

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONERS
PART 1 GENERAL PROVISIONS

16.23.1.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.
[16.23.1.1 NMAC - Rp, 16.23.1.1 NMAC, 04/21/2022]

16.23.1.2 SCOPE: The provisions of Part 1 of Chapter 23 apply to all Parts of Chapter 23 and provide relevant information to anyone affected or interested in the licensing and regulation of the practice of respiratory care as set forth in Chapter 23.
[16.23.1.2 NMAC - Rp, 16.23.1.2 NMAC, 04/21/2022]

16.23.1.3 STATUTORY AUTHORITY: Part 1 of Chapter 23 is promulgated pursuant to the Respiratory Care Act Section 61-12B-6 NMSA 1978.
[16.23.1.3 NMAC - Rp, 16.23.1.3NMAC, 04/21/2022]

16.23.1.4 DURATION: Permanent.
[16.23.1.4 NMAC - Rp, 16.23.1.4NMAC, 04/21/2022]

16.23.1.5 EFFECTIVE DATE: April 21, 2022, unless a later date is cited at the end of a section.
[16.23.1.5 NMAC - Rp, 16.23.1.5NMAC, 04/21/2022]

16.23.1.6 OBJECTIVE: The objective of Part 1 of Chapter 23 is to set forth the provisions which apply to all of Title 16, Chapter 23 NMAC of the New Mexico Administrative Code and to all persons and entities affected by Title 16, Chapter 23 NMAC.
[16.23.1.6 NMAC - Rp, 16.23.1.6NMAC, 04/21/2022]

16.23.1.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 23 NMAC, have the same meanings as set forth in the Respiratory Care Act or in other cited New Mexico statutes:

A. Definitions beginning with "A":

- (1) **"Applicant"** means a person who has applied to the department for a temporary permit or a respiratory care practitioner's license.
- (2) **"Approval"** means the review and acceptance of a specific activity.
- (3) **"Approval body"** means the agency, institution, or organization with the authorization to award continuing education credit.
- (4) **"Approved training and education program"** means a program supported by the commission accreditation for respiratory care (COARC), or its predecessor the joint review committee for respiratory therapy education (JRCRTE), or accredited by the commission on accreditation of allied health education programs (CAAHEP), or its successor approval body.
- (5) **"Audit"** means an examination and verification of continuing education documents by the department.

B. Definitions beginning with "B":

- (1) **"Board"** has the same meaning as defined in Subsection A of Section 61-12B-3 NMSA 1978.

C. Definitions beginning with "C":

- (1) **"Clock hour"** means a unit of measurement to describe a continuing education offering which equals a 60-minute clock hour.
- (2) **"Complaint"** means a complaint, which has been filed with the department or the board, against a temporary permittee, respiratory care practitioner licensee, or applicant for either permit or license.
- (3) **"Complainant"** means the party who files a complaint against a temporary permittee, a respiratory care practitioner licensee, or an applicant for either a permit or a license governed by the Respiratory Care Act.

(4) **“Continuing education” or “CE”** means a learning experience intended to enhance professional development and includes continuing education units (CEUs) and continuing medical education (CME).

(5) **“Controlled Substances Act”** refers to Section 30-31-1 through Section 30-31-41 NMSA 1978.

(6) **“CRT”** means certified respiratory therapist. This is the entry level of respiratory care.

(7) **“CRTT”** means a certified respiratory therapy technician. This is the entry level of respiratory care.

D. Definitions beginning with “D”:

(1) **“Department”** has the same meaning as defined in Subsection B of Section 61-12B-3 NMSA 1978.

(2) **“Direct supervision”** means direction and control by a training supervisor over a student extern temporary permittee or a graduate temporary permittee while the permittee is providing respiratory care procedures under the authority of the training supervisor’s license.

(3) **“DME or DME company”** refers to durable medical equipment or companies that provide durable medical equipment in the health care industry.

