

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 2 IMPAIRED PRACTITIONER PROGRAM

16.5.2.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[9/30/96; 16.5.2.1 NMAC - Rn & A, 16 NMAC 5.2.1, 04/17/06]

16.5.2.2 SCOPE: The provisions of Part 2 of Chapter 5 apply to all dentists and dental hygienists who hold a current license or retired license or who are applying for licensure in New Mexico.
[9/30/96; 16.5.2.2 NMAC - Rn, 16 NMAC 5.2.2, 04/17/06]

16.5.2.3 STATUTORY AUTHORITY: Part 2 is promulgated pursuant to the Impaired Dentists and Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978 (1996 Repl Pamp.).
[9/30/96; 16.5.2.3 NMAC - Rn, 16 NMAC 5.2.3, 04/17/06]

16.5.2.4 DURATION: Permanent.
[9/30/96; 16.5.2.4 NMAC - Rn, 16 NMAC 5.2.4, 04/17/06]

16.5.2.5 EFFECTIVE DATE: September 30, 1996, unless a later date is cited at the end of a section.
[9/30/96; 16.5.2.5 NMAC - Rn & A, 16 NMAC 5.2.5, 04/17/06]

16.5.2.6 OBJECTIVE: To clarify the procedures identified in the Impaired Dentists and Hygienists Act.
[9/30/96; 16.5.2.6 NMAC - Rn, 16 NMAC 5.2.6, 04/17/06]

16.5.2.7 DEFINITIONS: [RESERVED]
[9/30/96; 16.5.2.7 NMAC - Rn, 16 NMAC 5.2.7, 04/17/06]

16.5.2.8 COMPLAINTS: Anyone may file a complaint with the board if they have reasonable cause to believe a dentist or dental hygienist is impaired by:

- A. mental illness;
- B. physical illness, including but not limited to deterioration through the aging process or loss of motor skills;
- C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act; or
- D. habitual or excessive use or abuse of alcohol.

[9/30/96; 16.5.2.8 NMAC - Rn, 16 NMAC 5.2.8, 04/17/06]

16.5.2.9 PROCESS: Complaints received in the board office that allege impaired practice will be processed in the following manner.

A. The complaint committee of the board shall review the complaint to determine if the board has jurisdiction over the matter and if the complaint may have merit.

B. If the complaint committee has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene is unable to practice with reasonable skill and safety to patients because of a condition listed in 16.5.2.8 NMAC, the committee shall refer the matter to the board.

C. The board shall designate an examining committee consisting of two licensed dentists or two licensed hygienists, if the licensee is a dental hygienist and two licensed physicians, one of whom shall be a psychiatrist who is knowledgeable and experienced in the field of chemical dependency if a question of mental illness or dependency is involved.

(1) The board may consider nominations from the New Mexico dental association for dentist members or the New Mexico dental hygienists' association for dental hygienist members of the examining committee; the board may consider nominations from the New Mexico medical society for the physician members of the committee; and

(2) no current member of the board or dental hygienists committee shall be a member of an examining committee.

D. The examining committee shall examine a licensee referred by the board to determine the licensee's fitness to practice dentistry or dental hygiene with reasonable skill and safety to patients, on a restricted or unrestricted basis. The committee may recommend intervention as necessary.

(1) The examining committee shall order the licensee to appear before it for hearing. The committee shall give the licensee 15 days notice of the time and place for the hearing and the reason for the examination. Notice shall be served personally or by registered or certified mail with return receipt requested;

(2) if the examining committee feels that a mental or physical examination of the licensee is necessary to determine the licensee's fitness to practice, the committee shall order the licensee to submit to the examination;

(a) a person licensed to practice dentistry or dental hygiene gives consent to submit to a mental or physical examination when directed to do so by the committee by practicing dentistry or dental hygiene or filing an annual registration; the licensee also waives objections on the grounds of privileged communication to the admissibility of the report of the examining committee to the board or dental hygienists committee; and

(b) a licensee who submits to a diagnostic mental or physical examination as ordered by the examining committee has a right to designate an individual to be present at the examination and make an independent report to the board or dental hygienists committee;

(3) failure of a licensee to appear for an examining committee hearing or submit to a mental or physical examination shall be reported to the board or dental hygienists committee; this may be grounds for the immediate and summary suspension of the licensee's license to practice dentistry or dental hygiene unless the failure is due to circumstances beyond the licensee's control; the suspension remains in effect until further order of the board;

(4) the examining committee shall report its findings and recommendations to the board.
[9/30/96; 16.5.2.9 NMAC - Rn, 16 NMAC 5.2.9, 04/17/06; A, 06/14/12]

16.5.2.10 VOLUNTARY RESTRICTION OF LICENSE: A licensee may request a restriction to practice under his/her license. The request must be in writing to the board or the dental hygienists committee. The board or the dental hygienists committee has the authority to attach stipulations to the licensee's licensure, if appropriate and to waive commencement of any proceedings.

