

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

**16.5.1.1        ISSUING AGENCY:** New Mexico Board of Dental Health Care.  
[16.5.1.1 NMAC – Rp, 16.5.1.1 NMAC, 12/14/2019]

**16.5.1.2        SCOPE:** The provisions in 16.5.1 NMAC apply to all parts of Chapter 5 and provide relevant information to all licensees or certificate holders or anyone affected or interested in the licensing and regulation of dentists, dental hygienists and dental assistants.  
[16.5.1.2 NMAC - Rp, 16.5.1.2 NMAC, 12/14/2019]

**16.5.1.3        STATUTORY AUTHORITY:** Section 61-5A-1 through Section 61-5A-29, NMSA 1978, (Repl. Pamp. 1996). Section 16.5.1.10 NMAC is authorized by Subsection C of Section 10-15-1 NMSA 1978, (Repl. Pamp. 1993) Section 16.5.1.11 NMAC and 16.5.1.12 NMAC are authorized by Section 14-2-1 through 14-2-16, NMSA 1978, (Repl. Pamp. 1993). Section 16.5.1.26 NMAC is authorized by Section 14-16-18, NMSA 1978.  
[16.5.1.3 NMAC - Rp, 16.5.1.3 NMAC, 12/14/2019]

**16.5.1.4        DURATION:** Permanent.  
[16.5.4 NMAC - Rp, 16.5.4 NMAC, 12/14/2019]

**16.5.1.5        EFFECTIVE DATE:** December 14, 2019, unless a different date is cited at the end of a section.  
[16.5.1.5 NMAC - Rp, 16.5.1.5 NMAC, 12/14/2019]

**16.5.1.6        OBJECTIVE:** The objective of Part 1 is to set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16.  
[16.5.1.6 NMAC - Rp, 16.5.1.6 NMAC, 12/14/2019]

**16.5.1.7        DEFINITIONS:**

- A.        “Act”** means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.
- B.        “Assessment”** means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.
- C.        “Authorization”** means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.
- D.        “CITA”** means the council of interstate testing agencies, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.
- E.        “Close personal supervision”** means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.
- F.        “Consulting dentists”** means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.
- G.        “CRDTS”** means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.
- H.        “Current patients of record”** means the New Mexico licensed dentist has seen the patient in the practice in the last 12 months.
- I.        “Dental hygiene-focused assessment”** means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.
- J.        “Dental record”** means electronic, photographic, radiographic or manually written records.

- K. “Diagnosis”** means the identification or determination of the nature or cause of disease or condition.
- L. “Direct supervision”** means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:
- (1) is physically present throughout the performance of the act;
  - (2) orders, controls and accepts full professional responsibility for the act performed;
  - (3) evaluates and approves the procedure performed before the patient departs the care setting; and
  - (4) is capable of responding immediately if any emergency should arise.
- M. “Electronic signature”** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- N. “Extenuating circumstances”** are defined as a serious, physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board’s consideration on a case-by-case basis.
- O. “General supervision”** means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist’s diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.
- P. “Impaired Act”** means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978.
- Q. “Indirect supervision”** means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in 61-5A-3 NMSA 1978.
- R. “Jurisprudence exam”** means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.
- S. “Licensee”** means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.
- T. “NERB/CDCA”** means the former north east regional board of dental examiners, now called the commission of dental competency assessments, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.
- U. “Mobile dental facility”** means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
- V. “Non-dentist owner”** means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in Subsection G of 61-5A-5 NMSA 1978.
- W. “Palliative procedures”** means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.
- X. “Portable dental unit”** means a non-facility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.
- Y. “Professional background service”** means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.
- Z. “Protective patients stabilization”** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.
- AA. “Provider”** means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.
- BB. “Specialist”** means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.
- CC. “SRTA”** means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

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

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

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

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

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

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

[16.5.1.7 NMAC - Rp, 16.5.1.7 NMAC, 12/14/2019]

**16.5.1.8 LICENSE DISPLAY:** A valid license, certificates or permits must be displayed and must be visible to the public in each place of employment or business of the licensee.

[16.5.1.8 NMAC - Rp, 16.5.1.8 NMAC, 12/14/2019]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**16.5.1.15 GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION:**

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

- (1) scientific meetings or sessions sponsored or recognized by a local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional organization;
- (2) any dental related course sponsored by an institution accredited by the United States department of education;
- (3) courses that are primarily in relationship to maximizing income, billing, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period;
- (4) courses presented by approved study clubs as further defined in Subsection B of

16.5.1.15 NMAC;

- (5) on-line and self-study as further defined in Subsection C of 16.5.1.15 NMAC;
- (6) original presentation by a licensee who has submitted to the board an outline, date, place, and sponsor of the presentation; a maximum of eight hours will be allowed each triennial period in this category;
- (7) any course not sponsored by a recognized provider may be approved by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters;
- (8) medical education courses that are accredited by the American council for continuing medical education (ACCME) shall be limited to eight hours per triennial period;
- (9) clinical examiners for regional boards shall be allowed up to 24 hours per triennial period;
- (10) a non-board or non-committee licensee volunteering for the board or committee may receive up to 10 hours of continuing education for board approved activities; including serving as a hearing officer, investigator, mentor, or monitor;
- (11) participation in a board or dental hygiene committee board approved charitable event to include a post-event survey; charitable event credits shall be limited to eight hours per triennial period.

