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and filing of proposed, adopted and emergency rules.

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Notices of Rulemaking and Proposed Rules

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a rule hearing on Friday, January 12, 2024 beginning at 9:00 a.m. at the Santa Fe Community Convention Center, 201 W Marcy Street, Santa Fe, NM 87501. For instructions on how to attend this meeting, either in-person or virtually, visit the Department’s website at <https://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on proposed changes for the Hunter Education Rule.

Synopsis for the Hunter Education Rule

The proposal is to update the Hunter Education Rule, 19.36.3 NMAC, which will include changes to the existing rule and will become effective April 1, 2024 through March 31, 2028.

PROPOSED CHANGES TO THE HUNTER EDUCATION RULE

The proposed changes to the Hunter Education Rule will restrict the acceptance of out-of-state Hunter Education certifications to ages 9 and above, due to some states having no minimum age restrictions on their online Hunter Education certifications. The proposed changes will be added to the existing Hunter Education Rule and will become effective April 1, 2024 through March 31, 2028.

A full text version of changes in available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to

the Hunter Education Rule at: DGF-HunterEducation-Rule@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on January 10, 2024. The final proposed rules will be voted on by the Commission during a rule hearing on January 12, 2024. Interested persons may also provide data, views or arguments, orally or in writing.

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

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at (505) 476-8000 if a summary or other type of accessible format is needed.

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

GAMING CONTROL BOARD

AMENDED NOTICE OF PROPOSED RULEMAKING

The Gaming Control Board hereby gives notice that the Board will conduct a public comment hearing on the described rules below.

The public comment hearing will be held on Monday, January 8, 2024 from 9:00 am to 12:00 pm at the Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113. Interested individuals may also attend via Microsoft Teams as follows:

Telephonically: 1-505-312-4308, Conference ID: 924 966 459#
Join the meeting through a Web Browser or the MS Teams Application:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzdiZWZmZWQtOWFmYy00ZmQxLTgxYmEtNzgwM2Q0MmYxOWQw%40thead.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c99f99fc-5a8a-47ab-8f6e-c7b4dc8de83e%22%7d

The public comment hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Subsection G of 15.1.10.7 NMAC Definitions:

Purpose: To help nonprofits better allocate money in light of recent stator changes to Section 60-2E-47 NMSA 1978 of the Gaming Control Act.

Summary of Full Text: The Definitions section provides definitions of commonly used terms in the Gaming Control Regulations.

Specifically, this rule will only be revised as to Subsection G in that the definition of “allowable gaming expenses” by removing all of the sub-subsections and simply defining “allowable gaming expenses as “license fees, including renewals and gaming machine license fees”.

15.1.10.25 NMAC - Payment of Winnings:

Purpose: Revising the maximum jackpot amounts to conform to recently passed legislation. The revisions are also designed to protect nonprofit clubs from having to produce payouts in excess of the jackpots that are supposed to be set on their machines by requiring that the intended maximum jackpots be posted on the machines and making distributors responsible for the difference should the machines produce a jackpot above that requested by the nonprofit organization.

Summary of Full Text: The maximum payout allowed for any gaming machine located within a nonprofit organization is raised from \$4,000 to \$10,000. A section is also added to require the posting of the intended jackpot amount on each machine and to make distributors liable for the excess amount should any machine display a jackpot above the intended amount.

15.1.10.45 NMAC - Nonprofit Contracts:

Purpose: To keep the Board informed of agreements concerning requested jackpot amounts on machines located in nonprofit organizations for purposes of ensuring that machines are being set at the jackpots requested by the nonprofits so they may avoid having to pay jackpots above what they had intended and above what they can afford.

Summary: Language will be added to the current Rule requiring lease agreements between distributors and nonprofits to state the machines

and their max amounts set. Lease agreements between distributors and nonprofit organizations already require approval by the Board.

Subsection D of 15.1.10.32 NMAC - Use of Gaming Receipts by Nonprofit Operator Licensee:

Purpose: Revising the amount of net take nonprofits give to charitable organizations in Subsection D to conform with recently passed legislation modifying Section 60-2E-47 NMSA 1978 of the Gaming Control Act.

Summary: The Rule will be revised to change sixty percent to twenty percent.

15.1.5.23 NMAC - Application Fees:

Purpose: The purpose is to update application fees as they have not changed since the inception of the agency.

Summary:
The Rule will be revised to raise application fees as follows:
Manufacturer license application fees will be raised from \$10,000 to \$15,000
Associated Equipment Manufacturer license application fees will be raised from \$2,500 to \$5,000
Distributor license application fees will be raised from \$5,000 to \$7,500

Authority: Section 60-2E-7 NMSA1978 and Section 60-2E-8 NMSA 1978.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments:

Copies of the proposed rules are available on the Gaming Control Board’s website at <https://www.gcb.nm.gov/rulemaking/> or can be obtained by emailing GCB-PIO@state.nm.us. The proposed rules are also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments

may be sent to GCB-PIO@state.nm.us, or by regular mail at Attn: Michelle Pato - proposed rule, The Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113. The deadline to receive written comment is Monday, January 8, 2024. All written public comments will be posted on the website throughout the written comment period at: <https://www.gcb.nm.gov/rulemaking/>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 841-9700.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on January 10, 2024. The hearing will begin at 10:30 a.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed adoption of a new rule to **5.7.36 NMAC, COMMUNITY GOVERNANCE ATTORNEY PROGRAM**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTAxYWVvKZDEtMmQ2YS00YzhhLWI0NWQtMWQ2MTVmYTY4N2Fh%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%220id%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 202 170 69#

Purpose:
The Department proposes adoption of new rule 5.7.36 NMAC. The new

proposed rule establishes regulations and procedures for the Community Governance Attorney Program created by S.B.244, 54th Leg., 1st Sess. (N.M. 2019). The purpose of the program is to provide financial support to qualified third-year law students at the University of New Mexico School of Law and fifty percent of the salary for the recipients' first two years of employment providing legal services for to Acequias, Land Grants-Mercedes or low-income residents of Colonias. The forgivable loans are intended to help defray the cost of attendance.

Summary of proposed rule:

The proposed rule lays out the various duties of the New Mexico Higher Education Department and the Community Governance Attorney Commission. The rule includes the make-up of the Commission; the requirements for participant eligibility; the process of granting, forgiving or repayment of the loan; the soliciting of employers; and reporting requirements.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at <http://www.hed.nm.gov> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on January 10, 2024 from 10:30 a.m. until 11:00 a.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on January 5, 2024.** Please note that any written or verbal comments received will become part of the

rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Section 21-21Q-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

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

**NOTICE OF REGULAR BOARD
MEETING AND RULE HEARING**

The New Mexico Board of Pharmacy will convene on January 18th and 19th, 2024 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting and rule hearing.

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/pharmacy/pharmacy-board-information/pharmacy-board-meetings/>. All proposed language regarding rule hearings is linked to the *Agenda*, the *Notice to the Public* on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Board Administrator, at the general e-mail pharmacy.board@rld.nm.gov at least one week in advance of the scheduled meeting, as public comment is allowed during the rule hearing.

The board may go into Executive Session to discuss items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Board Administrator at 505-222-9830 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Board Administrator at 505-222-9830 or e-mail pharmacy.board@rld.nm.gov if a summary or other type of accessible format is needed.

The Board will address:

All Board Matters:

Rule Hearing: January 18th, 2024, at 9:10 a.m.