E. Definitions beginning with “E”:

(1) **“Electronic signature”** has the same meaning as defined in Subsection 7 of Section 14-16-2 NMSA 1978.

(2) **“Expired license”** means a license that has not been renewed on or before the end of the license renewal period.

(3) **“Expanded practice”** has the same meaning as the definition in Subsection E of Section 61-12B-3 NMSA 1978.

F. Definitions beginning with “F”: **“Facility”** means the employer of a licensed respiratory care practitioner or temporary permit holder.

G. Definitions beginning with “G”:

(1) **“Graduate”** means a non-licensed person who has completed an approved respiratory care training program and is employed by a supervisory facility to provide respiratory care for remuneration and in accordance with the provisions for a temporary permit issued under these regulations.

(2) **“Gratuitous”** means to receive no form of payment or remuneration.

H. Definitions beginning with “H”: **“Home care setting”** as it applies to respiratory care, means any facility, including a patient’s home that would usually not employ respiratory care practitioners, specifically those facilities visited by a person from outside the facility to provide respiratory care services.

I. Definitions beginning with “I”:

(1) **“Impaired Health Care Provider Act”** refers to Section 61-7-1 through Section 61-7-12 NMSA 1978.

(2) **“Initial licensure”** means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other licensing requirements.

(3) **“Inspection of Public Records Act”** refers to Section 14-2-1 through Section 14-2-12, NMSA 1978.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“Lapsed license”** means an expired license which has not been reactivated within the time limitations set forth in Section 11 in 16.23.11 NMAC.

(2) **“License”** means a document identifying the legal privilege and authorization to practice within a professional category. In the context of military and veterans applications submitted pursuant to 16.23.5 NMAC, “license” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

(3) **“License reactivation”** means the process of making current a license that has expired as a result of failure to comply with the necessary renewal requirements.

(4) **“Licensing fee”** has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

(5) **“Licensing period for extern permits”** means a one year period from the date of issuance to the last day of the same month, one year later.

(6) **“Licensing period for graduate permits”** means six months from the date of

application and is not renewable; or until receipt of failing national board of respiratory care (NBRC) registered respiratory therapist (RRT) exam results. Initial applicants who do not become licensed within one year of becoming national board of respiratory care (NBRC) credentialed are issued a one year graduate permit from the date of application.

M. Definitions beginning with “M”:

(1) **“Medical board”** as it applies to respiratory care, means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.

(2) **“Medical direction”** as it applies to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.

(3) **“Military service member”** has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

(4) **“Must”** has the same meaning as defined in Subsection A of Section 12-2A-4 NMSA 1978.

N. Definitions beginning with “N”:

(1) **“NBRC”** means the national board for respiratory care, inc.

(2) **“National licensing exam”** means the national examination for respiratory care practitioners administered by the national board for respiratory care resulting in obtaining CRTT, CRT, or RRT credentials.

(3) **“New Mexico Administrative Code” or “NMAC”** means the organizing structure for rules filed by New Mexico state agencies. The NMAC is also the body of filed rules and the published versions thereof. The NMAC is structured by Title, Chapter, and Part.

(4) **“Non-traditional training program”** refers to a respiratory care training program in which a person receives on-the-job training in respiratory care from a supervising medical director, a supervising physician, or a licensed respiratory care practitioner, and in which the trainee may receive compensation while in such a training program.

(5) **“Notice of contemplated action” or “NCA”** means the administrative action provided for by the Uniform Licensing Act, whereby the respondent is given notice of a pending disciplinary action against his or her application, permit or license, based upon violations of the department’s rules and regulations governing the practice of respiratory care or the Respiratory Care Act, which have been alleged in a complaint filed with the department or the board. The respondent is afforded an opportunity for a formal hearing before the department, in consultation with the board.

O. Definitions beginning with “O”:

(1) **“Open Meetings Act”** refers to Section 10-15-1 through Section 10-15-4, NMSA 1978.

