

**This is an amendment to 16.19.27 NMAC, Section 3 and 7, effective 2/28/2023**

**16.19.27.3 STATUTORY AUTHORITY:** Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Paragraph (7) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act. Section 61-11-20 NMSA 1978, [~~Uniform Licensing Act~~] authorizes the board [~~of pharmacy~~] in accordance with the Uniform Licensing Act, to deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant: (1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board; (17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board [~~of pharmacy~~] to promulgate rules relating to listing specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board [~~of pharmacy~~] from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board [~~of pharmacy~~] the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.

[16.19.27.3 NMAC - N, 12/1/2003; A, 11/30/2021; A, 02/28/2023]

**16.19.27.7 DEFINITIONS:** Dishonorable conduct by a pharmacist intern licensed pursuant to Section 61-11-6 NMSA 1978, or pharmacy technician registered pursuant to Section 61-11-6 NMSA 1978.

**A. “Dishonorable conduct by a pharmacist intern or pharmacy technician”** shall mean, among other things, but not to be limited to:

- (1) violation of any provision of the Pharmacy Act as determined by the board;
- (2) violation of the board of pharmacy regulations as determined by the board;
- (3) violation of the Drug and Cosmetic Act as determined by the board;
- (4) violation of the Controlled Substances Act as determined by the board;
- (5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;
- (6) acquiring prescription stock from unlicensed sources;
- (7) failure to hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;
- (8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;
- (9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;
- (10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:
  - (a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or
  - (b) a request for therapeutic interchange of a medication prescribed for the patient;
- (11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;
- (12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;
- (13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

**(14)** suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

**(15)** Disqualifying criminal conviction: “Conviction” means either a plea of guilty or nolo contendere, or any other full adjudication on the merits by a court of competent jurisdiction, including but not limited to a trial. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence.

**(a)** A felony conviction for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may result in suspension of a license or registration, or disqualify a licensee or applicant from receiving or retaining a license or registration issued by the board.

- (i)** Section 30-2-1 NMSA 1978 “Murder”;
- (ii)** Sections 30-9-1 and 30-9-11 to 30-9-13 NMSA 1978 Criminal sexual offenses, including of a minor and enticement of a child;
- (iii)** Sections 30-37-2 to 30-37-3.3 NMSA 1978, Sexually oriented material harmful to minors, including child solicitation by electronic communication device and criminal sexual communication with a child;
- (iv)** Sections 30-6A-3 to 30-6A-4 NMSA 1978, Sexual exploitation of children, including prostitution;
- (v)** Section 30-16-2 NMSA 1978 “Robbery”;
- (vi)** Section 30-16-6 NMSA 1978 “Fraud”;
- (vii)** Section Section 30-16-8 NMSA 1978 “Embezzlement”;
- (viii)** Section 30-16-9 NMSA 1978 “Extortion”;
- (ix)** Section 30-16-10 NMSA 1978 “Forgery”;
- (x)** Section 30-16-11 NMSA 1978 “Receiving stolen property”;
- (xi)** Section 30-16-24.1 NMSA 1978 “Theft of identity; obtaining identity by electronic fraud”;
- (xii)** Section 30-16-30 NMSA 1978 “Dealing in credit cards of another”;
- (xiii)** Section 30-16-31 NMSA 1978 “Forgery of a credit card”;
- (xiv)** Section 30-16-33 NMSA 1978 “Fraudulent use of a credit card”;
- (xv)** Section 30-28-3 NMSA 1978 “Criminal solicitation”;
- (xvi)** Section 30-42-4 NMSA 1978 “Engaging in a pattern of racketeering activity”;
- (xvii)** Sections 30-44-4 to 30-44-7 NMSA 1978, Offenses related to Medicaid Fraud;
- (xviii)** Sections 30-47-4 to 30-47-6 Abuse or neglect of a care facility resident, exploitation of a care facility resident’s property;
- (xix)** Section 30-51-4 NMSA 1978 “Money laundering”;
- (xx)** Section 30-52-1 NMSA 1978 “Human trafficking”;
- (xxi)** Section 24-26-12 NMSA 1978 “Intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act” (Sections 24-26-1 to 24-26-12 NMSA 1978);
- (xxii)** Section 27-5-12 NMSA 1978, Making false statement in claim for payment under Indigent Hospital and County Health Care Act (Chapter 27, Article 5);
- (xxiii)** Section 66-8-102 NMSA 1978 “Fourth or subsequent conviction for driving under the influence of intoxicating liquor or drugs”