16.19.1 NMAC – GENERAL PROVISIONS – Sections 1, 3, and 9, administrative updates. Section 6, remove reference to surety bonds. Section 8, update meeting location to include virtual, and remove requirement that majority of board request waiver for alternate meeting location. Remove obsolete reference to board-specified location

for examinations. Section 11, update registry requirement for pharmacists and pharmacist interns, the online license look up satisfies the requirement. Remove obsolete registry language.

STATUTORY AUTHORITY: The board of pharmacy is authorized under Paragraph (1) of Subsection A of Section 61-11-6 NMSA 1978 to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Paragraph (3) of Subsection A of Section 61-11-6 directs the board to provide for the issuance and renewal of licenses for pharmacists. Paragraphs (12), (13) and (14) of Subsection A of Section 61-11-6 NMSA 1978 authorize the board to employ and define the duties of an executive officer, inspectors, and qualified employees. Subsection B of Section 61-11-5 NMSA 1978 directs the board to meet at least once every three months.

16.19.2 NMAC – EXAMINATIONS – Sections 1, 3, and 6, administrative updates. Section 7, define abbreviations. Section 8, incorporate defined abbreviations, and specify that passing score for licensure examinations is that set by National Association of Boards of Pharmacy (NABP). Section 9, a candidate may not take either the NAPLEX or MPJE more than four consecutive times without passing, and the time limit is three years from the first exam attempt (respectively). This is a decrease from five consecutive times, and the time limit is new. Section 10, remove agreement of licensure requirement. Section 13, require current photograph (decreased from two), and remove requirement that back of photograph be signed and dated. Section 14, remove obsolete examination and extraneous language. Increase from one to two years the period of inactivity after which a pharmacist must take the jurisprudence examination and meet additional requirements.

STATUTORY AUTHORITY: Section 61-11-9 NMSA 1978 establishes qualifications for licensure as a pharmacist by examination. Paragraph (2) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of pharmacy provide for at least two examinations a year of applicants for licensure as pharmacists.

16.19.3 - RECIPROCITY – Sections 1 and 8, administrative updates. Sections 9 and 10, language regarding ineligibility is moved to applicant ineligible (from eligibility) section, redundant subsection is removed, and the period of inactivity after which a pharmacist must take the jurisprudence examination (MPJE) and meet additional requirements is increased from one to two years. Section 11, replace specified passing score with language that applicant must pass the MPJE prior to license issuance. Subsection B, administrative update. Subsection C, a candidate may not take the MPJE more than four consecutive times without passing, and the time limit is three years from the first exam attempt (decrease from five times and time limit is new). Section 12, require current photograph (decreased from two) and remove requirement that back be signed and dated. Section 13, update evidence of qualifications, remove language regarding ineligibility for licensure if the board does not find the applicant to be competent and qualified to function as a pharmacist (the board requires education, experience, qualifications, and license examinations, rather than individualized competence assessments, per se). Language regarding good moral character is removed, and reference to 16.19.4.8 (gross immorality) replaces pharmacy, liquor, narcotic or drug laws. Section 14, pending indictment or alleged violations is updated with reference to 16.19.4.8 replacing pharmacy, liquor, narcotic or drug laws. Section 15, temporary license language is clarified, and \$50 temporary license fee does not go towards eventual

licensing fee. Requirement that the licensing agency in each state submit a statement of good standing is removed (the board receives a certified report from NABP for each reciprocity applicant which includes all pharmacist licenses, by state and standing).

STATUTORY AUTHORITY: Section 61-11-10 NMSA 1978 authorizes the board of pharmacy to issue a certificate of licensure as a pharmacist, with or without examination, by reciprocity.

16.19.4 NMAC - PHARMACIST: Section 7, definitions - approved (continuing education, CE) provider is redesignated as accredited provider, with corresponding subsequent updates. Dangerous Drug definition is updated to include additional statements from statute, obsolete definition is removed, and additional administrative updates are made. Sections 9 and 10, administrative updates. Also in Section 10, remove open book test and reference to providing law programs in each pharmacy district (the law updates are now provided virtually, and all sessions are open to licensees). Section 11, administrative updates. Section 12, impaired pharmacist is changed to impaired licensee or registrant, and applies to applicants for licensure or registration. The procedures are updated, and reference to intervention and treatment removed. Disciplinary sanctions paragraph is updated and clarified. Confidentiality and civil immunity citations are updated. Section 15, inactive status, the time period after which a pharmacist license becomes inactive is increased from one to two years, with corresponding update to requirements when applying for active status. Section 16, administrative updates. Section 17, pharmacist clinician continuing education requirement changed from 20 live (hours) to 20 total of which 10 are live, and administrative updates are made.

STATUTORY AUTHORITY:

Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Those provisions include the authority to:

A. deny or take disciplinary action with respect to any certificate of registration or license held or applied for under the Pharmacy Act, Section 61-11-20 NMSA 1978;

B. require and establish criteria for continuing education as a condition of renewal of a pharmacist license, Paragraph (4) of Subsection A of Section 61-11-6 NMSA 1978;

C. issue permits or licenses, as defined and limited by board regulation, to nursing homes, industrial and public health clinics and home care services, Paragraph (6) of Subsection A of Section 61-11-6 and 61-11-14 NMSA 1978;

D. provide for the issuance and renewal of licenses for pharmacists, Paragraph (3) of Subsection A of Section 61-11-6, and 61-11-13 NMSA 1978;

E. provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline, Paragraph (5) of Subsection A of Section 61-11-6 NMSA 1978; and

F. adopt rules and regulations that establish patient counseling requirements, Paragraph (18) of Subsection A of 61-11-6 NMSA 1978. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the board is required to establish regulations governing certification as a pharmacist clinician. The Impaired Pharmacists Act, Sections 61-11A-1 to 61-11A-8 NMSA 1978, requires the establishment by the board of a plan for treatment and rehabilitation of impaired pharmacists. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board of pharmacy to promulgate rules relating to listing specific criminal convictions

that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board of pharmacy from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board of pharmacy the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.

16.19.6 NMAC – PHARMACIES – Section 30, repackaging and distribution, is amended to allow a contracted pharmacy to provide appropriately labeled and packaged medication to a correctional facility to provide to an inmate upon release to avoid interruption in prescribed treatment.

STATUTORY AUTHORITY: Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of Pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.

16.19.11 – NURSING HOME DRUG CONTROL – Section 7, definition of licensed custodial care facility is updated.

STATUTORY AUTHORITY: Section 61-11-6.A(6) NMSA 1978 authorizes the Board of Pharmacy to license nursing home drug facilities and all places where dangerous drugs are dispensed or administered and to provide for the inspection of their facilities and activities. Section 61-11-14.B(9) NMSA 1978 directs the Board to issue drug custodial licenses for licensed nursing homes and to adopt regulations that define and limit those licenses.

16.19.12 - FEES – Section 9 is reworded to make it more clear that the waiver of registration fee is for change of duty location to New Mexico. Section 13, roster of board of pharmacy facility license fee is removed.

STATUTORY AUTHORITY: Section 30-31-11 NMSA 1978 authorizes the board of pharmacy (“board”) to charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31B-6 NMSA 1978 authorizes the board to charge reasonable fees for the registration and control of the manufacture, possession, transfer and transportation of drug precursors. Sections 61-11-12, 61-11-13, and 61-11-14 NMSA 1978 authorize the board to charge, and limit the maximum charges for:

A. applications for registration and renewal of registration as a pharmacist, pharmacist intern, or pharmacy technician; and

B. applications for the registration of retail pharmacies, wholesale drug distributors, nonresident pharmacies, drug manufacturers, hospital pharmacies, drug rooms, nursing homes, industrial or public health clinics, the department of health clinics and health facilities, home care services, wholesalers, retailers and distributors of legend-bearing veterinary drugs, medicinal gas repackagers, medicinal gas sellers, outsourcing facilities, repackagers, and third party logistics providers. Section 61-1-34 NMSA 1978 authorizes the board to waive license fees for the first three years for military service members, spouses, dependents, and veterans where the license is issued by reciprocity.

