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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

Volume XXIX, Issue 5

March 13, 2018

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Notices of Rulemaking and Proposed Rules

MINING SAFETY BOARD

NOTICE OF RULEMAKING

Public Notice: The New Mexico Mining Safety Board will conduct a public hearing in Albuquerque at the Workers' Compensation Building, 2410 Center Ave., Albuquerque, New Mexico, 87106, on May 8, 2018 from 1:00 p.m. to 3:00 p.m. (MDT). The purpose of the hearing is to receive public comment on proposed amendments to 19.6.4 NMAC - Certification of Coal Mine Officials ("Part 4").

Purpose: The State Mine Inspector (SMI) has proposed amending the current rules concerning the certification and recertification of coal mine officials. The purpose of the proposed action is to clarify several procedural requirements, incorporate more consistent terminology, and to codify certain procedures used by the SMI in the course of certifying and recertifying coal mine officials. As part of this process, the SMI solicited input from the coal mining community. The response was positive toward the proposed changes in 19.6.4 NMAC with one additional recommendation that would resolve an issue concerning certification of coal mine foremen working on surface areas of underground mines. An additional proposal was drafted to address that issue. The proposed rule clarifies certification and recertification issues, codifies practices adopted by the SMI for administration of the rule, provides for consistent use of terminology, and provides for an agreeable solution to certification of surface foremen at underground coal mines.

Summary of full text: Throughout Part 4, the use of foreman and examiner was used liberally without direct context to coal mine foreman or coal mine examiner. Although the title of Part 4 directs application to coal mines, the proposed amendment would prevent confusion

by consistently using these terms throughout the part. This move also made clear that prerequisite experience for testing would be based on coal mine experience and not non-coal mining experience.

Subsection C of 19.6.4.9 NMAC was amended to codify the SMI practice of providing for coal mine official examinations on an appointment basis. Subsection D of the same subpart codifies the SMI practice of requiring certain identification and qualifications of prospective coal mine officials via the application process and clarifies the coal mine examiner experience expectations for underground mine foremen by replacing the phrase "serve as" with "regularly performed the duties of". Finally, the proposed Subsection D outlines requirements for an underground coal mine foreman who may be required to perform foreman duties at surface areas of underground mines. A new classification "general underground coal mine foreman" is incorporated in the proposed rule.

Subsection E of 19.6.4.9 NMAC expanded the SMI's authority to permit a modified experience requirement for persons with "credentials that attest to advanced competency". Otherwise, such accommodation is limited to mining engineering graduates (and by definition, mineral engineering graduates). A table was created that identifies the qualifications and authorizations associated with each classification of coal mine official in a simple format.

In Subsection A of 19.6.4.11 NMAC, a process was outlined for the SMI to use in recertification of coal mine officials who for a variety of reasons may not have maintained annual training requirements on the 5-year certification. Subsection E codifies language that allows the SMI to recertify all coal mine officials whose certification expires during that year to recertify on a single date. This

practice has been in place and has proven advantageous to the SMI, operators, and individual coal mine officials. Paragraph 5 of Subsection A was modified to make it clear that discipline for a non-mining issue in another state (such as a speeding ticket) does not disqualify a candidate for certification, recertification, or permit action by the SMI to suspend or revoke certification on such basis.

Authority: Section 69-8-4, NMSA 1978, provides that the Mining Safety Board "shall, after public hearing, adopt rules for the protection of the life and safety of employees and to carry out the intent of the Mining Safety Act." Section 69-14-3, NMSA 1978 authorizes the Mining Safety Board to "enact requirements, including requirements for applications, examinations and qualifications, for certification of any mine personnel required to be qualified by state or federal law." Finally, Section 69-14-4, NMSA 1978 provides that, "The mining safety board shall adopt rules for requirements for recertification."

Access to the Proposed

Rulemaking: A complete copy of the proposed rule changes with line-out of extracted text and underlined inserted text may be read or downloaded from the Bureau of Mine Safety (BMS) website at bmi.state.nm.us. A copy may be obtained by contacting Debora McVey at the Bureau of Mine Safety at 575-835-5460 or Debora.
mcvey@nmt.edu.

Public Comment: Interested parties may comment on the proposed rulemaking at a public hearing to be held at the regular mining safety board meeting beginning at 1:00 p.m. on May 8, 2018 at the NM Workers' Compensation building, 2410 Center Ave., Albuquerque, New Mexico. Written comments will also be received by the Bureau of Mine Safety until Monday, May 7, 2018 by U.S. Mail or email.

MSB Rulemaking Comments
 New Mexico Bureau of Mine Safety
 New Mexico Institute of Mining and
 Technology
 801 Leroy Place
 Socorro, NM 87801
Debora.mcvey@nmt.edu

Accommodations: Individuals with disabilities who require the above information in an alternative format or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debora McVey or Randy Logsdon at 575-835-5460 as soon as possible before the public hearing. The Bureau of Mine Safety will make a reasonable effort to provide necessary accommodations.

Technical Information: These proposed amendments did not require technical information.

PHARMACY, BOARD OF

NOTICE OF REGULAR BOARD MEETING

The New Mexico Board of Pharmacy will convene on April 19th & 20th, 2018 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting.

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: www.rld.state.nm.us/boards/pharmacy.aspx. All proposed language regarding rule hearings is linked on the Agenda, the Notice to the Public on our website and the New Mexico Sunshine Portal.

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Acting Executive

Director, Cheranne McCracken, Cheranne.McCracken@state.nm.us at least five days in advance to the scheduled meeting, if in attendance must also provide 12 copies of that documentation for distribution to board members and staff, as public comment is allowed during the rule hearing. (Board staff is not required to make copies.)

Any special needs and accommodations for board meetings or hearings should contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or e-mail debra.wilhite@state.nm.us as soon as possible.

The Board will address:

Rule Hearings:
 16.19.12 NMAC - FEES:
 Amendment; Fee for controlled substance registration or renewal.
 STATUTORY AUTHORITY:
 Paragraph 1 and 12 of Subsection A of 61-11-6 NMSA 1978.

16.19.20 NMAC - CONTROLLED SUBSTANCES: Amendments; clarification of section title; clarification of refill and fill process; addition of controlled substances; fee for controlled substance registration or renewal.
 STATUTORY AUTHORITY:
 Paragraph 1 and 12 of Subsection A of 61-11-6, 30-31-3, 30-31-11 NMSA 1978.

Disciplinary Hearings:
 Continuance Order to Show Cause: Robert (Bob) McClelland RP4533 - Case No. 2013-053 and Case No. 2015-024.
 Disciplinary Hearing: Kenneth Cooper RP6912 and Las Cruces Apothecary PH3866 - Case No. 2016-023.

Executive Director's Report:
 The board may go into Executive Session to discuss these items and any other items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda

items may be executed at any time during the meeting to accommodate hearings.

Executive Session:

The board may go into Executive Session to discuss items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7) of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

Published in the New Mexico Register March 13, 2018.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on April 19, 2018, from 9:00 a.m. to 11:00 a.m. (MDT). The purpose of the public hearing is to receive public input on the proposed amendment to 6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to speak will be given three (3) minutes to make a statement concerning the rule changes on record. Written comment will also be accepted at the hearing.

Rule Change Information. The purpose of this proposed rule change is to provide parameters on the use of restraint and seclusion techniques in schools through required school-specific policies and procedures. These school-specific policies and procedures include procedures for documentation and parent or guardian notification when restraint or seclusion techniques are used on a student, in compliance with

Section 22-5-4.12 NMSA 1978. The proposed rule change requires school-level safety plans to include policies and procedures for the proper use of restraint and seclusion techniques and provides specific requirements and considerations for discipline of students experiencing homelessness.

The statutory authorizations include the following:

Section 22-2-1 NMSA 1978 grants the authority of the secretary to adopt, promulgate, and enforce rules.

Section 22-2-2 NMSA 1978 grants the PED the authority to properly and uniformly enforce the provisions of the Public School Code.

Section 22-5-4.12 NMSA 1978 grants schools the authority to permit restraint or seclusion techniques.

Title VII-B of the McKinney-Vento Homelessness Assistance Act (42 U.S.C. 11431 et seq.) grants each state educational agency the authority to ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment on the proposed amendment of this state rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on the date of the public hearing. The PED encourages the early submission of written comments. The public comment period is from March 13, 2018 to April 19, 2018 at 5:00 p.m. (MDT).

Copies of the proposed rules may be accessed through the New Mexico

Public Education Department's website under the "Public Notices" link at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from Jamie Gonzales by contacting her at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, on Monday, April 23, 2018 from 9:00 a.m. to 12:00 p.m. (MDT). The purpose of the public hearing is to receive public input on the proposed new rule 6.30.13 NMAC, Early College High Schools. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the proposed new rule. Written comment will also be accepted at the hearing.

Rule Change Information. The proposed new rule outlines the qualifications that high schools in New Mexico must meet in order to receive official designation as a department-approved Early College High School (ECHS). The

qualifications defined in the proposed rule reflect best practices for operating an ECHS and will create uniformity across the state. The proposed rule would establish the processes and procedures for application, evaluation of compliance, and renewal. Schools choosing to apply for designation would be required to submit applications by July 1, 2018 and would receive notice of designation no later than August 1, 2018. Designations would be valid for two years beginning with the 2018-2019 school year.

The statutory authorizations include the following:

Section 9-24-8 NMSA 1978 gives the secretary the authority to adopt rule in order to carry out the duties of the department.

Section 22-2-1 NMSA 1978 gives the department the authority to adopt, promulgate, and enforce rules necessary to the department's exercise of authority over the control, management, and direction of all public schools.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment on the proposed new rule at the public hearing or may submit written comments, or both, to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, or by electronic mail at rule.feedback@state.nm.us, or fax to (505) 827-6681. All written comments must be received no later than 5:00 p.m. (MDT) on Monday, April 23, 2018. The PED encourages the early submission of written comments. The public comment period is from March 13, 2018 to April 23, 2018 at 5:00 p.m. (MDT).

