

This is an amendment to 16.21.11 NMAC, Section 10 effective 04/23/2022.

16.21.11.10 SUSPENSION, REVOCATION OR REFUSAL OF A LICENSE: For the purpose of the Podiatry Act, Section 61.8.11.10 NMSA 1978 of, the following may apply.

A. "Gross negligence" or "gross incompetency" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence on the part of the podiatrist as to render the podiatrist unfit to hold himself out to the public as a licensed podiatrist.

B. "Unprofessional conduct" means, but is not limited to:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the profession;

(2) practicing beyond the scope of practice of a podiatrist as defined by the Podiatry Act, Section 61-8-1 NMSA 1978, or board rule;

(3) failure of a podiatrist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent or misleading manner;

(b) shall include in the advertisement the podiatrist's name or medical group name, address and telephone number.

(4) the making of false or misleading statement in communication with patients or potential patients;

(5) the use of misleading or deceptive titles or designations in a name or title of a podiatric practice, including the unauthorized advertisement of a specialty designation;

(6) failure to release to a patient copies of that patient's records and x-rays;

(7) ~~[conviction of a felony; a certified copy of the record of the court of conviction shall be proof of such conviction]~~ disqualifying felony criminal conviction, defined below in Section C of this part;

(8) impersonating another person licensed to practice podiatry or permitting or allowing any person to use his license or certificate of registration;

(9) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another podiatrist licensed or applying for licensure by the board;

(10) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a professional partnership, association, HMO, or similar association shall not be construed as fee-splitting;

(11) injudicious prescribing, administration, or dispensing of any drug or medicine;

(12) sexual misconduct;

(13) the use of a false, fraudulent or deceptive statement in any document connected with the practice of podiatry;

(14) the falsifying of medical records, whether or not for personal gain;

(15) any intentional conduct or practice which is harmful or dangerous to the health of the patient;

(16) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(17) obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;

(18) cheating on an examination for licensure;

(19) violation of any order of the board, including any probation order;

(20) treating patients when the podiatrist is under the influence of alcohol, illegal drugs, or injudicious use of prescription medications; or

(21) failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(22) willful abandonment of a patient;

(23) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation;

(24) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American podiatric medical association.

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

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

- (a) homicide or manslaughter;
- (b) trafficking, or trafficking a controlled substance;
- (c) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (d) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- (e) crimes involving adult abuse, neglect or financial exploitation;
- (f) crimes involving child abuse or neglect;
- (g) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property;
- (h) practicing medicine without a license;
- (i) failure to comply with a proclamation of the governor; or
- (j) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

(2) 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 this subsection.

(3) 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 this subsection.

(4) 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 Podiatry 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 the subsection.

(5) 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:

- (a) an arrest not followed by a valid conviction;
- (b) a conviction that has been sealed, dismissed, expunged or pardoned;
- (c) a juvenile adjudication; or
- (d) a conviction for any crime other than the disqualifying criminal convictions listed in this subsection.

[16.21.11.10 NMAC - Rp, 16.21.11.10 NMAC 5/3/2019, A, 04/23/2022]