

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 4 CHIROPRACTIC PRACTITIONERS
PART 8 DISCIPLINARY PROCEEDINGS

16.4.8.1 ISSUING AGENCY: New Mexico Chiropractic Board, PO Box 25101, Santa Fe, New Mexico 87504.

[16.4.8.1 NMAC - Rp, 16.4.8.1 NMAC 4/9/2022]

16.4.8.2 SCOPE: The provisions of 16.4.8 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a chiropractor licensed by the board.

[16.4.8.2 NMAC - Rp, 16.4.8.2 NMAC 4/9/2022]

16.4.8.3 STATUTORY AUTHORITY: 16.4.8 NMAC is promulgated pursuant to the Chiropractic Physician Practice Act, Section 61-4-10 NMSA 1978 and the Uniform Licensing Act, 60-1-1 through -36 NMSA 1978.

[16.4.8.3 NMAC - Rp, 16.4.8.3 NMAC 4/9/2022]

16.4.8.4 DURATION: Permanent.

[16.4.8.4 NMAC - Rp, 16.4.8.4 NMAC 4/9/2022]

16.4.8.5 EFFECTIVE DATE: April 9, 2022, unless a later date is cited at the end of a section.

[16.4.8.5 NMAC - Rp, 16.4.8.5 NMAC 4/9/2022]

16.4.8.6 OBJECTIVE: To establish the procedures for filing complaints against licensees and applicants, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.

[16.4.8.6 NMAC - Rp, 16.4.8.6 NMAC 4/9/2022]

16.4.8.7 DEFINITIONS: [RESERVED]

16.4.8.8 COMPLAINTS: Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and complaint/review committee. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act, the Chiropractic Physician Practice Act, and the Impaired Practitioners Act.

[16.4.8.8 NMAC - Rp, 16.4.8.8 NMAC 4/9/2022]

16.4.8.9 ACTIONS:

A. The board may penalize, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Chiropractic Physician Practice Act, the Uniform Licensing Act, the Impaired Healthcare Care Providers Act, these Rules, or discipline imposed by other governing bodies.

B. The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the act or rules.

C. The board may at its discretion hire investigators to investigate complaints made to the board regarding chiropractic physicians.

D. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

[16.4.8.9 NMAC - Rp, 16.4.8.9 NMAC 4/9/2022]

16.4.8.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

A. “**Gross incompetence**” or “**gross negligence**” means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. “**Unprofessional conduct**” means, but is not limited to because of enumeration:

(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 chiropractic profession;

(2) representing to a patient that a manifestly incurable condition or sickness, disease or injury can be cured;

(3) willfully or negligently divulging a professional confidence;

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

(5) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by consultation with individuals having special skills, knowledge, and experience;

(6) failure of a chiropractor to comply with and following advertising guidelines as set in 16.4.1.12 NMAC;

(7) failure to use appropriate infection control techniques and sterilization procedures;

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

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient;

(10) intentionally engaging in sexual contact with a patient other than his spouse during the doctor-patient relationship;

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

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

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

(14) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician who renders care as a chiropractic assistant under 16.4.19 NMAC of these rules;

(15) cheating on an examination for licensure;

(16) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice chiropractic;

(17) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act (Chapter 61, Article 4 NMSA 1978) or rules and regulations promulgated by the board and filed in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1978);

(18) has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

(19) has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractic was based upon acts by the licensee similar to acts described in this section and by board rules;

(20) failure to report to the board within 90 days any adverse action taken after due process has been afforded to the licensee by:

(a) another licensing jurisdiction;

(b) any health care entity, not involving disputes over fees;

(c) any governmental agency, not involving disputes overseas;

(d) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section.

(21) failure to furnish the board, its investigators or representatives with information requested by the board;

(22) abandonment of patients;

(23) providing a false, materially incomplete, factually unsupported opinion or opinions which are not congruent with current teachings and standards of care as taught in CCE accredited chiropractic colleges in a peer review, records review, independent medical examination, or chiropractic examination.