Copies of the proposed rule may be accessed through the New Mexico Public Education Department's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation->

[measurement/rule-notification/](#), or may be obtained from Jamie Gonzales at (505) 827-7889 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Jamie Gonzales at (505) 827-7889 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

VETERINARY MEDICINE, BOARD OF

PUBLIC HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Veterinary Medicine (NMBVM) will hold a Rules Hearing on Friday, April 20, 2018. Following the Rules Hearing, the Board of Veterinary Medicine will convene a regular meeting to adopt the rules and take care of regular business. The Board of Veterinary Rules Hearing will begin at 9:00 a.m. and the regular meeting will convene following the Rules Hearing. The Rules Hearing and regular meeting will be held at the New Mexico Gaming Board hearing room located at 4900 Alameda Boulevard, N.E., Albuquerque, New Mexico 87113.

Statutory authority for this rulemaking can be found in Subsection F of Section 61-14-5 NMSA 1978.

The Animal Sheltering Board was assimilated into the Board of Veterinary Medicine by HB 219, effective July 1, 2018. Therefore, the purpose of the Rules Hearing is to hear public testimony and comments regarding:

New sheltering provider rules:

16.24.1 NMAC - General Provisions;
16.24.2 NMAC - Licensure and Certification and

16.24.3 NMAC - Duties of Licensees and Certificate Holders.

Proposed amendments to the Board's rules and regulations:

16.25.2 NMAC - Examination and Licensure - Veterinarians and

16.25.8 NMAC - Bovine Artificial Insemination and Pregnancy Diagnosis Technicians.

Persons desiring to view the proposed new rules and amendments to the rules may download them from www.NMBVM.org. If you do not have internet access, a copy of the proposed rules may be requested by contacting the NMBVM at (505) 553-7021.

Written comments may be submitted via email to director@NMBVM.org. If submitting comments via email, specify in the subject line the following: NMBVM Public Comments. Written comments may also be filed by sending original, signed copies to:

New Mexico Board of Veterinary Medicine
7301 Jefferson Street, N.E. Suite H
Albuquerque, New Mexico 87109

Persons wishing to submit written comments regarding the proposed rules should submit them to the Board office no later than April 13, 2018. Written comments will be given the same consideration as oral testimony made at the public hearing. All written comments must be received no later than 4:30 p.m. MDT, April 13, 2018.

If you are a person with a disability and require a special accommodation to participate in the public hearing, please contact the NMBVM at (505) 553-7021. The NMBVM requests at least ten (10) days advance notice to provide special accommodations.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.10 NMAC, amending Section 7 effective 03/13/2018.

1.13.10.7 DEFINITIONS:

A. **“Chief records officer”** means a person designated by an agency’s records custodian to administrate the agency’s records management program, refer to ~~[1.13.12.9 NMAC]~~ 1.13.12.10 NMAC.

B. **“Custodial agency”** means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

C. **“Custody”** means the guardianship of records, archives and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

D. **“Destruction”** means the disposal of records of no further operational, legal, fiscal, or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

E. **“Disposition”** means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

F. **“Functional records retention and disposition schedule”** means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

G. **“Inactive record”**

means a record no longer needed to conduct current business but required to be maintained for operational, legal, fiscal or historical purposes until it meets its retention.

H. **“Master microfilm”** means the original microform produced from which duplicates or intermediates can be obtained.

I. **“Microphotography”** means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records provided by information system technology pursuant to rules adopted by the commission.

J. **“Non-record”** means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

K. **“Pending litigation”** means threatened, pending or active proceedings in a court of law whose activity is in progress but not yet completed.

L. **“Pick-up only personnel”** means personnel authorized by a records custodian, chief records officer or record liaison officer to only pick-up records from the records center.

M. **“Records liaison officer”** means a person designated by the records custodian to interact with the state commission of public records, refer to ~~[1.13.12.10 NMAC]~~ 1.13.12.11 NMAC.

N. **“Retention”** means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

O. **“Trigger event”** means the closing event of a record which begins the retention period. [1.13.10.7 NMAC - Rp, 1.13.10.7 NMAC, 11/30/2015; A, 07/11/2017; A, 03/13/2018]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.30 NMAC, amending Section 7 effective 03/13/2018.

1.13.30.7 DEFINITIONS:

A. **“Chief records officer”** means a person designated by an agency’s records custodian to administrate the agency’s records management program, refer to ~~[1.13.12.9 NMAC]~~ 1.13.12.10 NMAC.

B. **“Confidential”** means information provided to, created by or maintained by a government agency and that is exempt from release under state or federal laws.

C. **“Custodial agency”** means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

D. **“Degaussing”** means the process of removing magnetism from magnetically

recorded tape thereby rendering the information unreadable.

E. “Destruction”

means the disposal of records of no further operational, legal, fiscal or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

F. “Disposition”

means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

G. “Functional records retention and disposition schedule” means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

H. “Inactive record”

means a record no longer needed to conduct current business but required to be maintained for operational, legal, fiscal or historical purposes until it meets its retention.

I. “Non-record”

means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

J. “On-site

destruction” means destruction of records approved by the state records administrator to be destroyed at a location other than the records center.

K. “Permanent

records” means records considered unique or so valuable in documenting

the history or business of an organization that they are preserved in an archives.

L. “Records”

means information preserved by any technique in any medium now known or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology [(1.13.70-NMAC)].

M. “Records liaison officer” means a person designated by the records custodian to interact with the state commission of public records, refer to [1.13.12.10-NMAC] 1.13.12.11.NMAC.

N. “Records management” means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

O. “Recycling”

means the process that recovers the raw materials of a medium allowing for the reuse of various media. Overwriting on magnetic media is a means of recycling.

P. “Retention” means

the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

Q. “State archives”

means the principle location within the state records center and archives that maintains, preserves and makes available to the public the permanent and historical records of the state of New Mexico.

R. “Transitory”

means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

S. “Trigger event”

means the closing event of a record which begins the retention period. [1.13.30.7 NMAC - Rp, 1.13.30.7

NMAC, 11/28/2017; A, 03/13/2018]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.21.2 NMAC, adding Section 644 effective 03/13/2018.

1.21.2.644 LEGAL CASE FILES - DISMISSED:

A. Category:

Legal and judiciary - legal matter management

B. Description:

Dismissed case files

C. Retention: destroy

one year from date file closed

[1.21.2.644 NMAC - N, 03/13/2018]

DENTAL HEALTH CARE, BOARD OF

The New Mexico Board of Dental Health Care reviewed at its 2/9/2018 hearing, to repeal its rule 16.5.15 NMAC, Dentistry (Dentists, Dental Hygienists, Etc., - Dentists, Anesthesia Administration (filed 2/15/2005) and replace it with 16.5.15 NMAC, Dentistry (Dentists, Dental Hygienists, Etc., - Dentists, Anesthesia/Sedation Administration, adopted 2/9/2018 and effective 3/18/2018.

DENTAL HEALTH CARE, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)

PART 15 DENTISTS, ANESTHESIA/SEDATION ADMINISTRATION

16.5.15.1 ISSUING

AGENCY: New Mexico Board of Dental Health Care.

[16.5.15.1 NMAC - Rp, 16.5.15.1 NMAC, 3/18/2018]

16.5.15.2 SCOPE: The provisions of Part 15 of Chapter 5 apply to all dentists who hold or who are applying for certification to administer anesthesia or analgesia. [16.5.15.2 NMAC - Rp, 16.5.15.2 NMAC, 3/18/2018]

16.5.15.3 STATUTORY AUTHORITY: Part 15 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, 61.5A-22 NMSA 1978 (1996 Repl. Pam.). [16.5.15.3 NMAC - Rp, 16.5.15.3 NMAC, 3/18/2018]

16.5.15.4 DURATION: Permanent. [16.5.15.4 NMAC - Rp, 16.5.15.4 NMAC, 3/18/2018]

16.5.15.5 EFFECTIVE DATE: March 18, 2018, unless a later date is cited at the end of a section. [16.5.15.5 NMAC - Rp, 16.5.15.5 NMAC, 3/18/2018]

16.5.15.6 OBJECTIVE:

A. To establish guidelines and procedures for the regulation of dentists who administer nitrous oxide inhalation analgesia, anxiolysis, minimal sedation, moderate sedation (formerly conscious sedation I and II), and deep sedation, or general anesthesia in an office located in New Mexico. Unless otherwise defined in this Part 15, the board will reference the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists" and "guidelines for teaching pain control and sedation to dentists and dental students".

B. These guidelines are not meant to regulate the existing precedent where New Mexico licensed dentists may have hospital privileges to provide anesthesia/sedation to dental patients in the operating room or emergency room based on their training, education and policy of the hospital. [16.5.15.6 NMAC - Rp, 16.5.15.6 NMAC, 3/18/2018]

16.5.15.7 DEFINITIONS:

A. "Anxiolysis" the diminution or elimination or reduction of anxiety without a concomitant reduction of the patient's awareness or ability to react to stimuli. For the purposes of these rules, only a single dose of a single drug within the normal therapeutic dose is allowed.

B. "American society of anesthesiologists (ASA) classification" is the physical status classification system as defined by the American society of anesthesiologists.

C. "Combination inhalation-enteral sedation (combined conscious sedation)" - conscious sedation using inhalation and enteral agents. Nitrous oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation or general anesthesia.

D. "CODA" means the commission on dental accreditation.

E. "Conscious sedation" means a minimally depressed level of consciousness that retains the patients' ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than conscious sedation. For the purposes of this chapter, conscious sedation is further defined as minimal and moderate sedation.

F. "Deep sedation" means an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic

or non-pharmacologic method or combination thereof.

G. "Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (ie oral, rectal, sublingual).

H. "End tidal carbon dioxide (ETCO2) capnography" means monitoring of the concentration or partial pressure of end tidal carbon dioxide in respiratory gases.

I. "General anesthesia" means an induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

J. "Minimal sedation" means a minimally depressed level of consciousness, produced by a pharmacological method that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile and verbal commands. Although cognitive function and coordination may be modestly impaired, ventilation and cardiovascular functions are unaffected. If more than one enteral drug is administered to achieve the desired effect, with or without concurrent use of nitrous oxide inhalation, the guidelines for moderate sedation must apply. The administration of an enteral drug exceeding the maximum recommended single dose during a single appointment is considered to be moderate sedation. Concomitant use of nitrous oxide with any sedative agent may produce minimal, moderate or deep sedation or general anesthesia.

