RESERVED]**

**History of Repealed Material:** 16.5.42 NMAC, Expanded Function Dental Auxiliary, Requirements For Certification filed 12/9/2011 Repealed effective 5/31/2023.

**Other History:** 16.5.42 NMAC, Expanded Function Dental Auxiliary, Requirements For Certification filed 12/9/2011 Replaced by 16.5.42 NMAC, Expanded Function Dental Auxiliary, Requirements For Certification effective 5/31/2023.

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

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.) PART 61 DENTAL THERAPISTS, LICENSURE AND CERTIFICATION**

**16.5.61.1 ISSUING AGENCY:** New Mexico Board of Dental Health Care.  
[16.5.61.1 NMAC - Rp, 16.5.61.1 NMAC, 5/31/2023]

**16.5.61.2 SCOPE:** The provisions of 16.5.61 NMAC apply to all applicants for licensure as a dental therapist.



[16.5.61.2 NMAC - Rp, 16.5.61.2 NMAC, 5/31/2023]

**16.5.61.3 STATUTORY**

**AUTHORITY:** 16.5.61 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-13.1-3 NMSA 1978.

[16.5.61.3 NMAC - Rp, 16.5.61.3 NMAC, 5/31/2023]

**16.5.61.4 DURATION:**

Permanent.

[16.5.61.4 NMAC - Rp, 16.5.61.4 NMAC, 5/31/2023]

**16.5.61.5 EFFECTIVE**

**DATE:** May 31, 2023, unless a later date is cited at the end of a section.

[16.5.61.5 NMAC - Rp, 16.5.61.5 NMAC, 5/31/2023]

**16.5.61.6 OBJECTIVE:**

To establish the requirements for application for licensure as a dental therapist.

[16.5.61.6 NMAC - Rp, 16.5.61.6 NMAC, 5/31/2023]

**16.5.61.7 DEFINITIONS:**

**“dental therapy post-graduate clinical experience”** means a clinical education program as defined in Section 61-5A-13.1 NMSA 1978 to provide advanced training for dental therapists in patient treatment and technical competency.

[16.5.61.7 NMAC - Rp, 16.5.61.7 NMAC, 5/31/2023]

**16.5.61.8 PREREQUISITE REQUIREMENTS FOR DENTAL THERAPIST LICENSE:**

Each applicant for a license to practice dental therapy must possess the following qualifications:

**A.** licensed as a dental hygienist in New Mexico;

**B.** graduated and received a degree from an accredited dental therapy education program as defined in Section 61-5A-13.1 NMSA 1978;

**C.** passed a clinical examination approved by the board; the results of the clinical examination are valid in New Mexico for a period not to exceed five years;

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

**(2)** results of the clinical examination must be sent directly to the board office.

**D.** Take and pass the New Mexico jurisprudence exam for dental therapy.

[16.5.61.8 NMAC - Rp, 16.5.61.8 NMAC, 5/31/2023]

**16.5.61.9 DOCUMENTATION**

**REQUIREMENTS:** Each applicant for a license must submit the required fees and following documentation:

**A.** completed application; applications are valid for one year from the date of receipt;

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

**C.** a copy of clinical examination score card;

**D.** proof of having taken a course in infection control technique or graduation from a dental therapy program within the past 12 months;

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

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

**G.** verification of licensure in all states where the applicant holds or has held a license in good standing to practice dental therapy, or other health care profession; verification must be sent directly to the office from the other

state(s) board, must include a seal, and must attest to the status, issue date, license number, and other information contained on the form. [16.5.61.9 NMAC - Rp, 16.5.61.9 NMAC, 5/31/2023]

**16.5.61.10 LICENSURE**

**PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

**A.** Initial dental therapist licenses are issued for a period not to exceed three years, as defined in Section of 16.5.63.8 NMAC.

**B.** Any application that cannot be approved by the delegate of the board will be reviewed by the entire board at the next scheduled meeting.

[16.5.61.10 NMAC - Rp, 16.5.61.10 NMAC, 5/31/2023]

**16.5.61.11 DENTAL THERAPY POST-GRADUATE CLINICAL EXPERIENCE:**

A dental therapist shall qualify to perform the procedures as stated in Section 61-5A-13.2 NMSA 1978 under general supervision, upon successful completion of a dental post-graduate clinical experience and submission to the board office of the following documentation.