Disciplinary Hearing(s): no disciplinary hearings are currently scheduled. If scheduling occurs, the final hearing date and time for each case will be included in the agenda posted to the board’s website at least 72 hours before the meeting.

Executive Director's Report:

Published in NM Register: December 5, 2023

**End of Notices of
Rulemaking**

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 20.2.77 NMAC Sections 2 and 9, effective 12/19/2023

20.2.77.2 SCOPE: Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through [January 15, 2017] June 28, 2023.

[06/16/1995, 11/19/1997, 09/08/1999; 20.2.77.2 NMAC - Rn & A, 20 NMAC 2.77.101, 06/23/2000; A, 02/18/2002; A, 06/13/2003; A, 06/15/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

20.2.77.9 ADOPTION OF 40 CFR PART 60: Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through [January 15, 2017] June 28, 2023 are hereby incorporated into this part (20.2.77 NMAC).

[06/16/1995, 08/02/1996, 11/19/1997, 09/08/1999; 20.2.77.9 NMAC - Rn & A, 20 NMAC 2.77.107, 06/02/2000; A, 02/18/2002; A, 06/13/2003; A, 06/15/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.2.78 NMAC Sections 2, 3 and 9, effective 12/19/2023

20.2.78.2 SCOPE: All sources emitting hazardous air

pollutants which are subject to the requirements of 40 CFR Part 61, as amended through [January 15, 2017] June 28, 2023.

[06/16/1995, 11/19/1997, 09/08/1999; 20.2.78.2 NMAC - Rn 20 NMAC 2.78.101 & A, 06/23/2000; A, 02/18/2002; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

20.2.78.3 STATUTORY

AUTHORITY: The environmental improvement board “shall promulgate regulations and standards in...air quality management” [~~Section 74-1-8-A~~] Subsection A of Section 74-1-8 NMSA 1978 and “regulations adopted by the environmental improvement board...may...prescribe standards of performance for sources and emissions standards for hazardous air pollutants...” [~~Section 74-2-5-C~~] Subsection D of Section 74-2-5 NMSA 1978.

[06/16/1995; 20.2.78.3 NMAC - Rn, 20 NMAC 2.78.102 06/23/2000; A, 12/19/2023]

20.2.78.9 ADOPTION

OF 40 CFR PART 61: Except as otherwise provided, the national emission standards for hazardous air pollutants as promulgated by the United States environmental protection agency, 40 CFR Part 61, as amended in the Federal Register through [January 15, 2017] June 28, 2023 are hereby incorporated into this part 20.2.78 NMAC.

[06/16/1995, 08/02/1996, 11/19/1997, 09/08/1999; 20.2.78.9 NMAC - Rn 20 NMAC 2.78.107 & A, 06/23/2000; A, 02/18/2002; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.2.82 NMAC Sections 2, 3 and 8, effective 12/19/2023

20.2.82.2 SCOPE: All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through [January 15, 2017] June 28, 2023.

[Rn, 20 NMAC 2.82.2, 08/14/1998; A, 08/14/1998; A, 09/08/1999; 20.2.82.2 NMAC - Rn & A, 20 NMAC 2.82.101, 06/23/2000; A, 02/18/2002; A, 06/13/2003; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

20.2.82.3 STATUTORY

AUTHORITY: Environmental Improvement Act, Paragraphs (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Subsections A, B and [€] D of Section 74-2-5. Subsection [€] D of Section 74-2-5 provides that “regulations adopted by the environmental improvement board may prescribe standards of performance for sources and emissions standards for hazardous air pollutants...”

[Rn, 20 NMAC 2.82.3, 08/14/1998; A, 08/14/1998; 20.2.82.3 NMAC - Rn, 20 NMAC 2.82.102, 06/23/2000; A, 12/19/2023]

20.2.82.8 ADOPTION OF 40

CFR PART 63: Except as otherwise provided in Section 20.2.82.10 NMAC (below), the national emission standards for hazardous air pollutants for source categories as promulgated

by the United States environmental protection agency, 40 CFR Part 63, as amended in the Federal Register through [January 15, 2017] June 28, 2023 are hereby incorporated into this part (20.2.82 NMAC).
[Rn, 20 NMAC 2.82.7, 08/14/1998; A, 08/14/1998; A, 09/08/1999; 20.2.82.8 NMAC - Rn & A, 20 NMAC 2.82.106, 06/23/2000; A, 02/18/2002; A, 06/13/2003; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

MEDICAL BOARD

The New Mexico Medical Board is repealing 16.10.5 NMAC - Disciplinary Power Of The Board filed 3/18/2022 and replacing it with 16.10.5 NMAC - Disciplinary Power Of The Board, effective 12/5/2023.

The New Mexico Medical Board is repealing 16.10.6 NMAC - Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022 and replacing it with 16.10.6 NMAC - Complaint Procedure And Institution Of Disciplinary, action, effective 12/5/2023.

MEDICAL BOARD

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 5 DISCIPLINARY POWER OF THE BOARD**

16.10.5.1 ISSUING AGENCY: New Mexico Medical Board, hereafter called the board. [16.10.5.1 NMAC - Rp, 16.10.5.1 NMAC, 12/5/2023]

16.10.5.2 SCOPE: This part applies to licensees and applicants for licensure. [16.10.5.2 NMAC - Rp, 16.10.5.2 NMAC, 12/5/2023]

16.10.5.3 STATUTORY AUTHORITY: This part is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, Section 61-1-1 through 61-1-33 NMSA 1978, the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978, the Genetic Counseling Act, Section 61-6A-1 through 61-6A-10 NMSA 1978, the Polysomnography Practice Act, Section 61-6B-1 through 61-6B-10 NMSA 1978, the Naprapathic Act, Sections 61-12F-1 through 61-12F-13 NMSA 1978, and the Naturopathic Doctors' Act, Section 61-12G-1 through 61-12G-11 NMSA 1978. [16.10.5.3 NMAC - Rp, 16.10.5.3 NMAC, 12/5/2023]

16.10.5.4 DURATION: Permanent. [16.10.5.4 NMAC - Rp, 16.10.5.4 NMAC, 12/5/2023]

16.10.5.5 EFFECTIVE DATE: December 5, 2023, unless a later date at the end of a section. [16.10.5.5 NMAC - Rp, 16.10.5.5 NMAC, 12/5/2023]

16.10.5.6 OBJECTIVE: This part establishes procedures for license denial, revocation of license, suspension of license, probation, censure and reprimand, fines, costs and stipulations. [16.10.5.6 NMAC - Rp, 16.10.5.6 NMAC, 12/5/2023]

16.10.5.7 DEFINITIONS:
A. "License" means a document granting legal permission to any practitioner licensed pursuant to the medical practice act, to practice in the state of New Mexico.
B. "Licensee" means any practitioner governed by the medical practice act, who has been granted permission to practice in the state of New Mexico. [16.10.5.7 NMAC - Rp, 16.10.5.7 NMAC, 12/5/2023]

16.10.5.8 DISCIPLINARY POWER OF THE BOARD:

Pursuant to Sections 61-6-5, 61-6-8, 61-6-15 and 61-7-8 NMSA, 1978, the board has the power to suspend or revoke a license, place a licensee on probation under such terms and conditions as the board deems necessary after a hearing or pursuant to a stipulation with a licensee. Further, under the Medical Practice Act the board has the power to deny a license application, to deny a license renewal, to censure, to reprimand or to fine a licensee. [16.10.5.8 NMAC - Rp, 16.10.5.8 NMAC, 12/5/2023]

16.10.5.9 REVOCATION OF LICENSE:

A. Action prior to revocation: Prior to revoking any license for any violation of the Medical Practice Act, or the Impaired Health Care Provider Act, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

B. Terms of revocation: A licensee whose license is revoked may not practice in any manner under that license.

C. Revocation under the Medical Practice Act: All revocations pursuant to the Medical Practice Act are permanent and no such license revoked shall be reinstated. Persons seeking licensure after revocation under the Medical Practice Act shall file a new application for licensure with the board, under the rules for new applicants.