K. "Moderate sedation" means a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile

stimulation. No interventions are required to maintain patent airway, and spontaneous ventilation is adequate, cardiovascular function is usually maintained. In accord with this particular definition, the drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. A patient whose response is reflex withdrawal from painful stimuli is considered to be in a deeper state than that moderate sedation.

L. "Monitor" means to constantly watch or check on the condition of the patient.

M. "Nitrous oxide inhalation analgesia" means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

N. "Parenteral" means any technique of administration in which the drug is injected through the dermis or into blood vessel (i.e., intramuscular, subcutaneous, or intravenous injections).

O. "Prescribed administration" means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist's authorization.

P. "Titration" means the incremental dosing of an intravenous or inhalation drug until the desired effect is reached. One must know if the previous dose of the drug has taken full effect before administering additional increments. [16.5.15.7 NMAC - Rp, 16.5.15.7 NMAC, 3/18/2018]

16.5.15.8 REQUIREMENT TO BE REGISTERED OR CERTIFIED: Dentists who administer nitrous oxide inhalation analgesia in New Mexico are required to be registered with the board. Dentists who administer minimal sedation, moderate sedation, deep

sedation, or general anesthesia in New Mexico are required to obtain an anesthesia permit from the board. Any dentist who fails to comply with these rules may be subject to disciplinary action by the board. Anesthesia permits valid on the effective date of this rule continue to be valid until the expiration date indicated on the permit.

A. Permit requirements: (In order of increasing complexity higher level permit includes all lower level permits within the scope of that permit).

(1) Anxiolysis only: No permit necessary (single drug/single dose, within the normal therapeutic dose for anxiolysis).

(2) Nitrous oxide alone: Permit required, no practitioner or facility exam required.

(3) Minimal sedation: Permit required, no exam of practitioner or facility, affidavit of compliance required (single enteral drug, with or without nitrous oxide, below the maximum recommended dose).

(4) Moderate sedation: Permit required, affidavit of compliance, oral, written, and facility exam required at the discretion of the board or its anesthesia committee (single enteral drugs above the maximum recommended dose, multiple enteral drugs, enteral drug plus nitrous oxide, any parenteral drugs).

(5) Deep sedation/general anesthesia: Permit required, affidavit of compliance, practitioner and facility exam required at the discretion of the board or its anesthesia committee.

B. Facility limitations: If the dentist of a facility approved for a sedation permit utilizes a certified registered nurse anesthetist (CRNA) to provide the sedation, the CRNA may only administer sedation up to the permit level of the operating dentist and the facility.

[16.5.15.8 NMAC - Rp, 16.5.15.8 NMAC, 3/18/2018]

16.5.15.9 ANESTHESIA COMMITTEE:

A. Appointment: All members of the anesthesia committee serve at the pleasure of the board. The board chair will appoint members to serve on the anesthesia committee for five year terms beginning on July 1. Individuals for consideration may be nominated by the New Mexico dental association, any local dental society, or the anesthesia committee.

B. Terms: Each member shall be appointed to serve a term of five years, however, the appointments shall be staggered so that no more than forty percent of the members will expire in any given year.

C. Committee composition: The anesthesia committee shall consist of licensed dentists, including at least one board certified oral and maxillofacial surgeon, one general dentist, one dentist board member, one dentist not engaged in the use of sedation techniques, and when possible, representatives of other interested dental specialties. Each anesthesia committee member should be currently practicing some form of sedation and be currently qualified as an examiner, except the non-sedating dentist.

D. Duties: Establish policies and procedures for the evaluation of applications, inspections of facilities, and examination of applicants; make recommendations to the board in regard to each application; report to the board, as needed, at regularly scheduled board meetings the status of activities of the anesthesia committee; inform the board of any licensee who fails to cooperate with the requirements for application, registration or renewal of permits; inspect facilities upon request of the board; and upon request, assist the board in the investigation of complaints concerning the administration of anesthesia or analgesia.

E. Designated examiners: The anesthesia committee chair may appoint a designated examiner with an anesthesia permit of an equal or greater level to perform evaluations

on licensed dental applicants to serve at the pleasure of the New Mexico board of dental health care (NMBODHC) chair. This designated examiner must be actively practicing his anesthesia level to be considered by the board.

[16.5.15.9 NMAC - Rp, 16.5.15.9 NMAC, 3/18/2018]

16.5.15.10 PEDIATRIC

GUIDELINES: Unless otherwise described in this section, all anesthesia for patients 12 years and under shall follow the American academy of pediatric dentistry's "guideline for monitoring and management of pediatric patients during and after sedation for diagnostic and therapeutic procedures".

[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 3/18/2018]

16.5.15.11 ADMINISTRATION OF ENTERAL ANXIOLYSIS:

A. Registration: No permit required. Enteral anxiolysis consist of the administration of a single dose enteral drug, not in combination with nitrous oxide or another drug, that does not exceed the normal therapeutic single dose of the drug recommended by the manufacturer in published literature. Anxiolytic drugs should be within the scope of practice and prescriptive authority of the practitioner. Anxiolytic drugs are for the sole purpose of diminution of anxiety related to dental treatment.

B. Education/training: it is assumed that all dentists who have successfully completed a course of study at an accredited dental school have the education for this level of anxiolysis.

(1) The dentist must have an active current dental license, current drug enforcement administration (DEA) registration and current New Mexico controlled substances registration and be registered with the New Mexico board of pharmacy.

(2) Each dentist who administers or auxiliary who monitors enteral anxiolysis

shall have current basic life support certification.

C. Facility/records:

The dentist must have appropriate equipment to monitor vital signs and appropriate emergency equipment and drugs for the anxiolytic agent used.

(1) Records should reflect the dose and drug administered.

(2) Records should reflect how the patient was released from the office and if accompanied by a driver.

(3) All administration of anxiolytic drugs shall be under the indirect supervision or prescription of a dentist.

[16.5.15.11 NMAC - Rp, 16.5.15.11 NMAC, 3/18/2018]

16.5.15.12 ADMINISTRATION OF NITROUS OXIDE INHALATION ANALGESIA:

A. Registration: Permit required, each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon request. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

B. Education/qualifications: Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(1) completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training that includes a minimum of 14 hours of course time and management of clinical cases.

(2) each dentist and auxiliary personnel who monitors the use of, or administers

nitrous oxide shall have current basic life support certification.

(3) current permit holder's education would be grandfathered by the New Mexico laws in effect at the time of original issue of their permit. However, safety standards must be updated to current state and ADA guidelines.

C. Facility/records:

The dental facility shall have adequate equipment which includes fail-safe features and a twenty five percent minimum oxygen flow and an effective scavenging system.

(1) all use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist holding a nitrous oxide permit.

(2) the patient's records shall reflect evidence of appropriate monitoring by qualified dental personnel of vital signs, including blood pressure, pulse, and respiratory rate. Dose (percent) of nitrous oxide time of administration and time of release of patient should be recorded.

[16.5.15.12 NMAC - N, 3/18/2018]

16.5.15.13 ADMINISTRATION OF MINIMAL SEDATION:

A. Minimal sedation is the use of a single enteral drug in a single or divided doses to achieve the desired effect as described in the definitions. The total dose of the single enteral drug shall not exceed the maximum recommended dose for the drug as recommended by the manufacturer and as published in scientific literature. Doses above this maximum recommended dose are considered moderate sedation, and moderate sedation guidelines will apply. A single drug combined with nitrous oxide may produce minimal, moderate, deep sedation or general anesthesia. It is the responsibility of the dentist to titrate the level of nitrous oxide to achieve only minimal sedation. If more than one enteral drug is administered to achieve the desired anxiolytic/sedation effect, with or without the concomitant use of nitrous oxide, the guidelines for moderate sedation will apply.

B. Registration:

Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve minimal sedation shall be registered with the board. An application form will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in Section 16.5.15.19 NMAC. Administration of minimal sedation without registration is a violation of these rules and may result in disciplinary action against the licensee.

C. Education/

qualifications: The dentist must have completed a course of training while a student in an accredited school of dentistry or through board approved post graduate training. To administer minimal sedation the dentist must satisfy the following criteria:

(1) training

to a level of competency in a minimal sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students".

(2) courses

must include 16 hours of course time plus clinically oriented experiences during which competency in enteral and combined nitrous oxide-enteral minimal sedation is demonstrated.

(a) if

the training received was pre-doctoral, while in dental school, the applicant should submit proof of course content completed as included in a course description from the dental education program.

(b) if

the course of study was postgraduate training, proper course completion forms must be submitted.

(3) Each

dentist administering and auxiliary monitoring, minimal sedation shall have current basic life support certification.

D. Facility/records:

The facility in which minimal

sedation is administered must comply with the following:

(1) have

adequate equipment to monitor patient's vital signs;

(2) the

patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, pulse oximetry, and respiratory rate during procedures and effect of medication;

(3) all use

of enteral medication shall be under the indirect supervision of a licensed dentist;

(4) shall

verify the patient has other means of transportation to be released from the office;

(5)

administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of practice and prescriptive authority of the dentist so as not to produce conscious sedation; does not require the dentist to hold a minimal sedation permit;

(6) a log of

drugs used, dosage or amount of drug used and date of administration must be maintained separate from the patient's record;

(7) ASA

classification of the patient and informed consent is required.

[16.5.15.13 NMAC - N, 3/18/2018]

16.5.15.14 ADMINISTRATION OF MODERATE SEDATION (Formerly conscious sedation I and II):

A. Moderate sedation

may be achieved by several methods:

The end point of sedation, as in the definition, is the important factor.

Drugs used here should have a wide safety margin so as to not allow patients to easily slide to deep sedation or general anesthesia. The dentist should also be aware that titrating an enteral dose of medication is difficult due to onset of action and multiple variables.

(1) moderate

enteral sedation (previously conscious sedation I) is achieved by the use of: single enteral drugs in doses as needed up to and above the maximum recommended single dose, or two or more enteral drugs used in combination, or single or multiple enteral drugs combined with nitrous oxide;

(2) moderate

parenteral sedation (previously conscious sedation II) is achieved by the use of single or multiple parenteral drugs, with or without nitrous oxide.

B. Registration:

Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve moderate sedation shall be registered with the board. Moderate sedation permits are issued for a specific practice location (facility). An application form will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in Section 16.5.15.19 NMAC.