**A.** a current active license in good standing to practice dental therapy in New Mexico;

**B.** proof of successful completion from a dental therapy post-graduate clinical experience which;

**(1)** meets criteria developed and approved by the board;

**(2)** is sanctioned by a regionally accredited educational institution with a program accredited by the commission on dental accreditation; and

**(3)** provides advanced training;

(a)  
of at least 2000 hours following  
completion of a CODA accredited  
dental therapy education program: or

(b)  
of at least 1500 hours following  
completion of a CODA accredited  
dental therapy education program  
and applicant can document active  
practice experience as a dental  
hygienist for five years or more.

C. There is no  
fee associated for filing this  
documentation.

D. The board will re-  
issue the dental therapy license with a  
designation of the completion of the  
post graduate clinical experience.  
[16.5.61.11 NMAC - Rp, 16.5.61.11  
NMAC, 5/31/2023]

**HISTORY OF 16.5.61 NMAC:  
[RESERVED]**

**History of Repealed Material:**  
16.5.61 NMAC, Dental Therapists,  
Licensure And Certification filed  
4/30/2021, Repealed effective  
5/31/2023.

**Other History:**  
16.5.61 NMAC, Dental Therapists,  
Licensure And Certification filed  
4/30/2021 Replaced 16.5.61 NMAC,  
Dental Therapists, Licensure And  
Certification effective 5/31/2023.

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**SUPERINTENDENT OF  
INSURANCE,  
OFFICE OF**

**This is an amendment to Section  
5 of 13.10.34 NMAC, effective  
7/1/2023.**

**13.10.34.5 EFFECTIVE  
DATE:** [~~July 1, 2023~~] January 1,  
2024, unless a later date is cited at the  
end of a section.  
[13.10.34.5 NMAC - Rp, 13.10.34.5  
NMAC, 07/01/2023, A, 7/1/2023]  
[From the date of publication of this  
rule in the New Mexico register to  
January 1, 2024, all carriers are given  
more time to make the necessary

changes to business practices to be in  
compliance with the rule.]

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**End of Adopted Rules**

## 2023 New Mexico Register Submittal Deadlines and Publication Dates Volume XXXIV, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 5</b>	<b>January 18</b>
<b>Issue 2</b>	<b>January 19</b>	<b>January 31</b>
<b>Issue 3</b>	<b>February 2</b>	<b>February 14</b>
<b>Issue 4</b>	<b>February 16</b>	<b>February 28</b>
<b>Issue 5</b>	<b>March 2</b>	<b>March 14</b>
<b>Issue 6</b>	<b>March 16</b>	<b>March 28</b>
<b>Issue 7</b>	<b>March 30</b>	<b>April 11</b>
<b>Issue 8</b>	<b>April 13</b>	<b>April 25</b>
<b>Issue 9</b>	<b>May 4</b>	<b>May 16</b>
<b>Issue 10</b>	<b>May 18</b>	<b>May 31</b>
<b>Issue 11</b>	<b>June 1</b>	<b>June 13</b>
<b>Issue 12</b>	<b>June 15</b>	<b>June 27</b>
<b>Issue 13</b>	<b>July 7</b>	<b>July 18</b>
<b>Issue 14</b>	<b>July 20</b>	<b>July 31</b>
<b>Issue 15</b>	<b>August 3</b>	<b>August 15</b>
<b>Issue 16</b>	<b>August 17</b>	<b>August 29</b>
<b>Issue 17</b>	<b>August 31</b>	<b>September 12</b>
<b>Issue 18</b>	<b>September 14</b>	<b>September 26</b>
<b>Issue 19</b>	<b>September 28</b>	<b>October 10</b>
<b>Issue 20</b>	<b>October 12</b>	<b>October 24</b>
<b>Issue 21</b>	<b>October 26</b>	<b>November 7</b>
<b>Issue 22</b>	<b>November 9</b>	<b>November 21</b>
<b>Issue 23</b>	<b>November 22</b>	<b>December 5</b>
<b>Issue 24</b>	<b>December 7</b>	<b>December 19</b>

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