D. Relicensing after revocation under the Impaired Health Care Provider Act: A licensee whose license has been revoked pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to Section 61-7-9 NMSA 1978. [16.10.5.9 NMAC - Rp, 16.10.5.9 NMAC, 12/5/2023]

16.10.5.10 SUSPENSION OF LICENSE:

A. Action prior to suspension: Except as provided in the Impaired Health Care Provider

Act, or in a disciplinary order entered after a hearing, or pursuant to Subsection C of 16.10.5.15 NMAC below, prior to suspending any license, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

B. Terms of suspension: The board may suspend a license for a specified period of time. A licensee whose license is suspended may not practice in any manner under that license during the period of suspension.

C. Reinstatement: Unless otherwise established by the board:

(1) If the board sets a date after which a license may be reinstated, the board will consider an application for reinstatement only after that date. The licensee may apply for reinstatement on a yearly basis thereafter.

(2) A licensee whose license has been suspended pursuant to the Impaired Health Care Provider Act may apply for reinstatement pursuant to Section 61-7-9 NMSA 1978, if the licensee can meet the statutory requirements. If the reinstatement is denied, the licensee may apply for reinstatement on a yearly basis thereafter. [16.10.5.10 NMAC - Rp, 16.10.5.10 NMAC, 12/5/2023]

16.10.5.11 PROBATION:

A. General: Probation means to allow, for a stated period of time, the conduct authorized by a license, subject to a licensee's license conditions or other restrictions that are reasonably related to the grounds for such restrictions. The board may stay any disciplinary action taken and place a licensee on probation with a requirement that the licensee comply with certain terms and conditions. The board may also place a licensee on probation without taking other disciplinary action.

B. Terms of probation: The terms of the probation shall be set forth in writing. The licensee on probation may

continue to practice under the license so long as the licensee complies with all terms of probation.

C. Violation of probation: If the terms of the probation are violated, the board shall give the applicant written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act prior to taking further disciplinary action, unless the order of probation contains a provision for the immediate suspension of the license. The initial order of probation may also contain a provision for a new stated period or term of probation if any term of probation is violated.

D. Conditions of probation: Conditions of probation may include monitoring or other directed management or supervision during the stated period of probation. [16.10.5.11 NMAC - Rp, 16.10.5.11 NMAC, 12/5/2023]

16.10.5.12 CENSURE AND REPRIMAND:

The board may issue a letter of censure or reprimand to a licensee for any *minor* violation of the Medical Practice Act pursuant to Section 61-1-3 of the Uniform Licensing Act. [16.10.5.12 NMAC - Rp, 16.10.5.12 NMAC, 12/5/2023]

16.10.5.13 FINES:

A. The board may impose a fine on a licensee for each violation of the Medical Practice Act after giving the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act. If the licensee's action constitutes more than one violation of the Medical Practice Act, the board may impose a fine for each violation.

B. The board may impose a fine in an amount not to exceed ten thousand dollars (\$10,000) for each violation against a person who, without an active license, engages in a violation of the Medical Practice Act.

C. All fines collected by the board pursuant to Subsection B of 16.10.5.13 NMAC shall be deposited to the credit of the current school fund as provided in Section

4 of Article 12 of the constitution of New Mexico.

[16.10.5.13 NMAC - Rp, 16.10.5.13 NMAC, 12/5/2023]

16.10.5.14 STIPULATION:

A. Power to enter into stipulations: The board may come to an agreement and enter into a stipulation with a licensee at any time. In a stipulation, the parties may agree to any disciplinary or other action that the board is authorized to take by law.

B. Contents: The stipulation shall be in writing, shall contain the agreed upon conditions or restrictions on the licensee and shall be signed by the board and the licensee. The stipulation shall contain statements that the licensee:

(1) knows and understands the applicable statutory and regulatory provisions setting forth the authority and power of the board; and

(2) understands that entering into a stipulation regarding the case results in a waiver of the licensee's rights under the Uniform Licensing Act, the Medical Practice Act, or the Impaired Health Care Provider Act, as applicable, including the right to appeal.

C. Violation of a stipulation: The licensee, by accepting a stipulation, agrees the board may immediately suspend a license if the board has reasonable cause to believe that any term of the stipulation has been violated, without the licensee being given an opportunity to request a hearing. The immediate suspension remains in effect until a further order of the board is entered. The board shall issue a notice of contemplated action within 10 days of the issuance of an immediate suspension. In this case, the stipulation shall provide that the board shall give notice of the disciplinary action to the licensee at the address of record maintained by the board of the licensee pursuant to the provisions of the Uniform Licensing Act. An immediate suspension is separate and distinct from a summary suspension described

in 16.10.5.15 NMAC below.
[16.10.5.14 NMAC - Rp, 16.10.5.14 NMAC, 12/5/2023]

16.10.5.15 SUMMARY

SUSPENSION: This is a formal preliminary disciplinary action that summarily suspends a licensee’s right to practice. The summary suspension remains in effect until a further order of the board is entered. The licensee has an opportunity for a full hearing before the board on the summary suspension.

A. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with, or at any time after, the issuance of a notice of contemplated action (NCA) and the initiation of proceedings for a hearing provided for under the Uniform Licensing Act on the NCA, if the board finds that evidence in its possession indicates that the licensee:

- (1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice; or
- (2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or
- (3) has pled guilty to or been found guilty of any offense related to their practice or for any violent criminal offense in this state or a substantially equivalent criminal offense in another U.S. jurisdiction.

B. A licensee is not required to comply with a summary action until service of the action has been made personally or by certified mail, return receipt requested, at the licensee’s address of record maintained by the board, or the licensee has actual knowledge of the order, whichever occurs first. The board’s executive director may sign a summary suspension order that the board has authorized.

C. A licensee whose license is summarily suspended is entitled to a hearing before the board on the summary suspension order, pursuant to the Uniform Licensing Act, within 15 days from the date

the licensee requests a hearing. This hearing request shall be in writing, addressed to the board, delivered by certified mail, return receipt requested.

[16.10.5.15 NMAC - Rp, 16.10.5.15 NMAC, 12/5/2023]

16.10.5.16 LIMITATIONS:

A. Limitations on actions are governed by Section 61-6-24 NMSA 1978.

B. For purposes of Subsection 1 of Section 61-1-3 NMSA 1978, discovery of the conduct by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the licensee was received by the board or board staff.

C. Receipt of a complaint by the board or board staff is established by the complaint and investigation process published in 16.10.6.8 NMAC.

[16.10.5.16 NMAC - Rp, 16.10.5.16 NMAC, 12/5/2023]

HISTORY OF 16.10.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under: Rule 7, Disciplinary Power of Board Over Physician Assistants, filed 6/21/1993.

