

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 23 RESPIRATORY CARE PRACTITIONERS
PART 18 DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER

16.23.18.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department in consultation with the Advisory Board of Respiratory Care Practitioners.
[16.23.18.1 NMAC - Rp, 16.23.18.1 NMAC, 04/21/2022]

16.23.18.2 SCOPE: The provisions in Part 18 of Chapter 23 apply to any temporary permittee or licensee governed by the Respiratory Care Act who may be subject to investigation and disciplinary action for violations of the Impaired Health Care Provider Act.
[16.23.18.2 NMAC - Rp, 16.23.18.1 NMAC, 04/21/2022]

16.23.18.3 STATUTORY AUTHORITY: Part 18 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6 NMSA 1978; the Uniform Licensing Act, Section 61-1-1 through Section 61-1-36 NMSA 1978; and the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978.
[16.23.18.3 NMAC - Rp, 16.23.18.3 NMAC, 04/21/2022]

16.23.18.4 DURATION: Permanent.
[16.23.18.4 NMAC - Rp, 16.23.18.4 NMAC, 04/21/2022]

16.23.18.5 EFFECTIVE DATE: April 21, 2022 unless a later date is cited at the end of a section.
[16.23.18.5 NMAC - Rp, 16.23.18.5 NMAC, 04/21/2022]

16.23.18.6 OBJECTIVE: The objective of Part 18 of Chapter 23 is to set forth policies and guidelines for disciplinary action when evidence or allegations of violation of the Impaired Health Care Provider Act a temporary permittee or licensed practitioner have been presented to the department or to the board.
[16.23.18.6 NMAC - Rp, 16.23.18.6 NMAC, 04/21/2022]

16.23.18.7 DEFINITIONS: All definitions related to this section are in 16.23.1.7 NMAC.
[16.23.18.7 NMAC - Rp, 16.23.18.7 NMAC, 04/21/2022]

16.23.18.8 EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS: In cases where the department or the board has reasonable cause to believe that a temporary permittee or a licensed practitioner is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the permittee's or licensee's ability to practice respiratory care with reasonable skill and safety to patients, the department, in consultation with the board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.
[16.23.18.8 NMAC - Rp, 16.23.8 NMAC, 04/21/2022]

16.23.18.9 EXAMINING COMMITTEE DESIGNATED: The department, in consultation with the board, shall designate three licensed health care providers as members of an "examining committee" to examine the temporary permittee or licensed practitioner believed to be impaired by the excessive or habitual use or abuse of intoxicants or drugs.
[16.23.18.9 NMAC - Rp, 16.23.18.9 NMAC, 04/21/2022]

16.23.18.10 EXAMINATION CONDUCTED BY EXAMINING COMMITTEE: In accordance with the provisions in the Impaired Health Care Provider Act, the examining committee shall order and conduct an examination and may require a physical examination or drug test of the permittee or licensee, to determine fitness to practice respiratory care with reasonable skill or safety to patients, either on a restricted or unrestricted basis.
[16.23.18.10 NMAC - Rp, 16.23.18.10 NMAC, 04/21/2022]

16.23.18.11 PHYSICAL EXAM OR DRUG TEST ORDERED: The physical examination and drug test

ordered by the examination committee shall be performed by a licensed professional designated by the department. The cost of said examination or test shall be borne by the temporary permittee or licensed practitioner.
[16.23.18.11 NMAC - Rp, 16.23.18.11 NMAC, 04/21/2022]

16.23.18.12 EXAMINING COMMITTEE REPORT:

A. The examining committee shall report its findings on the examination and make recommendation to the board and the department.

B. Recommendations made to the board and the department by the examining committee shall be advisory only and shall not be binding on the board or the department.
[16.23.18.12 NMAC - Rp, 16.23.18.12 NMAC, 04/21/2022]

16.23.18.13 RESULTS ADMISSIBLE: The results of the examining committee's findings and the physical exam and drug test shall be admissible in any subsequent review by the board or hearing before the department, notwithstanding any claim of privilege under a contrary rule or law or statute.
[16.23.18.13 NMAC - Rp, 16.23.18.13 NMAC, 04/21/2022]

16.23.18.14 [RESERVED]

16.23.18.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION: Failure or refusal by the temporary permittee or licensed practitioner to comply with an examining committee order to appear before it for examination, or to submit to a physical examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the temporary permit or license by the department until further order by the department.
[16.23.18.15 NMAC - Rp, 16.23.18.15 NMAC, 04/21/2022]

16.23.18.16 ACTION ON EXAMINATION COMMITTEE REPORT: The department, in consultation with the board, may accept or reject any finding, determination, or recommendation made by the examining committee to the board regarding the temporary permittee's or licensee's ability to continue to practice with or without restriction on the temporary permit or the license, or it may refer the matter back to the board or the examination committee for further examination and report, or it may decide that formal disciplinary action is immediately warranted.
[16.23.18.16 NMAC - Rp, 16.23.18.16 NMAC, 04/21/2022]

16.23.18.17 [RESERVED]

16.23.18.18 ENTITLEMENT TO HEARING: Before the department, in consultation with the board, can take action to restrict, suspend, or revoke the temporary permittee's permit or practitioner's license on the evidence reported by the examining committee, the temporary permittee or licensed practitioner shall be entitled to a hearing under, and in accordance with, the procedures contained in the Impaired Health Care Provider Act and the Uniform Licensing Act.
[16.23.18.18 NMAC - Rp, 16.23.18.18 NMAC, 04/21/2022]

16.23.18.19 [RESERVED]

16.23.18.20 REQUEST FOR VOLUNTARY RESTRICTION OF THE PERMIT OR LICENSE: In lieu of a formal hearing, the temporary permittee or licensed practitioner may voluntarily request, in writing to the department, a restriction of the temporary permit or the license to practice respiratory care.