A. As a condition for accepting a voluntary limitation, the board may require a licensee to:

(1) agree to and accept care, counseling or treatment by physicians or other appropriate health care providers acceptable to the board; and

(2) participate in a program of education prescribed by the board; or

(3) practice under the direction of a dentist acceptable to the board for a specified period of time.

B. A violation of any of the conditions of the voluntary limitation of practice by the licensee shall be cause for the refusal of renewal, or the suspension or revocation of the license by the board.

C. Removal of a voluntary restriction on a license is subject to the procedure for reinstatement of a license.

[9/30/96; 16.5.2.10 NMAC - Rn, 16 NMAC 5.2.10, 04/17/06; A, 06/14/12; A, 01-15-15]

16.5.2.11 ACTION ON THE REPORT OF THE EXAMINING COMMITTEE: The recommendations by the examining committee are advisory and are not binding on the board. The board or the dental hygienists committee may accept or reject a recommendation by the committee to permit a licensee to practice dentistry or dental hygiene with or without any restrictions or may refer the matter back to the examining committee for further examination or report. In the absence of a voluntary agreement for restriction of her/his license, a licensee shall be entitled to a hearing before the board in accordance with the procedures in the Uniform Licensing Act and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed.

[16.5.2.11 NMAC - N, 06/14/12]

16.5.2.12 PROCEEDINGS: The board may proceed formally against a licensee under the Impaired Dentists and Dental Hygienists Act in accordance with the procedures contained in the Uniform Licensing Act. When the licensee is a dental hygienist, the board shall act upon the recommendation of the dental hygienists committee on all procedures in the Impaired Dentists and Dental Hygienists Act.

A. At the conclusion of a hearing, the board shall make the following findings:

(1) whether or not the licensee is impaired by one of the conditions listed in 16.5.2.8 NMAC;

(2) whether or not such impairment does in fact limit the licensee's ability to practice dentistry or dental hygiene skillfully and safely;

(3) to what extent such impairment limits the licensee's ability to practice dentistry or dental hygiene skillfully and safely and whether the board or the dental hygienists committee finds that the impairment is such that the license should be suspended, revoked or restricted; and

(4) if the finding recommends suspension or restriction, then the board shall make specific recommendations as to the length and nature of the suspension or restriction and how it shall be carried out and supervised.

B. In addition to the findings listed in Subsection A of 16.4.2.12 NMAC, at the conclusion of a hearing, the board or the dental hygienists committee shall make a determination of the merits and may order one or more of the following:

(1) placement of the licensee on probation on such terms and conditions as it deems proper for the protection of the public;

(2) suspension or restriction of the license of the licensee to practice dentistry or dental hygiene for the duration of the licensee's impairment;

(3) revocation of the license of the licensee to practice dentistry or dental hygiene; or

(4) reinstatement of the license of the licensee to practice dentistry or dental hygiene without restriction.

C. The board may temporarily suspend the license of any licensee without a hearing, simultaneously with the institution of proceedings under the Uniform Licensing Act if it finds that the evidence in support of the determination of the examining committee is clear and convincing and that the licensee's continuation in practice would constitute an imminent danger to public health and safety.

D. Neither the record of the proceedings nor any order entered against a licensee may be used against the licensee in other legal proceeding except upon judicial review.

[16.5.2.12 NMAC - N, 06/14/12]

16.5.2.13 DISCIPLINARY ACTION: No action or examination or proceedings under the Impaired Dentists and Dental Hygienists Act precludes the board from investigating or acting simultaneously, in its sole discretion, under the Dental Health Care Act.

[16.5.2.13 NMAC - N, 06/14/12]

16.5.2.14 REINSTATEMENT OF LICENSE: A licensee whose license has been restricted, suspended or revoked under the Impaired Dentists of Dental Hygienists Act, voluntarily or by action of the board, shall have a right at reasonable intervals to petition for reinstatement of the license and to demonstrate that the licensee can resume the competent practice of dentistry or dental hygiene with reasonable skill and safety to patients.

A. The licensee shall make the petition in writing. If the licensee is a dental hygienist, the dental hygienists committee shall be advised and given all information so that its recommendation can be given to the board.

B. Once the board receives a licensee's petition for reinstatement, it shall be referred to the examination committee for an examination of the licensee.

C. The board, in its discretion, upon written recommendation of the examination committee, may restore the license of the licensee on a general or limited basis.

[16.5.2.14 NMAC - N, 06/14/12]

16.5.2.15 [RESERVED]

[16.5.2.14 NMAC - N, 06/14/12; Repealed, 01/15/15]

HISTORY OF 16.5.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives as:
BODHC 6-95, Impaired Practitioner Program, filed 7/31/95.

History of Repealed Material: [RESERVED]

Other History:

BODHC 6-95, Impaired Practitioner Program (filed 7/31/95) was renumbered, reformatted, amended and replaced by 16 NMAC 5.2, Impaired Practitioner Program, effective 9/30/96.

16 NMAC 5.2, Impaired Practitioner Program (filed 9/17/96) renumbered, reformatted, amended and replaced by 16.5.2 NMAC, Impaired Practitioner Program, effective 04/17/06.