Administration of moderate sedation without registration is a violation of these rules and may result in disciplinary action against the licensee.

C. Education/

qualifications: To administer moderate sedation by any means the dentist must satisfy one of the following criteria:

(1) training

to a level of competency in moderate sedation consistent with that described in the most current versions of the American dental association "guidelines for the use of sedation and general anesthesia by dentists", and "guidelines for teaching pain control and sedation to dentists and dental students".

The above involves completion of 60 hours of didactic instruction and administration of moderate sedation for at least 20 individually managed patients in a pre-doctoral program at a CODA accredited school, verifiable by the board, or in a post-doctoral continuing education program acceptable to the board and its anesthesia committee; or

(2) completion

of CODA accredited post-doctoral

training program, which affords comprehensive and appropriate training necessary to administer and manage moderate sedation as described in the most current versions of the American dental association “guidelines for the use of sedation and general anesthesia by dentists”, and “guidelines for teaching pain control and sedation to dentists and dental students”.

D. To administer moderate enteral sedation, the dentist must have current certification in basic life support. Moderate enteral sedation does not require ET/CO₂ capnography monitoring.

E. To administer moderate parenteral sedation, the dentist must have current certification in advanced cardiac life support. Moderate parenteral sedation does require ET/CO₂ capnography or precordial stethoscope monitoring.

F. Auxiliary clinical personnel must have current certification in basic life support.

G. The dentist must sign an affidavit of compliance. An oral and written examination administered by the anesthesia committee or designee will be required if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel on the applicant’s part to meet with an examiner. The applicant’s facility may also be subject to inspection and approval by the anesthesia committee or its designated examiner.

H. Current permit holder’s sedation education would be grandfathered in by board rules in effect at the time of original issue of their permit. However, safety standards must be updated to the current board and American dental association (ADA) guidelines.

I. Facility/records:

(1) the dentist must maintain a properly equipped facility for the administration of moderate sedation, staffed with supervised auxiliary personnel capable of handling procedures, problems and emergencies that may

arise;

(2) the facility along with the dentist providing the sedation will be evaluated. The moderate sedation permit is valid only at the facility approved by the permit;

(3) the patients shall be monitored and records shall reflect that the pre-operative patient evaluation, including American society of anesthesiologists (ASA) classification, pre-operative preparation, electrocardiogram (ECG) (for parenteral sedation), pulse oximetry, and blood pressure. ET/CO₂ capnography or precordial stethoscope monitoring is only required for moderate parenteral sedation. Recovery and discharge also needs to be performed and documented in accordance with the current “ADA guidelines for the use of sedation and general anesthesia by dentists”;

(4) a facility permitted for moderate sedation does not allow for the use of deep sedation or general anesthesia in that facility regardless of the licensee providing anesthesia;

(5) a log of drugs used, dosage or amount of drugs used and date of administration must be maintained separate from the patient’s record;

(6) informed consent is required.

J. Restrictions: A dentist with a moderate sedation (formerly conscious sedation II) permit shall not administer or employ any agent(s) which has a narrow margin for maintaining consciousness, or is federally classified as a general anesthetic including, but not limited to:

(1) ultra-short acting barbiturates including, but not limited to, sodium methohexital, thiopental, and thiamylal;

(2) alkylphenols-propofol (diprivan) including precursors or derivatives;

(3) neuroleptic agents;

(4) dissociative agents - i.e. ketamine;

(5) etomidate,

and similarly acting drugs;

(6) volatile inhalational agents; or

(7) any quantity of agent(s) or technique(s), or any combination thereof, that renders a patient deeply sedated or generally anesthetized.

K. The drugs/ techniques enumerated in Subsection J of Section 16.5.15.14 NMAC are presumed to produce general anesthesia and may only be used by a licensee holding a valid deep sedation/general anesthesia permit issued by the board, or by a corresponding licensing board if the licensee is not a dentist (eg., MD, CRNA).

[16.5.15.14 NMAC - N, 3/18/2018]

16.5.15.15 ADMINISTRATION OF DEEP SEDATION/GENERAL ANESTHESIA:

A. Registration:

Permit required, each licensed dentist who administers or supervises the prescribed administration of drugs to achieve deep sedation or general anesthesia (DS/GA) shall be registered with the board. DS/GA permits are issued for a specific practice location (facility). An application form and affidavit of compliance will be provided by the board office upon request. Applicant shall follow the permit application procedure as defined in Section 16.5.15.19 NMAC. Administration of DS/GA without registration is a violation of these rules and may result in disciplinary action against the licensee. The dentist must sign an affidavit of compliance. An oral and written examination administered by the anesthesia committee or designee will be required if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel by the applicant to meet with an examiner. The applicant’s facility is also subject to inspection and approval by the anesthesia committee or its designated examiner.

B. Education/

qualifications:

(1) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(2) completion of a CODA accredited post-doctoral training program (e.g. oral and maxillofacial surgery, dental anesthesiology), which affords comprehensive and appropriate training necessary to administer and manage deep sedation/general anesthesia, commensurate with these rules;

C. Current permit holders' sedation education would be grandfathered by the New Mexico laws in effect at the time of original issue of their permit. However, safety standards must be updated to current board and ADA guidelines.

D. Facility/records:

(1) the dentist maintains a properly equipped facility for the administration of deep sedation or general anesthesia in accordance with the most current version of the American dental association "guidelines for the use of sedation and general anesthesia by dentists";

(2) the office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto;

(3) the dentist must have current advanced cardiac life support certification (ACLS) and auxiliary clinical personnel have current basic life support certification;

(4) the patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, ASA classification, ECG, pulse oximetry, blood pressure and ETCO2 capnography monitoring recovery, discharge and documentation was performed in accordance with the most current version of the American dental association "guidelines for the

use of sedation and general anesthesia by dentists";

(5) the dentist passes the examination and receives approval after facility inspection, or affidavit acceptance, by the anesthesia committee or designated examiner;

(6) a log of drugs used, dosage or amount of drugs and date of administration must be maintained separate from the patient's record;

(7) informed consent is required;

(8) a dentist administering deep sedation/general anesthesia must document current, successful completion of an advanced cardiac life support (ACLS) course, or an equivalent as approved by the anesthesia committee;

E. Anesthesia permit at large: This permit allows the holder to provide sedation and anesthesia services to patients in dental offices on an out-patient basis. The holder of the "anesthesia permit at large" assumes all responsibility for the administration of the sedation or general anesthesia in the dental office.

(1) to hold an "anesthesia permit at large" a dentist must meet the requirements in Section 16.5.15.15 NMAC deep sedation/general anesthesia, and is only available for dentist anesthesiologists and oral and maxillofacial surgeons;

(2) the holder of a "permit at large" may be evaluated and inspected by the anesthesia committee as deemed necessary to assure safety to the public;

(3) the holder of such a permit agrees to have available at all times all monitors, emergency equipment, and other necessary drugs and materials when administering conscious sedation, deep sedation, and general anesthesia;

(4) the permit holder will inform the board of all dental facilities where anesthesia services are to be provided and follow all other procedures as outlined in Section 16.5.15.15 NMAC, deep sedation/general anesthesia.

[16.5.15.15 NMAC - Rp, 16.5.15.12

NMAC, 3/18/2018]

16.5.15.16 SEDATION/ ANESTHESIA PROVIDED BY OUTSIDE PERSONNEL:

A. Provided by dentists (DDS or DMD) or physicians (MD or DO):

(1) administration of sedation by another duly qualified dentist or physician requires the operating dentist to have completed a course in advanced cardiac life support (no certification necessary) and to have current certification in basic life support;

(2) the operating dentist must ensure that the dentist/physician DS/GA permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of parenteral sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. For DS/GA, advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available. Appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan;

(3) a dental facility utilizing a dentist or physician for deep sedation/general anesthesia, needs to be registered with the board and must submit verifying forms of the residency-trained dentist/physician's general anesthesia training, hospital credentials, and current license and anesthesia permits to practice in the state of New Mexico.

B. Provided by certified registered nurse anesthetists (CRNA):

(1) administration by a qualified certified nurse anesthetist (CRNA) requires the operating dentist to have oversight of the CRNA to perform sedation. If the dentist of a facility approved for

sedation utilizes a CRNA to provide the sedation, the CRNA may only administer sedation up to the permit level of the facility and the dentist.

(2) the operating dentist shall ensure that the CRNA is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the staff of an accredited New Mexico hospital in the community in which the anesthesia occurs. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all the anesthetists used.

(3) the operating dentist, working with a CRNA, is responsible for the adequacy of the facility, and aiding in the treatment of emergencies associated with the administration of parenteral sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. The CRNA is responsible for the sedation administration.

[16.5.15.16 NMAC - Rp, 16.5.15.13 NMAC, 3/18/2018]

16.5.15.17 REPORTING ADVERSE INCIDENTS:

A. Each licensed dentist must submit a written report to the board within thirty days after any significant morbidity or mortality or other incident which results in temporary or permanent physical or mental injury of a patient during, or as a result of, nitrous oxide inhalation analgesia, conscious sedation administered via oral, rectal, or parenteral routes, deep sedation, or general anesthesia.

B. The report is required regardless of the need for hospitalization after the incident and shall include the following:

- (1) description of the dental procedure;
- (2) description of the pre-operative physical condition of the patient;
- (3) list of drugs and dosage administered and

route of administration;

(4) description in detail of techniques utilized in administering the drugs utilized;

(5) the names of auxiliary personnel in attendance; and

(6) description of the adverse occurrence to include the following: detailed description of symptoms of any incident; treatment initiated on the patient; response of the patient to the treatment; description of the patient's condition on termination of treatment; and copies of the patient record, medical history and operative report.

[16.5.15.17 NMAC - Rp, 16.5.15.14 NMAC, 3/18/2018]

16.5.15.18 FAILURE TO REPORT: Failure to comply with the reporting requirements of Section 16.5.15.17 NMAC of this part shall be grounds for disciplinary action against the licensee. In accordance with the provisions of the Uniform Licensing Act, the board may take any actions enumerated in Section 16.5.16 NMAC, including revocation of the sedation/anesthesia permit.

