

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 12 DISCIPLINE AND APPLICATION DENIALS

16.12.12.1 ISSUING AGENCY: New Mexico Board of Nursing.
[16.12.12.1 NMAC - N, 12/30/2021]

16.12.12.2 SCOPE: These rules apply to all applicants, nurses licensed in New Mexico, nurses not licensed in New Mexico and who wish to practice in New Mexico pursuant to a multi-state license privilege as provided in the nurse licensure compact, certified medication aides, hemodialysis technicians, and all others licensed by the board.
[16.12.12.2 NMAC - N, 12/30/2021]

16.12.12.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, and the Lactation Care Provider Act, Sections 61-36-1 to -6 NMSA 1978.
[16.12.12.3 NMAC - N, 12/30/2021]

16.12.12.4 DURATION: Permanent.
[16.12.12.4 NMAC - N, 12/30/2021]

16.12.12.5 EFFECTIVE DATE: December 30, 2021, unless a later date is cited at the end of a section.
[16.12.12.5 NMAC - N, 12/30/2021]

16.12.12.6 OBJECTIVE: The objective of Part 12 is to establish the procedures for denying applications for licensure, processing complaints against licensees and applicants, reinstatement of suspended or revoked licenses, and taking disciplinary action against licensees.
[16.12.12.6 NMAC - N, 12/30/2021]

16.12.12.7 DEFINITIONS:

A. Refer to Definitions, 16.12.1.7 NMAC.

B. “Abandonment” means, in the context of disciplinary action, a nurse’s abrupt severance of, or disengagement from, the relationship between the nurse and the patient or client without giving reasonable notice to a qualified person for the purpose of making arrangements for the continuation of care by others. This definition does not include the abandonment of employment, such as contract issues, no call, no show, refusal to work mandatory overtime, refusal to float to unfamiliar areas, or resignation from a position, since the board has no jurisdiction over employment issues. Abandonment, which can only occur after the nurse has accepted an assignment to provide care, service or treatment to the patient or client, typically consists of one or more of the following elements that, as result of the nurse’s abandonment of the patient or client, caused or may have caused harm:

(1) failure to provide observation, including but not limited to assessment and intervention;
(2) failure to assure competent intervention at any time, including but not limited to delayed treatment, insufficient treatment, or refusal to treat; or
(3) failure to provide for provision of qualified coverage, including but not limited to adequate time to arrange nursing coverage of assigned care.

C. “Competency” means, in the context of the nursing profession, the ability to perform skillfully and proficiently the role of the licensee; the role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise.

D. “Complaint” means, in the context of disciplinary action, a written allegation by any person of one or more wrongful acts or omissions by an applicant, licensee, certificate holder, or anyone else subject to the jurisdiction of the board. A complaint may include knowledge of a judgment or settlement against a licensee.

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

F. “HSD” means the New Mexico human services department.

G. “Incompetent” means the failure to possess or to apply to a substantial degree the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by

the generally accepted standards of the profession. In performing nursing functions, whether those be direct patient care or the administration or management of that care, a nurse is under a legal duty to exercise this knowledge, skill and care. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

H. “Statement of compliance” means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

I. “Statement of non-compliance” means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is not in compliance with a judgment and order for support.

J. “Unprofessional conduct” means any departure from or failure to conform to the minimal standards of acceptable and prevailing nursing practice, including but not limited to such conduct which is or may be harmful to the health, safety, or welfare of the public or which reflects negatively on the individual’s fitness to practice nursing or on the profession more broadly. Unprofessional conduct includes, but is not limited to, the following:

