

NOTICE OF PROPOSED RULEMAKING

The New Mexico Board of Nursing (hereinafter the “Board”) will hold a public rule hearing on Monday, September 27, 2021 at 9:00 a.m. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically via Zoom teleconferencing. A Board staff member will also be present on the day of the hearing from approximately 8:00 a.m. to 9:00 a.m. at 6301 Indian School Rd, NE, Suite 710, Albuquerque, NM 87110, to accept comments in written form and submit those comments to the Hearing Officer during the hearing.

To attend the hearing online, please use the following link: <https://us02web.zoom.us/j/83068857429>

To join the meeting by phone, please call: (253) 215 8782 or (346) 248 7799 or (669) 900 9128 or (301) 715 8592 or (312) 626 6799 or (646) 558 8656.
Webinar ID: 830 6885 7429

The purpose of the rule hearing is to consider a proposal to repeal and replace 16.12.1 NMAC (“General Provisions”) and to promulgate a new 16.12.12 NMAC (“Discipline and Application Denials”).

Persons desiring to view the proposed rules may download them from <https://nmbon.sks.com/rule-changes.aspx>. If you do not have internet access, a copy of the proposed rules may be requested by contacting the NMBON at (505) 841-9083.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to sasha.poole@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to:

New Mexico Board of Nursing
ATTN: NMBON Public Comments
6301 Indian School Road, NE, Suite 710
Albuquerque, NM 87110

The Board will accept written public comment received at or before 5:00 PM on Friday, September 25, 2021, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the above-referenced address on the date of the rule hearing. All written comments will be posted to the Board’s website no later than three business days following receipt to allow for public viewing.

Designated Hearing Officer Melissa Charlie, PhD, RN, Director of Education and Practice, will preside over the hearing in lieu of the Board. Following the hearing, the Hearing Officer will send the Board a memorandum summarizing the contents of the hearing along with the hearing transcript, written public comments, and any exhibits admitted during the hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the NMBON at (505) 841-9083. The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Statutory Authority: Subsection A of Section 61-3-10 NMSA 1978 of the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, specifically authorizes the Board to “adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice.” In addition, Section 61-1-36 NMSA 1978 of the Uniform Licensing Act, Sections 61-1-1 to -36 NMSA 1978, requires the Board to “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction.”

Purpose of the proposed rules: The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board's statutory obligation to "promote, preserve and protect the public health, safety and welfare." Section 61-3-2. In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021), available at <https://www.nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>, and H.B. 120, 55th Leg., 1st Sess. (N.M. 2021), available at <https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf>.

Summary of Proposed Changes: The Board summarizes its proposed changes to its administrative rules as follows:

16.12.1 NMAC - General Provisions

The proposed changes to Part 1 of the Board's current rules consist of repealing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board's rules. It would also set general procedural requirements for the Board and the Board's staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board's various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining maintain the current and accurate name and mailing address of the licensee or certificate holder's employer on file with the board.

16.12.12 NMAC - Discipline and Application Denials

This new rule, which recodifies and amends many of the existing provisions in 16.12.1.9 NMAC, would create a new Part 12 of the Board's rules governing discipline and application denials. As a general overview, the new Part 12 would establish procedures for disciplinary and application proceedings conducted by the Board as well as the substantive grounds for disciplinary action and application denials by the Board. Notably, the rule amends and clarifies the definitions of "incompetent" and "unprofessional conduct," revises the requirements for former licensees and certificate holders to reinstate revoked licenses and certificates, and clarifies the Board's use of serious letters of concern. The rule also adds new language governing the Board's consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board's consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certificate holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public's continued confidence in the profession.

Technical Information: No technical information provided the basis for either of the proposed rules.