[16.5.15.18 NMAC - Rp, 16.5.15.15 NMAC, 3/18/2018]

16.5.15.19 PERMIT APPLICATION PROCEDURE FOR MINIMAL AND MODERATE SEDATION, AND DEEP SEDATION/GENERAL ANESTHESIA:

A. Applications may be obtained from the board office. The completed application, accompanied by the required permit fee as defined in Section 16.5.5 NMAC, the application is forwarded to the anesthesia committee for evaluation. After review of the completed application and any other documentation, including a signed notarized affidavit of compliance (if required), the anesthesia committee may recommend a permit for minimal, moderate, or deep sedation/general anesthesia. An oral and written examination of the applicant applying for moderate parenteral sedation or deep sedation/general

anesthesia may be required, as described in Subsection B of Section 16.5.15.19 NMAC.

B. Examination/evaluation: The anesthesia committee will require an oral and written examination of emergency protocols and practices from the applicant dentist for moderate parenteral sedation and deep sedation/general anesthesia, if the anesthesia committee or board determines an application is incomplete or is lacking information to make a final recommendation for approval. This may require travel by the applicant dentist to meet with an evaluator.

This along with the original application, cases examples supplied, and affidavit of compliance will be used to evaluate the competency of the applicant. If an office inspection is needed, the evaluator may need to schedule a facility inspection with the applicant. The anesthesia committee uses the American association of oral and maxillofacial surgeon's office anesthesia evaluation manual as a guide for the examinations. Incomplete applications will be returned by the anesthesia committee to the board office with a clear indication of the deficient areas.

C. After receipt of proper documentation, completion of an affidavit of compliance, and the successful passing of the oral and written examination (if required), the anesthesia committee and the secretary-treasurer of the board may issue a permit to administer the level of sedation for which the applicant was approved. Ratification of this permit will occur at the next regular scheduled meeting, unless substantial subsequent evidence compels the board to deny or delay approval of the permit.

D. Final action: after final evaluation of the application and examination results, the anesthesia committee recommends final action on the application to the board. The board makes final determination on approval of the permit. If an application is determined incomplete for failure to meet the requirements of Section 16.5.15 NMAC, the areas of

non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.19 NMAC - Rp, 16.5.15.16 NMAC, 3/18/2018]

16.5.15.20 PERMIT EXPIRATION AND RENEWAL:

A. Expiration:

Sedation/anesthesia permits are issued for six years from the last day of the month in which the initial permit was issued. Nitrous oxide analgesia permits do not expire.

B. Renewal: Renewal applications will not be sent to each dentist prior to the expiration date of the sedation/anesthesia permit. It is the responsibility of the permit holder to start the renewal process within six months prior to the expiration date. The completed application, along with the required fee must be returned to the board office prior to permit expiration. The permit renewal application will be forwarded to the anesthesia committee, which will renew the permit holder's affidavits for administration and facility or examine the permit holder as required. The anesthesia committee may require the applicant applying for a renewal permit to pass another oral examination and the facility used by the dentist may be subject to another inspection. This decision will be based on credentials of the applicant or past experience with sedation treatments.

C. Education requirements:

(1) minimal sedation - holders of permits in minimal sedation must have a minimum of eight hours of continuing education every six-year renewal period in medical emergencies, air way management, pharmacology, or anesthesia related topics;

(2) moderate sedation (formerly conscious sedation I and II), deep sedation and general anesthesia - holders of permits for moderate sedation, deep sedation or general anesthesia must have a minimum of 16 hours of continuing education every six-year renewal period in medical emergencies,

airway management, pharmacology, or anesthesia related topics.

D. New facility evaluation: a dentist who holds a moderate sedation, deep sedation or general anesthesia permit and who relocates his practice requires a new facility permit based on re-examination, or affidavit of compliance. A new permit fee will be charged.

E. Re-examination/evaluation: The board may require a re-examination or a re-evaluation of the credentials, facilities, equipment, personnel, and procedures of a permit holder to determine if the dentist is currently qualified to administer anesthesia. The board or its agents shall notify the dentist to be re-examined or re-evaluated 180 days in advance of permit expiration. The notification will indicate the content and format of the examination/evaluation.

F. Permit expiration: Failure of a dentist to renew his license and permit, or to schedule a required office re-evaluation within thirty days of receipt of the notification, or failure on the part of the licensee to successfully complete the examination/evaluation, will cause the permit to expire.

G. Verification of continuing education: The board requires verification of continuing education credits for sedation. The records identified in Subsection F of Section 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for 6 years following the renewal cycle in which they are earned. Additionally, and at renewal time, holders of any permit level may be requested to demonstrate competency in maintenance of airway patency to the anesthesia committee, it's designated examiner or the board either on a "board approved" simulator, or other device as may be acceptable to the board. There may be an announced audit of any permit holder by the anesthesia committee or by the board designated examiner during the permitted time for the purpose of

demonstrating airway management and airway competency, either on the board designated model or other device approved by the board.

[16.5.15.20 NMAC - Rp, 16.5.15.17 NMAC, 3/18/2018]

HISTORY OF 16.5.15 NMAC: Pre NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: Article XIV, Administration Of Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General Anesthesia, filed 09/04/1986; BOD Rule 13, Administration Of Nitrous Oxide Inhalation Analgesia, Conscious Sedation, Deep Sedation, And General Anesthesia, filed 02/09/1989; BODHC Rule DS 8-95, Dentists, Analgesia Administration, filed 07/31/1995.

History of Repealed Material: 85-1, Repealer, filed 10/29/1985. 16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, filed 2/15/2005- Repealed effective 3/18/2018.

NMAC History:

16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, (filed 2/15/2005) was replaced by 16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, effective 3/18/2018.

Other History:

BODHC Rule DS 8-95, Dentists, Analgesia Administration (filed 07/31/1995); renumbered, reformatted and replaced by 16 NMAC 5.15, Dentists, Analgesia Administration, effective 09/30/1996; 16 NMAC 5.15, Dentists, Analgesia Administration (filed 09/17/1996), replaced by 16.5.15 NMAC, Dentists, Analgesia Administration, effective 05/31/2002. 16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, (filed 2/15/2005) was replaced by 16.5.15 NMAC, Dentists, Anesthesia/Sedation Administration, effective 3/18/2018.

**DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.5 NMAC, Section 8, effective 03/18/2018.

- 16.5.5.8 FEES:**
- A.** All fees are non-refundable.
 - B.** Application for licensure by examination fee is \$600, which includes the initial licensing period.
 - C.** Application for licensure by credential fee is \$850, which includes the initial licensing period.
 - D.** An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.
 - E.** Triennial renewal fee for all dental licensees is \$550.
 - (1)** Impaired fee is \$30 per triennial renewal period plus renewal fee.
 - (2)** Late renewal fee of \$100 after July 1 through September 1 plus renewal and impaired fees.
 - (3)** Cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.
 - F.** Triennial renewal fee for inactive license is \$90.
 - G.** Temporary license fees:
 - (1)** forty-eight-hour license, application fee of \$50, license fee of \$50;
 - (2)** six-month license, application fee of \$100, license fee of \$200;
 - (3)** twelve-month license, application fee of \$100, license fee of \$300;
 - (4)** twelve-month license for student enrolled in residency program, application fee of \$25.00, license fee of \$50.00.
 - H.** Anesthesia permit fees:
 - (1)** nitrous

- oxide permit fee is \$25;
 - (2)** [conscience] minimal sedation [F] permit fee is \$25;
 - (3)** [conscience] moderate sedation [H] permit fee is \$300;
 - (4)** deep sedation and general anesthesia permit fee is \$300.
 - I.** Reinstatement fee is \$400.
 - J.** Application for licensure for inactive status is \$50.
 - K.** Non-dentist owner fees.
 - (1)** Application for licensure fee is \$300, which includes the initial licensing period.
 - (2)** Triennial renewal fee of \$150.
 - (3)** Late renewal fee of \$100 after July 1 through September 1 plus renewal fee.
 - (4)** Cumulative late fee of \$10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal and late fee.
 - L.** Administrative and duplication fees:
 - (1)** duplicate license fee is \$25;
 - (2)** multiple copies of the statute or rules are \$10 each;
 - (3)** copy fees are \$0.25 per page;
 - (4)** list of current dental licensees is \$300; an annual list of current licensees is available to the professional association upon request at no cost; and
 - (5)** mailing labels of current dental licensees is \$300.
- [10/21/1970, 3/14/1973, 4/11/1981, 3/7/1988, 4/12/1992, 3/16/1994, 5/31/1995, 9/30/1996, 12/15/1997, 5/28/1999, 8/16/1999; 16.5.5.8 NMAC - Rn & A, 16 NMAC 5.5.8, 06/14/2001; A, 5/31/2002, A, 03/06/2005; A, 04/17/2006 A, 07/16/2007; A, 07/17/2008; A, 06/10/2009; A, 01/15/2015, A,

03/18/2018]

**DENTAL HEALTH CARE,
BOARD OF**

This is an amendment to 16.5.16 NMAC, Section 10 effective 3/18/2018.

Explanatory statement: Statute citations throughout the rule were corrected to conform to correct legislative styles.

- 16.5.16.10 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 dental profession;
 - (2)** failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;
 - (3)** failure to release to a patient copy of that patient's records and x-rays within 15 business days regardless whether patient has an outstanding balance;
 - (4)** failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience, including:
 - (a)** an owner dentist or supervisor

causing an employee dentist to make a referral for dental treatment based on contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by referral to another practitioner, and failure to notify the patient of such contractual obligations for referrals;

(b)

an owner dentist or supervisor causing an employee dentist to use a dental laboratory due to contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by the use of another dental laboratory.

(5) failure

to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a

dentist to comply with the following advertising guidelines, no person shall:

(a)

practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

(b)

practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;

(c)

fail to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's names(s), address and telephone number or direct reference where the name of the dentist(s) can be found as defined in Section 16.5.16.7 NMAC;

(d)

advertise an offer for goods or services that does not meet the following requirements:

(i)

for a printed advertisement, all applicable conditions and restrictions of an offer, as well as the direct reference to the licensee(s), shall be no smaller than twenty percent of the largest [front] font contained in the advertisement;

(ii)

for an audio advertisement, all applicable conditions and restrictions of an offer, as well as the direct reference to the licensee(s), must be stated at the same volume and speed as the offer language;

(iii)

advertise a practice in a false, fraudulent or misleading manner; if the name of the practice or office contains one of the American dental association recognized specialties and only a general dentists performs that service, the advertisement, signage, or broadcast media must say "services provided by a general dentist", so as not to imply that a specialist is performing such procedures; and

(iv)

advertise as a specialist unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by commission on dental accreditation (CODA) in one of the specialty areas of dentistry recognized by the American dental association.