- (1) Misconduct involving misappropriation, such as:
 - (a) misappropriation of money, drugs, or property;
 - (b) obtaining or attempting to obtain any fee for patient/client services for one’s self or for another through fraud, misrepresentation, or deceit;
 - (c) obtaining, attempting to obtain, possessing, administering or furnishing prescription drugs to any person, including but not limited to one’s self, except as directed by a person authorized by law to prescribe;
- (2) Misconduct involving the delivery of nursing services, such as:
 - (a) intentionally engaging in sexual contact with or toward a patient or client in a manner that is commonly recognized as outside the scope of the individual nurse’s practice; abandonment;
 - (b) engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
 - (c) intemperance, addiction, incompetence, or unfitness manifesting itself during the course of employment as a nurse in a fashion or manner which is contrary to the provision of good health care;
 - (d) failure to maintain appropriate professional boundaries which may cause harm to the patient;
 - (e) inappropriate delegation of medication administration, evaluation and nursing judgment to non-licensed persons;
 - (f) practicing beyond the scope of a license, certificate, or other similar credential.
- (3) Misconduct involving patient records, such as:
 - (a) falsifying or altering patient or client records or personnel records for the purpose of reflecting incorrect or incomplete information;
 - (b) making statements or disclosures that create a risk of compromising a patient’s privacy, confidentiality and dignity; or
 - (c) dissemination of a patient or client’s health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital or agency policy from disclosure.
- (4) Misconduct involving legal process, such as:
 - (a) refusing to cooperate with the board in the course of an investigation or otherwise refusing to provide information requested by the board;
 - (b) physically intimidating or threatening, or attempting to physically intimidate or threaten, the board or its staff, whether in connection with an investigation or otherwise;
 - (c) obtaining or attempting to obtain a license to practice nursing for one’s self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or re-licensure process;
 - (d) practicing nursing in New Mexico without a valid, current New Mexico license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current New Mexico license;

(e) failure to report a nurse or certificate holder who is suspected of violating the New Mexico Nursing Practice Act or rules;

(f) failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;

(5) Misconduct involving other procedures or policies, such as:

(a) aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;

(b) failure to follow established procedure and documentation regarding controlled substances;

(c) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing; or

(d) physical, verbal, written, electronic, or other abuse of a patient, client or colleague.

[16.12.12.7 NMAC - N, 12/30/2021]

16.12.12.8 DISCIPLINARY PHILOSOPHY: The board operates its disciplinary program with the ultimate goals of protecting the citizens of New Mexico and ensuring professionalism in the nursing profession. In carrying out this mandate, the board considers all alleged violations based on the merits of each case. Unless the licensee or applicant posed or poses a real or potential danger to the public, the board will consider, but may not eventually utilize, remedial measures of corrective action rather than denial, suspension, or revocation of a license or certificate.

[16.12.12.8 NMAC - N, 12/30/2021]

16.12.12.9 GROUNDS FOR DISCIPLINARY ACTION OR DENIAL OF AN APPLICATION: The Board may take disciplinary action against a licensee or deny an application for licensure upon finding that the licensee or applicant is guilty of:

A. committing fraud or deceit in procuring or attempting to procure a license or certificate of registration;

B. having been convicted of a disqualifying criminal conviction;

C. being unfit or incompetent;

D. being intemperate or addicted to the use of habit-forming drugs;

E. being mentally incompetent;

F. committing unprofessional conduct;

G. having willfully or repeatedly violated any provisions of the Nursing Practice Act or any rule or regulation adopted by the board;

H. having been, while licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country, the subject of disciplinary action as a licensee for acts similar to acts described in this rule;

I. using conversion therapy on a minor;

J. unlicensed practice;

K. failure to comply with obligations under the Parental Responsibility Act; or

L. for hemodialysis technicians or medication aides, any of the offenses identified in 16.12.4.11

NMAC and 16.12.5.11 NMAC.

