

This is an amendment to 16.16.21 NMAC, Sections 7 and 12, effective 2/26/2022.

**16.16.21.7 DEFINITIONS:**

A. “Disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

~~[A]~~ **B. “Splitting or dividing of fees”** means offering, delivering, receiving, or accepting any unearned rebate, refund, commission, preference, patronage, dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, customers to any person, irrespective of any membership, proprietary interest, or co-ownership in or with any person to whom the patients, clients, or customers are referred.

**[B] C. “Professional superiority”** means claiming, implying, guaranteeing, or representing that one has superior professional qualities, skills, abilities, credentials, training and professional service outcomes beyond those of similarly licensed optometrists.

[N, 6/26/2000; 16.16.21.7 NMAC - Rn, 16 NMAC 16.21.7, 3/15/2001; A, 7/6/2012, A, 2/26/2022]

**16.16.21.12 DISQUALIFYING CRIMINAL CONVICTIONS:**

A. Convictions for any of the following felony offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board:

- (1) murder;
- (2) manslaughter;
- (3) aggravated assault;
- (4) assault with intent to commit a violent felony;
- (5) aggravated battery inflicting great bodily harm or with deadly weapon;
- (6) second or subsequent conviction of stalking;
- (7) aggravated stalking;
- (8) false imprisonment;
- (9) amendment of child resulting in death or great bodily harm;
- (10) abuse of a child;
- (11) negligent abuse of a child resulting in death;
- (12) intentional abuse of a child 12 to 18 years old resulting in death;
- (13) intentional abuse of a child less than 12 years old resulting in death;
- (14) contributing to the delinquency of a minor;
- (15) sexual exploitation of children;
- (16) sexual exploitation of children by prostitution;
- (17) accepting the earnings of a prostitute;
- (18) promoting prostitution;
- (19) criminal sexual penetration;
- (20) criminal sexual contact;
- (21) criminal sexual contact of a minor;
- (22) aggravated indecent exposure;
- (23) bigamy;
- (24) incest;
- (25) breaking and entering;
- (26) larceny;
- (27) robbery;
- (28) burglary;
- (29) aggravated burglary;
- (30) fraud;
- (31) embezzlement;
- (32) extortion;
- (33) forgery;
- (34) receiving stolen property;

- (35) falsely obtaining services or accommodations;  
(36) improper sale, disposal, removal or concealing of encumbered property;  
(37) theft of identity;  
(38) theft of a credit card by taking or retaining possession of card taken;  
(39) fraudulent transfer or receipt of a credit card;  
(40) dealing in credit cards of another;  
(41) forgery of a credit card;  
(42) fraudulent signing of credit cards or sales slips or agreements;  
(43) certain fraudulent acts by merchants or their employees;  
(44) possession of four or more incomplete credit cards or machinery, plates or other contrivance;  
(45) unlawful taking of a vehicle or motor vehicle;  
(46) embezzlement of a vehicle or motor vehicle;  
(47) fraudulently obtaining a vehicle or motor vehicle;  
(48) receiving or transferring a stolen vehicle or motor vehicle;  
(49) arson or negligent arson;  
(50) aggravated arson;  
(51) cruelty to animals or extreme cruelty to animals;  
(52) second conviction for use of telephone to terrify, intimidate, threaten, harass, annoy or offend;  
(53) aggravated fleeing a law enforcement officer;  
(54) tampering with evidence;  
(55) aggravated assault upon a peace officer;  
(56) assault with intent to commit a violent felony upon a peace officer;  
(57) battery upon a peace officer;  
(58) aggravated battery upon a peace officer;  
(59) assisting in assault upon peace officer;  
(60) disarming a peace officer;  
(61) paying or receiving public money for services not rendered;  
(62) making or permitting false public voucher;  
(63) unlawful interest in a public contract;  
(64) bribery of public officer or public employee;  
(65) demanding or receiving bribe by public officer or public employee;  
(66) bribery or intimidation of a witness;  
(67) retaliation against a witness;  
(68) acceptance of a bribe by a witness;  
(69) perjury;  
(70) tampering with public records;  
(71) attempt to commit a felony;  
(72) conspiracy;  
(73) criminal solicitation;  
(74) intentionally trafficking controlled substances;  
(75) intentionally distributing a controlled substance to a person under the age of eighteen years;  
(76) intentionally distributing or possessing with intent to distribute a controlled substance;  
(77) possession of a controlled substance;  
(78) violations of the administrative provisions of the Controlled Substances Act;  
(79) engaging in other acts prohibited by the Controlled Substances Act;  
(80) delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior;  
(81) manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;  
(82) intentionally selling an imitation controlled substance to a person under the age of eighteen years;  
(83) intentionally possessing an imitation controlled substance with the intent to distribute;  
(84) certain violations of the Drug Precursor Act;

- (85) child solicitation by electronic communication device;
  - (86) criminal sexual communication with a child;
  - (87) second or subsequent unauthorized distribution of sensitive images;
  - (88) failing to disclose facts or change of circumstances to obtain public assistance;
  - (89) unlawful use of food stamp identification card or medical identification card;
  - (90) misappropriating public assistance;
  - (91) making or permitting a false claim for reimbursement of public assistance services;
  - (92) failure to reimburse the human services department upon receipt of third party payment;
  - (93) making, conspiring, or attempting to make an extortionate extension of credit;
  - (94) knowingly advancing money or property to any person with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced for the purpose of making extortionate extensions of credit;
  - (95) knowingly participating, conspiring, or attempting to participate in the use of any extortionate means to collect any extensions of credit or to cause harm to the person, reputation or property of any person for the nonpayment thereof;
  - (96) falsification of documents in connection with the Medicaid Fraud Act;
  - (97) failure to retain records in connection with the Medicaid Fraud Act;
  - (98) obstruction of investigation in connection with the Medicaid Fraud Act;
  - (99) medicaid fraud;
  - (100) computer access with intent to defraud or embezzle;
  - (101) computer abuse;
  - (102) unauthorized computer use;
  - (103) human trafficking;
  - (104) willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;
  - (105) willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;
  - (106) homicide by vehicle;
  - (107) fourth or subsequent driving under the influence of intoxicating liquor or drugs;
  - (108) practicing medicine without a license;
  - (109) making a false statement under oath, or submitting a false affidavit, in connection with the Medical Practice Act;
  - (110) making an unauthorized withdrawal from the account of another person with a financial institution, or stealing the card of another, or making an unauthorized use of the card of another;
  - (111) violations of the New Mexico Drug, Device and Cosmetic Act;
  - (112) selling or dispensing a contact lens to a resident of this state unless the person has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription;
  - (113) certain violations of the Optometry Act;
  - (114) misuse of public funds;
  - (115) tax fraud;
  - (116) failure to comply with proclamation of the governor;
  - (117) violations of certain provisions of the Drug & Cosmetic Act;
  - (118) making false statement in claim for payment under Indigent Hospital and County Health Care Act;
  - (119) unauthorized obtain or use of DNA samples or DNA records;
  - (120) sex offender who fails to comply with SORNA re moving to another state;
  - (121) making a false entry in a book, report or statement of an insurer with intent to injure, defraud, or deceive (insurance);
  - (122) unlawfully removing or attempting to remove records, assets, or material from a domestic insurer (insurance);
  - (123) making a false statement in connection with insurance with the effect of causing a loss to the insurer.
- B. 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 Subsection A of this rule.
- C. 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 Subsection A of this rule.

**D.** 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 Optometry 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 Subsection A of this rule.

**E.** 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

Subsection A of this rule.

[16.16.21.12 NMAC - N, 2/26/2022]