P. Definitions beginning with “P”:

(1) **“Prescription”** means an order given individually for the person for whom prescribed, either directly from the prescriber to the person licensed to fill the prescription or indirectly by means of a written order signed by the prescriber.

(2) **“Parental Responsibility Act” or “PRA”** refers to Section 40-5A-1 through Section 40-5A-13, NMSA 1978 (1995 Supp.) herein referred to as the Parental Responsibility Act or PRA.

(3) **“Permittee”** means a person who has been granted a temporary permit by the department, in consultation with the board.

(4) **“Public health emergency”** is an emergency declared pursuant to the All Hazards Emergency Management Act, Sections 12-10-1 to 12-10-21 NMSA 1978, and the Public Health Emergency Response Act, Sections 12-10A-1 to 12-10A-19 NMSA 1978.

(5) **“Public Records Act”** refers to Section 14-3-1 through Section 14-3-25, NMSA 1978.

Q. Definitions beginning with “Q”: [RESERVED]

R. Definitions beginning with “R”:

(1) **“Redacted”** means the act or process of editing or revising the complaint so that the parties, which are the subject of the complaint, are unknown to the board.

(2) **“Reinstatement”** means the process whereby a license that has been subject to revocation or suspension is returned to former status.

(3) **“Respiratory Care Act”** refers to Section 61-12B-1 through Section 61-12B-16, NMSA 1978.

(4) **“Respiratory Care Practitioner” or “RCP”** means a person who is licensed to practice respiratory care in New Mexico.

(5) **“Respiratory Therapy Training Program”** means a program approved by the commission on accreditation of allied health education programs (CAHEP), or its successor approval body.

(6) **“Respondent”** means the permit or license applicant or the temporary permittee or licensed practitioner who is the subject of the complaint.

(7) **“RRT”** means a registered respiratory therapist. This is the advanced level of respiratory care.

S. Definitions beginning with “S”:

(1) **“Shall”** has the same meaning as defined in Subsection A of Section 12-2A-4 NMSA 1978.

(2) **“State Rules Act”** refers to Section 14-4-1 through Section 14-4-9, NMSA 1978.

(3) **“Student”** means a person enrolled in an approved respiratory care training and education program and who receives *no remuneration* for respiratory care services performed in a supervisory facility as part of an approved respiratory care training program.

(5) **“Student extern”** means a person who is engaged by a supervisory facility to provide respiratory care for remuneration while enrolled in an approved respiratory care training and education program, and in accordance with the provisions for a temporary permit issued under these regulations.

(6) **“Substantially equivalent”** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience required by the Respiratory Care Act.

(7) **“Superintendent”** has the same meaning as defined in Subsection I of Section 61-12B-3 NMSA 1978.

(8) **“Supervisory facility”** means the employer of a temporary permit holder.

T. Definitions beginning with “T”:

(1) **“Telemedicine”** means the use of telephonic or electronic communications to provide clinical services to patients without an in-person visit.

(2) **“Traditional training program”** refers to a respiratory care training program that provides classroom instruction and clinical experience only to students or student externs under direct supervision of a licensed and responsible professional.

(3) **“Training supervisor”** means a New Mexico licensed respiratory care practitioner or a New Mexico licensed physician who agrees to be responsible for the respiratory care administered by student externs and graduates while these individuals are employed by a supervisory facility and are being trained there.

U. Definitions beginning with “U”:

(1) **“Uniform Licensing Act”** or **“ULA”** refers to Section 61-1-1 through Section 61-1-36, NMSA 1978.

V. Definitions beginning with “V”:

(1) **“Veteran”** has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

W. Definitions beginning with “W”: [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[16.23.1.7 NMAC - Rp, 16.23.1.7 NMAC, 04/21/2022]

16.23.1.8 SEVERABILITY: Should any part or application of Title 16, Chapter 23 NMAC NMAC be declared invalid, the remainder shall remain in full force and effect.