(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 dentist 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; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating

dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe,

dispense or administer drugs outside the scope of dental practice;

(11)

charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual

misconduct;

(13) breach

of ethical standards, an inquiry into which the board will begin by reference to the most current code of ethics of the American dental association;

(14) the use

of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing

abusive billing practices;

(16) fraud,

deceit or misrepresentation in any application;

(17) violation

of any order of the board, including any probation order;

(18) injudicious

prescribing, administration, or dispensing of any drug or medicine;

(19) failure to

report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent

supervision of a dental hygienist or dental assistant;

(21) cheating

on an examination for licensure; or

(22) failure to

comply with the terms of a signed collaborative practice agreement;

(23) failure

of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care as defined in Section 16.5.17 NMAC;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;

(26) conviction of either a misdemeanor or a felony punishable by incarceration;

(27) aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient abandonment;

(29) habitually addicted as defined in Subsection C and D of Sections 61.5A-21 4 & 6 or 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, Section (30-31-1 NMSA 1978) or habitual or excessive use or abuse of alcohol;

(30) failure of the licensee to furnish the board within ten business days of request, its investigators or representatives with information requested by the board;

(31) failure to appear before the board when requested by the board in any disciplinary proceeding;

(32) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 seq.;

(33) fraudulent record keeping;

(34) failure to properly install amalgam separator as

defined in Section 16.5.58 NMAC;

(35) failure to properly operate and maintain amalgam separator as defined in Section 16.5.58 NMAC; and

(36) failure to properly dispose of amalgam waste as defined in 16.5.58 NMAC.

[9/13/1969, 10/21/1970, 4/11/1981, 3/9/1989, 3/11/1989, 10/16/1992, 5/31/1995, 6/4/1996, 2/14/2000; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12/14/2000; A, 07/16/2007; A, 07/19/2010; A, 01/09/2012; A, 06/14/2012; A, 07/17/2013; A, 01/04/2014; A, 01/15/2015; A, 3/25/2016; A, 3/15/2017, A, 3/18/2018]

DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.28 NMAC, Sections 3 and 9, effective 3/18/2018.

Explanatory statement: Statute citations throughout the rule were corrected to conform to correct legislative styles.

16.5.28.3 STATUTORY AUTHORITY: Part 28 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, [~~Section 61-5A-4 NMSA 1978~~] Section 61-5A-6 NMSA 1978 (1996 Repl. Pamp.). [9/30/1996; 16.5.28.3 NMAC - Rn, 16 NMAC 5.28.3, 4/17/2006]

16.5.28.9 CERTIFICATION BY CURRICULUM OR EXAMINATION: Applicants for certification in local anesthesia by curriculum or exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:
(1) a current active license in good standing to practice dental hygiene in New Mexico;

(2) certification by curriculum: successful completion of an educational program in local

anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, and successfully pass a board approved written local anesthesia exam [~~administered by western regional examining board (WREB), or other board approved written exam; the~~]. The results of the [western regional examining board (WREB) exam or other board] approved written exam are valid in New Mexico for a period not to exceed five years; or

(3) certification by examination: successful completion of a board approved educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training, and successfully pass a board approved written and clinical local anesthesia examination [~~administered by western regional examining board (WREB), or other board approved written and clinical exam; the~~]. The results of the [western regional examining board (WREB) exam or other] board approved written and clinical exam are valid in New Mexico for a period not to exceed five years.

B. Documentation:
(1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;

(2) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as required per Paragraph (9) of Subsection A of Section 16.5.28 NMAC; and

(3) certificate or score card from WREB or other board approved exam indicating successful completion and date of local anesthesia exam, as required per Paragraph (9) of Subsection A of 16.5.28 NMAC.

[3/14/1973, 4/10/1981, 5/31/1995,

12/15/1997; 16.5.28.9 NMAC - Rn, 16 NMAC 5.28.9, 04/17/2006; A, 04/16/2008; A, 07/17/2008; A, 09/18/2010; A, 01/09/2012; A, 3/15/2017; A, 3/18/2018]

DENTAL HEALTH CARE, BOARD OF

This is an amendment to 16.5.42 NMAC, Section 6, 9, 10 and 12, effective 3/18/2018.

Explanatory statement: Statute citations throughout the rule were corrected to conform to correct legislative styles.

16.5.42.6 OBJECTIVE:

To establish the requirements for certification for expanded function dental auxiliary to perform expanded functions. These rules address applicants being certified via the following tracks.

A. Completed an expanded function dental auxiliary program at an institution where the dental assisting program is accredited by the joint commission on dental accreditation (CODA).

B. Independent preparation for dental assistants that have five years' experience and prepare independently for the requirements.

C. Candidates who possess a current certificate in good standing in expanded function dental auxiliary from another state or jurisdiction (credentials).
[16.5.42.6 NMAC - N, 01/09/12, A, 3/18/2018]

16.5.42.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR EXPANDED FUNCTION DENTAL AUXILIARY:

A. satisfactory completion of an [accepted] expanded function dental auxiliary course at an institution [accredited by the board or joint commission on dental accreditation]. Where [in the offering] the dental assisting program is [also] accredited by the joint

commission on dental accreditation, and approved by the board. The applicant must be certified in all 4 expanded functions as defined in Section 16.5.33 NMAC; or

B. for dental auxiliaries that have five years' experience and "independent preparation" for the requirements:

(1) applicant must have a minimum of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(2) achieved certification in all expanded functions as defined in Section 16.5.33 NMAC;

(3) taken a course of study in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function and passed a post-test approved by the board verifying readiness for taking the certification examination;

(4) recommended for an expanded function dental auxiliary (EFDA) certification by the supervising dentist as defined in Subsection G of Section 16.5.42.7 NMAC;

(5) instructors must have higher or same level of licensure or certification in respective courses they are teaching;

C. pass a clinical examination accepted by the board for certification of EFDA;

D. completed the jurisprudence examination with a score of at least seventy five percent;

E. exemptions; an expanded function dental auxiliary who is certified to perform EFDA duties in another state or jurisdiction with requirements not less stringent than those in New Mexico may be certified based on credentials;

F. after passing a board accepted examination or being certified by credentials, EFDA candidates must complete an apprenticeship under the close personal supervision of a supervising dentist;

(1) the board will send to the EFDA candidate upon

receipt of the completed application the following:

(a) permit to start apprenticeship to be displayed during apprenticeship; and

(b) affidavit form to be signed by supervising dentist at start and completion of apprenticeship;

(2) the affidavit shall state that the supervising dentist assures that the EFDA candidate is competent in the procedures allowed by an EFDA and that the supervising dentist assumes full responsibility and liability for the training and actions of the EFDA;

(3) once the permit is issued by the board office the EFDA candidate has 180 days to complete the apprenticeship; and

(4) upon completion of the apprenticeship the candidate must return the EFDA permit and the signed affidavit to the board; once the permit and signed affidavit have been received and verified by the board a certificate for EFDA may be issued.

[16.5.42.9 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13; A, 12/16/1; A, 3/18/2018]

16.5.42.10 REQUIRED

DOCUMENTATION: Each applicant for an expanded function dental auxiliary certification shall submit to the board or its agent the required fees and the following documentation. Applications are valid for one year from the date of receipt by the board; after one year, the applicant shall submit to the board a new application.

A. Each application for licensure who completed an EFDA program as defined in Subsection A of Section 16.5.42.9 NMAC must submit the following documentation:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) official transcripts or certification verifying successful completion of an EFDA program accredited by the commission on dental accreditation;

(3) copy of clinical examination accepted by the board for certification as EDFA; the results of the exam are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination;

(b) results of the clinical examination shall be sent directly to the board office; and

(4) affidavit letter from supervising dentists.

(5) proof of certifications in all 4 expanded functions as defined in Section 16.5.33 NMAC no later than July 1, 2019.

B. An applicant who has [~~not graduated from an accredited expanded function dental auxiliary program~~] not graduated from a program as defined in Subsection A of Section 16.5.42.9 NMAC can apply for certification if they meet all requirements in [~~Subsection B, D and F of 16.5.42.9 NMAC~~] Subsection B, C, D and F of 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) shall provide proof of five years of continuous employment as a dental assistant or dental hygienist with a minimum of 1,000 hours per year;

(3) shall have achieved certification in all expanded functions as defined in Section 16.5.33 NMAC;

(4) shall provide proof of successful completion of courses in dental anatomy, dental materials, placing and shaping direct restorations, fitting and shaping of stainless steel crowns, and occlusion function;

(5) shall provide an affidavit executed on dentist letterhead from a supervising dentist recommending the applicant for EFDA certification and verifying

the applicant's competency; and

(6) copy of clinical examination score card or certificate.

C. Certification by credentials: Applicants can apply for certification by credentials if they meet all requirements as defined in Subsections A, C, D and F of Section 16.5.42.9 NMAC and must submit the following:

(1) completed application with a passport quality photo taken within six months affixed to the application;

(2) verification of a current active certification in good standing from another state; and

(3) copy of clinical examination score card or certificate; the results of the examination are valid in New Mexico for a period not to exceed five years:

(a) the applicant shall apply directly to a board approved testing agency for examination, and

(b) the results of the clinical examination must be sent directly to the board office; and

(4) affidavit letter from the supervising dentist of competency. [16.5.42.10 NMAC - N, 01/09/12; A, 06/14/12; A, 07/17/13; A, 12/16/15; A, 3/18/2018]

16.5.42.12 TIMELINE FOR PREVIOUSLY ISSUED EFDA PERMITS AND EXPANDED FUNCTIONS:

All current EFDA certification permit holders must have all four expanded functions as defined in Section 16.5.33 NMAC no later than July 1, 2019. EFDA permits will suspend automatically if such expanded functions certifications are not current. Once those expanded functions are certified, the EFDA permit will become valid until its regular expiration period.