[16.4.8.10 NMAC - Rp, 16.4.8.10 NMAC 4/9/2022]

16.4.8.11 COMPLAINT/REVIEW COMMITTEE: The complaint/review committee of the board is authorized to:

A. carry out the instructions of the board in the investigation and processing of complaints against licensees.

B. disciplinary actions taken by the board shall be reported as required to the following entities:

- HIPD”;
- (1) national practitioner databank-healthcare integrity and protection databank “NPDB-”;
 - (2) federation of chiropractic licensing boards “FCLB”;
 - (3) or their successors.

[16.4.8.11 NMAC - Rp, 16.4.8.11 NMAC 4/9/2022]

16.4.8.12 DISQUALIFYING CRIMINAL CONVICTIONS: A “disqualifying criminal conviction” means a conviction for a crime that is job-related for the position in question and consistent with business necessity. Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license or certificate by the board:

- A. Physical Harm to Others:**
 - (1) Section 30-2-1 NMSA 1978, “Murder”.
 - (2) Section 30-2-3 NMSA 1978, “Manslaughter”.
 - (3) Section 30-3-1 NMSA 1978, “Assault”.
 - (4) Section 30-3-4 NMSA 1978, “Battery”.
 - (5) Section 30-6-1 NMSA 1978, “Abandonment or abuse of a child”.
 - (6) Section 30-4-1 NMSA 1978, “Kidnapping”.
 - (7) Section 30-4-3 NMSA 1978, “False imprisonment”.
 - (8) Section 30-9-19, NMSA 1978, “Sexual assault”.
 - (9) Section 30-47-4 NMSA 1978, “Abuse of a care facility resident”.
 - (10) Section 30-47-5 NMSA 1978, “Neglect of a care facility resident”.
- B. Property Damage:**
 - (1) Section 30-15-1 NMSA 1978, “Criminal damage to property”.
 - (2) Section 30-7-5 NMSA 1978, “Dangerous use of explosives”.
 - (3) Section 30-15-1.1 NMSA 1978, “Unauthorized graffiti on personal or real property”.
 - (4) Section 30-17-5 NMSA 1978, “Arson and negligent arson”.
- C. Fraud:**
 - (1) Section 30-16-6 NMSA 1978, “Fraud”.
 - (2) Section 7-1-73 “NMSA 1978, Tax fraud”.
 - (3) Sections 59A-16C-1 to -17 NMSA 1978, , violations of the Insurance fraud act.
 - (4) Section 30-28-2 “NMSA 1978, Conspiracy”.
 - (5) Section 30-44-4 NMSA 1978, “Falsification of documents” under the Medicaid Fraud Act.
 - (6) Section 30-44-5 NMSA 1978, “Failure to retain records in connection with the Medicaid Fraud Act”.
 - (7) Section 30-44-6 NMSA 1978, “Obstruction of Investigation in connection with the Medicaid Fraud Act”.
 - (8) Section 30-44-7 NMSA 1978, “Medicaid fraud”.
 - (9) Section 30-51-4 NMSA 1978, “Money laundering”.
- D. Theft:**
 - (1) Section 30-14-8 NMSA 1978, “Breaking and entering”.
 - (2) Section 30-16-1 NMSA 1978, “Larceny”.
 - (3) Section 30-16-2 “NMSA 1978, Robbery”.
 - (4) Section 30-16-3 NMSA 1978, “Burglary”.
 - (5) Section 30-16-20 NMSA 1978, “Shoplifting”.
 - (6) Section 30-16-24.1 NMSA 1978, “Theft of identity”.
 - (7) Section 30-16-26 NMSA 1978, “Theft of a credit card”.
 - (8) Section 30-16-11 NMSA 1978, “Receiving stolen property”.
 - (9) Section 30-47-6 NMSA 1978, “Exploitation of a care facility resident’s property”.
- E. Financial Crimes:**
 - (1) Section 30-16-8 NMSA 1978, “Embezzlement”.
 - (2) Section 30-16-9 NMSA 1978, “Extortion”.
 - (3) Section 30-16-10 NMSA 1978, “Forgery”.
 - (4) Section 30-41-1 NMSA 1978, “Soliciting and receiving illegal kickbacks”.
 - (5) Section 30-42-4 NMSA 1978, “Racketeering”.
- F. Drug Offenses:**