A. The department, in consultation with the board, may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the temporary permit or practitioner's license to practice within specified limitations.

B. Upon imposition of voluntary restrictions on the temporary permit or the practitioner's license, the department, in consultation with the board, shall have the authority, if it deems appropriate, to waive the commencement of any further disciplinary proceedings conducted in accordance with the Uniform Licensing Act.
[16.23.18.20 NMAC - Rp, 16.23.18.20 NMAC, 04/21/2022]

16.23.18.21 PETITION FOR REMOVAL OF VOLUNTARY RESTRICTION: The temporary permittee or licensed practitioner shall have a right, at reasonable intervals after a year, to petition the department in writing,

for the removal of the voluntary restriction and to demonstrate that he or she is capable of resuming the competent practice of respiratory care with reasonable skill and safety to patients.

A. The department, in consultation with the board, shall act on the petition by referring it to the examining committee, who shall conduct the necessary examination of the temporary permittee or the licensed practitioner, and make written recommendation to the board.

B. Upon consideration of the examining committee's recommendation, the department, in consultation with the board may, in its discretion, remove the voluntary restriction on the temporary permit or practitioner's license.

[16.23.18.21 NMAC - Rp, 16.23.18.21 NMAC, 04/21/2022]

16.23.18.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION: In the absence of a request by the temporary permittee or licensed practitioner for voluntary restriction of their temporary permit or practitioner's license as provided in 16.23.18.20 NMAC (this rule), the department may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the temporary permit or practitioner's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.

[16.23.18.22 NMAC - Rp, 16.23.18.22 NMAC, 04/21/2022]

16.23.18.23 TEMPORARY SUSPENSION: The department may temporarily suspend the temporary permit or license without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the respondent's continuation in practice would constitute an imminent danger to the health and safety of the public. The respondent shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

[16.23.18.23 NMAC - Rp, 16.23.8.23 NMAC, 04/21/2022]

16.23.18.24 PETITION FOR REINSTATEMENT, RESTORATION, OR MODIFICATION OF DISCIPLINARY ORDER: Subsequent to formal proceedings under the Impaired Health Care Provider Act and the Uniform Licensing Act, any temporary permittee or licensed practitioner who is prohibited from practicing respiratory care may, after a year from the date of suspension or revocation of the temporary permit or practitioner's license, petition the department for reinstatement or restoration of his or her temporary permit or license to practice, or for modification of the final disciplinary orders.

A. The application for reinstatement or restoration of the temporary permit or practitioner's license, or for the modification of the disciplinary orders shall be made in writing to the department by the temporary permittee or licensed practitioner.

B. The temporary permittee or licensed practitioner shall be afforded an opportunity to demonstrate that he or she can resume the practice of respiratory care with reasonable skill, competence, and safety to patients and shall be required to provide verifiable proof of compliance with any stipulations in the disciplinary order.

(1) The department may require an examination by the examining committee for such reinstatement, restoration, or modification of the temporary permit or practitioner's license.

(2) The department may require verification that the temporary permittee or licensed practitioner has completed a treatment program for alcohol or chemical dependency.

(3) The department may require verifiable proof that the temporary permittee or licensed practitioner has 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 one year.

(4) The department may require verifiable proof that the temporary permittee or licensed practitioner has 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 alcohol screening of urine or blood.

(5) The department shall have the discretion to accept or reject the petition for reinstatement or restoration of the temporary permit or practitioner's license, or for modification of the disciplinary orders.

[16.23.18.24 NMAC - Rp, 16.23.18.24 NMAC, 04/21/2022]

HISTORY OF 16.23.18 NMAC:

PRE-NMAC HISTORY: None

HISTORY OF REPEALED MATERIAL:

16.23.18 NMAC, “Disciplinary Guidelines for Impaired Practitioner” filed 12/30/2002 repealed 04/21/2022.

Other History: 16 NMAC 23.18, “Disciplinary Guidelines for Impaired Practitioner”, filed 11/10/1997 renumbered and reformatted to 16.23.18 NMAC, “Disciplinary Guidelines for Impaired Practitioner”, effective 1/30/2003

16.23.18 NMAC, “Disciplinary Guidelines for Impaired Practitioner” filed 12/30/2002 was replaced by 16.23.18 NMAC, “Disciplinary Guidelines for Impaired Practitioner” effective 04/21/2022.