**(b)** Unless otherwise specified by law, the board shall not consider a criminal conviction as part of an application for licensure or registration unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph 15 of Subsection A of this section 16.19.27.7 NMAC. Any decision by the board to take action against an applicant or licensee (including a registrant) on the basis of a disqualifying criminal conviction shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

**(c)** Nothing in this section prevents the board from denying an application or disciplining a licensee (including a registrant) on the basis of the licensee or applicant’s conduct to the extent that such conduct violated the Pharmacy Act (Chapter 61, Article 11 NMSA 1978), the Drug Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978), the Controlled Substances Act (Chapter 30, Article 31 NMSA 1978), the Imitation Controlled Substances Act (Chapter 30, Article 31A NMSA 1978), or the Drug Precursor Act (Chapter 30, Article 31B NMSA 1978), or similar act of another state or of the United States, or pursuant to the Impaired Health

Care Provider Act (Chapter 61, Article 7 NMSA 1978), or the Impaired Pharmacists Act (Chapter 61, Article 11 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 Subsection A of this rule. Proceedings shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

(d) Notwithstanding Subparagraph (c) of this Section, in connection with an application for licensure or registration, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (i) an arrest not followed by a valid conviction;
- (ii) a conviction that has been sealed, dismissed, expunged or pardoned;
- (iii) a juvenile adjudication; or
- (iv) a conviction for any crime other than the disqualifying criminal

convictions listed in this section.

**B. “Dishonorable conduct by a facility (business)” shall mean but not to be limited to:**

- (1) violation of any provision of the Pharmacy Act as determined by the board;
- (2) violation of the board of pharmacy regulations as determined by the board;
- (3) violation of the Drug and Cosmetic Act as determined by the board;
- (4) violation of the Controlled Substances Act as determined by the board;
- (5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;
- (6) acquiring prescription stock from unlicensed sources;
- (7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities;
- (8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;
- (9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;
- (10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:
  - (a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or
  - (b) a request for therapeutic interchange of a medication prescribed for the patient;
- (11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;
- (12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;
- (13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;
- (14) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;
- (15) failure to correct written deficiencies, documented by drug inspectors during routine inspections;
- (16) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC);
- (17) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public;
- (18) failure to provide a work environment that allows a pharmacist and pharmacist intern to adequately perform duties requiring professional judgment, and for a pharmacist to fulfill duties as enumerated in 16.19.4.16 NMAC and all other duties and responsibilities of a pharmacist as listed in the rules of the board. In determining whether a work environment is appropriate, the board may consider factors including workload (e.g. sufficiency of staffing to prevent fatigue, distraction, or other conditions that interfere with a pharmacist’s ability to complete required duties);

(19) introducing or enforcing external factors, such as productivity or production quotas or other programs against pharmacists, pharmacist interns or pharmacy technicians, to the extent that they interfere with the ability of those individuals to provide appropriate professional services to the public.

(20) retaliation against a pharmacy employee for reporting or filing a complaint regarding violation of board requirements that the business has the authority to correct. Violation of board requirements includes unreasonable workload, such that pharmacy employee(s) are not able to adequately fulfill duties and responsibilities as outlined in board administered rules and statutes

~~(18)~~ (21) having a policy or procedure which hinders the apprehension and/or prosecution of individuals who the pharmacist or pharmacist intern after reasonable inquiry suspect of prescription forgery, alteration, fraud, misrepresentation or a prescription transaction which is not otherwise in accordance with the law;

~~(19)~~ (22) failure to adhere to the written policy and procedures established by the pharmacist-in-charge.

**C. “Pharmaceutical care”** means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient’s quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems. (Subsection V of Section 61-11-2 NMSA 1978)

**D. “Dispensing error”** means a prescription that was dispensed from the pharmacy differently from what was prescribed.

**E. “Harm”** means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.

**F. “Patient counseling”** means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or a device. (Subsection T of Section 61-11-2 NMSA 1978).

**G. “Physical environment”** means the facility layout design, fixtures, and surroundings that affect lighting levels, sound levels, temperature, interruptions, and distractions.

[16.19.27.7 NMAC - N, 12/1/2003; A, 4/1/2004; A, 9/30/2005; A, 12/15/2008; A, 11/13/2018; A, 11/30/2021; A, 02/28/2023]