[16.12.12.9 NMAC - N, 12/30/2021]

16.12.12.10 CRIMINAL CONVICTIONS:

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

(1) homicide;

(2) aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;

(3) robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child

solicitation, or other crimes constituting sexual offenses;

- (5) driving under the influence of intoxicating liquor or drugs;
- (6) trafficking controlled substances;
- (7) crimes involving child abuse or neglect;
- (8) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting,

financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;

- (9) making a false statement under oath or in any official document;
- (10) evasion of a lawful debt or obligation, including but not limited to tax obligations; or
- (11) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

B. The board shall not consider the fact of a criminal conviction as part of an application for a license or certificate unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend or revoke a license or certificate on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee or certificate holder on the basis of an individual's conduct to the extent that such conduct violated the Nursing Practice 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 Subsection A of this rule.

E. In connection with an application for a license or certificate, 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

Subsection A of 16.12.12.10 NMAC.

[16.12.12.10 NMAC - N, 12/30/2021]

16.12.12.11 PARENTAL RESPONSIBILITY ACT COMPLIANCE: The board shall suspend or revoke licensees or certificate holders and deny applications for licenses or certificates in accordance with the Parental Responsibility Act, Sections 40-5A-1 to -13 NMSA 1978.

A. All terms defined by the Parental Responsibility Act shall have the same meaning in this section.

B. If an applicant, licensee, or certificate holder is not in compliance with a judgment and order for support, the board:

- (1) shall deny an application for a license or certificate;
- (2) shall deny the renewal of a license or certificate; and
- (3) has grounds for suspension or revocation of the license or certificate.

C. Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support; the board shall match the applicant against the current certified list of board licensees, certificate holders, and applicants.

(1) Upon the later receipt of an application for licensure, certification or renewal, the board shall match the applicant against the current certified list.

(2) By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants, licensees, and certificate holders who are on the certified list and the action the board has taken in connection with such applicants, licensees, or certificate holders.

D. Upon determination that an applicant, licensee, or certificate holder appears on the certified list, board staff shall automatically issue a notice of contemplated action in accordance with the Uniform Licensing Act, Section 61-1-1 NMSA 1978, to take the appropriate action.

(1) The notice of contemplated action shall state that the board has grounds to take such action unless the applicant, licensee, or certificate holder:

(a) mails a letter, certified mail return receipt requested, within 20 days of receipt of the notice of contemplated action requesting a hearing; and

(b) provides the board, prior to the scheduled hearing date, with a statement of compliance from HSD.

(2) If the applicant, licensee, or certificate holder disagrees with the determination of non-

compliance, or wishes to come into compliance, the applicant, licensee, or certificate holder should contact the HSD child support enforcement division.

E. In any hearing under this subsection, a statement of non-compliance is conclusive evidence that requires the board to take the action to deny the application or suspend or revoke the license, unless the applicant, licensee, or certificate holder provides the board with a subsequent statement of compliance which shall preclude the board from taking any action.

F. When the board takes disciplinary action solely because the applicant, licensee, or certificate holder is not compliance with a judgment and order for support, the final decision and order shall state that the applicant, licensee, or certificate holder shall be reinstated upon presentation of a subsequent statement of compliance.

G. Reinstatement: The executive director shall, upon presentation of a subsequent statement of compliance, reinstate a license or certificate previously revoked solely due to noncompliance with a judgment and order for support, provided that the licensee or certificate holder must meet the requirements for reinstatement and pay the appropriate reinstatement fee.

[16.12.12.11 NMAC - N, 12/30/2021]

16.12.12.12 DISCIPLINARY AND APPLICATION PROCEEDINGS:

A. The board shall conduct all disciplinary and application proceedings in accordance with the Uniform Licensing Act and the Open Meetings Act.

B. Filing of a complaint:

(1) A person must file a written complaint with the board before the board can initiate disciplinary proceedings.

(2) Any person, including a member of the public, a member of the board, or an employee of the board, may file a complaint.

(3) A nurse or certificate holder who suspects that another nurse or certificate holder has violated any provision of the Nursing Practice Act or rules of the board must file a written complaint with the board, unless the nurse or certificate holder suspected of violating the Nursing Practice Act or rules of the board is a patient and patient confidentiality therefore applies.