[16.5.42.12 NMAC - N, 3/18/2018]

RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.1 NMAC, Sections 7, 9 and 10, effective 3/14/2018. In 15.2.1.7 NMAC, Subsections A through O, Paragraphs (1) through (14) of Subsection N and Subsections Q through Z were not published as there were no changes. In 15.2.1.9 NMAC, Subsection A, Paragraphs (1) through (8) and Paragraph (10) of Subsection B, and Subsection C were not published as there were no changes. In 15.2.1.10 NMAC Subsection A, Paragraph (1) of Subsection B and Subsection C were not published as there were no changes.

15.2.1.7 DEFINITIONS:

P. Definitions beginning with the letter "p":

(15) **"Program Trainer"** is a licensed trainer who solely for the purpose of the official race program, is identified as the trainer of the horse that is actually under the control of, and trained by, another person who may or may not hold a current trainer's license in any jurisdiction.

(16) **"Prohibited substance"** is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability, including

(a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or

(b) that may interfere with testing procedures; or

(c) that is a therapeutic medication present in excess of established acceptable levels; or

(d) that is present in the horse in excess

of levels that could occur naturally; or
(e)
that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.

~~(16)~~ (17)

“Program” is the published listing of all contests and contestants for a specific performance.

~~(17)~~ (18)

“Protest” is a written complaint alleging that a horse is or was ineligible to race.

~~(18)~~ (19)

“Purse” is the total cash amount for which a race is contested whether paid at the time of the race or at a future date.

[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 03/15/2001; A, 02/14/2002; A, 08/30/2007; A, 12/01/2010; A, 01/01/2013; A, 05/01/2013; 08/15/2014; A, 07/01/2017; A, 03/14/2018]

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

B. Proceedings before the stewards:

(9) Appeals.
(a)

A person who has been aggrieved by a ruling of the stewards may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b)

An appeal under this section must be filed not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The appeal must be received by noon, at the main commission offices or with the stewards who issued the ruling and must be accompanied by

a fee in the amount of \$500. The fee must be in the form of cash, a cashier’s check, money order or personal check.

(c)

The commission may fine a license holder in the amount up to \$2,500 after considering an appeal if based on the evidence the appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious. Failure of an appealing party to appear at a noticed hearing or withdraw their appeal without providing five business days notice prior to the hearing date may result in the non appearing appealing party being fined up to \$1,000.

(d)

An appeal must be in writing on a form prescribed by the commission. The appeal must include the name, address, telephone number and signature of the person making the appeal; and a statement of the basis for the appeal.

(e)

On notification by the commission that an appeal has been filed, the stewards shall forward to the commission the record of the proceeding on which the appeal is based, and a statement of the reasons for their rulings.

(f)

If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules.

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 03/15/2001; A, 03/31/2003; A, 05/30/2003; A, 06/15/2004; A, 06/30/2009; A, 09/15/2009; A, 12/1/2010; A, 05/01/2013; A, 01/01/2014; A, 03/16/2015; A, 05/01/2015; A, 09/16/2015; A, 03/15/2016; A/E, 06/28/2016; A, 09/16/2016; A, 12/16/2016; A, 07/01/2017; A, 03/14/2018]

15.2.1.10 RULEMAKING PROCEDURES:

B. PROCEEDINGS BY COMMISSION:

~~(2)~~ Notice of rulemaking hearings shall be given at least 20 days prior to the hearing date and shall state the subjects, time and place of the hearing and the manner in which interested persons may submit their views. The notice shall also state where copies of proposed rules may be obtained by the public. The notice shall be published in a newspaper of general circulation in the state and the commission shall mail copies of the notice to all persons who have made a written request to the commission for advance notice of such rulemaking hearings.

~~(3)~~

Rules are effective upon their filing at the state records center and published in the New Mexico register provided that rules shall not be filed with the records center sooner than five calendar days from the date of adoption. This provision does not apply to emergency rules.

~~(4)~~

If the commission determines that an emergency exists which requires immediate action it may adopt, amend or repeal a rule and cause its filing immediately with the state records center. An emergency is a direct and immediate need to preserve public peace, health, safety or general welfare. The rule shall be effective immediately upon such filing. An emergency rule shall be noted as such on the copies filed with the records center. A statement of the necessity for the emergency rule shall be contained within the emergency rule. The emergency rule shall not continue in effect longer than 30 days unless within that time the commission commences proceedings to adopt the rule under the standard provisions of these rules. If the commission commences such proceedings the emergency rule shall remain in effect until a permanent rule takes effect or until the proceedings are otherwise completed. In no event shall an emergency regulation remain in effect

for more than 120 days:

~~(5) Any interested person may request in writing that the commission adopt, amend or repeal a rule. Within 120 days of receipt of the written request, the commission shall either initiate formal proceedings to consider the proposed rule or issue a written statement of its reason for denial of the request to consider it.~~

(2) Notice of rulemaking hearings shall be provided to the public not later than 30 days prior to the hearing date. The notice shall include:

(a) a summary of the full text of the proposed rule;

(b) a short explanation of the purpose of the proposed rule;

(c) a citation to the specific legal authority authorizing the proposed rule and the adoption of the proposed rule;

(d) information on how a copy of the full text of the proposed rule may be obtained;

(e) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;

(f) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and,

(g) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained. The notice shall be published in a newspaper of general circulation in the state and the commission shall send by electronic mail copies of the notice to all persons who have made a written request to the commission for advance notice of such rulemaking hearings. The notice must also be published in the New Mexico register.

(3) Rules are effective the date they are published in the New Mexico register unless

a later date is otherwise provided by law or in the rule. The agency shall file the adopted rule with the state records administrator or the administrator's designee within 15 days from the date of the adoption. This provision does not apply to emergency rules.

(4) If the commission finds that the time required to complete the rulemaking procedure would cause an imminent peril to the public health, safety or general welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law, then the agency shall provide to the public a record of any such finding and detailed justification for that finding before issuing an emergency rule.

The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued.

(5) Any interested person may request in writing that the commission adopt, amend or repeal a rule. The commission shall either initiate formal proceedings to consider the proposed rule or issue a written

statement of its reason for denial of the request to consider it.

[15.2.1.10 NMAC - Rp, 15 NMAC 2.1.10, 03/15/2001; A, 03/14/2018]

RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.5 NMAC, Sections 6, 9 and 11, effective 03/14/2018. In 15.2.5.9, Subsection A and Paragraphs (1) through (5) of Subsection B were not published as there were no changes. In 15.2.5.11 NMAC Paragraph (1), (2) and (4) of Subsection A and Subsections B through D were not published as there were no changes.

15.2.5.6 OBJECTIVE: The objective of [Part 4] Part 5 of Chapter 2 is to achieve the objective that all horse races be conducted fairly and honestly.

[15.2.5.6 NMAC - Rp, 15 NMAC 2.5.6, 03/15/2001; A, 03/14/2018]

15.2.5.9 DECLARATIONS AND SCRATCHES: Declarations and scratches are irrevocable except with permission of the stewards.

B. Scratches:

(6) Entry of any horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness may not be accepted until the expiration of [three entry days] seven-calendar days after such horse was scratched or excused and the horse has been removed from the veterinarian's list [by the racing-veterinarian, and then only with the approval of the stewards].

[15.2.5.9 NMAC - Rp, 15 NMAC 2.5.9, 03/15/2001; A, 10/31/2006; A, 03/14/18]

15.2.5.11 WORKOUTS:
A. Requirements:

(3) Horses that have never raced around the turn will be required to have within 30 days prior to time of race, at least one workout at 660 yards or farther. [Horses that have previously started in a race around the turn, but not within 60 days, will be required to have at least one workout at 660 yards or farther prior to time of race.]

[15.2.5.11 NMAC - Rp, 15 NMAC 2.5.11, 03/15/2001; A, 03/30/2007; A, 06/15/2009; A, 07/05/2010; A, 01/01/2013; A. 03/15/2016; A, 12/16/16; A, 03/14/2018]

RACING COMMISSION

Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Sections 9 and 10, effective 03/14/2018. In 15.2.6.9 NMAC, Subsections A, and Subsections C through N were not published as there are no changes. In 15.2.6.10 NMAC, Subsections A through C, and Paragraphs (2) through (9) were not published as there are no changes.

15.2.6.9 MEDICATIONS AND PROHIBITED

SUBSTANCES: The classification guidelines contained within the “uniform classification guidelines for foreign substances and recommended penalties and model rule”, [~~April 20, 2017, version 13.02~~] July 29, 2017, version 13.3 and “association of racing commissioners international inc. controlled therapeutic medication schedule for horses”, version 4.0, revised April 20, 2017 by the association of racing commissioners international, are incorporated by reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission

as specified by this section.

Continued on the following page

B. Penalty recommendations:

(1) Category A penalties will be assessed for violations due to the presence of a drug carrying a category A penalty. Recommended penalties for category A violations are as follows:

Licensed trainer:**1st offense:**

A minimum one-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum three-year suspension. A minimum fine of \$10,000 or ten percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$25,000 or twenty-five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

2nd Lifetime offense in any jurisdiction:

A minimum three-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a three-year period. A minimum fine of \$25,000 or twenty-five percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$50,000 or fifty percent of the total purse (greater of the two), and may be referred to the commission for further action deemed necessary by the commission.

3rd Lifetime offense in any jurisdiction:

A minimum five-year suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of license revocation with no reapplication for a five-year period. A minimum fine of \$50,000 or fifty percent of the total purse (greater of the two) absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$100,000 or one hundred percent of the total purse (greater of the two), and may be referred to the commission for any further action deemed necessary by the commission.

Licensed owner:**1st offense:**

Disqualification and loss of purse. Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered.

2nd Lifetime offense in owner's stable in any jurisdiction:

Disqualification and loss of purse. Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered.

3rd Lifetime offense in owner's stable in any jurisdiction:

Disqualification, loss of purse, \$50,000 fine. Horse shall be placed on the veterinarian's list for 180 days and must pass a commission-approved examination before becoming eligible to be entered and referral to the commission with a recommendation of a suspension for a minimum of 90 days.

(2) Category B penalties will be assessed for violations due to the presence of a drug carrying a category B penalty and for the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraphs (3) and (4) of Subsection N of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:

Licensed trainer:**1st offense:**

A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.

2nd [Lifetime] offense (365-day period) in any jurisdiction:

A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum fine of \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.