BME Rule 7, Disciplinary Power of Board Over Physician Assistants filed 12/19/1989.

BME MD01-MD031, Board of Medical Examiners Model Disciplinary Order, filed 1/22/1985.

BME MDG1-MDG20, Manual of Disciplinary Guideline and Model Disciplinary Orders, filed 1/22/1985.

History of Repealed Material:

16 NMAC 10.5, Disciplinary Power of the Board filed 3/5/1997 - Repealed effective 4/18/2002.

16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002, emergency Repealed 7/7/2023.

16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002, Repealed 12/5/2023.

Other:

16 NMAC 10.5, Disciplinary Power of the Board filed 3/5/1997 was Replaced by 16.10.5 NMAC - Disciplinary Power of the Board effective 4/18/2002.

16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002 was emergency Replaced by 16.10.5 NMAC - Disciplinary Power of the Board 7/7/2023.

16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002 was Replaced by 16.10.5 NMAC - Disciplinary Power of the Board 12/5/2023.

MEDICAL BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 6 COMPLAINT PROCEDURE AND INSTITUTION OF DISCIPLINARY ACTION

16.10.6.1 ISSUING

AGENCY: New Mexico Medical Board, hereafter called the board. [16.10.6.1 NMAC - Rp, 16.10.6.1 NMAC, 12/5/2023]

16.10.6.2 SCOPE: This part applies to applicants, licensees and members of the board.

[16.10.6.2 NMAC - Rp, 16.10.6.2 NMAC, 12/5/2023]

16.10.6.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, Section 61-1-1 through 61-1-33 NMSA 1978, Impaired Physician Act, Section 61-7-1 through 61-7-12 NMSA 1978 and the Parental Responsibility Act Section 40-5A-1 through 13 NMSA 1978.

[16.10.6.3 NMAC - Rp, 16.10.6.3 NMAC, 12/5/2023]

16.10.6.4 DURATION:
Permanent.
[16.10.6.4 NMAC - Rp, 16.10.6.4 NMAC, 12/5/2023]

16.10.6.5 EFFECTIVE DATE: December 5, 2023, unless a later date at the end of a section.
[16.10.6.5 NMAC - Rp, 16.10.6.5 NMAC, 12/5/2023]

16.10.6.6 OBJECTIVE:
This part establishes a procedure for investigating complaints, issuing notices of contemplated action, holding hearings and making decisions in disciplinary proceedings.
[16.10.6.6 NMAC - Rp, 16.10.6.6 NMAC, 12/5/2023]

16.10.6.7 DEFINITIONS:
“Licensee” as used in this part means a physician, a physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist who holds a current license to practice in New Mexico or who is applying for licensure, license renewal or license reinstatement.
[16.10.6.7 NMAC - Rp, 16.10.6.7 NMAC, 12/5/2023]

16.10.6.8 COMPLAINTS:
A complaint may be filed against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist. All complaints must be in writing. The date of receipt of the complaint shall begin the running of the statute of limitation.
[16.10.6.8 NMAC - Rp, 16.10.6.8 NMAC, 12/5/2023]

16.10.6.9 COMPLAINT RECORD: The board shall maintain a record of all complaints filed. The complaint record is confidential.
[16.10.6.9 NMAC - Rp, 16.10.6.9 NMAC, 12/5/2023]

16.10.6.10 COMPLAINT COMMITTEE: The chair of the board shall appoint at least one member of the board to serve on each complaint committee. A complaint committee shall review each complaint charging a physician,

physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist with unprofessional conduct or other violations under the Medical Practice Act.

A. The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

B. Upon completion of an investigation, the complaint committee shall submit its recommendations to the board. After submitting their recommendations to the board, the members of the complaint committee shall recuse themselves from all further proceedings in that case.

C. The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in 61-1-10 NMSA 1978 or in the service of a notice of contemplated action (NCA) pursuant Subsection D of Section 61-6-15 NMSA 1978.
[16.10.6.10 NMAC - Rp, 16.10.6.10 NMAC, 12/5/2023]

16.10.6.11 NOTICE TO ANY PRACTITIONER LICENSED BY THE BOARD: If the complaint committee determines that it will not impede an investigation and will not interfere with the procurement of testimony or development of the case, the complaint committee may inform the practitioner licensed by the board about whom the complaint is made, of the nature of the complaint and may request a response to the allegations.
[16.10.6.11 NMAC - Rp, 16.10.6.11 NMAC, 12/5/2023]

16.10.6.12 INVESTIGATIVE SUBPOENA. Pursuant to Sections 61-6-23 and 61-1-9 NMSA 1978 the board may issue investigative subpoenas. Investigative subpoenas may be signed by the executive director of the board at the request of the chair or complaint committee. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in

Section 61-1-10, NMSA 1978 of the service of a notice of contemplated action pursuant to Subsection D of Section 61-6-15 NMSA 1978.
[16.10.6.12 NMAC - Rp, 16.10.6.12 NMAC, 12/5/2023]

16.10.6.13 NOTICE OF CONTEMPLATED ACTION. Pursuant to a complaint or on its own motion, the board may serve upon an applicant or licensee a notice of contemplated action for any alleged violation of the Medical Practice Act or the Impaired Health Care Provider Act. All notices of contemplated action shall comply with the Uniform Licensing Act, Section 61-1-4 NMSA 1978, and shall be served on the applicant or licensee personally or by certified mail, return receipt requested, at the applicant’s or licensee’s last known address as shown in the board’s records. The executive director may sign a notice of contemplated action that is the result of a formal board action.
[16.10.6.13 NMAC - Rp, 16.10.6.13 NMAC, 12/5/2023]

16.10.6.14 PROCEDURE:
A. If an applicant or licensee requests a hearing after receiving a notice of contemplated action, all proceedings, including the hearing before the board, shall be governed by the Uniform Licensing Act.

B. The parties may agree to conduct any hearing by virtual remote means and the hearing shall be recorded.

C. Correspondence sent by a licensee, applicant, or unlicensed person through other methods, including electronic or physical mail, should be reasonably accepted, and processed by the board.

D. Correspondence to the board during an administrative prosecution, beginning with the filing of a notice of summary suspension and notice of contemplated action, shall not be accepted and processed by the board or board staff.

E. Correspondence during an administrative prosecution shall be sent to the hearing officer for

receipt and inclusion in the record. Any action shall be taken by the hearing officer and not a member of the board or board staff. [16.10.6.14 NMAC - Rp, 16.10.6.14 NMAC, 12/5/2023]

16.10.6.15 CASE MANAGEMENT: Once the board serves a notice of contemplated action, an administrative prosecutor shall prepare the case for prosecution before the board. The board as a whole shall not participate in the development of the case after it serves a notice of contemplated action. [16.10.6.15 NMAC - Rp, 16.10.6.15 NMAC, 12/5/2023]

16.10.6.16 DISQUALIFICATION OF BOARD MEMBERS:

A. Excusal of a board member or hearing officer initiated by a party: Excusal of a board member or hearing officer shall be in accordance with Section 61-1-7 NMSA 1978. Untimely excusals or request for excusals will not be allowed.

B. Disqualification of a board member: A board member may disqualify him or herself from hearing and rendering a decision in the case if the board member believes it is in the best interest of the board or the parties to do so. Any member of the board who is unable to make an unbiased decision in a hearing because of pre-hearing review of documents or interview of witnesses must disqualify him or herself from participation in formal disciplinary action.