C. Investigation of a complaint:

(1) The board's staff may investigate complaints to determine whether a violation of law has occurred.

(2) The executive director or, in the director's absence, an assistant director or designee may authorize and sign investigative subpoenas in connection with any investigation.

(3) Upon receipt of a complaint, board staff may forward the complaint to the applicable licensee or certificate holder and request a response within 10 business days of receipt. A licensee or certificate holder's failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

D. Notices of contemplated action:

(1) The board's administrative prosecutor shall draft all notices of contemplated action.

(2) The executive director or, in the director's absence, an assistant director or designee shall sign all notices of contemplated action on behalf of the board.

E. Notices of hearings: Upon receipt of a respondent's timely request for hearing, the hearing officer or board staff shall, without exception, set the matter for a hearing as required by the Uniform Licensing Act. One or both parties may file a motion to continue or stay proceedings only after the issuance of the notice of hearing, subject to other limitations as provided in these rules.

F. Settlement agreements: The board encourages settlement agreements throughout the disciplinary process as a means of resolving cases in a mutually satisfactory manner without the time and expense of formal hearings.

(1) If the administrative prosecutor and the licensee or certificate holder agree upon a settlement agreement to propose to the board, the parties shall present the agreement in writing to the board for consideration and possible approval at a meeting.

(2) The proposed agreement is not binding on the board until approved by the board at a meeting. The board may approve, reject, or propose an amendment to any proposed stipulation and agreement.

(3) No board member may be presumed to be biased or excused for cause based solely on the basis that the member considered, approved, or rejected a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case.

G. Default orders: If the licensee or applicant does not respond to the notice of contemplated action by timely requesting a hearing on the matter, the board may take the action contemplated in the notice of contemplated action at a meeting and that action shall be final.

H. Requests to reopen: An applicant who has been denied a license or certificate in New Mexico or a licensee or certificate holder who has had disciplinary action taken by the board and who wishes to have the case reopened may submit a written request to reopen their case prior to filing a petition for review with the district court. The administrative prosecutor shall be given an opportunity to respond to any written request to reopen a case.
[16.12.12.12 NMAC - N, 12/30/2021]

16.12.12.13 HEARINGS AND THE AUTHORITY OF HEARING OFFICERS:

A. If a licensee or applicant requests an evidentiary hearing in response to a notice of contemplated action, the executive director shall designate a hearing officer to preside over the hearing. Alternatively, upon vote of the board, the entire board may preside over the hearing.

B. Subpoenas: The hearing officer or, if the board as a whole presides over the hearing, the board chair shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the board.

C. Continuances:

(1) Following the issuance of a notice of hearing, no party may file a motion for continuance, motion to vacate, or proposed settlement agreement less than seven calendar days prior to the hearing except under extraordinary, unforeseen circumstances beyond the control of the movant. In the absence of such circumstances, a hearing officer may not continue or vacate a hearing in response to a motion submitted to the board later than seven calendar days prior to the hearing. Lack of knowledge or familiarity with this rule are not extraordinary or unforeseen circumstances.

(2) Except as provided in Paragraph (1) of this section, the hearing officer may grant a continuance if the party requesting the continuances submits proof to verify good cause such as illness, availability of new evidence or unavailability of the licensee or licensee's attorney.

(3) A licensee or applicant may only request a continuance if the licensee or applicant signs an affirmative statement that the licensee or applicant waives the right to a hearing held not more than 60 days from the date of service of the notice of hearing.

D. Motions: Parties to a disciplinary case may file written motions for the consideration of the hearing officer or the full board. Any motion must state its legal grounds, including all necessary citations to legal authority, as well as the specific relief requested. Where a party raises an issue in the form of a dispositive motion, the hearing officer shall take any such dispositive motion under advisement and shall present the motion in writing to the board as part of the final hearing officer report.