3rd [Lifetime] offense (365-day period) in any jurisdiction:

A minimum 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

Licensed owner:

1st offense:

Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.

2nd [~~Lifetime~~] offense (365-day period) in owner's stable in any jurisdiction:

Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.

3rd [~~Lifetime~~] offense (365-day period) in owner's stable in any jurisdiction:

Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine* and horse must pass a commission-approved examination before becoming eligible to be entered.

[(2)] — Category B penalties will be assessed for violations due to the presence of a drug-carrying a category B penalty and for the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraphs (3) and (4) of Subsection P of 15.2.6.9 NMAC. Recommended penalties for category B violations are as follows:

Licensed trainer:

1st-offense:

A minimum 15-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 60-day suspension. A minimum fine of \$500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a \$1,000 fine.

2nd ~~Lifetime~~ offense in any jurisdiction:

A minimum 30-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum 180-day suspension. A minimum fine of \$1,000 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum fine of \$2,500.

3rd ~~Lifetime~~ offense in any jurisdiction:

A 60-day suspension absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum of a one year suspension. A minimum fine of \$2,500 absent mitigating circumstances or the presence of aggravating factors could be used to impose a maximum \$5,000 fine or five percent of the total purse (greater of the two) and may be referred to the commission for any further action deemed necessary by the commission.

Licensed owner:

1st-offense:

Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.

2nd ~~Lifetime~~ offense in stable in any jurisdiction:

Disqualification, loss of purse (in the absence of mitigating circumstances)* and horse must pass a commission-approved examination before becoming eligible to be entered.

3rd ~~Lifetime~~ offense in stable in any jurisdiction:

Disqualification, loss of purse, and in the absence of mitigating circumstances a \$5,000 fine* and horse must pass a commission-approved examination before becoming eligible to be entered.]

(3) Category C (minor) penalties will be assessed for violations due to the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraph (6) of Subsection N of 15.2.6.9 NMAC and overages for NSAIDs or for furosemide violations utilizing the following concentrations in serum or plasma:

- (a) phenylbutazone >2.0 mcg/ml and up to 5.0 mcg/ml; or
- (b) flunixin > 20 ng/ml and up to 100 ng/ml; or
- (c) ketoprofen > 2 ng/ml and up to 50 ng/ml; or
- (d) furosemide >100 ng/ml; or
- (e) no detectable furosemide concentration when identified as administered.

Recommended penalties for category C (minor) violations are as follows:

Licensed trainer:

1st offense (365-day period) in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of \$500.

2nd offense (365-day period) in any jurisdiction, the penalty is a minimum of a written warning to maximum fine of \$750.

3rd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of \$500 to a maximum fine of \$1,000.

Licensed owner:

1st offense (365-day period) in any jurisdiction, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run.

2nd offense (365-day period) in any jurisdiction, the penalty is the horse may be required to pass a commission-approved examination before being eligible to run.

3rd offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse and horse must pass a commission-approved examination before being eligible to run.

(4) Category C (major) penalties will be assessed for violations due to the presence of a drug carrying a category C penalty.

- (a) phenylbutazone [~~>5.1 mcg/ml;~~] >5.0 mcg/ml or
- (b) flunixin [~~>101 ng/ml;~~] > 100 ng/ml or
- (c) ketoprofen [~~>51 ng/ml;~~] > 50 ng/ml or
- (d) the presence of more than one NSAID in a plasma or serum sample in accordance with Paragraph (5) of Subsection N of 15.2.6.9 NMAC; or
- (e) penalty class C drugs.

Recommended penalties for category C (major) violations are as follows:

Licensed trainer:

1st offense (365-day period) in any jurisdiction, the penalty is a minimum fine of \$1,000 absent mitigating circumstances.

2nd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of \$1,500 and 15 day suspension absent mitigating circumstances.

3rd offense (365-day period) in any jurisdiction, the penalty is a minimum fine of \$2,500 and a 30 day suspension absent mitigating circumstances.

Licensed owner:

1st offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse in the absence of mitigating circumstances and the horse [may be required to] must pass a commission-approved examination before being eligible to run.

2nd offense (365-day period) in any jurisdiction, the penalty is disqualification, and loss of purse in the absence of mitigating circumstances. [and] If same horse, that horse shall be placed on veterinarian's list for 45 days and must pass a commission-approved examination before being eligible to run.

3rd offense (365-day period) in any jurisdiction, the penalty is disqualification, loss of purse, and in the absence of mitigating circumstances a [minimum] \$5,000 fine and if same horse that horse shall be placed on veterinarian's list for 60 days and must pass a commission-approved examination before being eligible to run.

(5) Any violation subsequent to a third violation will carry the same terms as imposed for a third violation. Penalties will run consecutively for a trainer or owner.

(6) If the trainer has not had more than one violation involving a drug that carries a category C penalty within the previous two years, the stewards are [~~encourage~~] encouraged to issue a warning in lieu of a fine provided the reported level in phenylbutazone is below 3.0 micrograms per milliliter absent of aggravating factors.

(7) After a two-year period, if a licensee has had no further violations involving a drug that carries a category C penalty, any penalty due to an overage in the 2.0-5.0 micrograms per milliliter range for phenylbutazone will be expunged from the licensee's record for penalty purposes.

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/2009; A, 06/30/2009; A, 09/15/2009; A, 12/15/2009; A, 03/16/2010; A, 07/05/2010; A, 09/01/2010; A, 12/01/2010; A, 11/01/2011; A, 02/15/2012; A, 04/30/2012; A, 07/31/2012; A, 12/14/2012; A, 05/01/2013; A/E, 05/02/2013; A, 09/30/2013; A, 04/01/2014; A, 05/16/2014; A, 08/15/2014; A, 09/15/2014; A, 03/16/2015; A, 09/16/15; A, 03/15/2016; A, 06/15/2016; A/E, 06/28/2016; A, 09/15/2016; A, 12/16/2016; A, 07/01/2017; A, 10/31/17; A, 03/14/2018]

15.2.6.10 TESTING:

D. Storage and shipment of split samples:

(1) Split samples obtained in accordance with Paragraphs (3) and (4) Subsection B, of 15.2.6.10 NMAC above shall be secured and made available for further testing. A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer or other secured mechanism at a secure location as provided by state statute or approved by the commission.

[15.2.6.10 NMAC - Rp, 15 NMAC 2.6.10, 04/13/2001; A, 03/30/2007; A, 09/01/2010; A, 07/31/2012; A, 05/01/2013; A, 05/16/2014; A, 06/15/2016; A, 07/01/2017; A, 03/14/2018]

RACING COMMISSION

Explanatory Paragraph: This is an amendment to 16.47.1 NMAC, Sections 8 and 10, effective 03/14/2018. In 16.47.1.8 NMAC, Subsections A through U were not published as there were no changes. In 16.47.1.10 NMAC, Subsections A through C, Paragraphs (1) through (4) in Subsection D, Paragraph (2) of Subsection F and Subsection E were not published as there were no changes.

16.47.1.8 GENERAL PROVISIONS:

V. Restrictions:

[Beginning one hour before post time, the use of cellular telephones will be prohibited in the paddock and the racetrack surface until the last race is official. Cellular telephone use will also be prohibited behind the starting gate during racing hours. The association shall be responsible for posting notices of the prohibition in these restricted areas.]

(1) Cellular telephone use is prohibited:

(a) on the race track surface beginning one half hour before first post through the last race becoming official; and

(b) behind the starting gate during racing hours.

(2) The association shall be responsible for posting notices of the cellular telephone prohibition in these restricted areas.

[16.47.1.8 NMAC - Rp, 16 NMAC 47.1.8, 03/15/2001, A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 02/14/2002; A, 11/14/2002; A, 03/31/2003; A, 07/15/2003; A, 09/29/2006; A, 03/30/2007; A, 08/14/2008; A, 06/15/2009; A, 09/15/2009; A, 01/01/2014; A, 04/01/2014; A, 06/01/2016; A, 12/16/2016; A, 07/01/2017; A, 03/14/2018]

16.47.1.10 TRAINERS:

D. Assistant trainers:

(5) A trainer that is involved in, or notified of, or under suspension for 30 days or more of a drug or rule violation, shall not transfer their horses to his or her assistant trainer or an employee of the trainer.

F. Program trainers:

(1) A program trainer, as defined in 15.2.1 NMAC, is a trainer who on behalf of an ineligible trainer or an undisclosed person:

(a) enters into an agreement for the sole purpose of completing an entry form for a race;

(b) pays an entry fee on behalf of an ineligible trainer or an undisclosed person;

(c) receives a financial or beneficial interest for the sole purpose of being listed as the trainer on the official race program; or

(d) obtains official works within New Mexico's jurisdiction on behalf of an ineligible trainer or an undisclosed person.]

(1) A program trainer, as defined in 15.2.1 NMAC, is a licensed trainer who, solely for the purposes of the official race program, is identified as the trainer of a horse that is actually under the control of, and trained by another person who may or may not hold a current trainer's license in any jurisdiction. Any trainer shall be deemed a program trainer if they:

(a) enter into an agreement on behalf of an unlicensed, ineligible or suspended trainer for the sole purpose of completing an entry form for a race;

(b)

pay an entry, nomination or starter fee on behalf of an unlicensed, ineligible or suspended trainer;

(c) receive a financial or beneficial interest from an unlicensed, ineligible or suspended trainer for the sole purpose of being listed as the trainer on the official race program; or

(d) obtain official works within New Mexico's jurisdiction on behalf of an unlicensed, ineligible or suspended trainer; or

(e) solicit or accepts a loan of anything of value from the unlicensed, ineligible or suspended trainer; or

(f) use the farm or individual name of the unlicensed, ineligible or suspended trainer when billing customers; or

(g) pay any compensation to the unlicensed, ineligible, or suspended trainer.

(3) On request by the commission or any of its agents, a person who assumes the care, custody or control of the horses of the unlicensed, ineligible or suspended trainer, shall permit the commission or its agents to examine all financial or business records to ensure compliance with this section. [16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007; A, 06/30/2009; A, 09/15/2009; A, 07/05/2010; A, 05/16/2014; A, 09/15/2014; A, 03/15/2016; A, 06/01/2016; A, 12/16/16; A, 03/14/2018]

End of Adopted Rules

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Issue 8	April 12	April 24
Issue 9	April 26	May 15
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