C. Peremptory challenge of hearing officer in the case of more than one hearing under one case number: When the board initiates a case proceeding under one case number and the proceeding includes both a notice of summary suspension and a notice of contemplated action and the appointment of a hearing officer only one peremptory challenge shall be allowed. Once a peremptory challenge is made for a summary suspension hearing, no additional peremptory challenge is allowed

before the hearing on the notice of contemplated action. If no peremptory challenge is made before a summary suspension hearing, a peremptory challenge may be timely made before the hearing on the notice of contemplated action. [16.10.6.16 NMAC - Rp, 16.10.6.16 NMAC, 12/5/2023]

16.10.6.17 PRE-HEARING CONFERENCE: Pursuant to Section 61-1-9 NMSA 1978, or upon the motion of a party, the board or hearing officer may conduct a pre-hearing conference. At the conference the parties shall determine the feasibility of settlement, formulate or simplify the issues in the proceeding, consider the necessity or desirability of amending the pleadings, obtain admissions and stipulations of fact, place limitations upon or determine the number of witnesses, distribute written testimony and exhibits, and dispose of such other matters as may aid in the disposition of the case. The board shall give all parties at least 10 days notice of the pre-hearing conference, provided however that parties may waive the 10 day notice requirement. Any settlement or simplification of issues resulting from the pre-hearing conference must be consented to by the licensee or applicant. [16.10.6.17 NMAC - Rp, 16.10.6.17 NMAC, 12/5/2023]

16.10.6.18 MOTIONS MADE PRIOR TO THE HEARING: Motions may be made prior to or during a hearing. Motions made during the hearing are governed by Subsection B of 16.10.6.21 NMAC. Pre-hearing motions may be accompanied by a memorandum of law in support of the motion and must be in writing. The moving party shall serve one copy of the motion on all other parties, including the prosecutor. Unless otherwise agreed upon by the parties, parties opposing the motion must respond within 10 days of service of the motion. If the motion is served within 10 days of the hearing, a response may be given at the hearing, either orally or in writing.

The board may consider motions made without response as unopposed motions. [16.10.6.18 NMAC - Rp, 16.10.6.18 NMAC, 12/5/2023]

16.10.6.19 EX PARTE COMMUNICATION: No party in a contested case shall communicate with any member of the board or any board staff, including the executive director, during the administrative proceedings. All communications, including correspondence, shall be directed to the hearing officer for receipt and inclusion in the record in an administrative prosecution. [16.10.6.19 NMAC - Rp, 16.10.6.19 NMAC, 12/5/2023]

16.10.6.20 ENTRY OF APPEARANCE: All attorneys representing physicians, physician assistants, anesthesiologist assistants, genetic counselors, or polysomnographic technologists in matters before the board shall file an entry of appearance. [16.10.6.20 NMAC - Rp, 16.10.6.20 NMAC, 12/5/2023]

16.10.6.21 HEARING PROCEDURE:
A. The board chair, or his designated representative, on behalf of the board, shall decide whether the hearing shall be before the board or a hearing officer. If the chair of the board, or his designated representative, decides that the matter shall be heard before the board or a hearing officer and the board disagrees with that decision, the board may reverse the decision and designate whether the hearing shall be before it or a hearing officer.

B. If the board or the chair of the board, or the board chair's designated representative, decides that the matter shall be before a hearing officer, the board, the chair of the board, or his designated representative shall appoint a person to act as the hearing officer.

C. Motions may be submitted in writing or made orally during the hearings. The board may request parties to submit a

memorandum of law following the hearing in support of a motion made orally. The board may defer judgment on a motion made during the hearing until it has had an opportunity to hear the presentation of evidence. All motions not specifically acted upon during the hearing shall be acted upon in the board's final decision.

D. A hearing is completed and closed after the conclusion of the evidentiary hearing and the date of the final submission of all proposed findings of fact and proposed conclusions of law and arguments, if any, submitted to the hearing officer by the parties. The hearing officer and parties may also agree to a date for the completion and closure of a hearing. Once a hearing is completed and closed, the hearing officer shall prepare and submit to the board a report within 30 days of the completion and closure of the hearing. The hearing officer's report may include recommendations.

E. No other submissions, including evidence, shall be filed by the parties after the completion and closure of the hearing. [16.10.6.21 NMAC - Rp, 16.10.6.21 NMAC, 12/5/2023]

16.10.6.22 TRANSCRIPTS:

A. Record of hearing. The board or hearing officer shall cause a record to be made of all formal hearings. The record shall be as recorded by a court reporter appointed by the board or taped (audio or video) at the discretion of the board in the manner authorized by the rules of civil procedure for the district court. The record shall include all evidence proffered but not admitted and admitted evidence. The record shall also designate and seal those portions of the record that are privileged, confidential or redacted either at the direction of the hearing officer, the request of a party or the request of a witness. Evidence proffered but not admitted shall be separated in the record, marked as proffered but not admitted and not presented to the board.

B. Correction: Parties wishing to correct the transcript or

record may request correction within 10 calendar days after the transcript is filed in the proceeding. All suggested corrections shall be in writing and shall be served upon each party or his attorney, the official reporter and the board or hearing officer. If no objection is made to the proposed corrections, the board or hearing officer, may direct that the corrections be made.

C. Objections to record: Objections shall be made in writing within 10 calendar days from the filing of the suggested correction. The board or hearing officer shall, with or without hearing, determine what changes, if any, shall be made in the record.

D. Copies of transcripts and tapes: Any party may request copies of transcripts and tapes of formal proceedings. Any party who requests and receives transcripts and tapes shall pay the specified costs to the reporter. [16.10.6.22 NMAC - Rp, 16.10.6.22 NMAC, 12/5/2023]

16.10.6.23 RULES OF EVIDENCE:

A. General: The board shall follow the rules of evidence set forth in Section 61-1-11 NMSA 1978 in proceedings held under the Uniform Licensing Act. Rules regarding evidence, not otherwise addressed by these rules or the Uniform Licensing Act, shall be governed by the rules of evidence for the district courts.

B. Testimony under oath: Witnesses testifying by deposition or before the board in formal hearings shall be placed under oath.

C. Stipulation as to facts: The parties to any investigation or proceeding before the board may stipulate to any facts in a document filed with the board or entered orally in the record. The stipulation shall be binding upon the parties and may be regarded and used by either party as evidence at the hearing. [16.10.6.23 NMAC - Rp, 16.10.6.23 NMAC, 12/5/2023]

16.10.6.24 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, BRIEFS AND ORAL ARGUMENTS:

A. Proposed findings of fact and conclusions of law: The board or hearing officer may require all parties to submit proposed findings of fact and conclusions of law. The board or hearing officer shall determine the time for submission of the proposed findings and conclusions. Each proposed finding and conclusion shall be clearly stated.

B. Briefs: The board or the hearing officer may require all parties to submit briefs.

(1) Unless otherwise ordered by the board or hearing officer, including directing the submission of briefs on a date certain, the prosecution shall file its brief-in-chief within 15 days after receipt of the transcript. The respondent shall file its answer brief within 15 days thereafter. Reply briefs must be filed within seven days after filing of the answer brief.

(2) Each party must serve one copy of its brief on all other parties.

(3) Briefs shall be concise and shall include transcript citations for each statement of fact. Briefs shall contain a table of contents with page references.

C. Oral argument: The board or the hearing officer may require all parties to present oral arguments after parties have filed briefs. Even though a hearing officer conducts the hearing the board may require oral arguments to be presented to it. Any party may request oral arguments before the hearing officer or the board. The hearing officer or the board will determine whether oral argument is necessary.