[16.12.12.13 NMAC - N, 12/30/2021]

16.12.12.14 SERIOUS LETTERS OF CONCERN:

A. Purpose: As an alternative to disciplinary action, the board may issue non-disciplinary serious letters of concern to licensees, certificate holders, applicants, and those accused of unlicensed practice.

B. Content: A serious letter of concern shall state expressly that it does not constitute disciplinary or corrective action, a letter of reprimand, or a determination of guilt of any kind. For the benefit of the recipient, a serious letter of concern shall identify and explain the applicable provision of the Nursing Practice Act or Board rules identified as the allegation in the complaint.

C. Function: A serious letter of concern operates as a dismissal of the complaint.

[16.12.12.14 NMAC - N, 12/30/2021]

16.12.12.15 REINSTATEMENT OF LICENSE OR CERTIFICATE:

A. The board shall not consider a petition to reinstate a license or certificate prior to the expiration of one year from the date of signature of the order of revocation, except for the following circumstances:

(1) where the board revoked the license or certificate solely due to noncompliance with a judgment and order for child support; or

(2) where the board's written order expressly permitted reinstatement sooner than one year.

B. An individual seeking to reinstate a license or certificate must file with the board a written petition for reinstatement containing, at a minimum, the following information:

(1) the individual's name, former license number, and the date of the individual's prior revocation;

(2) a detailed explanation of why good cause supports reinstatement of the license or certificate, along with any accompanying documentation or evidence;

(3) an affirmative statement as to whether, as a condition of reinstatement, the individual agrees to participate in the board's diversion program if found appropriate by the board; and

(4) an affirmative statement that the individual agrees to abide by all of the rules and regulation of the board and, where applicable, the diversion program.

C. The board's determination of good cause and its accompanying grant or denial of a petition for reinstatement is entirely discretionary, provided that the board shall consider at least the length of time having elapsed since the license was revoked, the gravity of the violations which represented the basis for the prior order of revocation, the risk the individual might pose to public health if licensed or certified, and evidence of the individual's rehabilitation since revoked.

D. In the event that the board grants the petition for reinstatement, the individual seeking reinstatement shall be required to submit the following prior to the issuance of the license or certificate:

(1) a completed reinstatement application;

(2) proof of meeting the renewal requirements as set forth in these rules adopted by the board;

(3) payment of the reinstatement fee;

(4) a completed criminal background check, unless the individual seeking to reinstate a license or certificate applies for reinstatement within less than one year of the date of signature of the order of revocation; and

(5) any additional documents, materials, or evidence required by the board.

E. If the results of a criminal background check indicate that the individual seeking reinstatement has been convicted of a disqualifying criminal conviction, the matter of the individual's reinstatement shall be decided by the board at a subsequent meeting.

[16.12.12.15 NMAC - N, 12/30/2021]

16.12.12.16 COMPLAINTS REGARDING FIRMS, ASSOCIATIONS, INSTITUTIONS, AND CORPORATION VIOLATING THE NURSING PRACTICE ACT:

A. The board shall accept and determine the disposition of written complaints regarding firms, associations, institutions and corporations violating the nursing practice act, causing the violation of the nursing practice act, or asking employees to violate the nursing practice act by policy or directive. In determining the disposition of these complaints, the board is not obligated to abide by the Uniform Licensing Act.

B. In the event that the board receives a written complaint regarding a firm, association, institution, or corporation, the board shall give the firm, association, institution, or corporation the opportunity to respond in writing to the allegations in the complaint.

C. If the board determines that the firm, association, institution, or corporation violated Subsection A through H of Section 61-3-30 NMSA 1978 of the Nursing Practice Act, the board shall inform the firm, association, institution, or corporation of the requirements set out in Section 61-3-30 NMSA 1978 of the Nursing Practice Act.

D. The board shall keep a record of the number of complaints received and the disposition of said complaints processed in accordance with this rule.

[16.12.12.16 NMAC - N, 12/30/2021]

HISTORY of 16.12.12 NMAC: [RESERVED]