[16.23.1.8 NMAC - RP, 16.23.1.8 NMAC, 04/21/2022]

16.23.1.9 EXCEPTIONS: Title 16, Chapter 23 NMAC NMAC does not apply to the following:

A. Other persons and health care providers licensed by appropriate agencies of New Mexico.

B. Persons providing self-care to themselves.

C. Persons who do not represent themselves or hold themselves out to be a respiratory care practitioner who are providing gratuitous care to a friend or family member.

D. Persons who provide respiratory care services in a case of emergency.

E. Title 16 Chapter 23 NMAC does not prohibit the following from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified.

(1) Qualified clinical laboratory personnel working in facilities licensed by the federal

Clinical Laboratories Improvement Act of 1967, as amended, or any subsequent act.

(2) Persons accredited by the college of American pathologists; or

(3) Qualified clinical laboratory personnel who work in facilities accredited by the joint commission on accreditation of health care organizations.

[16.23.1.9 NMAC - RP, 16.23.1.9 NMAC, 04/21/2022]

16.23.1.10 INSPECTION OF PUBLIC RECORDS: The board operates in compliance with the Inspection of Public Records Act, Section 14-2-1 through Section 14-2-12, NMSA 1978. The board administrator is the custodian of the board's records.

[16.23.1.10 NMAC - Rp, 16.23.1.10 NMAC, 04/21/2022]

16.23.1.11 TELEPHONE CONFERENCES: When it is difficult or impossible for a board member to attend a board meeting in person, the member may participate by means of a conference telephone or similar communications equipment as authorized by the Open Meetings Act, Subsection C of Section 61-15-1, NMSA 1978.

A. Participation by such means shall constitute presence in person at the meeting.

B. Each member participating by conference telephone must be identified when speaking.

C. All participants must be able to hear each other at the same time.

D. Members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[16.23.1.11 NMAC - Rp, 16.23.1.11 NMAC, 04/21/2022]

16.23.1.12 INCOMPLETE APPLICATIONS PURGED: Incomplete applications for licensure will be purged from board files two years from the date the file is closed.

[16.23.1.12 NMAC - N, 04/21/2022]

16.23.1.13 LEGAL NAME CHANGE: If a licensee or permit holder requests a new license or permit, wall or renewal, to be compatible with a legal name change, the department will issue a new license upon receipt of the following:

A. the old license(s) or permit(s);

B. legal proof of the name change;

C. a written request for name change to be made on licensing or permit records; and

D. fee(s) in an amount provided in 16.23.2.8 NMAC.

[16.23.1.13 NMAC - N, 04/21/2022]

16.23.1.14 ADDRESS OR EMPLOYMENT CHANGES: It is the licensee's or permittee's responsibility to keep the department informed immediately of any changes in residential and employment addresses and phone numbers so that renewal notices and correspondence from the department will be received by the licensee or permittee, by sending an email to the following board email address: respiratorycarebd@state.nm.us.

[16.23.1.14 NMAC - N, 04/21/2022]

16.23.1.15 DUPLICATE LICENSE: In the event a license or permit is lost or destroyed, the department will issue a duplicate license or permit upon receipt of the following.

A. Notice to the department of the loss by the licensee or permittee.

B. A request for a duplicate.

C. Administrative fee(s) in an amount as provided in 16.23.2.8 NMAC.

[16.23.1.15 NMAC - N, 04/21/2022]

16.23.1.16 INACTIVE STATUS REQUIREMENTS: Currently licensed practitioners who are not currently practicing in New Mexico under the terms and provisions authorized by the Respiratory Care Act, or who are working for the federal government, may place their licenses on inactive status at the time of renewal rather than let their licenses expire.

A practitioner's license will be placed on inactive status by the department after the licensee has provided the following:

A. a completed renewal application signed by the applicant under penalty of perjury, on which the "inactive status requested" box has been checked;

B. documentation verifying that the continuing education requirements were met as set forth 16.23.12 NMAC; and

C. the applicable fee for inactive status set forth in 16.23.2.8 NMAC.

D. the practitioner must submit the completed renewal application form marked for inactive status with a postmark dated on or before September 30 in order to be processed for inactive status.