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

- (1) composed of not less than five licensees with elected officers, written bylaws, and regular meetings;
- (2) organized for the purpose of scientific study;
- (3) the approved club must keep records of continuing education information or material presented the number of hours and the members in attendance; films, cassettes, or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material.

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

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

(2) A course that includes a post study course examination must be completed and returned for grading by the course provider.

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

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

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

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

**D. Credit hours.**

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

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

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

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

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

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

(3) course attendance sheet submitted from the sponsor;

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

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

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

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

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

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

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

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

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

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

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

**D.** Evaluation of provider with blood borne infection.

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

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

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

**E.** Confidentiality for dental health care workers.

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

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

[16.5.1.16 NMAC - Rp, 16.5.1.16 NMAC, 12/14/2019]

#### **16.5.1.17 BOARD OF DENTAL HEALTH CARE:**

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

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

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

#### **16.5.1.18 DENTAL HYGIENIST COMMITTEE:**

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

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

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

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

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

**16.5.1.20 U.S. CITIZENSHIP OR LEGAL RESIDENT:** Any person requesting a license to practice dentistry, dental hygiene or certificate to practice as a dental assistant, expanded function dental auxiliary or community dental health coordinator must be a United States citizen or legal resident with a valid social security number.

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

**16.5.1.21 CONSULTING SERVICES; CLAIMS REVIEW BY INSURANCE COMPANIES OR THIRD PARTY PAYERS:** A dentist who reviews dental insurance or third party payment claims for patients being treated by a dentist in New Mexico must meet the following requirements:

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

**B.** within 60 days, of initial agreement or contract with insurance company or third party payer, the reviewing dentist must provide the board office with the dentist's license number and name of the insurance company or third party payer for which the dentist is providing claims review services.  
[16.5.1.21 NMAC - Rp, 16.5.1.21 NMAC, 12/14/2019]

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

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

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

- A.** actual date of retirement or date of no longer practicing in New Mexico;
- B.** proof of written notification to all patients currently under active treatment; and
- C.** the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients in the 12 previous months to the date of closing practice, the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.1.24 NMAC - Rp, 16.5.1.24, 12/14/2019]

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

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

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

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

- A.** Maintain all records, either paper or electronic in a secure form or location.
- B.** Provide to the board, upon request, all treatment records and locations of treatment.
- C.** Provide to the board, upon request, the name, address, and contact information of the owner/operator of the mobile dental facility.
- D.** Provide each patient, parent, or guardian with the name(s) of the dentist or hygienist providing treatment and contact information immediately after treatment.

- E.** Have agreements in place with New Mexico licensed dentists for any immediate follow-up care.
  - F.** Dentists and hygienists shall display a copy of their license and registration within or directly outside the mobile dental facility or areas in which portable dental units are utilized. Exceptions:
    - (1) occasional services provided to a patient of record of a fixed dental office who is treated outside of the dental office;
    - (2) services publicly funded and provided solely as a public health measure;
    - (3) services provided to a patient by an accredited dental or dental hygiene school;
    - (4) services by a dentist, physician, or CRNA providing sedation in a dental office;
    - (5) collaborative hygienists in compliance with rules established in 16.5.17 NMAC.
- [16.5.1.28 NMAC - Rp, 16.5.1.28 NMAC, 12/14/2019]

**16.5.1.29 ADVERTISING, PROMOTIONS AND SPECIALTY RECOGNITIONS FOR ALL**

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

- A.** Definitions:
  - (1) for the purposes of this section, "advertising/advertisement" is:
    - (a) any written or printed communication for the purpose of soliciting, describing, or promoting a dentist's, hygienist's, non-dentist owner's licensed activity, including, but not limited to, a brochure, letter, pamphlet, newspaper, directory listing, periodical, business card or other similar publication;
    - (b) any radio, television, internet, computer network or similar airwave or electronic transmission which solicits or promotes the dental practice;
    - (c) "advertising" or "advertisement" does not include any of the following:
      - (i) any printing or writing on buildings, uniforms or badges, where the purpose of the writing is for identification;
      - (ii) any printing or writing on memoranda or other communications used in the ordinary course of business where the sole purpose of the writing is other than the solicitation or promotion of the dental practice;
      - (iii) any printing or writing on novelty objects or dental care products.
  - (2) "bait advertising" is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise or services, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise or services of the type so advertised. See 16 U.S.C Section 238.