- (1) Section 30-31-20 NMSA 1978, "Trafficking of controlled substances".
- (2) Section 30-31-21 NMSA 1978, "Distribution to a minor".
- (3) Section 30-31-22 NMSA 1978, "Intentionally distributing or possessing with intent to distribute a controlled substance.
- (4) Section 30-31-23 NMSA 1978, "Possession of controlled substances".
- (5) Section 30-31-24 NMSA 1978, "Violations of the administrative provisions of the Controlled Substances Act".
- (6) Section 30-31-25 "NMSA 1978, Engaging in other acts prohibited by the Controlled Substances Act".
- (7) Section 30-31-25.1 NMSA 1978, "Delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior".
- (8) Section 30-31A-4 NMSA 1978, "Manufacturing, distributing or possessing with intent to distribute an imitation controlled substance".
- (9) Section 30-31A-5 NMSA 1978, "Intentionally selling an imitation controlled substance to a person under the age of eighteen years".
- (10) Section 30-31A-6 NMSA 1978, "Intentionally possessing an imitation controlled substance with the intent to distribute".
- (11) Section 30-31B-12 NMSA 1978, "Certain violations of the Drug Precursor Act".
- (12) Section 30-6-3 NMSA 1978, "Contributing to the delinquency of a minor".

G. Sex Crimes:

- (1) Section 30-37A-1 NMSA 1978, "Unauthorized distribution of sensitive images".
- (2) Section 30-37-3.2 NMSA 1978, "Child solicitation by electronic communication device".
- (3) Section 30-37-3.3 NMSA 1978, "Criminal sexual communication with a child".
- (4) Section, 30-52-1 NMSA 1978, "Human trafficking".
- (5) Section 30-9-11 NMSA 1978, "Criminal sexual penetration".
- (6) Section 30-9-12 NMSA 1978, "Criminal sexual contact".
- (7) Section 30-9-13 NMSA 1978, "Criminal sexual contact of a minor".
- (8) Section 30-9-14.3 NMSA 1978, "Aggravated indecent exposure".
- (9) Section 30-6A-3 NMSA 1978, "Sexual exploitation of children".
- (10) Section 30-6A-4 NMSA 1978, "Sexual exploitation of children by prostitution".
- (11) Subsection P of Section 29-11A-4 NMSA 1978, "Failure to register as required by sex offender registration and notification act".

H. Abuse of animals:

- (1) Section 30-18-1 NMSA 1978, "Cruelty to animals or extreme cruelty to animals".
- (2) Section 30-18-3 NMSA 1978, "Unlawful branding of animals".
- (3) Section 30-18-6 NMSA 1978, "Transporting stolen livestock".
- (4) Section 30-18-9 NMSA 1978, "Dog fighting or cock fighting".
- (5) Section 30-18-12 NMSA 1978, "Injury to livestock".

I. Miscellaneous:

- (1) Section 30-3A-3 NMSA 1978, "Stalking".
- (2) Section 30-20-12 NMSA 1978, "Use of telephone to terrify, intimidate, threaten, harass, annoy or offend another.
- (3) Section 66-8-102 NMSA 1978, "Driving under the influence of intoxicating liquor or drugs".
- (4) Section 61-6-20 NMSA 1978, "Practicing medicine without a license".
- (5) Section 61-6-25 NMSA 1978, "Making a false statement under oath or submitting a false affidavit, in connection with the Medical Practice Act".
- (6) Section 26-1-26 NMSA 1978, "Violation of the New Mexico Drug, Device and Cosmetic Act".
- (7) Section 12-10-20 NMSA 1978, "Failure to comply with proclamation of the governor".

J. 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 under this section.

K. 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 under this section.

L. 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 Chiropractor Physician Practice Act,

Sections 61-4-1 to -17 NMSA 1978, or the Uniform Licensing Act, Section 61-1-1 to-36 NMSA 1978, 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 under this section.

M. 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

16.4.8.11 NMAC.

[16.4.8.12 NMAC - N, 4/9/2022]

History of 16.4.8 NMAC: 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006, Repealed effective 8/10/2019. 16.4.8 NMAC, Disciplinary Proceedings filed 7/10/2019, Repealed effective 4/9/2022.

Other History: 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 was replaced by 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 effective 8/10/2019. 16.4.8 NMAC, Disciplinary Proceedings filed 1/31/2006 was replaced by 16.4.8 NMAC, Disciplinary Proceedings filed 7/10/2019 effective 4/9/2022.