

This is an amendment to 16.5.1 NMAC, Section 7, and adding 30, effective 12/5/2021.

**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, dental therapist, community dental health coordinator, expanded function dental auxiliary, 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.** “Disqualifying criminal conviction” means a conviction for a crime that is job-related for the position in question and consistent with business necessity.
- [M] N.** “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] O.** “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] P.** “General supervision” means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, dental therapist, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.
- [P] Q.** “Impaired Act” means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978.
- [Q] R.** “Indirect supervision” means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant, dental therapist, or dental student as defined in 61-5A-3 NMSA 1978.

**[R] S. “Jurisprudence exam”** means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene, dental therapy and dental assisting in the state of New Mexico.

**[S] T. “Licensee”** means an individual who holds a valid license to practice dentistry, dental therapy or dental hygiene in New Mexico. This also includes non-dentist owners who are licensed in New Mexico.

**[T] U. “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] V. “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] W. “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] X. “Palliative procedures”** means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

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

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

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

**[BB] CC. “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] DD. “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] EE. “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] FF. “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] GG. “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, dental therapist or a student enrolled in a program of study to become a dental assistant, dental hygienist, dental therapist or dentist.

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

[16.5.1.7 NMAC - Rp, 16.5.1.7 NMAC, 12/14/2019; A, 5/30/2021; A, 12/5/2021]

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

- A. Physical harm to others:**
  - (1) murder;
  - (2) manslaughter;
  - (3) assault;
  - (4) battery;
  - (5) abandonment of a child resulting in death or great bodily harm;
  - (6) abuse of a child;
  - (7) kidnapping;
  - (8) false imprisonment;
  - (9) sexual assault.
- B. Property damage:**
  - (1) shooting at property;
  - (2) criminal damage to property;
  - (3) dangerous use of explosives;
  - (4) graffiti;
  - (5) arson.
- C. Fraud:**
  - (1) misrepresentation fraudulent statements or alterations of documents;
  - (2) improper sale, disposal, removal or concealing of encumbered property;
  - (3) tax fraud;
  - (4) conspiracy;
  - (5) medicaid, medicare or insurance fraud;
  - (6) money laundering.
- D. Theft:**
  - (1) breaking and entering;
  - (2) larceny;
  - (3) robbery;
  - (4) burglary;
  - (5) shoplifting;
  - (6) I.D. theft;
  - (7) credit card or other financial information;
  - (8) receiving or transferring stolen property.
- E. Financial crimes:**
  - (1) embezzlement;
  - (2) extortion;
  - (3) receiving stolen property;
  - (4) forgery;
  - (5) receiving illegal kickbacks;
  - (6) racketeering;
  - (7) falsification of documents;
  - (8) white collar crimes.
- F. Drug offenses:**
  - (1) drug trafficking;
  - (2) possession;
  - (3) contributing to the delinquency of a minor.
- G. Sex crimes:**
  - (1) distribution of pornography;
  - (2) human trafficking;
  - (3) criminal sexual penetration or contact;
  - (4) failure to register with the sex offender and notification act.
- H. Any crimes identified under Section 61-5A-21, NMSA 1978.**
- I. Miscellaneous:**
  - (1) felon in possession of a firearm;

- (2) bribery of an official;
- (3) accepting a bribe;
- (4) gambling and gaming crimes;
- (5) stalking;
- (6) terrify, intimidate, threaten, harass, annoy or offend another;
- (7) escape from incarceration;
- (8) driving while intoxicated (DWI)
- (9) practicing a profession without a license or on a revoked or suspended license;
- (10) violation of the subdivision act, mortgage foreclosure act, mortgage loan company act or uniform money services act;
- (11) violation of the controlled substance act.

J. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Section 16.5.1.30 NMAC.

K. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in 16.5.1.30 NMAC.

L. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Dental Health Care Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in 16.5.1.30 NMAC.

M. In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (1) an arrest not followed by a valid conviction;
- (2) a conviction that has been sealed, dismissed, expunged or pardoned;
- (3) a juvenile adjudication; or
- (4) a conviction for any crime other than the disqualifying criminal convictions listed in 16.5.1.30 NMAC.

[16.5.1.30 NMAC - N, 12/5/2021]