- B.** General requirements:
  - (1) at the time any type of advertisement is placed, the licensee must in good faith possess and provide to the board upon request information that would substantiate the truthfulness of any assertion, omission, or claim set forth in the advertisement;
  - (2) the board recognizes that clinical judgment must be exercised by a dentist or dental hygienist. Therefore, a good faith diagnosis that the patient is not an appropriate candidate for the advertised dental or dental hygiene service or product is not a violation of this rule;
  - (3) licensee shall be responsible for, and shall approve any advertisement made on behalf of the dental or dental hygiene practice, except for brand advertising, i.e. advertising that is limited to promotion of the name of the practice or dental corporation. The licensee shall maintain a record documenting their approval and shall maintain such record for a period of three years.

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

- (1) a known material misrepresentation of fact;



- (2) the omission of a fact necessary to make the statement considered as a whole not materially misleading;
- (3) advertising that is intended to be or is likely to create an unjustified expectation about the results the dentist or dental hygienist can achieve;
- (4) advertising that contains a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dental or dental hygiene services if that representation is not subject to reasonable substantiation. For the purpose of this subsection, reasonable substantiation is defined as tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Individual experiences are not a substitute for scientific research. Evidence about the individual experience of consumers may assist in the substantiation, but a determination as to whether reasonable substantiation exists is a question of fact on a case-by-case basis;
- (5) the false or misleading use of a claim regarding licensure, certification, registration, permitting, listing, education, professional memberships or an unearned degree;
- (6) advertising that uses patient testimonials unless the following conditions are met:
- (a) the patient's name, address, and telephone number as of the time the advertisement was made must be maintained by the dentist or dental hygienist and that identifying information shall be made available to the Board upon request by the board;
- (b) dentists or dental hygienists who advertise dental or dental hygiene services, which are the subject of the patient testimonial, must have actually provided these services to the patient making the testimonial;
- (c) if compensation, remuneration, a fee, or benefit of any kind has been provided to the person in exchange for consideration of the testimonial, such testimonial must include a statement that the patient has been compensated for such testimonial;
- (d) a specific release and consent for the testimonial shall be obtained from the patient;
- (e) any testimonial shall indicate that results may vary in individual cases;
- (7) advertising that makes an unsubstantiated medical claim or is outside the scope of dentistry, unless the dentist or dental hygienist holds a license, certification, or registration in another profession and the advertising and or claim is within the scope authorized by the license, certification, or registration in another profession;
- (8) advertising that makes unsubstantiated promises or claims, including but not limited to claims that the patient will be cured;
- (9) the use of bait advertising as outlined in federal trade commission guidelines;
- (10) advertising that includes an endorsement by a third party in which there is compensation, remuneration, fee paid, or benefit of any kind if it does not indicate that it is a paid endorsement;
- (11) advertising that infers or gives the appearance that such advertisement is a news item without using the phrase "paid advertisement";
- (12) the promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;
- (13) the use of any personal testimonial by the licensee attesting to a quality or competence of a service or treatment.
- (14) advertising that claims to provide services at a specific rate and fails to disclose that a dental benefit plan may provide payment for all or part of the services;
- (15) print advertising that contains all applicable conditions and restrictions of an offer that is not clearly legible or visible. The board will consider font size and positioning within the advertisement as to what is determined as false, misleading or deceptive;
- (16) audio advertising that contains all applicable conditions and restrictions that is broadcast at different speed and volume of the main recording and offer;
- (17) failure to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's or non-dentist owner's name(s), address and contact information or direct reference where the name of the dentist(s) or non-dentist owner(s) can be found, including, but not limited to, an internet website;
- (18) failure to update website(s) wherein the names of the current dentist(s) are for each office location within 30 days of the change;

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

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

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

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

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

[16.5.1.29 NMAC - N, 12/14/2019]

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

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

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

BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 8/14/1969;

BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 9/21/1970;

BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 02/12/1973;

Article I, Board of Dentistry, filed 3/11/1981;

Rules 1.1-1.8, Dental Hygiene Committee Rules and Regulations, filed 11/20/1987

BOD Rule 1, Board of Dentistry, filed 2/9/1989;

BOD Rule 14, Public Records Policy, filed 3/13/1992;

BOD Rule 15, The Control and Prevention of the Transmission of Blood borne Infections in Dental Offices and Facilities, filed 9/16/1992;

BODHC Rule 1-95, General Provisions, filed 5/5/1995;

BODHC Rule 2-95, Definitions, filed 5/5/1995;

BODHC Rule 3-95, Guidelines for Approved Continuing Education, filed 5/5/1995;

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

BODHC Rule 5-95, Savings Clause, filed 5/5/1995.

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

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

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

#### **Other History:**

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

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

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