

This is an amendment to 16.13.18 NMAC, Sections 8 and 9, effective 2/26/2022

16.13.18.8 DISCIPLINARY GUIDELINES: In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines the applicant or licensee has violated the Nursing Home Administrators Act or the board's regulations. The following shall subject the licensee to disciplinary action by the board.

A. Fraud or deceit in procuring or attempting to procure a license to practice as a nursing home administrator.

B. Knowingly practicing nursing home administration or using any designation with the licensee's [his/her] name tending to imply, without a valid license, that [he/she] the licensee is a nursing home administrator; or knowingly aiding, assisting, procuring, advising, or encouraging any unlicensed person to practice nursing home administration or use any designation with [his/her] the licensee name tending to imply that [he/she] the licensee is a nursing home administrator without a valid license.

C. Conviction [~~of a felony~~] by a court of competent jurisdiction of any of the following disqualifying criminal convictions:

- (1) homicide
- (2) trafficking, or trafficking in controlled substances;
- (3) kidnapping, false imprisonment, aggravated assault or aggravated battery
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation
- (6) crimes involving child abuse or neglect; or
- (7) crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property.

~~(4)~~ **(8)** This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.

~~(2)~~ **(2)** ~~The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.]~~

D. Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

(2) Any applicant who has been so adjudged to be mentally incompetent shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise.

E. Having become unable to practice nursing home administration with reasonable skill and safety to residents by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a physical condition.

(1) License suspension shall only be in effect during the period of alcohol or drug dependency or physical incapacitation.

(2) In enforcing the provisions in Subsections D and E of 16.13.18.8 NMAC, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a licensed professional designated by the board.

(3) The cost of such evaluation shall be borne by the licensee or applicant. The results shall be admissible in the hearing before the board, notwithstanding any claim of privilege under a contrary rule or law or statute.

(4) If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, a show cause order may be issued from the board directing the licensee or applicant to show cause why he/she should not submit to the examination.

(5) The board may enter a final order upon proper notice, hearing, and proof of such refusal.

(6) Any licensee or applicant who is prohibited from practicing nursing home administration under Subsections D and E of 16.13.18.8 NMAC will, at reasonable intervals, be afforded an opportunity to

demonstrate to the board that he/she can resume the practice of nursing home administration with reasonable skill and safety to residents.

(7) Applicants for licensure and renewal who have a history of alcohol or drug dependency shall be required to demonstrate to the satisfaction of the board that they have met all the following requirements:

- (a) completed a treatment program for alcohol or chemical dependency;
- (b) remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least two years; and
- (c) maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and/or alcohol screening of urine or blood.

F. Violation of any provision of the Nursing Home Administrators Act or any rules and regulations duly adopted by the board.

G. Gross incompetence.

~~H. Performance and conduct that substantially departs from, or fails to conform to, the minimal reasonable standards of acceptable and prevailing practice of nursing home administration, including but not limited to the following:~~

- ~~(1) conviction of a misdemeanor substantially relating to the practice of nursing home administration;~~
 - ~~(2) found to be directly responsible for the neglect or abuse of nursing home resident(s) or the misappropriation of resident funds or property by a court of law, the board, an agency responsible for the certification and licensure of nursing homes, a state medicaid fraud and abuse unit, or any other duly recognized state agency;~~
 - ~~(3) found to have falsified records related to residents or employees of a nursing home on the basis of race, religion, color, national origin, sex, age, or handicap in violation of federal or state laws;~~
 - ~~(4) knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of nursing home administration, in the operation of a nursing home facility, or in any document connected therewith;~~
 - ~~(5) revocation, suspension, or denial of a license by another state licensing board for any of the reasons which are also a violation of the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-1 through 61-13-17;~~
 - ~~(6) commission of a crime or act substantially related to the qualifications, functions, or duties of a nursing home administrator and which evidences unfitness to perform as a nursing home administrator in a manner consistent with protecting the public health, safety, and welfare; such crimes or acts shall include but not be limited to those involving the following: engaging in any unprofessional, immoral, unethical, deceptive or destructive conduct or practice harmful to the public, which materially affects the fitness of the licensee or applicant to practice nursing home administration;~~
 - ~~(7) commission of a crime involving moral corruption, without regard to conviction; the conviction of a crime involving moral corruption shall be evidence of the commission of such crime; as used in this paragraph, the term "conviction" shall have the meanings prescribed in Subsection C, Paragraph (2) of 16.13.18.8 NMAC; examples may include sexual harassment, resident abuse, breach of fiduciary duty, bribery, etc.]~~
- [10/31/1995; 16.13.18.8 NMAC - Rn, 16 NMAC 13.18.8, 1/25/2001; A, 2/15/2004; A, 2/26/2022]

16.13.18.9 GROSS INCOMPETENCE FURTHER DEFINED: In performing nursing home administrator functions, a licensee is under the legal duty to possess and to apply the knowledge, skill, and care that is ordinarily possessed and exercised by other licensed nursing home administrators and required by the generally accepted standards of the profession. The failure to possess or to apply to a substantial degree such knowledge, skill, and care constitutes gross incompetence.

A. Charges of gross incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the resident or to the public from the act or omission or series of acts or omissions.

B. The following shall be deemed prima facie examples of activities which demonstrate that a licensee is unfit or incompetent to serve as a nursing home administrator by reason of negligence, habits, or other causes. The Board shall not be limited to this list in determining whether an act or acts constitute gross incompetence:

(1) Willfully acting in a manner inconsistent with the care for the welfare and the health and safety of the residents of the nursing facility in which he is the administrator, administrator/owner, administrator/manager, or administrator/corporate officer;

(2) Failure to make good faith attempts using administrative management methods, to assure that the nursing home in which he/she is the administrator, administrator/ owner, administrator/manager, or administrator/corporate officer conforms with the provisions of pertinent statutes, codes, rules and regulations of the state licensing authority having jurisdiction over the operation and licensing of nursing homes;

(3) Failure to be responsible for planning, organizing, directing, and managing the operation of a nursing home in such a manner to ensure the safety, health, and welfare of the residents in the facility under ~~his/her~~ the licensee administration;

(4) Physical inability to serve as a nursing home administrator as evidenced by the statement of two licensed physicians; or

(5) Willfully permitting unauthorized disclosure of information relating to a resident in a nursing home under ~~his/her~~ the licensees administration.

[2/24/1988; 10/31/1995; 16.13.18.9 NMAC - Rn, 16 NMAC 13.18.9, 1/25/2001; A, 2/26/2022]