[16.10.6.24 NMAC - Rp, 16.10.6.24 NMAC, 12/5/2023]

16.10.6.25 WRITTEN DECISION:

Within 90 days after the completion and closure of the hearing the board shall issue written findings of fact, conclusions of law, and the order of the board regarding

any disciplinary action based on the findings of fact and conclusions of law. The board shall also issue a statement informing the applicant or licensee of his right to judicial review and the time within which review must be sought. The board may issue an oral decision prior to issuance of a written order. The board shall serve the written findings, conclusions, order and statements concerning judicial review upon the licensee personally or by certified mail, return receipt requested within 15 days after the decision is rendered and signed. [16.10.6.25 NMAC - Rp, 16.10.6.25 NMAC, 12/5/2023]

16.10.6.26 HEARING OFFICER’S REPORT AND RECOMMENDATION: If a hearing officer conducts the hearing, the hearing officer shall prepare a report of findings of fact and may make recommendations. All board members participating in the decision making process, but not present at the hearing, shall familiarize themselves with the record and hearing officer’s report prior to rendering a decision. The board may adopt, modify or reject the hearing officer’s report. [16.10.6.26 NMAC - Rp, 16.10.6.26 NMAC, 12/5/2023]

16.10.6.27 SIMULTANEOUS ACTIONS UNDER THE MEDICAL PRACTICE ACT AND THE IMPAIRED HEALTH CARE PROVIDERS ACT: Formal proceedings against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist may be taken by the board in accordance with the provisions of the Uniform Licensing Act. No action or investigation or proceedings under the Impaired Health Care Provider Act (Section 61-7-1 through Section 61-7-12 NMSA 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Medical Practice Act. (61-6-1 through 61-6-34 NMSA 1978). [16.10.6.27 NMAC - Rp, 16.10.6.27 NMAC, 12/5/2023]

16.10.6.28 EVALUATION OF COMPETENCE: When the board has reason to believe that an applicant for licensure or a licensee is not competent to practice, it may require the applicant or licensee to take a competency examination or to be evaluated for competence by any means that has been endorsed or approved by the board. [16.10.6.28 NMAC - Rp, 16.10.6.28 NMAC, 12/5/2023]

16.10.6.29 PARENTAL RESPONSIBILITY ACT COMPLIANCE: This section is adopted pursuant to the Parental Responsibility Act Sections 40-5A-1 through 40-5A-13 NMSA 1978. If an applicant for licensure or a licensee is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support relating to child support proceedings, the board shall have grounds to deny an application for a license, deny the renewal of a license or to suspend or revoke a license and shall initiate a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-3 NMSA 1978, subject to the following procedures.

A. Upon receipt of HSD’s certified list of obligors not in compliance with a judgment and order for support, the board shall match the obligors’ names against the board’s list of licensees and applicants.

B. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

C. Upon determination that an applicant or licensee appears on the certified list, the board shall issue a formal letter giving the licensee until the next certified list is received from HSD to provide the board with a statement of compliance from HSD. If the applicant or licensee fails to provide this statement in the specified time, the board

shall, upon its own motion, issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act.

D. If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee shall contact the HSD child support enforcement division.

E. In any hearing under this section, relevant evidence is limited to the following: A statement of non-compliance from HSD is conclusive evidence that requires the board to take the appropriate action under the Parental Responsibility Act, unless the applicant or licensee provides the board with a statement of compliance from HSD, which shall preclude the board from taking action under this section.

F. When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the board order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance from HSD. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses. [16.10.6.29 NMAC - Rp, 16.10.6.29 NMAC, 12/5/2023]

16.10.6.30 VENUE OF HEARING: Venue shall be determined by Section 61-1-6 NMSA 1978. In a proceeding involving a licensee without a residence in New Mexico, venue shall be in the county where the board maintains its office. [16.10.6.30 NMAC - N, 12/5/2023]

History of 16.10.6 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under: Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 6/21/1993.

BME Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 12/19/1989.
 Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 6/21/1993.
 BME Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 12/19/1989
 Rule 10, Hearings, filed 6/21/1993.
 BME Rule 10, Hearings, filed 12/19/1989.
 BME Rule 11, Transcripts, filed 12/19/1989.
 BME R1-15, Transcripts, filed 1/22/1985.
 Rule 12, Rules of Evidences, filed 6/21/1993.
 BME Rule 12, Rules of Evidence, filed 12/19/1989.
 BME Rule 13, Proposed Finding of Fact, Conclusions of Law Decision and Oral Arguments, filed 12/19/1989.
 BME R1-15, Proposed Finding of Fact, Conclusions of Law, Decision and Oral Arguments, filed 1/22/1985.
 Rule 14, Finding of Fact, Conclusions of Law, Decision and Order, filed 6/21/1993.
 BME Rule 14 Finding of Fact, Conclusions of Law, Decision and Order, filed 12/19/1989.
 Rule 22, Involuntary Restriction of License Under the Impaired Physician Act, filed 6/21/1993.

History of Repealed Material:

16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action filed 3/5/1997, - Repealed effective 4/18/2002.
 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022, (Emergency) Repealed effective 7/7/2023.
 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022, Repealed effective 12/5/2023.

Other:

16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action filed 3/5/1997, - Replaced by 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action, effective 4/18/2002.
 16.10.6 NMAC, Complaint Procedure

And Institution Of Disciplinary Action filed 3/18/2022 was Emergency Replaced by 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action, effective 7/7/2023.
 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022 was Emergency Replaced by 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action, effective 12/5/2023.

**TRANSPORTATION,
 DEPARTMENT OF**

**TITLE 18 TRANSPORTATION
 AND HIGHWAYS
 CHAPTER 28 HIGHWAY
 CONTRACTING AND BIDDING
 PART 6 TRANSPORTATION
 CONSTRUCTION MANAGER
 GENERAL CONTRACTOR RULE**

18.28.6.1 ISSUING

AGENCY: The New Mexico Department of Transportation, PO Box 1149, Santa Fe, New Mexico, 87504-1149.
 [18.28.6.1 NMAC - N, 12/5/2023]

18.28.6.2 SCOPE: This

rule applies to the New Mexico Department of Transportation construction projects.
 [18.28.6.2 NMAC - N, 12/5/2023]

18.28.6.3 STATUTORY

AUTHORITY: Sections 13-1-122.1 through 13-1-122.4 NMSA 1978 (2022), Section 67-3-8.4 NMSA 1978 (2022), Section 67-3-11 NMSA 1978 (2003), Section 67-3-14 NMSA 1978 (2003); 23 USC Section 112(b), 23 CFR Section 635.504.
 [18.28.6.3 NMAC - N, 12/5/2023]

18.28.6.4 DURATION:

Permanent.
 [18.28.6.4 NMAC - N, 12/5/2023]

18.28.6.5 EFFECTIVE

DATE: December 5, 2023, unless a later date is cited at the end of a section.
 [18.28.6.5 NMAC - N, 12/5/2023]

18.28.6.6 OBJECTIVE:

To establish procedures for the solicitation and award of a construction manager general contractor project delivery procurement method for department transportation projects. The construction manager general contractor project delivery method may be used to improve project quality, completion time and costs through early collaborative project development participation. This rule provides additional requirements and procedures for use of the construction manager general contractor project delivery method and is to be used in conjunction with the statutory requirements found in the transportation construction manager general contractor act, Sections 13-1-122.1 through 13-1-122.4 NMSA 1978.
 [18.28.6.6 NMAC - N, 12/5/2023]

18.28.6.7 DEFINITIONS:

- A.** All definitions in the procurement code.
- B.** "CMGC" means construction manager general contractor.
- C.** "Department" means the New Mexico department of transportation.
- D.** "GMP" means guaranteed maximum price.
- E.** "RFP" means request for proposals.
 [18.28.6.7 NMAC - N, 12/5/2023]

18.28.6.8 USE OF CMGC

DELIVERY METHOD: The department may use a CMGC project delivery method after making written determination that a transportation project is eligible for procurement using the alternate method and posting the same on the department's website for 90 days.