E. Upon approval of the inactive status application request, the department will send the licensee notice that the license has been placed on inactive status.

F. A license on inactive status must be reactivated before September 30 of the *next* odd-numbered year, or the license shall lapse and become null and void (see 16.23.11.11 NMAC).

G. Until the inactive status license has been reactivated, the respiratory care practitioner may not practice respiratory care in New Mexico unless employed by the federal government.

H. Inactive status reactivation: The individual who has placed his or her license on inactive status may reactivate the license before September 30 of the next odd-numbered year by completing the following procedure.

(1) Request a reactivation application form from the department or download it from the board's website.

(2) Complete, sign, and return the reactivation application form with a postmark dated on or before September 30 of the odd-numbered year and within the time limitation set forth in 16.23.9.14 NMAC.

(3) Remit the applicable fee for reactivation from inactive status set forth in 16.23.2.8 NMAC.

I. Upon review and approval of the reactivation application, the department will issue a reactivated license to the licensee. The license number will remain the same.

J. Upon receipt of the reactivated license, the licensee may resume the practice of respiratory care in New Mexico.

K. Continuing Education Requirements for Reactivation: For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

(1) **Twenty clock hours per renewal cycle.** If the completed reactivation application is received by the department postmarked *on or before* September 30 of the *even*-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be 20.

(2) **Ten clock hours per renewal cycle.** If the completed reactivation application is received by the department postmarked *on or after* October 1 of the *even*-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be 10.

(3) **Zero clock hours.** If the completed reactivation application is approved by the department postmarked *on or after* June 1 of the *odd*-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be zero. [16.23.1.16 NMAC - N, 04/21/2022]

16.23.1.17 LICENSE EXPIRATION AND LAPSE DUE TO NON-RENEWAL: Respiratory care practitioner licenses not renewed or which have not been placed on inactive status by the end of the renewal cycle will be deemed expired and invalid.

A. The individual who has allowed license expiration, must reactivate the expired license before the next scheduled renewal expiration date for licensed respiratory care practitioners on September 30 of the next odd-numbered year. The applicant must complete the following process in order to reactivate the license.

(1) Contact the department to request a reactivation application form or download it from the board's website.

(2) Complete and return to the department, the reactivation application form with the necessary continuing education documentation required in 16.23.12 NMAC.

(3) Submit to the department a check or money order payable to the board in the amount of the renewal and penalty fee (See 16.23.2.8 NMAC).

(4) Submit to the department, proof of 20 clock hours of continuing education per renewal cycle.

B. License lapse: An expired license that has not been reactivated before the next scheduled license expiration date of September 30 of the next odd-numbered year, will lapse and become null and void.

(1) Re-licensure required. Before resuming the practice of respiratory care in New Mexico, the individual whose license has lapsed must be approved for licensure by the department.

(2) Application required. The applicant with a lapsed license must repeat the entire initial licensure application process as set forth in 16.23.3 and 16.23.4 NMAC.
[16.23.1.17 NMAC - Rp, 16.23.1.17 NMAC, 04/21/2022]

16.23.1.18 PARENTAL RESPONSIBILITY ACT COMPLIANCE: Disciplinary action related to compliance with the provisions in the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, are regulated pursuant to Section 16.1.1 NMAC, Parental Responsibility Act Compliance.
[16.23.1.18 NMAC - N, 04/21/2022]

HISTORY OF REPEALED MATERIAL:

16.23.1 NMAC, “Respiratory Care Practitioners - General Provisions”, filed 6/6/2000 - Repealed effective 04/21/2022.

Other History: 16.23.1 NMAC, “Respiratory Care Practitioners - General Provisions”, (filed 6/6/2000) was replaced by 16.23.1 NMAC, “General Provisions”, effective 04/21/2022.