

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 40 DENTAL ASSISTANTS, DISCIPLINARY PROCEEDINGS

16.5.40.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[9/30/96; 16.5.40.1 NMAC - Rn & A, 16 NMAC 5.40.1, 04/17/06]

16.5.40.2 SCOPE: The provisions of Part 40 of Chapter 5 apply to all active certificate holders and applicants for certification. These provisions may also be of interest to anyone who may wish to file a complaint against a dental assistant certified by the board.
[9/30/96; 16.5.40.2 NMAC - Rn, 16 NMAC 5.40.2, 04/17/06]

16.5.40.3 STATUTORY AUTHORITY: Part 40 of Chapter 5 is promulgated pursuant to the Dental Health Care Act, Sections 61-5A-6 and 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).
[9/30/96; 16.5.40.3 NMAC - Rn, 16 NMAC 5.40.3, 04/17/06]

16.5.40.4 DURATION: Permanent
[9/30/96; 16.5.40.4 NMAC - Rn, 16 NMAC 5.40.4, 04/17/06]

16.5.40.5 EFFECTIVE DATE: September 30, 1996, unless a later date is cited at the end of a section.
[9/30/96; 16.5.40.5 NMAC - Rn & A, 16 NMAC 5.40.5, 04/17/06]

16.5.40.6 OBJECTIVE: To establish the procedures for filing complaints against certificate holders, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a certificate holder which are considered incompetent or unprofessional practice.
[9/30/96; 16.5.40.6 NMAC - Rn, 16 NMAC 5.40.6, 04/17/06]

16.5.40.7 DEFINITIONS: [RESERVED]
[9/30/96; 16.5.40.7 NMAC - Rn, 16 NMAC 5.40.7, 04/17/06]

16.5.40.8 COMPLAINTS: Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Dental Health Care Act.
[5/31/95; 16.5.40.8 NMAC - Rn, 16 NMAC 5.40.8, 04/17/06]

16.5.40.9 ACTIONS:

- A. The board may issue fines, deny, revoke or suspend, or otherwise limit a certificate if the board determines the certificate holder is guilty of violating any of the provisions outlined in the Act, the Uniform Licensing Act, or these rules.
- B. The board may reprimand, censure, stipulate and may require certificate holders to fulfill additional continuing education hours within limited time constraints for violations of the act or the rules.
- C. The board shall take into consideration the role of dental assistants as employees when taking disciplinary action against a certificate holder. In the event the complaint is ruled to be based primarily on the assistant's role as employee, the board may consider appropriate action against the employer/dentist.

[5/31/95, 8/15/95; 16.5.40.9 NMAC - Rn, 16 NMAC 5.40.9, 04/17/06]

16.5.40.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

- A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification 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, device or material in a manner that is not in accordance with the customary standards and practices of dental assisting;
- B. sexual misconduct;
- C. failure to use appropriate infection control techniques and sterilization procedures;
- D. fraud, deceit or misrepresentation in any application;
- E. cheating on an examination for expanded function certification;

- F. performing any procedure which requires certification unless so certified;
- G. injudicious administration of any drug or medicine;
- H. conviction of either a misdemeanor or a felony punishable by incarceration; and
- I. failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.

[10/16/92, 8/15/95, 9/30/96; 16.5.40.10 NMAC - Rn, 16 NMAC 5.40.10, 04/17/06; A, 07/16/07; A, 07/19/10; A, 06/14/12; A, 07/17/13]

16.5.40.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations.
[8/15/95; 16.5.40.11 NMAC - Rn, 16 NMAC 5.40.11, 04/17/06; A, 07/16/07; A, 07/17/08]

HISTORY OF 16.5.40 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 Rule DA 3-95, Dental Assistants, Disciplinary Proceedings, filed 5/5/95.

History of Repealed Material: [RESERVED]

Other History:

BODHC Rule DA 3-95, Dental Assistants, Disciplinary Proceedings (filed 5/5/95) was renumbered, reformatted, amended and replaced by 16 NMAC 5.40, Dental Assistants, Disciplinary Proceedings, effective 9/30/96.
16 NMAC 5.40, Dental Assistants, Disciplinary Proceedings (filed 9/17/96) renumbered, reformatted, amended and replaced by 16.5.40 NMAC, Dental Assistants, Disciplinary Proceedings, effective 04/17/06.