A. Project selection

criteria: To determine whether a project is eligible for use of the CMGC delivery method, the department must consider the criteria established in Subsection A of Section 13-1-122.3 NMSA 1978. The department must also ensure that any statutory limitations, established by

Section 67-3-8.4 NMSA 1978, on the use of the project delivery method alternate to standard design-bid-build project procurement will not be exceeded by the proposed use.

B. Scope of services:

The scope of any CMGC procurement shall identify two separate phases of work to be performed:

(1) project specific range of preconstruction services, including design consultation and obligation to participate in project design, cost control, scheduling and value engineering efforts; and

(2) construction services for the project or work packages associated with the project at a guaranteed maximum price for which the CMGC shall be financially responsible, in the event the second phase of the contract is executed.

C. Procurement: The department shall select a CMGC for a single project by using a sealed, qualifications-based proposal method, resulting in a professional services agreement.

(1) The department will issue a request for proposals (RFP) that contains, at a minimum, the elements established in Section 13-1-122.4 NMSA 1978.

(2) The RFP may require separate technical and price proposals.

(3) The RFP may require a minimum mandatory technical score, minimum contractor prequalification score, or both.

(4) The RFP shall include forms addressing required bid security, payment bonds and performance bonds in conformance with Sections 13-1-146 and 13-4-18 NMSA 1978.

(5) The RFP may include use of a short-list procedure.

[18.28.6.8 NMAC - N, 12/5/2023]

18.28.6.9 EVALUATION

CRITERIA: The department shall evaluate proposals in accordance with the evaluation criteria and scoring

parameters set forth in the RFP.

A. The evaluation criteria may require, at a minimum, offerors demonstrate:

(1) construction experience with similar projects;

(2) financial, manpower and equipment resources available for the project;

(3) preconstruction or design support experience;

(4) partnering approach to the project; and

(5) approach to safety, risk, schedule, and cost estimating.

B. The department may require offerors to participate in formal interviews as part of the evaluation process.

[18.28.6.9 NMAC - N, 12/5/2023]

18.28.6.10 SELECTION

COMMITTEE: The department shall use a selection committee for the evaluation of the qualifications submitted by offerors and to determine the offerors that qualify for award of the CMGC contract.

A. The selection committee composition shall be identified in the RFP; and

(1) shall include the following voting members, a minimum of three of whom will be registered New Mexico professional engineers:

(a) two employees of the department as requested to serve on the committee designated by the chief engineer for the department;

(b) two employees of the department as requested to serve on the committee designated by the deputy secretary of highway operations for the department;

(c) the employee of the department in responsible charge of the project; and

(2) may include the following advisory (non-voting) members:

(a)

the department chief procurement officer or designee;

(b) any other employee of the department requested to serve by the secretary; or

(c) any other advisory members requested to serve by the secretary based on industry recommendation.

B. No selection committee member may be an employee of any offeror or firm selected to provide design services or independent cost estimates for the project.

C. Every member of the selection committee must disclose conflicts of interest pursuant to the requirements of state and federal ethics and procurement laws and the department's policies.

D. The selection committee will rank offerors in accordance with the RFP evaluation and scoring criteria and provide a recommendation for award to the secretary.

[18.28.6.10 NMAC - N, 12/5/2023]

18.28.6.11 AWARD OF

CONTRACTS: Nothing in this rule requires the department to award a contract during either of the contract phases.

A. The basis for selection for award of contract shall be stated in the RFP and may be based on any of the following approaches:

(1) responsible offeror with lowest priced, responsive proposal. If the RFP includes minimum technical level, no proposal shall be considered responsive unless it meets that level;

(2) responsible offeror whose proposal is evaluated as providing the best value to the department;

(3) responsible offeror whose proposal is evaluated as the most qualified; or

(4) other approaches determined by the chief engineer or designee, which satisfy the requirements of the procurement code.

B. The second phase construction services contract may

be awarded after the project plans have been sufficiently developed and the GMP for construction services has been successfully validated and accepted by the department.

C. In the event a GMP is not validated and accepted, the department may:

(1) terminate the CMGC contract; and
(2) proceed to award the second phase construction services contract through the competitive sealed bid process.

D. If the department proceeds to award the second phase construction services contract through the competitive sealed bid process, the CMGC is prohibited from bidding.

[18.28.6.11 NMAC - N, 12/5/2023]

**HISTORY OF 18.28.6 NMAC:
[RESERVED]**

Pre-NMAC History: None

End of Adopted Rules

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Other Material Related to Administrative Law

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Human Services Department, Income Support Division gives Notice of a Minor, Nonsubstantive Correction to 8.102.100 NMAC, 8.106.100 NMAC, 8.106.520 NMAC, and 8.139.527 NMAC, published in issue 20 of the NEW MEXICO REGISTER on October 24, 2023.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rules, as follows:

8.102.100.7 NMAC:
Paragraph (5) of subsection G is corrected to read:
(5) Guaranteed basic income: Guaranteed basic income provides an individual or household a one time or recurring cash payment or transfer funded from a public or private source intended to support the basic needs of individuals or households by reducing poverty, promoting economic mobility, or increasing the financial stability.

Paragraph (2) of subsection U is corrected to read:
(2) Universal basic income: Universal basic income is a government-guaranteed program that provides a modest cash income at regular intervals (e.g., each month or year) to every individual or household to meet the basic needs.

8.106.100.7 NMAC:
Paragraph (5) of subsection G is corrected to read:
(5) Guaranteed basic income: Guaranteed basic income provides an individual or household a one time or recurring cash payment or transfer funded from a public or private source intended to support the basic needs of individuals or households by reducing poverty, promoting economic mobility, or increasing the financial stability.

Paragraph (3) of subsection U is corrected to read:
(3) Universal basic income: Universal basic income is a government-guaranteed program that provides a modest cash income at regular intervals (e.g., each month or year) to every individual or household to meet the basic needs.

8.106.520.9 NMAC:
Subsections N, O & P are corrected to read:
N. subsidized private sector employment: as outlined at Subsection B of 8.102.461.12 NMAC.
O. guaranteed basic income: any payments that is funded solely with private funds or mixture of private and public funds will be excluded income.
P. universal basic income: any payments that is funded solely with private funds or mixture of private and public funds will be excluded income.

8.139.527.9 NMAC:
Subsections Y & Z are corrected to read:
Y. Guaranteed Basic Income is any payments that is funded solely with private funds or mixture of private and public funds will be excluded income.
Z. Universal Basic Income is any payments that is funded solely with private funds or mixture of private and public funds will be excluded income.

A copy of this Notification will be filed with the official version of the above rule.

**End of Other Material
Related to Administrative
Law**

2023 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 18
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	May 4	May 16
Issue 10	May 18	May 31
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	July 7	July 18
Issue 14	July 20	July 31
Issue 15	August 3	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
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Issue 19	September 28	October 10
Issue 20	October 12	October 24
Issue 21	October 26	November 7
Issue 22	November 9	November 21
Issue 23	November 22	December 5
Issue 24	December 7	December 19

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2024 New Mexico Register

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